

## 2. Statutory Basis

The Exchange believes that the proposal 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 Amex members and issuers and other persons using the Amex's facilities.

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

The proposed fee change will impose no 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 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 has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>6</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>7</sup> because it establishes or changes a due, fee, or other charge imposed by the Amex. 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 Amex. All submissions should refer to file number SR-Amex-2002-107 and should be submitted by January 17, 2003.

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

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47031; File No. SR-BSE-2002-05]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto by the Boston Stock Exchange, Inc. Relating to the Trading of Nasdaq Securities on the Exchange

December 18, 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 May 13, 2002, 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, II, and III below, which Items have been prepared by the Exchange. The BSE amended the proposed rule change on June 13, 2002,<sup>3</sup> on October 22, 2002,<sup>4</sup> and on November 21, 2002.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

<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.

<sup>3</sup> See letter from John Boese, Assistant Vice President, Legal and Regulatory, BSE, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated June 12, 2002 ("Amendment No. 1").

<sup>4</sup> See File No. SR-BSE-2002-05, Amendment No. 2, dated October 18, 2002 ("Amendment No. 2").

<sup>5</sup> See File No. SR-BSE-2002-05, Amendment No. 3, dated November 20, 2002 ("Amendment No. 3").

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

The Exchange proposes to amend its trading rules for securities listed on The Nasdaq Stock Market, Inc. ("Nasdaq") to allow for extended hours and remote trading of Nasdaq securities. The text of the proposed rule change, as amended, is below. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

### Chapter XXXV

#### Trading in Nasdaq Securities

\* \* \* \* \*

#### Dealings on the Floor—Hours

Section 8. [Pursuant to Chapter I-B, Sec. 2, Dealings on the Floor—Hours, no member or member organization shall make any bid, offer or transaction upon the floor of the Exchange, issue a commitment to trade through ITS or send an order for a Nasdaq security to a Nasdaq System market maker other than during the hours the Exchange is open for the transaction of business. Nasdaq securities will not be eligible to participate in the Post Primary Session.] *For the purposes of transacting business in Nasdaq securities only, the Exchange shall be open from 7:00 a.m. until 6:30 p.m. Only transactions in Nasdaq securities will be permitted outside the hours of 9:30 a.m. and 4:15 p.m., in accordance with Chapter I-B, Business Hours, Section 1, Primary Session, and Section 1(a) Post Primary Session.*

#### Remote Trading in Nasdaq Securities

*Section 31. Nasdaq trading terminals and related equipment will be provided to remote member firm locations for specialist trading. The remote terminals will be linked to the Exchange's Nasdaq trading system and will provide the same functionality as is available to on-floor specialists. There will be no remote Nasdaq floor brokerage services. Floor broker orders will be routed to remote specialists under the same criteria by which they are routed to on-floor specialists.*

*(a) All rules and policies of the Board of Governors of the Exchange shall apply except as specifically excluded or amended under this section.*

*(b) Any eligible firm may apply to the Market Performance Committee to participate in the program. All applicants must meet the current minimum requirements for Nasdaq specialists set forth in Chapters XV and XXXV, including, but not limited to their background, experience, staffing, training procedures, adequacy of*

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

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

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

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

applicant's proposed confidentiality policy, adequacy of applicant's contingency plans for communication or technical failures, adequacy of applicant's offsite facilities, performance standards (as measured by the Exchanges SPEP and Best Execution programs), and the minimum margin, capital and equity requirements as set forth in Chapters VIII and XXII of the Rules of the Exchange, and conform to all other performance requirements and standards set forth in the Rules of the Exchange.

(c) Unless the Market Performance Committee specifically authorizes otherwise, participating member firms shall be prohibited from trading remotely any Nasdaq securities which are currently being traded on-floor by that individual member firm. In evaluating a member firm's petition for changing the location of where a particular security is traded, the Market Performance Committee shall consider the application in light of the requirements set forth in paragraph (b) above. Individual securities, however, may not be traded by one specialist firm in more than one location under any circumstances.

(d) The number of Nasdaq stocks traded remotely shall not exceed two hundred (200) per specialist account.

(e) All rule references pertaining to the trading floor of the Exchange shall be deemed to include any trading done remotely through the Exchange's Nasdaq trading system, and all such trades shall be deemed to be Boston executions.

(f) A written confidentiality policy regarding the location and access to information, terminals and equipment must be adopted by the firm and filed with and approved by the Exchange prior to the commencement of remote trading. Specifically, this policy must conform to the requirements set forth in Chapter II, Section 36 (Specialist Member Organizations Affiliated with an Approved Person), and Section 37 (ITSFEA Procedures) of the Rules of the Board of Governors of the Boston Stock Exchange. In accordance therewith, reasonable principles must be applied to limit access by non-specialists to Remote Specialist facilities and information, and to limit Remote Specialist access to and from other proprietary trading venues, including access from outcry or visible communication, intentional or otherwise.

(g) Floor policies regarding dress code, and smoking shall not apply. Access to the area designated as that of the Remote Specialist's shall be restricted to the specialist, backup

specialist, clerks, designated management of the specialist, and Exchange authorized personnel, consistent with the Rules of the Exchange, including, but not limited to, "Chinese Wall" procedures set forth in Chapter II, Section 36, (Specialist Member Organizations Affiliated with an Approved Person), and procedures set forth in Chapter XV, Section 6 (The Specialist's Book).

(h) All Exchange correspondence, memoranda, bulletins and other publications shall be sent to the Exchange's Nasdaq Remote Specialists via electronic means and via U.S. mail or overnight delivery.

(i) All Exchange Nasdaq Remote specialists will have stentofon, (or a similarly operational speakerphone), as well as dedicated telephone access, to the physical trading floor. Any regulatory requirements including trading halts, trading practices, policies, procedures or rules requiring floor official involvement will be coordinated by Exchange personnel with the remote specialist through the dedicated telephone line.

(j) Servicing of the Exchange's Nasdaq trading system terminals and related equipment shall be by Exchange authorized and trained personnel only.

(k) The Exchange's examination program of non-DEA floor members would include the remote specialist operations. Every firm must submit specific supervisory procedures relating to the Remote Specialist operations and appropriate identification of all individuals who will have access to the Remote Specialist operation, including all supervisory personnel.

(l) Any arbitration or disciplinary action arising out of trading activity pursuant to this section would be held at the physical offices of the Exchange located in Boston.

(m) Each remote Nasdaq trading terminal assigned and registered by the Exchange will require an ETP, and will be subject to the following:

(1) Each approved Specialist unit may be authorized to trade up to 200 issues.

(2) Each Specialist unit must have at least one registered Exchange seat assigned to the approved specialist.

(a) A specialist may be authorized to obtain additional ETPs for qualified registered clerks to access the Nasdaq trading system in support of the Specialist unit.

(b) All Specialists and registered clerk ETP holders must be approved by the Market Performance Committee and must meet the following:

(i) file an ETP application form with the BSE Surveillance Department;

(ii) completion of the required floor training program;

(iii) successful completion of the BSE floor examination within 90 days of application;

(iv) successful completion of the Series 63 (NASAA Uniform State Law Exam), and registration with the Commonwealth of Massachusetts, and;

(v) submission of fingerprint records to the BSE.

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## 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, as amended. 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 one section of Chapter XXXV of its Rules related to the trading of Nasdaq securities on the Exchange and to add a new section to the chapter, extending the Exchange's remote trading program to include Nasdaq securities.

The Exchange is proposing an alteration of the hours the Exchange seeks to be open for trading Nasdaq securities. Chapter XXXV, Trading in Nasdaq Securities, Section 8, Dealings on the Floor—Hours, limits the hours of trading in Nasdaq securities on the Exchange to the hours of 9:30 a.m. to 4 p.m. The Exchange will delete the present rule and replace it with one that will permit the transaction of business, in Nasdaq securities only, between the hours of 7 a.m. and 6:30 p.m. Such an extension of hours will allow Exchange specialists who trade Nasdaq securities to remain competitive with their counterparts on other exchanges that trade Nasdaq securities pursuant to unlisted trading privileges ("UTP"), as well as NASD member market makers who are permitted to conduct transactions in Nasdaq securities during this extended period. Furthermore, such extended hours are contemplated and permitted by Article XI of the Joint Self-

Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis ("UTP Plan").

The Exchange is also proposing to adopt rules based on its BEACON Remote trading program but modified for Nasdaq securities. As such, the Exchange will republish, in large part, its remote trading rules located in Chapter XXXIII, BEACON, Section 9, BEACON Remote, as a new section 31 in Chapter XXXV, Trading in Nasdaq Securities. As part of the remote trading program, the Exchange will denote separately a rule for the Exchange's Nasdaq trading program. In so doing, the substance of the remote trading rule will not change. For instance, all requirements relating to the applicability of other BSE rules, confidentiality, "Chinese Walls," communications, and Electronic Trading Permits will still apply. The only deletions or amendments will be those necessary to make the rule applicable to the Nasdaq program, such as deleting references to the BEACON trading system, which is presently designed for the trading of listed securities on the Exchange. Such changes will be administrative and non-substantive in nature.

## 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, to foster cooperation and coordination with persons engaged in regulating 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.

### 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-BSE-2002-05 and should be submitted by January 17, 2003.

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

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47052; File No. SR-CBOE-2002-61]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Rules Implementing the Options Intermarket Linkage Plan

December 19, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 9, 2002, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") 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.

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

The Exchange proposes to adopt rules implementing the options intermarket linkage. The text of the proposed rule change is below; proposed new language is italicized.

Chicago Board Options Exchange, Incorporated Rules

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#### CHAPTER VI

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Doing Business on the Exchange Floor

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#### Section E: Intermarket Linkage

##### Rule 6.80. Definitions

*The following terms shall have the meaning specified in this Rule solely for the purpose of this Section E under Chapter VI:*

(1) "Aggrieved Party" means a member of a Participant Exchange whose bid or offer was traded-through.

(2) "Block Trade" means a trade on a Participant Exchange that:

(i) involves 500 or more contracts and has a premium value of at least \$150,000;

(ii) is effected at a price outside of the NBBO; and

(iii) involves either:

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

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

<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).