

may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change 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, including whether the proposal 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 such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to file number SR-CBOE-2003-01 and should be submitted by February 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47190; File No. SR-CBOE-2002-62]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Proposing To Amend Interpretation .01(b)(2) and .05(d)(ii) to CBOE Rule 5.3 Which Establish the Pricing Criteria for Securities That Underlie Options Traded on the Exchange

January 15, 2003.

I. Introduction

On October 11, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("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 amend Interpretation .01(b)(2) and .05(d)(ii) to CBOE Rule 5.3, which establish the pricing criteria for securities that underlie options traded on the Exchange. The proposed rule change was published for comment in the **Federal Register** on December 16, 2002.³ No comments were received on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend Interpretation .01(b)(2) to CBOE Rule 5.3 to provide that, for securities that underlie options traded on the Exchange ("underlying security") that are deemed Covered Securities, as defined under section 18(b)(1)(A) of the Securities Act of 1933 ("1933 Act"),⁴ the closing market price of the underlying security must be at least \$3.00 per share for the five previous consecutive business days prior to the date on which CBOE submits an option class certification to the Options Clearing Corporation for listing and trading. For Underlying Securities that are not Covered Securities, the Exchange states that the

current \$7.50 price per share requirement would continue to apply. The market price of such underlying security would be measured by the closing price reported in the primary market in which the underlying security is traded. Finally, the Exchange proposes to amend Interpretation and Policy .05(d)(ii) to CBOE Rule 5.3 to reflect that the market price standard for Restructure Securities also shall be reduced from \$7.50 to \$3.00 as long as the Restructure Security is a Covered Security.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵ In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,⁶ which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade; facilitate transactions in securities, and protect investors and the public interest.

The Commission notes that although this proposal amends the closing market price for an underlying security which is deemed a Covered Security, as well as the time period for which it must trade at that price prior to it being listed on the Exchange, the CBOE has represented that it will continue to maintain its initial listing standards.⁷ Therefore, an underlying security that is deemed a Covered Security must also meet CBOE's additional listing requirements prior to CBOE bringing up a new series of options to trade, including the requirements that: there must be a minimum of 7,000,000 shares of the underlying security owned by public investors; there must be a minimum of 2,000 holders of the underlying security; and, that there must be a trading volume of at least 2,400,000 shares in the preceding twelve months.⁸ Accordingly, the Commission finds that the proposed rule change to require a closing market price of at least \$3.00 per share for the five previous consecutive business days for underlying securities that are

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 46957 (December 6, 2002), 67 FR 77106.

⁴ Section 18(b)(1)(A) of the 1933 Act provides that, "[a] security is a covered security if such security is—listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed, or authorized for listing, on the National Market System of the Nasdaq Stock Market. * * * 15 U.S.C. 77r(b)(1)(A). The term Covered Security, for the operation of proposed amendments to Interpretation .01(b)(2) to CBOE Rule 5.3 herein, would not include those securities defined under section 18(b)(1)(B) of the 1933 Act. 15 U.S.C. 77r(b)(1)(B).

⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

⁷ Telephone conversation between James Flynn, Attorney, CBOE, and Christopher Solgan, Attorney, Division of Market Regulation ("Division"), Commission, on January 14, 2002. See also Securities Exchange Act Release No. 46957, *supra* note 3.

⁸ See CBOE Rule 5.3.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 200.30-3(a)(12).

deemed Covered Securities, coupled with its additional listing requirements, will enable CBOE to list options on companies that are financially sound. Nonetheless, the Commission expects the Exchange to continue to delist inactive options classes, regardless of the market price of the underlying security, through its existing quarterly delisting program.⁹

Lastly, the Commission notes that each options exchange may currently list additional series on an option class even though the market price of the underlying security is below \$3, provided that at least one other options exchange trades the series to be added, and at the time the other options exchange added that series, it met the requirements to add new series, including the \$3 price requirement.¹⁰

For these reasons, the Commission finds that the proposed rule change to provide that the closing market price of the underlying security must be at least \$3.00 per share for the five previous consecutive business days for underlying securities that are deemed Covered Securities, is consistent with section 6(b)(5) of the Act.¹¹

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹² that the proposed rule change (SR-CBOE-2002-62) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

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⁹ CBOE states that it maintains an active delisting program which requires the quarterly review of multiply listed option classes that do not trade more than 20 contracts per day on the Exchange. Telephone conversation between James Flynn, Attorney, CBOE, and Florence Harmon, Senior Special Counsel, Division, Commission, on January 14, 2002. See also Securities Exchange Act Release No. 46957, n. 7, *supra* note 3.

¹⁰ See Interpretation and Policy .02 to CBOE Rule 5.4; Commentary .02 to American Stock Exchange LLC Rule 916; Commentary .01 to Pacific Exchange, Inc. Rule 3.7(b); Commentary .02 to Philadelphia Stock Exchange, Inc. Rule 1010; and International Securities Exchange, Inc. Rule 503(c).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47189; File No. SR-MSRB-2002-15]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to Rule G-28, on Transactions With Employees and Partners of Other Municipal Securities Professionals

January 15, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), and Rule 19b-4 thereunder,¹ notice is hereby given that on December 20, 2002 the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR-MSRB-2002-15). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing herewith a proposed amendment to Rule G-28, on transactions with employees and partners of other municipal securities professionals (hereafter referred to as "the proposed rule change"). Below is the text of the proposed rule change. New language is italicized; deletions are in brackets.

Rule G-28. Transactions With Employees and Partners of Other Municipal Securities Professionals

(a)-(b) No change.

(c) *Exemption for Municipal Fund Securities. The provisions of this rule shall not be applicable to transactions in municipal fund securities or to accounts that are limited to transactions in municipal fund securities.*

(a) Not applicable.

II. Self-Regulatory Organizations 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

below. The MSRB 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

Rule G-28, on transactions with employees and partners of other municipal securities professionals, requires a broker, dealer or municipal securities dealer ("dealer") that opens a municipal securities account for an employee of another dealer (or a spouse or child of such employee) to first provide written notice to such other dealer and to subsequently follow any instructions provided by the other dealer with respect to transactions for the employee. The transacting dealer is also required to provide copies of all confirmations to the other dealer. The rule was adopted to prevent an employee of a dealer from effecting transactions that are contrary to the interests of the dealer or from otherwise acting illegally or improperly with respect to transactions in municipal securities.

As part of its ongoing review of the application of MSRB rules to municipal fund securities, it has come to the MSRB's attention that the requirements of Rule G-28 may impose a burden on dealers and customers, particularly in the context of 529 college savings plan accounts, without any significant countervailing benefit. The MSRB is concerned that the requirements unnecessarily delay the opening of some accounts since dealers are required to provide written notice to a dealer that employs a new customer prior to opening an account. However, since it does not appear that transactions in municipal fund securities present the same potential for adverse impact on an employing dealer as might exist with respect to transactions in other types of municipal securities, the MSRB does not believe that any benefit is realized from imposing the requirements of Rule G-28 on transactions in municipal fund securities.

Thus, the MSRB has determined that it is appropriate to create an exemption from Rule G-28 for transactions and accounts involving municipal fund securities. The MSRB notes that transactions in registered mutual fund shares are currently exempted from similar requirements imposed under NASD Rule 3050. In addition, since there is no trading market in shares of 529 college savings plans or other types

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