

Filing Dates: The applications were filed on October 1, 2001, and amended on December 7, 2001.

Applicants' Address: Evergreen Funds, 200 Berkeley St., Boston, MA 02116.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45207; File No. SR-OPRA-2001-03]

Options Price Reporting Authority; Notice of Filing of Amendment to OPRA Plan To Exclude Foreign Currency Options From the Calculation of Capacity Allocation Provided for in the OPRA Plan

December 28, 2001.

Pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 10, 2001, the Options Price Reporting Authority ("OPRA"),² submitted to the Securities and Exchange Commission ("Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan"). The amendment would exclude foreign currency options ("FCOs") from the calculation of capacity allocation provided for in the OPRA Plan. The Commission is publishing this notice to solicit comments on the proposed amendment from interested persons.

I. Description and Purpose of the Amendment

The proposed amendment would revise certain provisions of section III,

"Definitions" and section V(d), "Quarterly Calculation of Capacity Allocation" in order to exclude FCOs from the calculation of system capacity allocation that is provided for in the OPRA Plan and make available exclusively for the processing and dissemination of FCO market data a fixed amount of system capacity as determined by OPRA from time to time. The proposed amendment provides that the capacity available for FCO market data will be capable of handling at least 350 messages per second ("mps"), the amount currently assigned by OPRA to FCO market data. OPRA represents that such capacity is sufficient to meet the anticipated needs of the FCO market. OPRA represents that the proposed amendment would make no substantive change to the provisions of the OPRA Plan.

II. Implementation of Plan Amendment

OPRA intends to make the proposed amendment to the OPRA Plan effective immediately upon approval of the amendment by the Commission pursuant to Rule 11Aa3-2 under the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed plan amendment 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, and all written statements with respect to the proposed plan amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment between the Commission and any person, other than those 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 at the principal offices of OPRA. All submissions should refer to File No. SR-OPRA-2001-03 and should be submitted by January 22, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³

Margaret F. McFarland,
Deputy Secretary.

[FR Doc. 02-215 Filed 1-3-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45199; File No. SR-MSRB-2001-09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Rule A-4, on Meetings of the Board

December 27, 2001.

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 December 13, 2001, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The MSRB has designated the proposed rule change as concerned solely with the administration of the Board under section 19(b)(3)(A) of the Act, which renders the proposed rule change effective upon receipt by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB has filed with the Commission a proposed rule change to amend rule A-4, on meetings of the Board, to include E-mail as a method of contacting and polling Board members. The text of the proposed rule change is set forth below. Additions are italicized; deletions are bracketed.

Rule A-4. Meetings of the Board

- (a) No change.
- (b) Notice of Meetings. Notice of the time and place of special meetings of the Board shall be mailed to each member, at such member's address appearing in the records of the Board, not later than the seventh calendar day preceding the date on which the

¹ 17 CFR 240.11Aa3-2.

² OPRA is a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act, 15 U.S.C. 78k-1, and Rule 11Aa3-2 thereunder, 17 CFR 240.11Aa3-2. See Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981). The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The five signatories to the OPRA Plan that currently operate an options market are the American Stock Exchange, the Chicago Board Options Exchange, the International Securities Exchange, the Pacific Exchange, and the Philadelphia Stock Exchange. The New York Stock Exchange is a signatory to the OPRA Plan, but sold its options business to the Chicago Board Options Exchange in 1997. See Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

³ 17 CFR 200.30-3(a)(29).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

meeting is to be held, or by telephone, [telegraph,] *E-mail* or personal delivery not later than the third calendar day preceding the date on which the meeting is to be held. Written notice of special meetings of the Board shall be signed by the Secretary to the Board. Notice of a special meeting shall also set forth the purpose or purposes of the meeting and the name or names of the person or persons at whose request the meeting is being called. Notice of a special meeting need not be given to any member who submits a signed waiver of notice before or after the meeting, or who attends the meeting without protesting, prior thereto or at the commencement thereof, the lack of notice to such member. No notice of regular meetings of the Board shall be required.

(c) No change.

(d) Action Without a Meeting. Action by the Board may be taken without a meeting by written consent of the Board setting forth the action so taken or by telephone or *E-mail* poll of all members of the Board, provided that, in the case of action taken by telephone or *E-mail* poll, the Board, at a meeting, or the chairman of the Board authorizes the action to be taken by such means. The Executive Director shall transmit to each Board member, as soon as practicable after a telephone or *E-mail* poll is taken, a written statement setting forth the question or questions with respect to which the telephone or *E-mail* poll was taken and the results of the telephone or *E-mail* poll. Such statement shall also be entered in the minutes of the next Board meeting. In the case of action taken without a meeting by written consent, [or] telephone or *E-mail* poll, an affirmative vote of a majority of the whole Board is required.

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

1. Purpose

Rule A-4, on meetings of the Board, establishes the procedures and requirements for holding Board meetings, the notice of the time and place required for special meetings, the quorum and voting requirements, and the procedures for taking action without a Board meeting.

Rule A-4(b), on notice of meetings, provides that notice of the time and place of special meetings of the Board shall be mailed to each Board member not later than the seventh calendar day preceding the date on which the meeting is to be held, or by telephone, telegraph or personal delivery not later than the third calendar day preceding the date on which the meeting is to be held. Notice of a special meeting shall also set forth the purposes or purposes of the meeting and the name or names of the person or persons at whose request the meeting is being called.

Rule A-4(d), on action without a meeting, provides that action by the Board may be taken without a meeting by written consent of the Board or by telephone poll of all members of the Board, provided that certain administrative procedures are followed.³

The proposed rule change amends rules A-4(b) and A-4(d) to include *E-mail* as a method of contacting and polling Board members. The amendment to rule A-4(b) provides that notification of special meetings of the Board may be made by *e-mail* and it removes notification of such meetings by the use of telegraph. The amendment to rule A-4(d) provides that *e-mail* may be used in conducting a poll of the Board for action taken without a meeting.

2. Basis

The MSRB has adopted the proposed rule change pursuant to section 15B(b)(2)(I) of the Act, which authorizes the MSRB to adopt rules that provide for

the operation and administration of the Board.

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 only applies to the operation and administration of the MSRB.

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

Written comments were neither solicited nor received.

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

The MSRB has designated the proposed rule change as concerned solely with the administration of the MSRB under section 19(b)(3)(A) of the Act, which renders the proposed rule change effective upon receipt by the Commission. At any time within 60 days of filing of the proposed rule change, the Commission may summarily abrogate the proposed 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 20549-0609. 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 MSRB's principal offices. All submissions should refer to File No. SR-MSRB-2001-09 and should be submitted by January 25, 2002.

³ The administrative procedures contained in rule A-4(d) are:

* * * in the case of action taken by telephone poll, the Board, at a meeting, or the chairman of the Board authorizes the action to be taken by such means. The Executive Director shall transmit to each Board member, as soon as practicable after a telephone poll is taken, a written statement setting forth the question or questions with respect to which the telephone poll was taken and the results of the telephone poll. Such statement shall also be entered in the minutes of the next Board meeting. In the case of action taken without a meeting by written consent or telephone poll, an affirmative vote of a majority of the whole Board is required.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 02-180 Filed 1-3-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45206; File No. SR-NASD-2001-76]

Self-Regulatory Organizations; Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Amending NASD Rules 4510, 4520 and 4530 Relating to Issuer Entry and Annual Fee Schedules

December 28, 2001.

I. Introduction

On October 31, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with 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 to amend Association Rules 4510, 4520, and 4530 pertaining to issuer entry and annual fee schedules for The Nasdaq National and The Nasdaq SmallCap Markets for both domestic and non-U.S. listings as well as additional conforming changes. On November 21, 2001, Nasdaq filed Amendment No. 1 to the proposed rule change.³ The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on November 30, 2001.⁴ No comments were received regarding the proposed rule change, as amended. This order approves the proposed rule change, as amended, on an accelerated basis.

II. Description of the Proposed Rule Change

The NASD proposed to amend the Association Rules 4510, 4520, 4530 pertaining to issuer entry and annual fees on The Nasdaq National Market and

The Nasdaq SmallCap Market for both domestic and foreign listings. It has been approximately ten years since the NASD amended the entry and annual fees for SmallCap⁵ and American Depository Receipts ("ADR") listings,⁶ and four years since it amended The Nasdaq National Market entry and annual fees.⁷

The NASD proposed to increase entry and annual fees for The Nasdaq National Market, including ADRs. The Nasdaq National Market entry fees would be split into two fee schedules: one schedule for all U.S. issuers and foreign issuers raising capital in conjunction with their listing on Nasdaq; and another schedule for foreign issuers that are not raising capital in connection with their listing. This second schedule has somewhat lower fees for foreign listings under 5 million shares, in recognition of the fact that these listings are non-capital raising and generally represent secondary market listings. The NASD will also increase its existing annual fee structure for The Nasdaq National Market.

The NASD proposed to increase entry and annual fees for The Nasdaq SmallCap Market as well. ADRs on The Nasdaq SmallCap Market will follow the same annual fee schedule as domestic and foreign issues. Finally, the NASD intends to add a new fee schedule to the NASD Rule 4500 Series for Other Securities qualified under NASD Rule 4420(f). Finally, the NASD requested that the new fees apply as of January 1, 2002 in order to be consistent with the expectations of Nasdaq listed companies and to ease administration of the fees.⁸

III. Discussion

After careful review, 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 association.⁹ In particular, the Commission finds that the proposed rule change, as amended, is consistent with section 15A(b)(6) of the Act¹⁰ because it is designed to promote just and equitable principles of trade. In addition, the Commission finds that the proposed rule change, as amended, is consistent with section 15A(b)(5) of the

Act¹¹ because it provides for the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using any facility or systems which the association operates. Specifically, the increase reflects additional costs that Nasdaq has represented it incurs for services provided to issuers. As represented by the NASD, it has committed increased resources to provide regulatory oversight, client coverage, and professional services to listed companies. The Nasdaq represents that additional resources were committed to fund regulatory costs associated with the institution of corporate governance requirements on The Nasdaq SmallCap Market in 1997. Furthermore, Nasdaq represents that it has made several market improvements such as Nasdaq Online, the Nasdaq Marketsite, and enhancements to Nasdaq.com, as well as market quality improvements such as decimalization, SuperSOES, and the development of SuperMontage. In addition, Nasdaq has represented that it also intends to allocate resources to fund service enhancements requested by Nasdaq companies, such as creating a telephone and technology-based corporate-client information center to provide Nasdaq companies with a range of integrated products and services in a more centralized and timely manner.¹²

Nasdaq seeks to implement the proposed fees on January 1, 2002. In order to be consistent with the expectations of Nasdaq listed companies and to ease administration of the fees, Nasdaq has requested that the Commission find good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that the proposed rule change and Amendment No. 1 were noticed for the full 21-day comment period and the Commission received no comments regarding the proposed rule change, as amended. The Commission believes that granting accelerated approval to the proposed rule change will allow Nasdaq to implement the new fees by January 1, 2002, and will provide issuers with notice and an opportunity to budget for the additional costs. Accordingly, the Commission finds good cause, consistent with

⁵ See Securities Exchange Act Release No. 30143 (January 2, 1992), 57 FR 726 (January 8, 1992).

⁶ See Securities Exchange Act Release No. 28731 (January 2, 1991), 59 FR 906 (January 9, 1991).

⁷ See Securities Exchange Act Release No. 39613 (February 2, 1998), 63 FR 6789 (February 10, 1998).

⁸ See Amendment No. 1, *supra* note 3.

⁹ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78o-3(b)(6).

¹¹ 15 U.S.C. 78o-3(b)(5).

¹² See Amendment No. 1, *supra* note 3.

⁴ 17 CFR 200.30-3(a)(12)

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Sara Nelson Bloom, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 21, 2001 ("Amendment No. 1").

⁴ See Securities Exchange Act Release No. 45101 (November 23, 2001), 66 FR 59827.