

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.*

[FR Doc. 02-22890 Filed 9-9-02; 8:45 am]

**BILLING CODE 8010-01-P**

## **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, Commission, 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).

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

Nasdaq proposes to: (1) Establish a \$75 maximum execution fee cap for a single SuperSoes transaction, and (2) establish a \$37.50 maximum cap on the rebate amount provided by Nasdaq to market participants that provide liquidity to its market. Nasdaq has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the self-regulatory organization under section 19(b)(3)(A)(ii) of the Act,<sup>5</sup> which renders the rule effective upon the Commission's receipt of this filing.<sup>6</sup>

The text of the proposed rule change appears below. New text is in italics.

#### 7010. System Services

(a)–(h) No change.

#### (i) Transaction Execution Services

(1) No change.

#### (2) Nasdaq National Market Execution System (SuperSOES)

The following charges shall apply to the use of the Nasdaq National Market Execution System:

##### Order Entry Charge

\$0.10 per order entry (entering party only)

##### Per Share Charge

\$0.001 per share executed for all fully or partially executed orders (entering party only)

##### Cancellation Fee

\$0.25 per order cancelled (canceling party only)

For a pilot period commencing on November 1, 2001 and lasting until October 31, 2002, the per share charge will be \$0.002 per share executed for all fully or partially executed orders (entering party only)

*For trades in securities that are executed at a price of \$1.00 or less per share, the maximum charge per trade under this section shall not exceed \$75.00*

(3) No change.

#### (j) Liquidity provider rebate

For a pilot period commencing on November 1, 2001 and lasting until October 31, 2002:

(A) NASD members that do not charge an access fee to market participants accessing their quotations through the Nasdaq National Market Execution System will receive a rebate of \$0.001

per share when their quotation is executed against by a Nasdaq National Market Execution System order.

(B) NASD members will receive a rebate of \$0.001 per share when they send a Nasdaq National Market Execution System order that executes against the quotation of a market participant that charges an access fee to market participants accessing its quotations through the Nasdaq National Market Execution System.

*(C) For trades in securities that are executed at a price of \$1.00 or less per share, the maximum rebate available per trade under section (4) of this rule shall not exceed \$37.50.*

(j)–(r) No change.

\* \* \* \* \*

### 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 Nasdaq 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. Nasdaq 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

In order to control trading costs for low-priced stocks, Nasdaq proposes to establish a maximum SuperSoes execution fee of \$75.00 per trade and liquidity provider rebate cap of \$37.50 per trade for securities trading at \$1.00 or less per share.

Currently, Nasdaq assesses on parties entering orders into SuperSoes a \$0.002 per share charge for all resulting full or partial trade executions. This fee applies regardless of the price of the individual security traded and there is no maximum fee per individual trade.

Nasdaq also rebates \$0.001 per share to market participants that provide liquidity to the market by having their quotes accessed by SuperSoes orders, when those quoting market participants do not themselves charge a separate fee for that access. When a market participant enters an order into SuperSoes that interacts with the quote of an access fee-charging Electronic Communications Network ("ECN"), Nasdaq likewise rebates \$0.001 per share to that entering party. Like the per

share SuperSoes execution fee, these rebates currently have no maximum dollar amount.

Nasdaq represents that recent market activity has caused the prices of many Nasdaq securities to fluctuate, and in some cases lose significant value. As the prices of these securities decline, market participants generally need to purchase or sell an increasing number of total shares to actively participate in the market for these issues. This increase in the size of individual transactions, when combined with SuperSoes' unlimited per share fee structure, raise execution costs to market participants. Similarly, large transactions involving low-priced securities also can result in disproportionate liquidity-provider rebates.

In response, Nasdaq has determined to establish per trade maximums for SuperSoes execution fees and liquidity provider rebates in low-priced (\$1.00 or less per share) securities. Under the proposal, Nasdaq would cap at \$75 the maximum execution fee it would impose on the entering party for a single SuperSoes trade where the price of the security traded was one dollar or less. For rebates, Nasdaq would cap at \$37.50 the amount it gives back to market participants for providing liquidity in low-priced securities or when their orders access the low-priced quotes of fee-charging ECNs. Nasdaq notes that the ratio between its low-priced maximum per trade fee and per trade rebate is the same as those that are applicable to higher-priced issues.

##### 2. Statutory Basis

Nasdaq believes that the proposed rule change is with the provisions of section 15A of the Act,<sup>7</sup> in general, and with section 15A(b)(5) of the Act,<sup>8</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers, and other persons using any facility or system which the association operates or controls.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

<sup>6</sup> Nasdaq also filed with the Commission a separate proposed rule change to apply the fee and rebate limits proposed here retroactive to July 1, 2002. See SR-NASD-2002-107.

<sup>7</sup> 15 U.S.C. 78o-3.

<sup>8</sup> 15 U.S.C. 78o-3(b)(5).

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

Written comments were neither solicited nor received.

### 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 Act<sup>9</sup> and Rule 19b-4(f)(2)<sup>10</sup> thereunder because it establishes or changes a due, fee, or charge imposed by the self-regulatory organization. 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.<sup>11</sup>

### 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 the filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to File No. SR-NASD-2002-106 and should be submitted by October 1, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-22892 Filed 9-9-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3428]

#### State of Texas

#### Amendment #9

In accordance with notices received from the Federal Emergency Management Agency, dated August 27 and August 30, 2002, the above numbered declaration is hereby amended to include Bee County in the State of Texas as a disaster area due to damages caused by severe storms and flooding beginning on June 29, 2002 and continuing through July 31, 2002. This declaration is also amended to extend the deadline for filing applications for physical damages as a result of this disaster to September 16, 2002.

All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is April 4, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 3, 2002.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 02-22931 Filed 9-9-02; 8:45 am]

**BILLING CODE 8025-01-P**

## SMALL BUSINESS ADMINISTRATION

### Privacy Act of 1974; Revision of Privacy Act System of Records

**AGENCY:** Small Business Administration.

**ACTION:** Notice of revision of Privacy Act System of Records.

**SUMMARY:** The Small Business Administration (SBA) Office of Inspector General (OIG) is revising its Privacy Act System of Records, SBA 120, Security and Investigations Files, and SBA 130, Investigations Division Management Information System, to include as routine uses the disclosure of information to the public when: (1) An investigation has become public knowledge; (2) it is necessary to

preserve confidence in the integrity of the investigative process; (3) it is necessary to demonstrate the accountability of individuals covered by this system; (4) a legitimate public interest exists; or (5) it is necessary for the protection from imminent threat to life or property.

In addition, the revision includes a routine use to allow the disclosure of information to members of the President's Council on Integrity and Efficiency (PCIE) for the purpose of accurate reporting to the President and Congress on the activities of the Inspectors General. The revision further includes a routine use to allow disclosures to members of the PCIE, the Department of Justice, the Federal Bureau of Investigation, or the U.S. Marshals Service, as necessary, for investigative qualitative assessment review. The PCIE is establishing a peer review process to ensure that adequate internal safeguards and management procedures continue to exist. The objectives of the review are to assess whether adequate internal safeguards and management procedures are met, foster high-quality investigations and investigative processes, ensure that the highest levels of professionalism are maintained, and promote consistency in investigative standards and practices within the Inspector General investigative community.

**DATES:** The changes to this System of Records are effective without further notice October 10, 2002, unless comments are received that result in further modifications.

**ADDRESSES:** Address comments to David R. Gray, Counsel to the Inspector General, Office of Inspector General, Small Business Administration, 409 Third Street SW., 5th Floor, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** David R. Gray, Counsel to the Inspector General, Office of Inspector General, Small Business Administration, 409 Third Street SW., 5th Floor, Washington, DC 20416, (202) 205-7200.

**SUPPLEMENTARY INFORMATION:** This publication is in accordance with the Privacy Act requirement that Agencies publish their amended Systems in the **Federal Register** when there is a revision, change, or addition. SBA is amending the Routine Uses of System of Records, SBA 120 Security and Investigations Files, and SBA 130 Investigations Division Management Information System previously published at 56 FR 8030 (Feb. 26, 1991) and 56 FR 8034 (Feb. 26, 1991). The Routine Use Notices of System 120, Security and Investigation Files, and

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

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

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