

consideration of the scheduled matters at the closed meetings.

The subject matters of the closed meeting scheduled for Tuesday, January 22, 2002, will be:

- Institution and settlement of injunctive actions;
- Institution and settlement of administrative proceedings of an enforcement nature; and
- Formal orders of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: January 15, 2002.

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45269; File No. SR-CBOE-2001-72]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Amending Its Fee Schedule With Respect to Certain Communications Fees

January 11, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder, notice is hereby given that on December 26, 2001, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 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 certain changes to its fee schedule. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at 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, 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 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 Exchange represents that the purpose of this proposed rule change is to implement certain fee changes. The Exchange is proposing to increase certain monthly communications fees to recover the incremental cost of replacing the Exchange's current analog trading floor telephone system with a new digital telephone system. These fee increases were approved by the Exchange's Board of Directors pursuant to CBOE Rule 2.22 and will take effect on January 1, 2002.

The Exchange is amending the following fees: (1) The "Exchangefone Maintenance" monthly fee will be increased from \$47.25 to \$70.88; (2) the "Lines Voice Circuits" monthly fee will be increased from \$13.12 to \$19.68; (3) the "Data Circuits at Ameritech Frame (Entrance)" monthly fee will be increased from \$13.12 to \$19.68; (4) the "Data Circuits at In-house Frame: Lines Between Ameritech and Communications Center" monthly fee will be increased from \$10.50 to \$15.75; (5) the "Data Circuits at In-house Frame: Lines Direct from Ameritech to the Trading Floor" monthly fee will be increased from \$10.50 to \$15.75; (6) the "Data Circuits at In-house Frame: Lines Between the Communications Center and the Trading Floor" monthly fee will be increased from \$10.50 to \$15.75; and (7) the "Wireless Phone Rentals" monthly fee will be increased from \$100.00 to \$150.00.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,³ in general, and Section 6(b)(4) of the Act,⁴ in particular, in that it is designed to provide for the

equitable allocation of reasonable dues, fees, and other charges among its 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 that is 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

The Exchange has neither solicited nor received any written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁵ and subparagraph (f)(2) of Rule 19b-4⁶ thereunder, because it establishes or changes a due, fee, or other charge. 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 purposes of the Act.⁷

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

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

⁶ 17 CFR 240.19b-4(f)(2).

⁷ See 15 U.S.C. 78(b)(3)(C).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(4).

the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-2001-72 and should be submitted by February 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45268; File No. SR-CHX-2001-24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Pricing of Preopening Orders for Nasdaq/NM Securities

January 11, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 14, 2001, the Chicago Stock Exchange, Inc. ("CHX" 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 CHX. 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 Exchange proposes to amend Article XX, rule 37(a)(4) of the CHX Rules, which governs, among other things, pricing of preopening orders for Nasdaq/NM securities. The text of the proposed rule change is as follows. New text is italicized. Deleted text is bracketed.

RULE 37.

(a) No change to text.

1-3. No change to text.

4. Preopenings. Preopening orders in Dual Trading System issues must be accepted and filled at the primary market opening trade price. In trading halt situations occurring in the primary market, orders will be executed based upon the reopening price. Preopening orders in NASDAQ/NM securities must be accepted and filled [on a single price opening at or better than the NBBO] at or better than the first unlocked,

uncrossed *bid* (for a sell order or offer (for a buy order) in the Nasdaq market. In trading halt situations, orders will be executed at or better than the *first unlocked uncrossed bid or offer in the Nasdaq market after reopening*. For purposes of this rule, (a) pre-opening orders in Dual Trading System Issues are orders that are received before a primary market opens a subject security based on a print or based on a quote and (b) preopening orders in NASDAQ/NM securities are orders received at or prior to 8:25 a.m. (Central Time) on the date of the opening.

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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 CHX 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 proposes to amend Article XX, rule 37(a)(4) of the CHX Rules, which governs, among other things, pricing of preopening orders for Nasdaq/NM securities. The proposed rule change would eliminate reference to a single price opening for such preopening orders. The amended rule would provide that opening prices would instead be determined based on the first unlocked, uncrossed bid and offer in the Nasdaq market. This standard would apply to both preopening orders and to orders executed at the opening following a trading halt.

The rule change is being proposed in response to changing practices in the Nasdaq market relating to calculation of opening prices. The vast majority of the Exchange's competitors in the Nasdaq market now calculate opening prices in a manner consistent with the proposed rule change. The Exchange believes that this rule change is not only in line with market custom and practice, but is also responsive to customer preferences. Moreover, this rule change could incentivize specialists to provide greater

price improvement intraday, thereby improving execution quality statistics, to the ultimate benefit of investors in Nasdaq/NM securities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act³ in general, and furthers the objectives of Section 6(b)(5)⁴ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The Exchange represents that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

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

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(5).