

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

The Exchange believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interest persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. 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 will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR-Amex-2001-84 and should be submitted by November 13, 2001.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ In its original approval of the pilot program,¹¹ the Commission detailed its reasons for finding its substantive features consistent with the Act, and in particular, the requirements of Sections 6(b)(5) and 6(b)(8) of the Act.¹² The Commission has previously approved rules on other exchanges that establish substantially similar programs

on a permanent basis,¹³ and the extension of the pilot program on the Amex—pending review of its related proposal to revise the program and make it permanent—raises no new regulatory issues for consideration by the Commission.

The Commission finds good cause, consistent with Sections 6(b) and 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The proposal will extend the pilot program without significant interruption while revisions are considered, and does not raise any new regulatory issues.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved on an accelerated basis as a pilot program through January 7, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-26483 Filed 10-19-01; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44928; File No. SR-BSE-2001-05]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Boston Stock Exchange, Inc. Relating to the Generic Listing and Trading Standards of Trust Issued Receipts Pursuant To Rule 19b-4(e) Under the Securities Exchange Act of 1934

October 12, 2001.

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 10, 2001, 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. On October 2, 2001, the Exchange filed

Amendment No. 1 to the proposed rule change.³ On October 10, 2001, the Exchange filed Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and to approve the proposed rule change, as amended, on an accelerated basis.

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

The Exchange proposes to amend BSE Chapter XXIV-A, ("Trust Issued Receipts" (hereinafter, "TIRs")), to provide generic standards that permit the listing and trading, or the trading pursuant to unlisted trading privileges ("UTP"), of TIRs pursuant to Rule 19b-4(e) under the Act. In addition, the Exchange proposes to adopt eligibility requirements for component securities that are represented by a series of TIRs pursuant to distribution or other corporate event. Below is the text of the proposed rule change. Proposed new language is italicized.

* * * * *

Chapter XXIV-A—Trust Issued Receipts

** * * Interpretation and Policies*

.02 *The Exchange may approve a series of Trust Issued Receipts for listing pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided each of the component securities satisfies the following criteria:*

(a) *Eligibility Criteria for Component Securities Represented by a Series of Trust Issued Receipts:*

(i) *Each Component Security of the Trust Issued Receipt must be registered under Section 1 of the Exchange Act;*
(ii) *Each Component Security of the Trust Issued Receipt must have a minimum public float of at least \$150 million;*

(iii) *Each Component Security of the Trust Issued Receipt must be listed on a national securities exchange or traded through the facilities of Nasdaq and a reported national market system security;*

³ See Letter from Esther M. Radovsky, Staff Attorney, BSE, to Lisa N. Jones, Attorney, Division of Market Regulation ("Division"), Commission (October 2, 2001) ("Amendment No. 1"). Amendment No. 1 amends the proposed rule text to reflect that the underlying security is of the Trust Issued Receipt rather than the HOLDR product, and therefore replaces the original filing in its entirety.

⁴ See Letter from Esther M. Radovsky, Staff Attorney, BSE, to Lisa N. Jones, Attorney, Division, Commission (October 9, 2001) ("Amendment No. 2"). Amendment No. 2 amends the proposed rule text to replace the term "Underlying Securities" with "Component Securities," and corrects a typographical error.

¹⁰ In approving this proposal, the commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹¹ See *supra*, note 3.

¹² 15 U.S.C. 78f(b)(5) and (b)(8).

¹³ See, e.g., Securities Exchange Act Release Nos. 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000), and 42848 (May 26, 2000), 65 FR 36206 (June 7, 2000).

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

¹⁶ 17 CFR 240.19b-4.

(iv) Each Component Security of the Trust Issued Receipt must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period;

(v) Each Component Security of the Trust Issued Receipt must have an average daily dollar value of shares traded during the preceding sixty-day trading period of at least \$ 1 million; and

(vi) The most heavily weighted Component Security in the Trust Issued Receipt cannot initially represent more than 20% of the overall value of the Trust Issued Receipt.

.03 The eligibility requirement for the Component Securities that are represented by a series of Trust Issued Receipts and that became part of the Trust Issued Receipt when the security was either: (a) distributed by a company already included as a Component Security in the series of Trust Issued Receipts; or (b) received in exchange for the securities of a company previously included as a Component Security that is no longer outstanding due to a merger, consolidation, corporate combination or other event, shall be as follows:

(a) the Component Security must be listed on a national securities exchange or traded through the facilities of NASDAQ and a reported national market system security;

(b) the Component Security must be registered under Section 12 of the Exchange Act; and

(c) the Component Security must have a Standard & Poor's Sector Classification that is the same as the Standard & Poor's Sector Classification represented by the Component Securities included in the Trust Issued Receipt at the time of the distribution or exchange.

* * * * *

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 III 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 Exchange proposes to amend its listing and trading standards for TIRs under BSE Chapter XXIV-A in two parts. First, the Exchange proposes to provide generic standards that permit the listing and trading, or trading pursuant to UTP, or TIRs, pursuant to Rule 19b-4(e) under the Act.⁵ Second, the Exchange proposes to adopt eligibility requirements for component securities, represented by a series of TIRs, that became part of such a series when the security was either: (a) distributed by a company whose securities are already included as an component security in the series of TIRs; or

(b) received in exchange for the securities of a company previously included as a component security that are no outstanding due to a merger, consolidation, corporate combination or other event.

Trading Trust Issued Receipts Pursuant to 19b-4(e).

On January 13, 2000, the Exchange received approval to adopt BSE Chapter XXIV-A, *et seq.* to establish standards for the listing and trading, pursuant to UTP, of TIRs.⁶ To accommodate the efficient listing and trading, or trading pursuant to UTP, of additional TIRs, the Exchange proposes to add a new section to its *Interpretation and Policies*, BSE Chapter XXIV-A, to permit the generic listing and trading of TIRs pursuant to Rule 19b-4(e).

The Commission has previously approved rules of other exchanges that permit the listing and trading of individual TIRs.⁷ In approving these securities for trading, the Commission considered the structure of these securities, their usefulness to investors and to the markets, and the Exchange

rules and surveillance programs that govern their trading.

The Exchange represents that BSE Chapter XXIV-A subjects TIRs to all of the Exchange's trading rules by expressly providing that the provisions of the Exchange's Constitution and all other rules and policies of the Board of Governors apply to the trading of TIRs on the Exchange.⁸ Furthermore, the Exchange represents that the initial and continued listing standards established for TIRs mandate that for each Trust,⁹ the Exchange will establish a minimum number of TIRs required to be outstanding at the time trading begins on the Exchange.¹⁰ BSE Chapter XXIV-A also requires that, following the initial twelve month period after trading begins, the Exchange will consider the suspension of trading in, or removal from listing of a TIR if: (1) The Trust has more than 60 days remaining until termination and there are fewer than 50 record or beneficial holders of TIRs for 30 or more consecutive days; (2) the Trust has fewer than 50,000 receipts issued and outstanding; (3) the market value of all receipts issued and outstanding is less than \$1,000,000; or (4) any other event occurs or conditions exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.¹¹

Under the *Interpretation and Policies* section of BSE Chapter XXIV-A, the Exchange proposes to provide generic standards to list or trade, pursuant to Rule 19b-4(e), any TIRs that meet the following criteria: (1) Each component security of the TIR must be registered under Section 12 of the Act; (2) each component security of the TIR must have a minimum public float of at least \$150 million; (3) each component security of the TIR must be listed on a national securities exchange or traded through the facilities of Nasdaq and a reported national market system security; (4) each component security of the TIR must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period; and (5) each component security of the TIR must have an average daily dollar value of shares traded during the preceding sixty-day trading period of at least \$1 million. Finally, the Exchange proposes that no component security of the TIR may initially

⁵ 17 CFR 240.19b-4(e). Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") shall not be deemed a proposed rule change, pursuant to Rule 19b-4(c)(1) under the Act, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures and listings standards for the product class that include the new derivative securities product and the SRO has a surveillance program for the product class. See 17 CFR 240.19b-4(e).

⁶ See Securities Exchange Act Release No. 42347, 65 FR 4451 (January 27, 2000) (accelerated order approving SR-BSE-99-15).

⁷ See, e.g. Securities Exchange Act Release Nos. 43396 (September 29, 2000) 65 FR 60230 (October 10, 2000) (order granting accelerated approval of SR-Amex-00-10 and SR-CHX-00-16); 44182 (April 16, 2001), 66 FR 21798 (May 1, 2001) (order granting accelerated approval of SR-PCX-2001-01).

⁸ Exceptions exist where a trading rule is inconsistent with the Trust Issued Receipt listing standard or where the context otherwise requires. See BSE Chapter XXIV-A, Section 1(a).

⁹ See BSE Chapter XXIV-A, Section 2(a) (defining the term, "Trust").

¹⁰ See BSE Chapter XXIV-A, Section 5(a).

¹¹ See BSE Chapter XXIV-A, Section 5(b).

represent more than 20% of the overall value of the receipt.

The Exchange believes that these additional criteria to the listing and trading standards for TIRs will ensure that no component security in a TIR product will be readily susceptible to manipulation, while permitting sufficient flexibility in the construction of various TIRs to meet investors' needs. These criteria also will ensure sufficient liquidity for those investors seeking to purchase and deposit the component securities with the trustee to create a new TIR.

The Exchange proposes to use existing surveillance procedures for the Trust Issued Receipts that it trades pursuant to Rule 19b-4(e). In addition, the Exchange will comply with the recordkeeping requirements of Rule 19b-4(e),¹² and will file Form 19b-4(e) for each series of TIRs within five business days of commencement of trading.

The Exchange proposes that TIRs are subject to the Exchange's rule relating to trading halts due to extraordinary market volatility (BSE Chapter II, Section 34A) and the Exchange's rule that provides discretion to Exchange officials to halt trading in specific securities under certain circumstances (BSE Chapter II, Section 34B). In exercising the discretion described in BSE Chapter II, Section 34B, appropriate Exchange officials may consider a variety of factors, including the extent to which trading is not occurring in a stock underlying the portfolio and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Further, the Exchange proposes that it will distribute an information circular to its members in connection with the trading of TIRs. It will discuss the special characteristics and risks of trading this type of security, including the fact that TIRs are not individually redeemable. Specifically, the circular, among other issues, will discuss what TIRs are, how they are created, the requirement that member and member firms deliver a prospectus to investors purchasing TIRs prior to or concurrently with the confirmation of a TIRs transaction, applicable BSE rules, dissemination information, trading information, and the applicability of suitability rules. In addition, the circular will inform members of specific BSE policies, such as trading halts and market conditions particular to such securities.

Eligibility Requirements for Component Securities Pursuant to Distribution or Other Corporate Event

Recently, the American Stock Exchange LLC ("Amex") revised its rules relating to the distributions of securities by component securities in a Trust.¹³ In sum, the Amex rules provide: (a) If a company whose securities are included in a series of TIRs distributes a security, the distributed security will remain in the Trust as a component security if it is listed for trading on a U.S. national securities exchange or through the facilities of Nasdaq and its Standard & Poor's sector classification is the same as the sector classification represented by the other component securities in the Trust at the time of the distribution; and (b) if the securities of a company that are included in a series of TIRs are no longer outstanding as a result of a merger, consolidation, corporate combination or other event, any securities received in exchange for those securities will remain in the Trust as a component security if it is listed for trading on a U.S. national securities exchange or through the facilities of Nasdaq and its Standard & Poor's sector classification is the same as the sector classification represented by the other component securities in the Trust at the time of the merger, consolidation, corporate combination or other event.

As a result of this change, the Exchange proposes that a security, which is automatically deposited into the Trust as a result of a distribution or a corporate event, may remain in the Trust even though it does not meet all of the initial eligibility requirements set forth in proposed *Interpretation and Policies*.02 of BSE Chapter XXIV-A. Specifically, the Exchange proposes under the *Interpretation and Policies* section of BSE Chapter XXIV-A, to provide eligibility requirements for a component security that became part of a Trust when the security was either: (a) Distributed by a company already included as a component security in the series of TIRs; or (b) received in exchange for the securities of a company previously included as a component security and that are no longer outstanding due to a merger, consolidation, corporate combination or other event.

The Exchange proposes that the eligibility requirements for such component securities are the following: (1) That such component security must be listed on national securities exchange

or traded through the facilities of Nasdaq and a reported national market system security; (2) that such component security must be registered under Section 12 of the Exchange Act; and (3) that such component security must have a Standard & Poor's Sector Classification that is the same as the Standard & Poor's Sector Classification represented by component securities already included in the TIRs at the time of the distribution or exchange.

The Exchange believes that it is appropriate in these limited situations to provide alternate eligibility criteria for the component securities. To reduce the number of distributions of securities from the TIR, which may cause inconvenience and increased transaction and administrative costs for investors, the Exchange believes that it is useful to allow certain securities that are received as part of a distribution from a company or as the result of a merger, consolidation, corporate combination or other event to remain in the TIR. The Exchange believes that the proposed eligibility requirements ensure that component securities included in a TIR as a result of a distribution or exchange event are widely held (having been distributed to all of the shareholders holding the original component security), traded through the facilities of an exchange or Nasdaq and registered under Section 12 of the Act.¹⁴

III. 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with them 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR-BSE-2001-05 and should be submitted by November 13, 2001.

¹³ See Securities Exchange Act Release No. 44309 (May 16, 2001), 66 FR 28587 (May 23, 2001) (order granting accelerated approval of SR-Amex-2001-04).

¹⁴ 15 U.S.C. 781

¹² 17 CFR 240.19b(c).

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act¹⁵ and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal to provide standards to permit listing and trading of trust issued receipts pursuant to Rule 19b-4(e)¹⁶ furthers the intent of the Rule by facilitating commencement of trading in these securities without the need for notice and comment and Commission approval.

By establishing generic listing standards, the proposal should reduce the BSE's regulatory burden, as well as benefit the public interest, by enabling the BSE to bring qualifying products to the market more quickly. Accordingly, the Commission finds that BSE's proposal should promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.¹⁷

As described above, the Commission has previously approved similar Amex, CHX, and PCX rules that permit the generic listing and trading of individual TIRs.¹⁸ In approving these securities for trading, the Commission considered their structure, their usefulness to investors and the markets, and the Exchanges' rules and surveillance programs that govern their trading. The Commission concluded then, as it does now, that securities approved for listing under those rules would allow investors to: (1) Respond quickly to changes in the overall securities markets generally and for the industry represented by a particular trust; (2) trade, at a price disseminated on a continuous basis, a single security representing a portfolio of securities that the investor owns beneficially; (3) engage in hedging strategies similar to those used by

institutional investors; (4) reduce transactions costs for trading a portfolio of securities; and (5) retain beneficial ownership of the securities component the TIRs.

The Commission notes that the BSE's proposed standards are substantially similar to the Amex, CHX and PCX standards. The Commission therefore believes that TIRs that satisfy the BSE's proposed standards should produce the same benefits to the BSE and to investors.

The Commission further believes that adopting generic listing standards for these securities pursuant to Rule 19b-4(e) under the Act should fulfill the intended objective of the Rule by giving the BSE the ability to potentially reduce the time frame for bringing these securities to the market, or for permitting the trading of these securities pursuant to UTP, and thus enhances investors' opportunities. The Commission notes that it maintains regulatory oversight over any products listed under the generic standards through regular inspection oversight.

The Commission finds that the BSE's proposal contains adequate rules and procedures to govern the listing and trading of TIRs pursuant to Rule 19b-4(e) on the BSE, or pursuant to UTP. All TIR products listed under the standards will be subject to the full panoply of BSE rules and procedures that now govern both the trading of TIRs and the trading of equity securities on the Amex, CHX, and the PCX including, among others, rules and procedures governing trading halts, disclosures to members, responsibilities of the specialist, account opening and customer suitability requirements, the election of a stop or limit order, and margin.

The Commission further finds that: (1) By requiring that the component securities in a TIR be registered under Section 12 of the Act and listed on a national securities exchange or Nasdaq, and (2) by establishing minimum values for the number of outstanding receipts, average daily trading volume, average daily dollar volume, and public float, the Exchange's proposed listing criteria will help to ensure that a minimum level of liquidity will exist to allow for the maintenance of fair and orderly markets for those TIRs listed and traded pursuant to Rule 19b-4(e). The Commission believes that these listing criteria will help to ensure that no component security a TIR will be readily susceptible to manipulation, while permitting sufficient flexibility in the construction of various trust issued receipts to meet investors' needs. The Commission further believes that these

criteria should serve to ensure that the component securities of such TIRs are well capitalized and actively traded, which will help to ensure that U.S. securities markets are not adversely affected by the listing and trading of new TIRs under Rule 19b-4(e). Accordingly, the Commission finds that these criteria are consistent with Section 6(b)(5) of the Act,¹⁹ because they serve to prevent fraudulent or manipulative acts; promote just and equitable principles of trade; remove impediments to and perfect the mechanism of a free and open market and a national market system; and protect investors and the public interest.

Additionally, as the Commission noted in its previous review and approval of Amex, CHX and the PCX Rules, the Exchange's delisting criteria allows it to consider the suspension of trading and the delisting of a TIR if an event occurs that makes further dealings in such securities inadvisable. This will give the Exchange flexibility to delist TIRs if circumstances warrant.

The Commission notes that, in connection with its previous review and approval of Amex, CHX and PCX Rules, it approved similar applicable minimum price increments, surveillance procedures, and disclosure and prospectus delivery requirements for TIRs.²⁰ In accordance with these previous findings, the Commission believes that the BSE's proposed rules will provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest. Further, the Commission believes that the proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risk of trading TIRs.

The BSE has noted that it will file Form 19b-4(e) with the Commission within five business days of commencement of trading a TIR under the listing standards and will comply with all Rule 19b-4(e) recordkeeping requirements.

Finally, the Commission finds that the BSE's proposal to provide an alternative eligibility criteria for component securities received as part of a distribution or as a result of a merger, consolidation, corporate combination or other event to remain in the Trust will prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 17 CFR 240.19b-4(e).

¹⁷ 15 U.S.C. 78f(b)(5). In approving these rules, the Commission has considered their impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁸ See Securities Exchange Act Release Nos. 43396 (September 29, 2000) 65 FR 60230 (October 10, 2000) (order granting accelerated approval of SR-Amex-00-10 and SR-CHX-00-16); 44182 (April 16, 2001), 66 FR 21798 (May 1, 2001) (order granting accelerated approval of SR-PCX-2001-01).

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ See note 17, *supra*.

and a national market system, and, in general, protect investors and the public interest. As noted above, the Commission has previously approved Amex rules that provided similar eligibility requirements.²¹

Thus, the Commission finds good cause for approving the proposed rule change (SR-BSE-2001-05) prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the BSE's proposed rule change is similar to rules previously approved by the Commission for Amex, CHX and the PCX. The Commission does not believe that the proposed rule change raises novel regulatory issues that were not addressed in the previous filings. Moreover, the Commission believes that approving the generic listing and trading of TIRs on the BSE will increase industry competitiveness by providing an additional venue for the trading of such issues, to the benefit of the investor. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,²² to approve the proposal on an accelerated basis, and before expiration of the period for filing comments.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²³ that the proposed rule change (SR-BSE-2001-05) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁴

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-26486 Filed 10-19-01; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44927; File No. SR-ISE-2001-25]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange LLC Modifying Certain Fees Relating to Servers and Cabinets Located on Members' Sites and Imposing a Fee for the Production of Certain Reports

October 12, 2001.

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 September 20, 2001, the International Securities Exchange LLC ("Exchange" or "ISE") 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 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 ISE is proposing changes to its fee schedule (i) to replace a \$1,650 "enhanced cabinet charge" with a \$250 incremental fee per server in an enhanced cabinet; (ii) to broaden the definition of "cabinet removal" and "router installation/removal" charges to include "moves, adds or changes"; and (iii) to impose a fee for providing reports to brokers on quarterly statistics relating to their order routing practices.

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 ISE 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 ISE 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 purpose of the proposed rule change is to effect the following changes in the ISE's fees:

Cabinets: One method by which ISE members connect to the Exchange is through ISE equipment located in cabinets on the members' sites. The ISE charges for this equipment based on, among other things, the number of servers in a cabinet. To provide more flexibility in this pricing, the ISE proposes to replace its "enhanced cabinet charge" with an incremental charge per server that is added to the base cabinet. The incremental fee will be \$250 per server, equivalent to the \$250 incremental fee per server in an enhanced cabinet. This will permit members to add more than one additional server per cabinet.

Also, the ISE is sometimes requested to reconfigure and relocate member equipment. Thus, the ISE proposes to broaden the definition of the "cabinet removal" and "router installation/removal" charges. These fees would encompass any "moves, adds or changes" to ISE equipment at a members' site, and would cover the Exchange's costs for providing these services.

Reports: Newly-adopted Commission Rule 11Ac1-6³ under the Act requires brokers to disclose certain quarterly statistics regarding their order routing practices. The ISE proposes to provide requesting members with a report that will facilitate their compliance with this rule. The Exchange represents that its proposed \$500 monthly fee would cover the costs of providing this report.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Section 6(b)(4),⁵ in particular, because it is an equitable allocation of reasonable fees among the Exchange's 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 that is not necessary or appropriate in furtherance of the purposes of the Act.

²¹ See Securities Exchange Act Release No. 44309 (May 16, 2001), 66 FR 28587 (May 23, 2001) (order granting accelerated approval of SR-Amex-2001-04).

²² 15 U.S.C. 78f(b)(5).

²³ 15 U.S.C. 78s(b)(2).

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.11Ac1-6.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).