

illustrated by an example provided by the Exchange:

Assume the market is quoted 20.00 to 20.01, 5,000 x 5,000, and the bid represents a limit order on the book. Further assume that the specialist announces an eQPRIORITY order to buy 1,000 and that a broker in the crowd is willing to sell 1,000 at 20.00. In this example, the limit order to buy on the book had established a bid of 20.00 prior to the representation of the eQPRIORITY order. The booked limit order, consequently, would buy the 1,000 shares sold by the broker at 20.00, and the eQPRIORITY order would be filled at 20.01.

2. Statutory Basis

Amex believes that the proposed rule change is consistent with section 6(b) of the Act⁹ in general and furthers the objectives of section 6(b)(5)¹⁰ in particular in that it is designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; 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. Amex also believes that the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, and dealers.

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

Amex has stated that the proposed rule change would impose no 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

Amex has stated that, because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), it has become effective pursuant to section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

Amex has requested that the Commission waive the 30-day pre-operative period under Rule 19b-4(f)(6)(iii). Under that rule, the Commission may designate that the rule will become effective in less than 30 days if such action is consistent with the protection of investors and the public interest.¹³ Acceleration of the operative date will allow the pilot program to continue without disruption to market participants. Therefore, the Commission finds that waiving the 30-day pre-operative period meets these criteria, and the proposed rule change may become operative immediately.¹⁴

Rule 19b-4(f)(6) also requires the self-regulatory organization to provide the Commission written notice of its intent to file the proposed rule change at least five business days before doing so (or such shorter time as designated by the Commission). Amex also has requested that the Commission waive this five-day pre-filing requirement. The Commission hereby waives the five-day pre-filing period.

At any time within 60 days of the filing of the 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 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 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

¹³ See *id.*

¹⁴ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

the principal office of the Exchange. All submissions should refer to File No. SR-Amex-2002-72 and should be submitted by November 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46619; File No. SR-BSE-2002-17]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Boston Stock Exchange, Inc. To Amend Its Transaction Fee Schedule To Revise the Monthly Transaction Related Revenue It Must Generate Before Sharing Excess Revenue With Eligible Firms

October 8, 2002.

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 September 27, 2002, the Boston Stock Exchange, Incorporated ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the BSE under Section 19(b)(3)(A)(ii) of the Act,³ which renders the proposal effective upon filing with the Commission. 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 BSE proposes to amend its Transaction Fee Schedule to revise the monthly transaction related revenue the BSE must generate before it shares excess revenue with eligible firms. The text of the proposed rule change is available at the BSE and at the Commission.

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

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 the Revenue Sharing Program that is currently part of the BSE's Transaction Fee Schedule. Currently, the minimum amount of monthly transaction related revenue the BSE must generate before it shares excess revenue with eligible member firms is \$1,700,000. The BSE proposes to revise this amount to \$1,900,000, to meet the budgeted costs of operating the Exchange in the upcoming fiscal year.⁴

The Exchange is seeking to amend only its existing revenue sharing program, and only in the area of the amount of revenue the Exchange must generate before sharing excess revenue. No changes are being sought to the fundamental structure of the existing program.

⁴ The Exchange notes that this revision would apply to the Transaction Fee Schedule currently in place for the BSE. On September 11, 2002, the Commission approved a proposed rule change that amended the BSE's Floor Operations and Transactions Fees Schedules. See Securities Exchange Act Release No. 46488 (September 11, 2002), (SR-BSE-2002-11). Normally, such changes are sought to run concurrent with the BSE's fiscal year, which begins on October 1. However, as part of the changes to its overall fee structure, the BSE sought to replace its current revenue sharing program with two new programs. The amendments to the BSE's revenue sharing program were the subject of a separate, but related, rule proposal, which has been published for notice and public comment. See Securities Exchange Act Release No. 46496 (September 19, 2002), (SR-BSE-2002-10). In seeking the changes to its Transaction Fee Schedule sought in SR-BSE-2002-11, which have been approved by the Commission, the Exchange stated that it would implement such changes only upon approval of its new revenue sharing programs, which were the basis of SR-BSE-2002-10. Since SR-BSE-2002-10 is still pending with the Commission, the BSE will not amend its Transaction Fee Schedule on October 1, 2002. Thus, the existing Transaction Fee Schedule (the one that was operative for the BSE's fiscal year that ends on September 30, 2002) will remain in effect, until such time as it is amended in response to Commission action on SR-BSE-2002-10.

The BSE is seeking to make this change operative only until the Commission acts on SR-BSE-2002-10. Upon such Commission action, the BSE will either implement the proposed revenue sharing program detailed in SR-BSE-2002-10, and the accompanying changes to the Transaction Fee Schedule that have been approved in SR-BSE-2002-11, or reevaluate its revenue sharing program and accompanying fee schedule.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁶ in particular, in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among the BSE's 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.

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 comments on the proposed rule change.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁷ and subparagraph (f)(2) of Rule 19b-4 thereunder,⁸ because it involves a due, fee, or other charge. At any time within 60 days of the filing of the 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 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 proposal 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 number SR-BSE-2002-17, and should be submitted by November 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46607; File No. SR-CBOE-2002-51]

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 Relating to a Safe Harbor From the Unbundling Rule

October 7, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder, notice is hereby given that on September 6, 2002, the Chicago Board Options Exchange, Incorporated ("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 September 27, 2002, CBOE submitted to the Commission Amendment No. 1 to the proposed rule change.³ The Commission

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 217 CFR 240.19b-4.

³ Amendment No. 1 revised the text of the proposed rule change to clarify that the safe-harbor from the unbundling rule applies to orders entered outside of any 15-second period. See letter from Steve Youhn, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 26, 2002.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

⁸ 17 CFR 240.19b-4(f)(2).