

*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 self-regulatory organization 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 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-2003-10 and should be submitted by September 10, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

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

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<sup>6</sup> 17 CFR 200.30-3(a)(12).

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-48339; File No. SR-CBOE-2003-32]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Refund of Certain Telecommunication Fees**

August 14, 2003.

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 July 30, 2003, 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 Exchange. CBOE has designated the proposed rule change as constituting a "non-controversial" rule change under Section 19(b)(3)(A)(iii) of the Act,<sup>3</sup> and paragraph (f)(6) of Rule 19b-4 under the Act,<sup>4</sup> which renders the proposal effective upon receipt of this filing by the Commission.<sup>5</sup> 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**

CBOE proposes to make a change to its Fee Schedule to refund certain telecommunication fees that were collected from members and member organizations during 2002 in anticipation of the need to fund a new trading floor telecommunications system. The text of the proposed rule change is available at the office of the Secretary, 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 CBOE 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

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

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

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> The CBOE has requested that the Commission waive both the five-day pre-filing notification requirement and the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

may be examined at the places specified in Item IV below. The CBOE 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

CBOE proposes to make a change to its Fee Schedule to refund certain telecommunication fees that were collected from members and member organizations during 2002 in anticipation of the need to fund a new trading floor telecommunications system. In SR-CBOE-2002-71,<sup>6</sup> the Exchange amended its Fee Schedule, effective January 1, 2003, to reduce certain of its telecommunications fees due to its decision to defer a previously planned purchase of a new trading floor telephone system. These telecommunications rates had been raised by approximately 50% at the start of calendar year 2002 (this increase had previously been reduced by approximately 60% in May 2002.) In SR-CBOE-2002-71, the Exchange also indicated that it intended to file a separate proposed rule filing that would refund the increased telecommunications fees that were collected during 2002 to the members and member organizations that paid them. This filing effectuates that refund.

2. Statutory Basis

CBOE believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act<sup>7</sup> in general, and with Section 6(b)(4) of the Act<sup>8</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

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

CBOE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

<sup>6</sup> See Securities Exchange Act Release No. 47171 (January 13, 2003), 68 FR 2594 (January 17, 2003) (order approving File No. SR-CBOE-2002-71).

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

<sup>8</sup> 15 U.S.C. 78f(b)(4).

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

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) after the date of the filing, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> At any time within 60 days of the filing of such 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.

The Commission has decided, consistent with the protection of investors and the public interest, to waive the five-day pre-filing notice and 30-day operative date to allow CBOE to immediately refund the increased telecommunications fees that were collected during 2002 to the members and member organizations that paid them.<sup>11</sup>

### 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 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-2003-32, and should be submitted by September 10, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48340; File No. SR-MSRB-2003-06]

### Self-Regulatory Organizations; Order Granting Approval of a Proposed Rule Change Filing by the Municipal Securities Rulemaking Board to Amend Rule A-14, on Annual Fees

August 14, 2003.

On July 3, 2003, 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 ("the Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change (File No. SR-MSRB-2003-06) (the "proposed rule change"). The MSRB's proposed rule change amends Rule A-14, which provides for an annual fee paid to the MSRB.

The Commission published the proposed rule change for notice and comment in the **Federal Register** on July 15, 2003.<sup>3</sup> The Commission received two comment letters on the proposed rule change.<sup>4</sup> This order approves the proposed rule change.

#### I. Description of the Proposed Rule Change

The MSRB proposed to amend Rule A-14, on annual fees paid by brokers, dealers and municipal securities dealers (collectively "dealers"). In its filing, the MSRB requested that the proposed rule change become effective prior to the beginning of the Board's fiscal year of 2004 (October 1, 2003). The proposed rule change increases the annual fee, from \$200 to \$300, for each fiscal year a dealer conducts municipal securities

activities. The effective date of the proposed fee change does not alter the date in which the fees must be received by the Board.<sup>5</sup> Under Rule A-14, the fee must be received by the office of the Board no later than October 31 of the fiscal year of the Board.

#### II. Summary of Comments

The commission received two comment letters addressing the proposed rule change. Both comment letters expressed their opposition to the proposed rule change for an increase in annual fees. One commentator stated that the increasing fees drive out the smaller firms from engaging in municipal securities business.<sup>6</sup> The other commentator suggested that the fees paid to the MSRB should be based on generated revenues from a firm's municipal securities activities.<sup>7</sup>

#### III. Discussion and Commission Findings

Section 19(b) of the Act<sup>8</sup> requires the Commission to approve a proposed rule change filed by the MSRB if the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder. After careful review of the proposed rule change and the related comments, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, which govern the MSRB,<sup>9</sup> and, in particular, the requirements of section 15B(b)(2)(j) of the Act.<sup>10</sup> Under section 15B(b)(2)(j) of the Act, in pertinent part, the Board's rules must provide that each municipal securities broker and each municipal securities dealer pay to the Board "such reasonable fees and charges as may be necessary or appropriate" to defray the costs and expenses of operating and administering the Board. The Commission believes that the annual fee, as described in the proposed rule change, is necessary and appropriate to defray Board expenses. Thus, the Commission believes that the MSRB's proposal meets the required statutory threshold.

To address the comment letters, the Commission notes that the annual fee, levied under Rule A-14, is a flat rate that applies equally to all dealers conducting municipal securities

<sup>12</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>3</sup> See Release No. 34-48140 (June 8, 2003), 68 FR 41852 (July 15, 2003).

<sup>4</sup> See letter from Erich Sokolower, Managing Director, Repex & Co., Inc., to MSRB, dated July 13, 2003; letter from Ying Cui, Winstrade, to MSRB, dated July 25, 2003.

<sup>5</sup> See Release No. 34-48140.

<sup>6</sup> See letter from Repex & Co, Inc., note 4, *supra*.

<sup>7</sup> See letter from Winstrade, note 4, *supra*.

<sup>8</sup> 15 U.S.C. 78s(b).

<sup>9</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>10</sup> 15 U.S.C. 78o-4(b)(2)(j).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).