

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.

[FR Doc. 03-1347 Filed 1-21-03; 8:45 am]

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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.