Section 5 of Rule 2 allows non-U.S. members to submit, among other things, to FICC audited financial statements and other financial information that has been prepared in accordance with U.S. GAAP, International Accounting Standards, or United Kingdom GAAP. In the filing, FICC is proposing to amend this section to require the financial information submitted to it to be prepared only in accordance with U.S. GAAP.

FICC believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it allows FICC to monitor the financial condition of members more completely and on a timely basis, thereby limiting the risk to FICC and its members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change would have an impact on or impose a burden on competition.

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

Written comments relating to the proposed rule change have not yet been solicited nor received. FICC will notify the Commission of any written comments received by FICC.

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 ninety 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 the proposed rule change or

(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, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–FICC–2003–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 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 FICC and on FICC's Web site at *http://www.ficc.com.* All submissions should refer to the File No. SR–FICC–2003–01 and should be submitted by February 20, 2004.

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

Jill M. Peterson,

Assistant Secretary.

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broker-dealer participants) may have other similar regulatory notification requirements (imposed by the Commission or another regulator or similar authority) when their capital levels or other financial requirements fall below required levels. The rules of the Mortgage Backed Securities Division were recently amended to include the requirement that participants submit such notifications to FICC concurrently with their submission to the relevant regulatory authority. (*See* amendment 3 to SR-MBSCC–2001–06, Securities Exchange Act Release No. 45604 (March 20, 2002), 67 FR 14755, which is currently pending with the Commission). This present rule filing imposes the same requirement in the rules of the Government Securities Division.

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49127; File No. SR–MSRB–2003–07]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Relating to Proposed Amendment to the MSRB's Telemarketing Rules to Require Participation in the National Do-Not-Call Registry

January 26, 2004.

I. Introduction

On August, 19, 2003, the Municipal Securities Rulemaking Board (''MSRB''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), 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 relating to the MSRB's adoption of telemarketing rules to require brokers, dealers and municipal securities dealers (collectively ''dealers'') to participate in the national do-not-call registry. The proposed rule change was published for comment in the **Federal Register** on August 27, 2003.[3] On January 21, 2003, the MSRB submitted Amendment No. 1 to the proposed rule change.[4]

The Commission received three comment letters on the proposed rule change.[5] The text of proposed Amendment No. 1 is below. Additions from the original filing are in *italics*; deletions are in [brackets].

* * * * *

Rule G–39. Telemarketing

(a)–(f) No change.

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

[2] 17 CFR 240.19b–4.

[3] The Commission published the proposed rule changes filed by the MSRB and the NASD simultaneously. *See* Securities Exchange Act Release Nos. 48389 (August 22, 2003), 68 FR 51609 (August 27, 2003) (SR-MSRB–2003–07); 48390 (August 22, 2003), 68 FR 51613 (August 27, 2003) (SR-NASD–2003–131).

[4] *See* letter from Ronald W. Smith, Senior Legal Associate, MSRB to Martha M. Haines, Office Chief, Division of Market Regulation, Commission, dated January 21, 2004 (''Amendment No. 1'').

[5] *See* letters from Mary Talbutt-Glassberg, Fixed Income Trader, Davidson Capital Management, to MSRB, dated Aug. 20, 2003 (''Davidson Letter''); Ted F. Angus, V.P. and Senior Corporate Counsel for Retail Brokerage, Charles Schwab, to Mr. Jonathan G. Katz, Secretary, Commission, dated September 17, 2003, (''Schwab Letter''); and James Y. Chin, A.V.P., Director and Counsel, State Government Affairs & Staff Advisor to the State Telemarketing Subcommittee, Securities Industry Association, to Mr. Jonathan G. Katz, Secretary, Commission, dated September 17, 2003, (''SIA Letter'').

(g) Definitions

(i) Established business relationship.

(A) An established business relationship exists between a broker, dealer or municipal securities dealer and a person if:

(1) the person has made a financial transaction *or has a security position, a money balance, or account activity* with the broker, dealer or municipal securities dealer *or at a clearing firm that provides clearing services to such broker, dealer or municipal securities dealer* within the [previous] eighteen months immediately preceding the date of the telemarketing call; [or]

(2) the broker, dealer or municipal securities dealer is the broker, dealer or municipal securities dealer of record for an account of the person within the eighteen months immediately preceding the date of the telemarketing call; or

[(2)]*(3)* the person has contacted the broker, dealer or municipal securities dealer to inquire about a product or service offered by the broker, dealer or municipal securities dealer within the [previous] three months immediately preceding the date of the telemarketing call.

(B) A person's established business relationship with a broker, dealer or municipal securities dealer does not extend to the broker, dealer or municipal securities dealer's affiliated entities unless the person would reasonably expect them to be included. Similarly, a person's established business relationship with a broker, dealer or municipal securities dealer's affiliate does not extend to the broker, dealer or municipal securities dealer unless the person would reasonably expect the broker, dealer or municipal securities dealer to be included.

(ii)–(iii) (No change).

(iv) the term ''account activity'' shall include, but not be limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the broker, dealer or municipal securities dealer.

(v) the term ''broker, dealer or municipal securities dealer of record'' refers to the broker, dealer or municipal securities dealer identified on a customer's account application for accounts held directly at an issuer of municipal fund securities or by the issuer's agent.

* * * * *

II. Description

A. General

The Federal Trade Commission (''FTC'') and the Federal Communications Commission (''FCC'') established requirements for sellers and telemarketers to participate in a national do-not-call registry.[6] Since June 2003, consumers have been able to enter their home and mobile telephone numbers into the national do-not-call registry, which is maintained by the FTC. Under rules of the FTC and FCC, sellers and telemarketers generally are prohibited from making telephone solicitations to consumers whose numbers are listed in the national do-not-call registry.

On July 2, 2003, the SEC requested that the MSRB amend its telemarketing rules to include a requirement for dealers to participate in the national do-not-call registry.[7] Because broker/dealers and banks are subject to the FCC's jurisdiction, the MSRB modeled its rules after the FCC, specifically tailoring the rules to broker/dealers and the securities industry.[8]

The MSRB submitted a proposed rule change to amend MSRB Rule G–39, to implement rules that prohibit dealers from making telemarketing calls to people who have registered on the FTC's national do-not-call registry.[9] The proposal retains the requirement that dealers make their a telemarketing calls only during certain times of day (8 a.m. to 9 p.m. local time at the called party's location) and a restriction against making calls to persons who have requested to be on a firm-specific do-not-call list.[10]

B. Exceptions

The MSRB currently provides dealers with an ''existing customer'' exception to its requirement that dealers make their a telemarketing calls only during certain times of day (8 a.m. to 9 p.m. local time at the called party's location) and to its requirement that dealers provide certain information about the caller during the course of the telephone conversation.[11] The proposed rule change would replace the ''existing customer'' exception with an ''established business relationship'' exception, a ''prior express invitation or permission'' exception and a ''personal relationship exception.''[12]

As originally proposed, the established business relationship exception would have enabled dealers to make a telephone solicitation as long as the call's recipient had made a financial transaction with the dealer within 18 months preceding the date of the telemarketing call, or if the recipient had contacted the dealer to inquire about a product or service offered by the dealer within the three months preceding the date of the telemarketing call.[13] The proposed established business relationship exception would not provide an exception for those individuals who have requested to be put on a dealer's firm-specific do-not-call list or from the time-of-day restrictions.

The second exception to the national do-not-call rules pertains to those persons from whom the dealer has obtained prior express written invitation or permission to make a telemarketing call.[14] The final exception pertains to those persons with whom an associated person of a dealer has a ''personal relationship.''[15]

C. Telemarketing Procedures

The MSRB also proposed that dealers must institute certain procedures related to do-not-call lists. As proposed, these procedures must include requirements to: Have a written policy for maintaining a do-not-call list, train personnel engaged in telemarketing in the existence and use of the do-not-call list, record and disclose requests from a person to be added to the dealer's do-not-call list, and have the dealer provide the called party with the name of the individual caller, the name of the dealer, a telephone number or address at which the dealer may be contacted, and that the purpose of the call is to solicit the purchase of securities or related services.[16] The proposed rules clarify that, absent a specific request, a person's do-not-call request would apply to the dealer making a call, but not an affiliated entity of such a dealer unless the person would expect such an affiliated entity to be included, given the identification of the caller and the product being advertised.[17] Further, the MSRB proposed that dealers must maintain a record of a caller's request to receive no further telemarketing calls

[6] Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 (''TCPA''), FCC 03–153, adopted June 26, 2003.

[7] The Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994 requires the Commission to promulgate telemarketing rules substantially similar to those of the FTC or direct self-regulatory organizations to do so, unless the Commission determines that such rules are not in the interest of investor protection. 15 U.S.C. 6102(d) (2003).

[8] *See* The Do-Not-Call Implementation Act, 108 Pub. L. 10, 117 Stat. 557 (Mar. 11, 2003).

[9] *See* proposed MSRB Rule G–39(a)(iii).

[10] *See* proposed MSRB Rule G–39(a)(i) and (ii).

[11] *See* MSRB Rule G–39(b)(i) and (b)(ii).

[12] *See* proposed MSRB Rule G–39(b).

[13] *See* original proposed MSRB Rule G–39(g)(i)(A).

[14] *See* proposed MSRB Rule G–39(b)(ii).

[15] *See* proposed MSRB Rule G–39(b)(iii).

[16] *See* proposed MSRB Rule G–39(d)(i)—(d)(iv).

[17] *See* proposed MSRB Rule G–39(d)(v).

and must honor that request for a period of five years.[18]

D. Safe Harbor

In addition to proposing certain baseline procedures that dealers must follow, the MSRB proposed a ''safe harbor'' under which a dealer would not be liable for calling a person on the national do-not-call registry if that call is the result of an error and if the telemarketer's routine business practice meets certain specified standards.[19] In order to benefit from this safe harbor the dealer must establish and implement written procedures to comply with the national do-not-call rules, train its personnel in those procedures, maintain a list of telephone numbers that the dealer may not contact, and use a process to prevent telephone solicitations to any telephone number that appears on any national do-not-call registry, including a version of the list obtained from the administrator.

E. Miscellaneous

The MSRB proposed that the applicability of the telemarketing and telephone solicitation restrictions and exceptions would extend to wireless telephone subscribers.[20] Further, the MSRB proposed that if a dealer uses another entity to perform telemarketing services on its behalf, the dealer remains responsible for ensuring compliance with all provisions contained in proposed MSRB Rule G–39.[21]

III. Summary of Comments

The commission received three comment letters addressing the proposed rule change.[22] All three letters expressed concerns with the MSRB's proposed amendments to MSRB Rule G–39.

In general, two commenters believe that the proposed rule change, as proposed in the original filing, would restrict the ability of dealer firms to contact their existing customers.[23] The commenters' primary concern relates to the MSRB's proposed definition of an ''established business relationship'' exception.[24] The commenters generally stated the MSRB's proposed version of the established business relationship exception, which is created when a customer has made a financial transaction with a dealer, is too limited in scope and appears inconsistent with the TCPA and FCC Rules.

The established business relationship exclusion, under the FCC's amendment to the TCPA, provides that formation of an existing relationship involves a voluntary two-way communication ''with or without an exchange of consideration.'' [25] By limiting the scope of the established business relationship exclusion, one commenter believes that the proposed rule change restricts opportunities for both dealers and customers.[26]

In addition, commenters expressed concerns that changing the interpretation from a customer that ''carries an account'' to requiring a ''financial transaction'' within the previous eighteen months imposes difficult compliance issues, increases confusion, and generally restricts the ability of dealers to contact their customers. These commenters believe the change undermines the broker-client relationship. In addition, some commenters claimed that narrowing the scope of existing customers for the established business relationship exception would force dealers to implement costly system changes that distinguish among their account holders.[27] As a whole, the commenters assert that the MSRB is setting forth a new concept that was not included in the FCC Rules under the amended TCPA.[28]

Two commenters believe that the MSRB's definition of an established business relationship is too narrow and omits various situations under which a broker/dealer may need to contact its customers.[29] These commenters state that the proposed definition of an established business relationship is significantly narrower than the MSRB's definition of existing customer, which is used for MSRB's existing telemarketing rules and the FCC's and FTC's definition of established business relationship.[30] Two commenters also believe that an established business relationship generally should exist when a customer is an account holder at a dealer.[31] Charles Schwab states that the proposed rule should permit a dealer to win back a customer's account.[32]

The commenters request a review of the proposal with consideration of the wide array of business activities of all dealer firms. One commenter urged the MSRB to revise the proposed rule change by expanding the definition of ''established business relationship'' to accommodate an effective means for dealers to deliver products and services to customers.[33]

IV. Amendment No. 1

In its letter included within Amendment No. 1, MSRB noted that proposed MSRB Rule G–39 would restrict only ''telephone solicitations,'' which would be defined as ''the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.'' Accordingly, under the original proposed definition, the MSRB interpreted a telephone call to a customer concerning a margin call or similar administrative event would not constitute a telephone solicitation.

In response to commenters' concerns about the narrow scope of the established business relationship exception, the MSRB stated that a dealer may, at times, be compelled to contact a customer to satisfy the dealer's attendant agency obligations, including situations where market swings, interest rate changes, new tax laws, or specific industry or company news may necessitate a broker contacting his or her customer.

In addition, the MSRB proposed two changes to the definition of an ''established business relationship.'' The first change to the definition would encompass situations where the person has a security position, a money balance, or account activity at a clearing firm on behalf of such dealer within the previous 18 months. The second change to the definition would include situations where a dealer was the ''broker, dealer or municipal securities dealer of record'' for an account of a person within the 18 months immediately preceding the date of the telemarketing call. Both definitions of established business relationship continue for 18 months after a triggering event, thus providing an opportunity for a firm to win back a customer.

Moreover, the MSRB noted that the proposed rule change, as amended, cannot assure dealers that compliance with the proposed MSRB Rule G–39

[18] *See* proposed MSRB Rule G–39(d)(vi).

[19] *See* proposed MSRB Rule G–39(c).

[20] *See* proposed MSRB Rule G–39(e).

[21] *See* proposed MSRB Rule G–39(f).

[22] *See supra* note 5.

[23] *See* Charles Schwab Letter, at 4; SIA Letter, at 4.

[24] *Id.*

[25] 47 CFR 64.1200(f)(3).

[26] *See* Davidson Letter.

[27] *See* Schwab Letter, at 5; SIA Letter, at 2.

[28] *See* Schwab Letter; SIA Letter.

[29] *See* Schwab Letter, at 4; SIA Letter, at 4.

[30] *See* SIA Letter, at 3–4; Charles Schwab Letter at 2–4.

[31] *See* SIA Letter at 3; and Schwab Letter at 3.

[32] See Schwab Letter, at 5. The FCC has stated, ''a consumer who once had telephone service with a particular carrier or a subscription with a particular newspaper could expect to receive a call from those entities in an effort to ''win back'' or ''renew'' that consumer's business within eighteen (18) months.'' 68 FR 44144, 44158 (July 25, 2003).

[33] *See* SIA Letter, at 4.

ensures compliance with FCC rules because dealers also must comply with the telemarketing rules of the FCC and any FCC interpretations of those rules.

V. Discussion and Commission Findings

After careful review of the proposed rule change, as amended, and the related comments, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder which govern the MSRB [34] and, in particular, the requirements of Section 15B(b)(2)(C) of the Act and the rules and regulations thereunder.[35] Section 15B(b)(2)(C) of the Act requires, among other things, that MSRB's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

A. General

The Commission believes that the investing public's participation in the do-not-call registry, as described in the proposed rule change, creates an expectation among national do-not-call registrants that they will not receive unwanted telephone solicitations from dealers. The Commission believes that the MSRB's proposal generally prohibits its dealers from making telemarketing calls to people who have registered on the national do-not-call registry, while retaining time-of-day and firm-specific do-not-call list restrictions.[36] The Commission believes that the proposed rule change, as amended, establishes adequate procedures to prevent dealers from making telephone solicitations to do-not-call registrants, which should have the effect of protecting investors, while providing appropriate exception to the rule for certain enumerated situations, which should promote just and equitable principles of trade.

B. Exceptions

The Commission recognizes the importance of having certain exceptions to the general prohibition of dealers from soliciting persons who have signed up on the FCC's national do-not-call registry. The Commission believes that the ''established business relationship'' exception, ''prior express invitation or permission'' exception, and a ''personal relationship'' exception provide appropriate scenarios where dealer should not be precluded from making a telemarketing call to do-not-call registrants.

The Commission further believes that the MSRB's expansion of ''established business relationship'' is appropriate. As originally drafted, an established business relationship would exist between the customer and a dealer as long as the call's recipient had made a financial transaction with the dealer within 18 months preceding the date of the telemarketing call, or if the recipient had contacted the dealer to inquire about a product or service offered by the dealer within the three months preceding the date of the telemarketing call.[37] In response to commenters concerns about the narrowness of the exception, the MSRB expanded the definition of ''established business relationship'' to include situations where the telemarketing call recipient has a security position, a money balance, or account activity at a clearing firm on behalf of such dealer within the previous 18 months, and where a dealer was the ''broker/dealer of record'' for an account of a person within the 18 months immediately preceding the date of the telemarketing call.

The Commission believes that a dealer should be able to discuss the purchase or sale of a security with a customer who has registered on the national do-not-call registry without fear of violating an MSRB rule when there is some development that could materially impact the investment decision of a reasonable investor. As originally proposed, an established business relationship did not exist unless an account holder had made a financial transaction within the previous eighteen months or affirmatively contacted the dealer to make an account inquiry within the past three months. The Commission believes that the definition, as originally proposed, would have restricted a dealer from making a telemarketing call to its customer in many situations where a prudent investor would ordinarily desire to be contacted, such as the existence of market swings, interest rate changes, new tax laws, or specific industry or company news. The Commission believes that the expansion of the definition of ''established business relationship'' exception to include persons that have a security position, money balance or account activity with a dealer or at a clearing firm that provides clearing services on behalf of a dealer will, among other things, assist dealers in upholding their agency obligations to customers. In addition, the Commission believes that broker/dealers of record who have served as such for a customer within the eighteen months preceding the date of the telemarketing call should be allowed to contact a customer whose account is held directly at an issuer of a municipal fund or by the issuer's agent.

Moreover, the Commission believes that the proposed established business relationship exception adequately protects customers who are most interested in not being contacted by a dealer by specifying that the exception does not apply to those individuals who have specifically requested to be put on a dealer's do-not-call list. The Commission further believes a dealer should not generally be restricted from contacting those do-not-call registrants from whom the dealer has received express written consent to contact and those registrants who have a personal relationship with the associated person making the call.

C. Telemarketing Procedures

As described above, the MSRB also proposed that dealers must institute certain procedures related to do-not-call lists.[38] The Commission believes that the procedures that the MSRB has proposed provide adequate guidelines for a dealer to establish education and training of its affiliated persons and adequately provides that a dealer will incorporate the names of persons who request to be put on a firm's do-not-call list among the list of names that a dealer may not contact. Further, the Commission believes that the identification procedure that a dealer or associated person must follow when making a telemarketing call should enhance the ability of consumers to hold dealers accountable for adhering to firm-specific and national do-not-call registry restrictions.

D. Safe Harbor

As described above, the MSRB proposed ''safe harbor'' procedures that a dealer could follow to avoid liability for do-not-call list violations that arise out of errors if the telemarketer's routine business practice meets certain specified standards.[39] The Commission believes that the safe harbor that the MSRB has proposed should ensure that a dealer incorporates national do-not-call registrants in its own list of telephone numbers that it may not contact, and that dealers follow procedures to refrain from contacting such persons. Accordingly, the

[34] In addition, in approving this rule the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[35] 15 U.S.C. 78*o*–4(b)(2)(C).

[36] *See* proposed MSRB Rule G–39(a)(i)—(a)(iii).

[37] *See* original proposed MSRB Rule G–39(g)(i)(A).

[38] *See* proposed MSRB Rule G–39(d)(i)–(d)(6).

[39] *See* proposed MSRB Rule G–39(c).

Commission believes it is appropriate for the MSRB to grant dealers who have established the appropriate routine business practices a safe harbor exemption from liability for calls made out of genuine error.

E. Miscellaneous

The Commission believes that the MSRB's proposal to apply the telemarketing and telephone solicitation restrictions to wireless telephone numbers is appropriate, given that consumers can register wireless telephone numbers in the national do-not-call registry. Further, the Commission believes that a dealer should not be able to avoid accountability for complying with telemarketing restrictions and regulations by employing another entity to perform telemarketing services on behalf of the dealer. Accordingly, the Commission finds proposed MSRB Rule G–39(f), relating to outsourcing telemarketing, to be appropriate.

F. Accelerated Approval of Amendment No. 1

The Commission finds good cause, pursuant to section 19(b)(2) of the Act, for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. As discussed above, in Amendment No. 1, the MSRB expanded the breadth of the established business relationship exception. The Commission believes that the proposed Amendment No. 1 will, among other things, facilitate dealers' ability to uphold their agency obligations by enabling them to make a telemarketing call under certain circumstances to customers who have not actively traded or made deposits to their brokerage accounts. In making the determination to accelerate approval of Amendment No. 1, the Commission notes that the majority of commenters supported a broader definition of ''established business relationship.''[40]

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 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 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–MSRB–2003–07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 such filing also will be available for inspection and copying at the principal office of the MSRB. All submissions should refer to File No. SR–MSRB–2003–07 and should be submitted by February 20, 2004.

VII. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[41] that the proposed rule change, as amended (File No. SR–MSRB–2003–07) is approved, and Amendment No. 1 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[42]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–1956 Filed 1–29–04; 8:45 am]

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[40] *See* Schwab Letter, at 4; SIA Letter, at 4.

[41] 15 U.S.C. 78s(b)(2).

[42] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49126; File No. SR–OCC–2003–07]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Clearance and Settlement of Foreign Currency Futures

January 26, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 4, 2003, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') and on November 17, 2003, amended the proposed rule change as described in items I, II, and III below, which items have been prepared primarily by OCC. 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).

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

The proposed rule change accommodates the introduction of foreign currency futures as proposed to be traded by the Philadelphia Board of Trade (''PBOT'') and cleared by OCC.

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

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

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

The proposed amendments provide for the clearance and settlement of cash-settled futures of foreign currency. The same basic rules and procedures currently applicable to other cash-settled futures contracts will be applicable to cash-settled foreign currency futures.

The by-laws and rules of PBOT provide for listing physically-settled foreign currency futures, which were historically cleared through The Intermarket Clearing Corporation (''IMM''), a subsidiary of OCC. PBOT now proposes to list cash-settled foreign currency futures for trading through its facilities, and OCC proposes to provide clearing and settlement services for these new contracts directly rather than through ICC. OCC would perform this function in its capacity as a derivatives clearing organization (''DCO'') registered as such under the Commodity Exchange Act.

OCC's existing rules already provide for the clearance of cash-settled futures. They do not, however, specifically contemplate cash-settled futures for which a foreign currency is the underlying interest. The purpose of the present rule change is to amend the rules as necessary to provide for

[2] The Commission has modified parts of these statements.