

discrimination between customers, issuers, brokers or dealers.

#### *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*

No written comments were solicited or received.

### **III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, and amended, 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 at 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-BSE-2003-18 and should be submitted by November 7, 2003.

### **IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>7</sup> which, among other things, requires that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices,

and, in general, protect investors and the public interest.

The Commission believes that the Exchange's proposal to adopt an Anti-Money Laundering Compliance Program accurately, reasonably, and efficiently implements the requirements of the Patriot Act as it applies to their members. The Commission also recognizes that anti-money laundering compliance programs will evolve over time, and that improvements to these programs are inevitable as members find new ways to combat money laundering and to detect suspicious activities.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that the Rule is substantially similar to anti-money laundering compliance program rules that the Commission has previously approved for other self-regulatory organizations.<sup>8</sup> Accordingly, the Commission believes that there is good cause, consistent with Section 19(b) of the Act,<sup>9</sup> to approve the proposed rule change on an accelerated basis.

### **V. Conclusion**

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change, as amended, is hereby approved.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-48623; File No. SR-CBOE-2003-43]

#### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated To Make Changes to Its Fee Schedule Involving the Exchange's Hybrid Trading System and Retail Automatic Execution System Orders**

October 10, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on October 1, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to 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 October 7, 2003, the CBOE filed an amendment to the proposed rule change. 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 make four changes to its Fee Schedule. The first three changes involve fees connected to the Exchange's Hybrid trading system. The fourth change involves the access fee for Retail Automatic Execution System ("RAES") orders. The text of the proposed rule change, as amended, to the fee schedule is available at the Office of the Secretary, the 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, as amended, 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.

<sup>8</sup> See Securities Exchange Act Release Nos. 45798 (April 22, 2002), 67 FR 20854 (April 26, 2002) (Order approving SR-NASD-2002-24 and SR-NYSE-2002-10); 46041 (June 6, 2002), 67 FR 40366 (June 12, 2002) (Order Approving SR-Phlx-2002-29); 46258 (July 25, 2002), 67 FR 49715 (July 31, 2002) (Order Approving SR-Amex-2002-52); 446462 (September 5, 2002), 67 FR 58665 (September 17, 2002) (Notice of Filing and Order Granting Accelerated Approval of SR-CBOE-2002-45); 46468 (September 6, 2002), 67 FR 58095 (September 13, 2002) (Notice of Filing and Immediate Effectiveness of SR-PCX-2002-44); and 46739 (October 29, 2002), 67 FR 67432 (November 5, 2002) (Notice of Filing and Immediate Effectiveness of SR-NASD-2002-146).

<sup>9</sup> 15 U.S.C. 78f(b)(5) and 78s(b).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>7</sup> 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

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

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to make several changes to its Fee Schedule involving Hybrid and RAES fees.

**Actant Infrastructure User Charge**

The Exchange is providing certain hardware and related maintenance needed by Actant, a third party vendor that is providing quoting software and a connection to the CBOEdirect system that many CBOE members are using to stream quotes to the Hybrid trading system. The Exchange provided the hardware and maintenance in order to facilitate Actant's service of Exchange members; however, the Exchange wishes to recover its costs in doing so. As a result, beginning on October 1, 2003, all users of Actant software for the Hybrid system will incur a \$100 per month Exchange user fee. The Exchange states that this fee will offset the cost of the hardware and ongoing maintenance that the Exchange is incurring in order to facilitate Actant's service.

**Market Data User Fee**

The Exchange states that numerous Exchange members making markets on the CBOE's trading floor in the Hybrid trading system make use of data feeds of underlying market information that are provided by the CBOE through its TickerXpress service ("TX"). The Exchange proposes to charge a fee of \$100 per month to members receiving TX market data to compensate the CBOE for providing the infrastructure to make this market data available. Alternatively, members may receive TX market data from the Exchange that has been enhanced by the data processing services of a third party service provider to the Exchange. The Exchange proposes to charge a fee of \$200 per month to members receiving the enhanced TX data to compensate the CBOE for providing the infrastructure to make this market data available. The Exchange proposes to waive these TX fees through the end of 2003 and to make them effective on January 1, 2004.

**CBOEdirect Connectivity Fee Waiver**

Currently, the Exchange charges monthly connection fees for users of its CBOEdirect electronic trading platform of \$900 per month for each connection to CBOEdirect through the CBOE Market Interface (CMI) and \$600 for a connection through the FIX (Financial Information Exchange) interface. The Exchange states that these fees help the

CBOE begin to recover its substantial investment in CBOEdirect.

However, as the Exchange expands its rollout of the Hybrid trading system, which also uses CBOEdirect, the Exchange proposes to waive the CBOEdirect connectivity fees for all connections to CBOEdirect for the purpose of using the CBOE's Hybrid system effective October 1, 2003. The Exchange believes that this waiver will encourage members to begin using Hybrid, and help offset the related costs that members must incur in order to stream quotes for Hybrid.

The Exchange will review the subject of this waiver again when it conducts next year's budget review of fees.

**RAES Access Fee Waiver for Non-Customer Equity Orders Submitted From the Trading Floor**

Currently, the Exchange charges a \$.30 per contract access fee for all Non-Customer orders (*i.e.*, those with an origin code other than "C") entered into RAES.<sup>3</sup> The Exchange proposes to waive this fee, effective October 1, 2003, in cases where a RAES order in an equity option class is entered from the Exchange trading floor. In such cases, a floor broker, who assumes responsibility for filling such an order in exchange for a floor brokerage fee, may have come to believe that his/her customer will receive a better "fill" electronically through RAES. However, the Exchange believes that imposing the RAES access fee burdens such orders with what is tantamount to a second execution fee (in addition to the floor broker's fee). The Exchange does not believe that it should place such an additional burden on the best execution of such orders. For this reason, the Exchange believes it is fair and equitable to waive the fee in such circumstances.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>4</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>5</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among the 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 proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>6</sup> and Rule 19b-4(f)(2)<sup>7</sup> thereunder because it establishes or changes a due, fee, or other charge imposed by the CBOE. At any time within 60 days of the filing of the proposed rule change, as amended, 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 purposes of the Act.<sup>8</sup>

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 CBOE. All submissions should refer to File No. SR-CBOE-2003-43 and should be submitted by November 7, 2003.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

<sup>3</sup> See Securities Exchange Act Release No. 48223 (July 24, 2003), 68 FR 44978 (July 31, 2003).

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

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on October 7, 2003, the date on which the Exchange filed Amendment No. 1.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48615; File No. SR-EMCC-2003-05]

### Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Return of Clearing Fund Deposits

October 9, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on September 29, 2003, Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by EMCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

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

The proposed rule change consists of changes to EMCC's rules relating to the return of clearing fund deposits.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC 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. EMCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>2</sup>

#### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In File No. SR-EMCC-2003-02, EMCC sought Commission approval (1) to establish a fixed clearing fund requirement for inter-dealer brokers ("IDBs") or members who clear for IDBs and (2) to have the difference between an IDB's calculated clearing fund requirement and the fixed amount be paid by other members on a pro rata basis. As part of that filing, EMCC also sought Commission approval to eliminate the "look back" feature from its clearing fund formula. EMCC expected that the elimination of the look back feature would offset its non-IDB members' obligation to deposit additional clearing fund to cover the difference between the IDB's calculated clearing fund requirement and the fixed amount. On August 19, 2003, the Commission approved the proposed rule change.<sup>3</sup>

In connection with its members' depositing additional clearing fund to cover the difference between the IDB's calculated clearing fund requirement and the fixed amount, EMCC had planned on allowing its members to receive upon request the return of excess clearing fund deposits on a daily basis instead of on a monthly basis. The appropriate change to EMCC's rules to accomplish the daily return of excess clearing fund deposits was inadvertently omitted from that filing. Accordingly, the purpose of this filing is to modify EMCC Rule to provide for a daily return upon request of excess clearing fund deposits and to provide that EMCC will begin honoring such requests concurrent with the implementation of the changes covered by File No. SR-EMCC-2003-02.

EMCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to EMCC because it will permit the equitable allocation of charges among participants.

#### (B) Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will have any impact on or impose a 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 relating to the proposed rule change have been solicited or received. EMCC will notify the Commission of any written comments received by EMCC.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.<sup>4</sup> Approval of File No. SR-EMCC-2003-02 resulted in a more accurate clearing fund calculation and a more timely collection of members' required clearing fund deposits. It also resulted in EMCC's members having to pay the difference between the calculated clearing fund requirement and the fixed clearing fund amount for each IDB or member who clears for IDBs. Under EMCC's existing rule, if a member had on deposit clearing fund in excess of its required deposit, the excess could be returned to the member no more frequently than once a month. By providing that members are entitled to have their excess clearing fund deposits returned to them upon request on a daily basis, the proposed rule change allows EMCC to implement the changes in File No. SR-EMCC-2003-02 in a way that accommodates the needs of EMCC's members while not affecting EMCC's ability to safeguard securities and funds which are in its custody or control or for which it is responsible.

EMCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice because accelerated approval will facilitate the implementation of File No. SR-EMCC-2003-02 which the Commission previously determined met the requirements of Section 17A(b)(3)(F) of the Act.

#### 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.

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> The Commission has modified parts of these statements.

<sup>3</sup> Securities Exchange Act Release No. 48366, 68 FR 51311 (August 26, 2003).

<sup>4</sup> 15 U.S.C. 78q-1(b)(3)(F).