

Governor). [(Throughout the Rules, the term non-member governor shall mean a Governor who is unaffiliated with the Exchange or any broker or dealer in Securities, as defined in Article III, Section 2 of the Exchange's Constitution).] It shall have the responsibility of establishing the compensation of the President and of coordinating with the President to determine a comprehensive corporate compensation and benefits policy. The comprehensive corporate policy shall include the structure and the administration of the determined compensation policy, the advisability and use of outside consultants, and a periodic review of the manner in which the determined policy is being administered.

#### Audit Committee

RULE 8. There shall be an Audit Committee which shall have not less than three members, all of whom shall be Governors, in addition to the Chairman of the Board. [The majority of the voting members of the Committee shall not be active on the floor of the Exchange. In the event that the Committee is appointed with five or more voting members, two such members shall be, if practicable, non-member] *Not less than 50 percent of the committee members shall be Non-Industry Governors (including at least one Public Governor).* The Chairman of the Committee shall be a [non-member] *Non-Industry Governor.* The Committee shall have the responsibility to annually review with the independent auditors, the scope of their examination and the cost thereof. It shall periodically review with the independent auditors and the internal auditor, the Exchange's internal controls and the adequacy of the internal audit program. It shall review the annual "management letter" and other reports submitted by the independent auditors, and take such action with respect thereto as it may deem appropriate. The Committee shall also annually recommend to the Board of Governors independent public accountants for appointment as auditors of the books, records and accounts of the Exchange and its subsidiaries.

#### Committee Quorum

RULE 10. One-half of its members, including the ex-officio ones, shall constitute a quorum of each committee provided for in this Article, except for the Committee on Specialist Assignment and Evaluation, the *Compensation Committee and the Audit Committee.* For [such] *the Committee on Specialist Assignment and Evaluation,* one-half of its members, not counting ex-officio members, shall constitute the number of committee members required for a quorum. Ex-officio members may be included for purposes of determining a quorum, provided that at least one-half of those members present are no ex-officio ones. *For the Compensation Committee and the Audit Committee, a quorum for the transaction of business shall consist of one-half of the committee members, including not less than 50 percent of the Non-Industry members of such committees. If at least 50 percent of the Non-Industry committee members are (i) present at or (ii) have filed a waiver of attendance for a meeting after receiving an*

*agenda prior to such meeting, the requirement that not less than 50 percent of the Non-Industry committee members be present to constitute the quorum shall be deemed satisfied.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39768; File No. SR-MSRB-98-3]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Rule G-36

March 17, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 10, 1998, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (SR-MSRB-98-3). The proposed rule change is described in Items I and II below, which Items have been prepared by the Board. The Board has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (e)(6) of Rule 19b-4 under the Act which renders the proposal effective upon receipt of this filing by the Commission.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board has filed with the Commission a proposed rule change consisting of an amendment to section (c)(iii) of Rule G-36, on delivery of official statements, advance refunding documents, and Forms G-36(OS) and G-36(ARD) to the Board. The proposed

rule change will become operative on April 9, 1998.<sup>4</sup>

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Rule G-36 requires that a broker, dealer or municipal securities dealer acting as underwriter in a primary offering of municipal securities (with certain limited exceptions) send to the Board copies of the official statement and completed Form G-36(OS). The rule was adopted by the Board for the purpose of creating a repository for official statements that would function much like a public library that stores, indexes and provides copies of official statements.<sup>5</sup> This library<sup>6</sup> was intended to serve as a central source for information regarding municipal securities trading in the primary and secondary markets. As originally adopted by the Board and approved by the Commission, Rule G-36 did not apply to any primary offering that qualified for an exemption under current section (d)(1) of Rule 15c2-12 under the Act, including, among other things, commercial paper that qualified for the exemption set forth in paragraph (ii) of Rule 15c2-12(d)(1).<sup>7</sup> In 1992, Rule G-36 was amended to make commercial paper and certain other categories of municipal securities subject to the rule if an official statement in final form had been prepared by or on behalf of the issuer, thereby extending the reach of Rule G-36 beyond the scope of Rule

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> On March 4, 1998, pursuant to Rule 19b-4(e)(b)(iii), the Board provided the required five day advance notice to the Commission of its intent to file this proposed rule change. In this notice, the Board has represented that this proposed rule change: (1) Will not significantly affect the protection of investors; (2) will not impose any significant burden on competition; and (3) will not become operative for thirty days after the date of this filing. See letter from Ernesto A. Lanza, Assistant General Counsel, MSRB, to Katherine A. England, Esq., Assistant Director, Division of Market Regulation, SEC, dated March 2, 1998.

<sup>4</sup> *Id.*

<sup>5</sup> See Securities Exchange Act Rel. No. 28081 (June 1, 1990), 55 FR 23333 (June 7, 1990).

<sup>6</sup> The library is now known as the Municipal Securities Information Library® (MSIL®) system. Municipal Securities Information Library and MSIL are registered trademarks of the Board.

<sup>7</sup> Prior to Rule 15c2-12 amendments adopted by the Commission on November 10, 1994, this section was labeled "(c)(2)." See Securities Exchange Act Rel. No. 26985 (June 28, 1989), 54 FR 28799 (July 10, 1989) (Adopting Release for Rule 15c2-12).

15c2-12.<sup>8</sup> the 1992 amendment was adopted because the Board believed there existed an interest among market participants in obtaining official statements relating to such municipal securities. By expanding the scope of the rule to include such offerings, the Board believed a more complete collection of disclosure documents would result and the overall integrity, efficiency and liquidity of the municipal securities market would be increased.

Rule G-36(c)(i) currently requires that the underwriter in a primary offering of commercial paper send to the Board a copy of the official statement, if any, prepared by or on behalf of the issuer within one business day of the bond closing.<sup>9</sup> Some concern has been expressed that each roll-over under a commercial paper program may technically constitute a primary offering that might trigger the rule's official statement submission requirement if there exists an official statement in final form prepared by or on behalf of the issuer, even if such official statement has previously been submitted to the Board in connection with the initial sale of commercial paper under the commercial paper program. Such a conclusion is not consistent with the intent of the Board in adopting Rule G-36. The Board had sought to build a library that included a substantially complete set of official statements rather than to impose, for reasons unrelated to the central purpose of building such library, a filing requirement in connection with each primary offering.<sup>10</sup> No purpose is served under these circumstances by having the same official statement submitted to the Board repeatedly.<sup>11</sup>

<sup>8</sup> Thus, only primary offerings that qualified for the limited placement exemption from Rule 15c2-12 under current paragraph (i) of section (d)(1) (formerly section (c)(1)) remained exempt from Rule G-36. See Securities Exchange Act Rel. No. 32086 (March 31, 1993), 58 FR 18290 (April 8, 1993) (order approving SR-MSRB-92-7).

<sup>9</sup> The official statement for a commercial paper issue is often referred to as an offering memorandum.

<sup>10</sup> Form G-36(OS) is also used to assist the Board in invoicing underwriters for underwriting assessments that are due under Rule A-13 in connection with primary offerings. However, as commercial paper issues fall within the exemption from the underwriting assessment set forth in Rule A-13(a)(ii), this function is not served by requiring that Form G-36(OS) be submitted in connection with each primary offering of commercial paper.

<sup>11</sup> In contrast, in certain situations where different underwriters or syndicates have underwritten different portions of the securities offered in a single official statement, separate submissions of Form G-36(OS) and of the official statement (thereby causing multiple copies of the official statement to be filed with the Board) serve the purpose of ensuring that underwriting assessments are invoiced to the applicable underwriters in the appropriate amounts.

The Board proposed the rule change to clarify that underwriters of commercial paper issues are required to submit to the Board the official statement in final form, if any, prepared by or on behalf of the issuer only once rather than each time outstanding commercial paper is rolled-over. Under the amendment, once the official statement for a commercial paper issue has been submitted to the Board, such official statement would not be required to be submitted in connection with future roll-overs or issuances of new tranches of commercial paper, even if it is used in connection with such offering, so long as the official statement has not been modified from the form previously submitted to the Board. If the official statement is revised or otherwise modified (e.g., a periodic revision or a modification due to the occurrence of a material event), then the revised or modified official statement would be subject to the rule's submission requirement the first time it is used in connection with a primary offering of the commercial paper, such as a roll-over or issuance of a new tranche. Such revised or modified official statement would thereafter qualify for the submission exemption until it is again revised or modified.

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act.<sup>12</sup> The Board believes that the proposed rule change will provide greater clarity to brokers, dealers and municipal securities dealers in complying with Rule G-36.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, because it would apply equally to all brokers, dealers and municipal securities dealers and would reduce the burden of complying with Rule G-36 for brokers, dealers and municipal securities dealers that underwrite commercial paper programs.

<sup>12</sup> Section 15B(b)(2)(C) states in pertinent part that the rules of the Board "shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest."

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; (iii) was provided to the Commission for its review at least five business days prior to the filing date; and (iv) does not become operative for 30 days from the date of its filing, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(e)(6) thereunder and will become operative on April 9, 1998.<sup>13</sup>

In particular, the Commission believes the proposed rule change qualifies as a "non-controversial filing" in that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at

<sup>13</sup> See *supra* note 3.

the Board's principal offices. All submissions should refer to File No. SR-MSRB-98-3 and should be submitted by April 14, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39764; File No. SR-PCX-98-03]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to a Change in the Lead Market Marker Staffing Charges

March 16, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 26, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to modify its staffing charge that is currently applicable to Lead Market Makers ("LMMs") who participate in the Exchange's LMM Book Pilot Program. The text of the proposed rule change is attached as Exhibit A.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included

statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On October 11, 1996, the Commission approved an Exchange proposal to adopt the LMM Book Pilot Program under which a limited number of LMMs would be permitted to assume operational responsibility for the options public limit order book ("Book") in a limited number of issues ("LMM Book Pilot Program" or "Program").<sup>4</sup> On October 28, 1996, the Commission approved an Exchange proposal to establish a staffing charge to LMMs who participate in the LMM Book Pilot Program.<sup>5</sup> This charge is currently set at \$0.50 per contract for each contract executed by the Book under the LMM Book Pilot Program, subject to a minimum monthly charge of \$200 and a maximum monthly charge of \$16,000.

The Exchange is now proposing to eliminate the current staffing charge and to replace it with a tiered rate structure. As with the existing staffing charge, the new charge will apply individually to each LMM who is participating in the Program. It will also continue to apply to all option contracts executed by the Book per month in all option issues collectively traded by an LMM under the Program. The new rates are as follows. For up to and including the first 15,000 option contracts executed by the Book in Program issues traded by an LMM per trade month, the charge will be \$0.10 per contract. For the next tier, covering from 15,001 to 30,000 contracts, the charge will be \$0.20 per contract. For the next tier, covering from 30,001 to 55,000 contracts, the charge will be \$0.30 per contract. For the final tier, covering all contracts over 55,000 contracts, the charge will be \$0.20 per contract.

For example, assume an LMM trades five option issues under the Program, and during the month of December, the Book executed a total of 25,000 contracts in those five issues. The

Exchange would assess the LMM a staffing charge of \$1,500 for contracts executed under the first tier (15,000 × \$0.10), plus \$2,000 for contracts executed under the second tier (10,000 × \$0.20), for a total staffing charge for December of \$3,500.

The staffing charge is intended to cover the Exchange's cost of providing staff to assist the LMM in operating the Book. The Exchange is modifying the current charge in order to encourage additional LMMs to participate in the LMM Book Pilot Program.<sup>6</sup> By expanding participation in the program, the Exchange will improve its competitive posture by giving its LMM participants the ability to lower transaction costs to the customer and thus to heighten competition with other options exchanges for order flow in issues included in the Program.

The proposal is consistent with Section 6(b) of the Act, in general and Section 6(b)(4), in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among Exchange members.

##### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

##### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act and subparagraph (e) of Rule 19b-4 thereunder because it constitutes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

<sup>6</sup> Under the terms of the LMM Book Pilot Program, no more than nine LMMs are permitted to participate in the program. Currently, there are three LMMs participating in the program.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> On March 12, 1998, PCX submitted Amendment No. 1, which made a technical correction and clarification to the filing. See Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to Marie Ito, Special Counsel, Division of Market Regulation, Commission, dated March 11, 1998.

<sup>4</sup> See Exchange Act Release No. 37810 (October 11, 1996), 61 FR 54481 (October 18, 1996).

<sup>5</sup> See Exchange Act Release No. 37874 (October 28, 1996), 61 FR 56597 (November 1, 1996).