

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

The Exchange proposes a pilot program to suspend an Access Fee for non-customer orders in equity option classes executed through its Retail Automatic Execution System ("RAES"). The text of the proposed rule change appears below.<sup>3</sup> New text is in italics.

### Fee Schedule

March 11, 2003

#### 4. RAES (Retail Automatic Execution System) (1)(4): Per Contract

\* \* \* \* \*

Non-Customer Transactions (origin code other than "C") (8)—\$.30 (*Fee suspended through 6/30/03 in equity option classes only*).

\* \* \* \* \*

(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.

## 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 previously established a \$.30 per contract Access Fee to all non-customer transactions (defined as all transactions with origin codes other than "C")<sup>4</sup> in option classes that are

<sup>3</sup> The text reflects minor, technical corrections to the text that the Exchange submitted with the proposed rule. Telephone conversation between Christopher Hill, Attorney, CBOE, and T.R. Lazo, Senior Special Counsel, Division of Market Regulation, Commission, on March 20, 2003.

<sup>4</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

executed by means of the CBOE's RAES.<sup>5</sup>

The CBOE now proposes a pilot program to suspend this Access Fee in all equity option classes, in conjunction with other steps the CBOE is taking to open up equity option classes to more automatic execution of non-customer orders.<sup>6</sup> The CBOE believes that suspending the Access Fee will encourage more non-customer RAES orders to be sent to the CBOE. The suspension will last through the end of the CBOE's fiscal year on June 30, 2003. Prior to that date, the CBOE will examine the effects of suspending the fee and advise the Commission whether CBOE intends to continue or modify the suspension.

#### (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) of the Act,<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.

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 Release Act No. 34-46102 (June 21, 2002), 67 FR 43692 (June 28, 2002) (Notice of Filing and Immediate Effectiveness of SR-CBOE-2002-33).

<sup>5</sup> See Securities Exchange Act Release Nos. 46455 (September 3, 2002), 67 FR 57468 (September 10, 2002) (Notice of Filing and Immediate Effectiveness of SR-CBOE-2002-42, which established 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 SM"), and European style S&P 100® Index options ("XEO®") classes; and 47032 (December 18, 2002), 67 FR 79196 (December 27, 2002) (Notice of Filing and Immediate Effectiveness of SR-CBOE-2002-68, which extended the \$.30 per contract access fee 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.)

<sup>6</sup> See, e.g., Securities Exchange Act Release No. 47492 (March 13, 2003), 68 FR 13350 (March 19, 2003) (Notice of Filing and Immediate Effectiveness of SR-CBOE-2003-09 which proposed to expand the order-types eligible for the Exchange's Large Order Utility).

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

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

### 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.

## 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-2003-10 and should be submitted by April 17, 2003.

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

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

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