

# SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46062; File No. SR-CBOE-2001-66]

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Chicago Board Options Exchange, Inc. Relating to Registration Filing Requirements of Associated Persons of Member Organizations

June 11, 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 December 17, 2001, 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 Exchange filed an amendment to its proposal on April 22, 2002.<sup>3</sup> The Exchange filed a second amendment to its proposal on May 29, 2002.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change as amended from interested persons.

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

The Exchange proposes to amend the CBOE Fee Schedule and Rules 2.22 (Other Fees or Charges), 3.6A (Qualification and Registration of Certain Associated Persons), 9.2 (Registration of Options Principals), and 9.3 (Registration and Termination of Representatives) relating to the registration filing requirements of associated persons of member organizations. The amended rules will allow for all Exchange members and member firms, who are not members of the NASD to file a Uniform Application for Securities Industry Registration or Transfer ("Form U-4") and a Uniform Termination Notice for Securities Industry Registration ("Form U-5") and fingerprint information on behalf of their registered persons directly with Web CRD. The text of the proposed rule change is below. Proposed new

language is in italics; proposed deletions are in brackets.

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### Chapter II

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#### Organization and Administration

Rule 2.22—In addition to the dues and charges provided for by Rules 2.20 and 2.21 of this Chapter, the Board may, from time to time, fix and impose other fees, assessments or charges to be paid to the Exchange *or to an organization designated by the Exchange* by members or by categories of members with respect to applications, registrations, approvals, use of Exchange facilities, or other services or privileges granted.

(a) Regulatory Oversight Service Fees. Member Organizations that are subject to the SEC Net Capital Rule and for which the Exchange has been assigned as the Designated Examining Authority ("DEA") pursuant to SEC Rule 17d-1 shall be required to pay quarterly Regulatory Oversight Service Fees. The fee shall be \$0.40 per \$1,000 gross revenue as reported on the member organization's quarterly FOCUS Report, provided that, upon application to the [Financial Compliance] Department of *Financial and Sales Practice Compliance*, accompanied by appropriate documentation, fees shall not be assessed against commission revenue generated from the conduct of a retail commodities future business.

(b) No changes

\* \* \* Interpretations and Policies:

.01 No changes

\* \* \* \* \*

### Chapter III

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#### Membership

Rule 3.6A Qualification and Registration of Certain Associated Persons

(a) Financial/Operations Principal. No changes.

(b) Associated Person Statuses Under Chapter IX. No changes.

\* \* \* Interpretations and Policies:

.01 Each person in an associated person status enumerated in paragraph (a) or (b) of this Rule shall, *electronically submit to the NASD's Web Central Registration Depository ("CRD") System* [in a form and manner prescribed by the Exchange] (i) [submit to the Exchange] a Uniform Application for Securities Industry Registration or Transfer (Form U-4) and (ii) [promptly submit to the Exchange] any required amendments to Form U-4.

.02 No Change.

.03 No Change.

\* \* \* \* \*

### Chapter IX

\* \* \* \* \*

#### Rule 9.2 Registration of Options Principals

No member organization shall be approved to transact options business with the public until those persons associated with it who are designated as Options Principals have been approved by and registered with the Exchange. Persons engaged in the management of the member organization's business pertaining to option contracts shall be designated as Options Principals. In connection with their registration, Options Principals shall *electronically* file [an application] *a Uniform Application for Securities Industry Registration or Transfer (Form U-4)* with the *NASD's Web CRD System* [Secretary of the Exchange on a form prescribed by the Exchange], shall successfully complete an examination prescribed by the Exchange for the purpose of demonstrating an adequate knowledge of the options business and of the Rules of the Exchange, and shall [sign an agreement] *further agree in the U-4 filing* to abide by the Constitution and Rules of the Exchange and the Rules of the Clearing Corporation. *Any person required to complete Form U-4 shall promptly electronically file any required amendments to Form U-4 with the NASD's Web CRD system.* Termination of employment or affiliation of any Registered Options Principal in such capacity shall be *promptly electronically* reported [promptly] to the *NASD's Web CRD System* [Secretary of the Exchange] together with a brief statement of the reason for such termination *on Form U-5*.

#### Rule 9.3 Registration and Termination of Representatives

(a) Registration. No member organization shall be approved to transact business with the public until those persons associated with it who are designated as Representatives have been approved by and registered with the Exchange. Persons who perform duties for the member organization which are customarily performed by sales representatives, solicitors, [customers' men] or branch office managers shall be designated as Representatives. In connection with their registration, Representatives shall *electronically* file *a Uniform Application for Securities Industry Registration or Transfer (Form U-4)* [an application] *with the NASD's Web CRD System* [on a form prescribed

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

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

<sup>3</sup> See Letter from Nancy L. Nielsen, Director of Arbitration and Assistant Secretary, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission (April 19, 2002) ("Amendment No. 1").

<sup>4</sup> See Letter from Christopher R. Hill, Attorney II, Legal Department, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission (May 29, 2002) ("Amendment No. 2").

by the Exchange] *by appropriately checking the CBOE as a requested registration on the electronic U-4 filing, and [,] shall successfully complete [a training course and] an examination for the purpose of demonstrating an adequate knowledge of the securities business, and shall further agree in the U-4 filing [sign an agreement] to abide by the Constitution and Rules of the Exchange and the Rules of the Clearing Corporation.;* provided, however, that Representatives of member organizations that are members of another national securities exchange or association which has standards of approval acceptable to the Exchange may be deemed to be approved by and registered with such other exchange or association. Member organizations whose Representatives are deemed registered pursuant to the last clause of the preceding sentence shall inform their Representatives of their obligation to adhere to the Constitution and Rules of the Exchange and the Rules of the Clearing Corporation.] *Any person required to complete Form U-4 shall promptly electronically file any required amendments to Form U-4 with the NASD's Web CRD system.*

(b) Termination—Filing of U-5's. The discharge or termination of employment of any registered person, together with the reasons therefore, shall be *electronically reported to the NASD's Web CRD System* by a member organization immediately following the date of termination, but in no event later than thirty (30) days following termination, [to the Exchange's Department of Financial and Sale Practice Compliance] on a Uniform Termination Notice for Securities Industry Registration (Form U-5). A copy of said termination notice shall be provided concurrently to the person whose association has been terminated.

(c) Termination—Filing of amended U-5's. The member organization shall *electronically report to the NASD's Web CRD system [Exchange]*, by means of an amendment to the Form U-5 filed pursuant to paragraph (b) above, in the event that the member organization learns of facts or circumstances causing any information set forth in the notice to become inaccurate or incomplete. Such amendment shall be [filed with the Exchange's Department of Financial and Sales Practice Compliance and] provided concurrently to the person whose association has been terminated no later than thirty (30) days after the member organization learns of the facts or circumstances giving rise to the amendment.

\* \* \* [Interpretations and Policies:

.01 The application prescribed by the Exchange pursuant to paragraph (a) of this Rule is the Uniform Application for Securities Industry Registration or Transfer (Form U-4). Any person required to complete Form U-4 shall promptly file any required amendments to Form U-4.

.02 Any filing or submission requirement under this Rule shall be deemed to be satisfied if such filing or submission is made with the North American Securities Administrators Association/National Association of Securities Dealers, Inc. Central Registration Depository (CRD) within the applicable time period set forth in this Rule.]

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#### *Fee Schedule*

\* \* \* \* \*

#### 12. REGULATORY FEES:

- (A) No change.
- (B) No change.
- (C) No change.
- (D) Web CRD<sup>SM</sup> Fees.

*The following fees will be collected and retained by NASD via the Web CRD<sup>SM</sup> registration system for the registration of associated persons of Exchange members/member organizations who are not also NASD members:*

#### *(i) GENERAL REGISTRATION FEES:*

- \$85.00 NASD Non-Member Processing Fee\**
- \$95.00 NASD Disclosure Processing Fee\*\* (U-4, U-5, & amendments)*
- \$30.00 NASD Annual System Processing Fee assessed only during Renewals*

*\*For all Initial, Transfer, Relicense, Dual registration Form U-4 filings. This fee will also be generated upon refiling to Web CRD<sup>SM</sup> of CBOE—only registered individuals.*

*\*\*For all registration, transfer, or termination filings with new or amended disclosure information or that require certification as well as any amendment to disclosure information.*

#### *(ii) FINGERPRINT PROCESSING FEES:*

- \$32.00 per card Initial Submission*
- \$10.00 per card Second Submission w/ initial Fingerprint Card attached*
- \$32.00 per card Second Submission w/o initial Fingerprint Card attached*
- \$32.00 per card Third Submission*

*Please also note that effective within 60 days after the CBOE receives approval from the SEC and reaches agreement with the NASD, the CBOE REGISTRATION FEES listed in Section 12(A) above will be collected by NASD from associated persons of CBOE member firms that are not members of*

*NASD. (Advance notification of the specific date will be provided to CBOE member firms.) Please note further that these fees are already being collected by the NASD on behalf of the CBOE from CBOE members that are also members of the NASD.*

\* \* \* \* \*

## **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 purpose of this proposed rule is to allow for associated persons of CBOE member firms that are not members of the National Association of Securities Dealers, Inc. ("NASD") to register their qualification status electronically via the NASD's Web CRD. Currently, the Exchange requires those associated persons of member organizations that are members of the CBOE, but not NASD members, to manually register for a qualification status by filing a hard copy Form U-4. In addition, a hard copy Form U-5 must be filed with the Exchange within 30 days of the registered person's termination or within 30 days after the member organization learns of any facts or circumstances that would give rise to an amendment. The CBOE has established an arrangement with NASD Regulation ("NASDR") to allow CBOE members that are not NASD members to register associated persons electronically with the NASDR in place of the CBOE as a CRD participant. The CBOE believes that this revision to the current registration process will benefit those persons seeking and/or maintaining registrations with the CBOE in that hard copy filings will no longer need to be sent to the Exchange. Further, all registration and disclosure data will be consolidated into one database, Web CRD, thus allowing members and member organizations access to the member's associated persons' records.

Further, processing associated persons of these non-NASD member firms in Web CRD will make information about them more readily available to regulators and allow for closer monitoring of these firms. In addition, this agreement will establish a method to allow registered persons to be notified and satisfy the Continuing Education Regulatory Requirement pursuant to CBOE Rule 9.3A.

This proposed rule change implements the following fees to be imposed upon non-NASD Exchange members and member organizations, which members will be instructed to pay directly to NASDR through the Web CRD system at the time the Exchange member/member organization effects a registration transaction through Web CRD:

(a) *Non-Member Processing Fee*—This \$85.00 fee will be assessed upon establishing a record on the Web CRD system for any associated person of a non-NASD CBOE member. Accordingly, this fee will be assessed for all initial, transfer, relicense and dual registration Form U-4 filings. In addition, this fee will be assessed when NASDR establishes a record for any associated person of a non-member who already maintains a registration capacity at the CBOE (e.g., NASDR will assess this fee when establishing CRD records for individuals who previously were manually tracked at the CBOE).

(b) *Disclosure Processing Fee*—This \$95.00 fee will be assessed for any initial, transfer, relicense and dual registration Form U-4 or Form U-5 filing that contains new or amended disclosure information (i.e., an initial affirmative response to current Question 23 on the Form U-4 or a change to any information previously reported in response to Question 23).

(c) *Annual System Processing Fee*—This \$30.00 fee will be assessed during the yearly renewals cycle and covers system processing costs for the year.

(d) *Fingerprint Processing Fees*—These fees, as specified in the CBOE Fee Schedule, will be assessed for processing fingerprint cards submitted with Form U-4 filings.<sup>5</sup>

Once the transition to the Web CRD is completed all Exchange members and member organizations that are not members of the NASD will be subject to these Web CRD fees, which will be set forth on the Exchange Fee Schedule. In

addition, all registered persons will continue to be assessed CBOE registration fees as outlined in CBOE Rule 2.22(b)—*Other Fees or Charges, (Registration Fees)*.

Rule 9.3(a) is being edited to eliminate obsolete language (i.e., “customers’ men”), and to clarify the requirements for registration by associated persons of members of other national securities exchanges, by deleting language that will no longer be applicable when such associated persons effect their registration via Web CRD (“provided, however, that Representatives of member organizations \* \* \* of the Clearing Corporation.”) This deleted language is obsolete and has had no practical effect since the CBOE began coordinating the registration of its members with the CRD. The former Interpretations .01 and .02 to Rule 9.3 are being eliminated, as the appropriate portions have been incorporated into Rule 9.3 itself.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,<sup>6</sup> in general, and Section 6(b)(5) of the Act,<sup>7</sup> in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest.

### 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 written comments on 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 Exchange 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.

## 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-2001-66 and should be submitted by July 9, 2002.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46066; File No. SR-NASD-2002-73]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Nasdaq Testing Facility Fees, and To Add the Ability To Test Computer-to-Computer Interface, Application Programming Interface, and Market Data Vendor Feeds Over Dedicated Circuits

June 12, 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 June 4,

<sup>5</sup> By letter to Elizabeth King, Associate Director, Division of Market Regulation, SEC, from Joanne Moffic-Silver, General Counsel and Corporate Secretary, Legal Department, CBOE, dated March 1, 2002, the Exchange submitted an amended Fingerprint Plan pursuant to SEC Rule 17f-2(c), 17 CFR 240.17f-2(c), under the Act.

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</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.