

members and Exchange member applicants.

The Exchange will keep a list of the fingerprint cards and electronic fingerprint records submitted to the Attorney General in order to check on fingerprint submissions to the Attorney General pursuant to this Plan for which no fingerprint report has yet been received from the Attorney General. When a fingerprint report is received by the Exchange from the Attorney General with respect to fingerprints submitted by the Exchange pursuant to this Plan, the Exchange promptly will manually (such as by United States mail) or electronically forward a copy of the fingerprint report to the appropriate Exchange member or Exchange member applicant. If the Exchange electronically forwards a copy of a fingerprint report to an Exchange member or Exchange member applicant, the Exchange will take reasonable measures to transmit the report in an electronically secure manner.

The Exchange promptly will review all fingerprint reports received from the Attorney General with respect to fingerprints submitted by the Exchange pursuant to this Plan in order to determine whether they contain information involving:

1. A statutory disqualification, as that term is defined in the Act; or
2. material misstatements or omissions concerning information previously reported to the Exchange.

If so, the Exchange promptly will take appropriate action concerning eligibility or continued eligibility for Exchange membership or for employment or association with an Exchange member.

Copies of fingerprint reports received from the Attorney General with respect to fingerprints submitted by the Exchange pursuant to this Plan will be maintained by the Exchange in accordance with the Exchange's Record Retention/Destruction/Conversion Plan filed with the Commission. Any maintenance of fingerprint records by the Exchange shall be for the Exchange's own administrative purposes, and the Exchange is not undertaking to maintain fingerprint records on behalf of Exchange members pursuant to Rule 17f-2(d)(2).

The above procedures will be modified in the following manner with respect to individuals in registration capacities recognized by the Exchange who are associated persons of Exchange members that are not members of the NASD. The Exchange has established an arrangement with NASD to permit these individuals to be electronically registered with the Exchange through the Web Central Registration Depository

("Web CRD"). In connection with this registration process, these registered persons will have their fingerprints processed and submitted to the Attorney General through the facilities of either NASD or the Exchange. The extent to which these registered persons may utilize either one or both of these facilities will be determined by the Exchange and NASD. Fingerprint reports for these registered persons that are generated by the Attorney General will be provided to Web CRD and will be provided to the members with which these registered persons are associated through Web CRD. Record-keeping with respect to fingerprint submissions to and fingerprint reports from the Attorney General for these registered persons will be maintained by NASD. NASD will notify the Exchange if a fingerprint report received by Web CRD for one of these registered persons contains information relating to an arrest or conviction. In such an instance, the Exchange will review the fingerprint report and take appropriate action, if necessary, concerning eligibility or continued eligibility of the individual for employment or association with an Exchange member.

The Exchange will advise Exchange members and Exchange member applicants of the availability of its fingerprint services and any fees charged by the Exchange in connection with those services and the processing of fingerprints pursuant to this Plan. The Exchange shall file any such fees with the Commission pursuant to Section 19(b)(3)(A) of the Act.

The Exchange shall not be liable for losses or damages of any kind in connection with its fingerprinting services, as a result of its failure to follow, or properly to follow, the procedures described above, or as a result of lost or delayed fingerprint cards, electronic fingerprint records, or fingerprint reports, or as a result of any action by the Exchange or the Exchange's failure to take action in connection with this Plan.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>1</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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<sup>1</sup> 17 CFR 200.30-3(a)(17)(iii).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47032; File No. SR-CBOE-2002-68]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Extension of an Access Fee for Non-Customer RAES Orders

December 18, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 20, 2002, the Chicago Board Options Exchange ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. 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 CBOE proposes to make a change to its Fee Schedule to extend the applicability of an access fee for non-customer RAES orders. Below is the text of the proposed rule change. Proposed new text is italicized, and proposed deleted text is bracketed.

\* \* \* \* \*

#### FEE SCHEDULE

NOVEMBER 1, 2002

#### 4. RAES (RETAIL AUTOMATIC EXECUTION SYSTEM) (1)(4): Per Contract

Assessed to Non-Customer Transactions (*all RAES transactions with origin codes other than "C"*)[In MNX, NDQ, QQQ and XEO] \* \* \* \$ .30

\* \* \* \* \*

(1) Per contract side, including FLEX options. Transaction and Trade Match Fees are applicable to the CBOEdirect system.

\* \* \* \* \*

(4) Transaction, trade match and RAES fees are charged to the CBOE executing firm on the input record.

\* \* \* \* \*

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-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 CBOE 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 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

#### 1. Purpose

The CBOE is proposing to extend a \$.30 per contract Access Fee to all non-customer transactions (defined as all transactions with origin codes other than "C")<sup>3</sup> in option classes that are executed by means of the CBOE's Retail Automatic Execution System ("RAES").<sup>4</sup> Under this proposal, all non-customer RAES transactions would be uniformly assessed this fee. The CBOE also notes that this fee would only be charged to Exchange member firms, through the customary monthly billing that occurs shortly after the close of each trading month. The fee would not be charged to non-members of the Exchange.

This proposal is related to the fact that the CBOE has begun to permit certain broker-dealer orders to be executed on RAES for equity option classes.<sup>5</sup> Having thus extended the benefits of rapid, automatic execution to such non-customer orders, the Exchange seeks to impose this fee to help allocate to such orders a fair share of the related

<sup>3</sup> Every order entering the CBOE Order Routing System is assigned an origin code to reflect the category (though not the specific identity) of the source of each order: "C" for public customers, "B" for Broker-Dealers, "F" for proprietary accounts of member firms of the Options Clearing Corporation, "M" for CBOE market-makers, "N" for non-CBOE market-makers, and "Y" for specialists in an underlying security. The CBOE adopted a related order identification rule for market-maker and specialist orders. See Securities Exchange Act Release No. 46102 (June 21, 2002), 67 FR 43692 (June 28, 2002) (SR-CBOE-2002-33).

<sup>4</sup> The CBOE applies the \$.30 per contract Access Fee for non-customer RAES orders in options on the Nasdaq 100® Index Tracking Stock ("QQQ"), Nasdaq-100® Index Options (NDX), CBOE Mini-NDX Index Options ("MNX<sup>SM</sup>"), and European style S&P 100® Index options ("XEO®") classes. See Securities Exchange Act Release No. 46455 (September 3, 2002), 67 FR 57468 (September 10, 2002) (SR-CBOE-2002-42).

<sup>5</sup> See Securities Exchange Act Release No. 46598 (October 3, 2002), 67 FR 63478 (October 11, 2002) (SR-CBOE-2002-56).

costs of running the RAES and related Exchange systems. The CBOE notes in this regard that most index customer orders are already assessed a RAES fee of \$.25 per contract.<sup>6</sup> In addition, as noted earlier, the CBOE has already adopted the Access Fee for non-customer RAES transactions in the QQQ, NDX, MNX, and XEO option classes.<sup>7</sup>

Under this proposal, the Access Fee would continue to apply to non-customer RAES options transactions in QQQ, NDX, MNX, and XEO and would be extended to non-customer RAES transactions in equity options, as well as other option classes when non-customer orders in those classes become eligible for execution via RAES.

The CBOE believes that this fee would help better equalize RAES fees between customer and non-customer RAES orders. The CBOE also notes that this proposal, like SR-CBOE-2002-42, is modeled on a filing by the Pacific Exchange, Inc., which adopted a \$.45 per contract surcharge fee for all broker-dealer orders executed via its automatic execution system.<sup>8</sup>

#### 2. Statutory Basis

The CBOE believes the proposed rule change is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>10</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

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

The Exchange 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.

### 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 proposed rule change has become effective pursuant to Section

<sup>6</sup> QQQ customer orders are currently exempt from the RAES fee, and DJX RAES customer orders are only assessed the fee on the first 25 contracts.

<sup>7</sup> See *supra* note 4.

<sup>8</sup> See Securities Exchange Act Release No. 45662 (March 27, 2002), 67 FR 16786 (April 8, 2002) (SR-PCX-2002-10).

<sup>9</sup> 15 U.S.C. 78f(b)

<sup>10</sup> 15 U.S.C. 78f(b)(4).

19(b)(3)(A)(ii) of the Act<sup>11</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>12</sup> because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of the 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, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-2002-68 and should be submitted by January 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).