scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: March 19, 2002.

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45574; File No. SR–CBOE–2001–63]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Thereto by the Chicago Board Options Exchange, Inc. Relating to the Exchange's AutoQuote System

March 15, 2002.

I. Introduction

On December 17, 2001, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the Exchange's Auto-Quote System. The Exchange filed Amendment No. 1 to the proposed rule change on February 7, 2002.[3] The **Federal Register** published the proposed rule change and Amendment No. 1 for comment on February 13, 2002.[4] The Exchange filed Amendment No. 2 to the proposed rule change on March 7, 2002.[5] The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as amended by Amendment No. 1, and issues notice of, and grants accelerated approval to, Amendment No. 2.

II. Description of Proposal

CBOE Rule 8.15 currently provides that the appropriate MPC may appoint Lead Market-Makers (''LMMs'') and Supplemental Market-Makers (''SMMs'') for a specified period of time to participate in opening rotations in S&P 100 options (''OEX'') and options on the Dow Jones Industrial Average (''DJX''). The proposed rule change amends CBOE Rule 8.15 to make explicit in the rule that the appropriate Market Performance Committee (''MPC'') may appoint LMMs and SMMs to determine a formula for generating automatically updated market quotations and to use the Exchange's AutoQuote system or to provide a proprietary automated quotation updating system to monitor and automatically update market quotations during the trading day in any options class for which a Designated Primary Market-Maker (''DPM'') has not been appointed.

Proposed new paragraph (d) of CBOE Rule 8.15 provides that LMMs and SMMs appointed pursuant to the CBOE Rule 8.15 to determine a formula for generating automatically updated market quotations must, for the period in which its acts as LMM or SMM, use the Exchange's AutoQuote system or a proprietary automated quotation updating system to update market quotations during the trading day. Proposed paragraph (d) also requires LMMs to disclose to the trading crowd the variables of the formula for generating automatically updated market quotations unless exempted by the appropriate MPC. Proposed paragraph (d) further provides a cross-reference to the requirements of Interpretation .07 to CBOE Rule 8.7, which sets forth the AutoQuote obligations of market makers.[6] The Exchange also proposes to eliminate the references to S&P 100 options and options on the DJX from CBOE Rule 8.15 so that the appropriate MPC may appoint LMMs and SMMs in other options classes without having to file a proposed rule change with the Commission.

III. 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.[7] Specifically, the Commission believes that the proposed rule change is consistent with the Section 6(b)(8) [8] requirement that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that the proposed rule change should deter collective action, except as authorized by the Exchange's rules, by clearly establishing in the Exchange's rules the responsibilities of, and conduct permitted by, Exchange members in setting AutoQuote parameters. For instance, the proposal amends CBOE Rule 8.15 to make explicit in the rule that in options for which a DPM has not been appointed, the Exchange's MPC may appoint LMMs and SMMs to determine a formula for generating automatically updated market quotations and to use the Exchange's AutoQuote system or to provide a proprietary automated quotation updating system. The Commission believes this provision should clarify the obligations of LMMs and SMMs with respect to the Exchange's AutoQuote system. In addition, the proposal would permit the LMM or SMM to receive input from members of the crowd in setting the parameters of the formula used to automatically update options quotations. At this time, the Commission believes it is reasonable for the Exchange's rules to permit members of the crowd to be given a voice in setting AutoQuote parameters because, pursuant to the Exchange's rules, they will be obligated to execute orders at the resultant quote.[9]

Finally, the Commission finds that the proposed rule change is designed to effectively limit the circumstances in which collective action is permissible.

The Commission finds good cause for accelerating approval of Amendment No. 2 because it clarifies the obligations of LMMs and SMMs regarding AutoQuote. Accordingly, the Commission finds that good cause exists, consistent with sections 6(b)(5) of the Act,[10] and section 19(b)(2) of the Act[11] to accelerate approval of Amendment No. 2 to the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Patrick Sexton, Assistant General Counsel, CBOE, to Deborah Flynn, Assistant Director, Division of Market Regulation (''Division''), Commission (''Amendment No. 1''). Amendment No. 1 requests the Commission to designate the proposed rule change as having been filed pursuant to section 19(b)(2) of the Act. 15 U.S.C. 78s(b)(2).

[4] Securities Exchange Act Release No. 45419 (February 7, 2002), 67 FR 6772.

[5] *See* letter from Patrick Sexton, Assistant General Counsel, CBOE, to Deborah Flynn, Assistant Director, Division, Commission, dated March 5, 2002 (''Amendment No. 2'').

[6] *See* Amendment No. 2, *supra* note 5.

[7] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(8).

[9] The Commission expects the Exchange to monitor the collective actions that are undertaken pursuant to the rule change approved herein for any undesirable or inappropriate anticompetitive effects. The Commission's examination staff will monitor the Exchange's efforts in this regard.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

change prior to the thirtieth day after publication in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether the Amendment No. 2 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 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–2001–63 and should be submitted by April 15, 2002.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–CBOE–2001–63), as amended, is approved, and Amendment No. 2 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7040 Filed 3–22–02; 8:45 am]

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[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45591; File No. SR–MSRB–2002–01]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change Relating to Rule G–17 on Disclosure of Material Facts

March 18, 2002.

On January 25, 2002, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change relating to Rule G–17, on disclosure of material facts.

The Commission published the proposed rule change for comment in the **Federal Register** on February 12, 2002.[3] The Commission received no comment letters relating to the forgoing proposed rule change. This order approves the proposal.

I. Description of the Proposed Rule Change

The proposed rule change provides an interpretation of the duty to deal fairly set forth in Rule G–17. The MSRB's proposed this interpretation to set forth an expanded explanation of what Rule G–17's obligation to ''disclose all material facts'' means in today's innovative market. The MSRB believes that technological changes necessitate interpretive guidance for the application of certain rules. Alternative trading systems present the most graphic example of changing dealer/customer relationships and the consequent need for regulatory change, but these relationship obligations are not necessarily limited to electronic trading venues.

As part of a dealer's obligation to deal fairly, the MSRB has consistently interpreted that Rule G–17 creates affirmative disclosure obligations for brokers, dealers and municipal securities dealers (collectively, ''dealers''). The MSRB has stated that a dealer's affirmative disclosure obligations require that a dealer disclose, at or before the sale of municipal securities to a customer, all material facts concerning the transaction, including a complete description of the security.[4] These obligations apply even when a dealer is acting as an order taker and effecting non-recommended secondary market transactions.

Rule G–17 requires that dealers disclose to a customer at the time of trade all material facts about a transaction known by the dealer. In addition, a dealer is required to disclose material facts about a security when such facts are reasonably accessible to the market. Thus, a dealer would be responsible for disclosing to a customer any material fact concerning a municipal securities transaction made publicly available through sources such as the NRMSIR system, the MSIL® system, TRS, rating agency reports and other sources of information relating to the municipal securities transaction generally used by dealers that effect transactions in the type of municipal securities at issue (collectively, ''established industry sources'').[5]

In addition to the basic disclosure obligations, the duty to ''deal fairly'' is intended to ''refer to the customs and practices of the municipal securities markets, which may, in many instances differ from the corporate securities markets.'' [6] The customs and practices of the industry suggest that the sources of information generally used by a dealer that effects transactions in municipal securities may vary with the type of municipal security. For example, a dealer might have to draw on fewer industry sources to disclose all material facts about an insured ''triple-A'' rated general obligation bond than for a non-rated conduit issue. In addition, to the extent that a security is more complex, for example, because of complex structure or where credit quality is changing rapidly, a dealer might need to take into account a broader range of information sources prior to executing a transaction.

II. Discussion

The MSRB believes that the proposed rule change is consistent with section 15B(b)(2)(C) of the Exchange Act.[7] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Release No. 34–45361 (January 30, 2002), 67 FR 6562.

[4] *See e.g.,* Rule G–17 Interpretation—Educational Notice on Bonds Subject to ''Detachable'' Call Features, May 13, 1993, *MSRB Rule Book* (July 2001) at 129–130. The Commission described material facts as those ''facts which a prudent investor should know in order to evaluate the offering before reaching an investment decision.'' *Municipal Securities Disclosure,* Exchange Act Release No. 26100 (Sept. 22, 1988) 53 FR 37778 at note 76, quoting In re *Walston & Co. Inc., and Harrington*, Exchange Act Release No. 8165 (Sept. 22, 1967) 43 SEC 508, 1967 SEC LEXIS 553. Furthermore, the United States Supreme Court has stated that a fact is material if there is a substantial likelihood that its disclosure would have been considered significant by a reasonable investor. *TSC Industries, Inc.* v. *Northway, Inc.,* 426 U.S. 438 (1976).

[5] Dealers operating electronic trading platforms have inquired whether providing electronic access to material information is consistent with the obligation to disclose information under Rule G–17. The MSRB believes that the provision of electronic access to material information to customers who elect to transact in municipal securities on an electronic platform is generally consistent with a dealer's obligation to disclose such information, but that whether such access is effective disclosure ultimately depends upon the particular facts and circumstances present.

[6] *See* Exchange Act Release No. 13987 (Sept. 22, 1977).

[7] MSRB rules shall, ''be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade * * * to remove impediments to and perfect the

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