

and conversions;⁹ (2) dividend spreads;¹⁰ and (3) box spreads.¹¹

The Exchange proposes not to charge the recent increase in transaction, comparison and floor brokerage fees (a total increase of \$0.12) to the entire number of contracts executed as an accommodation trade or pursuant to one of the above strategies. Thus, specialist and registered traders will pay a (1) transaction fee of only \$0.17 for equity options and \$0.12 for index options; (2) comparison fee of \$0.04; and (3) floor brokerage fee of \$0.03 for contracts executed as an accommodation trade or pursuant to a reversal or conversion, a dividend spread or a box spread.

The Exchange proposes not to apply the fee increases to accommodation transactions in order to encourage specialists and registered options traders, by keeping fees low, to provide liquidity as an accommodation to investors seeking to close out worthless option positions. In addition, the Exchange proposes not to apply the fee increases to reversals, conversions, dividend spreads and box spreads in order to encourage specialists and registered options traders, by keeping fees low, to provide liquidity for these types of financing strategies. The Exchange represents that these financing strategies are usually entered into by professionals whose profit margins are generally narrow. In addition, the Exchange states that it has determined to keep fees for accommodation transactions and spread strategies comparable with the fees charged by other options exchanges for these types of transactions.

The Exchange represents that its billing system is unable to distinguish among these types of transactions; therefore, it has developed a manual procedure. Specifically, within thirty calendar days of the particular transaction date, a Fee Reimbursement Form must be completed and submitted to the Exchange. Upon acceptance, the Exchange will deliver to that member's clearing firm a reimbursement check in

the amount of the transaction, clearance and brokerage fee increases (a total of \$0.12) charged on contracts executed pursuant to an accommodation trade or one of the strategies described above.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act¹² in general and furthers the objectives of section 6(b)(4) of the Act¹³ in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

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

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 foregoing rule change, as amended, has become effective pursuant to section 19(b)(3)(A)(ii) of the Act¹⁴ and Rule 19b-4(f)(2)¹⁵ thereunder because it establishes or changes a due, fee, or charge imposed by the Exchange. 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.¹⁶

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 Amex. All submissions should refer to File No. SR-Amex-2002-11 and should be submitted by May 17, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45791; File No. SR-BSE-2001-08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Boston Stock Exchange, Inc. Relating to Competing Specialists and the Execution of Directed Agency Orders

April 19, 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 December 21, 2001, 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. On April 19, 2002, the Exchange submitted Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit

⁹ A "conversion" is a strategy in which a long put and a short call with the same strike price and expiration date are combined with long underlying stock to lock in a nearly riskless profit. A "reversal" is a strategy in which a short put and long call with the same strike price and expiration date are combined with short stock to lock in a nearly riskless profit.

¹⁰ A "dividend spread" is any trade done within a defined time frame in which a dividend arbitrage can be achieved between any two (2) deep-in-the-money options.

¹¹ A "box spread" is a spread strategy that involves a long call and short put at one strike price as well as a short call and long put at another strike price. This is a synthetic long stock position at one strike price and a synthetic short stock position at another strike price.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4).

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁵ 17 CFR 240.19-4(f)(2).

¹⁶ For purposes of calculating the 60 day abrogation period, the Commission considers the period to commence on April 16, 2002, the date that the Amex filed Amendment No. 1.

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from John A. Boese, Assistant Vice President, Legal and Regulatory, BSE, to Belinda Blaine, Associate Director, Division of Market Regulation, SEC, dated April 18, 2002 ("Amendment No. 1"). In Amendment No. 1, the BSE removed from the proposed rule change all references to a new defined term, "Professional Agency Order."

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 certain sections of its rules related to Competing Specialists (as defined in BSE Rules, Chapter XV, *Dealer Specialists*, Section 18, *Procedures for Competing Specialists*) and the execution of directed agency orders. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Chapter XV

Dealer Specialists

Procedures for Competing Specialists

Sec. 18

* * * 6. The [receiving] specialist/*competing specialist* is responsible for all orders directed to him/her.

* * * * *

9. * * * However, [the regular specialist will be responsible for updating quotations; thus all competitors must communicate their markets to the regular specialist and] *all specialists* must be responsible for their portion of the published bid and/or offer, *and the BEACON System will update quotations accordingly.*

10. Because there is only one Exchange market in a security subject to competition, all limit orders sent to the Exchange will be maintained by the BEACON System's central limit book and will be executed strictly according to time priority as to receipt of the order in the BEACON System, irrespective of firm order routing procedures. *This rule shall not be applicable where the quotation on the book is for the account of a specialist/competing specialist and another specialist/competing specialist has received an order directed to him. In such event, the specialist/competing specialist can elect to execute the order for his own account at the same price as the other specialist/competing specialist's order, or a better price, or to permit the order to be executed against the specialist/competing specialist's quotation.*

* * * * *

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

In today's competitive marketplace, customers and market makers have an increasing number of venues for the trading of listed securities. Both customers and market makers are becoming aware of and more selective about where their orders are ultimately executed, particularly in light of the increased disclosure under recently enacted Rule 11Ac1-5 under the Act ("Rule 5").⁴ This reflects the reality that quoting does not, in and of itself, indicate the best price within a market center, due to price improvement. Rather, it is a combination of several factors which attract orders and comprise order routing decisions, such as historical results, added depth, price improvement and other factors which serve to enhance best execution practices. Accordingly, the Exchange seeks to amend portions of its Competing Specialist Initiative Rules (see BSE Rules, Chapter XV, *Dealer Specialists*, Section 18, *Procedures for Competing Specialists*) to allow, under certain conditions, for the altering of priority of specialist/competing specialist principal quotations when orders are directed by a customer to another specialist/competing specialist. Under this proposal, it should be noted that all non-directed and Intermarket Trading System ("ITS") orders will continue to be routed according to existing competing specialist rules.

The reasons behind this request are threefold. First, the proposal will enable Exchange specialists to effectively compete with other exchanges and market centers amidst recent changes in the competitive landscape. This is particularly true in light of (a) Nasdaq's proposed rules in their recent Form 1 exchange registration filing, (b) the various order routing scenarios set forth in the Nasdaq SuperMontage environment,⁵ (c) the Philadelphia Stock Exchange's recently adopted rules

in relation to the directing of orders,⁶ and (d) the current preferencing model in place on the Cincinnati Stock Exchange (see CSE Rule 11.9). Second, the proposed rule amendment will reward specialists who are able to attract orderflow directed to them. Hence, it will increase competition in the marketplace, which carries an inherent benefit to investors. Third, the proposal supports the initiative of Rule 5 as it will improve the ability of order sending firms to better identify and direct orders to those venues that their customers demand as a result of the increased visibility of execution practices under the Rule.

Presently, Chapter XV, *Dealer Specialists*, Section 18, *Procedures for Competing Specialists*, Paragraph 10, sets forth that all limit orders sent to the Exchange will be executed strictly according to time priority as to receipt of an order in the Boston Exchange Automated Communication and Order Routing Network ("BEACON") system, irrespective of firm order routing procedures. This would continue to be the case for all customer orders. However, the proposed rule amendment would allow specialists/competing specialists to execute an order that has been directed to him, at the same or better price as the prevailing national best bid and offer ("NBBO"), if the BSE quotation is for the account of another specialist/competing specialist.

Accordingly, the Exchange seeks to amend Chapter XV, *Dealer Specialists*, Section 18, *Procedures for Competing Specialists*, Paragraph 10, of its Rules by adding an exception for orders directed to a specialist/competing specialist. The exception will allow the specialist/competing specialist who receives such an order to elect to execute the order for his own account at the same NBBO price or better than the quotation on the book, if the quotation on the book is for the account of another specialist/competing specialist, or to permit the directed order to execute against the prevailing specialist/competing specialist's quotation.⁷ Furthermore, certain other paragraphs of Chapter XV, *Dealer Specialists*, Section 18, *Procedures for Competing Specialists*, will need to be slightly amended in order to remain consistent with

⁶ See Exchange Act Release No. 45183 (December 21, 2001), 67 FR 118 (January 2, 2002).

⁷ Where an agency order resides on the book of a specialist/competing specialist and a specialist/competing specialist then receives an executable order routed to him/her, the subsequent orders may be price improved by the specialist/competing specialist receiving such order, or permitted to match the resident agency order at the limit price (without price improvement).

⁴ 17 CFR 240.11Ac1-5.

⁵ See Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001).

paragraph 10. Namely, Paragraph 6 will need to be amended to reflect that all specialist/competing specialists will be responsible for orders directed to him/her. Likewise, Paragraph 9 will need to be amended to reflect certain BEACON system changes which will update quotations more efficiently, removing the burden from the regular specialist.

In today's BEACON system, an agency order is automatically routed to the specialist quote in accordance with price/time priority amongst competing specialists if such quote is at the NBBO. Such order routing has allowed specialists with orderflow to reduce their costs and compete more effectively for public customer business without sacrificing quality of executions. However, the economic value of this practice has diminished considerably with the introduction of a number of Commission led initiatives in recent years, particularly the introduction of decimalization. Implementation of the proposed rule will enable the order to be routed to the designated specialist and will enable competing specialists to exercise greater control over more of their firm's orderflow and provide price improvement opportunities to their customers over existing specialist proprietary quotations. All ITS transactions and non-directed orders will continue to be routed according to price/time priority, and available for price improvement by exposure to the specialists/competing specialists.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b) of the Act,⁸ in general, and section 6(b)(5) of the Act,⁹ 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, 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, in general, to protect investors and the public interest, and not be 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 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-2001-08 and should be submitted by May 17, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45798; File Nos. SR-NASD-2002-24 and SR-NYSE-2002-10]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc. and the New York Stock Exchange, Inc.; Order Approving Proposed Rule Changes Relating to Anti-Money Laundering Compliance Programs

April 22, 2002.

I. Introduction

On February 15, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to establish NASD Rule 3011, Anti-Money Laundering Compliance Program. The proposed rule change prescribes the minimum standards required for each member firm's anti-money laundering program. On February 25, 2002, notice of the proposed rule change was published in the **Federal Register**.³ The Commission received four comments on the proposal.⁴

On February 27, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed a proposed rule change to adopt NYSE Rule 445, Anti-Money Laundering Compliance Program. The proposed rule change would require each member and member organization to develop and implement an anti-money laundering compliance program consistent with applicable provisions of the Bank Secrecy Act and the regulations thereunder. On March 7, 2002, notice of the proposed rule change was published in the **Federal Register**.⁵ The

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 45457 (February 19, 2002), 67 FR 8565.

⁴ March 18, 2002 letter from Alan E. Sorcher, Vice President and Associate General Counsel, Securities Industry Association ("SIA"), to Jonathan G. Katz, Secretary, SEC ("SIA Letter"); March 18, 2002 letter from Betty Santangelo, Schulte Roth & Zabel LLP, to Jonathan G. Katz, Secretary, SEC ("Schulte Roth Letter"); March 11, 2002 letter from W. Richard Mason, General Counsel, Mosaic Funds, to Secretary, SEC ("Mosaic Letter"); March 18, 2002 letter from Craig S. Tyle, General Counsel, Investment Company Institute ("ICI"), to Jonathan G. Katz, Secretary, SEC ("ICI Letter").

⁵ Securities Exchange Act Release No. 45487 (February 28, 2002), 67 FR 10463.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 17 CFR 200.30-3(a)(12).