direct link to the broker-dealer's balance sheet; and

(c) If the Websites for two or more broker-dealers can be accessed from the same home page, a hyperlink directing the Internet user to the home page of each broker-dealer. Upon reaching the broker-dealer's home page, the home page contains a hyperlink providing a direct link to the particular broker-dealer's balance sheet.

Each of the above hyperlinks is placed on the broker-dealer's Website, in either textual or button format, as a separate, prominent link, in a manner that is clearly visible.[3]

(4) The broker-dealer maintains a toll-free number that customers can call to request a paper or electronic copy of its balance sheet.

(5) If a customer requests a paper or electronic copy of the broker-dealer's balance sheet, the firm sends it promptly at no cost to the customer.

(6) If the broker-dealer's net capital falls below the early warning levels of Rule 17a–11 and the broker-dealer fails to cure the relevant deficiency within 24 hours, or if the broker-dealer's auditors determine that a material inadequacy exists with regard to any of the financial disclosures contained in the audited financial statements or in the broker-dealer's internal controls, the firm returns to sending its balance sheet as required under Rule 17a–5(c), including footnotes, by the next date that financial disclosures are required, until the deficiency or material inadequacy is cured.

(7) The broker-dealer submits to the Commission, addressed to Division of Market Regulation, United States Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–1001, no later than 60 days after each distribution of its published statement containing the Net Capital Disclosure:

(a) A report on the number of requests that the broker-dealer has received for copies of its balance sheet via its toll-free number and the number of times its balance sheet has been viewed on its Website. The report contains the number of requests received in the month following its Website publishing of its recent balance sheet and, except in the case of the first Website publishing, in the preceding six months; and

(b) Written investor complaints regarding the exemption received by the broker-dealer in the preceding six months.

Accordingly,

It is ordered, under Exchange Act Section 17(e)(1)(C) and Rule 17a–5(l)(3), that the exemption from Exchange Act Section 17(e)(1)(B) and Rule 17a–5(c) granted in Exchange Act Release No. 42222 is extended to December 31, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–31918 Filed 12–27–01; 8:45 am]

BILLING CODE 8010–01–U

[3] This Order exempts certain firms from the delivery requirement under Rule 17a–5(c), in part, based on the protections afforded by the Commission's financial responsibility rules. The condition that a broker-dealer makes its balance sheet available on its Website is not an alternative method of delivering this information to customers under Rule 17a–5(c).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45174; File No. SR–MSRB–2001–07]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Minimum Denominations

December 19, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'') and Rule 19b–4 thereunder,[1] notice is hereby given that on October 16, 2001, Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–MSRB–2001–07) (the ''proposed rule change'') described in Items I, II, and III below, which Items have been prepared by the MSRB. 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 MSRB is filing a proposed rule change concerning minimum denominations consisting of an amendment to its rule G–15, on confirmation, clearance and settlement of transactions with customers, an amendment to its rule G–8, on books and records to be made by brokers, dealers and municipal securities dealers, and an interpretation of its rule G–17, on conduct of municipal securities activities.

[1] 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4 thereunder.

The text of the proposed rule change follows.[2]

G–15 Confirmation, Clearance, [and] Settlement [of] *and Other Uniform Practice Requirements with Respect to* Transactions with Customers

(a) through (e) No change.

(f) *Minimum Denominations*

(i) *Except as provided in this section (f), a broker, dealer or municipal securities dealer shall not effect a customer transaction in municipal securities issued after June 1, 2002 in an amount lower than the minimum denomination of the issue.*

(ii) *The prohibition in subsection (f)(i) of this rule shall not apply to the purchase of securities from a customer in an amount below the minimum denomination if the broker, dealer or municipal securities dealer determines that the customer's position in the issue already is below the minimum denomination and that the entire position would be liquidated by the transaction. In determining whether this is the case, a broker, dealer or municipal securities dealer may rely either upon customer account information in its possession or upon a written statement by the customer as to its position in an issue.*

(iii) *The prohibition in subsection (f)(i) of this rule shall not apply to the sale of securities to a customer in an amount below the minimum denomination if the broker, dealer or municipal securities dealer determines that the securities position being sold is the result of a customer liquidating a position below the minimum denomination, as described in subsection (f)(ii) of this rule. In determining whether this is the case, a broker, dealer or municipal securities dealer may rely upon customer account records in its possession or upon a written statement provided by the party from which the securities are purchased. A broker, dealer or municipal securities dealer effecting a sale to a customer under this subsection (iii) shall at or before the completion of the transaction, give or send to the customer a written statement informing the customer that the quantity of securities being sold is below the minimum denomination for the issue and that this may adversely affect the liquidity of the position unless the customer has other securities from the issue that can be combined to reach the minimum denomination. Such written statement may be included on the customer's confirmation or may be*

[2] Italics indicates additions; brackets denote deletions.

provided on a document separate from the confirmation.

Rule G–8. Books and Records To Be Made by Brokers, Dealers and Municipal Securities Dealers

(a) Description of Books and Required to be Made

(i) through (viii) No change.

(ix) Copies of Confirmation, Periodic Statements and Certain Other Notices to Customers. A copy of all confirmation of purchase or sale of municipal securities, of all periodic written statements disclosing purchases, sales or redemptions of municipal fund securities pursuant to rule G–15(a)((viii), *of written disclosures to customers, if any, as required under rule G–15(f)(iii)* and, in the case of a broker, dealer or municipal securities dealer other than a bank dealer, of all other notices sent to customers concerning debits and credits to customer accounts, or, in the case of a bank dealer, notices of debts and credits for municipal securities, cash and other items with respect to transactions in municipal securities.

Rule G–17. Conduct of Municipal Securities Activities

Notice of Interpretation of Rule G–17 Concerning Minimum Denominations

Muncipal securities issuers sometimes set a relatively high minimum denomination, typically $100,000, for certain issues. This may be done so that the issue can qualify for one of several exemptions from Securities Exchange Act Rule 15c2–12, meaning that the issue would not be subject to certain primary market or continuing disclosure requirements. In other situations, issuers may set a high minimum denomination even though the issue is subject to Securities Exchange Act Rule 15c2–12. This may be because of the issuer's (or the underwriter's) belief that the securities are not an appropriate investment for those retail investors who would be likely to purchase securities in relatively small amounts.

Several issuers have expressed concern to the MSRB upon discovering that their issuers with high minimum denotations were trading in the secondary market in transaction amount much lower than the stated minimum denomination.[1] Based on information obtained from the MSRB Transactions Reporting Program, it appears that there are significant numbers of these types of transactions. In the past, brokers, dealers and municipal securities dealers (collectively ''dealers'') effecting such transactions likely would have had the problem brought to their attention when attempting to make delivery of a certificate to the customer. This is because the transfer agent would not have been able to honor a request for a certificate with a par value below the minimum denomination. Today, however, increased use of book-entry deliveries and safekeeping arrangements for retail customers largely preclude the need for individual certificates for customers and there is no other systemic screening to identify transactions that are in below-minimum denomination amounts.

Rule G–17 states: ''In the conduct of its municipal securities activities, each broker, dealer, and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.'' The MSRB has interpreted this rule to mean, among other things, that dealers are required to disclose, at or before a transaction in municipal securities with a customer, all material facts concerning the transaction, including a compete description of the security. The MSRB has proposed an amendment to rule G–15 that would prohibit transactions in below-minimum denomination amounts for municipal securities issued after June 1, 2002, with certain limited exceptions.[2] The MSRB anticipates that some transaction in below-minimum denomination amounts may continue to occur for issues prior to June 1, 2002, as well as under the limited exception to the proposed amendment to rule G–15.[3] In either case, the MSRB believes that any time a dealer is selling to a customer a quantity of municipal securities below the minimum denomination for the issue, the dealer should consider this to be a material fact about the transaction. The MSRB believes that a dealers's failure to disclose such a material fact to the customer, and to explain how this could affect the liquidity of the customer's position, generally would constitute a violation of the dealer's duty under rule G–17 to disclose all material facts about the transaction to the customer.

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 MSRB 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 MSRB 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

1. Purpose

Official documents for municipal securities issues sometimes state a ''minimum denomination'' larger than the normal $5,000 par value. An issuer may state a high minimum denomination (typically $100,000) to qualify for one of several exemptions from Exchange Act Rule 15c2–12, the rule designed to ensure production of certain disclosure documents in the primary and secondary markets. Aside from this rule, an issuer may also sometimes set high minimum denominations for issues because of a concern that the securities may not be appropriate for those retail investors who would be likely to purchase securities in relatively small amounts.

Several issuers have expressed concern to the MSRB upon discovering that their issues with high minimum denominations were trading in the secondary market in transaction amounts much lower than the stated minimum denomination. Based on information obtained from the MSRB Transaction Reporting Program, it appears that there are significant numbers of these types of transactions. In the past, brokers, dealers and municipal securities dealers (collectively ''dealers'') effecting such transactions likely would have had the problem brought to their attention when attempting to make delivery of a certificate to the customer. This is because the transfer agent would not have been able to honor a request for a

[1] *Occasionally, bond documents may state a minimum transaction amount that applies only to primary market transactions, but with a clear indication by the issuer that transactions may occur at lower amounts in the secondary market. The MSRB is not aware of non-authorized transaction amounts occurring for issuers of these types. In general, however, bond documents describing a minimum ''denomination'' would appear to the intended to apply to both primary and secondary market transactions.*

[2] *Proposed rule change SR–MSRB–2001–07, filed with the Securities and Exchange Commission on October 16, 2001.*

[3] Even for municipal securities issued after June 1, 2002, below-minimum denomination transactions may need to be effected in compliance with proposed MSRB rule G–15(f) to liquidate below-minimum denomination positions created through the exercise of a will, division of a martial estate, as a result of an investor giving a portion of a position as a gift, etc. In addition, the exercise of a sinking fund or other partial redemption by an issuer can sometimes result in customers holding below-minimum denomination amounts.

certificate with a par value below the minimum denomination. Today, however, increased use of book-entry deliveries and safekeeping arrangements for retail customers largely preclude the need for individual certificates for customers and there is no other systemic screening to identify transactions that are in below-minimum denomination amounts. However, since municipal securities today predominantly stay in a book-entry environment, with ownership recorded on the books and records of depositories and other nominees, a restriction on the par value of certificates does not effectively restrict the size of transactions.

The purpose of the proposed rule change is to help ensure that dealers observe the minimum denominations stated in the official documents of municipal securities issues. As discussed below, the MSRB received nine comments from issuer and dealer organizations urging that any prohibition on below-minimum denomination trading be prospective in its application with respect to currently outstanding versus future issues of municipal securities. The MSRB agrees that it is appropriate for the rule to be prospective in this manner so that issuers, dealers and other market participants will be aware of the secondary market implications of high minimum denominations at the time the decision is made to incorporate them into an issue's terms. Accordingly, the proposed rule change includes an amendment to MSRB rule G–15 that, for securities issued after June 1, 2002, would prohibit transactions in below-minimum denomination amounts, with two limited exceptions.

The general prohibition of the rule G–15 amendment is designed to prevent dealers from effecting transactions that break up securities positions into amounts below the issue's denomination. The two exceptions in the amendment to rule G–15 are designed to help preserve liquidity of customer's below-minimum denomination positions that may occur through actions other than a dealer effecting transactions in below-minimum denomination amounts.[3] First, a dealer may purchase a below-minimum denomination position from a customer provided that the customer liquidates his/her entire position. Second, a dealer may sell such a liquidated position to another customer but would be required to provide written disclosure, either on the confirmation or separately, to the effect that the security position is below the minimum denomination and that liquidity may be adversely affected by this fact.

Under MSRB rule G–8, on books and records, customer confirmations must be kept for three years in a dealer's books and records. To ensure consistency in the recordkeeping requirements for separate written disclosures given to a customer under the rule G–15 amendment and the recordkeeping requirements for customer confirmations, the proposed rule change includes an amendment to rule G–8 that would require dealers to keep a record of these separate written disclosures for a minimum of three years.

Although certain written disclosures would be required, after the trade, for those transactions done under the second exemption to the rule G–15 amendment, the MSRB also seeks to address a more general need for time-of-trade disclosure in the proposed rule change. Rule G–17 states: ''In the conduct of its municipal securities activities, each broker, dealer, and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.'' The MSRB has interpreted this rule to mean, among other things, that dealers are required to disclose, at or before the sale of municipal securities to a customer, all material facts concerning the transaction, including a complete description of the security. The proposed rule change includes an interpretation of rule G–17 stating that any time a dealer is selling to a customer a quantity of municipal securities below the minimum denomination for the issue, the dealer should consider this to be a material fact about the transaction. The MSRB believes that a dealer's failure to disclose such a material fact to the customer, and to explain how this could affect the liquidity of the customer's position, generally would constitute a violation of the dealer's duty under rule G–17 to disclose all material facts about the transaction of the customer.

While the rule G–15 amendment applies only to municipal securities issued after June 1, 2002, the interpretation of rule G–17 applies to all transactions in municipal securities regardless of the date of issuance of the security traded. This helps ensure that all future investors are made aware at or prior to the time of trade that the securities position they are about to purchase is below the minimum denomination and that the liquidity of that position may be adversely affected by this fact.

2. Basis

The MSRB believes the proposed rule change is consistent with Section 15(b)(2)(C) of the Exchange Act, which provides that the MSRB's rules:

> . . . be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade . . . and to protect investors and the public interest . . .

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

The MSRB does not believe that the proposed rule change will impose any burden on competition in that it applies equally to all dealers in municipal securities.

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

On March 14, 2001, the MSRB published a notice seeking comment on an exposure draft of the proposed rule change (''March 2001 draft amendment'')[4] the terms of which substantially were the same as the rule G–15 amendment. The March 2001 draft amendment differed from the one in the proposed rule change in that it would have restricted transactions in all municipal securities, while the one in the proposed rule change applies only to municipal securities issued after June 1, 2002. In addition, the proposed rule change includes an interpretation of rule G–17 and a rule G–8 recordkeeping requirement, while the March 2001 draft amendment did not.

The MSRB received comments on the March 2001 draft amendment from the following fifteen commentators: A.G. Edwards & Sons, Inc. (''A.G. Edwards''); Association for Investment Management and Research (''AIMR''); Colorado Health Facilities Authority (''Colorado HFA''); First Miami Securities, Inc. (''First Miami''); Idaho Health Facilities Authority (''Idaho HFA''); Indiana Health Facility Financing Authority (''IHFFA''); Maryland Health and Higher Educational Facilities Authority (''Maryland HHEFA''); MEK Securities LLC (''MEK Securities''); National Council of Health Facilities Finance Authorities (''NCHFFA''); New Jersey

[3] A below-minimum denomination position may be created, for example, by call provisions that allow calls in amounts less than the minimum denomination, investment advisors who may split positions they purchase among several clients or the division of an estate as a result of a death or divorce. Such below-minimum denomination positions also may be created as a result of a gift.

[4] ''Minimum Denominations,'' *MSRB Reports,* Vol. 21, No. 1 (May 2001) at 15.

Health Care Facilities Financing Authority (''NJHCFFA''); Regional Municipal Operations Association (''RMOA''); Securities Operations Division—Securities Industry Association (''SIA Operations Division''); Stoever Glass and Co. (''Stoever Glass''); The Bond Market Association (''TBMA''); and Wisconsin Health and Educational Facilities Authority (''Wisconsin HEFA'').

Among these commentators there was general though not unanimous support. All six municipal securities issuers who commented (''Six Issuers'')[5] and the NCHFFA stated ''the draft amendment strikes an appropriate balance between enforcing the bondholder protections contained in the bond documents and not unduly impairing the liquidity of bonds currently held in unauthorized denominations by unsuspecting bondholders.'' AIMR stated that they ''view the MSRB's attempt to hold dealers accountable for complying with set minimum denominations as a positive step in reinforcing certain safeguards for existing and potential investors.'' A.G. Edwards also supported the March 2001 draft amendment because ''it will provide a level of comfort and certainty for customers and member firms when dealing with such situations, which usually are not of their own making.'' The SIA Operations Division stated that it ''supports the intent of the MSRB to ensure compliance with issuer guidelines relating to minimum denominations in transactions effected for customers.''

Some commentators, however, expressed basic disagreement over the use of minimum denominations as a means to restrict purchasers to certain types of investors. Stoever Glass stated that a ''minimum purchase requirement does not properly address the intended purpose, if the purpose is to limit the purchase of such securities to sophisticated accredited investors.'' First Miami stated, ''Since many investors will increase their purchase to the $100,000 minimum, they will be taking on more risk than they are normally inclined to. If they don't want to invest the minimum $100,000, they are then unfairly denied access to these securities.''

The TBMA emphasized the burden that the March 2001 draft amendment would place on dealers and on investors currently holding below-minimum denomination positions. The RMOA emphasized the operational difficulties that the March 2001 draft amendment would impose on dealers. Several commentators noted the potential loss of liquidity of current below-minimum denomination positions[6] and the fact that below-minimum denomination positions can be created by a variety of factors other than dealer action.[7]

1. Prospective Application

The MSRB agrees with those commentators who noted that, even with the two exceptions, the proposed restrictions would made it more difficult for dealers to transact in below-minimum denomination positions.[8] to use the exceptions, a dealer must: (a) establish that a proposed transaction fits into one of the exceptions; and (b) provide separate written disclosure to any customer buying into a below-minimum denomination position. These requirements would likely make below-minimum denomination positions currently held by investors more difficult for dealers to sell.

Because of the effect that the March 2001 draft amendment's trading restriction would have placed on below-minimum denomination positions, nine commentators suggested that the draft amendment apply only to securities issued after some date in the future.[9] The MSRB adopted this suggestion and believes it will help to minimize the negative effect on liquidity for existing bondholders with below-minimum denomination positions and allow issuers, dealers and information vendors to change their current practices and systems if necessary to accommodate the proposed rule change.[10] The MSRB views this as a significant cost to vendors and dealers, but not a major one.[11] The MSRB believes that June 1, 2002 would be an appropriate effective date for such a rule so that issues issued after that date would be covered by the rule.

2. Confirmation Disclosure or Separate Written Disclosure

For those securities issued after the effective date, the March 2001 draft amendment would have required a dealer to provide a separate written disclosure to a customer purchasing a below-minimum denomination position. RMOA suggested that it would be easier for the dealer in this case simply to provide confirmation disclosure. The MSRB concluded that confirmation disclosure would be easier for some dealers, but noted that other dealers may find it easier to send a separate written document rather than to change their automated systems that produce customer confirmations. Since either form of written disclosure should serve the same purpose, the MSRB chose to give dealers the option of providing written disclosure on a separate written document or on a trade confirmation.

3. Institutional Customers

A proposal was made by Stoever Glass to limit sales of below-minimum denomination positions to accredited investors, in lieu of the restrictions proposed by the March 2001 draft amendment. The MSRB considered whether it would be possible to restrict sales of below-minimum denomination positions to ''institutional accounts,'' as defined under MSRB rule G-8(a)(xi), without a separate written disclosure. While this exemption probably would fit within the issuer's objective, it would be inconsistent with the approach taken in the Exchange Act Rule 15c2–12 and the MSRB did not adopt it.

4. Customer Ability To Sell Part of Below-Minimum Denomination Position Instead of Whole Position Liquidated

A.G. Edwards, TBMA and SIA Operations Division stated that they believe it is unfair to the investor holding a below-minimum denomination position to be required to sell the entire position at one time. The MSRB believes that allowing partial sales by the customer in these cases would act against the basic purpose of the rule. For example, an institutional investor holding a position of $95,000 could sell out the position at $5,000 or $10,000 per transaction, effectively reaching the retail market with the securities and creating a number of below-minimum denomination positions where there was once only one. The MSRB also notes that, with the prospective application of the rule,

[5] Colorado HFA, Idaho HFA, IHFFA, Maryland HHEFA, NJHCFFA, and Wisconsin HEFA.

[6] Six Issuers, NCHFFA, SIA Operations, Stoever Glass and TBMA.

[7] A.G. Edwards, RMOA and TBMA.

[8] MEK Securities, RMOA, SIA Operations and TBMA. The proposed rule change would not, as suggested in the A.G. Edwards letter and TBMA letter, restrict inter-dealer transactions since rule G–15 applies only to customer transactions.

[9] Six Issuers and NCHFFA, RMOA and TBMA.

[10] The accuracy of vendor information on minimum denominations was called into question in the comment letters of A.G. Edwards and TBMA. MEK Securities suggested an enhancement to the MSRB's web site that would include a list of CUSIP numbers and their respective minimum denominations. Since private vendors have been active in collecting descriptive information on municipal securities for a number of years, the MSRB believes that information generally is available, even though, as in any information database there may be errors. The MSRB does not believe that it should explore undertaking this information function itself unless the vendor response to the proposed rule change is shown to be ineffective.

[11] Based on representations from the three major information vendors, each has a field for minimum denominations.

current investors would not be affected and that future investors in issues issued after June 1, 2002 will have notice of the effect of minimum denominations on their municipal securities positions.

5. Other Suggestions

A.G. Edwards and TBMA both recommended that dealers should be able to correct an erroneous transaction done in a below-minimum denomination amount. If a dealer mistakenly sells a below-minimum denomination position to a customer, such a correction generally would be possible under the second exception in the proposed rule change.[12] Other commentators suggested that the rule should not apply if the issuer failed to state the purpose of its denomination restriction in bond documents or if a below-minimum denomination position was created by an action of the issuer, such as by a partial call. The MSRB notes that issuers do not generally state the purpose of the denominations they choose. Moreover, Rule 15c2–12 provides disclosure exemptions that apply to an issue regardless of whether the issuer states the purpose of its minimum denomination in bond documents or exercises calls that take an investor's authorized position into a below-minimum denomination amount. Therefore, the MSRB has not adopted these suggestions.

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

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

[12] There may be unique situations when dealers effect transactions in violation of the rule and cannot reverse the transactions under the second exception. For example, a dealer may unintentionally sell an unauthorized amount of securities to a customer already holding an authorized amount. The transaction would be a violation of the rule, albeit an unintentional one. The MSRB believes the enforcement agencies have enough flexibility that they are not required to further penalize the dealer if the dealer corrects the situation by reversing the transaction.

IV. Solicitation of Comments

Interested persons are inviting to submit written data, views, and arguments concerning the forgoing, including whether the proposed rule change is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submissions, 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 MSRB's principal offices. All submissions should refer to File SR–MSRB–2001–07 and should be submitted by January 18, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–31917 Filed 12–27–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45167; File No. SR–PCX–2001–49]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Changes in Marketing Fees

December 18, 2001.

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 December 3, 2001, the Pacific Exchange, Inc. (''PCX'') filed with the Security and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which the PCX has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

The PCX proposes to change its marketing fee for certain options and to declare a marketing fee for recently listed options. A copy of the proposed new Schedule of Fees and Charges for Exchange Services is available at the PCX and at the Commission.

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

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

1. Purpose

The PCX recently adopted a payment-for-order-flow program under which it charges a marketing fee ranging from $0 to $1.00 per contract on a per-issue basis.[3] The PCX segregates the funds from this fee by trading post and makes the funds available to Lead Market Makers for their use in attracting orders in the options traded at the posts. The PCX charges the marketing fees in the amounts set forth in its Schedule of Fees and Charges for Exchange Services, hereinafter referred to as the ''Schedule of Rates.''

The PCX proposes to amend its Schedule of Rates in order to change the marketing fee that it charges for certain options and to adopt new marketing fees for newly listed options, beginning with the start of the December trade month and continuing until further notice. Only the amount of the fee is being changed.[4] The PCX believes that the

[3] *See* Securities Exchange Act Release No. 44830 (September 21, 2001), 66 FR 49728 (September 28, 2001) (SR–PCX–2001–37).

[4] The PCX proposes to change only the amounts of the fees that it charges for transactions in the options that are included in the proposed amended Schedule of Rates. Any fees currently being charged for transactions in options that are not listed in this amendment to the Schedule of Rates would not be affected by the proposed rule change. Telephone conversation between Mai Shiver, Senior Attorney, PCX, and Patrick Joyce, Special Counsel, Division of Market Regulation, Commission, on December 10, 2001.