



BOSTON
STOCK EXCHANGE

George W. Mann, Jr.
Executive Vice President
and General Counsel

September 30, 2004

Annette L. Nazareth
Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549

Dear Ms. Nazareth,

The Boston Stock Exchange ("BSE") is requesting an extension of the exemption granted to the BSE on February 4, 2004 from the Requirement to Pay the New Participant Fee as required under the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage ("Linkage Plan") (See Sections 4 (c) (iv), 5 (c) (ii) and 11 (b) therein).

The BSE has consistently objected to the new participant fee established by the Linkage Plan Operating Committee ("OLAOC" or "operating committee") for numerous reasons, some of which are noted herein, including the BSE's inability to review documentation of the costs being attributed to such a fee.¹ The Linkage Plan provision that authorizes the operating committee to establish the new participant fee, does not provide any standards or objective criteria whatsoever that would enable a new participant to determine what methodology is being applied in determining the fee.² The only language that provides a general reference for guidance states, "the participation fee shall reasonably reflect a new

¹ See e-mail from George Mann to OLAOC c/o Mike Simon of January 27, 2003; letter from George Mann to OLAOC c/o Ed Provost of February 7, 2003; letters from George Mann to OLAOC dated October 24, 2003, December 5, 2003, and December 31, 2003 (relating concerns about the lack of documentation for the new entrant fee to be assessed for a new participant and questioning further the criteria included in these costs). Since the grant of the exemption the BSE has had at least three conference calls with two representatives delegated by OLAOC as well as bifurcated discussions with individual representatives to resolve the fee disagreement.

² See Sec. 11(b) of the Linkage Plan, which states "Any Eligible Exchange that seeks to become a new Participant shall be required to pay a participation fee. The Operating Committee shall establish the participation fee no less frequently than once a calendar year. The participation fee shall reasonably reflect a new Participant's pro rata share of costs initially developing the Linkage, as well as any additional development costs the Participants incur in maintaining and enhancing the Linkage. Upon payment, such fee shall be distributed equally to the then-current Participants."

Participant's pro rata share of costs initially developing the Linkage, as well as any additional development costs the Participants incur in maintaining and enhancing the Linkage."

In our letter to the OLAOC dated October 24, 2003, in response to the September 15, 2003 analysis of costs comprising the proposed Participant fee, we pointed out in detail the highly speculative nature of the criteria that had been included in these costs. Not only did these costs include undocumented estimates of man-hours for conference calls and meetings to discuss the Plan document, but estimates on the number of attendees by one participant that was then "extrapolated" (multiplied by 5) to arrive at the most significant portion of the baseline costs. These undocumented estimates include criteria never before used by any other national market system plans in determining a new participant fee.

Your letter dated August 3, 2004 to CTA Chairman Thomas E. Haley ("CTA letter") raised the very same issues that the BSE was confronting in the form of undocumented subjective criteria and costs, which are not proper criteria for imposing a new entrant fee on a new participant. We also noted in our letter addressed to the OLAOC on December 31, 2003, attached to and incorporated as part of this request, that the OLAOC chose to interpret the Linkage Plan to include Participants' staff time, travel expenses of meetings and participation on conference calls, all at very generous rates (multiplied by 5), for creating the Plan document.

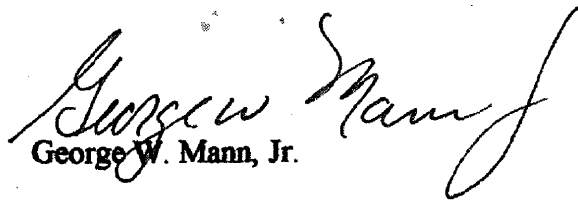
We believe the focus of your CTA letter is not only timely, but exactly on point with the concerns raised by the BSE in earlier correspondence with OLAOC. Specifically, in your letter you state that, "the Plan should delineate the method for determining (1) the specific costs current Plan participants have incurred in the development, expansion, and maintenance of CTA-related facilities and/or systems, (2) the portion of those costs participants can legitimately recoup from a new entrant, and (3) the costs incurred or to be incurred for modifying systems to accommodate a new participant (which are not otherwise required to be paid or reimbursed by the new participant). The Plan should not include any subjective criteria, or objective factors designed to compensate for the costs of operating the systems prior to the time the new participant joins the Plan, or for 'goodwill' or any future benefits of the new entrant." Our recent attempts to agree on a new participant fee through discussions with representatives of the OLAOC have been unsuccessful. We believe we might be able to more readily resolve this issue if the Linkage Plan contained more specific methodology for determining new entrant fees.

As a condition of the BSE's exemption, the BSE placed in escrow with the Options Clearing Corporation ("OCC"), the full amount of the fee requested by the OLAOC until resolution of the dispute. We agree to leave the deposit of \$439,377 with OCC as a further condition of this request, until such time as we are able to agree on a reasonable fee.

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We respectfully request that the BSE be granted an extension of the exemption of at least 6 months, which we hope should provide sufficient time for the OLAOC to define objective standards for new participants, to include the BSE, consistent with the criteria discussed in your letter noted above.

Very truly yours,


George W. Mann, Jr.

CC: Elizabeth King, Associate Director
Deborah Flynn, Assistant Director
OLAOC Members
Annah Kim, CRO - BOXR

December 31, 2003

Option Linkage Authority Operating Committee
c/o Edward L. Provost
Chicago Board Options Exchange
400 South La Salle Street
Chicago, IL 60605

Dear Ed,

The Boston Stock Exchange has reviewed your letter of December 23, 2003 on behalf of the Option Linkage Authority ("OLA") Operating Committee that again, has rejected an offer from the BSE to pay what it believes to be, a fair and reasonable new participant fee. In particular, the BSE increased its original offer of \$63,660 to \$163,660 in its letter of December 5, 2003. The Committee however, has remained firm at its September 15, 2003 new participant fee proposal of \$439,377.

It is quite clear that the BSE's desire to pay a reasonable fee, based on its ability to receive and evaluate documentation of the actual costs, is being dismissed without any effort on the part of the Committee to address the questions raised by the BSE in its earlier letters, nor provide the documentation requested.¹ In fact, since September 15, 2003 we have made no progress whatsoever other than an exchange of letters and an increasing level of frustration as BSE approaches a launch date for BOX.

The Committee, in its last two letters, has chosen instead, to reiterate its authority to calculate and administer the new participant fee "in complete compliance with the relevant terms of the Plan... approved by the Securities and Exchange Commission." In addition, OLA has interpreted Section 11(b) of the Plan², "to ensure that the significant

¹ See E-mail from George Mann to OLA c/o Mike Simon of January 27, 2003, See letter from George Mann to OLA c/o Ed Provost of February 7, 2003, See letters of October 24, 2003 and December 5, 2003 from George Mann to OLA reincorporating similar concerns for documentation of the "costs" to be assessed for a new participant.

² Section 11(b) New Participants: Any Eligible Exchange that seeks to become a new Participant shall be required to pay a participation fee. The Operating Committee shall establish the participation fee no less frequently than once a calendar year. The participation fee shall reasonably reflect a new Participant's pro rata share of costs of initially developing the Linkage, as well as any additional development costs the Participants incur maintaining and enhancing the Linkage. Upon payment, such fee shall be distributed equally to the then-current Participants.

costs of creating the Plan document (emphasis added), the related technical documentation and the cost associated with building and maintaining the linkage system hub to be considered when calculating a new participant's entry fee", as the intended meaning of this section. Section 11(b) is silent as to any intent to include pro rata costs for drafting this Linkage Plan. Further, OLA stated that the BSE could have voiced its concerns with this provision during the public comment period if it was unhappy with it.

The BSE, as you know, did not know; nor could it have known from the rule filing, that the intent of the Committee was to include cost criteria that had never before been part of any new participant fee to a National Plan (such as the ITS Plan, NASDAQ UTP Plan and the CTA Plan). The BSE and other National Plan participants are familiar with development costs and related maintenance to the systems which support each Plan.³ To date, no National Plan Committee has assessed the costs of their own staff's time and travel expenses to discuss the Plan language itself.

The BSE has also opposed the amount of the fee and methodology used by OLA in arriving at the \$439,377 fee because of the highly speculative nature of the "costs" which are established and multiplied by 5. Though the Committee offered to answer any questions we may have had in each of their letters, no answers have been given that could specifically address the arbitrary financial estimates (hours expected and hourly rates) that were used to calculate the fee. In fact, the fees include hourly rates of \$300 and \$150 per hour. Based on our projection of an annual salary, these rates would indicate that the average salary levels for each of the 5 OLA representatives is \$624,000 (assuming also, fringe benefits were factored into this rate) and half that salary for the technical staff. We would be quite surprised to learn that these rates are representative of actual "costs".

Without the costs attributed to the Plan itself (staff time) the calculation of a new participant fee, all of a sudden, becomes much simpler and less arbitrary. We doubt that the Commission, would have approved this provision as it currently reads, if these unstated intentions were known at that time, especially in view of the speculative assessments now being attributed to time and travel for "Plan" meetings and discussions by various staff. OLA still, had not as yet established a participation fee, as required by the Plan (approved July 28, 2000), until July 2, 2003 and later amended September 15, 2003.

We would again propose to the Committee, BSE's willingness to deposit an additional \$339,377 (\$100,000 currently on deposit) into the escrow account held by OCC, prior to the BOX launch, until such time as we are able to arrive at a fair and reasonable fee and for the BSE to have a better understanding of many of the unanswered issues raised in our earlier letters and reincorporated herein.

³ Pursuant to the Linkage Plan, the definition of "Linkage" means "the systems and data communications network that link electronically the Participants..." (NOT THE PLAN ITSELF). This term "Linkage" is specifically referred to in Section 11(b) when discussing the fee for a new Participant, a "pro rata share of costs of initially developing the Linkage."

We do appreciate the Committee's approval of the BSE, as an interim participant in the general sessions of the Committee meetings. We support the Committee's role in improving the Plan's overall effectiveness and operational support and have provided input when appropriate. It is also our goal to resolve what appears to be the only obstacle to the OLAOC's approval of the BSE as a full Plan participant, subject to the SEC's approval of BOX.

We will be available to discuss this further during the next conference call, scheduled for January 6, 2004 at 10:15 a.m. and hopefully come to an agreement on this fee, or at a minimum, an escrow arrangement.

Very truly yours,

George W. Mann, Jr.
Executive Vice President
& General Counsel

cc: OLAOC members
Elizabeth King
Deborah Flynn
Kelly Riley