

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47515; File No. SR-CBOE-2003-11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Linkage Fees

March 17, 2003.

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 March 12, 2003 the Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) 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 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 Exchange proposes to provide that its linkage fee structure operate as a pilot program for one year. The text of the proposed rule change is below; proposed language is italicized.³

* * * * *

CHICAGO BOARD OPTIONS EXCHANGE, INC.—FEE SCHEDULE, JANUARY 31, 2003

| | | | | | | | Per contract |
|---|--|--|--|--|--|--|--------------|
| 1. Option Transaction Fees ^{1 2 3 4 7} : | | | | | | | |
| Equity & QQQ Options | | | | | | | |
| * * * * * | | | | | | | |
| VI. Non-Member Market Maker (not eligible for Prospective Fee Reduction Program) ⁸ | | | | | | | \$.19 |
| Index Options | | | | | | | |
| * * * * * | | | | | | | |
| V. Non-Member Market Maker ⁸ : | | | | | | | |
| • S & P 100 (including OEF), PREMIUM > OR = \$1 | | | | | | | .30 |
| • S & P 100 (including OEF), PREMIUM < \$1 | | | | | | | .15 |
| * * * * * | | | | | | | |
| 2. Trade Match Fee ^{1 4 7} : | | | | | | | |
| * * * * * | | | | | | | |
| • All Other Equity, QQQ and Index Orders ⁸ | | | | | | | .05 |
| 3. Floor Brokerage Fee ^{1 5} : | | | | | | | |
| • All Other Equity, QQQ and Index Options ⁸ | | | | | | | .04 |
| 4. Raes Access Fee (Retail Automatic Execution System) ^{1 4} : | | | | | | | |
| * * * * * | | | | | | | |
| • Non-Customer Transactions (Origin Code Other Than “C”) ⁸ | | | | | | | .30 |

Notes:

⁸ Includes, on a pilot basis until January 31, 2004, orders from members of other exchanges executing Linkage transactions, except for Satisfaction Orders, which are not assessed Exchange fees per Linkage rules.

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. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 31, 2003, the Commission approved a CBOE proposal adding rules concerning the intermarket options linkage.⁴ As part of that filing, CBOE submitted an amendment making minor changes to the text of the proposed linkage rules and modifying CBOE’s fee schedule to make clear that CBOE fees for linkage orders would be the same as CBOE fees for non-linkage orders from the same originating source (market makers on other exchanges). This filing merely proposes to establish that CBOE’s fees for linkage orders will operate under a pilot program to allow

the Commission and CBOE to gauge the suitability of the current linkage fees. The pilot would last until January 31, 2004.

Because all linkage orders received by CBOE are for the account of a broker-dealer market maker on another exchange, CBOE proposes that the fees applicable to such orders to be the same as fees applicable to market makers on other exchanges that submit orders to CBOE outside of the linkage taking into account how those orders are handled at CBOE. More specifically, the “regular” transaction fee applicable to non-member market makers would apply to linkage orders (currently \$.19 per contract for equity options and QQQ options, and \$.30 or \$.15 per contract for OEF options depending on premium). Further, a \$.05 per contract

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ At the request of the CBOE, nonsubstantive modifications were made to the proposed rule text as filed with the Commission to indicate omitted language. Telephone call between Angelo Evangelou, Senior Attorney, Legal Division, CBOE, and Jennifer Lewis, Attorney, Division of Market Regulation, Commission, on March 17, 2003.

⁴ See Securities Exchange Act Release No. 47294 (January 31, 2003), 68 FR 6527 (February 7, 2003) approving SR-CBOE-2002-61.

trade match fee would also apply to each linkage order. Lastly, if a linkage order is executed in whole or in part on RAES,⁵ a \$.30 per contract RAES fee would apply, and if any portion of a linkage order is manually handled, a \$.04 per contract floor brokerage fee is assessed.

2. Statutory Basis

The Exchange believes that the proposed rule change meets the requirement of section 6(b)(5) under the Act⁶ in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism for 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 believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange 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

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 such proposed rule change; or

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

⁵ RAES is the automated execution system feature of the Exchange's order routing system that is owned and operated by the Exchange and that provides automated order execution and reporting services for options. See Exchange rule 6.8.

⁶ 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 CBOE. All submissions should refer to File No. SR-CBOE-2003-11 and should be submitted by April 15, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-6989 Filed 3-24-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47517; File No. SR-NASD-2002-158]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to the Establishment of a Nasdaq Official Closing Price and a Trade Report Modifier With Which To Identify That Price to the Public

March 18, 2003.

I. Introduction

On November 1, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to establish a Nasdaq Official Closing Price ("NOCP"), and a trade report modifier with which to identify that price to the public. The proposed rule change was published for comment in the **Federal Register** on December 26, 2002.³ The Commission received seven comment letters regarding the proposal.⁴ Nasdaq responded to the commenters in an amendment which Nasdaq filed with the Commission on January 28, 2003⁵ and in a second response letter that Nasdaq filed with the Commission on March 7, 2003.⁶ This order approves the proposed rule change, and approves Amendment No. 1 on an accelerated basis.

II. Description of the Proposed Rule Change

A. Background

Nasdaq is proposing to establish an NOCP, and a trade report modifier with which to identify that price to the public. Nasdaq would program its proprietary systems to append the new

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 47022 (December 18, 2002), 67 FR 78840.

⁴ See letter from Brett W. Redfearn, Senior Vice President, Business Strategy and Equity Order Flow, American Stock Exchange LLC, to Jonathan G. Katz, Secretary, Commission, dated January 29, 2003 ("Amex Letter"); letter from Jeffrey T. Brown, Senior Vice President, Secretary and General Counsel, the Cincinnati Stock Exchange, Inc., to Mr. Jonathan G. Katz, Secretary, Commission, dated January 24, 2003 ("CSE Letter"); letter from Jon Kroeper, First Vice President and Associate General Counsel, Instinet Group Incorporated, to Mr. Jonathan G. Katz, Secretary, Commission, dated February 13, 2003 ("Instinet Letter"); letter from Donald J. Boteler, Vice President-Operations, Investment Company Institute, to Mr. Jonathan G. Katz, Secretary, Commission, dated January 15, 2003 ("Institute Letter"); letter from C. Thomas Richardson, Managing Director, Nasdaq Trading, and David Weisberger, Managing Director, U.S. Equities Models Trading, Salomon Smith Barney, to Mr. Jonathan G. Katz, Secretary, Commission, dated January 15, 2003 ("SSB Letter"); letter from Hendrik J. Kranenburg, Executive Vice President, Standard & Poor's, to Secretary, Commission, dated January 17, 2003 ("S&P Letter"); and letter from Scott W. Anderson, Associate Director and Counsel, Region Americas Legal, UBS Warburg LLC, to Jonathan G. Katz, Secretary, Commission, dated January 15, 2003 ("UBSW Letter").

⁵ See letter from Jeffrey S. Davis, Associate General Counsel, Nasdaq, to Alton S. Harvey, Office Head, Division of Market Regulation ("Division"), Commission, dated January 27, 2003 ("Amendment No. 1"). In Amendment No. 1, Nasdaq addresses the positive comments submitted with respect to the proposed rule change and proposes, in response to comments, to revise its original proposal to consider canceled or corrected trades submitted until 5:15:00 PM rather than 4:30:00 PM for the calculation of the NOCP.

⁶ See letter from Jeffrey S. Davis, Associate General Counsel, Nasdaq, to Alton S. Harvey, Office Head, Division, Commission, dated March 7, 2003 ("Second Response Letter").

⁷ 17 CFR 200.30-3(a)(12).