

14, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. 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 CBOE proposes to amend its rules to establish minimum price variations ("MPVs"). The text of the proposed rule change is available at the CBOE 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 Exchange 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 Exchange 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**

On September 25, 2001, the Commission issued an order requiring the securities exchanges and the NASD to submit their own respective rule filings to establish MPVs for quoting equity securities and options by January 14, 2002.<sup>3</sup> The CBOE now proposes to formally adopt the MPVs currently in place on the Exchange.

As part of the industry conversion to decimal pricing and pursuant to the Decimals Implementation Plan for the Equities and Options Markets submitted to the Commission on July 26, 2000 (the "Plan"),<sup>4</sup> the Exchange adopted the following MPV schedule for quoting: a five cent MPV for option issues quoted under \$3 a contract; a ten cent MPV for option issues quoted at \$3 a contract or greater; and a one cent MPV for the

quoting of CBOE's equity products. The Plan, including the MPVs adopted under the Plan, remains in effect until the Commission approves rules submitted by each exchange and the NASD designating each market's MPVs. The Exchange seeks to designate the MPVs utilized under the Plan as its minimum increments.

The proposed rule change also provides that future changes to the Exchange's MPVs would be handled as they were handled before the conversion to decimal pricing, namely that the CBOE Board of Directors may determine to change the minimum increments and that the Exchange will designate any such change as a stated policy, practice, or interpretation with respect to the administration of the CBOE minimum increment rule for bids and offers (CBOE Rule 6.42) within the meaning of section 19(b)(3)(A) of the Exchange Act<sup>5</sup> and will file a rule change for effectiveness upon filing with the Commission. Lastly, the Exchange also seeks to formally eliminate CBOE Rule 15.11 (Mandatory Year 2000 Testing) and CBOE Rule 15.22 (Mandatory Decimal Pricing Testing), both of which have expired.

##### **2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>7</sup> in particular, in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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

No written comments were solicited or received with respect to the proposed rule change.

### **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 Exchange 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.

### **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. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR-CBOE-2002-02 and should be submitted by April 10, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-45562; File No. SR-MSRB-2001-08]

### **Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change Relating to Official Communications, Pursuant to MSRB Rules G-15 and G-8**

March 14, 2002.

On November 6, 2001, the Municipal Securities Rulemaking Board ("MSRB")

<sup>3</sup> See Securities Exchange Act Release No. 44846 (September 25, 2001), 66 FR 49983 (October 1, 2001).

<sup>4</sup> See letter from Dennis L. Covelli, Vice President, New York Stock Exchange, Inc. to Annette Nazareth, Director, Division of Market Regulation, Commission, dated July 25, 2000.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-MSRB-2001-08) (the "proposed rule change") relating to official communications under Rules G-15 and G-8. The MSRB submitted the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 19b-4 thereunder.<sup>1</sup>

The Commission published the proposed rule change for comment in the **Federal Register** on February 8, 2001.<sup>2</sup> The Commission received no comment letters regarding the forgoing proposal. This order approves the proposal.

### I. Description of the Proposed Rule Change

The MSRB's proposed rule change amended Rule G-15 on confirmation, clearance and settlement of transactions with customers and Rule G-8 on books and records. The proposed rule change requires brokers, dealers and municipal securities dealers (collectively "dealers") that safekeep municipal securities to retransmit official documents about municipal securities issues to their safekeeping clients under certain conditions. The amendment to Rule G-15 provides that, upon request for retransmission, dealers who serve as safekeeping agents must undertake "reasonable efforts" to retransmit "official communications" <sup>3</sup> to their safekeeping clients. For their retransmission efforts, the amendment provides that dealers receive "adequate compensation".<sup>4</sup> Without an offer of adequate compensation, dealers are not required to effect the retransmission.

The proposed amendment includes a "compensation threshold". For

retransmission where the total compensation sought will be less than \$500, the dealer should begin retransmitting immediately and ask for the calculated compensation concurrently. For retransmission where the total compensation sought will be greater than \$500, the dealer may choose instead to promptly contact the party offering compensation, inform it of the amount of compensation required, obtain specific agreement on the amount of compensation and wait for receipt of such compensation prior to proceeding with the retransmission.

In addition, the amendment allows dealers in certain circumstances to send to the party requesting an official communication retransmission a list of beneficial owners who do not object to the disclosure of their name, contact information and security positions ("non-objecting beneficial owners") in lieu of retransmitting documents. The customer account information amendment to Rule G-8 ensures that dealers retain an official record of a customer's written authorization, if any, as to the customer's status as a non-objecting beneficial owner.

The MSRB realizes that some dealers today retransmit documents to their customers voluntarily, or under specific terms of their safekeeping agreements, and in many cases do so without compensation from the party requesting retransmission. It is not the intent of the proposed rule change to discourage retransmissions of official communications in these cases. Rather, the purpose of the proposed rule change is to ensure that parties needing to transmit official communications to beneficial owners may rely on dealers undertaking reasonable efforts, under the explicit terms of Rules G-15 and G-8, to retransmit such official communications and maintain appropriate records.

### II. Discussion

The MSRB believes that the proposed rule filing, relating to official communications, will promote just and equitable principles of trade and fosters an open market for municipal securities. Additionally, the MSRB believes that the proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act since it applies equally to all dealers in municipal securities.

The Commission must approve a proposed MSRB rule change if the Commission finds that the MSRB's proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder

that govern the MSRB.<sup>5</sup> The language of Section 15(b)(2)(C) of the Exchange 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 and a national system, and, in general, to protect investors and the public interest.<sup>6</sup>

After careful review, the Commission finds that the MSRB's proposed rule change relating to official communications meets this standard. The Commission believes that this proposed rule change is consistent with the requirements of the Exchange Act, and the rules and regulations thereunder. In particular, the Commission finds that the proposed rule is consistent with the requirements of Section 15B(b)(2)(C) of the Exchange Act, set forth above.

### III. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act that the proposed rule change (File No. SR-MSRB-2001-08) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45547; File No. SR-NYSE-2002-12]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. to Eliminate References to Quoting in Fractions

March 12, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 5,

<sup>5</sup> 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).

<sup>6</sup> 15 U.S.C. 78o-4(b)(2)(c).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>1</sup> 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b-4 thereunder.

<sup>2</sup> See Release No. 34-45363 (January 30, 2002), 67 FR 6067.

<sup>3</sup> The proposed rule change defines an "official communication" as a document or collection of documents addressed to beneficial owners that was prepared or authorized by an issuer of municipal securities, a trustee for an issue of municipal securities, a state or federal tax authority or a custody agent for a stripped coupon municipal securities program in its capacity as custody agent. See Release No. 34-45363 (January 30, 2002), 67 FR 6067.

<sup>4</sup> Rule G-15 does not provide specific guidance to define adequate compensation; however, the proposed rule change references the rates of compensation for transmittal of documents detailed in NASD interpretation IM-2260, on Suggested Rates of Reimbursement, relating to forwarding of proxy and other materials. See *id.*; see also *NASD Manual* (CCH) ¶ 4233. As under NASD Rule 2260, compensation under Rule G-15 is intended to reimburse a dealer for its out of pocket expenses, including reasonable clerical expenses, associated with the particular retransmission. See *NASD Manual* (CCH) ¶ 4231.