

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43280; File No. SR-BSE-00-06]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to the Intermarket Trading System

September 11, 2000.

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 September 5, 2000, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") 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 by the Exchange. On September 5, 2000, the BSE submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> 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 seeks to amend its rules relating to the Intermarket Trading System ("ITS") to make these rules consistent with ITS Plan amendments filed by the Participants in ITS.<sup>4</sup>

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

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

<sup>3</sup> The BSE originally filed the proposal on August 4, 2000, pursuant to Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2). On September 5, 2000, the BSE submitted a letter from John A. Boese, Assistant Vice President, Rule Development and Market Structure, BSE, to Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, amending the proposal ("Amendment No. 1"). In Amendment No. 1, the BSE requested that the Commission consider the proposal under Section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A). Because the BSE amended the proposal to file it under Section 19(b)(3)(A) of the Act, the Commission considers the proposal refiled as of the date of the amendment. Therefore, the date of the amendment is deemed the date of the filing of the proposal.

<sup>4</sup> Participants to the ITS Plan include the American Stock Exchange LLC, the BSE, the Chicago Board Options Exchange, Inc., the Chicago Stock Exchange, Inc., the Cincinnati Stock Exchange, Inc., the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc. (collectively, "Participants"). This filing incorporates ITS Plan amendments, which codify trade adjustment procedures and make technical revisions found in the 15th ITS Plan Amendment ("15th ITS Plan Amendment"). See Securities Exchange Act Release No. 43240 (September 1, 2000) (notice of the 15th ITS Plan Amendment).

#### 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 the proposed rule change is to amend Sections (a)(1) (*Definitions*) and (1)(b) (*Provisions of the Plan*) of Chapter XXXI, *Intermarket Trading System*, and add Section (5) (*Corrections*) to Chapter XXXI, *Intermarket Trading System*. Specifically, the BSE seeks to change its rules regarding the ITS to make these rules consistent with the recent 15th ITS Plan Amendment filed by the Participants.

Presently, the term "System" is defined in sub-section (ii) of Chapter XXXI, Section (1)(a) as "the communications network and related equipment that links electronically the participating market centers as described in the Plan." Under the 15th ITS Plan Amendment, the definition of "System" is expanded to include the ITS control center which is responsible for, among other things, monitoring and controlling communications and processing trade adjustments as a result of errors.<sup>5</sup> Accordingly, the Exchange seeks to expand its definition of "System" consistent with the 15th ITS Plan Amendment.

Furthermore, the term "Participant(s) Market" as defined in sub-section (vii) of Chapter XXXI, Section (1)(a) does not include Remote Specialist locations as part of the Exchange Market. The 15th ITS Plan Amendment takes into account the recent approval by the Commission and pending addition of Remote Specialists to the Exchange.<sup>6</sup> The 15th ITS Plan Amendment includes Remote Specialist locations at which ITS stations are located in the definition of

<sup>5</sup> See supra note 4.

<sup>6</sup> The Commission approved the BSE's Remote Specialist proposal on August 8, 2000. See Exchange Act Release No. 43127 (August 8, 2000), 65 FR 49617 (August 14, 2000).

"Participant Market." <sup>7</sup> Accordingly, the Exchange seeks to expand its definition of "Participant(s) Market" consistent with the 15th ITS Plan Amendment so that Remote Specialist locations are included in all references thereto.

The 15th ITS Plan Amendment adds a new paragraph to the ITS Plan concerning trade adjustments.<sup>8</sup> In order to remain consistent with the 15th ITS Plan Amendment, the Exchange seeks to add Section (5) (*Trade Adjustments*) to Chapter XXXI. This section sets forth the procedures for facilitating trade adjustments. The Exchange seeks to codify their responsibilities concerning these procedures. Specifically, the Section delineates how and by whom messages requesting trade adjustments must be sent and the steps which will be taken by the ITS Control Center ("ICC") to process the adjustments. The messages concerning trade adjustments (*i.e.*, price, size, buy or sell side, cancel or insert trade "as of" a prior day) must be sent to the ICC in the form of administrative messages through ITS by a supervisor of the Exchange ("Exchange supervisor") authorized to send such messages.

In the case of trade day adjustments, if an Exchange member receives and executes a commitment to trade, the Exchange supervisor will be permitted to send a trade adjustment message to the ICC only after receiving an administrative message through ITS from the supervisor of the market that issued the commitment ("issuing supervisor"), agreeing to the terms of, and authorizing the Exchange supervisor to make, the adjustment. Similarly, if the Exchange is the issuing market, the Exchange supervisory must send administrative messages to any executing market supervisor regarding any trade adjustment terms and authorizations. In the case of "as-of" adjustments, in all cases, the Exchange supervisor and the corresponding supervisor of the trade must both send administrative messages to the ICC, each requesting the same terms and authorization for the adjustment. An administrative message from the ICC confirming any adjustments will be sent to both the issuing and executing markets following each adjustment.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>9</sup> in that it is designed to promote just and equitable principles of trade, to foster cooperation

<sup>7</sup> See supra note 4.

<sup>8</sup> *Id.*

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

and coordination with persons engaged in regulatory, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Exchange believes that the proposed rule change is also consistent with section 11A(a)(1)(D) of the Act,<sup>10</sup> which calls for the linking of all markets for qualified securities.

#### *B. Self-Regulatory Organization's Statement of 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 either solicited or received.

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

Because the foregoing proposed rule, which is based on an ITS Plan amendment approved by the Participants: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days or such shorter time as the Commission may designate,<sup>11</sup> the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>12</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>13</sup>

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.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and

arguments concerning the foregoing, including whether the proposed rule 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, D.C. 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 BSE. All submissions should refer to File No. SR-BSE-00-06 and should be submitted by October 10, 2000.

For the Commission, by the Division of market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-43273; File No. SR-CBOE-00-29]

#### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Market Performance Responsibilities of the Exchange's Modified Trading System Appointments Committee**

September 11, 2000.

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 July 11, 2000, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

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

The Exchange proposes to amend its rules governing designated primary market-makers ("DPMs") to modify a provision requiring that the Exchange's Modified Trading System Appointments Committee ("MTS Committee") undertake certain performance evaluation and remedial action functions with respect to DPMs and other Exchange members trading in DPM crowds. 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 parts of such statements.

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

The proposed rule change concerns the role of the CBOE's MTS Committee in reviewing the performance of DPMs and Market Makers and Floor Brokers that regularly trade at DPM trading stations. The purpose of the proposed change is to clarify that while the MTS Committee has the authority, by rule, to perform the market performance evaluations and remedial action functions set forth in CBOE Rule 8.60<sup>3</sup> with respect to members that regularly trade at DPM stations, it will not be obligated to perform such evaluations and functions when they are carried out by other appropriate Exchange committees.

#### 1. Background

On June 3, 2000, the Commission approved a rule change that updated and reorganized the Exchange's rules

<sup>3</sup> CBOE Rule 8.60(a) requires the periodic evaluation of members to determine whether they have fulfilled various performance standards, including those related to quality of markets, competition among market makers, observance of ethical standards, and administrative factors.

<sup>10</sup> 15 U.S.C. 78k-1(a)(1)(D).

<sup>11</sup> On August 4, 2000, the Exchange provided the Commission with the five business day notice required by Rule 19b-4(f)(6) of the Act:

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).