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Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 39199; File No. SR-BSE-97-05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange Relating to Its Transaction Fee Schedule

October 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 4, 1997, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange seeks to amend its transaction fee schedule to implement two additional transaction fee maximums.

The text of the proposed rule change is available at the Office of the Secretary, BSE 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 self-regulatory organization 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 self-regulatory organization 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 fee revision is to respond to the needs of the

Exchange's constituents with respect to overall competitive market conditions and customer satisfaction. As such, the Exchange intends to implement two additional transaction fee maximums.

A monthly transaction fee maximum (including both Trade Recording and Comparison and Value Charge fees) of \$50,000 per member firm for all electronic order flow (both incoming and outgoing trades) is being implemented. The monthly electronic transaction fee maximum of \$50,000 will precede the existing total volume maximum of \$.45 per 100 average monthly shares. Member firms will continue to pay the current rate for Trade Recording and Comparison and Value Charge fees on all electronic trades up to the maximum charge of \$50,000 for this type of order flow. Any electronic trading beyond the \$50,000 electronic transaction fee cap will be assessed at \$0.00 per 100 average monthly shares throughout the remainder of the month.¹ If at month's end, a member firm's fee for electronic order flow has reached the \$50,000 maximum and its total volume rate per 100 average monthly shares exceeds \$.45, the firm's transaction fees will then be capped at \$.45 per 100 average monthly shares.²

A transaction fee maximum (including both Trade Recording and Comparison and Value Charge fees) for multiple automated cross trades is also being implemented. The transaction fee maximum of \$.25 per 100 shares will apply once a firm has executed 100,000 average daily multiple automated cross trade shares. This maximum is in addition to the maximum rate per trade

side of \$25.00 for Trade Recording and Comparison fees and \$50.00 for Value Charge fees. Member firms will pay the lesser of \$.25 per 100 shares or the original rate per share at the time of execution.³

2. Statutory Basis

The basis for the proposed rule change is Section 6(b)(5) of the Act, in that the proposed rule change is 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 is not designed to permit unfair 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

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

Because the foregoing rule change establishes or changes a due, fee, or other change imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4

¹ Telephone conversation between Kathy Marshall, Boston Stock Exchange, and Christine Richardson, Division of Market Regulation, Commission (Sep. 17, 1997).

² For example, assume Member Firm ABC generated \$100,000 in total transaction fees, \$80,000 of which were associated with electronic order flow. Assume further that this \$100,000 related to 200,000 total shares traded during the month. Under the new fee maximum, ABC's electronic order flow fees would be capped at \$50,000 and any electronic order flow executed beyond this maximum would be assessed at \$0.00 throughout the remainder of the month. At the end of the month, the Exchange would calculate the total fees generated by ABC's account, here \$90,000 (\$50,000 in electronic order flow plus \$40,000 in non-electronic order flow), and divide it by the total number of shares traded during the month. Here, the Exchange would divide \$90,000 by 200,000 shares, which would equate to a rate of \$.45 per 100 average monthly shares. Thus ABC would pay a total of \$90,000 in transaction fees for that month. If, however, the resulting rate were greater than \$.45 per 100 average monthly shares, the total transaction fees would be further reduced to this maximum. Telephone Conversation between Kathy Marshall, Boston Stock Exchange, and Christine Richardson, Division of Market Regulation, Commission (Sep. 24, 1997).

³ For example, assume Member Firm ABC executed 2,500,000 multiple automated cross trade shares in a month comprised of 21 trading days. Under the new proposal, the cost structure of the first 2,100,000 multiple automated cross trade shares (21 trading days × 100,000 average daily shares) would not change. However, for every share of this type executed above and beyond 100,000 average daily shares (in this example, 2,100,000 shares), the cost per share would be the lesser of \$.0025 per share or the original rate per share at the time of execution. If a 7,500 share cross trade generated a total fee of \$30.00 (\$.0040 per share), the total fee of this trade would be capped at \$18.75 (\$.0025 per share) for a reduction in the cost of the trade of \$11.25. If the same trade generated a total fee of \$15.00 (\$.0020 per share), the total cost of the trade would remain at \$15.00. Telephone Conversation between Kathy Marshall, Boston Stock Exchange, and Christine Richardson, Division of Market Regulation, Commission (Oct. 1, 1997).

thereunder. At any time within 60 days of the filing of such 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 the 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-97-05 and should be submitted by November 4, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39202; File No. SR-CBOE-97-45]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Certain Rules Governing Market-Maker Obligations With Respect to the Trading of Options on the DJIA

October 3, 1997.

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 8, 1997,³ 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 and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is granting accelerated approval to the proposed rule change.

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

The CBOE proposes to amend certain of its rules governing market-maker obligations with respect to the trading of options on the Dow Jones Industrial Average ("DJIA" or "Index"). 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 self-regulatory organization 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 III below. The self-regulatory organization 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 Exchange is proposing to amend certain Exchange rules governing market-maker obligations with respect to the trading of options on the DJIA (trading symbol "DJX"). Specifically, the Exchange is proposing to make the following changes with respect to trading in options on the DJIA: (i) Amending Rule 24.17 to apply the rules governing the Retail Automatic Execution System ("RAES") eligibility in options on the Standard & Poor's 100 Stock Index ("S&P 100") ("OEX") to

options on the DJIA; (ii) amending Rule 24.17 to add an interpretation and policy that the provisions of paragraph (b)(v)(C) and (D) will not apply to DJX market makers until December 1, 1997; (iii) creating Rule 24.17A, RAES Operations in Options on the DJIA, which applies the RAES operations in OEX to DJX and states that the Exchange can determine the maximum order size for RAES orders for options on the DJIA up to 100 contracts, a higher level than for OEX; (iv) amending paragraph (a)(2) of Rule 8.51 (and related interpretations) governing the minimum firm quote requirement, for a market-maker trading crowd; (v) applying the terms of the previously approved OEX firm quote program to the DJX trading crowd, and amending the fine amount under the Minor Rule Plan for violations of the Firm Quote Rule; (vi) amending the fine schedule for violations of the Firm Quote Rule for OEX; and (vii) amending Rule 8.16, RAES Eligibility in Equity Options, to indicate that it does not apply to DJIA options.⁴

The purpose for these proposed rule changes is to enhance market-maker obligations with respect to the trading of options on the DJIA. The Exchange expects these change to enhance the depth and liquidity of the market for options on the DJIA. The Exchange also notes that because option contracts on the DJIA will be based upon one-one hundredth of the value of the DJIA, these options contracts will overlie approximately one-tenth of the value that other broad-based index options overlie, such as options on the Standard & Poor's 500 Stock Index ("SPX") and on OEX. This is so because the values of the S&P 500 Index and the S&P 100 Index currently are approximately one-tenth of the value of the DJIA, yet OEX and SPX are based on the full value of their respective underlying indexes. Consequently, the Exchange believes an increase in these market-maker obligations is necessary to ensure an appropriate level of market-maker commitment.

Under the proposed rule change, the rules applicable to RAES in OEX will apply to RAES in DJX. The proposed rule change revises Rule 24.17, RAES Eligibility in OEX to refer to "Option Class" instead of OEX. "Option Class" will mean either OEX or DJX, as appropriate. Also, the Rule will be revised to refer to the "appropriate Committee" which will mean the OEX Market Performance Committee" the

³ The Exchange filed Amendment No. 1 to the proposed rule change, the substance of which is incorporated into this notice. See letter from Timothy H. Thompson, Senior Attorney, CBOE, to John Ayanian, Special Counsel, Market Regulation, Commission, dated September 16, 1997 ("Amendment No. 1").

⁴ The Exchange's OEX firm quote program was approved by the Commission under Section 19(b) of the Act in Securities Exchange Act Release No. 37388 (June 28, 1996), 61 FR 35821 (July 8, 1996).

¹ 17 CFR 200.30-3(a)(12).

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.