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 Amex proposes to increase its options transaction charge, options floor brokerage fee, and CRD fee, as well as adopt a new technology fee.

The text of the proposed rule change is available at the Office of the Secretary, Amex 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 Amex 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 Amex 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

1. Purpose

The Exchange is increasing three charges imposed on members and member organizations. The options transaction charge for specialist and market maker proprietary trades is being increased from $.07 to $.08 per contract side for equity option contracts and from $.11 to $.12 per contract side for index option contracts. An option floor brokerage fee, currently imposed on all customer and non-market making member firm principal activity at the rate of $.03 per contract side, will now also be imposed on all specialist and market maker proprietary trades at the rate of $.02 per contract side. The fees charged to member firms for registering sales personnel through the CRD System are being increased from $25 to $30 for renewals, from $20 to $25 for terminations, from $45 to $55 for initial registration, and from $30 to $40 for transfers.

The Exchange is also imposing a new technology fee of $1,200 per year on all members to help offset the costs associated with the Exchange's continued investment in trading floor technology. All of the above fees are scheduled to take effect on January 1, 1996.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(4) in particular in that they provide for the equitable allocation of reasonable dues, fees, and other charges among Amex members, issuers, and other persons using the Exchange's facilities.

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

The Exchange believes the proposed rule change will impose no burden on competition.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

The fee changes have become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e)(2) of Rule 19b–4. At any time within 60 days of the filing of such fee changes, the Commission may summarily abrogate such fee changes 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. 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 coping at the Commission's Public Reference section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–95–55 and should be submitted by February 14, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–1031 Filed 1–23–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36727; File No. SR–MSRB–95–15]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Consultants

January 17, 1996.

On September 28, 1995,[1] the Municipal Securities Rulemaking Board (''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder.[3] The proposed rule change amends rules G–8[4] and G–9,[5] on recordkeeping and record retention, rule G–37,[6] on political contributions and prohibitions on municipal securities business, and adds a new rule G–38 regarding consultants. The proposed rule change also amends MSRB Form G–37, and redesignates it as Form G–37/G–38.

Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release (Securities Exchange Act Release No. 36522, November 28, 1995) and by the publication in the Federal Register (60 FR 62275, December 5, 1995). One comment letter was received.[7] This order approves the proposed rule change.

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[1] 17 CFR 200.30–3(a)(12) (1994).

[1] On November 15, 1995, the MSRB filed Amendment No. 1 with the Commission. Amendment No. 1 was a minor technical amendment, the text of which may be examined in the Commission's Public Reference Room. See Letter from Jill C. Finder, Assistant General Counsel, MSRB, to Ethan D. Corey, Senior Counsel, Division of Market Regulation, Commission, dated November 15, 1995.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] MSRB Manual, General Rules, G–8 (CCH) ¶ 3536.

[5] MSRB Manual, General Rules, G–9 (CCH) ¶ 3541.

[6] MSRB Manual, General Rules, G–37 (CCH) ¶ 3681.

[7] Letter from David J. Rubin (''Rubin'') to Jonathan G. Katz, Secretary, Commission, dated December 6, 1995 (''Rubin Letter'').

I. Introduction

The rule change approved today will require brokers, dealers and municipal securities dealers (collectively, ''municipal securities firms'') to enter written agreements with ''consultants,'' as defined in rule G–38, and to disclose such arrangement to issuers and to the public through disclosure to the Board. It is the latest in a series of actions taken by the Commission and the MSRB to combat abuses associated with the awarding of municipal securities business. The Commission approved rule G–37 on April 7, 1994 in order to cleanse the municipal securities market of pay-to-play practices. Rule G–37 prohibits, among other things, any municipal securities firm from engaging in municipal securities business with an issuer if: (i) it; (ii) any municipal finance professional associated with it; or (iii) any political action committee controlled by it or any of its municipal finance professionals has contributed to an official of that issuer within the previous two years.[8] The rule also provides that no municipal securities firm or any of its municipal finance professionals shall, directly or indirectly, through or by any other means, do any act that would result if a municipal securities firm engages in municipal securities business with an issuer after directing third parties (such as consultants) to make contributions to that issuer. In addition to recording and disclosing political contributions, rule G–37 currently requires municipal securities firms to record and disclose on Form G–37 those issuers with which those firms have engaged in municipal securities business and, where applicable, the name, company, role and compensation arrangement of any person employed by the dealer to obtain or retain business with such issuers. The United States Court of Appeals for the District of Columbia Circuit, in rejecting a challenge to rule G–37, noted that ''the link between eliminating pay to play practices and the Commission's goals of 'perfecting the mechanism of a free and open market' and promoting 'just and equitable principles of trade' is self-evident.'' [9]

Rule G–37 complements rule G–20, on gifts and gratuities, which prohibits dealers from, directly and indirectly, giving or permitting to be given any thing or service of value, including gratuities, in excess of $100 per year to any person, other than an employee of partner of the municipal securities firm, in relation to the municipal securities activities of the person's employer. All gifts given by the municipal securities firm and its associated persons, or by consultants at the direction of the municipal securities firm, are used to compute the $100 limitation and this limitation applies to gifts and gratuities to customers, individuals associated with issuers, and employers of other municipal securities firms.[10]

In addition to these initiatives, the Commission has brought several actions against participants in the municipal securities market in connection with payments made by underwriters to agents or employees of issuers in order to secure municipal securities business. In one instance, the Commission found that an employee of a municipal securities underwriter provided certain benefits to an elected public official of an issuer during a time when that official has an important role in selecting the underwriter for municipal securities issued by that issuer.[11] In another instance, the Commission found that employees of a municipal securities underwriter made undisclosed payments to a third party to assure that underwriter's continued participation as book-running senior manager for a municipal issuer's offering of debt securities.[12] The Commission also found that the same municipal securities underwriter itself engaged in schemes to defraud various municipal issuers and investors by agreeing to pay undisclosed kickbacks to agents of those issuers in exchange for underwriting business.[13]

The Commission notes that past rulemaking initiatives have helped to ensure that municipal securities firms are prohibited from engaging in practices that bring into question the integrity of the municipal securities market and that it has brought enforcement actions to address fraudulent practices in the municipal securities market. However, the Commission is concerned that abusive practices such as those disclosed in the Tuttle and First Fidelity orders do not represent isolated instances of wrongdoing.

The MSRB stated in its filing that it believes that municipal securities firms may employ consultants as a result of limitations placed on municipal securities firm activities by rule G–37 and rule G–20.[14] While both rules prohibit municipal securities from doing indirectly what they are precluded from doing directly, indirect activities often are difficult to prove. The rule approved today is intended to provide additional information to issuers and to the public to assist in determining the extent to which payments to consultants influence the issuer's selection process in connection with municipal securities business, as well as the extent to which such payments increase the cost of bringing municipal securities issues to market.

II. Scope of Rule G–38

Rule G–38, on consultants, does not impose any substantive restrictions on arrangements between municipal securities firms and consultants. Rather, rule G–38 will require municipal securities firms to enter into written agreements with ''consultants,'' as defined in rule G–38, and to disclose such arrangements to issuers and to the public through disclosure to the Board.

A. Definition of Consultant

Rule G–38 defines consultant as any person used by a municipal securities firm to obtain or retain municipal securities business through direct or indirect communication by such person with an issuer on the municipal securities firm's behalf where the communication is undertaken by such person in exchange for, or with the understanding of receiving, payment from the municipal securities firm or any other person.[15] The definition

[8] Rule G–37(b) contains an exception for certain contributions of $250 or less per election made by an municipal finance professional to an official of an issuer for whom that municipal finance professional was entitled to vote.

[9] *Blount* v. *Securities and Exchange Commission*, 61 F.3d 938, 945 (D.C. Circuit 1995); *rehearing and application for rehearing en banc denied* (D.C. Cir. Oct. 4, 1995).

[10] MSRB Reports, vol. 14, no. 1 at 11 (Jan. 1994). Rule G–20(b) exempts ''normal business dealings'' from the $100 annual limit. These payments are defined as occasional gifts of meals or tickets to theatrical, sporting, and other entertainments, as well as the sponsoring of legitimate business functions that are recognized by the IRS as deductible business expenses, and gifts of reminder advertising. However, the rule also provides that such gifts can not be so frequent or so expensive as to raise a suggestion of unethical conduct.

[11] See Preston C. Bynum, Securities Exchange Act Release No. 35870 (June 20, 1995), 59 SEC Dock, 1801 (July 18, 1995).

[12] See George l. Tuttle, Jr., and Alexander S. Williams, Securities Exchange Act Release No. 35605 (April 14, 1995), 59 SEC Dock, 330 (May 16, 1995) (''Tuttle'').

[13] See First Fidelity Securities Group, Securities Exchange Act Release No. 36694 (Jan. 9, 1996) (''First Fidelity'').

[14] The MSRB also stated in its filing that it believes that in many instances the use of consultants is appropriate.

[15] ''Person'' is defined in Section 3(a)(9) of the Securities Exchange Act of 1934 as ''a natural person, company, government, or political subdivision, agency or instrumentality ''Municipal securities business' has the same meaning as in rule G–37(g)(vii), *i.e.*, (A) the purchase of a primary offering (as defined in rule A–13(d)) of municipal securities from the issuer on other than a competitive bid basis (*i.e.*, negotiated underwriting); (B) the offer or sale of a primary offering of municipal securities on behalf of any

specifically excludes ''municipal finance professionals,'' as that term is defined in rule G–37(g)(iv), because such individuals are covered by the requirements of rule G–37. The definition also excludes any person whose sole basis of compensation from the municipal securities firm is the actual provision of legal advice, accounting or engineering assistance in connection with the municipal securities business that the municipal securities firm is seeking to obtain or retain. The exclusion would apply, for example, to a lawyer retained to conduct a legal analysis on a particular transaction contemplated by the municipal securities firm, or to review local regulations; an accountant retained to conduct a tax analysis or to scrutinize financial reports; or an engineer retained to perform a technical review or feasibility study. The exemption is intended to ensure that professionals who are engaged by the municipal securities firm solely to perform substantive working connection with municipal securities business are not brought within the definition of consultant as long as their compensation is in consideration of only those professional services actually provided in connection with such municipal securities business. Any attorney, accountant, engineer or other professional used by the municipal securities firm as a ''finder'' for municipal securities business would, however, be considered a consultant under the proposed rule.

The definition of consultant also will encompass third parties who initiate contact with prospective underwriters to offer their services in obtaining or retaining municipal securities business through direct or indirect communication by such person with an issuer official. The definition does not distinguish between instances in which the municipal securities firm initiates contact and instances in which the third party initiates contact. The touchstone is whether that person is used by a municipal securities firm to obtain or retain municipal securities business through direct or indirect communication by such person with an issuer on the municipal securities firm's behalf where the communication is undertaken by such person in exchange for, or with the understanding of receiving payment from the municipal securities firm or any other person. If that person is so used, then that person is a consultant.

B. Written Agreement

Rule G–38 will require municipal securities firms who use consultants to evidence the consulting arrangement in writing (''Consultant Agreement''), and that, at a minimum, the writing must include the name, company, role and compensation arrangement of each consultant used by the municipal securities firm. Such written agreements must be entered into before the consultant engages in any direct or indirect communication with an issuer on the municipal securities firm's behalf.

C. Disclosure to Issuers

Rule G–38 will require each municipal securities firm to disclose to an issuer with which it is engaging or seeking to engage in municipal securities business, in writing, information on consulting arrangements relating to that issuer. The written disclosure must include, at a minimum, the name, company, role and compensation arrangement with the consultant or consultants. Municipal securities firms are required to make such written disclosures prior to the issuer's selection of any municipal securities firm in connection with the municipal securities business sought, regardless of whether the municipal securities firm making the disclosure ultimately is the municipal securities firm that obtains or retains that business.

D. Disclosure to the Board

Rule G–38 will require municipal securities firms to submit to the Board, on a quarterly basis, reports of all consultants used by the municipal securities firm. For each consultant, municipal securities firms must report, in the prescribed format, the consultant's name, company, role and compensation arrangement, as well as the dollar amount of any payment made to the consultant during the quarterly reporting period. If any payment made during the reporting period is related to the consultant's efforts on the municipal securities firm's behalf which resulted in particular municipal securities business, whether the municipal securities business was completed during that or a prior reporting period, then the municipal securities firm must separately identify that business and the dollar amount of the payment. In addition, as long as the municipal securities firm continues to use the consultant to obtain or retain municipal securities business (*i.e.*, has a continuing arrangement with the consultant), the municipal securities firm must report information concerning such consultant every quarter, whether or not compensation is paid to the consultant during the reporting period. The quarterly reporting requirement is intended to assist enforcement agencies and the public in their review of such arrangements.

The rule change approved today deletes the current reporting requirements regarding consultants from rule G–37. Instead, reporting requirements imposed under rule G–37 and rule G–38 will be contained in a single form—new G–37/G–38. Municipal securities firms will be required to submit two copies of such reports on new Form G–37/G–38.[16] The quarterly due dates will be the same as the due dates currently required under rule G–37 (*i.e.*, within 30 calendar days after the end of each calendar quarter, which corresponds to each January 31, April 30, July 31, and October 31). Finally, consistent with current rule G–37, municipal securities firms will be required to submit these reports to the Board by certified or registered mail, or some other equally prompt means that provides a record of sending.[17] The Board will then make these documents available to the public for inspection and photocopying at its Public Access Facility in Alexandria, Virginia, and for review by agencies charged with enforcement of Board rules.

E. Recordkeeping Requirements

The rule change approved today also amends rules G–8 and G–9, concerning recordkeeping and record retention, to facilitate compliance with, and enforcement of, rule G–38. The amendments to rule G–8 will require municipal securities firms to maintain: (i) A listing of the name, company, role and compensation arrangement of each consultant; (ii) a copy of each Consultant Agreement; (iii) a listing of

issuers (*i.e.*, private placement); (C) the provision of financial advisory or consultant services to or on behalf of an issuer with respect to a primary offering of municipal securities on other than a competitive bid basis; or (D) the provision of remarketing agent services to or on behalf of an issuer with respect to a primary offering of municipal securities on other than a competitive bid basis.

''Payment'' has the same meaning as in rule G–37(g)(viii), *i.e.*, any gift, subscription, loan, advance, or deposit of money or anything of value.

[16] In addition to the new rule G–38 consultant reporting requirements, Form G–37/G–38 includes revisions to the rule G–37 political contribution reporting requirements. Such revisions include, for each contribution, a required notation of the category of the contributor (*e.g.*, municipal finance professional or executive officer) and the amount of the contribution, as well as a separate section for the reporting of ''payments'' to political parties distinct from ''contributions'' to issuer officials.

[17] Rule G–37 Filing Procedures are contained within the language of rule G–37, and rule G–38 Filing Procedures are contained within the language of new rule G–38.

the compensation paid in connection with each Consultant Agreement; (iv) where applicable, a listing of the municipal securities business obtained or retained through the activities of each consultant; (v) a listing of the issuers and a record of disclosures made to such issuers concerning each consultant used by the municipal securities firm to obtain or retain municipal securities business with each such issuer; and (vi) the date of termination of any consultant arrangement. The amendment to rule G–9 will require municipal securities firms to maintain these records for a six-year period.

III. Comment Letters

As noted above, the Commission received one comment letter concerning the proposed change. The Rubin Letter argued that although the proposed rule change may assist in uncovering payments to third parties that are intended to influence the awarding of municipal securities business, such business will continue to be awarded based on criteria other than merit until issuers are required to select the best underwriters for debt issuance. The Commission agrees with the Rubin Letter that the rule change approved today, standing alone, will not operate to cleanse the municipal market of all practices resulting in issuers awarding municipal securities business on a basis other than the merits of the underwriting firm chosen.[18] As noted above, however, the rule change approved today is intended to provide additional information to issuers and to the public to assist in determining the extent to which payments to consultants influence the issuer's selection process in connection with municipal securities business, as well as the extent to which such payments increase the cost of bringing municipal securities issues to market.

IV. Discussion and Findings

The Commission finds that the rule change is consistent with the provisions of Section 15B(b)(2)(C)[19] of the Act, which provides that the Board's rules 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. The Commission believes that the rule change removes impediments to and perfects the mechanism of a free and open market in municipal securities in that the amendments enhance the ability of municipal securities firms to compete for, and be awarded, municipal securities business on the basis of merit, rather than political or financial influence. Such healthy competition will act to lower artificial barriers to those municipal securities firms not willing or able to hire consultants to obtain or retain municipal securities business, thereby maintaining the integrity of the municipal securities market, as well as the public trust and confidence that is essential to the long-term health and liquidity of the market.

The Commission also believes that the rule change is in the public interest in that the amendments enhance the ability of investors to determine whether an underwriter may have made improper payments in order to secure municipal securities business. The Commission has recognized that ''information concerning financial and business relationships among the parties involved in the issuance of municipal securities may be critical to an evaluation of the underwriting.''[20]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that File No. SR–MSRB–95–15 be, and hereby is, approved, effective March 18, 1996.

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. 96–909 Filed 1–23–96; 8:45 am]

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[18] The MSRB determined not to include within the definition of consultant persons who are engaged by a dealer at the request or direction of the issuer because those persons do not assist the dealer in obtaining or retaining municipal securities business. The MSRB stated in its filing that it will review the issue of ''issuer-designated'' professionals and other issuer involvement in the underwriting process and will address this subject, including the question of requiring disclosure of issuer-designated persons, at a future time. The Commission encourages the MSRB to consider such further initiatives in this area in order to promote the awarding of municipal securities business based on merit.

[19] 15 U.S.C. 78*o*–4.

[20] First Fidelity, *supra* n. 13, quoting Statement of the Commission Regarding Disclosure Obligations of Municipal Securities Issuers and Others, Securities Act Release No. 7049 (Mar. 9, 1994), 59 FR 12748 (Mar. 17, 1994).

[Release No. 34–36730; File No. SR–CHX–95–18]

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change Relating to Priority and Precedence of Agency and Professional Orders

January 17, 1996.

I. Introduction

On July 14, 1995, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify the priority and precedence of agency and professional orders. On July 26, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 36373 (Oct. 16, 1995), 60 FR 54268 (Oct. 20, 1995). No comments were received on the proposal.

II. Description of Proposal

Currently, under the Exchange's rules, specialists are not required to accept professional orders for the book unless such orders better the existing market.[4] A specialist also is not required to provide primary market protection to professional orders pursuant to the Exchange's Best Rule[5] as it does for

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

[2] 17 CFR 240.19b–4.

[3] See letter from David Rusoff, Foley & Lardner, to Glen Barrentine, Senior Counsel, Division of Market Regulation, SEC, dated July 26, 1995. In Amendment No. 1, the Exchange notified the Commission that the proposed rule change was approved by the Exchange's Executive Committee on July 20, 1995.

[4] See CHX Article XXX, Rule 2. A professional order is any order for the account of a broker-dealer, the account of an associated person of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest. See Interpretation .04 of CHX Article XXX, Rule 2.

[5] See Article XX, Rule 37(a). Under the Exchange's Best Rule, Exchange specialists are required to guarantee executions of market and limit orders under certain circumstances. For all agency limit orders in Dual Trading System issues, the specialist must fill the order if the bid or offer at the limit price has been exhausted in the primary market, there has been price penetration of the limit in the primary market (a trade through of a CHX limit order), or the issue is trading at the limit price on the primary market, unless it can be demonstrated that such order would not have been executed if it had been transmitted to the primary market or the broker and specialist agree to a specific volume related or other criteria for requiring a fill.