

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 CBOE 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

Exchange Rule 15.5 requires members to file financial reports in a manner prescribed by the Exchange. Pursuant to Rule 15.5, the Exchange will now require that net capital computing members file electronically their required monthly/quarterly FOCUS reports³ using the WinJammer system. The Exchange will add Interpretation .02 to Rule 15.5 to set forth this requirement in its Rules. By requiring net capital computing firms to file their FOCUS reports electronically, the Exchange will be making its requirements consistent with those of the New York Stock Exchange and the National Association of Securities Dealers.

The use of WinJammer to collect FOCUS information ensures that the Exchange receives FOCUS reports from members without the risk of filings being lost. Additionally, because of the rigorous edit checks in the WinJammer system, the FOCUS data received will more likely be accurate and complete. Electronic receipt of FOCUS data also means that Exchange staff and outside vendors will no longer have to re-key the information; thus, freeing up Exchange resources for more important tasks. The Exchange will provide members with copies of the WinJammer software.

By requiring net capital computing firms to file electronically, the Exchange will help to reduce errors and save resources. The filing, therefore, is consistent with and furthers the objectives of Section 6(b)(5) of the Exchange Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

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

CBOE does not believe that the proposed rule change will impose any burden on competition.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act⁴ and subparagraph (e)(1) of Rule 19b-4 thereunder because the proposal constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange.⁵ Notwithstanding that this rule change is effective immediately upon filing, the CBOE will not require the filing of the electronic FOCUS reports until June 1998. At any time within 60 days of the filing of such 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.

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. 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 the File No. SR-CBOE-98-08 and should be submitted by April 14, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39759; File No. SR-CHX-97-36]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Stock Exchange, Inc., Relating to the Structure and Composition of the Board of Governors

March 6, 1998.

I. Introduction

On December 16, 1997, The Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder.² In this filing the Exchange proposed amendments to the structure and composition of its Board of Governors ("Board") to include greater participation and oversight by individuals who are not affiliated with the Exchange or registered brokers or dealers.³ The filing was amended on January 16, 1998, to revise certain Board

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Specifically, the CHX proposed amendment to Articles III, IV and V of its Constitution and Article IV, Rules 7, 8 and 10 of its Rules. The revised text of the Constitution and Rules accompany this Order in the Addendum hereto and are incorporated herein.

For purposes of this Order, "affiliated" refers to a member of the Board of Governors or a committee who is either a member of the Exchange or affiliated with a broker or dealer in securities, and includes all Member Governors and CHX committee members. Non-affiliated and Non-Industry both refer to a CHX Board or committee member who is neither a member of the Exchange nor affiliated with a broker or dealer. Finally CHX *Public* Governors and committee members, a subset of the Non-Affiliated or Non-Industry category, are those who have no material business relationship with the Exchange, a broker or a dealer.

³ "FOCUS reports" are the Financial and Operational Combined Uniform Single Report which most broker-dealers are required to file with their designated examining authority pursuant to Exchange Act Rule 17a-5.

⁴ 15 U.S.C. 78s(b)(3)(A)(i).

⁵ 17 CFR 240.19b-4(e)(1). In reviewing this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

and committee membership qualifications.⁴ Notice of the proposed rule change, as amended, was published in the **Federal Register** on February 5, 1998.⁵ The Commission did not receive any comment letters on the proposal.

II. Background

The Exchange is a non-stock membership corporation registered in the State of Delaware. Its corporate structure is defined in its Certificate of Incorporation and its By-laws. The Certificate of Incorporation includes general parameters of corporate governance, while the By-laws, composed of the Constitution and the Rules, contains the specific requirements for constitution of the Board, its committees and the daily operation of the Exchange. The submitted filing proposes changes to the By-laws only. Within the By-laws, the structure of the Board, the Executive Committee and the Nominating Committee are set forth in the Constitution, while the Audit Committee and Compensation Committee requirements are included in the Rules.⁶

The current Board of Governors has twenty-seven voting members, including the Vice-Chair of the Board (who must be a member of the Exchange active on its trading floor) ("Vice-Chair"), the president of the CHX (who is an Exchange employee appointed by the Board) (the "President") and twenty-five elected Governors. The Chair of the Board (who, as a matter of practice, is not a member of the Exchange active on its trading floor) ("Chair") is appointed by the full Board from among the elected Governors. The twenty-five governors include sixteen affiliated with the CHX or with a registered broker or dealer (known as Member Governors),

and nine without such affiliations (known as Non-Member Governors).⁷ Of the affiliated Governors, nine must be from Chicago, and the remaining seven from outside the metropolitan area. Moreover, the affiliated Governors cannot serve more than two consecutive Board terms.

The current Executive Committee consists of seven or more members, who are appointed by the Vice-Chair of the Board. The Chair and the President serve as ex-officio members with full voting power. The Chair of the Board also serves as chair of the Executive Committee. A majority of members (including the ex-officio) constitute a quorum for transaction of business. All committee members must be Governors, but there are no other compositional requirements.⁸ Notwithstanding this, the members of the Executive Committee are currently balanced between affiliated and non-affiliated members.⁹

The current Nominating Committee has five members, who hold no other positions with the Exchange.¹⁰ The members of the Nominating Committee must include at least two affiliated persons; one who is active on the trading floor of the Exchange, and one who is not. Two non-affiliated committee members are also required by the Constitution.¹¹

The current Audit Committee is composed of at least three Governors, plus the Chair of the Board. The majority of voting committee members cannot be affiliated individuals active on the trading floor of the Exchange. In addition, the Rules suggest inclusion of at least two non-affiliated participants, when the Audit Committee has five or more voting members.¹² While inclusion of non-affiliated persons is not required, the Audit Committee currently operates with a balance of affiliated and non-affiliated members.¹³

The current Compensation Committee consists of the Chair and at least one affiliated and one non-affiliated Governor. The Chair of the Compensation Committee must be a non-affiliated Governor. The majority of the voting members of the Compensation Committee cannot be active on the trading floor of the exchange, and if the committee has five or more voting members, the Rules suggest inclusion of at least two non-affiliated participants.¹⁴ Consistent with this approach, and similar to the practices of the Audit Committee and the Executive Committee, the Compensation Committee currently contains a balance of affiliated and non-affiliated committee members without being positively required to do so.¹⁵

Finally, there currently does not exist either Public representation requirements of the type included in the proposal or quorum provisions related to compositional structure on either the Board or the four committees.¹⁶

III. Description of the Proposal

The Exchange's proposal will change the structure and composition of the Board and the Executive, Nominating, Audit and Compensation Committees by imposing an enhanced non-industry and public participation requirement similar to those recently adopted by certain other self-regulatory organizations ("SROs").¹⁷ The proposed changes are based upon recommendations made by the Exchange's Governance Committee, who is responsible for general oversight of the CHX's corporate governance matters.¹⁸ The changes represent the

¹⁴ See current Article IV, Rule 7 "Compensation Committee" of the Rules.

¹⁵ Telephone call between Joseph M. Klauke, Foley & Lardner and Mandy Cohen, Division of Market Regulation, Office of Market Supervision dated March 5, 1998.

¹⁶ See current Article IV Rule 10 "Committee Quorum" of the Rules (Audit and Compensation Committees); see also current Article III, Sec. 7 "Quorum" (Board) and current Article V, Sec. 4 "Membership of the Executive Committee" (Executive Committee) of the Constitution. There is no particular quorum for the Nominating Committee set for in the current By-laws; therefore, a majority of the members is required. Delaware Gen. Corp L Section 141.

¹⁷ Securities Exchange Act Release No. 39608 (February 2, 1998), 63 FR 6249 (February 6, 1998) (File No. SR-Philadep-97-06); Securities Exchange Act Release No. 39609 (February 2, 1998), 63 FR 6250 (February 6, 1998) (File No. SR-SCCP-97-06); Securities Exchange Act Release No. 39326 (November 14, 1997), 62 FR 62385 (November 21, 1997) (File No. SR-NASD-97-71); and Securities Exchange Act Release No. 38960 (August 22, 1997), 62 FR 45904 (August 29, 1997) (File No. SR-PHLX-97-31).

¹⁸ See current Article IV, Rule 9 "Committee on Organization and Governance" of the Rules; see also Securities Exchange Act Release No. 31633 (December 22, 1992), 57 FR 62402 (December 30,

⁴ See Letter Amendment No. 1 from Joseph M. Klauke, Foley & Lardner to Katherine A. England, Division of Market Regulation, Commission, dated January 16, 1998.

⁵ See Securities Exchange Act Release No. 39603 (January 30, 1998), 63 FR 5982 (File No. SR-CHX-97-36). To allow time for approval of the proposal by its members, the Exchange agreed to extension of the time period specified in Section 19(b)(2) of the Act. See letter from Joseph M. Klauke, Foley & Lardner to Katherine A. England, Division of Market Regulation, Commission, dated December 30, 1997. A technical amendment to the filing memorializing member approval of the proposal was submitted on February 12, 1998. See Letter Amendment No. 2 from Joseph M. Klauke, Foley & Lardner to Katherine A. England, Division of Market Regulation, Commission, dated February 12, 1998. This technical amendment, which served to notify the Commission that the CHX complied with its internal procedures, did not require notice and comment, as it did not affect the substance of the rule filing.

⁶ Collectively, these four committees are referred to as the "Committees."

⁷ See current Article III, Sec. 2 "Members of the Board of Governors" of the Constitution. See also, supra note 3, defining "affiliated" and "non-affiliated" Governors and Committee members.

⁸ See current Article V, Sec. 4 "Membership of Executive Committee" of the Constitution.

⁹ Telephone call between Joseph M. Klauke, Foley & Lardner and Mandy Cohen, Division of Market Regulation, Office of Market Supervision dated March 5, 1998.

¹⁰ For instance, a single individual cannot be both member of the Board and member of the Nominating Committee. See current Article IV, Sec. 3 "Nominating Committee" of the Constitution.

¹¹ See *id.*

¹² See current Article IV, Rule 8 "Audit Committee" of the Rules.

¹³ Telephone call between Joseph M. Klauke, Foley & Lardner and Mandy Cohen, Division of Market Regulation, Office of Market Supervision dated March 5, 1998.

latest in a continuing series of amendments to the corporate governance structure of the CHX over the past two decades.¹⁹

A. Board Composition and Size

The first portion of the proposal calls for reduction in the number of Governors and modification of Board membership standards to include greater participation and supervision by individuals without securities industry affiliation. Under the proposal, the current members of the Board will be reduced from twenty-seven to twenty-four and the number of Governors affiliated with Exchange or registered brokers or dealers from sixteen to ten.²⁰ At the same time, the number of non-affiliated Governors will rise from nine to twelve.²¹

The amendments, as proposed, will result in Exchange management balanced between non-affiliated individuals and CHX members. Moreover, the non-affiliated Governors, termed Non-Industry, will include a mandatory subset of five Public Board members, who should truly enhance the public interest in CHX operations. The Non-Industry Governor positions will be filled by individuals who are not presently, and have not been involved in the securities industry for an extended period of time, whether directly, as an employee of, or provider of professional services to, the Exchange or a broker or dealer, or indirectly,

through management or ownership of a securities industry participant. Non-Industry may, however, include employees and other associates of issuers exclusively listed on the CHX. Public Governors positions, however, will be open only to those individuals who have no material business relationship with a registered broker or dealer or the Exchange.²²

The affiliated Board members will be split between On-Floor and Off-Floor Member Governors, reflecting the different types of Exchange members.²³ Under the proposal, an On-Floor Member Governor is one who is, or is associated with, a member of the CHX that is primarily engaged in business on the Exchange trading floor. The proposed definition of Off-Floor Member Governors includes all other CHX members (sometimes referred to as up-stairs members), or their associates.²⁴ The changes will also codify the current practice of selecting a Chair who is not active on the trading floor of the Exchange.

B. Committee Composition

The second portion of the proposed amendments address the compositional requirements of the Executive, Nominating, Audit and Compensation Committees. The Executive, Audit and Compensation Committees are made up of Governors appointed by the Board, while the Nominating Committee is made up of Non-Industry participants appointed by the Board, and Member participants elected by the Membership.²⁵ The definitions of Non-Industry, Public On-Floor, Off-Floor and Member Governors apply equally to members of these four committees. As proposed, not less than fifty percent of the members of the Executive Committee, the Compensation Committee and the Audit Committee must be Non-Industry (including at least one Public Governor on the Compensation and Audit Committees), and the Nominating Committee will be composed of fifty percent Non-Industry

and fifty percent Member representatives.²⁶ Currently, the Audit, Executive, and Compensation Committees have this balance, although it is not specifically required.²⁷ The Nominating Committee currently has five members, two of which are Non-Industry.²⁸

C. Quorum Requirements

The third portion of the proposal addresses quorum requirements. Currently there are no quorum provisions in the Exchange's Constitution or Rules related to compositional structure.²⁹

Under the proposed amendments, a quorum for the transaction of business on the Board of Governors will require participation by one-half of the number of Governors then in office.³⁰ The Executive and Nominating Committees will require a majority of members to be present, while the Audit and Compensation Committees will need at least half of their members to satisfy their quorum requirements.³¹

In addition, not less than fifty percent of the Non-Industry participants on both the committees and the Board must be present to fulfill quorum committee requirements.³² Notwithstanding this, an informed waiver of attendance by Non-Industry Board or Committee members will satisfy the compositional quorum requirements. Thus, if at least fifty percent of the Non-Industry Board or Committee members are either present at a meeting or have waived their attendance for the meeting after receiving notice of, and an agenda for, such meeting, then the compositional portion of the quorum requirements will be deemed satisfied.³³

1992) (File Nos. SR-MSE-92-12 and SR-MSE-92-13) (formalizing the duties of the Committee on Organization and Governance).

¹⁹ See, e.g., Securities Exchange Act Release No. 34563 (August 19, 1994), 59 FR 44207 (August 26, 1994) (File No. SR-CHX-94-15) (increasing Board membership to accommodate operation of Exchange and its clearance, settlement and securities depository subsidiaries as a single entity); Securities Exchange Act Release No. 33901 (April 12, 1994), 59 FR 18586 (April 19, 1994) (File No. SR-CHX-93-28) (including changes to the Executive and Finance Committees, voting powers of President and Chair and adding definition of Non-Member Governor); Securities Exchange Act Release No. 32488 (June 18, 1993), 58 FR 34284 (June 24, 1993) (File No. SR-MSE-93-13) (changing name from Midwest Stock Exchange, Inc. to Chicago Stock Exchange, Inc.); Release No. 34-31633, *supra* note 18 at page 6 (transferring duties from Chair to President and making Chair part-time, requiring Vice-Chair to be an On-Floor member, formalizing various standing Board committees, etc.); Securities Exchange Act Release No. 30844 (June 19, 1992), 57 FR 29106 (June 30, 1992) (File No. SR-MSE-92-07) (conforming certificate of incorporation to previous by-laws and rule changes); Securities Exchange Act Release Nos. 16468 and 16468A (January 4, 1980, as corrected January 16, 1980) (File No. SR-MSE-79-22, as corrected to reference SR-MSE-79-25).

²⁰ See proposed Article III, Sec. 2 "Members of the Board of Governors" of the Constitution.

²¹ See *id.* The current rules also impose residence requirements on a portion of the affiliated governors. The proposed amendments will eliminate the distinction.

²² See proposed Article III, Sec. 2 "Members of the Board of Governors" of the Constitution.

²³ The proposed amendments will require a minimum of four On-Floor Member Governor positions and four Off-Floor Member Governor positions.

²⁴ The current Constitution and Rules refer to those persons who are "active on the [trading] floor of the Exchange" as floor Governors, although a specific definition is not included. These persons have been interpreted to include floor members acting as, i.e., floor brokers, market makers or specialists. The definition of On-Floor is somewhat broader in scope, and will include all persons associated with On-Floor members under the current interpretation.

²⁵ See proposed Article IV, Section 3 "Nominating Committee" of the Constitution.

²⁶ See proposed Article V, Sec. 4 (Executive Committee) and proposed Article IV, Sec. 3 (Nominating Committee) of the Constitution; see also proposed Article IV, Rule 7 (Compensation Committee) and proposed Article IV, Rule 8 (Audit Committee).

²⁷ See *supra* notes 8 through 14, pp. 3-4.

²⁸ See *id.* The change to require balanced committees will be effective upon approval of the proposed rule change for these committees, except the Nominating Committee. One additional Non-Industry person will be added to the Nominating Committee to achieve balance in conjunction with the 1999 Annual Election.

²⁹ See *supra* note 16, p. 5 and accompanying text.

³⁰ See proposed Article III, Sec. 7 "Quorum" of the Constitution.

³¹ See proposed Article V, Sec. 4 "Membership of the Executive Committee" of the Constitution (Executive Committee); see also proposed Article IV, Rule 10 "Committee Quorum" of the Rules (Audit and Compensation Committees).

³² See *Id.*

³³ See *id.*

D. Term Limits, Attendance at Board Meetings and Recusal Provisions

The next several portions of the proposal revises gubernatorial term limits, impose an attendance requirement on Board members and expand the recusal provisions for interested Governors. The current term limits on Board service affect only affiliated Governors.³⁴ The proposed changes impose a three term limit on all elected Board members, regardless of affiliation, and partial terms will not count. After serving three complete terms, a minimum of two years must elapse before a former Governor can again serve on the Board.³⁵

The proposed rule changes will also recognize failure to attend at least seventy-five percent of all full Board meetings annually as cause for removal from the Board.³⁶ The CHX has represented that this removal power will not be implemented in an arbitrary fashion.³⁷

Finally, the proposal includes changes to those provisions of the Constitution related to disqualification of Governors due to personal interest in a matter. The text of these provisions will be amended to refer to "determination" of matters rather than just "adjudication" (as currently worded). Member Governors will not, however, be precluded from participating in decisions that affect members or classes of members in general, on the grounds of personal interest.³⁸

E. Technical Amendments

In addition to the foregoing, the last portion of the proposal includes certain technical changes to the Constitution and rules, for organizational or accuracy purposes. These include those changes necessary throughout the Constitution and Rules to reflect the use of the terms Non-Industry and On-Floor.³⁹ In addition, a number of revisions of the term "member" are included. For example, use of the word member in connection with operation of the Nominating Committee, is being changed to person (or otherwise

modified) whenever necessary to prevent confusion.⁴⁰ Similarly, the reference to member used in the context of voting designees is being clarified to specifically refer to a member of the Exchange.⁴¹

IV. Discussion

As discussed below, the Commission has determined at this time to approve the Exchange's proposal. The Commission must approve a proposed rule change if its finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that govern the Exchange. The standard by which the Commission must evaluate a proposed rule change is set forth in Section 19(b) of the Act.⁴² In addition, Section 6 of the Act establishes specific standards for Exchange rules against which the Commission must measure CHX's proposal.⁴³ In evaluating a given proposal, the Commission examines the record before it and all relevant factors and necessary information.

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.⁴⁴ In particular, the Commission believes that the proposal is consistent with Sections 6(b)(1), (3), (5), and (8) of the Act.⁴⁵ Section 6(b)(1) requires that an exchange be organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, and the rules of the exchange. Section 6(b)(3) of the Act requires, among other things, that the rules of an exchange assure a fair representation of its members in the selection of its directors and administration of its affairs. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed, in general, to protect investors and the public interest. Finally, Section 6(b)(8) requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the federal securities laws.

The Commission believes that the proposals to diversify the composition

of the CHX's Board, Executive Nominating, Compensation and Audit Committees⁴⁶ should increase non-partisan participation on these governing bodies and provide adequate representation of On-Floor members, "upstairs firms" and investors. The changes to the structure of the Board and Committees are a positive step to ensure that no one group will be able to dominate the governance of the Exchange. The Commission believes that these bodies, as revised, should be more responsive to the interests of the Exchange and its various constituencies, including the public, and thus are consistent with both the fair representation requirements of Section 6(b)(3) of the Act and the protection of investors and the public interest pursuant to Section 6(b)(5) of the Act. Moreover, the changes should result in the more efficient operation of the Exchange generally, and therefore do not impose any unnecessary or inappropriate burdens on competition.

The CHX Board of Governors is responsible for oversight of all aspects of Exchange and SRO operations. Over the past ten years, these operations have changed in various ways, and the Board has been adjusted to reflect these changes.⁴⁷ As suggested by this filing, the CHX believes that the recent sale of its clearance and settlement and securities depository subsidiaries requires readjustment of Board structure. The Exchange submits that the governors added to the Board when the subsidiaries were consolidated into Exchange operations are no longer necessary, and that a smaller Board will make deliberations more efficient and manageable.

The Commission agrees that given the Exchange's downsizing, a smaller Board may be appropriate. Moreover, as the remaining number of Governors (twenty-four) is substantial, and since the present restructuring includes an increase in the proportion of non-affiliated Governors, the Commission believes that reduction of the number of Board members should improve the Exchange's ability to perform its SRO responsibilities, conduct its business, provide fair representation to its members, and adequately protect investors.

The restructuring of the Board and the Committees, to include a greater proportion of non-affiliated members,

³⁴ See current Article IV, Sec. 5 "Limitation on Service" of the Constitution.

³⁵ See proposed Article IV, Sec. 5 "Limitation on Service" of the Constitution.

³⁶ See proposed Article III, Sec. 1 "The Board of Governors" of the Constitution.

³⁷ Telephone call between Craig Long, Foley & Lardner and Mandy Cohen, Division of Market Regulation, Commission dated February 26, 1998.

³⁸ See proposed Article III, Sec. 3 "Participation in Meeting, Action or Proceeding" of the Constitution.

³⁹ See, e.g., Article IV, Rules 7 and 8 of the Rules (regarding the Compensation Committee and the Audit Committee).

⁴⁰ See, e.g., proposed Article IV, Sections 3 "Nominating Committee" of the Constitution.

⁴¹ See e.g., proposed Article IV, Section 14 "Term 'Member' includes Voting Designee" of the Constitution.

⁴² 15 U.S.C. 78s(b).

⁴³ 15 U.S.C. 78o-3.

⁴⁴ 15 U.S.C. 78f(b).

⁴⁵ 15 U.S.C. 78f(1), (3), (5) and (8).

⁴⁶ See *supra*, text accompanying notes 19 to 32.

⁴⁷ See Securities Exchange Act Release No. 34563 (August 19, 1994), 59 FR 44207 (August 26, 1994) (File No. SR-CHX-94-15) (increasing the number of Board members upon consolidation of the Exchange and its subsidiaries under one management structure).

and the redefinition of Public, Non-Industry and Member Governors and committee members reflect recent trends in SRO corporate governance generally, and ease concerns previously raised by the Commission. In approving earlier changes to the Board and its committees, the Commission expressed concerns about domination by Governors active on the trading floor of the Exchange.⁴⁸ By supplementing the non-affiliated representation on these governing bodies, and imposing compositionally-based quorums, the current proposal should have the effect of countering the influence of On-Floor members, and increasing the influence of unbiased Board and committee members. Recognizing a distinction between Public and Non-Industry individuals advances this, and requiring Public participation in critical areas should enhance the non-partisan oversight of Exchange operations. Inclusion of compositionally-based quorums, requiring diversity between Non-Industry and Member participants, further protects such oversight.⁴⁹ The Commission retains some concerns that the categories of permissible Board members do not include securities industry individuals who are not members of the CHX. The increased participation by Non-Industry and Public individuals, however, should provide the balance necessary for unbiased oversight by the Board and the Committees as a whole.

The proposal's remaining changes should similarly ease and improve the operations of the Board and the Committees. Eliminating the geographical distinction for Member Governors should provide the Nominating Committee with more flexibility in its choice of potential Governors and should eliminate an inappropriate arbitrary distinction given CHX's current national constituency. Imposing term limits on all Governors should foster a healthy influx of fresh perspectives on the Board. Setting

attendance requirements should promote attendance and thus enhance participation in Board meetings. Allowing removal for failure to attend Board meetings should allow replacement of Board members who are not performing their required duties. Extending the recusal provisions to include all determinations by Board members more appropriately reflects the kind of activities that Governors become involved in.

Taken as a whole, the changes brought about by the proposed amendments will have a beneficial impact on the Board, the Committees and the Exchange. The Commission believes that the changes will benefit members of the Exchange and investors particularly and the public interest generally, are consistent with the provisions of the Act, and appropriate for approval at this time.⁵⁰

V. Conclusion

For all of the aforementioned reasons, the Commission finds that the proposal is consistent with the requirements of Section 19(b)(2) of the Act⁵¹ and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁵² that the proposed rule change (SR-CHX-97-36), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵³

Margaret H. McFarland,
Deputy Secretary.

Addendum

Additions are *italicized*; deletions are [bracketed].

Constitution

Article III

Government and Administration

Powers of the Board of Governors

SEC. 1. The business of the Exchange shall be managed by its Board of Governors which shall be vested with all powers necessary for the government of the Exchange, the regulation of the business conduct of members and member organizations, and the promotion of the welfare, objects and purposes of the Exchange. Without limiting the generality of the foregoing: The Board of Governors may establish Rules governing the qualifications for membership, the requirements for remaining a member in good standing and the circumstances under which a membership owned by a person or organization not in good standing may be

sold by the President. It may fix fees and compensation to be paid Governors, members of committees and officers. It may fix dues, fees, assessments and other charges to be paid by members and member organizations. It may, for cause, remove any Governor or officer of the Exchange. "*Cause*" shall include, but not be limited to, failure by a Governor to attend at least seventy-five percent of the Board meetings held in a calendar year. It may fill vacancies in the Board of Governors or the office of Vice Chairman who shall serve until the next annual meeting, and the office of Chairman, President, or Non-[Member] Industry [Committee] committee members of the Nominating Committee who shall serve until the expiration of their term, and shall approve all appointments to Committees (other than the Nominating Committee) made by the Vice Chairman. It may determine the manner in which its own proceedings and the proceedings of any committee of the Exchange shall be conducted. It shall have power to interpret the Constitution and Rules of the Exchange and any interpretation thereof made by it shall be final and conclusive.

The foregoing specification of the powers and authority of the Board of Governors is in furtherance of and not by way of limitation of the power and authority of the Board of Governors to do all things necessary for the government and administration of the Exchange, including all such things which are not by statute, by the Certificate of Incorporation or by the Constitution directed or required to be done by the members.

Members of the Board of Governors

SEC. 2. The Board of Governors shall be composed of the Vice Chairman of the Board, the President and [25] 22 Governors (one of which shall be appointed Chairman of the Board as hereinafter provided). The Vice Chairman of the Board shall be a member, general partner in a member firm, or officer of a member corporation [and shall be active on the floor of the Exchange] *who is On-Floor*. [Sixteen] *Ten* of the [25] 22 Governors shall be [members, general partners of member firms or officers of member corporations (such Governors sometimes hereinafter referred to as "member Governors"))] *Member Governors, of whom at least 4 shall be On-Floor and at least 4 shall be Off-Floor*, and [nine] *twelve* Governors shall be [unaffiliated with the Exchange or any broker or dealer in securities (such Governors sometimes hereinafter referred to as "non-member Governors"))] *Non-Industry, of whom at least 5 shall be Public*. The Chairman of the Board shall be appointed by the Board of Governors [from among the 25] *and shall be one of the elected Governors that is not On-Floor*. The President shall be appointed by the Board of Governors to serve at its pleasure. The Chairman and the Vice Chairman shall each serve a two-year term in such capacities. [The initial term of the Chairman shall end at the first meeting of the Board held after the 1994 annual election meeting of the Exchange.] The members of the Board of Governors (other than the Vice Chairman of the Board and the President) shall be divided into classes; there shall be [eight] *seven* Governors in Class I, [nine]

⁴⁸ See Release No. 34-31633.

⁴⁹ In conversations with the Commission concerning the compositional quorum requirements, the Exchange expressed concerns about the potential for disruption in operations caused by the absence of the non-affiliated members (due to the part-time nature of their service) at various meetings. The informed waiver of participation by Non-Industry Governors and Committee members (which allows non-affiliated members to review the agenda before a meeting to determine the nature of the matters to be discussed) addresses this concern, without sacrificing the benefits of the non-affiliate's non-partisan oversight. By viewing the agenda, the non-affiliate member will be able to judge the import of the subjects to be discussed and, if necessary, will be able to allocate his or her time to the most important issues.

⁵⁰ See 15 U.S.C. 78c(f).

⁵¹ 15 U.S.C. 78s(b)(2).

⁵² *Id.*

⁵³ 17 CFR 200.30-3(a)(12).

seven Governors in Class II and eight Governors in Class III. [Three] Four members of each of Class I, Class II and Class III shall be [non-member] Non-Industry Governors. At each annual meeting of the Exchange, Governors shall be elected to succeed those whose terms then expire. The Governors so elected shall be identified as being of the same class as the Governors they succeed and shall be elected for a term expiring at the third succeeding annual election meeting of the Exchange or until their respective successors in each case are thereafter elected and qualified.

Anything in this Section 2 to the contrary notwithstanding, (1) any Governor that is a general partner or officer of a participant of the Midwest Clearing Corporation or Midwest Securities Trust Company ("Participant Governor") and is acting as a Participant Governor as of November 1, 1995 may continue to serve the remainder of his or her term[, even if doing so causes the total number of Governors to exceed twenty-five.]; and (2) the transition to a Board of Governors as comprised in accordance with this Section 2, from the Board of Governors as comprised as of September 24, 1997, shall be implemented as follows. At the 1998 annual election, Class I shall be reduced by two Member Governors. At the 1999 annual election, Class II shall be reduced by four Member Governors. At the 2000 annual election, Class III shall be reduced by one Member Governor and Class II shall be increased by one Member Governor. The Board of Governors shall be increased by three Non-Industry Governors by the 1999 annual election to serve for staggered terms so as to balance the Classes as determined by the Nominating Committee.

Participation in Meeting, Action or Proceeding

SEC. 3. No Governor shall be disqualified from participating in any meeting, action or proceeding of the Board of Governors by reason of having, either personally or as a member of any committee, made prior inquiry, examination or investigation of the subject under consideration, nor shall any member of any such committee be disqualified from acting as a Governor upon any appeal from a decision of any committee. But no [person] Governor shall participate in the [adjudication] determination of any matter in which [he] such Governor is personally interested. Notwithstanding the foregoing, Member Governors shall not be deemed to be personally interested in the determination of matters that may effect the members as a whole or certain classes of members, and Member Governors shall not be prohibited from participating in such determinations in the normal course of conducting Exchange business.

Quorum

SEC. 7. At all meetings of the Board of Governors, one-half of the number of Governors then in office (including not less than 50 percent of the Non-Industry Governors) shall constitute a quorum for the transaction of business and the act of a majority of the Governors present at any meeting at which there is a quorum shall be the act of the Board of Governors except as

may be otherwise specifically provided by statute, the Certificate of Incorporation, the Constitution or Rules. If at least 50 percent of the Non-Industry Governors are (i) present at or (ii) have waived their attendance for a meeting after receiving an agenda prior to such meeting, the requirement that not less than 50 percent of the Non-Industry Governors be present to constitute the quorum shall be deemed satisfied. If a quorum shall not be present at any meeting of the Board of Governors, a majority of the Governors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Definitions

SEC. 10. The following terms as used anywhere in the Constitution or the Rules, unless the context indicates otherwise, have the meanings herein specified:

(a) "Non-Industry" means a Governor or committee member (excluding the Chief Executive Officer of the Exchange) who is:

- (i) a Public Governor or committee member;
- (ii) an officer or employee of an issuer of securities listed exclusively on the Exchange; or
- (iii) any other individual who:

(A) is not, or has not served in the prior three years (or such lesser period as deemed appropriate by the Exchange, in its discretion, but not less than one year), as an officer, director, or employee of a broker or dealer and has not had (within the same time period specified above) an ownership interest in a broker or dealer that permits him or her to be engaged in the day-to-day management of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer;

(B) is not an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity;

(C) does not own more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers do not exceed ten percent of his or her net worth, or whose ownership interest does not otherwise permit him or her to be engaged in the day-to-day management of a broker or dealer;

(D) does not provide and whose firm or partnership does not provide professional services to brokers or dealers that constitute 20 percent or more of the professional revenues received by the Governor or committee member or 20 percent or more of the gross revenues received by the Governor's or committee member's firm or partnership;

(E) does not provide and whose firm or partnership does not provide professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Governor or committee member or 20 percent or more of the gross

revenues received by the Governor's or committee member's firm or partnership; and (F) does not have a consulting or employment relationship with or provide professional services to the Exchange and has not had any such relationship or provided any such services at any time within the prior three years.

(b) "Public" means a Governor or committee member who has no material business relationship with a broker or dealer or the Exchange.

(c) "On-Floor" when used in the context of Governors and committee members means members who are primarily engaged in business on the Exchange's trading floor or persons associated with member organizations primarily engaged in business on the Exchange's trading floor.

(d) "Off-Floor" when used in the context of Governors and committee members means members and persons associated with member organizations who are not "On-Floor."

(e) "Member Governor" means a Governor who is a member, general partner of a member firm or officer of a member corporation.

Article IV

Meetings of Members, Nominations and Elections

Nominating Committee

SEC. 3. There shall be a Nominating Committee composed of five (six to act in conjunction with the 1999 Annual Election and thereafter) [members] persons. Three [members] persons shall be elected at each annual election meeting of the Exchange from among members, general partners of member firms and officers of member corporations who do not hold any other office in the Exchange ("Member Committee members"). At least one Member Committee member shall be [active on the floor of the Exchange] On-Floor and at least one Member Committee member shall [not be active on the floor of the Exchange] be Off-Floor. Two [members other than Member Committee members] other persons on the Committee (three to act in conjunction with the 1999 Annual Election and thereafter) shall be [unaffiliated with any broker or dealer in securities] Non-Industry and shall be appointed annually by the Board of Governors at its first meeting held after the annual election meeting of the Exchange [("Non-member Committee members")]. Any vacancy in Member Committee members [upon] on the Nominating Committee shall be filled by the remaining [member of] persons on the Nominating Committee from among persons who would have been eligible for election to such position at the preceding annual election meeting. Any vacancy in Non-[member] Industry [Committee] committee members shall be filled by the Board of Governors. No [member of] person on the Nominating Committee in any year shall be eligible for election to any office or position in the Exchange for the ensuing year nor shall [he] such person serve [as a member of] on the Nominating Committee for two successive years. At all meetings of the Nominating Committee, a quorum for the

transaction of business shall consist of a majority of the committee members, including not less than 50 percent of the Non-Industry committee members. If at least 50 percent of the Non-Industry committee members are (i) present at or (ii) have filed a waiver of attendance for a meeting after receiving notice of such meeting, the requirement that not less than 50 percent of the Non-Industry committee members be present to constitute the quorum shall be deemed satisfied.

Reporting of Nominating Committee

SEC. 4(a). After consulting with the President and the Chairman of the Board with respect to the current developments and needs of the Exchange which should be considered in connection with nominations and not later than 30 days preceding each annual election meeting, the Nominating Committee shall report to the Secretary nominations to be voted on at the annual election meeting as follows:

(i) A Vice Chairman of the Board to serve for two years if his term is then expiring or until the end of the unexpired term if the office had been filled by the Board as a result of a vacancy.

(ii) [Eight] *Subject to the transition provisions of Article III, Sec. 2, seven* Governors [five] *three* of whom shall be [member] *Member* Governors and [three] *four* of whom shall be [non-member] *Non-Industry* Governors to serve for a term of three years, if the Governors whose terms are expiring are [members of] *in either Class I or Class [III] II, or [nine] eight* Governors, [six] *four* of whom shall be [member] *Member* Governors and [three] *four* whom shall be [non-member] *Non-Industry* Governors to serve a term of three years, if the Governors whose terms are expiring are [members of] *in Class [III] III.*

(iii) That number of Governors required to fill any vacancies on the Board of Governors to serve for any unexpired terms. Any person nominated to fill a vacancy on the Board of Governors shall be of the same category ([from the Chicago area or elsewhere, member] *Member* or [non-member] *Non-Industry*) as the Governor he is nominated to succeed;

(iv) Three Member Committee members of the Nominating Committee to act in connection with the next following annual election meeting;

(b) [The] *Subject to the transition provisions of Article III, Sec. 2, Nominating* Committee shall make its nominations so as to accomplish the following:

(i) [Having] *Of the [16] 10* [member] *Member* Governors [in Classes I, II and III consist of nine from the Chicago area (at least three of whom shall be active on the Floor of the Exchange) and seven from elsewhere in the United States or Canada, selected with a view to providing, over time, representation on the Board to all geographical areas in which there are member organizations which support and significantly contribute to the strength and growth of the Exchange] *at least 4 must be On-Floor and at least 4 must be Off-Floor, and, of the 12 Non-Industry Governors, at least 5 must be Public.*

(ii) Having a Vice Chairman of the Board and [member] *Member* Governors who, if

affiliated with member organizations, occupy senior management positions having substantial responsibility in such member organizations.

(iii) Having persons on the Board of Governors and the Nominating Committee who are interested in and knowledgeable about the various aspects of Exchange operations and of the securities business and the activities of the subsidiaries of the Exchange.

Limitation on Service

SEC. 5. No [member] *Member* or *Non-Industry* Governor[, nor the Chairman nor the Vice Chairman of the Board] who has served all [or part] of [two] *three* consecutive terms in such capacity [excluding terms expiring at the first annual meeting of the Exchange] shall be eligible for election [or appointment] in such capacity except after an interval of at least [one year] *two years. Notwithstanding the foregoing (1) No person who was elected as a Member Governor, whose term expires in either 1998 or 1999 and who will have served all or part of two consecutive terms in such capacity by the annual election meeting in 1998 or 1999, respectively, shall then be eligible for election in such capacity except after an interval of at least two years; and (2) any Non-Industry Governor whose term expires in either 1998 or 1999 and who will have served all of three or more consecutive terms in such capacity by the annual election meeting in 1998 or 1999, respectively, shall be eligible for election for one additional term. Neither the Chairman nor the Vice Chairman of the Board who has served all or part of two consecutive terms in such capacity shall be eligible for election or appointment in such capacity except after an interval of at least one year.* No [non-member] *Non-Industry* Governor shall be eligible for election or reelection as a Governor of the Exchange upon reaching the age of 71; however, having been elected or re-elected prior to reaching the age of 71 such [non-member] *Non-Industry* Governor shall be entitled to complete the term during which he or she reached the age of 71.

Nominations by Members

SEC. 7. Members may nominate other candidates for the same office or offices as the candidates nominated by the Nominating Committee. Such nominations shall be by written petition which shall designate the candidate by name and office and shall be signed by the members so nominating. The petition must be filed with the Secretary at least 20 days prior to the annual election meeting. A petition shall not be valid unless signed by not less than 10 members. No member may endorse more than one candidate for the same office, excepting candidates for members of the Board of Governors and of the Nominating Committee, in which case as many candidates as there are offices to be filled may be endorsed. In case of any nomination of a candidate or candidates for election to the Board of Governors pursuant to this Section 7, the election of [member] *Member* Governors [from the Chicago area, member Governors from elsewhere in the United States or Canada] and [non-member] *Non-Industry* Governors shall be separate so that the

candidate or candidates so nominated will be opposing only the candidate or candidates of the same category nominated by the Nominating Committee.

Term "Member" Includes Voting Designee

SEC. 14. The word "member" wherever used in this Article IV *in the context of a member of the Exchange* shall include and also mean the "voting designee" of a member organization but shall not include or mean the "nominee" of a member organization.

Article V

Committees

Membership of Executive Committee

SEC. 4. The Executive Committee shall consist of not less than seven member of the Board of Governors, plus the Chairman of the Board and the President as ex-officio members with full voting powers. *Not less than 50 percent of the committee members shall be Non-Industry.* The Chairman of the Board shall be the Chairman of the Executive Committee. Appointments to the Executive Committee shall be made by the Vice Chairman of the Board with the approval of the Board of Governors. Such appointments shall be made with a view to providing, over time, representation on the Committee to all geographical areas in which there are member organizations which support and significantly contribute to the strength and growth of the Exchange and with a view to having persons on the Executive Committee who are interested in the knowledgeable about the various aspects of Exchange operations and of the securities business and the activities of the subsidiaries of the Exchange. Any Governor may be appointed a temporary member of the Executive Committee by the Vice Chairman of the Board during the absence or inability to act of a regular member of the Committee. Such temporary appointee shall have all the rights, powers, authority, duties and obligations of the regular committeeman until the later returns or is again able to act. A majority of members of the Executive Committee *(including not less than 50 percent of the Non-Industry committee members), which may include ex-officio members, shall constitute a quorum. If at least 50 percent of the Non-Industry committee members are (i) present at or (ii) have filed a waiver of attendance for a meeting after receiving an agenda prior to such meeting, the requirement that not less than 50 percent of the Non-Industry committee members be present to constitute the quorum shall be deemed satisfied.*

Rules

Article IV

Committees

Compensation Committee

RULE. 7. There shall be a Compensation Committee which shall consist of the Chairman of the Board with full voting powers, and not less than two other Governors[.]. [at] *[at least one of whom] Not less than 50 percent of the committee members shall be [a non-member] Non-Industry Governors (including at least one Public*

Governor). [(Throughout the Rules, the term non-member governor shall mean a Governor who is unaffiliated with the Exchange or any broker or dealer in Securities, as defined in Article III, Section 2 of the Exchange's Constitution).] It shall have the responsibility of establishing the compensation of the President and of coordinating with the President to determine a comprehensive corporate compensation and benefits policy. The comprehensive corporate policy shall include the structure and the administration of the determined compensation policy, the advisability and use of outside consultants, and a periodic review of the manner in which the determined policy is being administered.

Audit Committee

RULE 8. There shall be an Audit Committee which shall have not less than three members, all of whom shall be Governors, in addition to the Chairman of the Board. [The majority of the voting members of the Committee shall not be active on the floor of the Exchange. In the event that the Committee is appointed with five or more voting members, two such members shall be, if practicable, non-member] *Not less than 50 percent of the committee members shall be Non-Industry Governors (including at least one Public Governor).* The Chairman of the Committee shall be a [non-member] *Non-Industry Governor.* The Committee shall have the responsibility to annually review with the independent auditors, the scope of their examination and the cost thereof. It shall periodically review with the independent auditors and the internal auditor, the Exchange's internal controls and the adequacy of the internal audit program. It shall review the annual "management letter" and other reports submitted by the independent auditors, and take such action with respect thereto as it may deem appropriate. The Committee shall also annually recommend to the Board of Governors independent public accountants for appointment as auditors of the books, records and accounts of the Exchange and its subsidiaries.

Committee Quorum

RULE 10. One-half of its members, including the ex-officio ones, shall constitute a quorum of each committee provided for in this Article, except for the Committee on Specialist Assignment and Evaluation, the *Compensation Committee and the Audit Committee.* For [such] *the Committee on Specialist Assignment and Evaluation,* one-half of its members, not counting ex-officio members, shall constitute the number of committee members required for a quorum. Ex-officio members may be included for purposes of determining a quorum, provided that at least one-half of those members present are no ex-officio ones. *For the Compensation Committee and the Audit Committee, a quorum for the transaction of business shall consist of one-half of the committee members, including not less than 50 percent of the Non-Industry members of such committees. If at least 50 percent of the Non-Industry committee members are (i) present at or (ii) have filed a waiver of attendance for a meeting after receiving an*

agenda prior to such meeting, the requirement that not less than 50 percent of the Non-Industry committee members be present to constitute the quorum shall be deemed satisfied.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39768; File No. SR-MSRB-98-3]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Rule G-36

March 17, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 10, 1998, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (SR-MSRB-98-3). The proposed rule change is described in Items I and II below, which Items have been prepared by the Board. The Board has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (e)(6) of Rule 19b-4 under the Act which renders the proposal effective upon receipt of this filing by the Commission.³ 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 has filed with the Commission a proposed rule change consisting of an amendment to section (c)(iii) of Rule G-36, on delivery of official statements, advance refunding documents, and Forms G-36(OS) and G-36(ARD) to the Board. The proposed

rule change will become operative on April 9, 1998.⁴

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 Board 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 Board 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

Rule G-36 requires that a broker, dealer or municipal securities dealer acting as underwriter in a primary offering of municipal securities (with certain limited exceptions) send to the Board copies of the official statement and completed Form G-36(OS). The rule was adopted by the Board for the purpose of creating a repository for official statements that would function much like a public library that stores, indexes and provides copies of official statements.⁵ This library⁶ was intended to serve as a central source for information regarding municipal securities trading in the primary and secondary markets. As originally adopted by the Board and approved by the Commission, Rule G-36 did not apply to any primary offering that qualified for an exemption under current section (d)(1) of Rule 15c2-12 under the Act, including, among other things, commercial paper that qualified for the exemption set forth in paragraph (ii) of Rule 15c2-12(d)(1).⁷ In 1992, Rule G-36 was amended to make commercial paper and certain other categories of municipal securities subject to the rule if an official statement in final form had been prepared by or on behalf of the issuer, thereby extending the reach of Rule G-36 beyond the scope of Rule

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On March 4, 1998, pursuant to Rule 19b-4(e)(b)(iii), the Board provided the required five day advance notice to the Commission of its intent to file this proposed rule change. In this notice, the Board has represented that this proposed rule change: (1) Will not significantly affect the protection of investors; (2) will not impose any significant burden on competition; and (3) will not become operative for thirty days after the date of this filing. See letter from Ernesto A. Lanza, Assistant General Counsel, MSRB, to Katherine A. England, Esq., Assistant Director, Division of Market Regulation, SEC, dated March 2, 1998.

⁴ *Id.*

⁵ See Securities Exchange Act Rel. No. 28081 (June 1, 1990), 55 FR 23333 (June 7, 1990).

⁶ The library is now known as the Municipal Securities Information Library® (MSIL®) system. Municipal Securities Information Library and MSIL are registered trademarks of the Board.

⁷ Prior to Rule 15c2-12 amendments adopted by the Commission on November 10, 1994, this section was labeled "(c)(2)." See Securities Exchange Act Rel. No. 26985 (June 28, 1989), 54 FR 28799 (July 10, 1989) (Adopting Release for Rule 15c2-12).