

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54034; File No. SR-BSE-2006-22)

June 22, 2006

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto to Implement the Boston Equities Exchange (“BeX”) Trading System

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 May 10, 2006, the Boston Stock Exchange, Inc. (“BSE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the BSE. BSE filed Amendment No. 1 to the proposed rule change on June 2, 2006.³ BSE filed Amendment No. 2 to the proposed rule change on June 9, 2006.⁴ BSE filed Amendment No. 3 to the proposed rule change on June 15, 2006.⁵ 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 Exchange is proposing the implementation of the Boston Equities Exchange (“BeX”) trading system, a fully-automated electronic book for the display and execution of orders in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaces and supersedes the original filing in its entirety.

⁴ Amendment No. 2 replaces and supersedes the original filing and Amendment No. 1 in their entirety.

⁵ Amendment No. 3 replaces and supersedes the original filing, Amendment No. 1 and Amendment No. 2 in their entirety.

securities listed otherwise than on The Nasdaq Stock Market (“Nasdaq”) for which the BSE obtains unlisted trading privileges (“UTP”) after June 30, 2006.⁶

The text of the proposed rule change is available on the Exchange’s Web site (<http://www.bostonstock.com>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

The text of the proposed rule change also appears below.⁷ Proposed new language is underlined.

RULES OF THE BOSTON STOCK EXCHANGE

Chapter II – Dealings on the Exchange

Sections 1 through 40. No Change.

SEC. 41. Minimum Price Variation

The Minimum Price Variation shall be 0.01. Those securities trading in fractions shall continue to trade in Minimum Price Variations as currently approved by the Exchange. Mid-Point Cross Orders may be executed and reported in increments as small as one-half of the Minimum Price Variation.

Sections 42 through 43. No Change.

⁶ The rules governing trading in Nasdaq stocks (BSE Rules, Chapter XXXV) and the rules governing trading in listed securities assigned to a specialist (BSE Rules, Chapters I, II, III, XV, XVI, XVII, XIX, and XXXIII) remain unchanged. Separate from this rule filing, the BSE intends to apply for UTP in all stocks listed otherwise than on The Nasdaq Stock Market for which we do not yet have UTP.

⁷ The Commission notes that the rule text submitted by the Exchange contained several technical errors, which, for the purpose of this notice, have been corrected. In addition, the reference to “Market” orders contained in the last sentence of proposed Chapter XXXVII, Section 3(f)(ii) should instead be “At the Close” orders. The Exchange has committed to address these errors formally in an amendment to the proposed rule change following publication of this notice. Telephone conversation among John Curtain, Assistant Vice President Corporate Legal and Contracts Attorney, BSE; Jennifer Colihan, Special Counsel, Division of Market Regulation (“Division”), Commission; and David Michehl, Special Counsel, Division, Commission on June 22, 2006.

Chapter XXXVII - Boston Equities Exchange (“BeX”) Trading System

The Boston Equities Exchange (“BeX”) trading system is a fully-automated facility of the Exchange, which allows eligible orders in eligible securities to electronically match and execute against one another.

Section 1. BeX Eligible Securities

(a) Eligible Securities. All securities eligible for trading on the Exchange that are listed otherwise than on The Nasdaq Stock Market for which the BSE obtains unlisted trading privileges (“UTP”) after June 30, 2006 shall be eligible for trading through BeX. Any specialist request to remove a security from BeX shall be considered by the appropriate Board Committee.

Section 2. Eligible Orders

(a) All orders sent to BeX must be round lot market or limit orders, specifically designated in the manner specified by the Exchange for trading in BeX.

(b) All orders sent to BeX must be for regular way settlement.

(c) Eligible order types:

(i) Orders eligible for execution in BeX may be designated as one of the following existing BSE order types as defined in Chapter I, Section 3 except that any reference in the existing BSE Rules to the execution of Orders as soon as “represented at the specialist’s post” shall for purposes of this Section be understood to mean “entered in BeX”:

(A) At the Opening or At the Opening Only Order

(B) Day Order

(C) Do Not Increase (DNI)

(D) Do Not Reduce (DNR)

(E) Fill or Kill

(F) Good 'Till Cancel Order

(G) Immediate or Cancel

(H) Limit, Limited Order or Limited Price Order

(I) At the Close

(J) Market Order

(K) Stop Limit Order

(L) Stop Order

With the exception of Fill or Kill and Immediate or Cancel Orders, a customer may append to an Order an instruction that the Order be cancelled or routed to the market(s) displaying the National Best Bid or Offer if the Order would trade through the National Best Bid or Offer if executed on the BeX.

(ii) Orders eligible for execution in BeX may also be designated as one of the following additional order types:

(A) "Cross": An order to buy and sell the same security at a specific price better than the best bid and offer displayed in BeX and equal to or better than the National Best Bid and Offer. A Cross Order may represent interest of one or more BSE Members.

(B) "Cross with Size": A Cross Order to buy and sell at least 5,000 shares of the same security with a market value of at least \$100,000.00 (i) at a price equal to or better than the best bid or offer displayed in BeX and the National Best Bid or Offer (ii) where the size of the order is larger than the aggregate size of all

interest displayed in BeX at that price; and (iii) where neither side of the order is for the account of the BSE Member sending the order to BeX.

(C) “Good ‘Till Date (GTD)”: An order to buy or sell that, if not executed, expires at the end of date specified in the order.

(D) “Good ‘Till Time (GTT)”: An order to buy or sell that, if not executed, expires at the time specified in the order.

(E) “Limit or Close ”: A limit order to buy or sell that if not executed prior to the Market on Close cutoff time of 3:40 p.m., pursuant to Chapter II, Section 22, will automatically convert to an At the Close Order for inclusion in the closing process and if not so executed, at the close, will be cancelled.

(F) “Mid-Point Cross ”: A two-sided order with both a buy and sell component combined that executes at the midpoint of the National Best Bid or Offer. A Mid-point Cross Order will be rejected when a locked or crossed market exists in that security at the time the Order is received. Midpoint Cross Orders may be executed and reported in increments as small as one-half of the Minimum Price Variation.

(d) Orders may be entered by a Member on its own behalf, for the account of another Member (collectively, professional orders) or for the account of a customer (an agency order). In BeX, however, agency orders are subject to the same display and execution processes as professional orders, and agency orders do not receive any priority in order execution or handling.

***Interpretations and Policies

.01 The terms “Best Bid” and “Best Offer” shall mean, respectively, the highest and lowest priced order to buy and sell an eligible security in BeX.

.02 The terms “National Best Bid” and “National Best Offer” shall mean, respectively, the highest and lowest priced order or quote to buy and sell a BeX eligible security displayed in the consolidated quotation system for the security.

Section 3. Operation of BeX

(a) Operating Hours. BeX will operate from 7:30 a.m. until 4:30 p.m during the Exchange’s Pre-Opening, Opening, Primary and Post-Primary Trading Sessions.

(i) For purposes of this Chapter XXXVII, the primary market for a security is, unless otherwise designated by the appropriate Board committee, the listing market for a security; provided, however, that if a security is traded by the NYSE, then the primary market for such security is the NYSE, and if a security is not traded by the NYSE and is traded by the Amex, then the primary market for such security is the Amex. If a security is solely listed on any other Exchange, then the primary market for such security is that market. If a security is traded on both the NYSE and the Amex, whichever of the two is the listing market is the primary market.

(b) Pre-Opening. BeX will accept orders each day during the Pre-Opening. The Pre-Opening in BeX extends from 7:30 a.m. until 9:30 a.m. During the Pre-Opening, orders are placed on the BeX but will not be matched and do not generate trade executions. Market participants are permitted to add, modify or cancel orders. Cross, Cross with Size, and Mid-point Cross Orders do not participate in the opening and are not accepted by the BeX trading system during the Pre-Opening.

(c) Opening. BeX will open for trading each day once the primary market for a security opens its market on either a displayed quote or trade.

Primary Market Opening Procedures (PMOP). Where the opening price is based on a trade print in the primary market, the BeX opening price will match the primary market opening price for each individual security opened. Once the BeX opening price has been determined, all eligible orders priced equal to or better than the BeX opening price will be paired for execution at the determined price following applicable BeX priority rules.

Where the primary market opening is based on a quote, the BeX will open as follows:

(i)(a) where there are orders in the BeX that cannot be matched, the BeX will open on a quote;

(i)(b) where there are orders in the BeX that can be matched, (such as a Market Order to Market Order, Limit Order to Market Order, or Limit Orders that lock or cross) the BeX opening price will be the Theoretical Opening Price (“TOP”), provided the TOP is at or within the National Best Bid and Offer;

(i)(c) where there are orders in the BeX that can be matched, and the TOP is not at or within the National Best Bid and Offer, the BeX opening trade price will be at the National Best Bid or Offer closest to the TOP so long as Orders can be matched at that price. If Orders cannot be matched at that price, the BeX will open on a quote.

(ii) Following the opening execution process in an individual security, all orders remaining that are executable against the National Best Bid and Offer will be cancelled or routed in accordance with the customer’s instruction. All other Orders will be booked on the BeX.

(iii) The TOP.

(a) The TOP is the price that maximizes the quantity of orders traded on the BeX at the opening;

(b) If multiple prices exist under subparagraph (a), above, then the TOP is the price that minimizes the quantity of orders not traded;

(c) If multiple prices exist under subparagraph (b), above, then the price that minimizes any order imbalance is the TOP;

(d) If multiple prices exist under subparagraph (b) and there is no order imbalance, the TOP is the price closest to the previous day's closing price.

(d) Primary Trading Session. BeX will operate the Primary Trading Session immediately following the opening for individual securities where the primary market is either the NYSE or AMEX. During the primary session, orders are automatically executed as soon as a match can be found, following applicable BeX priority rules.

(e) Trading Halts. BeX will halt trading during regulatory trading halts called by the primary or listing market in a security. Additionally, BeX will halt its operation during periods of unusual market conditions pursuant to Chapter II, Section 34A. If trading in an issue has been halted, BeX will go through its Pre-Opening and Opening procedures as set forth above.

(f) Closing. BeX will close as follows:

(i) Market on Close Period: Beginning at 3:40 p.m. (EST), BeX will broadcast the imbalance between the At the Close and Limit or Close Orders on the bid side and the At the Close and Limit or Close Orders on the sell side.

(A) During this period At the Close Orders will only be accepted on the imbalance side.

(B) During this period At the Close and Limit or Close Orders cannot be cancelled.

(ii) BeX will provide a group closing by putting all eligible orders received by 4:00 p.m. into an “Authorized Reserve State (ARS).” During ARS, BeX will not accept any new orders, cancellations or modifications. When BeX receives the closing price message from the primary market, as defined in Section 3(a)(i) above, the BeX trading system will complete the closing process for each individual security. During the closing process, all paired At the Close and Limit or Close Orders are executed at the primary market closing price. If a Market or Limit or Close Order is not fully executed at the close, the part not executed will be cancelled.

(g) Post-Primary Trading Session (PPS). The BeX PPS will operate from the time when the primary market disseminates its closing price until 4:30 p.m. During the BeX PPS only cross orders at a specific price may be submitted.

(h) Receipt of Orders. Orders shall be routed to BeX using one of the following methods:

(i) Except for the orders described in subparagraph (ii) below, all orders must be sent to BeX through the Exchange’s systems or through other communication lines approved by the Exchange for the delivery of orders by its Members.

(ii) ITS commitments for ITS-eligible securities traded in BeX shall be sent through the ITS system.

(i) Ranking and Display of Orders. Except for Cross, Cross with Size, and Mid-point Cross Orders, which shall be executed as described in Paragraph (k) below, all orders sent to BeX shall be ranked according to their price and time of receipt, as follows:

(i) Limit Orders shall be ranked based on their limit prices and times of receipt by BeX.

(ii) All eligible orders shall be immediately and publicly displayed through the processes set out in the appropriate transaction reporting plan for each security when they constitute the best bid or offer in BeX for that security, provided, however, that an order that would lock or cross another ITS market shall be cancelled rather than displayed.

(j) Automated Matching and Execution of Orders. Orders shall automatically be matched and executed against each other, as follows:

(i) Except for Cross, Cross with Size, and Mid-point Cross Orders, which shall be executed as described in Paragraph (k) below, an incoming order shall be matched against one or more orders in the BeX in the order of their ranking, following price and time priority for the full amount of shares available at that price, or for the size of the incoming order, if smaller. If an incoming Limit Order would trade through (as defined in the ITS Plan) the National Best Bid or Offer if executed on the BeX at the time of receipt, it will, at the instruction of the Member entering the order, either be cancelled or routed to the market(s) displaying the National Best Bid or Offer. If no instruction is provided, the order will be returned to Member entering the order.

(ii) If an incoming Limit Order cannot be matched when it is received and it is not designated as a type that should be immediately cancelled the order shall be treated in accordance with Section 3, Paragraph (i) above.

(iii) If an incoming Market Order would trade-through (as defined in the ITS Plan) the National Best Bid or Offer if executed on the BeX at the time of receipt, it will, at the instruction of the Member entering the order, either be cancelled or routed to the market(s) displaying the National Best Bid or Offer.

(iv) An inbound ITS commitment, if it is priced at or better than the current Best Bid or Offer in BeX, shall be automatically executed against the order(s) reflected in the Best Bid or Offer, for the full amount of shares available at that price, and any remaining portion of the ITS commitment shall be automatically cancelled.

(v) Orders shall only be matched at prices that are equal to, or better than, the National Best Bid or Offer.

(k) Submission of Cross Orders. Cross, Cross with Size, and Mid-point Cross Orders shall be automatically executed if they meet the requirements set out in Section 2(c)(ii)(A), (B) and (F) above. If an order designated as Cross, Cross with Size, or Mid-point Cross does not meet such requirements at the time it is received by BeX, it shall be immediately cancelled.

Section 4. Cancellation of Transactions

(a) Cancellation of Transactions. A transaction made in demonstrable error and cancelled by both parties may be unwound, subject to the approval of the Exchange. Unresolved controversies relating to transactions that occur in BeX, and which are not addressed pursuant to the procedures in Section 5, Paragraph (a) below shall be subject to the arbitration rules of the Exchange set out in Chapter XXXII of the Rules.

Section 5. Handling of Clearly Erroneous Transactions

(a) Handling of Clearly Erroneous Transactions. The Exchange will respond to requests for review of clearly erroneous transactions using the following procedures:

(i) The terms of a transaction are “clearly erroneous” where there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security.

(ii) Any Member may request a review of an execution received through BeX when the Member believes that the terms of the transaction were clearly erroneous when submitted.

(A) The Member must make a request for review immediately after the execution and also must provide a written request, by facsimile or by e-mail, within 15 minutes after the execution.

(B) The Exchange shall promptly notify the other party to the transaction of the request for review.

(C) The Member making a request for review shall provide, within 30 minutes after making the written request for review (or within such longer period of time specified by Exchange staff), written documentation relating to the disputed transaction that is reasonably necessary for use by the Exchange in resolving the matter. The other party to the transaction shall provide, within 30 minutes after receiving notice from the Exchange of the request for review (or within such longer period of time specified by Exchange staff), written documentation relating to the disputed transaction that is reasonably necessary for use by the Exchange in resolving the matter. Once a party has submitted its documentation, and the period for providing the documentation has ended (or, if earlier, the party has notified the Exchange that it has no further information), the party may not provide additional information unless requested to do so by Exchange staff. Either party to the transaction may request, and the Exchange shall provide, the written documentation submitted by the other party.

(D) The Exchange's Chief Regulatory Officer ("CRO") or another officer designated by the CRO shall review the transaction and determine whether it is clearly erroneous. In making that determination, the CRO or another officer designated by the CRO shall consider the goals of maintaining a fair and orderly market and the protection of investors and the public interest.

(E) If the CRO or another officer designated by the CRO determines that a transaction is not clearly erroneous, the Exchange shall notify both parties, in writing, that no action will be taken with respect to the completed trade. If the CRO or another officer designated by the CRO determines that a transaction is clearly erroneous, the CRO or another officer designated by the CRO shall declare the transaction null and void or modify one or more of the terms of the transaction with the aim of trying to return the parties to the positions that they would have been in (or to positions reasonably similar to those positions) if the error had not occurred. The Exchange shall document this decision in writing and provide copies of the decision to all parties.

(iii) Either party may appeal this determination to a subcommittee of the Exchange's Regulatory Oversight Committee ("ROC") by submitting an appeal to the Exchange's Secretary, by facsimile or in writing, within 30 minutes after receiving the Exchange's written decision or, if the Exchange notifies parties of its decision after 4:00 p.m., by 9:30 a.m. the next trading day. Once an appeal is received, the Exchange shall notify the counterparty to the trade and both parties and the Exchange itself will be permitted to submit any additional supporting written materials up to the time that the subcommittee considers the appeal. Either party to a disputed trade may request, and the

Exchange shall provide, the written documentation presented to the subcommittee by the other party or by the Exchange. An appeal does not operate as a stay on the decision being appealed. After consideration of any written materials provided by the parties or by the Exchange, and after any hearings that the subcommittee may hold, the subcommittee, using the standards set out in this rule, shall affirm, modify or reverse the original decision. The subcommittee's decision on a matter shall be the final Exchange action on the matter. Any decision by the CRO or another officer designated by the CRO under subparagraph (ii) above or by the ROC subcommittees under this subparagraph (iii) shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.

(iv) If there is any disruption or malfunction in the use or operation of BeX, or the communications systems associated with BeX, the CRO or another officer designated by the CRO may declare any transaction arising out of the use of BeX during the period of the disruption or malfunction null and void or may modify the terms of these transactions. In making this decision, the CRO, or any designee, must find that the transactions were clearly erroneous or that the actions are necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest. Absent extraordinary circumstances, any action by the CRO or other designee shall be taken within 30 minutes of detection of the erroneous transaction, but in no event later than 3:00 p.m. on the trading day following the date of the trade at issue. The Exchange shall notify each Member involved in the transaction as soon as practicable following the decision and any party to the transaction may appeal that decision by following the procedures set out above in subparagraph (iii) of this rule.

Section 6. Orders to be Reduced and Increased on Ex-Date

(a) When a security is quoted ex-dividend, ex-distribution, ex-rights or ex-interest, the following kinds of orders shall be reduced by the value of the payment or rights, and increased in shares in the case of stock dividends and stock distributions which result in round-lots, on the day the security sells ex:

(i) Open buying orders;

(ii) Open stop orders to sell. (With open stop limit orders to sell, the limit, as well as the stop price, shall be reduced.)

The following shall not be reduced:

(i) Open stop orders to buy;

(ii) Open selling orders.

(b) Reduction of orders, Odd amounts. When the amount of a cash dividend is not equivalent to or is not a multiple of the fraction of a dollar in which bids and offers are made in the particular stock, orders shall be reduced by the next higher variation.

(c) Reduction of orders, Proportional procedure. Open buy orders and open stop orders to sell shall be reduced by the proportional value of a stock dividend or stock distribution on the day a security sells ex-dividend or ex-distribution. The new price of the order is determined by dividing the price of the original order by 100% plus the percentage value of the stock dividend or stock distribution. For example, in a stock dividend of 3%, the price of an order would be divided by 103%.

The chart below lists, for the more frequent stock distributions, the percentages by which the prices of open buy orders and open stop orders to sell shall be divided to determine the new order prices.

	<u>Price of Order</u>		<u>Price of Order</u>
<u>Distribution</u>	<u>Divided by</u>	<u>Distribution</u>	<u>Divided by</u>
<u>5-for-4</u>	<u>125%</u>	<u>2-for-1</u>	<u>200%</u>
<u>4-for-3</u>	<u>133 1/3%</u>	<u>5-for-2</u>	<u>250%</u>
<u>3-for-2</u>	<u>150%</u>	<u>3-for-1</u>	<u>300%</u>
<u>5-for-3</u>	<u>166 2/3%</u>	<u>4-for-1</u>	<u>400%</u>

If as a result of this calculation the price is not equivalent to or is not a multiple of the fraction of a dollar in which bids and offers are made in the particular security, the price should be rounded to the next lower variation.

In reverse splits, all orders (including open sell orders and open stop orders to buy) should be cancelled.

(d) Procedure for increase in number of shares. When there is a stock dividend or stock distribution, open buy orders and open stop orders to sell shall be increased in shares as follows:

(i) When there is a stock dividend or stock distribution which results in one or more full shares for each share held, the number of shares in open buy orders and open stop orders to sell shall be increased accordingly.

EXAMPLES:

A 3-for-1 stock distribution.

An order for 100 shares is increased to 300 shares.

An order for 200 shares is increased to 600 shares.

An order for 500 shares is increased to 1500 shares.

(ii) When there is a stock dividend or stock distribution of less than a one-for-one basis and thus results in fractional shares, open buy orders and open stop orders to sell shall be increased to the lowest full round-lot.

EXAMPLES:

A 25% stock dividend or a 5-for-4 stock distribution.

An order for 100 shares remains at 100 shares.

An order for 300 shares remains at 300 shares.

An order for 900 shares is increased to 1100 shares.

An order for 2000 shares is increased to 2500 shares.

(iii) When there is a stock dividend or stock distribution which results in fractional shares combined with full shares, the number of shares in open buy orders and open stop orders to sell shall be increased to the lowest full round-lot.

EXAMPLES:

A 5-for-2 stock distribution.

An order for 100 shares is increased to 200 shares.

An order for 200 shares is increased to 500 shares.

An order for 700 shares is increased to 1700 shares.

An order for 1200 shares is increased to 3000 shares.

Section 7. Application of BSE Rules

(a) The rules and procedures in this Chapter shall apply to trading conducted in BeX.

Unless otherwise defined in this Chapter, terms used in this Chapter shall have the same meanings given them elsewhere in the Rules. Except where the context requires otherwise, the provisions of the bylaws and all other Rules and policies of the Board of Governors shall

continue to be applicable to trading that occurs on the BeX. If any rule in this Chapter is inconsistent with any other provision of the Rules, the provisions of this Chapter shall control and shall be deemed to supplement or amend the inconsistent provision.

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, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV 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 BSE has proposed in a separate rule filing, to create a new electronic trading facility, as that term is defined in Section 3(a)(2) of the Act,⁸ called BeX.⁹ BeX, which is to be developed, owned and operated by BSX Group, LLC ("BSX"), would be an electronic securities communications and trading facility intended for the use of BSE Members and Electronic Access Members and their customers. In this rule filing relating to the initial phase of the BeX facility, the Exchange proposes to implement the BeX as a fully-automated electronic book for the

⁸ Under the Act, the "term 'facility' when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service." See 15 U.S.C. 78c(a)(2).

⁹ On May 5, 2006, the Exchange filed with the Commission a proposed rule change that establishes BeX and sets forth governance and membership rules changes pertaining to BeX (SR-BSE-2006-20).

display and execution of orders in securities listed on any exchange other than issues listed on Nasdaq for which the BSE obtains unlisted trading privileges after June 30, 2006. All such issues would not be assigned to a specialist. The rules would be located in Chapter XXXVII of the Exchange's Rules of the Board of Governors.¹⁰

Under the Exchange's current rules there are no provisions for trading securities that are not assigned to a specialist. Rather than instituting a "Cabinet" rule, which the Exchange considers to be manually intensive and inefficient, the Exchange proposes to institute rules governing the BeX as a new fully-automated electronic book that would display and match eligible orders in these securities, without the participation of a specialist. For competitive reasons, the Exchange considers this proposal to be vitally important to its ability to attract to, and retain order flow by, the BSE.

Currently, BSE Specialists quote and trade approximately 300 securities. The BSE Floor Broker community routinely receives baskets of securities that contain orders and cross trades in securities that are not quoted by BSE Specialists. As such, the orders and cross trades for securities that are not traded on the BSE must be routed to other market centers for execution. Thus, the Exchange is not able to retain order flow that has been directed to the BSE. Moreover, BSE Floor Brokers are hampered in their ability to attract more sources of order flow to the Exchange, because a percentage of the order flow they do attract is eventually routed to other market centers for execution. The other market centers include those centers that have the capability to post and execute orders in securities that are not continuously quoted or traded by

¹⁰ See note 6, supra, for a description of the scope of this proposal.

any member in a market making capacity, including other exchanges that have rules governing the same type of electronic book functionality that the BSE is now seeking to employ.¹¹

As described below, BeX would allow Exchange Members, whether or not they are on the Exchange's floor, to enter orders into the BeX for possible execution.

Eligible securities and eligible orders. Under the proposed rules, all securities eligible for trading on the Exchange that are not assigned to a Specialist would be traded in the BeX. Orders sent to BeX would be required to be specifically designated for handling in BeX. BeX would accept only round-lot market and limit orders.¹² No odd-lot, or mixed lot orders would be accepted.

Orders eligible for execution in BeX may be designated as one of the following existing BSE order types: "at the close," "at the opening or at the opening only," "day," "do not increase (DNI)," "do not reduce (DNR)," "fill or kill," "good 'till cancel," "immediate or cancel," "limit, limited or limited price," "market," "stop limit," or "stop" orders. Orders may also be designated one of the following new order types: "cross," "cross with size," "good 'till date (GTD)," "good 'till time (GTT)," "limit or close," or "mid-point cross." Descriptions of the eligible new order types are as follows:

Cross: An order to buy and sell the same security at a specific price better than the best bid and offer displayed in BeX and equal to or better than the National Best Bid and Offer. A Cross Order may represent interest of one or more BSE Members.

Cross with Size: A Cross Order to buy and sell at least 5,000 shares of the same security with a market value of at least \$100,000.00 (i) at a price equal to or better than the best bid or offer displayed in BeX and the National Best Bid or Offer; (ii) where the size of the order is

¹¹ See, e.g., Chicago Stock Exchange ("Chx") Rules, Article XXA.

¹² Id.

larger than the aggregate size of all interest displayed in BeX at that price; and (iii) where neither side of the order is for the account of the BSE Member sending the order to BeX. The latter provision is intended to restrict such orders to agency orders, similar to the existing BSE, Chx, and American Stock Exchange (“Amex”) rules.¹³

Good ‘Till Date (GTD): An order to buy or sell that, if not executed, expires at the end of the date specified in the order.

Good ‘Till Time (GTT): An order to buy or sell that, if not executed, expires at the time specified in the order.

Limit or Close: A Limit Order to buy or sell that if not executed prior to the Market on Close cutoff time of 3:40 p.m., pursuant to Chapter II, Section 22, will automatically convert to an At the Close Order for inclusion in the closing process, and if not so executed at the close, will be cancelled.

Mid-Point Cross: A two-sided order with both a buy and sell component combined that trades at the midpoint of the National Best Bid or Offer. A Mid-point Cross Order will be rejected when a locked or crossed market exists in that security at the time the Order is received. Mid-point Cross Orders may be executed and reported in increments as small as one-half of the Minimum Price Variation.

With the exception of Fill or Kill and Immediate or Cancel Orders, a customer may append to an Order an instruction that the Order be cancelled or routed to the market(s) displaying the National Best Bid or Offer if the Order would trade through the National Best Bid or Offer if executed on the BeX.

¹³ BSE Rule Chapter II, Sec. 8 and Chapter XXV, Sec. 6; Amex Rule Sec. 126.02, and Chx Rule Article XXA, Rule 2(c)(4).

Compliance with Intermarket Trading System (“ITS”) Plan. To ensure compliance with the ITS Plan, otherwise eligible orders would be cancelled or routed away in certain circumstances. Specifically, if an order in an ITS eligible security crosses or locks the National Best Bid or Offer at the time that it is received, the order would be immediately cancelled to ensure compliance with the ITS Plan’s rules relating to locked markets.¹⁴ Marketable orders that would trade-though the National Best Bid or Offer would either be cancelled or be routed to the market(s) showing the National Best Bid or Offer at the order-entering firm’s instructions.¹⁵

Operating hours. Under the proposed rules, BeX would operate during the Exchange’s Pre-Opening, Opening, Primary, and Post-Primary Trading Sessions. Specifically, BeX would accept orders each day during the Pre-Opening. BeX will open for trading each day for a particular security once the primary market in that security opens on either a displayed quote or a trade.¹⁶ BeX would close at 4:30 p.m.

Pre-Opening. The Pre-Opening in BeX would extend from 7:30 a.m. until 9:30 a.m., during which orders would be entered on the BeX and market participants would be able to add, modify or cancel orders. There would be no matching of orders during the Pre-Opening.

¹⁴ Similarly, if an order in a listed security locks or crosses the Best Bid or Offer in BeX at the time it is received, but not the National Best Bid or Offer, the order would be executed according to BeX’s matching algorithm, and any remaining portion would be immediately cancelled, if it would lock or cross the National Best Bid or Offer.

¹⁵ See proposed BSE Rule, Chapter XXXVII, Section 3, Paragraph (j)(i) and (iii).

¹⁶ The proposed rules define the primary market as the listing market for a security, unless otherwise designated by the appropriate Board committee; provided, however, that if a security is traded by the New York Stock Exchange, Inc. (“NYSE”), then the primary market for such security would be the NYSE and if a security is traded by the Amex, then the primary market for such security would be the Amex. If a security is traded on both the NYSE and the Amex, whichever of the two is the listing market would be considered the primary market. See proposed BSE Rule, Chapter XXXVII, Section 3, Paragraph (a)(i).

Opening. BeX will open based upon the opening of the primary market for a security.¹⁷

Where the opening price is based on a trade print in the primary market, the BeX opening price will match the primary market opening price for each individual security opened. Where the opening is based on a quote in the primary market, the BeX will open in one of the following ways: (1) where there are orders in the BeX that cannot be matched, the BeX will open on a quote; (2) where there are orders in the BeX that can be matched, the BeX opening price will be the Theoretical Opening Price (“TOP”), provided the TOP is at or within the National Best Bid and Offer; (3) where there are orders in the BeX that can be matched, and the TOP is not at or within the National Best Bid and Offer, the BeX opening trade price will be at the National Best Bid or Offer closest to the TOP so long as Orders can be matched at that price. If Orders cannot be matched at that price, the BeX will open on a quote; (4) following the opening execution process in an individual security all orders remaining that are executable against the National Best Bid and Offer will be cancelled or routed in accordance with the customer’s instruction. All other Orders will be booked on the BeX.

Primary Trading Session. Once the opening occurs for individual securities, BeX will operate the Primary Trading Session. All orders would automatically be matched following price and time priority as soon as they are entered in the order book. Incoming orders will be executed at or within the National Best Bid and Offer.

Closing. BeX will close in two stages. The first stage is the “Market on Close Period”. Beginning at 3:40 p.m. (EST), BeX will broadcast the imbalance between the At the Close and

¹⁷ The primary market is defined as either the NYSE, the Amex, or another exchange solely listing a security (other than the BSE). Nasdaq securities and BSE solely listed issues (which are assigned to a specialist) will continue to trade under the BSE’s existing rules, and not on BeX, so this rule proposal does not provide opening or closing rules for such securities.

Limit or Close Orders on the bid side and At the Close and Limit on Close Orders on the offer side.

Second, BeX will close based upon the primary market close.¹⁸ BeX will provide a group closing by putting all eligible orders in such securities received by 4:00 p.m. into an Authorized Reserve State. When BeX receives the closing price message from the primary market, the BeX trading engine will complete the closing process for each individual security.

Post-Primary Trading Session. The Post-Primary Trading Session would operate from the time when the primary market disseminates its closing price until 4:30. During the Post Primary Trading Session only Cross Orders may be submitted to BeX.

Receipt of orders. Orders could be routed to BeX through the Exchange's systems or through other communications lines approved by the Exchange for the delivery of orders by Exchange Members.¹⁹ BeX would also accept and automatically execute commitments sent by market centers that participate in ITS.

Ranking and display of orders. Except for Cross, Cross with Size, and Mid-point Cross Orders, all orders sent to BeX would be ranked according to their price and time of receipt and would be displayed to the public when they constitute the Best Bid or Offer in BeX for a security.²⁰

Automated matching of orders. In BeX, orders would automatically match against each other, in price/time priority.²¹ Specifically, an incoming order would be matched against

¹⁸ Id.

¹⁹ See proposed BSE Rule, Chapter XXXVII, Section 3, Paragraph (h)(i).

²⁰ See proposed BSE Rule, Chapter XXXVII, Section 3, Paragraph (i).

²¹ The only exception to this price/time priority matching would occur when certain "cross with size" orders are executed. In those instances, eligible "cross with size" transactions – where there is an order to buy and sell at least 5,000 shares of the same security with a

one or more orders in the BeX, in the order of their ranking, at the price of each order, for the full amount of shares available at that price, or for the size of the incoming order, if smaller. If an incoming order could not be matched when it is received, and it is not designated as an order that should be immediately cancelled, the order would be placed in the BeX. For example:

Assume that BeX contains the following bids and offers in a particular security, AAA:

<u>Buy</u>	<u>Price</u>	<u>Price</u>	<u>Sell</u>
200	\$47.50	\$48.20	400
1,500	\$47.00	\$48.50	700
600	\$46.75	\$49.00	100

- An incoming Limit Order to buy 500 shares at a price of \$48.00 would become the top-of-the-book best bid.

- An incoming Limit Order to buy 500 shares at a price of \$48.20 would match for 400 shares against the top-of-the-book best offer at a price of \$48.20, leaving 100 shares to buy at \$48.20.

- Similarly, an incoming Limit Order to buy 500 shares at a price of \$48.50 would match for 400 shares against the top-of-the-book best offer at a price of \$48.20 and would match for 100 shares at a price of \$48.50.

Inbound ITS commitments, if priced at or better than the current Best Bid or Offer in BeX, would be automatically executed against the order(s) reflected in the Best Bid or Offer for

market value of at least \$100,000.00 (A) at a price equal to or better than both the National Best Bid and Offer and the Best Bid and Offer displayed in BeX; (B) where the size of the order is larger than the aggregate size of all interest displayed in BeX at that price; and (C) where neither side of the order is for the account of the BSE Member sending the order to BeX – could execute at the price of orders in BeX, without executing those earlier-received orders. Because this type of crossing transaction is permitted on the floor of the Exchange today, the Exchange believes it is appropriate to include this transaction type in BeX.

the full amount of shares at that price, and any remaining portion of the ITS commitment would be automatically cancelled.²²

Cross, Cross with Size and Mid-point Cross Orders would be automatically executed if they meet the requirements for those types of orders. If they do not meet applicable requirements, they would be immediately cancelled.

No distinction between agency and professional orders. Under the proposed rules, agency orders (entered on behalf of a customer) and professional or proprietary orders (entered for the account of a BSE Member (or other broker-dealer)) would be handled in an identical way in BeX's matching algorithms.²³

Cancellations of transactions and handling of clearly erroneous transactions.

Under the proposed rules, Members that make a transaction in demonstrable error could agree to cancel and unwind the transaction, subject to the approval of the Exchange.²⁴ For purposes of BeX, the Exchange also proposes to adopt a policy for the handling of clearly erroneous transactions.²⁵ This policy would allow the Exchange's Chief Regulatory Officer ("CRO") or another officer designated by the CRO to (a) review and potentially modify or cancel executions where one party believes that the terms of the transaction were clearly

²² See proposed BSE Rule, Chapter XXXVII, Section 3, Paragraph (j)(iii).

²³ See proposed BSE Rule, Chapter XXXVII, Section 2, paragraph (d). See also Chx Rule, Article XXA, Rule 2, paragraph (d). The Exchange believes that this handling is appropriate because BeX is a fully-automated functionality of the Exchange. Orders for BeX would be submitted directly and electronically to the Exchange. Once transmitted, an order could be cancelled, but a Member could not influence the execution of that order in any way. The orders would enter a line of other orders to be matched against one another based on an established algorithm. As did the Chx when it proposed its Ebook rule change, the BSE is seeking an exemption under Rule 11a2-2(T) for this part of this rule filing.

²⁴ See proposed BSE Rule, Chapter XXXVII, Section 4, Paragraph (a).

²⁵ See proposed BSE Rule, Chapter XXXVII, Section 5, Paragraph (a).

erroneous when submitted; and (b) modify or cancel executions that result from a disruption or malfunction in the use or operation of BeX, or any communications system associated with the BeX.

The proposed rules set out procedures for each of these reviews, including specific means for Members to appeal the Exchange's decisions.²⁶

Adjustment of Orders on Ex-Dates

The Exchange is proposing to adopt the standard process for adjusting orders on ex-dates.²⁷ For example, open buy orders are reduced by the value of a cash dividend on the ex-dividend date. If the amount of the cash dividend is not equivalent to or is not a multiple of the fraction of a dollar in which bids and offers are made in the stock, open buy orders will be reduced by the next higher variation. The proposed rule text sets forth charts and examples.

²⁶ For example, a Member seeking review of a "clearly erroneous" transaction would be required to notify the Exchange of the request, by telephone and in writing, promptly after the execution. After the CRO or another officer designated by the CRO reviewed the transaction, the Exchange would notify both parties of the CRO's or designee's decision, in writing. Either party could appeal the decision to a subcommittee of the Exchange's Regulatory Oversight Committee ("ROC"), whose decision would be final. In making their decisions, the CRO, CRO's designee, and the ROC Subcommittee would consider the goals of maintaining a fair and orderly market and protecting investors and the public interest. If it is determined that a transaction was clearly erroneous, the CRO, CRO designee, or the ROC Subcommittee would try to return the parties to the positions that they would have been in (or positions reasonably similar to those positions) if the error had not occurred. Similarly, in the event of disruption or malfunction that impacts the operation or use of BeX, the CRO or CRO designee could act promptly to declare transactions void or to modify transactions. The Exchange would be required to notify each Member involved in the transaction as soon as practicable after the CRO or CRO designee makes any decision. Decisions could be appealed using the procedure set out for the review of decisions addressing clearly erroneous transactions.

²⁷ See proposed BSE Rules, Chapter XXXVII, Section 6. These proposed rules are based on NYSE Rule 118.

Conclusion

The Exchange represents that it has designed BeX to be a fully-automated system that would permit eligible orders in eligible securities to match against one another, without the required participation of a Specialist. The Exchange believes that this system functionality would provide all Exchange Members with an efficient way to trade securities that would protect investors and the public interest by automatically handling orders in a fair and reasonable manner.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²⁸ in general, and furthers the objectives of Section 6(b)(5),²⁹ in particular, in that it is designed 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.

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

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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, as amended.

²⁸ 15 U.S.C. 78f(b).

²⁹ 15 U.S.C. 78f(b)(5).

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, as amended; or
- B. institute proceedings to determine whether the proposed rule change, as amended, 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, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BSE-2006-22 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BSE-2006-22. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that

you wish to make available publicly. All submissions should refer to File Number SR-BSE-2006-22 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁰

Nancy M. Morris
Secretary

³⁰ 17 CFR 200.30-3(a)(12).