

• When calculating the amount the Market-Maker would otherwise receive pursuant to the operation of the algorithm, the participation entitlement and public customer priority overlays would not be considered. Instead the calculation would be based on a price-time or pro-rata basis, as applicable, and subject to any other applicable priority overlays, such as market turner priority.

In addition, the Exchange proposes that the modified participation entitlement overlay would be available to modify the application of the small order participation entitlement.

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers; as well as Section 6(b)(8) of the Act, which requires the rules of an exchange not to impose any burden on competition not necessary or in furtherance of the Act.<sup>9</sup>

The Commission believes that the proposed rule change amending the market turner and modified participation entitlement overlays is consistent with the Act. All public customer orders at the best price will continue to be satisfied before a participation entitlement will be applied. If an entitlement is not applied, then the incoming order will be allocated among all market participants using the underlying matching algorithm—price-time or pro-rata—both of which the Commission already has

participation entitlement parameters would be applied for PAR and electronic auctions. In pro-rata classes where the UMA method is selected to calculate the Market-Maker's modified participation entitlement share, executions of incoming electronic orders initiated from PAR and electronic auctions would be allocated using the UMA method. Therefore, in such classes, the Market-Maker's original participation entitlement share of a PAR or electronic auction execution would be calculated using the UMA method.

<sup>7</sup> In approving this proposed rule change, the Commission has considered the proposed Rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78f(b)(8).

found consistent with the Act.<sup>10</sup> In addition, the Exchange's overlay determinations will be distributed via regulatory circular. For these reasons, the Commission believes that the proposed rule change is consistent with the Act.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-CBOE-2010-038), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62322; File No. SR-MSRB-2010-04]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Discontinuation of the MSRB Public Access Facility

June 17, 2010.

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 June 14, 2010, the Municipal Securities Rulemaking Board ("MSRB"), 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 MSRB. The MSRB has filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act,<sup>3</sup> and Rule 19b-4(f)(3) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 MSRB has filed with the Commission a proposed rule change

<sup>10</sup> See Securities Exchange Act Release No. 51822 (June 10, 2005), 70 FR 35321 (June 17, 2005) (Adopting CBOE Rule 6.45B).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

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

<sup>4</sup> 17 CFR 240.19b-4(f)(3).

relating to its public access facility and access to printed copies of certain documents made available by the MSRB to the public.

The text of the proposed rule change is available on the MSRB's Web site at <http://www.msrb.org/msrb1/sec.asp>, at the MSRB's principal office, and at the Commission's Public Reference Room.

#### 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 text 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

###### 1. Purpose

The proposed rule change would (a) terminate the public access facility created under the MSRB's Municipal Securities Information Library ("MSIL") system<sup>5</sup> and (b) revise a related Rule G-37 interpretive Question & Answer to delete a reference to the public access facility. The public access facility is physically located at the offices of the MSRB and makes official statements and advance refunding documents available to the public for viewing and photocopying. Over the years, the MSRB has undertaken to make other items available through the public access facility including, but not limited to, copies of Forms G-37, G-37x and G-38t, certain transaction data and comment letters received in connection with requests for comment. All current information that is accessible to the public through the public access facility is now readily accessible through the MSRB Web site or the EMMA Web site. Accordingly, the MSRB will discontinue the public access facility but will retain the ability to provide photocopies of the documents for members of the public without Internet access, upon written

<sup>5</sup> The MSIL system, originally established by the MSRB in 1990 to collect official statements and advance refunding documents, was discontinued for purposes of accepting submissions of such documents upon the establishment by the MSRB of its Electronic Municipal Market Access (EMMA) System's Primary Market Disclosure Service. The MSIL system continues to operate in a limited capacity for internal MSRB purposes only.

request, for a copying charge at a rate equal to the then-current Commission copying charge under its schedule of fees for records services as published on the Commission Web site.

## 2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,<sup>6</sup> which provides that the MSRB's rules shall:

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.

The MSRB believes that the proposed rule change is consistent with the Act since broad public access to documents otherwise available through the public access facility will continue to be available through the MSRB Web site, the EMMA Web site, or upon written request from the MSRB.

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

The MSRB does not believe the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The documents that are available through the public access facility are readily available to the public on an equal and nondiscriminatory manner on the MSRB Web site, the EMMA Web site, or upon written request from the MSRB.

### *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 on the proposed rule change.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>7</sup> and Rule 19b-4(f)(3) thereunder<sup>8</sup> because it is concerned solely with the operation and administration of the MSRB. 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.<sup>9</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. Comments may be submitted by any of the following methods:

### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2010-04 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-MSRB-2010-04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All

submissions should refer to File Number SR-MSRB-2010-04 and should be submitted on or before July 15, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[Docket No. AB 33 (Sub-No. 284X)]

### Union Pacific Railroad Company— Abandonment Exemption—in Kane County, IL.

On June 4, 2010, Union Pacific Railroad Company (UP) filed with the Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 3.17-mile line of railroad known as the St. Charles Industrial Lead, extending from milepost 35.13 to the end of the line at milepost 38.30, near St. Charles, in Kane County, Ill. The line traverses United States Postal Service Zip Code 60174, and includes no stations.

The line does not contain Federally granted rights-of-way. Any documentation in the possession of UP will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, In Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued on or before September 22, 2010.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a \$1,500 filing fee. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than July 14, 2010. Each

<sup>6</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(3).

<sup>9</sup> See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

<sup>10</sup> 17 CFR 200.30-3(a)(12).