

**Federal Register.** The Commission believes that granting accelerated approval of the proposed rule change will allow the Exchange to implement its existing pilot program for Linkage fees as the BSE and the Commission consider the appropriateness of Linkage fees.

## V. Conclusion

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-BSE-2004-07), as amended, is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2004.

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. 34-49305; File No. SR-BSECC-2003-01]

### Self-Regulatory Organizations; Boston Stock Exchange Clearing Corporation; Order Approving Proposed Rule Change To Clarify Liability and Clearing Agency Services

February 23, 2004.

#### I. Introduction

On May 29, 2003, the Boston Stock Exchange Clearing Corporation ("BSECC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-BSECC-2003-01 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> On July 21, 2003, August 25, 2003, and September 12, 2003, BSECC amended the proposed rule change. Notice of the proposal was published in the **Federal Register** on January 13, 2004.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

#### II. Description

The purpose of the proposed rule change is to delete or amend certain sections of the BSECC Rules to clarify BSECC's liability and clearing agency services.

BSECC is seeking to make several changes to its Rules as they pertain to

BSECC's liability in order to maintain a consistent approach with the Boston Stock Exchange's ("BSE") recently approved proposed rule change clarifying BSE's liability with respect to its members' contractual obligations.<sup>3</sup> These changes being made by BSECC:

(1) Clarify in Rule II, Section 1, that BSECC's clearing fund is to make good losses suffered by BSECC without the losses of its members having priority;

(2) Eliminate a provision in Rule II, Section 5(e), which allows the retained earnings of BSECC to be used to satisfy any loss or liability resulting from a BSECC member's default;

(3) Eliminate language in Rule III, Section 3(a), stating that BSECC guarantees settlement of all trades executed on the floor of BSE;<sup>4</sup>

(4) Amend Rule III, Section 3(e), to make BSECC loans to members to complete settlement with the National Securities Clearing Corporation ("NSCC") discretionary, not automatic. The current automatic loan provision is inconsistent with the purpose of the proposed rule change that members will be solely liable for their transactions and that BSECC is not the ultimate guarantor for its members;

(5) Amend Rule XI, Section 3, to increase the maximum fine for any offense of BSECC Rules from \$1,000 to \$5,000 and increase from \$5,000 to \$30,000 the amount that fines imposed in the last six months must exceed before BSECC is required to give the member notice of its right to appeal; and

(6) Strengthen BSECC's indemnification clause found in Rule XII, Section 6, by stating that each member will remain "solely responsible" and liable for its transactions; The proposed rule change also deletes all references to Boston Representative Broker/Dealer Accounts, BSE Service Corporation, and Institutional Members. Such references are no longer applicable as they relate to services or lines of business in which BSECC is no longer involved. Also, BSECC has in various places added references to NSCC due to the merger of NSCC and The Depository Trust Company.

BSECC is not making these amendments in response to any recent or perceived action by any of its

<sup>3</sup> The Commission approved a companion proposed rule change filed by the Boston Stock Exchange to amend various Articles of its Constitution and sections of its Rules to clarify the liability of the exchange with respect to its members' contractual obligations. Securities Exchange Act Release No. 49304 (February 23, 2004), [File No. SR-BSE-2002-06].

<sup>4</sup> BSE guarantees exchange trades until they are accepted by the National Securities Clearing Corporation.

members. Rather, BSECC is seeking to clarify, by eliminating inconsistencies and providing succinct language, and to enhance its position which it holds with respect to liability on the part of its members.

#### III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.<sup>5</sup> The Commission finds that BSECC's proposed rule change is consistent with this requirement because it will clarify and enhance BSECC's Rules so that it can better protect itself and its members from the risk of default.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-BSECC-2003-01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49304; File No. SR-BSE-2002-06]

### Self-Regulatory Organizations; Boston Stock Exchange; Order Approving Proposed Rule Change To Clarify Exchange Liability

February 23, 2004.

#### I. Introduction

On September 26, 2002, the Boston Stock Exchange ("BSE") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-BSE-2002-06 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> On November 5, 2002, May 29, 2003, and July 21, 2003, BSE amended the proposed rule change.

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

<sup>13</sup> *Id.*

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

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

<sup>2</sup> Securities Exchange Act Release No. 49027 (January 6, 2004), 69 FR 2027.

Notice of the proposal was published in the **Federal Register** on January 13, 2004.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

## II. Description

The purpose of the proposed rule change is to amend certain sections of the BSE Constitution and Rules to clarify BSE's liability with respect to its members' contractual obligations.<sup>3</sup>

In particular, BSE is modifying Articles XII and XIII of its Constitution to insure that any BSE member who is a party to a transaction remains solely liable for the transaction. This language is consistent with similar language and approaches of other exchanges in limiting the liability of an exchange with respect to contracts entered into by members.<sup>4</sup> In Article XIII of its Constitution, the BSE is also adding certain language from the BSECC Participant Hypothecation Agreement. The provision to be inserted into the Constitution would prevent BSE from becoming a de facto guarantor of an insolvent member's contractual obligations.

BSE is amending other sections of its Rules consistent with this theme. Chapter III, "Comparisons—Liability on Contracts," Section 4, "Failures to Compare," now states that BSE shall have no liability to any of the original parties to a contract entered into by a member. Chapter VI, "Failure to Fulfill Contracts," Section 1, "Closing Contracts," now makes it clear that no action taken by BSE in closing or assisting to close a contract entered into by a BSE member shall have the effect of transferring any liability related to that contract to BSE. Chapter VI, Section 2, "Notice of Closing Contracts," echoes this approach for instances in which BSE takes action to attempt to close a contract on behalf of a member in default. None of these changes are in response to any recent circumstance. They are only aimed at clarifying BSE's unique position in relation to assisting its members in other contractual matters

<sup>2</sup> Securities Exchange Act Release No. 49026 (January 6, 2004), 69 FR 2026.

<sup>3</sup> The Commission approved a companion proposed rule change filed by the Boston Stock Exchange Clearing Corporation ("BSECC") to amend various sections of its Rules as they pertain to BSECC's liability in order to maintain a consistent approach with the changes approved in this filing. Securities Exchange Act Release No. 49305 (February 23, 2004), [File No. SR-BSECC-2003-01].

<sup>4</sup> See, e.g., New York Stock Exchange Rules 137 and 142; Chicago Stock Exchange Rules, Article XXV, Rule 11; and Philadelphia Stock Exchange Rule 254.

exclusively linked to conducting transactions in the buying and selling of equity securities.

## III. Discussion

Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, 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 are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.<sup>5</sup> The Commission finds that BSE's proposed rule change is consistent with these requirements because it clarifies BSE's liability with respect to its members' contractual obligations.

## IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 6(b)(5) of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-BSE-2002-06) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49297; File No. SR-CHX-2003-39]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Inc. Relating to Membership Dues and Fees

February 23, 2004.

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>

<sup>1</sup> 15 U.S.C. 78f(b)(5).

<sup>2</sup> 17 CFR 200.30-3(a)(12).

<sup>3</sup> 15 U.S.C. 78s(b)(1).

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

notice hereby is given that on December 31, 2003, the Chicago Stock Exchange, Inc. ("CHX" 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. On February 19, 2004, the Exchange filed 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, as amended, from interested persons.

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

The Exchange proposes to amend its membership dues and fees schedule (the "Fee Schedule"), effective January 1, 2004, to clarify the applicability of certain Fee Schedule provisions relating to transaction fees, and establish a schedule of maximum monthly transaction fees for certain agency orders executed through a CHX floor broker.

Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in [brackets].

\* \* \* \* \*

### Membership Dues and Fees

#### F. Transaction and Order Processing Fees

- 1-3. No change to text.
4. Transaction Fees.
  - a. Market orders sent via MAX, *except agency orders executed through floor brokers*—No charge.
  - b. All orders sent via MAX in Tape B eligible issues or in the stocks comprising the Standard & Poor's 500 Stock Price Index, *except agency orders executed through floor brokers*—No charge.
  - c. No change to text
  - d. [Through June 30, 2001, all orders that are executed during the E-Session] *Reserved for future use*—[No charge.]
  - e. In Nasdaq/NM securities, agency executions executed through a floor broker and market maker execution—\$.0025 per share (up to a maximum of \$100 per side), subject to the fee reduction described in (i), below[,] *and the fee cap described in (j) below.*
  - f. In Dual Trading System issues, agency executions executed through a

<sup>3</sup> See facsimile from Ellen J. Neely, Senior Vice President & General Counsel, CHX, to A. Michael Pierson, Attorney, and Marisol Rubecindo, Law Clerk, Division of Market Regulation ("Division"), Commission, dated February 19, 2004 ("Amendment No. 1"). Amendment No. 1 replaced the proposed rule change in its entirety.