

deemed Covered Securities, coupled with its additional listing requirements, will enable CBOE to list options on companies that are financially sound. Nonetheless, the Commission expects the Exchange to continue to delist inactive options classes, regardless of the market price of the underlying security, through its existing quarterly delisting program.⁹

Lastly, the Commission notes that each options exchange may currently list additional series on an option class even though the market price of the underlying security is below \$3, provided that at least one other options exchange trades the series to be added, and at the time the other options exchange added that series, it met the requirements to add new series, including the \$3 price requirement.¹⁰

For these reasons, the Commission finds that the proposed rule change to provide that the closing market price of the underlying security must be at least \$3.00 per share for the five previous consecutive business days for underlying securities that are deemed Covered Securities, is consistent with section 6(b)(5) of the Act.¹¹

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹² that the proposed rule change (SR-CBOE-2002-62) is approved.

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

Margaret H. McFarland,
Deputy Secretary.

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⁹ CBOE states that it maintains an active delisting program which requires the quarterly review of multiply listed option classes that do not trade more than 20 contracts per day on the Exchange. Telephone conversation between James Flynn, Attorney, CBOE, and Florence Harmon, Senior Special Counsel, Division, Commission, on January 14, 2002. See also Securities Exchange Act Release No. 46957, n. 7, *supra* note 3.

¹⁰ See Interpretation and Policy .02 to CBOE Rule 5.4; Commentary .02 to American Stock Exchange LLC Rule 916; Commentary .01 to Pacific Exchange, Inc. Rule 3.7(b); Commentary .02 to Philadelphia Stock Exchange, Inc. Rule 1010; and International Securities Exchange, Inc. Rule 503(c).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47189; File No. SR-MSRB-2002-15]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to Rule G-28, on Transactions With Employees and Partners of Other Municipal Securities Professionals

January 15, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), and Rule 19b-4 thereunder,¹ notice is hereby given that on December 20, 2002 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-2002-15). 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 Organizations Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing herewith a proposed amendment to Rule G-28, on transactions with employees and partners of other municipal securities professionals (hereafter referred to as "the proposed rule change"). Below is the text of the proposed rule change. New language is italicized; deletions are in brackets.

Rule G-28. Transactions With Employees and Partners of Other Municipal Securities Professionals

(a)-(b) No change.

(c) *Exemption for Municipal Fund Securities. The provisions of this rule shall not be applicable to transactions in municipal fund securities or to accounts that are limited to transactions in municipal fund securities.*

(a) Not applicable.

II. Self-Regulatory Organizations 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

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

Rule G-28, on transactions with employees and partners of other municipal securities professionals, requires a broker, dealer or municipal securities dealer ("dealer") that opens a municipal securities account for an employee of another dealer (or a spouse or child of such employee) to first provide written notice to such other dealer and to subsequently follow any instructions provided by the other dealer with respect to transactions for the employee. The transacting dealer is also required to provide copies of all confirmations to the other dealer. The rule was adopted to prevent an employee of a dealer from effecting transactions that are contrary to the interests of the dealer or from otherwise acting illegally or improperly with respect to transactions in municipal securities.

As part of its ongoing review of the application of MSRB rules to municipal fund securities, it has come to the MSRB's attention that the requirements of Rule G-28 may impose a burden on dealers and customers, particularly in the context of 529 college savings plan accounts, without any significant countervailing benefit. The MSRB is concerned that the requirements unnecessarily delay the opening of some accounts since dealers are required to provide written notice to a dealer that employs a new customer prior to opening an account. However, since it does not appear that transactions in municipal fund securities present the same potential for adverse impact on an employing dealer as might exist with respect to transactions in other types of municipal securities, the MSRB does not believe that any benefit is realized from imposing the requirements of Rule G-28 on transactions in municipal fund securities.

Thus, the MSRB has determined that it is appropriate to create an exemption from Rule G-28 for transactions and accounts involving municipal fund securities. The MSRB notes that transactions in registered mutual fund shares are currently exempted from similar requirements imposed under NASD Rule 3050. In addition, since there is no trading market in shares of 529 college savings plans or other types

¹ 15 U.S.C. 78s(b)(1); 17 CFR 240.19b-4.

of municipal fund securities, the safeguards provided by Rule G-28 are not needed in the context of this market.

(2) Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Exchange Act, which authorizes the MSRB to adopt rules that 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 Exchange Act in that it amends an existing MSRB rule to better accommodate the unique characteristics of municipal fund securities, thereby removing impediments to a free and open market in such securities and promoting the protection of investors and the public interest.

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 brokers, dealers and municipal securities dealers effecting transactions in municipal fund securities.

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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission 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 such 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 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 submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's offices. All submissions should refer to File No. SR-MSRB-2002-15 and should be submitted by February 12, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.²

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-1348 Filed 1-21-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47181; File No. SR-NASD-2002-89]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend Nasdaq's Listing Standards Pertaining to American Depositary Receipts, Preferred and Secondary Classes of Stock, Bid Price Compliance and Monitoring Periods, Categories of Securities Eligible for Initial Inclusion on Nasdaq, and the Market Capitalization Compliance Period

January 14, 2003.

On January 7, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to modify Nasdaq's listing standards pertaining to American Depositary Receipts, preferred

and secondary classes of stock, bid price compliance and monitoring periods, categories of securities eligible for initial inclusion on Nasdaq, and the market capitalization compliance period. On November 1, 2002, NASD filed Amendment No. 1 to the proposed rule change.¹ On December 2, 2002, NASD filed Amendment No. 2 to the proposed rule change.² Notice of the proposed rule change, as amended, was published for comment in the **Federal Register** on December 9, 2002.³ The Commission received no comments regarding the proposal.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.⁴ The Commission finds that the proposal is consistent with the requirements of Section 15A(b)(6) of the Act,⁵ which requires, among other things, that the rules of a registered national securities association 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 securities, to 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. Specifically, the Commission believes that the proposal should provide greater transparency and consistency to Nasdaq's listing standards.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁶ that the proposed rule change (SR-NASD-2002-89) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-1349 Filed 1-21-03; 8:45 am]

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¹ See letter from John Nachmann, Senior Attorney, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated November 1, 2002.

² See letter from John Nachmann, Senior Attorney, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated December 2, 2002.

³ See Securities Exchange Act Release No. 46940 (December 3, 2002), 67 FR 72998.

⁴ In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78o(b)(6).

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).

² 17 CFR 200.30-3(a)(12).