

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, Mail Stop 0-4, 450 5th Street, NW., Washington, DC 20549.

Dated: June 20, 2001.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44462; File No. SR-CBOE-00-22]

### Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Automatic Execution of Certain Orders on the Exchange's Electronic Limit Order Book

June 21, 2001.

On June 1, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission" or "SEC"), 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> a proposed rule change relating to the automatic execution of certain orders on the Exchange's electronic limit order book. Notice of the proposed rule change and Amendment Nos. 1 and 2 thereto were published for comment in the **Federal Register** on May 7, 2001.<sup>3</sup> No comments were received on the proposed rule change, as amended.

The Exchange proposes to amend its rules governing the operation of its Retail Automatic Execution System ("RAES") to provide for the automatic execution, under certain circumstances, of orders in the Exchange's electronic limit order book when they become marketable. The Exchange proposes to implement a system enhancement called "Autoquote Triggered EBook Execution" ("Trigger") to particular option classes, as determined by the appropriate Floor Procedure Committee. Trigger will allow orders resting in the book to be automatically executed where the bid or offer for a series of options generated by the Exchange's Autoquote system (or any Exchange-approved proprietary quote generation

system used in lieu of Autoquote) is equal to or crosses the Exchange's best bid or offer for that series as established by a booked order. Only series in which Autoquote (or any Exchange-approved quote generation system) is employed are eligible for Trigger.

Where Trigger has been activated, as Autoquote changes and the quote generated by Autoquote either touches or crosses an order in the book, the booked order(s) will be automatically executed up to the applicable RAES contract limit. The booked order then will be immediately taken out of the book and a last sale will be disseminated. A ticket will be printed on the book printer notifying the book clerk that a trade has been executed and an endorsement is required. After the book clerk verifies with the Designated Primary Market-Maker ("DPM") that the trade is valid based on movements in the underlying security, the trade will be endorsed by the book clerk.<sup>4</sup> In most instances, it will be endorsed to the RAES "wheel" up to the applicable RAES contract limit. However, the Trigger system will have the functionality to allow the trade to be endorsed manually (as is done today) when appropriate.

If the number of contracts in the book is greater than the applicable RAES contract limit, the trading crowd will manually execute the remainder. In the limited circumstance where contracts remain in the book after a Trigger execution and a disseminated quote remains locked or crossed, orders in RAES for options of that series will be "kicked-out" of RAES, and immediately and automatically routed to the crowd Public Automated Routing ("PAR") terminal (absent contrary instructions of the firm), where they will be represented by the broker and, if executable, will ordinarily be executed immediately. Because these orders remain RAES eligible, they will be entitled to receive firm quote treatment when represented in the crowd.

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.<sup>5</sup> In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the

<sup>4</sup> If the DPM determines that the trade is not valid, e.g., if the trade was based on an erroneous print in the underlying security, the order will be re-booked and the last sale canceled.

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

Act,<sup>6</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. The proposed rule change should help provide faster execution of customer orders, while reducing the burden on the Exchange's DPMs with respect to manual execution of booked orders, limiting the number of book trade-throughs, and eliminating a large number of RAES kick-outs.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (File No. SR-CBOE-00-22) be, and it hereby is, approved.

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. 34-44458; File No. SR-MSRB-2001-03]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to the Establishment of an Optional Procedure for Electronic Submissions of Required Materials Under Rule G-36, on Delivery of Official Statements, Advance Refunding Documents and Forms G-36(OS) and G-36(ARD) to the MSRB

June 20, 2001.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder,<sup>1</sup> notice is hereby given that on June 7, 2001, the Municipal Securities Rulemaking Board ("MSRB" or "Board") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change (File No. SR-MSRB-2001-03) ("proposed rule change") described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

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

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

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

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

<sup>3</sup> See Securities Exchange Act Release No. 44236 (April 30, 2001), 66 FR 23055 (May 7, 2001).

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

MSRV has filed with the SEC a proposed rule change establishing an optional procedure for electronic submissions of required materials under rule G-36, on delivery of official statements, advance refunding documents and Forms G-36(OS) and G-36(ARD) to the MSRB. The proposed rule change consists of (i) an amendment to the MSRB facility currently known as the Official Statement and Advance Refunding Document—Paper Submission system (OS/ARD) of the Municipal Securities Information Library® system or MSIL® system<sup>2</sup> (the "OS/ARD Facility") and (ii) an amendment to rule G-36. The MSRB expects the optional procedure for electronic submissions to become operational on the later of January 1, 2002 or 60 days after SEC approval. The text of the proposed rule change is set forth below. Additional are italicized and underlined; [ ] means elections.

#### OS/ARD Facility—Official Statement and Advance Refunding Document [—Paper Submission] system (OS/ARD) of the Municipal Securities Information Library® System or MSIL® System

(No change to existing text—the following text is inserted at the end of existing text)

##### Optional Procedure for Electronic Submissions

*Consistent with the Board's stated objectives to pursue collection of electronic submissions of official statements and advance refunding documents, the Board is implementing an optional procedure for electronic submission by underwriters of official statement, advance refunding documents and Forms G-36(OS) and G-36(ARD), together with amendments thereto, to the MSIL® system. Underwriters are not required to make submissions electronically and the Board will continue to accept submissions made on paper. The Board expects the optional procedure for electronic submissions to become operational on the later of January 1, 2002 or 60 days after Commission approval.*

*Electronic submissions will be made by underwriters through a secured, password-protected Internet website. Forms G-36(OS) and G-36(ARD) will be submitted by completion of an on-line form. On-line forms will elicit the same information as paper Forms G-36(OS) and G-36(ARD) and will be in substantially the same format. Notice of cancellation of an issue also will be affected by means of on-line entry of information by the underwriter. Official statements and advance refunding documents will be submitted by underwriters by uploading through the website simultaneously with the*

*completed on-line forms. Underwriters will receive electronic records of submissions.*

*All official statements, advance refunding documents and amendments submitted electronically must be in Adobe Acrobat® portable document format ("PDF"). Such documents may be either a "native" PDF file or a scanned image PDF file. For scanned image PDE files, underwriters are required to use a resolution of 300 dpi. Underwriters may be required to compress submissions using file compression software in order to speed transmission times.*

*Documents submitted electronically will be included in the daily and back-log collections currently produced by the MSIL® system and also will be available for viewing and printing at the public access facility. Upon the electronic system becoming operational, the Board will disseminate new submissions (whether submitted electronically or in paper form) as PDF files.*

#### Rule G-36. Delivery of Official Statements, Advance Refunding Documents and Forms G-36(OS) and G-36(ARD) to Board or Its Designee

(a) No change.

(b) Delivery Requirements for Issues Subject to Securities Exchange Act Rule 15c2-12.

(i) Each broker, dealer or municipal securities dealer that acts as an underwriter in a primary offering of municipal securities subject to Securities Exchange Act rule 15c2-12 shall send to the Board or its designee [by certified or registered mail, or some other equally prompt means that provides a record of sending], within one business day after receipt of the official statement from the issuer or its designated agent, but no later than 10 business days after any final agreement to purchase, offer, or sell the municipal securities, [the following documents and written information: two copies of] the final official statement[;] and [two copies of] completed Form G-36(OS) prescribed by the Board, including the CUSIP number or numbers for the issue.

(ii) If the issue advance refunds an outstanding issue of municipal securities and an advance refunding document is prepared by or on behalf of the issuer, each broker, dealer or municipal securities dealer that acts as an underwriter in such issue also shall send to the Board or its designee [by certified or registered mail, or some other equally prompt means that provides a record of sending], within five business days of delivery of the securities by the issuer to the broker, dealer, or municipal securities dealer, [the following documents and written information: two copies of] the advance refunding document and [documents if prepared by or on behalf of the issuer; and, if the advance refunding documents are prepared, two copies of the] completed Form G-36(ARD) prescribed by the Board, including reassigned CUSIP number or numbers for the refunded issue, if any. (c) Delivery Requirements for Issues not Subject to Securities Exchange Act Rule 15c2-12.

(i) Subject to paragraph (iii) below, each broker, dealer, or municipal securities dealer that acts as an underwriter in a primary offering of municipal securities not subject to

Securities Exchange Act rule 15c2-12 for which an official statement in final form is prepared by or on behalf of the issuer shall send to the Board or its designee, [by certified or register mail, or some other equally prompt means that provides a record of sending,] by the later of one business day after delivery of the securities by the issuer to the broker, dealer, or municipal securities dealer or none business day after receipt of the official statement in final form from the issuer or its designated agent, [the following documents and written information: two copies of] the official statement in final form[;] and [two copies of] completed Form G-36(OS) prescribed by the Board, including the CUSIP number or numbers for the issue.

(ii) [if an official statement in final form and] if the issue advance refunds an outstanding issue of municipal securities and both an official statement in final form and an advance refunding document are prepared by or on behalf of the issuer, each broker, dealer, or municipal securities dealer that acts as an underwriter in such issue also shall send to the Board or its designee [by certified or registered mail, or some other equally prompt means that provides a record of sending], within five business days of delivery of the securities by the issuer to the broker, dealer, or municipal securities dealer, [the following documents and written information: two copies of] the advance refunding document and [documents if prepared by or on behalf of the issuer; and, if the advance refunding documents are prepared, two copies of] completed Form G-36(ARD) prescribed by the Board, including reassigned CUSIP number or numbers for the refunded issue, if any.

(iii) No change.

(d) Amended Official Statements. In the event a broker, dealer, or municipal securities dealer provides to the Board or its designee an official statement pursuant to section [s] (b) or [(c)] above, and the official statement is amended or "stickered" by the issuer during the underwriting period, such broker, dealer, or municipal securities dealer must send to the Board or its designee, [by certified or registered mail, or some other equally prompt means that provides a record of sending, two copies of the amended official statement] within one business day after [of] receipt of the amended official statement from the issuer[, along with] or its designated agent, the amended official statement and an amended Form G-36(OS) as prescribed by the Board, [two copies of a statement] including: The CUSIP number or numbers for the issue; the fact that the official statement previously had been sent to the Board or its designee and that the official statement has been amended.

(e)-(f) No change.

(g) Method of Delivery. A broker, dealer or municipal securities dealer that submits documents or forms required to be sent to the Board or its designee pursuant to section (b), (c) or (d) above shall either:

(i) Sent two copies of each such document or form to the Board or its designee by certified or registered mail, or some other equally prompt means that provides a record of sending; or

(ii) Submit an electronic version of each such document or form to the Board or its

<sup>2</sup> Municipal Securities Information Library and MSIL are registered trademarks of the MSRB.

designee in such format and manner specified in the current Form G-36 Manual.

## 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 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 texts of these statements may be examined at the places specified in Item IV 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

(a) Rule G-36 requires that a broker, dealer or municipal securities dealer (a "dealer") that acts as managing or sole underwriter for most primary offerings send the official statement and Form G-36(OS) to the MSIL<sup>®</sup> system within certain time frames set forth in the rule.<sup>3</sup> In addition, if the offering is an advance refunding and an advance refunding document has been prepared, the advance refunding document and Form G-36 (ARD) also must be sent to the MSIL<sup>®</sup> system by the managing or sole underwriter.<sup>4</sup> In an interpretive notice published by the MSRB in November 1998 (the "1998 MSRB Notice"), the MSRB described standards that dealers should meet in order to satisfy document delivery obligations under MSRB rules by means of electronic communications.<sup>5</sup> At that time, the

<sup>3</sup> For primary offerings subject to Exchange Act Rule 15c2-12, the final official statement and Form G-36(OS) must be sent to the MSIL<sup>®</sup> system within one business day after receipt of the official statement from the issuer, but no later than ten business days after the sale date of the offering. For most primary offerings exempt from Rule 15c2-12 for which an official statement in final form is being prepared, such official statement and Form G-36(OS) must be sent to the MSIL<sup>®</sup> system by the later of one business day after the closing of the underwriting or one business day after receipt of the official statement from the issuer. Rule G-36(c)(iii) provides exemptions from the rule requirements for certain limited types of offerings.

<sup>4</sup> The advance refunding document and Form G-36(ARD) must be sent to the MSIL<sup>®</sup> system within five business days after the closing of the underwriting.

<sup>5</sup> See Rule G-32 Interpretation—Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers, November 20, 1998, *MSRB Rule Book* (January 1, 2001) at 163. These standards are the same as those established by the Commission for brokers, dealers, issuers and others in the corporate markets in interpretative releases published in 1995 and 1996. See "Use of Electronic Media by Broker-Dealers,

MSRB deferred accepting electronic submissions under rule G-36 pending resolution of then on-going industry debate over electronic formatting of disclosure materials.<sup>6</sup>

Since publication of the 1998 MSRB Notice, the MSRB has undertaken, as one of its chief goals under its current long range plan, the role of serving as a catalyst for improving and modernizing disclosure practices in the primary and secondary municipal securities markets. In this role, the MSRB has hosted several disclosure forums and industry roundtable discussions focused both on industry-wide practices and practices in specific sectors where disclosure issues have been particularly troublesome. In addition, the MSRB and a number of industry groups have recently agreed to launch a process of long-range planning designed to further industry initiatives in the area of disclosure.

Most participants at these industry forums and roundtables have agreed that improvements in disclosure practices will be highly dependent on the establishment of reliable systems for electronic dissemination of information. In support of secondary market disclosure initiatives, the MSRB launched its current test program of electronic submission and dissemination of continuing disclosure information, known as CDINet Web Test.<sup>7</sup> In the primary market, in addition to making clear that dealers may meet their obligation to deliver official statements to new issue customers under rule G-32 by use of electronic media as provided in the 1998 MSRB Notice, the MSRB has remained attentive to developing industry practices (e.g., the increasing use of electronic preliminary and final official statements), attempts by industry groups

Transfer Agents, and Investment Advisers for Delivery of Information," Securities Act Release No. 7288, Exchange Act Release No. 37182 (May 9, 1996), 61 FR 24644 (May 15, 1996), and "Use of Electronic Media for Delivery Purposes," Securities Act Release No. 7233, Exchange Act Release No. 36345 (October 6, 1995), 60 FR 53458 (October 13, 1995).

<sup>6</sup> The MSRB stated that "electronic submission [under rule G-36] is complicated by the requirement that Forms G-36(OS) and G-36(ARD) be accompanied by an official statement or advance refunding document, as appropriate. Given the current debate and lack of consensus among the various sectors of the municipal securities industry regarding electronic formatting of disclosure materials, and since the Board does not have the authority to dictate the format of issuer documents, the Board believes that any further action regarding electronic submissions under rule G-36 should await resolution of these issues." See 1998 MSRB Notice at n. 5.

<sup>7</sup> See "Test Program for the Electronic Submission of Continuing Disclosure Information to the MSRB," *MSRB Reports*, Vol. 19, No. 3 (Sept. 1999) at 51.

to reach consensus on technical issues relating to electronic primary market disclosure (e.g., the work of the Task Force on Electronic Information Delivery of The Bond Market Association) and further interpretive guidance on the use of electronic media issued by the Commission in 2000 (the "2000 SEC Interpretation").<sup>8</sup> At the same time, the MSRB has made efforts to understand the needs and desires of investors, who are the ultimate end-users of primary market disclosure.<sup>9</sup>

Although industry-wide consensus on certain key issues as they relate to electronic official statements continues to be elusive, the MSRB believes that it can take steps to implement an electronic system for submissions under rule G-36 without final resolution of such issues. Thus, the MSRB is implementing an optional system of electronic submission by underwriters of official statements, advance refunding documents and Forms G-36(OS) and G-36(ARD) to the MSIL<sup>®</sup> system. The MSRB also is amending rule G-36 in order to effectuate this electronic system. The new system will allow underwriters that are prepared to make submissions electronically to do so while continuing to allow paper submissions for those who prefer that method.

(b) The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which requires that the MSRB's rules:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating 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; and not be designed to permit unfair discrimination between customers, issuers,

<sup>8</sup> See "Use of Electronic Media," Securities Act Release No. 7856, Exchange Act Release No. 42728 (April 28, 2000), 65 FR 25843 (May 4, 2000).

<sup>9</sup> Some dealers have expressed concern that investors, including both retail and institutional investors, may not wish to receive official statements in electronic form or may require that they receive paper copies as well as electronic versions of official statements. Many institutional investors have agreed with this assessment, citing legal and compliance concerns under state fiduciary laws and certain federal securities laws (e.g., Investment Company Act Rule 2a-7) as well as concerns about telecommunication, computer and printing system capacities and certain human factors (e.g., preferences of analysts to review paper copies over on-screen text, etc.). To the extent that issuers begin producing official statements solely in electronic format while some investors continue to request paper copies, the use of electronic official statements may result in the shifting of some costs between issuers and dealers.

municipal securities brokers, or municipal securities dealers, to fix minimum profits, to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by municipal securities brokers or municipal securities dealers, to regulate by virtue of any authority conferred by this title matters not related to the purpose of this title or the administration of the Board, or to impose any burden on competition not necessary or appropriate in furtherance of the purpose of this title.

The MSRB believes that the proposed rule change is consistent with the Act in that it allows for more efficient dissemination of official statements and advance refunding documents.

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

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all underwriters.

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

On September 19, 2000, the MSRB published a notice seeking comment on the establishment of an optional system of electronic submissions by underwriters of official statements, advance refunding documents and Forms G-36(OS) and G-36(ARD) to the MSIL<sup>®</sup> system. The notice also sought comment on draft amendments to rule G-36 to effectuate this optional electronic submission system.<sup>10</sup> The MSRB received comments from four commentators.<sup>11</sup> After reviewing these comments, the MSRB approved the proposed rule change for filing with the SEC.

Commentators generally were supportive of the MSRB's plans to allow electronic submissions, although certain modifications were suggested. These suggestions are discussed below.

#### *Require paper submission in addition to optional electronic submission. One*

<sup>10</sup> "Electronic Submission of Official Statements, Advance Refunding Documents and Forms G-36(OS) and G-36(ARD), to the MSRB," *MSRB Reports*, Vol. 20, No. 2 (November 2000) at 17.

<sup>11</sup> Letter from John Palang, Product Manager—Global Imaging Solutions, Bloomberg L.P., to Harold Johnson, Deputy General Counsel of the MSRB, dated November 15, 2000 (the "Bloomberg Letter"); letter from Amy B.R. Lancellotta, Senior Counsel, Investment Company Institute, to Ernesto A. Lanza, Associate General Counsel of the MSRB, dated November 17, 2000 ("ICI Letter"); letter from Lynette Kelly Hotchkiss, Vice President and Associate General Counsel, The Bond Market Association, to Ernesto A. Lanza, dated November 30, 2000 ("TBMA Letter"); and an anonymous e-mail dated September 19, 2000 ("Anonymous E-mail").

commentator suggests that underwriters submitting electronic copies should also be required to submit paper copies if they exist, arguing that some investors prefer to view official statements and advance refunding documents in paper form.<sup>12</sup> The MSRB believes that no benefit would result from requiring electronic submitters to also send paper copies of submissions and that requiring delivery of paper versions would substantially eliminate any incentive for underwriters to use the proposed electronic system. During the last two years, the MSRB's public access facility has registered approximately 200 visits (60% of which represent visits by a single securities research service). The documents available at the public access facility generally are viewed on or printed from an optical viewer rather than by physical review of a paper version. In addition, the MSIL<sup>®</sup> system already disseminates submissions to subscribers in electronic, rather than paper, form. The MSRB has not adopted this commentators suggested modification.

*Use of PDF files.* Two commentators seek to have the MSRB limit the format of electronic submissions to "native" PDF.<sup>13</sup> If imaged PDF files are permitted, one commentator suggests that they be in "multi-page" format and be imaged at a resolution of 200 dpi.<sup>14</sup> This commentator requested that files disseminated to subscribers not be in compressed format. The other commentator suggests that multi-part documents be merged into a single PDF file.<sup>15</sup> On the other hand, a third commentator suggests that the MSRB accept electronic submissions in any format.<sup>16</sup>

The MSRB believes that, based on several factors, PDF is the best suited format for purposes of an electronic submission system at this time. First, the MSRB has designed this system to accept electronic submissions of documents regardless of whether the original document is in electronic or paper form. PDF generally allows for relatively easy conversion of document files from other electronic formats to PDF as well as for the handling of imaged files created from paper documents. Documents produced in either manner generally provide a reliable and secure reproduction of the paper version, which is a significant issue for many issuers who are concerned about the vulnerability of

most other formats to undetectable changes by unauthorized individuals. Also, the MSRB feels that it is preferable to restrict electronic submissions to a single format for the benefit of MSIL<sup>®</sup> subscribers, many of which already convert the imaged documents currently supplied to them by the MSRB to PDF. Finally, the SEC addressed certain concerns regarding the use of PDF files to meet securities law delivery obligations in the 2000 SEC Interpretation.<sup>17</sup> Based on the guidance provided by the SEC on the use of PDF files, the MSRB feels that dealers using electronic versions of official statements received from the MSIL<sup>®</sup> system (directly or through a subscriber) to make required deliveries under MSRB rules may be well situated to assure compliance with the standards set forth in the 1998 MSRB Notice.

Thus, the system will require submissions of documents solely as one or more PDF files, either in native or imaged files.<sup>18</sup> In addition, underwriters submitting imaged files will be required to use an image resolution of 300 dpi.<sup>19</sup> Files that are available for viewing at the public access facility or disseminated by the MSIL<sup>®</sup> system to subscribers will not be in compressed format. The MSRB notes that this represents an initial phase in the establishment of an optional electronic system and that further improvements will be instituted as technological innovation and changes in the marketplace dictate.

*Amendments.* Two commentators suggest that underwriters be permitted to submit amendments to official statements or advance refunding documents electronically even if the original documents had been submitted in paper form.<sup>20</sup> As originally proposed,

<sup>17</sup> See 2000 Interpretation at n. 34 and accompanying text.

<sup>18</sup> The MSRB believes that the use of native PDF files is preferable to scanned image PDF files but has not restricted submissions solely to native PDF files. If an underwriter is in a position to use or produce either a native or scanned file, the MSRB believes that the underwriter would in most instances use the native version because it would significantly reduce file size and therefore significantly increase transmission speed. Further, although the MSRB agrees that it would be most convenient that documents be submitted as a single PDF file, it believes that requiring that separate PDF files be merged into a single file (or that imaged files be only in multi-page format) may create a significant disincentive against the use of the optional electronic system. Finally, the MSRB believes that compression of files is appropriate to speed transmission times.

<sup>19</sup> Since some current subscribers to MSIL<sup>®</sup> system currently use an image resolution of 300 dpi, a reduction of the required image resolution to 200 dpi would degrade such subscribers' image quality. Instead, users with lower resolution needs can themselves reduce the resolution from 300 dpi to the desired resolution level.

<sup>20</sup> See ICI and TBMA Letters.

<sup>12</sup> See ICI Letter.

<sup>13</sup> See Bloomberg and ICI Letters.

<sup>14</sup> See Bloomberg Letter.

<sup>15</sup> See ICI Letter.

<sup>16</sup> See TBMA Letter.

the system would permit electronic submission of amendments only if the original official statement or advance refunding document had been submitted electronically. The MSRB agrees that this would be an appropriate change, allowing for more expedited dissemination of amendments to official statements and advance refunding documents to the marketplace. This should help to minimize erroneous reliance on outdated documents.

*Miscellaneous.* One commenter suggests that the MSRB expand the definition of advance refunding document to include verification reports and defeasance opinions.<sup>21</sup> Although the MSRB agrees that such documents may be important in the valuation of advance refunded securities, it does not believe that underwriters are well positioned to provide such information in many circumstances, particularly since such documents often are not delivered until well after the underwriting period has lapsed.

Another commentator states that the proposed electronic system was a "great idea" but that "those individual investors who do not have access to a PC will have problems."<sup>22</sup> This commentator apparently has confused the obligation of underwriters to submit official statements to the MSRB under rule G-36 with the obligation of dealers selling new issue municipal securities to customers to deliver official statements to such customers under rule G-32. The MSRB understands the concern expressed by this commentator and notes that paper versions of official statements are required to be delivered to customers unless the dealer meets the requirements for electronic delivery set forth in the 1998 MSRB Notice.

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

Within 35 days of the 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 the 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 MSRB's principal offices. All submissions should refer to File No. SR-MSRB-2001-03 and should be submitted by July 19, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>23</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-16255 Filed 6-27-01; 8:45 am]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44464; File No. SR-MSRB-2001-04]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to In-Firm Delivery of the Regulatory Element of the Continuing Education Requirement

June 22, 2001.

On June 14, 2001, 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-2001-04), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder. 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 herewith amendments to rules G-3, on professional qualifications, rule G-8, on books and records, G-9, on record retention, and G-27, on supervision. The proposed rule change will allow dealers to provide in-firm delivery of Regulatory Element of the continuing education requirement. The text of the proposed rule change is below.<sup>1</sup>

#### Rule G-3. Classification of Principals and Representatives; Numerical Requirements; Testing; Continuing Education Requirements

No broker, dealer or municipal securities dealer or person who is a municipal securities representative, municipal securities principal of financial and operations principal (as hereafter defined) shall be qualified for purposes of rule G-2 unless such broker, dealer or municipal securities dealer or person meets the requirements of this rule.

(a) through (g) No change.

(h) Continuing Education Requirements

This section (h) prescribes requirements regarding the continuing education of certain registered persons subsequent to their registration with a securities association with respect to a person associated with a member of such association, or the appropriation regulatory agency as defined in section 3(a)(34) of the Act with respect to a person associated with any other broker, dealer or municipal securities dealer ("the appropriate enforcement authority"). The requirements shall consist of a Regulatory Element and a Firm Element as set forth below.

(i) Regulatory Element

(A) through (F) No change.

(G) *In-Firm Delivery of the Regulatory Element*

*Brokers, dealers and municipal securities dealers will be permitted to administer the continuing education Regulatory Element program to their registered persons by instituting an in-firm program acceptable to the Board.*

*The following procedures are required:*

(1) *Principal In-Charge.* The broker, dealer or municipal securities dealer has designated a municipal securities principal or a general securities principal to be responsible for the in-firm delivery of the Regulatory Element.

(2) *Site Requirements.*

(a) *The location of all delivery sites will be under the control of the broker, dealer or municipal securities dealer.*

(b) *Delivery of Regulatory Element continuing education will take place in an environment conducive to training. (Examples: A training facility, conference room or other area dedicated to this purpose)*

<sup>1</sup> Proposed new language is in italicized and underlined; [ ] means deletions.

<sup>21</sup> See ICI Letter.

<sup>22</sup> See Anonymous E-mail.

<sup>23</sup> 17 CFR 200.30-3(a)(12).