

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52412; File No. SR-BSE-2005-38)

September 13, 2005

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to the Exchange's Transaction Fees and Tape A Revenue Sharing Program for Electronically Routed Cross Trades

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 19, 2005, 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 BSE filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act,³ and Rule 19b-4(f)(2) thereunder,⁴ as one establishing or changing a due, fee or other charge imposed by the BSE, which renders the proposal effective upon filing with the Commission. On September 9, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.⁵ On September 12, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.⁶ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ The BSE withdrew Amendment No. 1 on August 12, 2005 for technical and formatting reasons.

⁶ In Amendment No. 2, the Exchange: (1) provided additional detail about the Exchange's rules and procedures regarding electronically routed cross trades; (2) clarified that the proposed changes will not adversely affect the BSE's regulatory responsibilities; and (3)

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

The Exchange proposes to amend its Transaction Fee Schedule in relation to electronically routed cross trade executions. The text of the proposed rule change is available on the Exchange's Web site (www.bostonstock.com), at the Exchange's Office of the Secretary, 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.

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

1. Purpose

The BSE proposes to amend its Transaction Fee Schedule by eliminating all fees for cross trades delivered electronically to the Exchange.⁷ Specifically, the Exchange proposes to waive

amended the proposed rule text regarding the Exchange's Tape A revenue sharing program to clarify how the revenue sharing will be calculated. The effective date of the original proposed rule change is August 19, 2005, and the effective date of Amendment No. 2 is September 12, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on September 12, 2005, the date on which the Exchange filed Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

⁷ Upon entry into the BEACON trading system, all orders are transmitted to a BSE specialist. Depending on factors such as order size and type, the orders are either

all Value Charges and Trade Recording Fees on cross trades that are electronically routed to the BSE for execution. The current fee structure for Automated Portfolio Crosses will also be eliminated. The category of Automated Portfolio Crosses was created in the Transaction Fee Schedule several years ago for a specific type of business related only to cross trades that would be routed to the Exchange as part of a larger basket of trades. The BSE no longer receives this type of specialized cross trade. Therefore, the separate category of fees for Automated Portfolio Crosses is no longer required. The BSE believes that these changes to its Transaction Fee Schedule will allow the Exchange to attract a new segment of business to the Exchange, which will, in turn, allow the Exchange to remain competitive in the overall marketplace.

The BSE is now proposing to eliminate all fees for all electronically delivered cross trades. Since the Exchange requires that all orders submitted to a BSE specialist by members be transmitted through the BEACON trading system, all cross trades submitted to BSE specialists for execution would be considered to be electronically routed, with the exception of those entered by a BSE Floor Broker. While floor brokered orders must also be entered into the BEACON trading system for transmission to a BSE specialist, the Exchange does not consider floor brokered orders to be electronically routed cross trades, due to the intervention of and handling by the floor broker. Thus, the proposed fee waiver would not apply to floor broker entered cross

automatically or manually executed. Cross trades would automatically execute, provided that no customer orders existed on the book which held priority over either side of the cross and could “break up” the cross. See Chapter II, “Dealings on the Exchange,” Section 6, “Bids and Offer for Stocks,” and Section 18, “Orders to Buy and Sell the Same Security” of the Rules of the Board of Governors of the BSE (“BSE Rules”). Additionally, cross trades of 5,000 shares or more are considered, under Chapter II, Section 18 of the BSE Rules, to be “clean crosses,” which can execute within the prevailing bid and offer given a set of qualifying conditions.

trades, even though such cross trades are entered through the BEACON trading system, but would apply to all other cross trades submitted to BSE specialists through BEACON.

The Exchange also proposes to amend its Tape A revenue sharing program to further encourage its member firms to electronically route cross trades to the BSE. Under this proposal, electronically routed cross trades would be excluded from the current Tape A revenue sharing program, which requires that a pre-determined Exchange-wide Tape A revenue target be achieved, and requires that a member firm generate a minimum of \$50,000 in overall monthly transaction fees before being eligible to participate in a 50% revenue share for Tape A business. The BSE is proposing that member firms that electronically route cross trades to the BSE for execution be permitted to receive 50% of the Tape A revenue generated by such electronically routed cross trades, regardless of whether the Exchange has met its pre-determined Tape A revenue target, and regardless of the amount of the firm's overall monthly transaction fees. The 50% revenue sharing would be a flat rate, calculated on a trade-by-trade basis. Thus, a BSE member would receive 50% of the Tape A revenue generated by each electronically routed cross trade that the member routes to the BSE for execution.

The Exchange is cognizant of its surveillance and compliance responsibilities as a self-regulatory organization. Although this proposal involves the waiver of certain fees and amendments to the Tape A revenue sharing program, which could result in a reduction of revenue to the BSE, the Exchange represents that its responsibilities as a self-regulatory organization will in no way be compromised by the implementation of the changes proposed herein.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁹ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its 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.

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 Act¹⁰ and subparagraph (f)(2) of Rule 19b-4 thereunder,¹¹ 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 such 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.¹²

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

¹² See supra note 6.

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. Please include File Number SR-BSE-2005-38 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-BSE-2005-38. 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 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-2005-38 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.¹³

Jonathan G. Katz
Secretary

¹³ 17 CFR 200.30-3(a)(12).