

believes that the proposal should prevent a disingenuous regular specialist from abusing the competition objection process by objecting to specialist competition solely as leverage for objections unrelated to specialist competition.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-BSE-2002-07) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46482; File No. SR-BSE-2002-13]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to an Interpretation of Its Execution Guarantee Rule

September 10, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 4, 2002, the Boston Stock Exchange, Inc. ("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 self-regulatory organization. On September 10, 2002, the Exchange submitted Amendment No. 1 to the proposed rule change.³

The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

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

The Exchange proposes to implement an interpretation of its Execution Guarantee Rule in response to Commission action regarding *de*

minimis trades through of certain Exchange Traded Funds ("ETFs") in ITS.

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 add Paragraph .07 to the Interpretations and Policies section of Chapter II, *Dealings on the Exchange*, Section 33, *Execution Guarantee*, of the BSE Rules. This proposed rule change is in response to a Commission Order issued August 28, 2002, granting a *de minimis* exemption for transactions in certain ETFs from the Trade-Through Provisions of the Intermarket Trading System ("ITS") Plan ("Order").⁴

As of the implementation date of the Order, September 4, 2002, certain executions that take place according to the rules of the Exchange may be deemed violative of the provisions thereof. Accordingly, the Exchange is seeking to implement this proposed rule change on a temporary basis, for a period of thirty days.

In Chapter II, *Dealings on the Exchange*, Section 33, *Execution Guarantee* of the BSE Rules, paragraph (c)(2) states that "All agency limit orders will be filled if one of the following conditions occur * * * (2) there has been price penetration of the limit in the primary market. * * *" Moreover, in various sections of Chapter XV, *Dealer Specialists*, there are similar provisions.⁵ These provisions, in

particular those set forth in Chapter II, guarantee that a limit order in a BSE specialist's book will be filled if the primary market trades through the limited price. The BSE specialist provides this protection to its customer limit orders in part due to the fact that the specialist can seek relief through ITS in the event of a trade-through.

As a result of the Commission's Order, certain primary market trades-through in ETFs will constitute exempt trades-through, but will still, under BSE Rules, trigger an obligation on the part of a BSE specialist to provide trade-through protection. However, the specialist will no longer be able to seek recourse to seek satisfaction through ITS from the primary market. Accordingly, the BSE specialist will be competitively disadvantaged if this section of its rules is strictly enforced, while the *de minimis* exemption exists for other ITS participants. Therefore, the BSE is seeking to implement an Interpretation of Chapter II, Section 33(c)(2) of its rules permitting the Exchange to not enforce the provision following a *de minimis* trade through of certain ETFs outlined in the Order.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of section 6(b) of the Act⁶ and furthers the objectives of Section 6(b)(5),⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate 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, in that it is designed 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.

to buying and selling on a principal basis while holding unexecuted orders in his book; Section 2, *Responsibilities*, which sets forth, in part, a specialist's primary duties as agent; Section 4, *Precedence to Orders in the Book*, which sets forth the precedence parameters a specialist must adhere to; and Section 18, *Procedures for Competing Specialists*, which sets forth, in various paragraphs, obligations which may conflict with the *de minimis* exemption in the Order.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁴ See Securities Exchange Act Release No. 46428 (August 28, 2002). Participants of the ITS Plan are exempt from Section 8(d) of the Plan for the period of September 4, 2002 until June 4, 2003 with respect to transactions in QQQs, DIAMONDS, and SPDRs, that are executed at a price that is no more than three cents lower than the highest bid displayed in CQS and no more than three cents higher than the lowest offer displayed in CQS.

⁵ See, e.g., Commentary to Section 1, *Specialists*, which sets forth a specialist's obligations in relation

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-2(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from John Boese, Assistant Vice President, Legal and Regulatory, BSE, to Alden Adkins, Associate Director, Division of Market Regulation, Commission, dated September 9, 2002 ("Amendment No. 1").

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 foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange and therefore, has become effective pursuant to section 19(b)(3)(A)(i) of the Act⁸ and subparagraph (f)(1) of Rule 19b-4 thereunder.⁹

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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to the File No. SR-BSE-2002-13 and should be submitted by October 8, 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. 34-46489; File No. SR-BSE-2002-12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Boston Stock Exchange, Inc. To Amend Its Fee Schedule

September 11, 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 August 8, 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. On August 20, 2002, the BSE amended the proposal.³ 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,⁴ which renders the proposal effective upon filing with the Commission. 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 BSE proposes to amend its Floor Operations Fees Schedule. The text of the proposed rule change is available at the BSE and at the Commission.

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See August 19, 2002 letter from John A. Boese, Assistant Vice President, Legal and Regulatory, BSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, and attachments ("Amendment No. 1"). Amendment No. 1 completely replaces and supersedes the original filing. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on August 20, 2002, the date the BSE filed Amendment No. 1.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

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 Exchange's Floor Operation Fees schedule to ensure that the Exchange recovers the fixed costs of providing services to floor members. Generally, the fee changes reflect a pass-through of direct costs in certain expense areas which are not fully paid for by floor members today. These fees that the BSE is amending in this proposed rule change apply to members only, and the changes are applied on a non-discriminatory basis.

The proposed changes to the Floor Operation Fees schedule are (1) increasing the Specialist/Floor Trader Technology Fee (per BEACON terminal per month) from \$250 to \$500; (2) implementing a Designated Examining Authority ("DEA") fee of \$400 per month per firm where the Exchange is not the primary examining authority, and \$600 per month per firm where the Exchange is the primary examining authority; (3) implementing a \$100 SRO Fee (per specialist account); (4) implementing a \$250 Floor Facility Fee (per month per person who regularly accesses the trading floor); (5) increasing the Specialist Post Clearing and Cashiering fee from \$500 to \$750 (per account for the first 3 accounts a specialist firm has and \$100 for any accounts a firm may have in excess of 3); (6) decreasing the Round Lot fee (per order) from \$.75 to \$.50 and; (7) implementing a Clearing Fee (per order) of \$.05.

The Exchange is seeking these fee increases, and direct cost reimbursements to, in part, fund technology initiatives. However, the Exchange seeks to charge its members in an equitable and fair manner for its products and services while funding these initiatives, and at the same time

⁸ 15 U.S.C. 78s(b)(3)(A)(i).

⁹ 17 CFR 240.19b-4(f)(1).