

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41773; File No. SR-MSRB-99-7]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to an Amendment to Rule G-16 on Periodic Compliance Examinations

August 20, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 13, 1999, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Board. 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 is filing herewith a proposed rule change to Rule G-16, on periodic compliance examination (hereinafter referred to as the "proposed rule change"). The proposed rule change will revise the 24-month examination in Rule G-16 to a two calendar year requirement. Below is the text of the proposed rule change:³

Rule G-16. Periodic Compliance Examination

At least once each [twenty-four months] two calendar years, each broker, dealer and municipal securities dealer shall be examined in accordance with Section 15B(c)(7) of the Act to determine, at a minimum, whether such broker, dealer or municipal securities dealer and its associated persons are in compliance with all applicable rules of the Board and all applicable provisions of the Act and rules and regulations of the Commission thereunder.

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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 text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Section 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

Section 15B(c)(7)(A)⁴ of the Act provides that periodic examinations of dealers for compliance with Board rules are to be conducted by the National Association of Securities Dealers, Inc. ("NASD") with respect to securities firms and by the appropriate federal bank regulatory agencies with respect to bank dealers. Rule G-16 permits such examinations to be combined with other periodic examinations of securities firms and bank dealers in order to avoid unnecessary regulatory duplication and undue regulatory burdens for such firms and bank dealers.

By letter dated April 28, 1999, NASD Regulation, Inc., ("NASDR") requested that the Board revise Rule G-16. The letter states that because of NASDR's efforts to coordinate examination schedules, NASDR believes there is a need for a change in Rule G-16. NASDR requested that the Board change the 24-month requirement in Rule G-16 to a two calendar year requirement.

NASDR states that the requirement in Rule G-16 that municipal securities examinations commence within 24-months of the previous examination takes precedence over all examinations when coordinating examination schedules. NASDR uses the "field work start date" of a firm's prior municipal securities examination to calculate the 24-month period for the purposes of Rule G-16. Apply this methodology, NASDR identifies all municipal securities examinations required in a given calendar year. A determination is then made as to whether the identified firms are also scheduled for a routine cycle examination during the same year.

If a routine cycle examination is required of a firm that is subject to a municipal inspection, the routine and municipal examinations are combined. If a routine cycle examination is not required, a separate "off-cycle" municipal examination may have to be conducted on-site. Whenever a municipal securities examination is accelerated, the due date for commencement of a subsequent examination is moved to an earlier period; increasingly the first quarter. NASDR states that this hampers both

current and future examination planning and coordination. NASDR states that without the rule change it may be necessary to remove municipal securities examinations from the coordinated examination programs.

The Board discussed the proposed rule change with representatives from the Federal Deposit Insurance Corporation, the Federal Reserve Board, and the Office of the Comptroller of the Currency ("the bank regulators") The bank regulators also examine dealers for compliance with Board rules pursuant to Rule G-16. All of the bank regulators responded favorably to the NASDR's request, stating that the requested change would help bank regulators better coordinate examinations.

Coordination of on-site examinations eliminates unnecessary regulatory duplication and is less intrusive for dealers without negatively impacting investor protection. A formal Memorandum of Understanding among the North American Securities Administrators Association, Inc., SEC, NASDR and other securities industry self-regulatory organizations reflects the joint commitment to coordinated examinations. The Board believes that the proposed rule change will permit more effective coordination of examinations with other regulatory and self-regulatory organizations. It will also provide operating flexibility in planning and scheduling NASDR's and the bank regulators' overall examination program.

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.

C. Self-Regulatory Organization's Statement 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ New language is italicized and deletions are in brackets.

⁴ 15 U.S.C. 78o-4(c)(7)(A).

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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, N.W., Washington, D.C. 20549-0609. 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 the Board's principal offices. All submissions should refer to File No. SR-MSRB-99-7 and should be submitted by September 20, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41774; File No. SR-PCX-99-24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Automated Opening Rotations

August 20, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 13, 1999, the Pacific Exchange Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On August 4,

1999, the Exchange filed with the Commission Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange is proposing to adopt a new procedure for handling customer orders and executing option transactions during the opening rotation. This rule change is intended to automate the current procedures for opening rotations, except for those situations in which the opening rotation will continue to be conducted manually. The test of the proposed rule change follows. New text is italicized.

¶15073—Trading Rotations

Rule 6.64(a)—No additional change.

(b) *Automated Opening Rotation. The Exchange may employ automated opening rotations in designated series of options. All option series that are eligible for participation in the Automatic Opening Rotation will be opened automatically. Conversely, if an option series is not opened automatically pursuant to this Rule, then that series must be opened manually pursuant to applicable Exchange Rules. Automated Opening Rotations, when held, will be based upon the following procedures.*

(1) *Establishing a Market for the Opening Rotation: Prior to the opening rotation in a particular option series, the Order Book Official will determine whether there are any manual orders being represented in the trading crowd to be executed during the opening rotation. In doing so, the Order Book Official will call for bids and offers from the trading crowd once the underlying security has opened. The trading crowd may determine that the bids and offers then being displayed on the overhead screens are accurate, or alternatively, may modify those bids and offers by public outcry.*

(2) *Designating Series that are Not Eligible for the Automated Opening Rotation. The Order Book Official must identify, prior to the opening, all option series that are not eligible for the automated opening rotation. These series include:*

(A) *Series for which there are no market or marketable limit orders in the POETS system.*

(B) *Series for which there are one or more manual orders being represented in the trading crowd that are likely to be executed during the opening rotation, as determined by an Order Book Official.*

(C) *Series for which one or more members of the trading crowd has reasonably requested that a manual opening rotation be conducted. Two Floor Officials may deny member requests for manual opening rotations in the absence of reasonable justification for doing so. Prior to the opening, the OBO, in conjunction with the members of the trading crowd, will set for each option issue a number of contracts that constitutes an imbalance threshold, i.e., a specific number of option contracts to buy in excess of the number of contracts to sell or a specific number of contracts to sell in excess of the number of contracts to buy. The POETS system will not automatically open any series with an imbalance exceeding the threshold for that issue.*

(3) *Automated Opening Rotations. Series Eligible for the Automated Opening Rotation will be opened automatically based on the following principles and procedures:*

(A) *The POETS system will determine a single price at which a particular option series will be opened, as provided in Commentary .03, below.*

(B) *Orders in the system will maintain priority over Market Maker bids and offers. Orders in the system will be matched up with one another, if possible, before they are executed against the accounts of Market Makers participating on the Automatic Execution System.*

(C) *If there is an imbalance in the number of contracts to buy or sell at the opening, then the imbalance will be cleaned up by the Market Makers who are participating on the Automatic Execution System. Accordingly, each Market Maker will be assigned a number of option contracts for execution until the imbalance has been exhausted. The maximum number of option contracts that may be assigned to a Market Maker is established pursuant to Rule 6.87. When the Auto-Ex System assigns the imbalance of contracts to Market Makers, the assignments will be made in the same manner in which option contracts are allocated to Market Makers who are participating on the Auto-Ex System pursuant to Rule 6.87. The maximum number of contracts assigned will be the same as the number assigned under the Auto-Ex procedures established pursuant to Rule 6.87.*

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange further clarifies the operation of automated openings, provides rule text related to the new procedures, and justifies its request for accelerated approval. See letter from Michael D. Pierson, Director, Regulatory Policy, PCX, to Michael A. Walinskias, Associate Director, Commission, dated August 3, 1999 ("Amendment No. 1").