

securities exchange.¹² Specifically, the Commission finds that these proposed changes are consistent with the requirements of Section 6(b)(5) of the Act¹³ because they are designed to facilitate transactions in securities; to remove impediments to and to perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.¹⁴

The Commission believes that the proposed changes to CHX Article XX, Rule 37(a)(2) providing for an Aggregate Share Threshold achieve an appropriate balance between providing customers with efficient and prompt executions of orders and limiting the risk that specialists are exposed to by guaranteeing automatic executions. The Commission further finds that the proposed changes to CHX Article XX, Rule 37(b)(1) dealing with a specialist's obligations for manually handling market and marketable limit orders are consistent with the Act and the manner in which specialists currently handle orders for listed securities.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁵ that the portion of proposed rule change (SR-CHX-2002-20) relating to CHX Article XX, Rules 37(a)(1), 37(a)(2), 37(b)(1) and 43(d), as discussed above, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47814; File No. SR-MSRB-2002-12]

Self-Regulatory Organizations; Order Granting Approval of a Proposed Rule Change and Amendment No. 1 Thereto by the Municipal Securities Rulemaking Board Relating to Amendments to Rules G-37, on Political Contributions and Prohibitions on Municipal Securities Business, G-8, on Books and Records, Revisions to Form G-37/G-38 and the Withdrawal of Certain Rule G-37 Questions and Answers

May 8, 2003.

I. Introduction

On September 26, 2002, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"), and rule 19b-4 thereunder,¹ a proposed rule change to amend rule G-37, on political contributions and prohibitions on municipal securities business, G-8, on books and records, revisions to Form G-37/G-38 and the withdrawal of certain rule G-37 Questions and Answers. On March 26, 2003, the MSRB amended the proposal. The proposed rule change revises the exemption process and the definition of municipal finance professional. Amendment No. 1 alters the text of the amendments to the rule language as it appears in the original filing. The proposed rule change, as modified by Amendment No. 1, was published in the **Federal Register** on April 8, 2003.²

The Commission received two comment letters on the proposed rule change.³ This order approves the proposed rule change as modified by Amendment No. 1.

II. Summary of Comments

The Commission received two comment letters on the proposed rule change, both support the proposal.

The TBMA letter expresses support for the proposal because the TBMA believes that the changes will help

reduce some of the burdens associated with rule G-37. According to the TBMA letter, the proposed rule change, "will not undercut [rule G-37's] goal of maintaining the integrity of the municipal underwriting process."⁴ Furthermore, TBMA believes that the changes are long overdue and urges the Commission to quickly adopt the proposal.⁵ Similar to the TBMA letter, the ABA/ABASA letter provides support for the proposed rule change as a means to limit the costs and burdens associated with regulatory compliance. On the amended definition of municipal finance professional, the ABA/ABASA letter expressed that the changes will limit the "unintended consequences of preventing dealer firms from hiring otherwise qualified employees."⁶ Additionally, the more flexible exemption process will provide some relief for "inadvertent violations" on rule G-37's ban on contributions.⁷

III. Discussion and Commission Findings

Section 19(b) of the Exchange Act⁸ requires the Commission to approve the proposed rule change filed by the MSRB if the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder. After careful review of the proposed rule change and comment letters, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder, which govern the MSRB.⁹ The language of section 15B(b)(2)(C) of the Act requires that the MSRB's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, settling, processing information with respect to, and facilitating transactions in 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.¹⁰

The Commission acknowledges the MSRB Long-Range Plan, to assess rule G-37's requirements and resulting

¹² In approving this portion of the rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ The Commission notes that it is not approving proposed Interpretation .01 to CHX Rule 37, nor the corresponding modifications to Rule 37 that would accompany this interpretation.

¹⁵ 15 U.S.C. 78f(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1); 17 CFR 240.19b-4.

² See Release No. 34-47609 (April 1, 2003), 67 FR 17122.

³ April 25, 2003, letter from John M. Ramsay, Senior Vice President and Regulatory Counsel, The Bond Market Association to Jonathan G. Katz, Secretary, Commission ("TBMA letter"); April 29, 2003, letter from Sarah Miller, American Bankers Association and ABA Securities Association to Jonathan G. Katz, Secretary, Commission ("ABA/ABASA letter").

⁴ See TBMA letter at 1.

⁵ *Id.* at 2.

⁶ See ABA/ABASA letter at 2.

⁷ *Id.*

⁸ 15 U.S.C. 78s(b).

⁹ Additionally, 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).

¹⁰ 1015 U.S.C. 78o-4(b)(2)(C).