

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

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 agency consents, the Commission will:

- A. by order approve the 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 proposal is consistent with the Exchange 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-2003-75 and should be submitted by September 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-22234 Filed 8-29-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48396; File No. SR-BSE-2003-12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Boston Stock Exchange, Inc. Relating to Its Transaction and Floor Operations Fee Schedules

August 22, 2003.

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 July 1, 2003, 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 BSE. On August 5, 2003, the BSE filed an amendment to the proposal.³ 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 and Transaction Fees schedules. The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

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FLOOR OPERATION FEES

| | |
|---|---|
| (1) Occupancy/Technology Occupancy Fee | \$500.00 per post per month. |
| Specialist/Floor Trader Technology Fee | \$500.00 per BEACON terminal per month. |
| Floor Broker Technology Fee | \$100.00 per BEACON terminal per month. |
| Security Routing Fee | \$500.00 per month per BEACON user-ID that has stocks routed to it. |
| Floor Facility Fee | \$250.00 per person that regularly accesses the trading floor. |
| Electronic Trading Permit Fee | \$1,000.00 per trader trading from a remote location per month. |
| (2) Specialist Post Clearing and Cashiering Post Cashiering Fee | \$750.00 per specialist book for first 3 books per firm. |
| | \$100.00 per specialist book for any books in excess of 3 per firm. |
| Clearing Fee | \$.05 per trade. |
| (3) Specialist Trade Processing Fees/Credits Pre-Opening Trades | No Charge. |
| Trades in CTA Securities ranked 1,001 and greater | No Charge (BSE executions only). |
| Round lot | \$.50 per order. |
| Odd Lot Trades (includes CSI Issues) | \$.05 per order (\$400 maximum per account). |
| Trading Account Trades | \$1.50 per order. |

²⁶ 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 Boese, Vice President Legal and Compliance, BSE, to Ms. Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated August 14, 2003 ("Amendment No. 1"). In Amendment No. 1, the BSE added purpose language that elaborates on the overarching

purpose of the rulefiling, inserted purpose language to clarify that the rulefiling will apply solely to BSE members, and provided purpose language that describes the necessity of the fee change to offset systems related expenses incurred by the Exchange in providing facilities for its member firms to provide layoff services to the BSE specialist community. For purposes of calculating the 60-day

abrogation period, the Commission considers the period to have commenced on August 5, 2003.

| | |
|---|--|
| ETF Trade Credit | \$2.00 per trade (maximum annual credit capped at total amount paid in upfront annual registration fees). |
| Revenue Sharing Program | 100% (50% after 1st 6 months) non specialist revenue and 50% CTA revenue will be shared on all floor broker generated volume in CTA 501+ issues. |
| * | * |
| (4) Other Charges ITS User Fee | [\$.003] \$.0018 per share on [net] outbound specialist trades [(charge for outgoing trades offset by cumulative credit for incoming trades)]. No charge for non-specialist firms. |
| Quotation Services | Member assumes 100% of cost. |
| Specialist Margin Account Financing | Charged daily at current broker call rate. |
| Solely Listed Issue Credit | \$50.00 Credit per issue traded. |
| Miscellaneous Charges | At cost for phone, postage, courier service, fax usage, after hours BSE staff assistance and other applicable items. |
| Late Fees | 1.5% will be charged on outstanding balances as of the last calendar day of the month. |

TRANSACTION FEES

| | |
|---|---|
| 1. Trade Recording and Comparison Charges | |
| • All BSE executions up to and including 2,500 shares | No Charge. |
| • All BSE single-sided executions from 2,501–5,000 shares | No Charge. |
| • All other executions (excluding automated non-BSE executions) | |
| First 2,500 trades per month | \$.29 per 100 shares |
| Next 2,500 trades per month | \$.25 per 100 shares |
| Next 2,500 trades per month | \$.15 per 100 shares |
| Over 7,500 trades per month | \$.04 per 100 shares |
| Floor Brokered non-BSE executions | \$.05 per 100 shares |
| Automated non-BSE executions | [\$.05 per 100 net non-BSE automated shares]. |
| | \$.025 per 100 shares for non-BSE automated shares offset by automated incoming volume routed to BSE |
| | \$.05 per 100 shares for non-BSE automated shares in excess of automated incoming volume routed to BSE. |
| Maximum charge per side (single-sided) | \$50.00 |
| Maximum charge per side (cross) | \$25.00 |
| (all trades accumulate for volume discounts) | |
| 2. Value Charges | |

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REVENUE SHARING:

- TAPE A—Should the Exchange generate its monthly Tape A revenue target, 50% of any amount in excess of this target amount will be shared on a pro-rata basis with those firms that generate a minimum of \$50,000 in overall monthly automated transaction fees.
- TAPE B—50% of NET Tape B revenues will be shared on a per executed trade routed to the BSE.

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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 BSE 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 and is set forth in Sections A, B, and C below.

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 with the overall goal of increasing the number of stocks traded on the BSE. The Exchange is proposing to eliminate the credit it offers to specialists for inbound Intermarket Trading System ("ITS") volume and to also reduce the fee that it charges to specialists to execute outbound volume through the same system. The credit was initially implemented to induce specialists to attract volume to the BSE through ITS by openly displaying their limit orders. Since the initial implementation of this

credit, overall market conditions have changed and, more importantly, the Limit Order Display Rule, SEC Rule 11Ac1–4,⁴ now requires that specialists display their limit orders. The Exchange realizes that eliminating this credit may increase the overall cost to transact business on the BSE for some specialists and, as a result, further proposes to reduce the cost to transact outbound ITS volume from \$.003/share to \$.0018/share to offset this cost.

The Exchange also proposes to implement a credit program for its specialists by which, for the first six (6) months of the program, the BSE will credit back 100% of the Trade Recording and Value Charge revenue it generates on BSE executed Floor-Brokered trades in the issues ranked 501

⁴ 17 CFR 240.11Ac1–4.

or greater in listed securities volume reported to the Consolidated Tape Association ("CTA"). In addition, as part of the credit program, the BSE proposes to include 50% Tape Revenue sharing for revenue generated on the same Floor-Brokered volume.⁵ After the first six (6) months of the program, the credit of 100% of the Trade Recording and Value Charge revenue will be reduced to 50%. CTA revenue sharing will remain at the current rate of 50%. The purpose of the credit program for the specialists is to acknowledge the importance of their participation in the Exchange's overall initiative by implementing incentives for specialists to increase the number of issues, and related executions, traded on the BSE.

Additionally, the BSE also proposes to amend its Transaction Fees schedule by revising the rate at which it charges member firms that route orders to the BSE and also provide BSE specialists with the capability of routing order flow to other exchanges (for example, through DOT⁶ terminals). A firm may currently use its automated inbound volume that it routes to the BSE to qualify for reduced rates on outbound volume executed through its DOT terminals and will continue to be able to do so. However, a firm that provides automated inbound volume to the BSE, will now be charged rates on its outbound volume (up to the amount of inbound volume routed to the BSE) of \$.025/100 shares. Rates on outbound volume executed in excess of automated inbound volume routed to the BSE will continue to be charged at the rate of \$.05/100 shares, as previously established. These fees are necessary to offset systems related expenses incurred by the Exchange in providing facilities for its member firms to provide layoff

services to the BSE specialist community.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁸ in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate 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 either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act⁹ and Rule 19b-4(f)(2) thereunder.¹⁰ Accordingly, the proposal will take effect upon filing with the Commission. 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 proposal 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 BSE. All submissions should refer to File No. SR-BSE-2003-12 and should be submitted by September 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-22235 Filed 8-29-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48394; File No. SR-CBOE-2003-28]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Open Outcry Size Guarantees

August 22, 2003.

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 July 21, 2003, the Chicago Board Options Exchange, Inc. ("Exchange" or "CBOE") 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. The proposed rule change has been filed by CBOE under Rule 19b-4(f)(6) under the Act.³ 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

CBOE proposes to amend its rules relating to open outcry size guarantees in those classes of options that trade on the CBOE Hybrid System ("Hybrid"). Below is the text of the proposed rule change. Proposed new language is in *italics*.⁴

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¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ The Commission notes that it added language to the rule text that was inadvertently omitted by CBOE. Telephone call between Steve Youhn, Legal

⁵ The BSE represented to the Commission that the proposed BSE specialist Revenue Sharing Program will not result in a market data revenue rebate that exceeds 50% of Tape A or B market data revenue. See Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002) (File Nos. SR-NASD-2002-61, SR-NASD-2002-68, SR-CSE-2002-06, and SR-PCX-2002-37) (Order of Summary Abrogation). The BSE represented that the instant proposal simply clarifies the BSE's existing Revenue Sharing arrangement, which does not specifically indicate to whom market data revenue rebates are to be awarded. The Commission has relied on the BSE's representations in not abrogating the proposed fee filing. Telephone conference between John Boese, Vice President Legal and Compliance, BSE, and Christopher B. Stone, Special Counsel, Division of Market Regulation, Commission (August 22, 2003).

⁶ DOT is the New York Stock Exchange's ("NYSE") Designated Order Turnaround System, an application that permits NYSE members to route market orders and day limit orders on an automated basis directly to the appropriate specialist on the NYSE trading floor. See Securities Exchange Act Release No. 16649 (March 13, 1980), 45 FR 18541.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).