

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

## 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 Exchange 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 Exchange 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 proposes to adopt a \$0.30 per contract access fee for all non-customer orders in the MNX<sup>SM</sup>, NDX, QQQ, and XEO<sup>®</sup> option classes that are executed through RAES. Under this proposal, all non-customer transactions in these options classes that are executed via RAES would be uniformly assessed this fee.

According to the CBOE, non-customer orders subject to this proposed fee are Firm orders, CBOE market maker orders, non-CBOE market maker orders, orders from a specialist in the underlying security, and orders for the account of a registered broker-dealer.<sup>3</sup> 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. Non-members of the Exchange would not be charged this proposed fee.

The CBOE recently began to allow broker-dealer orders to be executed on RAES for products within the jurisdiction of the Exchange's Index Floor Procedure Committee.<sup>4</sup> Currently, such orders are only authorized in the QQQ, NDX, MNX<sup>SM</sup>, and XEO<sup>®</sup> option classes. Having extended the benefits of rapid, automatic execution to such non-customer orders, CBOE seeks to impose this fee to help allocate to such orders a fair share of the related costs of running RAES and related Exchange

systems. The CBOE notes in this regard that most index customer orders are already assessed a RAES fee of \$0.25 per contract.<sup>5</sup> The CBOE believes that this fee would help to better equalize RAES fees between customer and non-customer RAES orders. The CBOE also notes that this proposal is modeled after File No. SR-PCX-2002-10.<sup>6</sup>

#### (2) Statutory Basis

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of section 6(b)(4),<sup>8</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 foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and Rule 19b-4(f)(2) hereunder.<sup>10</sup> 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 purpose of the Act.

<sup>5</sup> The CBOE notes that QQQ customer orders are currently exempt from the RAES fee, and Dow Jones Industrial Index customer orders executed through RAES are only assessed the fee on the first 25 contracts.

<sup>6</sup> Under that proposal, the Pacific Exchange, Inc. established a \$0.45 per contract surcharge fee for all broker-dealer orders executed via its automatic execution system. See Securities Exchange Act Release No. 45662 (March 27, 2002), 67 FR 16786 (April 8, 2002).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78(s)(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

## 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 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 Exchange. All submissions should refer to File No. SR-CBOE-2002-42 and should be submitted by October 1, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46452; File No. SR-CBOE-2002-43]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Electrical Fees for Market Maker Hand Held Terminal Tethering

September 3, 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 August 5, 2002, the Chicago Board Options Exchange, Inc. ("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 Exchange. The Commission is publishing this

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Telephone conversation between Christopher R. Hill, Attorney, CBOE, and Christopher Solgan, Attorney, Division of Market Regulation, Commission, on August 15, 2002.

<sup>4</sup> See Securities Exchange Act Release No. 46113 (June 25, 2002), 67 FR 44486 (July 2, 2002).

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 add a pass-through charge for electrician service pertaining to market maker hand held terminal tethering services on the floor. The text of the proposed rule change is available at the Office of the Secretary, the CBOE, and the Commission.

### **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 Exchange is submitting this rule filing to add to its Fee Schedule charges for electrician services connected to the installation and relocation of infrastructure related to the tethering of market maker hand held terminals ("MMHs") on the CBOE trading floor. These terminals, originally designed to be wireless, now have the option of being tethered, which can provide superior speed and reliability of data transmission. The Exchange proposes to charge \$350 for installation of the tethering, and \$200 for relocation. There will be no charge for termination of the tethered service. These fees represent a simple pass-through of the Exchange's costs to provide these services. The CBOE notes that this fee will be charged to Exchange members through their clearing firms, by way of the customary monthly billing that occurs shortly after the close of each trading month.

##### **2. Statutory Basis**

The Exchange believes that its proposal is consistent with section 6(b) of the Act,<sup>3</sup> in general, and section 6(b)(4) of the Act,<sup>4</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 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**

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>5</sup> and subparagraph (f)(2) of Rule 19b-4<sup>6</sup> thereunder. 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 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 at 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-2002-43 and should be submitted by October 1, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-46456; File No. SR-NASD-2002-106]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. To Establish Maximum Execution Fees and Liquidity Provider Rebates for SuperSoes Transactions in Low-Priced Securities**

September 3, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on August 6, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. Nasdaq submitted Amendment No. 1 with the Commission on August 19, 2001.<sup>3</sup> Nasdaq filed Amendment No. 2 with the Commission on August 30, 2001.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Thomas P. Moran, Office of General Counsel, Nasdaq, to Katherine A. England, Associate Director, Division of Market Regulation ("Division"), Commission, dated August 16, 2002. In Amendment No. 1, Nasdaq made non-substantive, technical amendments to its rule.

<sup>4</sup> See letter from Thomas P. Moran, Office of General Counsel, Nasdaq, to Katherine A. England, Associate Director, Division of Market Regulation, dated August 30, 2002. In Amendment No. 2, Nasdaq made a non-substantive, technical amendment to its rule. For purposes of determining the effective date and calculating the 60-day abrogation date, the Commission considers August 30, 2002, the date Nasdaq filed Amendment No. 2, to be the effective date of the proposed rule change.

<sup>3</sup> 15 U.S.C. 78f(b).

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

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).