

investment trust and management investment companies that hold securities based on an index or a portfolio of securities is that they are open-ended. New Fund Shares in these products may be created on any business day in response to an offer to purchase such shares. Accordingly, the ability of the seller of a call option on any such Fund Share to deliver upon exercise is a function of the availability of all the shares of the components represented in the trust, not just the share held by the fund itself. As a result, there is substantially less potential for manipulation of a Fund Share's price, since, unlike the market in a thinly traded corporate stock, the market for Fund Share's cannot be successfully squeezed or cornered because the potential supply to Fund Shares is, for all practical purposes, unlimited.

Lastly, although the Exchange believes that the proposed rule change will not increase the potential for trading abuse or manipulation, the Exchange currently has in place safeguards to detect and prevent any such abuse or manipulative activities. The Exchange believes its existing surveillance procedures are more than sufficient to detect any improper trading activity, deter any potential manipulative or improper trading activity and minimize the regulatory risks of integrated market making. The concentration of related product trading activity helps in the surveillance that assures that a customer receives a price appropriate to the state of the market when his order arrives on the trading floor. The Exchange conducts regular surveillance to detect any abuse or attempted manipulations and to insure compliance with its safeguards. The Exchange believes that the proximity of trading activity in related products will increase the effectiveness of these safeguards.⁷

⁷ In addition to the foregoing, in recent months the Commission has approved rule changes by other options exchanges which will permit these exchanges to list and trade, under unlisted trading privileges, some or all Fund Shares now listed on the Amex or which might be listed on the Amex or some other exchange in the future. In contrast to Amex rules which currently place limitations on option and equity trading locations and specialists' affiliations, the Amex believes that the rules of some of the other U.S. options exchanges impose no such limitations on trading locations, specialists' affiliations or market maker participation on these or related products. The proposed rule change will permit the Amex to conduct its business without unnecessary fetters not imposed on competitive markets. The changes will permit Amex specialists and market makers to use other related products traded on the Amex in the same way that specialists and market makers on other exchanges will be able to use related products traded on their exchanges in their market making and risk management

(2) Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act⁸ in general and furthers the objectives of Section 6(b)(5)⁹ in particular in that 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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.

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 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. 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

activities in Fund Shares and related options products.

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-98-23 and should be submitted by October 8, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40430; File No. SR-CBOE-98-06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto by the Chicago Board Options Exchange, Inc. Relating to the Rerouting of RAES Eligible Orders for the Last Five Minutes of the Scheduled Trading Day

September 10, 1998.

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 February 20, 1998, 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 CBOE. On April 9, 1998, the CBOE filed Amendment No. 1 to the proposed rule change with the Commission.³ On August 26, 1998, the CBOE filed Amendment No. 2 to the proposed rule change with the Commission.⁴ The

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange clarified when the new rule will operate. See Letter from Timothy H. Thompson, Director, Regulatory Affairs, Legal Department, CBOE, to Ken Rosen, Attorney, Division of Market Regulation ("Division"), Commission, dated March 31, 1998 ("Amendment No. 1").

⁴ In Amendment No. 2, the Exchange amended the proposed rule language to account for a new "RAES step-up" feature and further explained 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 CBOE proposes to turn off, five minutes prior to the scheduled close of the trading day, the feature of CBOE's Retail Automatic Execution System ("RAES")⁵ that re-routes orders away from RAES when the RAES price is inferior to the best bid or offer in any other market ("NBBO reject"). Moreover, the design of RAES will not allow the RAES "step-up" feature, which provides automatic price improvement for RAES orders in some circumstances, to be used while the NBBO reject feature is turned off.⁶ The text of the proposed rule change is available at the Office of the Secretary, CBOE and at 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

Currently, when an order is routed to the Exchange's order routing system and is eligible for execution through RAES,⁷ the system checks whether the bid or offer (as appropriate for the type of order) on any other U.S. exchange is better than the current CBOE displayed price for that series. The Exchange receives quotes from the other exchanges through a feed into its mainframe computer from the Options

Price Reporting Authority ("OPRA"). If the CBOE price is no worse than the price elsewhere, the order will be automatically executed at that price through RAES. If there is a better price elsewhere, then, pursuant to Interpretation .02 to CBOE Rule 6.8, the order will be rerouted to the Designated Primary Market-Maker ("DPM") (in the case of an option assigned to that DPM) or to an Order Book Official (in the case of an option assigned to a market-making crowd) for non-automated handling of the order.⁸ This rerouting function is called the "NBBO reject" feature.

Interpretation .02 to CBOE Rule 6.8 provides two situations in which the NBBO reject feature may not be employed: where a "fast market" in the equity options that are the subject of the orders in question has been declared on the Exchange or where comparable conditions exist in the other market such that the firm quote requirements do not apply. The proposed rule change will add a third situation that will apply to all equity options at the close of the scheduled trading day.

Under the proposal, the Exchange will turn off the NBBO reject feature of RAES for equity options five minutes prior to the scheduled close of the trading day. Thus, where the current rules set a closing time of 3:02 p.m. for equity options, the NBBO reject feature would be turned off at 2:57 p.m. The Exchange is proposing this change because trading is often hectic during the last few minutes of the trading day and the Exchange often receives large numbers of RAES orders at the end of the day. If a large number of orders are rejected, the number of orders to be handled in a nonautomated manner in a finite period of time will increase. The Exchange believes that this situation could interfere with the fair and orderly close of trading.

It should be noted that when a RAES-eligible order is subjected to an NBBO reject, the order must still be filled in the crowd. There is no guarantee that the order will be executed at a better price than the order will be executed at a better price than the order would have received had it been automatically executed on RAES. During the trading day when there is not a fast market, a DPM or trading crowd will likely fill the order at the better bid or offer displayed elsewhere. However, at the end of the

trading day, the order, once rerouted, may be filled behind at a number of other orders. By the time the crowd or DPM is able to fill the order, the market may have moved substantially from the time at which the order was re-routed and the order may be filled at a price inferior to that at which RAES would have executed the order. In fact, the order may not be filled at all if the market has moved away from the order's limit price. The Exchange believes that turning off the NBBO reject feature of RAES for the last five minutes of the scheduled trading day will reduce the likelihood of these occurrences. Of course, the Exchange also will still retain the right to turn off the NBBO reject feature at other times during the trading day when a "fast market" has been declared or when the other exchange is not honoring its firm quote commitment.

The design of RAES also prevents the RAES "step-up" feature from being used while the NBBO reject feature is turned off.⁹ In Amendment No. 2, the Exchange represented that member firms that handle a large percentage of the RAES order flow have expressed their interest in turning off the reject feature, and consequently the RAES "step-up," during the last five minutes of the trading day because, in their informed opinion, it is more problematic if an order does not get filled at all (which is a possibility if the order is rejected for manual handling in the last few minutes of the trading day) than if an order is filled at the displayed CBOE price even though there may have been a better displayed quote on another exchange. These firms have stated that their customers are much more sensitive to the risk that their order will not be filled. In addition, these firms have indicated that in some circumstances the firm may talk to the trading crowd about making an adjustment for a customer if the customer believes he was disadvantaged by such a policy.¹⁰

2. Statutory Basis

The CBOE believes that the proposed rule change will help to allow the Exchange to close its market in a fair and orderly manner. As such, the Exchange believes the rule proposal is consistent with and furthers the objectives of Section 6(b)(5)¹¹ of the Act, in that it is designed the perfect the mechanisms of a free and open market and to protect investors and the public interest.

purpose of and justification for the proposal. See Letter from Timothy H. Thompson, Director, Regulatory Affairs, Legal Department, CBOE, to Richard Strasser, Assistant Director, Division, Commission, dated July 15, 1998 ("Amendment No. 2").

⁵ RAES is the Exchange's automatic execution system for small public customer market or marketable limit orders.

⁶ See Amendments No. 2.

⁷ See CBOE Rule 6.8.

⁸ However, when the NBBO is within one pricing increment of the CBOE price, a new RAES "step-up" feature may be employed to provide automatic execution in RAES at the NBBO. See Securities Exchange Act Release No. 40096 (June 16, 1998) 63 FR 34209 (June 23, 1998) (order approving proposal).

⁹ See amendment No. 2.

¹⁰ See amendment No. 2.

¹¹ 15 U.S.C. 78f(b)(5).

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

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Burden 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.

IV. Solicitation of Comments

Interests persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. In particular, the Commission seeks comment on firms' continued best execution obligations in light of the proposal. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 CBOE. All submissions should refer to File No. SR-CBOE-98-06 and should be submitted by October 8, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 3440427; File No. SR-NASD-98-65]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to SelectNet Fees

September 10, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on August 27, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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

Nasdaq is herewith filing a proposed rule change to extend, through November 30, 1998, the fees currently charged under NASD Rule 7010(1) for the execution of transactions in SelectNet. Under the proposed extension, SelectNet fees would continue to be assessed in the following manner: (1) \$1.00 will be charged for each SelectNet order entered and directed to one particular market participant that is subsequently executed in whole or in part; (2) no fee will be charged to a member who receives and executes a directed SelectNet order; (3) the existing \$2.50 fee will remain in effect for both sides of executed SelectNet orders that result from broadcast messages; and (4) a \$0.25 fee will remain in effect for any member who cancels a SelectNet order. If no further action is taken, SelectNet fees will revert to their original \$2.50 per-side level on December 1, 1998.

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

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 NASD included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at places specified in Item IV below. The self-regulatory organization 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

Nasdaq is proposing to again extend its current SelectNet fees. The reasons for Nasdaq's prevailing SelectNet fee structure were fully explained in its original fee structure proposal filed with the Commission in February of this year.² Since then, SelectNet usage has continued at significantly elevated levels, averaging over 120,000 daily executions in June and 140,000 executions each day in July of 1998. As such, Nasdaq believes that an extension of these reduced fees, through November 30, 1998, is warranted. Under the proposed extension, SelectNet fees would continue to be assessed in the following manner: charged to a member who receives and executes a directed SelectNet order; (3) the existing \$2.50 fee will remain in effect for both sides of executed SelectNet orders that result from broadcast messages; and (4) a \$0.25 fee will remain in effect for any member who cancels a SelectNet order. Nasdaq will continue to monitor and review SelectNet activity to determine if further extensions of its reduced SelectNet fee structure are appropriate. If no further action is taken, SelectNet fees will revert to their original \$2.50 per-side level on December 1, 1998.

For the reason set forth above, Nasdaq believes that the proposed rule change is consistent with Section 15A(b)(5) of the Act,³ which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any

² Securities Exchange Act Release No. 39641 (February 10, 1998), 63 FR 8241 (February 18, 1998). Nasdaq's current reduced fee structure was originally approved for a 90-day trial period, commencing the day the proposal was published in the **Federal Register**. The reduced fees were extended in May 1998 and would expire on August 31, 1998, if not extended by this filing. See Securities Exchange Act Release No. 40050 (June 1, 1998), 63 FR 31254 (June 8, 1998).

³ 15 U.S.C. 78o-3(b)(5).