

acquire those FITRs from the Index Fund and tender those FITRs for redemption to the Index Fund in Creation Unit Aggregations only. Any advertising material that describes the purchase or sale of Creation Unit Aggregations or refers to redeemability will prominently disclose that FITRs are not individually redeemable and that owners of FITRs may acquire those FITRs from the Index Fund and tender those FITRs for redemption to the Index Fund in Creation Unit Aggregations only.

5. Before an Index Fund may rely on the order, the Commission will have approved, pursuant to rule 19b-4 under the Exchange Act, an Exchange rule requiring Exchange members and member organizations effecting transactions in FITRs to deliver a Product Description to purchasers of FITRs.

6. The website for the Trust, which will be publicly accessible at no charge, will contain the following information, on a per FITR basis, for each Index Fund: (a) The prior business day's NAV and Bid Price, and a calculation of the premium or discount of such Bid Price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. In addition, the Product Description for each Index Fund will state that the website of the Trust has information about the premiums and discounts at which the Index Fund's FITRs have traded.

7. The Prospectus and the annual report for each Index Fund will also include: (a) The information listed in condition 6(b), (i) in the case of the Prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per FITR basis for one, five and ten year periods (or life of the Index Fund), (i) the cumulative total return and the average annual total return based on NAV and Bid Price, and (ii) the cumulative total return of the relevant Underlying Index.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 02-22888 Filed 9-9-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46451; File No. SR-Amex-2002-46]

### Self-Regulatory Organizations; the American Stock Exchange LLC; Order Granting Approval to a Proposed Rule Change Relating to the Amex Listing Agreement

September 3, 2002.

On May 29, 2002, the American Stock Exchange LLC ("Amex or Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to modify the Amex Listing Agreement for issuers.

The proposed rule change was published for comment in the **Federal Register** on July 23, 2002.<sup>3</sup> The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>4</sup> and, in particular, the requirements of section 6 of the Act<sup>5</sup> and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>6</sup> that the proposed rule change (SR-Amex-2002-46) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

Deputy Secretary.

[FR Doc. 02-22891 Filed 9-9-02; 8:45 am]

**BILLING CODE 8010-01-P**

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

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

<sup>3</sup> See Securities Exchange Act Release No. 46218 (July 17, 2002), 67 FR 48231 (July 23, 2002).

<sup>4</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation.

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46455; File No. SR-CBOE-2002-42]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Establishing To Adopt an Access Fee for Non-Customer Orders in the MNX<sup>SM</sup>, NDX, QQQ, and XEO<sup>®</sup> Options Classes Executed Through the Retail Automatic Execution System

September 3, 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 August 1, 2002, the Chicago Board Options Exchange, Inc. ("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 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 adopt an access fee for non-customer orders in the Nasdaq 100<sup>®</sup> Index Tracking Stock ("QQQ"), Nasdaq-100<sup>®</sup> Index ("NDX"), CBOE Mini-NDX Index ("MNX<sup>SM</sup>"), and European style S&P 100<sup>®</sup> Index ("XEO<sup>®</sup>") option classes executed through its Retail Automatic Execution System ("RAES"). The text of the proposed rule change appears below. New text is in italics.

#### FEE SCHEDULE AS OF JULY 1, 2002

4. RAES (Retail Automatic Execution System) (1)(4)	Per contract
Assessed to Index Customer Transactions .....	\$ .25
• Dow Jones, Assessed on the First 25 Contracts Only	
Assessed to Non-Customer Transactions 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.

\* \* \* \* \*

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

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

(4) Transaction, trade match and RAES fees are charged to the CBOE executing firm on the input record.

## 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 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 CBOE proposes to adopt a \$0.30 per contract access fee for all non-customer orders in the MNX<sup>SM</sup>, NDX, QQQ, and XEO<sup>®</sup> option classes that are executed through RAES. Under this proposal, all non-customer transactions in these options classes that are executed via RAES would be uniformly assessed this fee.

According to the CBOE, non-customer orders subject to this proposed fee are Firm orders, CBOE market maker orders, non-CBOE market maker orders, orders from a specialist in the underlying security, and orders for the account of a registered broker-dealer.<sup>3</sup> The CBOE also notes that this fee would only be charged to Exchange member firms through the customary monthly billing that occurs shortly after the close of each trading month. Non-members of the Exchange would not be charged this proposed fee.

The CBOE recently began to allow broker-dealer orders to be executed on RAES for products within the jurisdiction of the Exchange's Index Floor Procedure Committee.<sup>4</sup> Currently, such orders are only authorized in the QQQ, NDX, MNX<sup>SM</sup>, and XEO<sup>®</sup> option classes. Having extended the benefits of rapid, automatic execution to such non-customer orders, CBOE seeks to impose this fee to help allocate to such orders a fair share of the related costs of running RAES and related Exchange

systems. The CBOE notes in this regard that most index customer orders are already assessed a RAES fee of \$0.25 per contract.<sup>5</sup> The CBOE believes that this fee would help to better equalize RAES fees between customer and non-customer RAES orders. The CBOE also notes that this proposal is modeled after File No. SR-PCX-2002-10.<sup>6</sup>

#### (2) Statutory Basis

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of section 6(b)(4),<sup>8</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 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 foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and Rule 19b-4(f)(2) hereunder.<sup>10</sup> 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 purpose of the Act.

<sup>5</sup> The CBOE notes that QQQ customer orders are currently exempt from the RAES fee, and Dow Jones Industrial Index customer orders executed through RAES are only assessed the fee on the first 25 contracts.

<sup>6</sup> Under that proposal, the Pacific Exchange, Inc. established a \$0.45 per contract surcharge fee for all broker-dealer orders executed via its automatic execution system. See Securities Exchange Act Release No. 45662 (March 27, 2002), 67 FR 16786 (April 8, 2002).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

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

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

## 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 the principal office of the Exchange. All submissions should refer to File No. SR-CBOE-2002-42 and should be submitted by October 1, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 02-22889 Filed 9-9-02; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46452; File No. SR-CBOE-2002-43]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Electrical Fees for Market Maker Hand Held Terminal Tethering

September 3, 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 August 5, 2002, the Chicago Board Options Exchange, Inc. ("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 Exchange. The Commission is publishing this

<sup>11</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> Telephone conversation between Christopher R. Hill, Attorney, CBOE, and Christopher Solgan, Attorney, Division of Market Regulation, Commission, on August 15, 2002.

<sup>4</sup> See Securities Exchange Act Release No. 46113 (June 25, 2002), 67 FR 44486 (July 2, 2002).