

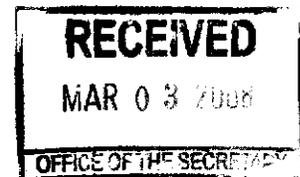


BOSTON
STOCK EXCHANGE

March 3, 2008

Via Courier Service

Ms. Nancy M. Morris
Secretary
United States Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090



Re: SR-BSE-2007-55: Response to Comment Letter

Dear Ms. Morris:

On February 12, 2008, the Securities Industry and Financial Markets Association (“SIFMA”) submitted a comment letter regarding the above-referenced rule filing (the “Filing”).¹ In the letter, SIFMA requested that the Securities and Exchange Commission (the “Commission”) take the extreme measure of abrogating a rule implementation to assess fees supporting regulatory activities of the Boston Stock Exchange, Inc. (“BSE” or the “Exchange”). The BSE appreciates the opportunity to explain why SIFMA’s comment letter is unsupported by fact, statute or rule. The Exchange also respectfully suggests that the Commission permit the Filing to stand, as SIFMA requests the arbitrary and capricious abrogation of one exchange’s non-controversial rule filing as a vehicle to discuss long-standing and broad policy decisions of the Commission.

SIFMA’s comment letter relates to a December 21, 2007 rule implementation in which BSE revised its rules to enable the Exchange to begin charging Participants fees for registering, transferring, re-licensing or terminating the registration of its representatives. The Exchange established an initial registration fee of \$60.00, a renewal fee of \$50.00, a transfer fee of \$40.00, and a termination fee of \$30.00 (collectively, the “Fees”). The Filing was proposed for immediate effectiveness pursuant to Section 19(b)(3)(A)(ii)² of the Securities Exchange Act of 1934 and Rule 19b-4(f)(2) thereunder as establishing a member due, fee or other charge.

The Exchange notes that SIFMA’s comment letter contains many factual inaccuracies, mischaracterizing, among other things, the Exchange’s justification for the Filing, the Exchange’s regulatory responsibilities, the associated costs therewith, as well as the “ease” with which BSE can predict future regulatory costs. In responding to their letter, the Exchange will note and correct these inaccuracies where relevant.

¹ See Securities Exchange Act Release No. 57152 (January 15, 2008), 73 FR 3767 (January 22, 2008).

² 15 U.S.C. 78s(b)(3)(A)(ii)

I. THE FEES ARE BOTH REASONABLE AND EQUITABLY ALLOCATED BECAUSE THEY ARE USED TO OFFSET REGULATORY EXPENSES, ARE APPLIED TO ALL BOX PARTICIPANT REPRESENTATIVES EQUALLY, AND ARE SIMILAR TO FEES CHARGED BY OTHER EXCHANGES.

It is important to clarify the precise nature of the Fees being discussed. The Filing is based upon the registration fees that have been assessed by other national securities exchanges that, like BSE, established such fees via immediately effective rule proposals. Like other exchange fees, the BSE Fees are assessed in conjunction with the use of the Web Central Registration Depository (the "Web CRD") for registration of a Participant's representatives. The Fees are comparable to the amounts charged by other exchanges with long-standing filing fees.

SIFMA's characterization of the Fees as "increases" is incorrect and misleading. In fact, these Fees are being implemented for the first time by the BSE and will establish registration fees similar to those already in effect at a majority of the other National Securities Exchanges.

BSE deems the Fees to be "regulatory fees." As such, the revenue generated from the Fees is placed in a segregated account and used solely for offsetting regulatory costs relating to Participants. Costs associated with regulation vary from year to year, but costs associated with a Participant are not significantly higher during the first year after initial registration as compared to subsequent years. This is because many regulatory functions are periodic functions that occur regardless of whether a Participant is a new member or is well-established.

Despite SIFMA's claim that there is no "market test"³ to control registration fees, Participants in fact choose how many of their representatives will be registered with the Exchange. Participants are free to consider the costs of registration in relation to the benefits of having more representatives able to trade on the market and make their own determination of how many representatives to register. To illustrate, a Firm who has a total of 5000 registered representatives may decide that only 20 registered representatives are going to conduct business on BOX, and therefore, the Firm is only responsible for the Fees of those 20 registered representatives. This is a fair and equitable way in assessing the Fees in question as the Firm is in complete control in determining the said number of registered representatives and in turn the Fees.

The Exchange is required to provide for "the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities" pursuant to Section 6(b)(4) of the Exchange Act.⁴ SIFMA's two challenges are that: 1) the Fees are unreasonable because the Exchange has little or no expense related to regulation to defray and 2) the Fees are not equitably allocated. These challenges are without merit because they rely upon factually inaccurate information and do not recognize the requirements of the exchanges under the Act.

³ See SIFMA Comment Letter p. 4.

⁴ See 15 U.S.C. 78f(b)(4).

A. THE FEES ARE REASONABLE GIVEN THE COSTS OF REGULATION AND COMPARED TO THE FEES ASSESSED BY OTHER EXCHANGES.

The crux of SIFMA's argument is that the Fees are unreasonable because they are not to be used to defray regulatory costs.⁵ SIFMA first claims that there are limited costs associated with registration, and therefore the registration fees are excessive and unreasonable. The Exchange, however, has never taken the position that the Fees are intended solely to defray registration costs, despite SIFMA's claim to the contrary.⁶ Rather, the Fees will offset various regulatory costs associated with the Exchange's regulatory responsibilities, including costs to not only oversee the registration of a Participant's representatives, but to then examine, surveil, and discipline, as necessary, the Participants and their representatives. These activities are paramount to the industry's self-regulatory system.

SIFMA's position is also in large part based on the mistaken belief that the Exchange is involved in only "extremely limited" regulatory activities, because it claims the Exchange outsources its regulatory responsibilities to the Financial Industry Regulatory Authority ("FINRA") as part of the 17d-2 Allocation Plan.⁷ This is incorrect. In fact, BSE conducts extensive regulation of its Participants through cycle and for-cause examinations, as well as through surveillance, enforcement, and other activities.

Boston Options Exchange Regulation ("BOXR"), a subsidiary of the Boston Stock Exchange, is responsible for overseeing the activities of its Participant firms, as stated in Boston Options Exchange ("BOX") rules. The BSE delegated this authority under Sections 6 and 19 of the Securities Exchange Act of 1934. The Exchange therefore conducts examinations to review the trading activities of BOX Participants, and is as comprehensive as possible in order to ensure BOX Participants are operating in accordance with BOX Rules as well as the Federal Securities Laws.

BSE reviews are extensive, requiring an Exchange examiner to request documentation from a Participant for review. Typical documents reviewed include, for example, a Participant's Written Supervisory Procedures, Anti-Money Laundering Policy, Chinese wall policies, and trade data. Based upon that documentation, the examiner will determine if a Participant is in compliance with all applicable rules, and issue a report to the Participant noting any shortfalls. After resolving any disputes, a deficiency notice articulating any shortfalls in the Participant's procedures is sent to the Participant. Issues may be forwarded to the BSE's Surveillance or Enforcement Department on a case-by-case basis as necessary for resolution of issues.

⁵ SIFMA made similar claims in a letter challenging similar fees to be charged by NASDAQ. SIFMA incorporated its previous comment letter by reference. See SIFMA Comment Letter on SR-NASDAQ-2007-009 (January 23, 2008).

⁶ SIFMA states that "BSE seeks to justify the new fee as a necessary cost associated with implementing the registration process through WebCRD." SIFMA then challenges whether there are costs associated with registration of member firm's representatives. See SIFMA Comment Letter at p.2.

⁷ See SIFMA Comment Letter fn. 8

The Exchange is also involved in daily surveillance of trade data. Members of the surveillance team monitor daily reports that are designed to detect trading activity that is potentially in violation of BOX rules or the Federal Securities Laws (“Exception Reports”). Investigations of exceptions noted on a report are opened by members of the team and inquiries are sent to the Participant. Where appropriate, issues may be referred to the BSE Enforcement Department for eventual resolution. In addition, all of these activities require the supervision of the Chief Regulatory Officer and Chief Legal Officer of the Exchange, and must be supported by administrative, accounting, financial and human resource services.

SIFMA’s assertion that the Exchange has outsourced much of this responsibility is exaggerated. The Options Self-Regulatory Council (“OSRC”), of which the Exchange is a member, has a 17d-2 agreement which allocates regulatory responsibility to FINRA and NYSE to be the Designated Options Examining Authority (“DOEA”) over firms that conduct a public options business and are common to more than one of the members. This does not mean, however, that the Exchange is relieved of its responsibility to conduct routine and for-cause examinations, as appropriate. Additionally, if a Participant conducts public options business and is not a common member/Participant, BSE is required to conduct the options sales practice examination. In addition, to the extent certain regulatory functions are outsourced, such as examinations pursuant to a Regulatory Services Agreement, the Exchange would be required to compensate the SRO conducting the service

The Exchange believes that the Fees assessed are reasonable in light of the regulatory functions detailed above and the associated costs. Many exchanges have similar fee structures in place to help pay for the regulatory functions they serve.⁸ The fees are similar in amounts and are assessed in a similar manner.

The Exchange also projects that the costs associated with regulation will continue to increase. For example, as part of ongoing discussions with the Office of Compliance Inspections and Examinations (“OCIE”), the Exchange is currently looking into ways to bolster its current examination procedures to increase oversight. Given that this is the sole regulatory fee assessed by the Exchange, BSE believes it to be reasonable in light of current and projected costs, especially when compared to the fees charged by other exchanges.

⁸ The Amex charges a \$60 Initial Registration Fee, a \$40 Transfer/Relicensing Fee and a \$50 Renewal Fee. See Securities Exchange Act Release No. 48066 (June 19, 2003), 68 FR 38409 (June 27, 2003)(SR-AMEX-2003-49); NYSE Arca, Inc. (f/k/a the Pacific Exchange, Inc.) charges a \$55 Initial Registration Fee, a \$55 Transfer/Relicensing Fee and a \$55 Renewal Fee. See Securities Exchange Act Release No. 51641 (May 2, 2005), 70 FR 24155 (May 6, 2005)(SR-PCX-2005-49); the Philadelphia Stock Exchange, Inc. charges a \$55 Initial Registration Fee, a \$55 Transfer/Relicensing Fee, and a \$55 Renewal Fee. See Securities Exchange Act Release No. 53688 (April 20, 2006), 71 FR 24885 (April 27, 2006)(SR-PHLX-2006-24); The International Securities Exchange charges an Initial Registration Fee of \$55, an Annual Fee of \$55, a Transfer Fee of \$55, and a Termination Fee of \$30. See SEC Release No. 34-55899, 72 FR 55819(SR-ISE-2007-30); The NASDAQ charges a \$55 Licensing Fee and a \$55 Transfer/Relicensing Fee. See Securities Exchange Act Release No 57001 (December 20, 2007), 72 FR 74385 (December 31, 2007)(SR-NASDAQ-2007-099).

B. THE FEES ARE PROPERLY ALLOCATED

The Fees charged by the Exchange, like those of other exchanges, are charged per registration. The fees are equitable in that every firm is charged for each representative it chooses to register with the exchange. SIFMA has made the unfounded assertion that this established method - which has been in place for years - is inequitable because market volume of a Participant is "likely" a better gauge of the regulatory costs. SIFMA provides no facts or analysis to support the assertion that the propensity for regulatory cost should be tied solely to market volume.

In fact, most of the Exchange's regulatory budget is derived from fees that have a relation to a Participant's trading volume. As part of the Regulatory Services Agreement between BOX and BSE, BSE is compensated for its regulatory services by BOX. This compensation derives from fees related to trading volume. The Exchange estimates that, with the implementation of the Fees, 85% of BSE's regulatory budget is still derived from BOX trading fees.

Despite this, however, the Exchange believes that market volume is no fairer an allocation method than a per-registration allocation method, and in the cases of many costs of an exchange, it is a less fair and less accurate way to allocate fees. As noted above, there are a variety of regulatory tasks that must be undertaken by the Exchange. The necessity of performing these tasks - and the associate costs - bears little relation to the trading volume of that Participant. For example, routine examinations occur regardless of the trading volume of the Participant. During those examinations, documents are reviewed and examined for compliance with BOX Rules as well as actual firm practices. In doing such a review, there is no greater cost for reviewing, for example, a Participant's Chinese wall policy, if the Participant has higher trading volume. Additionally, the same administrative costs apply to preparing a report to a Participant regardless of trade volume.

Another example where trade volume bears no relation to costs is in the surveillance context. In the Exchange's experience, there is no correlation between a Participant's trading volume and their propensity for having trades appear on exception reports that merit an investigation. Because the majority of costs in surveillance are associated with investigating exceptions as opposed to generating a report, there is no reason to suspect high trading volume Participants cost more to surveil than lower trading volume Participants.

The Exchange believes that registration fees should continue to be assessed in proportion to the number of registered representatives at a Participant firm. Not only is there no evidence that a per-registration fee is an unfair allocation, but it remains the industry standard for assessing these kinds of fees. Further, the Exchange's experience suggests a trade volume allocation model would simply be unfair to firms with higher volume.

II. THE REMAINING ISSUES RAISED BY SIFMA ARE POLICY-ORIENTED ARGUMENTS THAT ARE NOT DIRECTLY FOCUSED ON BSE'S RULE FILING.

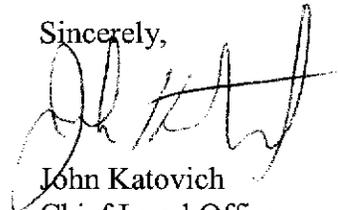
After discussing the factual errors in SIFMA's comment letter, the only remaining issues are broad policy arguments unrelated to BSE's Filing. SIFMA is inappropriately using the Filing as a vehicle to discuss "rate regulation" and other broad policy issues, and to propose a new policy that has no authority in current statutes or rules. There is no requirement, for example, that Exchanges provide a breakdown of their regulatory fees in order to satisfy Section 6(b)(4). It would therefore be inappropriate for the Exchange to comment at length on these policy issues. The Exchange notes, however, that this Filing raises no novel regulatory issues, and it closely resembles the filings of other exchanges. As SIFMA itself acknowledges, such a filing qualifies as a non-controversial filing.⁹

Because SIFMA requests abrogation of BSE's Fee, while other exchanges' similar fees would be left intact, the request is both arbitrary and capricious. SIFMA is requesting the Commission partake in inequitable treatment of BSE by abrogating this one fee on a policy basis while requesting no action as to similar fee structures at other national securities exchanges. SIFMA has not consistently commented on registration fee filings. As recently as June of 2007 a fee filing increasing Web CRD fees at another national securities exchange was filed without any objection from SIFMA.¹⁰ That rule, as well as those of other exchanges before it, have passed the 30-day abrogation period and can now only be abrogated or deleted through a 19(c) proceeding. Therefore, allowing similar fees of other exchanges to stand while prohibiting BSE's fees would result in an unfair and inequitable treatment of BSE, in addition to hindering BSE's ability to fulfill its regulatory responsibilities.

For the above-stated reasons, the Exchange respectfully requests that the Commission allow the Filing to stand alongside the similar filings by the other exchanges.

Please contact me at 617-235-2023 if you have any further questions or would like to discuss this comment response letter in greater detail.

Sincerely,



John Katovich
Chief Legal Officer
Executive Vice President

⁹ See SEC Release No. 34-35123 (December 28, 1994) at n. 59.

¹⁰ See SEC Release No. 34-55899 (June 12, 2007), 72 FR 33794 (June 19, 2007)(SR-ISE-2007-30).

cc: The Hon. Christopher Cox, Chairman
The Hon. Paul S. Atkins, Commissioner
The Hon. Annette L. Nazareth, 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