

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 02-32638 Filed 12-26-02; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46467A]

### Self-Regulatory Organizations; Approval of Chicago Board Options Exchange, Inc. Fingerprinting Plan

December 19, 2002.

#### Correction

In Release No. 34-46467 ("Prior Release"), issued on September 6, 2002, beginning on page 58088 in the **Federal Register** issue of Friday, September 13, 2002, the amended fingerprinting plan of the Chicago Board Options Exchange, Inc. ("CBOE") was noticed incorrectly. The corrected text of the amended CBOE fingerprinting plan appears below. Additions are in italics and deletions are in brackets as compared to the plan text that appeared in the Prior Release.

#### Chicago Board Options Exchange, Incorporated Fingerprint Plan

Chicago Board Options Exchange, Incorporated ("Exchange") submits this Fingerprint Plan ("Plan") pursuant to Rule 17f2(c) under the Securities Exchange Act of 1934, as amended ("Act"). This Plan supersedes and replaces the Exchange's Fingerprint Plan approved by the Securities and Exchange Commission ("Commission") on January 27, 1984.

The purpose of this Plan is to enable Exchange members and Exchange member applicants to comply with Section 17(f)(2) of the Act and Rule 17f2 thereunder by providing a facility for the fingerprints of individual partners, directors, officers, and employees of Exchange members and Exchange member applicants to be processed and submitted to the Attorney General of the United States or its designee ("Attorney General").

The Exchange will utilize a Live-Scan electronic system for the taking of fingerprints. Any Live-Scan system utilized by the Exchange will have been certified by the Federal Bureau of Investigation ("FBI") for compliance with the FBI's Integrated Automated Fingerprint Identification System Image Quality Specifications. The Exchange

will train the Exchange personnel responsible for operating the Live-Scan system. The Exchange may also manually take fingerprints and receive manually taken fingerprint cards. The purpose of allowing this flexibility is to permit the Exchange to retain the ability to process and submit fingerprints to the Attorney General in the event the Exchange's Live-Scan system is not able to be used due to, for example, a system problem. Additionally, this flexibility will permit the Exchange to continue to receive manually taken fingerprint cards from those who are located at a distance from the Exchange or who for other reasons find it more expedient to provide manually taken fingerprint cards to the Exchange rather than travel to the Exchange to have fingerprints taken.

Accordingly, under the Plan, the Exchange may receive fingerprints through any of the following methods:

1. The Exchange may utilize a Live-Scan system to take the fingerprints and create an electronic fingerprint record for the fingerprints;
2. the Exchange may manually take the fingerprints on a paper fingerprint card; [or]
3. the Exchange may receive manually taken paper fingerprint cards;
4. *the Exchange may receive paper copies of electronic fingerprint records created by an FBI certified Live-Scan system that is utilized by a third party;* or
5. *the Exchange may electronically receive from a remote location electronic fingerprint records created by an FBI certified Live-Scan system that is utilized by a third party.*

If the Exchange electronically receives an electronic fingerprint record created by an FBI certified Live-Scan system that is utilized by a third party, the Exchange will take reasonable measures to receive the transmission in an electronically secure manner.

The fingerprint cards and electronic fingerprint records will identify the individual providing the fingerprints and the Exchange member or Exchange member applicant with whom the individual is associated. The fingerprint cards and electronic fingerprint records will be in a form acceptable to the Attorney General and the Exchange.

In the event that an individual who previously provided fingerprints to the Exchange in accordance with this Plan is required to re-submit fingerprints, the Exchange may permit the individual not to be re-fingerprinted if the following conditions are satisfied:

1. The Exchange is in possession of an electronic record of that individual's

fingerprints taken by a Live-Scan system;

2. the existing electronic fingerprint record was previously submitted to, and deemed acceptable by, the Attorney General; and

3. the Exchange is able to resubmit the existing electronic fingerprint record to the Attorney General.

In such an event, the Exchange shall re-submit the existing electronic fingerprint record to the Attorney General and process the fingerprint record received back from the Attorney General with respect to the fingerprints in the same manner as is the case with respect to initially submitted fingerprints.

Once fingerprints are taken, the Exchange will review the information on the fingerprint card or in the electronic fingerprint record for the fingerprints, as applicable, for completeness, but not for accuracy, and will then submit the completed fingerprint card or electronic fingerprint record, as applicable, to the Attorney General for identification and processing.

The Exchange shall submit fingerprint cards and electronic fingerprint records to the Attorney General in accordance with any requirements of the Attorney General relating to the manner of submission of this information. The submission may occur through any of the following methods:

1. The Exchange may electronically transmit to the Attorney General an electronic fingerprint record created by a Live-Scan system;
2. the Exchange may print out an electronic fingerprint record created by a Live-Scan system onto a paper fingerprint card (or receive a paper copy of an electronic fingerprint record created by an FBI certified Live-Scan system that is utilized by a third party) and submit the paper fingerprint card to the Attorney General through manual transmission, such as by United States mail; or
3. the Exchange may submit manually taken fingerprint cards to the Attorney General through manual transmission, such as by United States mail.

The purpose of allowing this flexibility is to permit the Exchange to retain the ability to submit fingerprints to the Attorney General in the event the Exchange is unable to electronically transmit electronic fingerprint records to the Attorney General due to a telecommunication problem or otherwise. Additionally, this flexibility will permit the Exchange to manually transmit to the Attorney General fingerprint cards manually taken by the Exchange and received from Exchange

<sup>8</sup> 17 CFR 200.30-3(a)(12).

members and Exchange member applicants.

The Exchange will keep a list of the fingerprint cards and electronic fingerprint records submitted to the Attorney General in order to check on fingerprint submissions to the Attorney General pursuant to this Plan for which no fingerprint report has yet been received from the Attorney General. When a fingerprint report is received by the Exchange from the Attorney General with respect to fingerprints submitted by the Exchange pursuant to this Plan, the Exchange promptly will manually (such as by United States mail) or electronically forward a copy of the fingerprint report to the appropriate Exchange member or Exchange member applicant. If the Exchange electronically forwards a copy of a fingerprint report to an Exchange member or Exchange member applicant, the Exchange will take reasonable measures to transmit the report in an electronically secure manner.

The Exchange promptly will review all fingerprint reports received from the Attorney General with respect to fingerprints submitted by the Exchange pursuant to this Plan in order to determine whether they contain information involving:

1. A statutory disqualification, as that term is defined in the Act; or
2. material misstatements or omissions concerning information previously reported to the Exchange.

If so, the Exchange promptly will take appropriate action concerning eligibility or continued eligibility for Exchange membership or for employment or association with an Exchange member.

Copies of fingerprint reports received from the Attorney General with respect to fingerprints submitted by the Exchange pursuant to this Plan will be maintained by the Exchange in accordance with the Exchange's Record Retention/Destruction/Conversion Plan filed with the Commission. Any maintenance of fingerprint records by the Exchange shall be for the Exchange's own administrative purposes, and the Exchange is not undertaking to maintain fingerprint records on behalf of Exchange members pursuant to Rule 17f-2(d)(2).

The above procedures will be modified in the following manner with respect to individuals in registration capacities recognized by the Exchange who are associated persons of Exchange members that are not members of the NASD. The Exchange has established an arrangement with NASD to permit these individuals to be electronically registered with the Exchange through the Web Central Registration Depository

("Web CRD"). In connection with this registration process, these registered persons will have their fingerprints processed and submitted to the Attorney General through the facilities of either NASD or the Exchange. The extent to which these registered persons may utilize either one or both of these facilities will be determined by the Exchange and NASD. Fingerprint reports for these registered persons that are generated by the Attorney General will be provided to Web CRD and will be provided to the members with which these registered persons are associated through Web CRD. Record-keeping with respect to fingerprint submissions to and fingerprint reports from the Attorney General for these registered persons will be maintained by NASD. NASD will notify the Exchange if a fingerprint report received by Web CRD for one of these registered persons contains information relating to an arrest or conviction. In such an instance, the Exchange will review the fingerprint report and take appropriate action, if necessary, concerning eligibility or continued eligibility of the individual for employment or association with an Exchange member.

The Exchange will advise Exchange members and Exchange member applicants of the availability of its fingerprint services and any fees charged by the Exchange in connection with those services and the processing of fingerprints pursuant to this Plan. The Exchange shall file any such fees with the Commission pursuant to Section 19(b)(3)(A) of the Act.

The Exchange shall not be liable for losses or damages of any kind in connection with its fingerprinting services, as a result of its failure to follow, or properly to follow, the procedures described above, or as a result of lost or delayed fingerprint cards, electronic fingerprint records, or fingerprint reports, or as a result of any action by the Exchange or the Exchange's failure to take action in connection with this Plan.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>1</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 02-32639 Filed 12-26-02; 8:45 am]

**BILLING CODE 8010-01-P**

<sup>1</sup> 17 CFR 200.30-3(a)(17)(iii).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47032; File No. SR-CBOE-2002-68]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Extension of an Access Fee for Non-Customer RAES Orders

December 18, 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 November 20, 2002, the Chicago Board Options Exchange ("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 CBOE. 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 a change to its Fee Schedule to extend the applicability of an access fee for non-customer RAES orders. Below is the text of the proposed rule change. Proposed new text is italicized, and proposed deleted text is bracketed.

\* \* \* \* \*

#### FEE SCHEDULE

NOVEMBER 1, 2002

#### 4. RAES (RETAIL AUTOMATIC EXECUTION SYSTEM) (1)(4): Per Contract

Assessed to Non-Customer Transactions (*all RAES transactions with origin codes other than "C"*)[In MNX, NDQ, QQQ and XEO] \* \* \* \$30

\* \* \* \* \*

(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.

\* \* \* \* \*

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

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