

Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Section 6(b)(5),¹⁸ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, 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, and, in general to protect investors and the public interest.

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

The proposed rule change will impose no 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

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 self-regulatory organization 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, 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 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 the File No. SR-Amex-98-29 and should be submitted by September 30, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40381; File No. SR-BSE-98-05]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to the Display of Limit Orders

August 27, 1998.

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 June 16, 1998, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change. The proposed rule change, as amended, is described in Items I and II below, which Items have been prepared by the Exchange. The Exchange submitted to the Commission Amendment No. 1 to its proposed rule change on July 16, 1998,³ Amendment No. 2 to its proposal on August 6, 1998,⁴ and Amendment No. 3 on August 17, 1998.⁵ The Commission is publishing

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange generally made technical changes to the Exchange's proposed rule and interpretive guidance. See Revised Rule Filing, received July 16, 1998 ("Amendment No. 1").

⁴ In Amendment No. 2, the Exchange generally made technical changes to the Exchange's proposed rule and interpretive guidance. See Letter from George W. Mann, Jr., Senior Vice President and General Counsel, Exchange, to Terri Evans, Attorney, Division of Market Regulation ("Division"), SEC, dated August 3, 1998 ("Amendment No. 2").

⁵ In Amendment No. 3, the Exchange generally made technical changes to the Exchange's interpretive guidance. See Letter from George W. Mann, Jr., Senior Vice President and General Counsel, Exchange, to Terri Evans, Attorney,

this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

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

The Exchange seeks to incorporate the provisions of SEC Rule 11Ac1-4,⁶ Display of Customer Limit Orders, and interpretations thereto, into the Exchange rules to assist members and staff in ensuring compliance with its provisions. Proposed new language is italicized.

Chapter II

Dealings on the Exchange

* * * * *

Limit Order Display Rule

Sec. 40. All customer Limit Orders shall be immediately (defined as no later than 30 seconds) displayed upon receipt, unless specifically exempted under SEC Rule 11Ac1-4 of the Securities Exchange Act of 1934.

(a) More specifically, SEC Rule 11Ac1-4 provides that a specialist must, under normal market conditions, "immediately" (i.e., no later than 30 seconds) display such order in the bid or offer that reflects:

(i) the price and the full size of each customer limit order held by the specialist that is at a price that would improve the bid or offer price displayed by such specialist in such security; and

(ii) the full size of each customer limit order held by the specialist that:

(A) is priced equal to the bid or offer of such specialist for such security;

(B) is priced equal to the national best bid or offer; and

(C) represents more than a de minimus change in relation to the size associated with the specialist's bid or offer (more than 10% of the current quote size—must aggregate de minimus orders in calculating 10%).

(b) Exceptions. The requirements in paragraphs (i) and (ii) above shall not apply to any customer limit order:

(i) that is executed upon receipt of the order;

(ii) that is placed by a customer who expressly requests, either at the time that the order is placed or prior thereto, pursuant to an individually negotiated agreement with respect to such customer's orders, that the order not be displayed;

(iii) that is an odd-lot order;

Division, SEC, dated August 13, 1998 ("Amendment No. 3").

⁶ 17 CFR 240.11Ac1-4.

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

(iv) that is a block size order (10,000 shares or more or a market value of \$200,000 or more), unless a customer placing such order requests that the order be displayed (block size limit order—may accumulate partial executions and go below 10,000 shares without required display based on original block size exception);

(v) that is delivered immediately upon receipt to an exchange or association-sponsored system, or an electronic communications network that complies with the requirements of SEC Rule 11Ac1-1(c)(5)(ii) with respect to that order;

(vi) that is delivered immediately upon receipt to another exchange member that complies with the requirements of this section with respect to that order; or

(vii) that is an "all or none" order.

Interpretations:

(i) A customer short sale limit, if such display would cause an execution on a minus or zero-minus tick, should not be displayed.

(ii) BSE sole-listed issues are exempted.

(iii) "Marker" orders are permissible for those limit orders that qualify for an exception to SEC Rule 11Ac1-4.

(iv) A specialist may send a partial "marker" only with explicit customer authorization.

(v) The limit order display does not require a specialist to immediately display an order that would lock or cross the market. However, the specialist, if after using reasonable and efficient means, attempted but was unable to trade with the displayed market, the limit order must be displayed even if it locks or crosses the market.

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 III 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 incorporate the provisions of the SEC Limit Order Display Rule into the Exchange rules for members' ease of reference, clarification and interpretation. The Rule is almost a verbatim copy of the relevant portions of SEC Rule 11Ac1-4.⁷

Additional interpretive sections (taken from SEC letters giving guidance on the order handling rules)⁸ discuss further relief from the display requirements in certain situations, such as where the display of a customer short sale limit order would result in an execution on a minus or zero-minus tick; in all Exchange sole listed securities; where an attempt has been made to reach another market through a "marker" order and the quote is inaccessible, where a customer authorized partial marker order has been sent; and where the display of a limit order would result in a locked or crossed market.

2. Statutory Basis

The statutory basis for the proposed rule change in Section 6(b)(5) of the Act,⁹ in that the proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest by ensuring that all limit orders are reflected in a timely and accurate manner.

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

The Exchange has neither solicited nor received comments on the proposed rule change.

III. 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. 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 in Washington, DC. 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-98-05 and should be submitted by September 30, 1998.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission believes that the Exchange's proposal to adopt a limit order display rule is consistent with the policies behind the Commission's own Limit Order Display Rule.¹⁰ The Commission recognizes that the Exchange's proposal is substantially similar to the Commission's own Limit Order Display Rule. The Commission also recognizes that the Exchange's proposal summarizes and incorporates interpretations of the Limit Order Display Rule issued by the Commission staff.¹¹ The Commission notes, however, that the Exchange's interpretations are merely summaries of guidance issued by the Commission staff and that reference should be made to the Commission's release adopting the Limit Order Display Rule¹² and the Interpretation Letters for full interpretive guidance on the Commission's Limit Order Display Rule. For instance, to understand fully the exceptions to the Limit Order Display Rule regarding "marker" orders, which are discussed in the Exchange's Interpretations (iii) and (iv), you must reference the Interpretation Letter to the NYSE.¹³

With respect to the foregoing, the staff has opined that an exchange specialist

⁷ 17 CFR 240.11Ac1-4.

⁸ See letters from Richard R. Lindsey, Director, Division, SEC to Richard Grasso, Chairman and Chief Executive Officer, New York Stock Exchange, Inc. ("NYSE"), dated November 22, 1996, and to Richard G. Ketchum, Chief Operating Officer, National Association of Securities Dealers, Inc., dated January 3, 1997 (collectively "Interpretation Letters").

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ See Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996).

¹¹ See Interpretation Letters, *supra* note 8.

¹² See Release No. 37619A, *supra* note 10.

¹³ See Letter to Richard Grasso, *supra* note 8.

may route its own order, rather than a customer order, to another market if the specialist's own order fully reflects the terms of the customer limit order, the order is displayed (or executed) by the other market, consistent with the Limit Order Display Rule, and any execution, in whole or in part, is passed on to the customer limit order. An exchange specialist order for less than the full size of the customer limit order would not be deemed to reflect the terms of the customer limit order. As a result, sending such an order to another market or market maker for display would not satisfy the Limit Order Display Rule. Using a market order not for the full size of the customer limit order would be permissible, however, if the customer had authorized the exchange specialist to use discretion in determining whether to display the order, or had requested that only the number of shares represented by the market order be displayed, consistent with the exception contained in the Limit Order Display Rule for customer consent.¹⁴

In addition to summarizing and incorporating interpretive guidance issued by the Commission staff, the Exchange also has interpreted the Commission Limit Order Display Rule as exempting Exchange solely listed issues.¹⁵ While the Commission has never explicitly recognized this exemption from the Limited Order Display Rule, the Commission believes that, under the current circumstances, this interpretation is reasonable. The Commission notes that any interpretative guidance issued by the Commission staff is subject to modification at any time if the Commission or its staff determines that such action is necessary or appropriate. The Commission emphasizes that the Exchange specialists must comply with the Commission's rules and interpretations, notwithstanding the incorporation of prior Commission staff guidance in the Exchange's rule.

The Commission believes that the Exchange's proposal is consistent with Section 6 of the Act.¹⁶ Specifically, the Commission believes the proposal is consistent with Section 6(b)(5) of the Act,¹⁷ which requires an exchange to have rules designed to prevent

fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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. In particular, the Commission believes that by incorporating the Commission's Limit Order Display Rule and the Commission staff's interpretive guidance regarding that rule into the Exchange's own rule the proposal should facilitate compliance with the Limit Order Display Rule by Exchange members by raising member awareness of the Commission rule and how the rule applies to Exchange members.

The Exchange has requested that the Commission approve the proposal prior to the thirtieth day after the date of publication of notice of the proposal in the **Federal Register**. Because the Commission believes the proposal clarifies and restates Commission requirements that already apply to all Exchange members and may facilitate compliance by making the rules and guidance more accessible to Exchange members, the Commission finds good cause for approving the proposed rule change (SR-BSE-98-05) prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40383; File No. SR-CBOE-98-36]

Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Exchange Fees

August 31, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder,

notice is hereby given that on August 19, 1998, 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, 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 is proposing to make changes to its fee schedule relating to the Manual Book Entry fee and satellite television fees.

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 CBOE 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 CBOE 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

The purpose of the proposed rule change is (i) to rescind, as of July 1, 1998, the Manual Book Entry fee, and (ii) to impose a monthly maintenance fee and installation fee for satellite television. These fee changes are being implemented by the Exchange pursuant to CBOE Rule 2.22.

The Exchange proposes to rescind, as of July 1, 1998, the Manual Book Entry fee, which initially was proposed in SR-CBOE-98-31, effective July 1, 1998. The Exchange now proposes to rescind the fee because there would have to be substantial systems enhancements in order to implement the fee, which would take much longer than expected, and the costs to Exchange and member firm staff would be significant compared to the expected revenue from the fee. As a result of this rescission, no members will be charged this fee, including any fee that would otherwise have been billed at the end of July for July activities.

The Exchange proposes to add two new fees relating to satellite television. The Exchange recently has approved the installation of satellite television in

¹⁴ See Letter to Richard Grasso, *supra* note 8 and rule 11Ac1-4(c)(2) under the Act.

¹⁵ The Exchange reasoned that because the BSE solely listed issues are not reported pursuant to an effective transaction reporting plan, they are not reported securities as defined in Rule 11Ac1-1(a)(20) under the Act.

¹⁶ In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78f.

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.