

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50436; File No. SR-BSE-2004-39)

September 23, 2004

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Exchange's Transaction Fees Schedule

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 August 31, 2004, the Boston Stock Exchange ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On September 22, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.³ 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 BSE proposes to amend its Transaction Fees schedule with respect to its new Instant Liquidity Access ("ILA") service.⁴ The text of the proposed rule change is available at the BSE and at the Commission.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from John Boese, Vice President and Chief Regulatory Officer, BSE to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 15, 2004 ("Amendment No. 1"), in which the BSE made a minor revision of the proposed rule change.

⁴ See Securities Exchange Act Release No. 34-48596 (October 7, 2003), 68 FR 59435 (October 15, 2003) (SR-BSE-2003-08).

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 Change⁵

1. Purpose

The BSE proposes to amend its Transaction Fees schedule to establish a transaction charge for its new ILA product. The Exchange would apply these fees effective September 1, 2004, as this is when the product was fully implemented.

Under the proposed fees, firms that access liquidity on the BSE through ILA will be charged \$.002 per share when an order removes liquidity (order immediately executes against displayed liquidity on the BSE) and will be credited \$.001 per share when an order provides liquidity (order is trading away from the market, is placed on the BSE limit order book and is ultimately executed).⁶ A firm can receive total credits up to the amount of total fees charged to the firm for ILA activity on a monthly basis. Therefore, no firm will be credited in an amount greater than the amount of fees it was charged for a

⁵ The BSE requested that the staff of the Division make minor modifications to language in the purpose and statutory basis sections. Telephone discussion between Kathy Marshall, Vice President of Finance, BSE, and Mia Zur, Attorney, and Natasha Cowen, Attorney, Division, Commission (September 14, 2004).

⁶ Orders trading away from the market and submitted through ILA without being designated as ILA orders are placed on the BSE limit order book and receive the credit. Telephone discussion between Kathy Marshall, Vice President of Finance, BSE, and Ira Brandriss, Assistant Director, and Natasha Cowen, Attorney, Division, Commission (September 23, 2004).

given month.

2. Statutory basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁸ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

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.

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 proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act⁹ and subparagraph (f) (2) of Rule 19b-4 thereunder,¹⁰ because it establishes or changes a due, fee, or other charge imposed by the BSE. At any time within 60 days of the filing of the proposed 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.¹¹

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78f(b)(3)(a)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

¹¹ For purposes of calculating the 60-day abrogation period, the Commission considers the proposal to have been filed on September 22, 2004, the date the BSE filed Amendment No. 1.

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-2004-39 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-BSE-2004-39. 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 the filing also will be available for inspection and copying at the principal offices 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-2004-39 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.¹²

Margaret H. McFarland
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).