

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50928; File No. SR-BSE-2004-59)

December 23, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. to Amend the Exchange's Rule Relating to Its Regulatory Transaction Fee

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 December 17, 2004, 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 Exchange. The proposed rule change has been filed by BSE as a "non-controversial" rule change pursuant to 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective on filing with the Commission. 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 Exchange proposes to amend Chapter XXIII, Section 2 of the BSE Rules relating to the Exchange's regulatory transaction fee.

The text of the proposed rule change is set forth below. Proposed new language is italicized; deletions are bracketed.

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

RULES OF THE BOSTON STOCK EXCHANGE

Chapter XXIII

Stamp Taxes – Transaction Fee

Sec. 1 - No change.

Regulatory Transaction Fee [Under Securities Exchange Act of 1934]

Sec. 2. So long as the Exchange shall be registered as a national securities exchange, there shall be paid to the Exchange by each member or member-organization monthly in such manner and at such time as the Exchange shall direct, a regulatory transaction fee. The monthly regulatory transaction fee shall equal the member's aggregate dollar amount of covered sales occurring that month (other than those resulting from options transactions) divided by the Exchange's aggregate dollar amount of covered sales (other than those resulting from options transactions) occurring that month, multiplied by the Section 31 fees payable by the Exchange to the Commission for that month (other than those resulting from options transactions). [the sum of one cent for each \$300 or fraction thereof of the dollar volume of the sales of securities upon the Exchange (whether or not cleared through the Boston Stock Exchange Clearing Corporation) by such member or member-organization during the preceding month].

[Any such member or member-organization required by the foregoing Rule to pay any sum to the Exchange in respect of any sale upon the Exchange shall charge and collect from the person for whom he or it was acting in making such transaction, the sum of one cent for each \$300 or fraction thereof of the dollar amount involved in such transaction.]

Sec. 3 - No change.

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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 parts of such statements.

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

1. Purpose

The Exchange proposes to amend Chapter XXIII, Section 2 of the BSE Rules regarding transaction fees to change language in the rule to represent that the Exchange will be assessing a fee to each member for sales of securities on the Exchange and that the aggregate amount of all such fees assessed to Exchange members will reflect as nearly as possible the fee assessed to the Exchange by the Commission pursuant to Section 31 of the Act.⁵ The transaction fee covered by this rule is applicable to equity securities only. The Exchange anticipates filing a rule in the future to assess a transaction fee for options transactions.

The regulatory transaction fee, similar to the fee the Exchange has collected in the past, will equal as nearly as possible, the member's aggregate dollar amount of covered sales⁶ occurring that month (other than those resulting from options transactions) divided by the Exchange's aggregate dollar amount of covered sales (other than those resulting from options transactions) occurring that month, multiplied by the amount of Section 31 fees payable by the

⁵ 15 U.S.C. 78ee.

⁶ See 17 CFR 240.31(a)(6).

Exchange to the Commission for that month (other than those resulting from options transactions). To the extent that additional funds are collected, they will be used for other proper regulatory purposes.

The Exchange is also proposing eliminating language in Chapter XXIII, Section 2 of the BSE Rules, which directs BSE members to charge persons for whom the member makes a transaction on the Exchange an amount equivalent to the charge which the member is assessed. Since fees assessed under Section 31 of the Act are the responsibility of the Exchange, BSE will not require, by rule or otherwise, that its members charge their customers in any manner a fee for which the ultimate customer is not responsible.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and 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 inappropriate 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 in connection with the proposed rule change.

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

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

Because, the foregoing proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative until 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

BSE has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because doing so will make Chapter XXIII, Section 2 of the BSE Rules consistent with the Commission's guidance on Section 31 of the Act as quickly as possible. For these reasons, the Commission hereby designates the proposal to be effective and operative upon filing with the Commission.¹¹

At any time within 60 days of the filing of this 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.

IV. Solicitation of Comments

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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. Please include File Number SR-BSE-2004-59 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-2004-59. 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of 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-2004-59 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).