

margin level would be appropriate, the CBOE will take immediate steps to implement the change. If, on the other hand, the Exchange determines that a lower margin percentage would be appropriate, the Exchange must file a proposal with the Commission pursuant to Section 19(b) of the Act to modify the margin add-on percentages applicable to Real warrants. Should the customer margin levels for Real warrants be changed, the Exchange will promptly notify the Exchange's membership and the public.

II. Discussion

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, and, in particular, the requirements of Section 6(b)(5)¹⁰ in that it will help remove impediments to a free and open securities market and facilitate transactions in securities by providing investors with a low-cost means to participate in the performance of the Brazilian economy or to hedge against the risk of investing in that economy. Specifically, the Commission believes that the trading of listed warrants on the Brazilian Real should provide investors with a hedging and risk transfer vehicle that will reflect the overall movement of the Brazilian Real in relation to the U.S. dollar. In this regard, Real warrants should provide investors with an efficient and effective means of managing risk associated with the Brazilian Real.

Moreover, Real warrants will conform to the listing standards in Rule 31.5(E), and the other provisions of the generic warrant listing order. These rules provide a regulatory framework for trading currency warrants, and should help to provide for fair and orderly markets in Real warrants. Under these rules, the Exchange will limit transactions in Real warrants to customers with options approved accounts and impose the CBOE's options suitability standards and discretionary accounts standards to transactions in Real warrants. Additionally, the requirements established by the Exchange for reporting positions of 100,000 or more Real warrants on the same side of the market should assist the CBOE in detecting and deterring attempts at manipulation.

Furthermore, the CBOE has proposed adequate customer margin requirements. The proposed add-on margin (*i.e.* 10% with a minimum add-

on for out-of-the-money warrants of 7%) provides sufficient coverage to account for historical and potential volatility in the Brazilian Real in relation to the U.S. dollar. The Exchange will conduct periodic reviews of the volatility in the Brazilian Real and must take immediate steps to increase the existing customer margin levels if the Exchange determines that the existing levels are no longer adequate. As a result, the Commission believes that the proposed customer margin levels and the review and maintenance criteria for those margin levels will result in adequate coverage of contract obligations and are designed to reduce risks arising from inadequate margin levels.

Finally, the Exchange will prepare and distribute to its membership a circular describing each issue of Real warrants listed by the CBOE, calling attention to certain compliance responsibilities when handling transactions in Real warrants.¹¹

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of the notice thereof in the Federal Register. Specifically, Amendment No. 1 increases the minimum add-on margin for out-of-the-money Real warrants from 2% to 7%, to protect against greater fluctuations in the value of the Real. In addition, Amendment No. 1 clarifies that the Exchange will require any issuer of Real warrants to use a reliable, widely disseminated, and unbiased source for determining settlement value of the Real warrants. The Exchange will require the issuer or issuer's designee to use the Fed noon buying rate, published by the Federal Reserve Bank of New York for settlement purposes. Alternatively, in the event the Fed noon buying rate is unavailable, the Exchange will require the issuer to use the exchange rate published by the Central Bank of Brazil.¹² Based on the above, the Commission finds good cause to accelerate approval of Amendment No. 1.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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 at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. 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 No. SR-CBOE-95-54 and should be submitted by March 8, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-CBOE-95-54), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-36827; File No. SR-MSRB-95-17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Reports of Sales and Purchases

February 9, 1996.

On December 13, 1995 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-95-17), pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(2). 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 Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing an amendment to Board rule G-14, concerning reports of sales or purchases, and associated transaction reporting procedures (hereafter collectively referred to as "the proposed rule change"). The purpose of

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ See *supra* note 8.

¹² See notes 4 and 5 *supra*.

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

the proposed rule change is to enhance the Board's transaction reporting pilot program ("The program") to improve support for market surveillance and enforcement of Board rules. The proposed rule change would require brokers, dealers and municipal securities dealers ("dealers") to include the time of trade execution when submitting information on inter-dealer transactions to the Board under rule G-14. This would make it possible to reconstruct the time sequence of the transactions. Such information would be made available, through the Board's automated transaction reporting system, to the Commission and to organizations charged with inspection for compliance with, and enforcement of, Board rules ("enforcement agencies"). The Board is requesting that the proposed rule change become effective July 1, 1996.

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 Board 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 texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Section (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

(a) Background

On November 9, 1994, the Commission approved an amendment to Board rule G-14, on reports of sales or purchases of municipal securities, and associated transaction reporting procedures for inter-dealer transactions.¹ The amendment enabled implementation of the Board's transaction reporting program and operation of the supporting computer system. The program is an important first step to increase transparency in the municipal securities market.

The goals of the program are to help provide market participants and the public with more information about the value of securities, and to help enforcement agencies identify transaction patterns as they carry out dealer inspections and conduct market surveillance. The Board stated in 1994

its plans to implement the program (the "1994 plan").² The 1994 plan called for the Board to disseminate a daily public report summarizing market activity for those municipal securities that traded "frequently"³ on the previous day ("T+1 reporting"). The plan also called for the construction of a comprehensive "surveillance database," that would include details of each trade (the identity of the parties, the price, par value, etc.). The 1994 plan had four phases, of which the first three covered different types of municipal securities transactions: Inter-dealer transactions in Phase I, institutional customer transactions in Phase II,⁴ and retail customer transactions in Phase III. The time-of-trade would be added to the surveillance database after initial implementation of Phase I and also would be included as transaction data in subsequent phases. Phase IV is the Board's plan ultimately to improve the public reporting of transaction data by capturing and reporting trade data intraday, rather than reporting it on the following business day.

The 1994 plan called for data taken from the central confirmation/acknowledgment system to serve as the input stream for institutional customer transaction reporting in Phase II. Currently, dealers submit information on transactions with institutional customers to this system, pursuant to Board rule G-15(d), to facilitate automated clearance and settlement.⁵ For Phase III, however, retail customer transaction data would be reported by dealers directly to the Board, since there is no central system to receive such information.

A study by the Board of sample data from the confirmation/acknowledgment system, conducted during the spring and summer of 1995, revealed that data submitted by dealers to this system is unsuitable for transaction reporting purposes, since the data available for T+1 reporting is not sufficiently reliable and complete to be usable as a source of published T+1 prices. The Board examined a number of possible

measures to improve the data, but found no alternative to make confirmation/acknowledgment data sufficiently reliable and complete.⁶ The Board consequently has revised the 1994 plan, and now plans to combine reporting of all dealer-customer transactions in one phase which will replace Phases II and III in a "customer transaction" phase. Under the revised plan, dealers, either directly or through intermediaries, would report selected information about institutional and retail customer trades to the Board by uploading the data from their own systems to the central system operated by the Board. A notice will be made available to the Commission and the industry, by the end of 1995, outlining the new plan and requesting comment from industry participants. Corresponding amendments to rule G-14 will be filed with the Commission in mid-1996. The planned starting date for the customer transaction phase is January 1998.⁷

Operation of Phase I System

Phase I of the transaction reporting system has been operational since January 23, 1995. Each day, the system has produced a report of price and volume of inter-dealer transactions in municipal securities that were executed the previous business day. In addition to the transparency component which produces these daily reports, the system has a second component, a surveillance database of detailed records about every inter-dealer transaction that has been successfully compared⁸ by the automated comparison system. The surveillance database includes, among other things, the price and volume of each compared transaction, the trade date, identification of the security traded, and identification of all parties to each compared transaction.⁹ This information is intended to enable the enforcement agencies to construct audit trails of inter-dealer transactions. The Board has provided on-line access to the surveillance database to the National Association of Securities Dealers, Inc. ("NASD") and is making information

⁶In its study, the Board found nothing to indicate any problem with the reliability of the information as it relates to settlements. The data sample seems satisfactory for its intended purpose of facilitating automated clearance and settlement.

⁷The Commission notes that it has not approved this change in schedule for the transparency pilot program.

⁸In general, a "compared" transaction is one for which salient information items, provided by both parties to a trade, are matched and found to agree by the automated comparison system.

⁹The Commission has recently approved the requirement to identify all dealers that are parties to a trade when submitting transaction information to the Board. See Securities Exchange Act Release No. 35988 (July 18, 1995), 60 FR 38069.

¹ See Securities Exchange Act Release No. 34955 (November 9, 1994), 59 FR 59810.

² See letter from Robert Drysdale, MSRB, to Arthur Levitt, SEC, dated November 3, 1994.

³ Currently, the threshold for "frequent" trading is four or more trades in one day.

⁴ "Institutional" transactions were defined for the purpose of Phase II as customer transactions settled on a delivery versus payment/receipt vs. payment (DVP/RVP) basis. These are transactions in which the customer requires that settlement occur with an exchange of money and securities at the time of settlement. Generally, institutional customers require DVP/RVP settlement and retail customers do not.

⁵ This system, operated by Depository Trust Corporation (DTC), is known as the Institutional Delivery (ID) system.

from the surveillance database available to all agencies responsible for enforcing Board rules.

The input stream for inter-dealer transaction reporting is transaction information reported by dealers, pursuant to rule G-14, to the Board through the automated comparison system. The Board has designated National Securities Clearing Corporation ("NSCC"), the central facilities provider of the automated comparison system, as its agent for receiving inter-dealer transaction information.

Need for Time-of-Trade Information

The Commission has noted the need to make an "integrated audit trail" of transaction information available to the enforcement agencies. The Commission has expressed its belief that an audit trail will "provide valuable information for market surveillance and inspection purposes to the MSRB, the Commission, the NASD, and the relevant banking agencies."¹⁰

The proposed rule change will help to ensure that the audit trail information in the surveillance database includes the time of execution of each compared inter-dealer municipal securities transaction. Enforcement agencies are expected to utilize the time-of-trade information when examining a series of transactions in a given municipal security. The information currently available from the surveillance database enables one to determine the date on which a trade or group of trades was executed; the addition of time-of-trade will help determine the sequence of trades during the day.

The Requested Date of Effectiveness

Changes in the automated comparison system are underway to enable that system to incorporate time-of-trade information collected as part of the trade data submitted by dealers.¹¹ Dealers and providers of system services must make corresponding changes in dealer systems that provide input to the automated comparison systems, and some time will be needed to allow these changes to be made. Accordingly, the Board is requesting that the Commission make the proposed rule change effective on July 1, 1996, to provide market participants with sufficient time to make the necessary internal system changes.

¹⁰ Securities Exchange Act Release No. 34955, *supra* note 1, at 19.

¹¹ The Board understands from conversations with NSCC representatives that the necessary changes to the automated comparison system will be complete and tested during the first quarter of 1996.

Effect of Proposed Rule Change Upon Dealers

Requiring trade reports to the Board to contain the time-of-trade would involve relatively minor changes in current practice. Currently, under Board rule G-8 on books and records, dealers are required to make and keep a record of the time of execution of each trade, to the extent feasible,¹² for each agency order and each transaction effected by the dealer as principal. Under the proposed rule change, each dealer reporting inter-dealer transactions to the Board would include the time of execution in each transaction submitted to the automated comparison system.¹³ The time-of-trade would be reported by both the buyer and seller, to ensure that a time-of-trade is available on all transactions even when one side does not report the trade on the night of trade date.¹⁴

(b) The Board has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Securities Exchange Act of 1934, which requires, in pertinent part, that the Board's rules: Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and

¹² The Board has clarified that the phrase "to the extent feasible" is intended to require municipal securities professional to note the time of execution for each agency and principal transaction "* * * * except in extraordinary circumstances when it is impossible to determine the exact time of execution. In such cases, the municipal securities professional should note the approximate time of execution and indicate that it is an approximation." (MSRB Interpretation of July 29, 1997 regarding rules G-8(a)(vi) and (vii), *MSRB Manual* (CCH), para. 3536 [emphasis added].)

¹³ Rule G-14 Transaction Reporting Procedures stipulate that the broker, dealer or municipal securities dealer may employ an agent that is a member of NSCC or a registered clearing agency for the purpose of submitting transaction information; however, the primary responsibility for timely and accurate submission continues to rest with the broker, dealer or municipal securities dealer that executed the transaction.

¹⁴ The time, accurate to the nearest minute, would be reported as Eastern time. The time-of-trade would not be used to match submissions during the comparison process nor would it be made public in the daily reports. Requiring both the buyer and seller to report time-of-trade will ensure its presence in the surveillance database for those transactions where advisories are "stamped" in the automated comparison system. In "stamping" an advisory of a transaction to achieve comparison, one party indicates agreement with the transaction information submitted by the other party. If time-of-trade information were to be required of the party on only one side of the trade, transactions "stamped" by that party would not include any time-of-trade information for reporting purposes. In certain limited cases, involving syndicate transactions, however, NSCC comparison procedures require a submission only from one dealer: the syndicate manager. Accordingly, only one dealer (*i.e.*, the syndicate manager) is required in such a case to report the trade to the Board, and only that dealer would report the time-of-trade.

coordination with persons engaged in regulating * * * transactions in municipal 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 * * *.

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

The Board does not believe that the proposed rule change will impose any burden on competition in that it applies equally to all dealers in municipal securities.

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

The Board published a notice in February 1995, which among other things, described the proposed rule change and requested comment from market participants.¹⁵ Two letters were received commenting on the proposed rule change. One commentator¹⁶ stated that time-of-trade reporting would involve "major and possibly costly" system changes to dealer systems. This commentator believed time-of-trade reporting should be delayed until retail customer transactions are added to the transaction reporting program, so that dealers and clearing agencies could make the needed changes in conjunction with more extensive changes foreseen for the later phases. Another commentator¹⁷ stated that many firms would incur development costs to modify their trading systems to accommodate time-to-trade information.

The Board believes that the proposed rule change is essential to facilitating effective surveillance and enforcement activities regarding inter-dealer transactions and should not be delayed until later phases of the transaction reporting program. The Board does not believe that incorporating time-of-trade data into current trade reporting systems represents a major system change. The proposed rule change would merely add one item of information to an existing reporting requirement. That information item already is required, for recordkeeping purposes, to be recorded by the dealer. The Board is proposing more than six months' lead time to allow dealers sufficient time to schedule the necessary system changes. In many cases, it would be expected that this

¹⁵ See "Transaction Reporting Program for Municipal Securities: Phase II," *MSRB Reports*, Vol. 15, No. 1 (April 1995), at 11-15.

¹⁶ The Public Securities Association provided this comment.

¹⁷ Goldman, Sachs & Co. provided this comment.

change could be made in connection with other minor system adjustments that must be implemented in the ordinary course of business.

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.

As discussed above, the Board is requesting that the Commission make the proposed rule change effective on July 1, 1996, to provide market participants with sufficient time to make the necessary internal system changes.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, 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 Board's principal offices. All submissions should refer to File No. SR-MSRB-95-17 and should be submitted by March 8, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-36831; File No. SR-NYSE-95-43]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Amendments to Exchange Rules 27, 476(a)(11), and 477

February 12, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on January 5, 1996, the New York Stock Exchange, Inc. ("NYSE" 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 self-regulatory organization. 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 proposed rule change consists of amendments to New York Stock Exchange (the "Exchange") Rules 27, 476(a)(11) and 477, which require persons under Exchange jurisdiction to comply with information requests from commodities markets and associations and foreign self-regulatory organizations and associations.

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 self-regulatory organization 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 self-regulatory organization 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

The purpose of the proposed rule change is to require persons under Exchange jurisdiction to comply with information requests from commodities markets and associations and foreign self-regulatory organizations and associations.

Currently, Rule 27 authorizes the Exchange to enter into information sharing agreements with domestic and foreign self-regulatory organizations and associations, but does not provide for such agreements with commodities regulatory organizations such as contract markets and registered futures associations.

Rule 476(a)(11) permits the Exchange to initiate a disciplinary proceeding against a member, member organization, allied member, approved person, registered or non-registered employee of a member organization or a person otherwise subject to the jurisdiction of the Exchange, for failure to furnish information to, or appear or testify before the Exchange or another domestic self-regulatory organization. The rule does not authorize the Exchange to initiate such a proceeding when someone under Exchange jurisdiction fails to cooperate with a commodities market or association or a foreign self-regulatory organization or association.

Rule 477 permits the Exchange to require a member, member organization, allied member, approved person or registered or non-registered employee of a member organization that is terminating his status as such to comply with a request to appear, testify, submit books, records, papers, or objects and to respond to written requests and attend hearings in the same manner and to the same extent as if such person had maintained his status, if, prior to such termination, or during the period of one year immediately following the receipt by the Exchange of written notice of the termination, the Exchange makes such a request in writing. The rule does not require the above parties to comply with such requests from commodities markets or associations or from foreign self-regulatory organizations or associations.

The Exchange is proposing to amend Rule 27 to add domestic contract markets and futures associations to the list of entities with which the Exchange is authorized to enter into information sharing agreements. The extent to which those under the Exchange's jurisdiction would be required to cooperate would be predicated on the subject matter or scope of the relevant information sharing agreement. Rule 476(a)(11) would be amended to require that those under its jurisdiction cooperate with information requests from domestic commodities markets and associations and foreign self-regulatory organizations and associations as well as from

¹ 15 U.S.C. 78s(b)(1).