

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make several changes to its Fee Schedule involving Hybrid and RAES fees.

Actant Infrastructure User Charge

The Exchange is providing certain hardware and related maintenance needed by Actant, a third party vendor that is providing quoting software and a connection to the CBOEdirect system that many CBOE members are using to stream quotes to the Hybrid trading system. The Exchange provided the hardware and maintenance in order to facilitate Actant's service of Exchange members; however, the Exchange wishes to recover its costs in doing so. As a result, beginning on October 1, 2003, all users of Actant software for the Hybrid system will incur a \$100 per month Exchange user fee. The Exchange states that this fee will offset the cost of the hardware and ongoing maintenance that the Exchange is incurring in order to facilitate Actant's service.

Market Data User Fee

The Exchange states that numerous Exchange members making markets on the CBOE's trading floor in the Hybrid trading system make use of data feeds of underlying market information that are provided by the CBOE through its TickerXpress service ("TX"). The Exchange proposes to charge a fee of \$100 per month to members receiving TX market data to compensate the CBOE for providing the infrastructure to make this market data available. Alternatively, members may receive TX market data from the Exchange that has been enhanced by the data processing services of a third party service provider to the Exchange. The Exchange proposes to charge a fee of \$200 per month to members receiving the enhanced TX data to compensate the CBOE for providing the infrastructure to make this market data available. The Exchange proposes to waive these TX fees through the end of 2003 and to make them effective on January 1, 2004.

CBOEdirect Connectivity Fee Waiver

Currently, the Exchange charges monthly connection fees for users of its CBOEdirect electronic trading platform of \$900 per month for each connection to CBOEdirect through the CBOE Market Interface (CMI) and \$600 for a connection through the FIX (Financial Information Exchange) interface. The Exchange states that these fees help the

CBOE begin to recover its substantial investment in CBOEdirect.

However, as the Exchange expands its rollout of the Hybrid trading system, which also uses CBOEdirect, the Exchange proposes to waive the CBOEdirect connectivity fees for all connections to CBOEdirect for the purpose of using the CBOE's Hybrid system effective October 1, 2003. The Exchange believes that this waiver will encourage members to begin using Hybrid, and help offset the related costs that members must incur in order to stream quotes for Hybrid.

The Exchange will review the subject of this waiver again when it conducts next year's budget review of fees.

RAES Access Fee Waiver for Non-Customer Equity Orders Submitted From the Trading Floor

Currently, the Exchange charges a \$.30 per contract access fee for all Non-Customer orders (*i.e.*, those with an origin code other than "C") entered into RAES.³ The Exchange proposes to waive this fee, effective October 1, 2003, in cases where a RAES order in an equity option class is entered from the Exchange trading floor. In such cases, a floor broker, who assumes responsibility for filling such an order in exchange for a floor brokerage fee, may have come to believe that his/her customer will receive a better "fill" electronically through RAES. However, the Exchange believes that imposing the RAES access fee burdens such orders with what is tantamount to a second execution fee (in addition to the floor broker's fee). The Exchange does not believe that it should place such an additional burden on the best execution of such orders. For this reason, the Exchange believes it is fair and equitable to waive the fee in such circumstances.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act⁴ in general, and furthers the objectives of Section 6(b)(4) of the Act⁵ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among the 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, as amended, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁶ and Rule 19b-4(f)(2)⁷ thereunder because it establishes or changes a due, fee, or other charge imposed by the CBOE. At any time within 60 days of the filing of the proposed rule change, as amended, 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.⁸

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 will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-2003-43 and should be submitted by November 7, 2003.

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁷ 17 CFR 240.19b-4(f)(2).

³ See Securities Exchange Act Release No. 48223 (July 24, 2003), 68 FR 44978 (July 31, 2003).

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

⁸ For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on October 7, 2003, the date on which the Exchange filed Amendment No. 1.