



February 12, 2008

**Via Email and Overnight Mail**

Ms. Nancy M. Morris, Secretary  
U.S. Securities and Exchange Commission  
100 F St. NE  
Washington D.C. 20549

**Re: File No. SR-BSE-2007-55 – Amendment No. 1 Relating to Exchange Fees**

Dear Ms. Morris:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> is pleased to provide comments on the above-referenced filing by the Boston Stock Exchange (“Boston Exchange” or “BSE”) which would impose various individual registration fees on member firms. SIFMA respectfully requests that the Securities and Exchange Commission (“SEC” or “Commission”) abrogate the filing pursuant to its authority under Section 19(b) of the Securities Exchange Act of 1934 (the “Exchange Act”), on the ground that the proposed registration fees do not satisfy the equitable allocation standards of Section 6(b)(4) of the Exchange Act. Additionally, SIFMA respectfully requests that the Commission address the broader policy issue of regulatory fee increases currently imposed by other exchanges, as well as the Commission’s own procedures for reviewing proposed exchange fee rules.<sup>2</sup>

---

<sup>1</sup> SIFMA brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA’s mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public’s trust and confidence in the markets and the industry. SIFMA works to represent its members’ interests locally and globally. It has offices in New York, Washington D.C. and London, and its associated firm, the Asian Securities Industry and Financial Markets Association, is based in Hong Kong.

<sup>2</sup> SIFMA made a similar request in connection with a recent Nasdaq Stock Market LLC (“Nasdaq”) registration fee filing. See SIFMA comment letter dated January 23, 2008, a copy of which can be found at [http://www.sifma.org/regulatory/comment\\_letters.shtml](http://www.sifma.org/regulatory/comment_letters.shtml), and which we incorporate by reference herein.

The Boston Exchange proposes to impose a series of new individual registration fees for its members<sup>3</sup> in connection with participation in an electronic registration process through the Financial Industry Regulatory Authority's ("FINRA") Web Central Registration Depository ("Web CRD"). These fees include a \$60 initial registration fee, a \$40 transfer fee, a \$50 renewal fee, and a \$30 termination fee.<sup>4</sup> BSE has designated the proposal as one establishing or changing a member due, fee or other charge imposed by the BSE pursuant to Exchange Act Section 19(b)(3)(A)(ii) and Rule 19b-4(f)(2), thereby rendering the proposed fees effective immediately upon filing.<sup>5</sup>

BSE seeks to justify the new fee increase as a necessary cost associated with implementing the registration process through Web CRD. BSE also states that its proposed fees are reasonable because they are similar to those charged by other self regulatory organizations that use FINRA's Web CRD.

As a general matter, SIFMA supports BSE's effort to implement electronic member registration through Web CRD for BSE member firms, a development we believe will provide more streamlined "one-stop filing" for member firms. We also recognize that there will be costs associated with migrating from the current paper-based BSE registration process to a web-based process. However, because BSE does not provide any cost analysis or data as to its actual regulatory costs, it is unclear what BSE's costs are and to what extent the BSE, and not FINRA, will bear those costs. Moreover, while BSE apparently intends to limit the scope of the new registration fees to individuals conducting business on their exchange, that fact does not mitigate the industry's increasing concern about the ability of exchanges to impose regulatory fee increases upon member firms with little or no cost-justification.

Section 6(b)(4) of the Exchange Act requires the Commission to evaluate whether proposed BSE fees are consistent with the fair allocation standard articulated therein.<sup>6</sup> Unfortunately, exchanges are routinely imposing new fees upon their members with little or no cost analysis.<sup>7</sup> SIFMA strongly believes that the BSE should be held to a standard

---

<sup>3</sup> Because BSE ceased operations of its BeX equity market on September 5, 2007, the only active members that the new fees apply to are those members of The Boston Options Exchange.

<sup>4</sup> BSE also proposes to adopt the following "FINRA Fee" that will be paid directly to FINRA in connection with their required participation in Web CRD: (i) FINRA CRD Processing Fee of \$85.00; (ii) FINRA Disclosure Processing Fee of \$95.00; (iii) FINRA Annual System Processing Fee of \$30.00; and fingerprinting fees ranging from \$30.25 to \$13.00, depending on the number of submissions.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(iii) and 17 CFR 240.19b-4(f)(2).

<sup>6</sup> Section 6(b)(4) states that an exchange's rules must "provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities." Exchange Act Section 6(b)(4).

<sup>7</sup> This proposal is one of several in the past year in which various exchanges have raised or imposed regulatory fees (such as registration fees) without disclosing to the Commission or to the member firms any relationship (reasonable or otherwise) to the actual costs of its regulatory expenses. In all instances, these fee increases were filed for immediate effectiveness. See SEC Release No. 34-55899, 72 Fed. Reg. Vol.

of greater transparency and accountability when proposing new registration fees for its member firms.<sup>8</sup> Otherwise, and in the absence of supporting regulatory expense information in the exchange's rule filing, there is no way of determining whether or not the expenses are proportionate and reasonably designed to recover the BSE's actual costs related to regulation and oversight of its members.

The Commission therefore should require BSE to document its regulatory costs, its existing regulatory revenues, and what it expects to earn from its proposed fee increase. The Commission then should make that information available for public notice and comment as part of the SRO rule approval process. Absent this data – all of which is readily quantifiable and available to BSE – the Commission, member firms and investing public have no way of determining whether BSE is in fact recovering its legitimate regulatory costs, or using its regulatory authority to create additional revenue for the exchange without a corresponding increase in its expenses.

BSE's filing illustrates a larger issue. For a number of years the Commission has allowed exchanges to make fee filings for immediate effectiveness as long as the fees are to be paid only by the exchanges' members and are similar to fees charged by other exchanges. This approach, SIFMA believes, is not an effective check against unfair and inequitable fees. While we recognize that the Commission does not wish to engage in "rate regulation," the Exchange Act requires a level of transparency and accountability by the exchanges before they are permitted to impose these types of fees on member firms.

Indeed, many of the issues raised by the BSE filing are particularly relevant to fees charged by the other options exchanges. Generally, the options exchanges charge renewal fees based on the number of registered representatives at each member firm. Additional fees are charged for the initial registration, renewal, and the termination of all those registered representatives. These fees are substantial and run into millions of dollars per year on an industry-wide basis.

SIFMA respectfully submits that there appears to be no direct relationship between the number of registered representatives at a member firm and the potential costs of regulating the options business conducted by that firm. Such costs are more likely related to the number or volume of options transactions effected by the firm on each exchange or the revenues earned by each firm from its options business. Moreover, now that FINRA is the primary SRO for all member firm regulation, the role of the options exchanges is principally limited to market regulation, and they continue to coordinate so that only one

---

72, No. 117 (June 19, 2007), SEC Release No. 34-57001, 72 Fed. Reg. Vol. 72, No. 249 (December 31, 2007).

<sup>8</sup> It is our understanding that BSE engages in extremely limited self-regulatory activities, as it has outsourced its examinations, surveillance and investigative function to FINRA as part of the 17d-2 Allocation Plan.

of them will inspect each member firm per year.<sup>9</sup> As such, uniform fees charged on a per individual representative basis do not appear to be reasonably related to the regulatory responsibilities remaining with the options exchanges.

SIFMA urges the Commission to require the exchanges to change their approach when proposing to impose or modify regulatory fees. Formerly, SROs argued that regulatory costs were spread across all their operations and were very difficult for them to separate and quantify. Whatever the merit of that argument in the past, today these expenses are typically the subject of clearly defined outsourcing agreements that presumably specify the precise outsourcing costs. The few remaining in-house SRO regulatory functions are well-defined and those costs also easily ascertainable. Therefore, when filing a rule proposal to add or change a regulatory fee, each SRO should be obligated to disclose as part of its public filing exactly what its current regulatory costs and regulatory revenues are, and to estimate how the additional revenue to be generated from the proposed fee increase reasonably relates to those costs.

A collateral issue is whether the Commission can satisfy its statutory responsibility to measure fees against the Section 6(b)(4) standard by comparing an exchange's proposed fees with those charged by other exchanges.<sup>10</sup> SIFMA respectfully submits that although potentially efficient from an administrative perspective, this approach does not meet the standards in Section 6(b)(4) because other exchanges may well have different cost structures, different membership configurations or other features that makes a simple fee-to-fee comparison inappropriate. In addition, there is no market test of any of these fees, particularly as charged by the larger exchanges since brokerage firms that have a substantial business find it necessary to join most if not all the national securities exchanges. Therefore, the Commission should not use this comparative approach as part of its evaluation of the exchange's filing.

\* \* \*

For the reasons set forth above, SIFMA respectfully requests that the Commission, under its Section 19(b) authority, abrogate the Boston Exchange filing for a fee increase. Furthermore, we urge the Commission to require all exchanges who seek approval for regulatory fee changes to provide specific data about their regulatory costs and existing regulatory revenues and demonstrate the reasonable relationship between such costs and the fee changes. We appreciate the Commission's prompt attention to this important

---

<sup>9</sup> Option exchanges no longer conduct sales practice examinations, though some might still conduct financial examinations that also cover books and records and a number of no-sales practice related areas.

<sup>10</sup> The Commission takes the position that if "an SRO proposes a reasonable and relatively minor increase in an existing fee, or a proposal that is nearly identical to fees of other SROs, provided that the proposal does not raise other regulatory issues, such proposal would qualify under the noncontroversial category." SEC Release No. 34-35123 (December 28, 1994) at n.59.

Ms. Nancy M. Morris  
Page 5 of 5  
February 12, 2008

issue. If the Commission or the Staff would like to discuss this issue further with SIFMA, please contact the undersigned at (202) 962-7373 or Amal Aly at (212) 313-1268.

Respectfully submitted,



Ira D. Hammerman  
Senior Managing Director and General Counsel

cc: The Hon. Christopher Cox, Chairman  
The Hon. Paul S. Atkins, Commissioner  
The Hon. Kathleen L. Casey, Commissioner  
Dr. Erik R. Sirri Director, Division of Trading and Markets  
Robert L. D. Colby, Deputy Director, Division of Trading and Markets  
Elizabeth King, Associate Director, Division of Trading and Markets  
David Shillman, Associate Director, Division of Trading and Markets  
Marlon Paz, Special Counsel to the Director, Division of Trading and Markets  
Brian G. Cartwright, General Counsel  
Dr. James A. Overdahl, Chief Economist