

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54795; File No. SR-BSE-2006-44)

November 20, 2006

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Existing BSE Fee Schedules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 20, 2006, the Boston Stock Exchange, Inc. (“BSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the BSE. The BSE has designated this proposal as one changing a due, fee, or other charge under Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this filing is to amend the existing BSE fee schedule and to establish a fee schedule for the Boston Equities Exchange trading system (“BeX”). The amendments to the existing BSE fee schedule would delete of fees that are no longer applicable or that will now be associated with BeX. The BeX fee schedule reflects the new fees associated with the services and products available to BSE Members, including Electronic Access Members (“EAMs”), in the BeX fully electronic environment. The primary categories of new fees set forth in the proposed BeX fee

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

schedule include: transaction fees, including regulatory transaction fees; clearing services fees; facility fees; technology fees; and connectivity fees.

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

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the BSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The BSE 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

On June 13, 2006, the BSE filed Amendment No. 3 to SR-BSE-2006-22 (the "BeX Facility Filing"), a rule filing submitted in connection with the implementation of the first of two phases of the BeX, a fully automated electronic book for the display and execution of orders in securities. On August 25, 2006, SR-BSE-2006-22 was approved by the Commission.<sup>5</sup> On August 3, 2006, the BSE filed, in connection with the implementation of the second phase of the BeX trading system and in connection with satisfying the requirements of Regulation NMS, SR-BSE-2006-30. On September 29, 2006, the Commission approved SR-BSE-2006-30.<sup>6</sup>

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<sup>5</sup> See Securities Exchange Act Release No. 54365 (Aug. 25, 2006), 71 FR 52192 (Sept. 1, 2006).

<sup>6</sup> See Securities Exchange Act Release No. 54546 (Sept. 29, 2006), 71 FR 59161 (Oct. 6, 2006).

The existing BSE fee schedule will be amended so as to delete all Transaction Fees, Electronic File Access and Processing Fees, and Floor Operation Fees. The Transaction Fees and Electronic File Access and Processing Fees will now be contained in the BeX fee schedule and, in view of the fact that there will no longer be a physical trading floor in the traditional sense once the transition to the BeX fully electronic platform occurs, there is no longer a need for the Floor Operation Fees. The existing Membership and Other Fees will remain in their present form. It should be noted that while BSE Members will continue to be charged the Membership and Other Fees, EAMs will not be charged those fees. That is due to the fact that, although EAMs and BSE Members are treated equally, EAMs do not vote on matters related to mergers, consolidations, dissolution, liquidation, transfer or conversion of the assets of the Exchange and hold non-transferable permits that are solely for trading on BeX. Therefore, EAMs are not required to pay the Membership fees applicable to BSE Members.

The BeX fee schedule reflects the new fees associated with the services and products available to BSE Members in the BeX fully electronic environment. The primary categories of new fees set forth in the proposed BeX fee schedule are: transaction fees, including regulatory transactions fees; clearing service fees; facility fees; technology fees; and connectivity fees. Unless otherwise indicated on the fee schedule, all fees are charged on a monthly basis. The following is a description of the foregoing categories:

Transaction Fees: Transaction fees in BeX are broken down based upon share price and where they are listed, such as on the Nasdaq Stock Exchange versus another exchange. For securities listed on an exchange other than the Nasdaq that are traded with a share price greater than or equal to \$1.00, the Liquidity Provider will receive a \$0.0023 credit and the Liquidity Taker will be charged \$0.0028 per share. For securities that are listed on the Nasdaq that are

traded with a share price equal to or greater than \$1.00, the Liquidity Provider will receive a \$0.0025 credit and the Liquidity Taker will be charged \$0.0028 per share.

If a security is listed on an exchange other than the Nasdaq and trades with a share price less than \$1.00, the Liquidity Provider receives a credit in the amount of \$0.0023, with a maximum of .3% of the quotation price per share and the Liquidity Taker is charged \$0.0028 with a maximum of .3% of the quotation price per share. If a security is listed on the Nasdaq and trades with a share price less than \$1.00, the Liquidity Provider receives a credit in the amount of \$0.0025, with a maximum of .3% of the quotation price per share and the Liquidity Taker is charged \$0.0028 with a maximum of .3% of the quotation price per share.

Trades submitted as pre-matched cross trades are free. Additionally, all transaction fees and credits are capped at \$100.00 per trade side.

Revenue Sharing: In the case of a trade that provides liquidity, BeX will share 50% of gross revenue received (less any CQS/CTS capacity and ETF registration fee expenses, if applicable) from CTA and SIP for all Tape A, Tape B and Tape C issues with the liquidity providing side. Similarly, BeX will share 50% of gross revenue with a Member Firm that submits a pre-matched cross trade in the same manner as it shares revenue with a liquidity provider.

Smart Order Routing: BeX will charge \$.0010 per order routed to an away Trading Center on behalf of a Member.

Regulatory Transaction Fees: In order to fund the Section 31 obligations of the BSE, Regulatory Transaction Fees will continue to be assessed in accordance with Chapter XXIII, Section 2 of the BSE Rules.

Clearing Services: Trades cleared through the Boston Stock Exchange Clearing Corporation's account at the National Securities Clearing Corporation will incur a \$0.50 trade side charge.

Technology: While BSE Members need not utilize technology made available to them by BeX, BSE Members will have available to them through BeX technology that will enable them to access the BeX marketplace. That access is available through BeX Workstations. If a BSE Member utilizes the Basic BeX Workstation, they will incur a fee of \$750.00 per logon. A "logon" is simply an identification number. Up to five logons are available per workstation.

Trading Floor Fees: While the Exchange will no longer have a physical trading floor in the regulatory sense, the floor space will continue to exist and be available to BSE Members for a fee should they choose to maintain workspace on that floor. If BSE Members choose to maintain workspace on the floor, they will be charged \$500.00 per month per post and \$250.00 per month for each person who regularly shows up to work at that post. There will be a \$50.00 per voice circuit Port Charge. The fee for unique telecommunications configurations will be cost plus a 25% mark up. Fees to cover the cost cable television, postage, courier service, fax, phone, after hours BeX staff assistance and certain other items that may arise from time to time as a result of the BSE Member's use of the floor space will be priced at cost.

Reports: Daily P&S Blotters in PDF format will be available for free. Daily electronic trade file access and processing will cost \$300.00 per month, per firm I.D. Special Report Development will also be available and fees for such reports will be determined on a case by case basis and will be subject to an appropriate rule filing.

Connectivity: To the extent Members choose SIAC SFTI as their network provider, the Members will be charged a one time SIAC SFTI fee by BeX in the amount of \$200.00 and a

monthly fee of \$200.00. Members need not, however, utilize SIAC SFTI as their network provider. Members can choose from among three other network providers, Radianz, TNS and Savvis, in the event they do not wish to use SIAC SFTI as their network provider. Should a Member choose a network provider other than SIAC SFTI, the relationship between the Member and the network provider, including any costs associated with the provision of network provider services, are between the Member and that network provider and BeX will have no involvement with that relationship.

Members will also be charged for port connections. The first active and first back up ports are free to the Member, but any additional ports utilized by the Member beyond the first active and first back up ports will incur a monthly charge which is set forth on the fee schedule.

Additionally, Members who choose to have their servers physically located at the BSE will be charged for hosting and server management. Hosting and server management services include the hosting of a server, maintenance of network connectivity, provision of power to the server, and day to day management of the server being hosted, such as making sure the server is communicating properly with the network. A Member who chooses to have their server hosted by BeX will have options available to them with respect to the server's physical location and the amount of power and bandwidth associated with the server, which is expressed in terms of Cabinet and Power Services on the fee schedule. In any event, fees related to hosting and server management, as with all fees to be charged in the BeX environment, are set forth in detail in the proposed fee schedule.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b)

of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>8</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange Members and issuers and other persons using Exchange facilities.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is 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.

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

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(2) thereunder,<sup>10</sup> because it establishes or changes a due, fee or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

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](mailto:rule-comments@sec.gov). Please include File Number SR-BSE-2006-44 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-2006-44. 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 BSE. 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-2006-44 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.<sup>11</sup>

Nancy M. Morris  
Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).