

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### 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-NYSEArca-2010-76 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-NYSEArca-2010-76. 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 Exchange. 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 publicly available. All submissions should refer to File Number SR-NYSEArca-2010-76 and should be

submitted on or before September 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62715, File No. SR-MSRB-2009-17]

### **Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Consisting of (i) Amendments to Rule G-8 (Books and Records To Be Made by Brokers, Dealers and Municipal Securities Dealers), Rule G-9 (Preservation of Records), and Rule G-11 (New Issue Syndicate Practices); (ii) a Proposed Interpretation of Rule G-17 (Conduct of Municipal Securities Activities); and (iii) the Deletion of a Previous Rule G-17 Interpretive Notice**

August 13, 2010.

#### **I. Introduction**

On November 18, 2009, the Municipal Securities Rulemaking Board ("MSRB" or "Board"), filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change consisting of (i) proposed amendments to Rule G-8 (books and records to be made by brokers, dealers and municipal securities dealers), Rule G-9 (preservation of records), and Rule G-11 (new issue syndicate practices); (ii) a proposed interpretation (the "proposed interpretive notice") of Rule G-17 (conduct of municipal securities activities); and (iii) the deletion of a previous Rule G-17 interpretive notice on priority of orders dated December 22, 1987 (the "1987 interpretive notice"). The proposed rule change was published for comment in the **Federal Register** on December 10, 2009.<sup>3</sup> The Commission received four comment

<sup>15</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 Securities Exchange Act Release No. 61110 (December 3, 2009), 74 FR 65573 (December 10, 2009) ("Commission's Notice") (the "original proposed rule change").

letters about the proposed rule change.<sup>4</sup> On August 4, 2010, the MSRB filed with the Commission, pursuant to Section 19(b)(1) of the Exchange Act<sup>5</sup> and Rule 19b-4 thereunder,<sup>6</sup> Amendment No. 1 to the proposed rule change, which made technical changes to the proposed rule change and responded to the comment letters received by the Commission in response to the Commission's Notice. The text of Amendment No. 1 is available on the MSRB's Web site (<http://www.msrb.org>), at the MSRB's principal office, and for Web site viewing and printing in the Commission's Public Reference Room. This order provides notice of Amendment No. 1 and approves the proposed rule change as modified by Amendment No. 1 on an accelerated basis.

#### **II. Description of the Proposed Rule Change, As Modified by Amendment No. 1 to the Proposed Rule Change**

The proposed amendments to Rule G-11 would: (1) Apply the rule to all primary offerings, not just those for which a syndicate is formed; (2) require that all dealers (not just syndicate members) disclose whether their orders are for their own account or a related account; and (3) require that priority be given to orders from customers over orders from syndicate members for their own accounts or orders from their respective related accounts, to the extent feasible and consistent with the orderly distribution of securities in the offering, unless the issuer otherwise agrees or it is in the best interests of the syndicate not to follow that order of priority.

The proposed amendments to Rules G-8 and G-9 would require that records be retained for all primary offerings of: (1) All orders, whether or not filled; (2) whether there was a retail order period and, if so, the issuer's definition of "retail;" and (3) those instances when the syndicate manager allocated bonds other than in accordance with the priority provisions of Rule G-11 and the specific reasons why it was in the best interests of the syndicate to do so.

The proposed interpretive notice would provide that violation of these priority provisions would be a violation

<sup>4</sup> See letters from: John C. Melton, Sr., Houston, Texas, dated December 15, 2009; Karrie McMillan, General Counsel, Investment Company Institute ("ICI"), dated December 23, 2009 ("ICI Letter"); Mike Nicholas, CEO, Regional Bond Dealers Association ("RBDA"), dated December 30, 2009 ("RBDA Letter"); Leon J. Bijou, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), dated December 31, 2009 ("SIFMA Letter").

<sup>5</sup> 15 U.S.C. 78s(b)(1).

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

of Rule G-17, subject to the same exceptions as provided in proposed amended Rule G-11. It also would provide that Rule G-17 does not require that customer orders be accorded greater priority than orders from dealers that are not syndicate members or their respective related accounts. The proposed interpretive notice also would provide that it would be a violation of Rule G-17 for a dealer to allocate securities in a manner that is inconsistent with an issuer's requirements for a retail order period without the issuer's consent. Issuance of the notice, in addition to the amendments to Rule G-11, is consistent with previous guidance issued by the Board that all activities of dealers must be viewed in light of the basic fair dealing principles of Rule G-17, regardless of whether other MSRB rules establish additional requirements on dealers.<sup>7</sup>

The original proposed rule change arose out of the Board's ongoing review of its General Rules as well as concerns expressed by institutional investors that their orders were sometimes not filled in whole or in part during a primary offering, yet the bonds became available shortly thereafter in the secondary market. They attributed that problem to two causes: First, some retail dealers were allowed to place orders in retail order periods without going away orders and second, syndicate members, their affiliates, and their respective related accounts were allowed to buy bonds in the primary offering for their own account even though other orders remained unfilled. There was also concern that these two factors could contribute to restrictions on access to new issues by retail investors, in a manner inconsistent with the issuer's intent. A full description of the original proposed rule change is contained in the Commission's Notice.

Amendment No. 1 amends the text of the original proposed rule change to clarify that (i) amended MSRB Rule G-8(a)(viii) requires that records must be kept of whether there was a retail order period, regardless of whether the issuer required that there be one; (ii) the term "priority provisions" as used in amended Rule G-8(a)(viii)(A) includes both the customer priority provisions set forth in amended Rule G-11(e) and any other priority provisions of the syndicate (e.g., those included in an agreement among underwriters); (iii) the recordkeeping requirements of amended

Rule G-8(a)(viii) concerning deviations from the customer priority provisions and the specific reasons for doing so are the same for both sole underwriters and syndicate managers; and (iv) the customer priority requirements of the interpretive notice are the same as those of amended Rule G-11(e).<sup>8</sup> Amendment No. 1 also corrects a typographical error in amended G-11(e)(ii).

The MSRB is proposing the revision to the original proposed rule change set forth in clause (i) of the description of Amendment No. 1 above, because in many cases a retail order period is conducted based on the recommendation of the underwriter, not because the issuer has required that there be a retail order period. The MSRB considers it important to know whether there was a retail order period, regardless of whether the issuer required that there be one. There is no revision to the requirement of amended Rule G-8(a)(viii) that requires a record of the issuer's definition of "retail," if applicable.

As more fully described below, the MSRB is proposing the revision to the original proposed rule change set forth in clause (ii) of the description of Amendment No. 1 above in response to a comment filed by the Regional Bond Dealers Association, which suggested that it was unclear what the term "priority provisions" meant in amended Rule G-8(a)(viii)(A).

The MSRB is proposing the revision to the original proposed rule change set forth in clause (iii) of the description of Amendment No. 1 above to conform the recordkeeping rules for syndicates and sole managers, finding no reason for distinguishing between the two. Furthermore, the revision to amended Rule G-8(a)(viii)(A) is intended to remove what might have been perceived as a difference between amended Rule G-11(e) and the proposed interpretive notice.

As more fully described below, the MSRB is proposing the revision to the original proposed rule change set forth in clause (iv) of the description of Amendment No. 1 above in response to a comment received from the Securities Industry and Financial Markets Association, which interpreted the use of the word "generally" to mean that there could be exceptions to the priority of orders provisions other than those set forth in the proposed interpretive notice. The revision makes it clear that the exceptions set forth in the proposed interpretive notice are the only

exceptions. The Board considers those exceptions sufficient to cover the circumstances under which an underwriter might find it necessary to deviate from the priority provisions.

#### *Effective Date of Proposed Rule Change*

The MSRB requested that the proposed rule change become effective for new issues of municipal securities for which the Time of Formal Award (as defined in Rule G-34(a)(ii)(C)(1)(a)) occurs more than 60 days after approval of the proposed rule change by the SEC.

### **III. Discussion and Commission Findings**

The Commission has carefully considered the proposed rule change, the comment letters received, and the MSRB's responses to the comment letters and finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the MSRB<sup>9</sup> and, in particular, the requirements of Section 15B(b)(2)(C) of the Exchange Act<sup>10</sup> and the rules and regulations thereunder. Section 15B(b)(2)(C) of the Exchange Act requires, among other things, 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.<sup>11</sup> In particular, the Commission finds that the proposed rule change is consistent with the Exchange Act because it will prevent fraudulent and manipulative acts and practices and protect investors and the public interest. The Commission believes the proposal will help achieve a broader distribution of municipal securities while still providing sufficient flexibility to syndicate managers and sole underwriters, and further believes that investors would benefit from a broader distribution of securities that is fair and reasonable and consistent with principles of fair dealing.

<sup>9</sup> In approving this proposed rule change, 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)(C).

<sup>11</sup> *Id.*

<sup>7</sup> MSRB Notice 2009-42 (July 14, 2009)—Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities.

<sup>8</sup> Amendment No. 1 would make no changes to revised Rule G-9 as set forth in the original proposed rule change.

### Discussion of Comment Letters

The Commission received four comment letters in response to the Commission's Notice. ICI supported the proposal. RBDA, SIFMA and Mr. Melton expressed concerns about various aspects of the proposal.

ICI stated that they believe the proposal would improve access to new issues by investors and would help address uncertainty surrounding Rule G-17. They also stated that the experience of their members has demonstrated that industry practice over the previous year has allowed for the regular disregard of previous MSRB guidance on priority of orders. In addition, they stated that there is no reason to disadvantage, or allow for the appearance of disadvantaging, retail customers in primary offerings because the offering does not use a syndicate.

ICI urged the MSRB to consider defining "retail" for purposes of "retail order periods" in a way that recognizes that retail investors access the municipal market through a variety of ways, including mutual funds. ICI noted that retail investors are excluded from the retail order periods if they choose to make their municipal bond investments through mutual funds, and that these retail investors often are the smaller or less sophisticated investors who do not have the necessary assets to purchase bonds on their own.

The MSRB stated that it appreciated the concerns expressed by ICI regarding the pricing of bonds purchased by retail investors. The MSRB indicated that it is aware of the substantial retail participation in the municipal securities market that is accomplished through mutual fund investments. Nevertheless, the MSRB stated that MSRB rules do not require that primary offerings of municipal securities include retail order periods, and that the MSRB considers it appropriate to leave that decision and the decision of how "retail" is defined to issuers of municipal securities. The Commission believes that leaving decisions about retail order periods to the discretion of municipal issuers is not inconsistent with the Exchange Act.

RBDA supports the intent of the proposed amendments to the priority provisions which generally would give express priority to customer orders over orders by members of a syndicate or a sole underwriter for their own or related accounts. Nonetheless, RBDA urges the MSRB to permit syndicate managers and sole underwriters to refuse to prioritize as a customer order any order that the syndicate manager or sole underwriter reasonably believes to have been placed by an opportunistic investor purchasing

bonds with the expectation of reselling them at higher prices shortly after the initial offering.

The MSRB stated in response that the proposed rule change would permit deviation from the priority provisions of amended Rule G-11 if following the priority provisions was not consistent with the orderly distribution of securities in the offering or, in the case of syndicates, the syndicate manager determined that it was in the best interests of the syndicate to deviate from the priority provisions. The MSRB believes that, depending on the specific facts and circumstances, a sole underwriter or syndicate manager could reasonably determine that according priority to an order from a customer whom the sole underwriter or syndicate manager reasonably believes would purchase municipal securities with the expectation of selling them at higher prices shortly thereafter might be an appropriate basis for departing from the priority provisions consistent with the proposed rule change.

RBDA was also concerned that the proposed amendment would require records to be made of each instance in which the syndicate manager accorded equal or greater priority over other orders to orders by syndicate members for their own or related accounts, even if such prioritization were in compliance with the priority provisions of Rule G-11. The MSRB responded that in order for the proposed recordkeeping rule to track the proposed amendment to Rule G-11 more closely, Amendment No. 1 would amend the syndicate recordkeeping rule (Rule G-8(a)(viii)(A)) to require records of: "those instances in which the syndicate manager allocated securities in a manner other than in accordance with the priority provisions, including those instances in which the syndicate manager accorded equal or greater priority over other orders to orders by syndicate members for their own accounts or their respective related accounts. \* \* \*"

In addition, RBDA was concerned that the proposal's requirement to record the specific reasons why it was in the best interests of the syndicate to make any such alternate allocations would be unnecessarily perilous for syndicate managers. RBDA believes the amendment is unclear about the amount of detail regarding these reasons that would be necessary to record in order to satisfy the new requirements. RBDA also states that the requirement for such qualitative analysis will create an opportunity to second guess in hindsight the recorded judgment of the syndicate manager.

The MSRB responded that existing Rule G-11 already provides that, in the event the syndicate manager allocates bonds other than in accordance with the priority provisions of the syndicate, "the syndicate manager or managers shall have the burden of justifying that such allocation was in the best interests of the syndicate." The MSRB also stated that the proposed rule change does not change this requirement; it merely requires the syndicate manager to keep a contemporaneous record of such justification.

The Commission believes the MSRB has adequately addressed RBDA's concerns. The proposed rule change would permit deviation from the priority provisions of amended Rule G-11 if following the priority provisions was not consistent with the orderly distribution of securities in the offering or, in the case of syndicates, the syndicate manager determined that it was in the best interests of the syndicate to deviate from the priority provisions. Amendment No. 1 should address RBDA's duplicative recordkeeping concerns. And the Commission agrees that the proposed rule change does not change the syndicate manager's existing burden of justifying that such allocation was in the best interests of the syndicate; rather, it merely requires the syndicate manager to keep a contemporaneous record of such justification.

SIFMA expressed concern that the intent of the proposed rule is ambiguous. SIFMA infers that the MSRB's intent is, at least in part, to prevent flipping. SIFMA stated that there are many reasons why orders are not filled and that there are many ways securities can be sold at higher prices in the secondary market that do not require regulatory response. The MSRB stated in its response that its goal behind the proposed rule change was to achieve a broader distribution of municipal securities, and the proposed rule change was not directed at flipping.

SIFMA suggested that helping to ensure that institutional investors' orders are filled would be the antithesis of "a broader distribution of municipal securities." In addition, SIFMA stated that the exceptions to the priority provisions contradict the claim that the purpose of the proposal is to encourage a broader distribution of municipal securities.

The MSRB noted in its response that many institutional investors serve as vehicles for individual investors to invest in municipal securities, as explained in ICI's comment letter. The MSRB stated that, as of September 2009, 20 percent of municipal securities were

held by mutual funds on behalf of retail investors. The MSRB stated that these investors frequently are able to negotiate lower prices for their customers and provide a means for individual investors to achieve diversification without making large investments. The MSRB further stated that the proposed rule change does not require that underwriters accord non-underwriter dealers the same priority as customers; it simply permits them to do so.

The MSRB believes the allowance of some exceptions to the priority provisions provides needed flexibility. The MSRB noted that the proposed interpretation provides that it “understands that syndicate managers must balance a number of competing interests in allocating securities in a primary offering and must be able quickly to determine when it is appropriate to allocate away from the priority provisions, to the extent consistent with the issuer’s requirements.” The interpretation applies equally to sole underwriters. The need for such flexibility does not contradict the purpose of achieving broader distribution of municipal securities. The Commission agrees that the proposal would help achieve a broader distribution of municipal securities, while still allowing flexibility depending on various market conditions.

SIFMA also questioned whether the MSRB is authorized to determine the preferred order of distributing securities. The MSRB stated in its response that the MSRB is directed by Congress in section 15B of the Exchange Act to write rules designed, among other things, “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 broadening the distribution of municipal securities to investors in the primary market, at what are generally attendant lower prices than those available in the secondary market, is clearly within that statutory purpose. The MSRB further noted that Congressional concerns led to the provision of section 15B of the Exchange Act, and support its view that broadening the distribution of municipal securities falls within its statutory purpose. The Commission agrees that the proposed rule falls within the MSRB’s statutory authority.

SIFMA expressed concern that the proposed amendments contain several different and possibly conflicting standards, and that newly revised Rule G–11(e)(i) is confusing and contradictory. SIFMA suggested that the

proposed interpretive notice does not define what would constitute “the orderly distribution of securities,” and that dealers could have difficulty determining what “is in the best interests of the syndicate.” The MSRB responded that the phrase “orderly distribution of new issue securities” was used in the 1987 Interpretive Notice, which the proposed rule change would replace. The MSRB recognizes that, while broad distribution of securities was a concern of Congress when it enacted section 15B of the Exchange Act, the underwriter must be free to exert some control over that process if necessary to achieve a favorable result for the issuer. The MSRB further stated that it was the MSRB’s intent that the priority provisions may be deviated from if it is in the best interests of the syndicate to do so, and noted that the proposed interpretation contains the same exception as is found in the proposed amendment to Rule G–11.

SIFMA believes the proposed rule change would have a detrimental effect on competition and borrowing costs and would not apply equally to all dealers. SIFMA believes that the proposal would result in higher borrowing costs for issuers and subordinate a very large group of active municipal market investors to other investors because they are affiliated with or related to the syndicate manager.

The MSRB responded that the proposal would apply equally to all dealers when they serve as underwriters. All underwriters would continue to be able to place going-away orders (*i.e.*, orders for which customers are already conditionally committed) during the primary offering that would be accorded priority under the proposal.<sup>12</sup> The MSRB stated that the proposed rule change incorporates the same exceptions to the priority provisions that exist under current law. The MSRB further stated that what the proposed rule change would do is to require accountability of underwriters who deviated from the priority provisions, because they would be required to keep records of their reasons for doing so.<sup>13</sup>

<sup>12</sup> The MSRB stated that the fact that Rule G–14 requires that such orders be reported to the MSRB’s Real-Time Trade Reporting System as interdealer orders will not cause such orders to be treated as interdealer orders for purposes of the priority of orders provisions of Rule G–11(e) and Rule G–17, as long as an equivalent amount of customer orders for the same securities is reported under Rule G–14 on the same day as the interdealer order is executed.

<sup>13</sup> The MSRB also notes that a “municipal securities investment trust” is only a related account if sponsored by a syndicate member, sole underwriter, or an affiliate of either. To be a

SIFMA stated that the proposed interpretive notice is less restrictive than the proposed rule amendments. SIFMA said that the greater flexibility of the proposed interpretive notice is the result of the word “generally,” which was included to indicate that the principles of fair dealing contained in Rule G–17 provide guidance that must take into account all of the circumstances surrounding an allocation of securities in a primary offering and do not compel giving priority to customers’ orders. SIFMA stated that the interpretive notice is also more flexible than the proposed rule for sole underwriters who are not part of a syndicate. The MSRB responded that there was no intent to make the proposed interpretation less rigorous than the proposed amendment to Rule G–11. For the avoidance of doubt, Amendment No. 1 would slightly revise the proposed interpretation.

The Commission believes the MSRB has adequately addressed SIFMA’s concerns about the purpose of the proposal, the application of the proposal’s requirements, its impact on competition and borrowing costs and the MSRB’s statutory authority. Amendment No. 1 should clarify that the interpretive notice is not inconsistent with the rule.

Mr. Melton states that the intent of the MSRB is to restrict activity that many see as free riding in new issue municipal offerings. He suggests that the proposal should be re-drafted to allow underwriters the flexibility to identify flippers and treat those orders as dealer orders rather than affording flippers customer status. He is also of the view that the “best interests of the syndicate” exception would require unnecessary effort and not provide assurance that an underwriter could protect itself against allegations of rule violations in new issue allocations. Mr. Melton suggested that clear language should be drafted that allows an underwriter to identify flippers and prioritize flipper orders accordingly.

The MSRB responded that the MSRB considers it consistent with the permitted exceptions from the priority provisions for a sole underwriter or syndicate manager to refuse to accord priority to an order from a customer whom the sole underwriter or syndicate manager reasonably believes would purchase municipal securities with the

sponsor of such a trust a dealer or its affiliate must share in the benefits and burdens of ownership of the municipal securities in the trust. The provision of structuring, remarketing, or liquidity services with respect to such a trust will not alone cause the trust to be a related account of the dealer or affiliate providing such services.

expectation of selling them at higher prices shortly thereafter. Furthermore, the MSRB stated that the proposed rule change incorporates the same exceptions to the priority provisions that exist under current law, and that what the proposed rule change would do is to require accountability of underwriters who deviated from the priority provisions, because they would be required to keep records of why they did so. The Commission believes the MSRB's explanation of the application of the proposal adequately addresses Mr. Melton's concerns. With regard to all other issues raised by the commenters, the Commission believes that the MSRB has adequately addressed the commenters' concerns.

#### IV. Order Granting Accelerated Approval of Proposed Rule Change

Pursuant to Section 19(b)(2) of the Exchange Act,<sup>14</sup> the Commission may not approve any proposed rule change, or amendment thereto, prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding. The MSRB requests that the Commission find good cause, pursuant to Section 19(b)(2) of the Exchange Act, for approving Amendment No. 1 prior to the thirtieth day after publication of notice of filing of Amendment No. 1 in the **Federal Register**. The MSRB believes that the Commission has good cause for granting accelerated approval of the proposed rule change because the revisions made by Amendment No. 1 are technical amendments that do not significantly alter the substance of the original proposed rule change, are consistent with the purpose of the original proposed rule change, and do not raise significant new issues. The Commission hereby finds good cause for approving the proposed rule change, as modified by Amendment No. 1, before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that the original proposed rule change was published in the **Federal Register** on December 10, 2009. The Commission does not believe that Amendment No. 1 significantly alters the proposal. In Amendment No. 1, the MSRB made technical revisions in response to comments. The Commission believes that Amendment No. 1 is consistent with the proposal's purpose and raises no new significant issues. Accordingly, pursuant to Section 19(b)(2) of the Exchange Act,<sup>15</sup> the

Commission finds good cause to approve the proposed rule change, as amended, on an accelerated basis.

#### V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Exchange 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-2009-17 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-2009-17. 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-2009-17 and should be submitted on or before September 8, 2010.

#### VI. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Exchange Act and the rules and regulations thereunder applicable to the MSRB<sup>16</sup> and, in particular, the requirements of Section 15B(b)(2)(C) of the Exchange Act<sup>17</sup> and the rules and regulations thereunder. The proposal will become effective for new issues of municipal securities for which the Time of Formal Award (as defined in Rule G-34(a)(ii)(C)(1)(a)) occurs more than 60 days after approval of the proposed rule change by the SEC, as requested by the MSRB.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act,<sup>18</sup> that the proposed rule change (SR-MSRB-2010-17), as amended, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. 2010-20467 Filed 8-17-10; 8:45 am]

**BILLING CODE 8010-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62704; File No. SR-CBOE-2010-073]

#### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fees Schedule and Circular Regarding Trading Permit Holder Application and Other Related Fees

August 12, 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 August 3, 2010, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by CBOE. The Commission is

<sup>16</sup> In approving this proposed rule change, 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>17</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>19</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>14</sup> 15 U.S.C. 78s(b)(2).

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