SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56231; File No. SR–CBOE 2007–73]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change To Assess, on a Retroactive Basis, Certain CBOE and CBSX Market Data Fees

August 9, 2007.

On June 28, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposal to retroactively apply certain recently modified market data fees. The proposal was published for comment in the **Federal Register** on July 10, 2007.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Exchange proposes to retroactively apply the recent increase in monthly fees for enhanced TickerXpress (''TX'') [4] market data from $200 per month to $300 per month and the recently adopted fee of $100 per TX user per month for use of TX software for the use and display of market data. The Exchange also proposes to retroactively apply CBSX's recently adopted market data infrastructure fee, which is a monthly fee assessed to recoup fees paid to a third-party market data vendor and other parties to help establish facilities at CBSX through which the third-party market data vendor can provide CBSX participants with certain market data. The market data infrastructure fee is equal to $19,400 divided by the number of CBSX participants receiving the market data.

These changes in the Exchange's market data fees became effective on June 1, 2007, pursuant to a previous rule change submitted by the Exchange.[5] The Exchange now proposes to retroactively apply these fee changes for the period April 1, 2007, through May 31, 2007.

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.[6] Specifically, the Commission finds that the proposal is consistent with section 6(b)(4) of the Act,[7] which requires the equitable allocation of reasonable dues, fees, and other charges among Exchange members and other persons using Exchange facilities. In approving this proposal, the Commission notes the Exchange's statements that: (1) Retroactively applying the TX market data fees will compensate the Exchange for its increased costs in providing the TX data and will partially offset the license fees paid by the Exchange to its third-party provider for making the TX software available to users during this time period; and (2) retroactively applying the market data infrastructure fee will enable the Exchange to recoup the fees CBSX paid during this time period for providing the infrastructure to make the market data available to CBSX participants.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–CBOE–2007–73) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Florence E. Harmon,
Deputy Secretary.
[FR Doc. E7–16053 Filed 8–15–07; 8:45 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56237; File No. SR–NASDAQ–2007–043]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To Remove Provisions Governing the Operation of the ACES System

August 9, 2007.

I. Introduction

On April 25, 2007, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act

of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposal to remove its rule provisions governing the operation of the ACES system. The Exchange filed Amendments No. 1 and 2 to the proposed rule change on May 29, 2007, and June 5, 2007, respectively. The proposal was published for comment in the **Federal Register** on June 18, 2007.[3] The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendments No. 1 and 2.

II. Description of the Proposal

The Exchange proposes to delete the Rule 6200 Series and Rule 7026, which govern the operations of the ACES system. The Exchange's rule book contains rules pertaining to ''facilities'' of the exchange, and the Exchange believes that ACES is not a ''facility'' within the meaning of the Act.

The ACES system is a neutral communications service that allows Nasdaq members and non-members to route orders to one another. Market participants may execute orders received through ACES in any manner that they deem consistent with duties of best execution and other applicable industry obligations. ACES does not effect trade executions or report executed trades to the consolidated tape. Because ACES merely allows market participants to route orders to one another for execution and does not effect trade executions or report executed trades to the consolidated tape, the Exchange does not believe that ACES constitutes a facility of a national securities exchange within the meaning of the Act, nor does it believe it is required to file or maintain rules regarding the operation of ACES.

In the past, when Nasdaq's parent entity, The Nasdaq Stock Market, Inc., was a subsidiary of the National Association of Securities Dealers, Inc. (''NASD''), ACES rules were not included in the NASD Manual, based on Nasdaq's and NASD's understanding that ACES is not a facility of the NASD. These rules were, nevertheless, approved as Nasdaq rules in connection with Nasdaq's registration as a national securities exchange. Nasdaq now proposes the deletion of these rules based on its conclusion that ACES is not a Nasdaq facility and that therefore these rules are not required under the Act. However, Nasdaq represented that it would file a proposed rule change if

---

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56000 (July 2, 2007), 72 FR 37554.

[4] TX is an Exchange service that supplies market data to Exchange market makers trading on the Hybrid Trading System.

[5] *See* Securities Exchange Act Release No. 55882 (June 8, 2007), 72 FR 32931 (June 14, 2007) (notice of filing and immediate effectiveness of SR–CBOE–2007–54).

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55892 (June 11, 2007), 72 FR 33550 (''Notice'').