

August 9, 2007

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change to Amend the Existing 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 July 18, 2007, the Boston Stock Exchange, Inc. (“BSE”), 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 substantially prepared by BSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The BSE proposes amending certain transaction fees set forth in the Boston Equities Exchange (“BeX”) fee schedule. The text of the proposed rule change is available at [www.bostonstock.com](http://www.bostonstock.com), at the BSE, 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 Exchange 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 Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

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

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

1. Purpose

The Exchange is proposing to amend the revenue sharing provision of the BeX fee schedule for the revenue sharing program. BeX proposes to share fifty percent of gross revenues generated from the Liquidity Taker transaction fees for each symbol traded. The revenue would be shared with the top three liquidity-providing Member Firms based on monthly BeX executed share volume in each security. Cross trade volume would not be eligible to be counted for purposes of determining BeX executed share volume in this revenue sharing program. In addition, Chapter II "Dealings on the Exchange", Section 26 "Anti-Manipulative Provisions" of the BSE rules prohibits firms from executing wash sale trades. If the Exchange determines that a wash sale trade has occurred, the volume from such a trade would not be counted for the purposes of determining BeX executed share volume for this revenue sharing program.<sup>3</sup>

The new revenue sharing program would work as follows: First, total monthly BeX generated liquidity taking revenues would be determined on a per symbol basis; Second, the total monthly BeX generated liquidity taking revenues would be split in half, with fifty percent going to BeX and fifty percent to be allocated among the top three liquidity providing Member Firms in each security ("Eligible Revenues"). BeX would split the pool of Eligible Revenues with the top three liquidity providers in each security as follows: In each calendar month, each of the top three providers would share in the pool of Eligible Revenues on a pro-rata basis based on their percentage of executed liquidity versus the total executed liquidity for the top three providers. Additionally, a minimum of 25,000 total monthly BeX executed shares must be

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<sup>3</sup> Telephone conversation between Kathy Marshall, Vice President, Business Strategist, BSE and Jennifer Colihan, Special Counsel, Division of Market Regulation, Commission on August 9, 2007.

executed by a liquidity provider to be eligible to participate in the revenue sharing program for any specific security.

The following is an example of how the revenue sharing program would work for any one security: Assume 1,125,000 total shares of liquidity were provided and executed by five separate firms for the month. Of the 1,125,000 total shares, the top three liquidity providers represented 1,000,000 shares with the top firm providing 700,000, the second place firm providing 200,000 and the third place firm providing 100,000. Since the top firm represented seventy percent of the total liquidity provided by the top three firms (700,000 of the 1,000,000 shares), this firm would receive seventy percent of the Eligible Revenues. The second place firm would receive twenty percent of the Eligible Revenues and the third place firm would receive ten percent of the Eligible Revenues.

In the event firms are tied at certain volume levels, those firms would share the applicable percentage of Eligible Revenues among all firms that are tied at the same levels. The following is an example of how this would work: Assume 1,200,000 total shares of liquidity were provided and executed by seven separate firms for the month. Of the 1,200,000 total shares, the top three liquidity providers represented 1,000,000 with the top firm providing 700,000, and the second, third, and fourth place firms providing 150,000 shares each. In this example, the top firm would receive seventy percent of the Eligible Revenue. The remaining thirty percent of Eligible Revenue would be shared equally with the three firms, each of whom had executed 150,000 shares. Each of the three firms would receive ten percent of the Eligible Revenue.

BeX would also report BeX-provided liquidity information daily on its Web site, accumulated on a month-to-date basis. This would show the total liquidity provided in each security and would be updated at the close of each business day. This information would also be

updated hourly on the last trading day of the month. In addition, all of the different firms providing liquidity, as well as the individual levels of liquidity provided, would be reported on an anonymous basis (i.e., Firm A, Firm B, Firm C, etc.) in a matrix format by security and by firm.<sup>4</sup> This would allow firms to determine their ranking in a security at any given point during the month and at any given hour on the last trading day of the month. To maintain a fair and equitable distribution of information, BeX staff would be prohibited from communicating, outside of the publicly available Web site information as described above, with any Member Firms regarding their liquidity providing levels as well as the levels of any other Member Firms.

This proposed method of revenue sharing is designed to attract volume to BeX. Firms do not need to reach high overall volume levels in an effort to participate in this revenue sharing program. It is designed to provide incentives for competitive quoting as well as liquidity provision in less active securities. BeX believes that this proposal is fair and equitable and would lead to broad participation by firms of all sizes with varied business models.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section

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<sup>4</sup> The matrix will list in the left column each individual security in which liquidity has been provided over the course of the month. Listed to the right of each security will be total liquidity provided on a month to date (MTD) basis. The exception to this will be the last trading day of the month in which total MTD liquidity provided will be reflected on an hourly basis. Across the top of the matrix, anonymous firm names will be listed with Firm A always representing the top liquidity provider in each issue, Firm B always representing the second top provider and Firm C always representing the third top provider and will continue through Firm Z. In the event that more than 26 firms provide liquidity in a security, the firm names will continue with Firm AA and so on. To the extent that fewer than 26 firms have provided liquidity in a security, those firms that have not provided liquidity will be assigned a zero value in the matrix. See E-mail from Kathy Marshall, Vice President, Business Strategist, BSE, to Jennifer Colihan, Special Counsel, Division of Market Regulation, Commission dated July 26, 2007.

6(b) of the Act,<sup>5</sup> in general, and further the objectives of Section 6(b)(4) of the Act,<sup>6</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among member and issues and other persons using Exchange facilities. The Exchange believes that sharing revenue with the top three liquidity providers creates a more competitive environment than sharing revenue, on a pro-rata basis, with all participants because it creates an incentive for firms to provide competitive quotes in order to participate. The Exchange also believes that sharing revenue across all participants, on a pro-rata basis, would dilute the amount shared and thus make it non-competitive with prevailing fee structures of other market centers. In addition, the Exchange believes that sharing on a per symbol basis (as opposed to an aggregate basis) allows for a broader participation of firms with various business models, as opposed to the typical larger firms, with high volumes, who are generally eligible to participate in programs with tiered volume structures.

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 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

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

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<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(4).

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, or
- (B) institute proceedings to determine whether the proposed rule change 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 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](mailto:rule-comments@sec.gov). Please include File Number SR-BSE-2007-37 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-BSE-2007-37. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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-2007-37 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>7</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12).