

states that any such offering by Applicant of transferable rights will also comply with any applicable rules of the National Association of Securities Dealers, Inc. regarding the fairness of compensation.

5. Applicant states that increased administrative costs also is a concern underlying section 19(b) and rule 19b-1. Applicant asserts that the anticipated benefits to its shareholders are such that Applicant will continue to make quarterly distributions regardless of what portion thereof is composed of long-term capital gains.

6. Section 6(c) of the Act provides that the Commission may exempt any person or transaction from any provision of the Act or from any rule under the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, Applicant believes that the requested relief satisfies this standard and would be in the best interests of Applicant and its shareholders.

#### **Applicant's Condition**

Applicant agrees that any order granting the requested relief shall terminate upon the effective date of a registration statement under the Securities Act of 1933 for any future public offering by Applicant of its shares other than:

(i) A rights offering to holders of Applicant's common stock, in which (a) shares are issued only within the six-week period immediately following the record date of a quarterly dividend, (b) the prospectus for the rights offering makes it clear that shareholders exercising rights will not be entitled to receive such dividend, and (c) Applicant has not engaged in more than one rights offering during any given calendar year; or

(ii) An offering in connection with a merger, consolidation, acquisition, spin-off or reorganization of Applicant; unless Applicant has received from the staff of the Commission written assurance that the order will remain in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**  
Deputy Secretary.

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BILLING CODE 8010-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-46496; File No. SR-BSE-2002-10]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the Boston Stock Exchange, Inc. To Eliminate Its Current Market Data Revenue Sharing Program and Establish Two New Market Data Revenue Sharing Programs**

September 13, 2002.

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 22, 2002, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The BSE amended the proposed rule change on August 2, 2002.<sup>3</sup> On August 20, 2002, the BSE again amended the proposed rule change.<sup>4</sup> 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 seeks to amend its Transaction Fee Schedule to eliminate its current revenue sharing program and replace it with two new revenue sharing programs. The text of the proposed rule change is available at the BSE and at the Commission.

#### **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 the Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

The purpose of the proposed rule change is to amend the Exchange's Transaction Fee Schedule by eliminating the BSE's current revenue sharing program and replacing it with two new revenue sharing programs that would allow the Exchange to continue to provide quality markets to its customers at competitive prices. The Exchange believes that its current revenue sharing program, which shares a portion of all transaction related fees, is too broad in scope and difficult for its customers to understand. By implementing a more clearly defined comprehensive program, the Exchange seeks to narrow and simplify its Transaction Fee Schedule for its customers. The Exchange is seeking to implement these new programs on a pilot basis, for an initial period of six months.

Under the Exchange's existing revenue sharing program, the amount of revenue to be shared is determined by the total amount of transaction related revenue (Value Charge fees, Trade Recording Fees, Specialist Transaction fees, Consolidated Tape revenue and Net ITS fees) the Exchange generates on a monthly basis. Once the Exchange generates \$1,700,000 in monthly transaction revenue, 50% of the revenue above this amount is shared with those firms that have generated \$50,000 in monthly-automated transaction revenue. The \$50,000 cap is reviewed as necessary by the Executive Committee of the Board of Governors and adjusted as required to meet the costs of operating the trading floor. Each firm that reaches the \$50,000 cap receives a pro-rata share of the excess revenue based on the total number of Exchange automated executions executed by those firms that reach the cap. However, if the Exchange does not attain its monthly revenue goal, no revenue is shared for that month.

The Exchange is seeking to replace the current revenue sharing program with a simpler, more comprehensive, two-part revenue sharing program. The first part of this program proposes to

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

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

<sup>3</sup> See August 1, 2002 letter from John A. Boese, Assistant Vice President ("AVP"), Legal and Regulatory, BSE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), SEC, and attachments ("Amendment No. 1"). Although Amendment No. 1 makes no substantive changes to the original filing, Amendment No. 1 completely replaces and supersedes the original filing, so as to ensure that the proposed rule change is in proper format.

<sup>4</sup> See August 19, 2002 letter from John A. Boese, AVP, Legal and Regulatory, BSE, to Nancy Sanow, Assistant Director, Division, SEC, and attachments ("Amendment No. 2"). Amendment No. 2 completely replaces and supersedes Amendment No. 1 and the original proposed rule change.

share 50% of all monthly net Tape A (NYSE) revenues in excess of a threshold amount with those firms that generate a minimum of \$50,000 in overall monthly automated BSE transaction fees.<sup>5</sup> The threshold amount will be periodically reviewed by the Executive Committee of the Board of Governors and adjusted as required to meet the costs of operating the Exchange. In no case, however, will the threshold amount be less than \$250,000.00, as the cost of operating the Exchange, given current and forecasted revenue, expenses and costs, will not be less than this amount.

Although Tape A revenues are received quarterly, for the purpose of this program, the net amount received each quarter will be divided in three (for each month of that quarter) and the determination of the credit will be calculated for each individual month in the quarter. Only those firms that are eligible in any particular month will receive their pro-rata portion of the credit based on the total number of Exchange executions executed by those firms that generate \$50,000 in BSE automated transaction fees for that month. All credits will be calculated monthly but will be distributed quarterly.

The application of the credit can be demonstrated by the following example:

- Suppose the Exchange generates \$1,500,000 in net Tape A revenues for the quarter and the monthly threshold amount the BSE must generate is \$350,000.
- BSE Net Tape A revenues for the quarter—\$1,500,000
- Less: Quarterly threshold (as determined by the executive committee, but not less than \$250,000 per month). Therefore, the monthly threshold of \$350,000 is multiplied by 3, for each month of the quarter, for a total of \$1,050,000—(\$1,050,000)
- Subtotal (net revenue minus quarterly threshold)—\$450,000
- Multiply the subtotal by 50% (percentage of revenue to be shared among qualifying firms)—\$225,000

<sup>5</sup> The automated BSE transaction fees are generated based on executions that take place on the BSE. These charges vary on the size of the execution. For example, all BSE executions of market and marketable limit executions up to and including 2,500 shares are not charged a transaction fee. All other BSE executions up to and including 2,500 shares are charged \$.020 per 100 shares, which is reduced to \$.035 per 100 shares if the member firm generates at least \$50,000 in automated BSE transaction fees. All other executions are charged on a "sliding scale" of \$1,000 contract value, from \$.01 per \$1,000 contract value, up to \$.16 per \$1,000 contract value, based on the dollar value of the executions generated by that firm per month.

—Divide by 3, to reach the amount of revenue to be shared per month among qualifying firms (\$225,000/3)—\$75,000

• Now assume that four retail firms each generate a minimum of \$50,000 in automated BSE transaction fees (making them eligible to participate in the program) the first month of the quarter. The number of Exchange Tape A executions each qualifying firm executes for the month are as follows:

Firm A .....	50,000 trades.
Firm B .....	125,000 trades.
Firm C .....	75,000 trades.
Firm D .....	25,000 trades.

Total ..... 375,000 trades.

• Each qualifying firm would now receive Tape A revenue sharing amounts equal to their percentage of the total trades:

- Firm A percentage (150,000 trades/375,000 total qualifying trades)—40%
- Firm B percentage (125,000 trades/375,000 total qualifying trades)—33%
- Firm C percentage (75,000 trades/375,000 total qualifying trades)—20%
- Firm D percentage (25,000 trades/375,000 total qualifying trades)—7%

• The dollar amount of Tape A revenues to be shared amongst each qualifying firm for the first month of the quarter is arrived at by multiplying each qualifying firm's percentage of qualifying trades times the revenue available to be shared for that month. In this example, the available monthly revenue to be shared is \$75,000 (see above):

- Firm A (40% × \$75,000)—\$30,000
- Firm B (33% × \$75,000)—\$25,000
- Firm C (20% × \$75,000)—\$15,000
- Firm D (7% × \$75,000)—\$5,000

• The same process would be followed for any subsequent months of the quarter in which there are firms which meet the qualifying threshold (i.e. \$50,000 in automated BSE transaction fees for that month), although the percentages and amount of revenue to be shared among the qualifying firms would change as applicable.

The second program proposes to share 50% of the net Tape B (AMEX) revenue per trade with those firms that route Tape B business to the Exchange. The amount eligible to be shared with customers will be based on the BSE's receipt of its distribution of quarterly Tape B revenue. There are no thresholds to meet, and the formula for revenue sharing is a simple 50% distribution of net Tape B revenues, as demonstrated by the following example:

- Assume that the BSE receives \$90,000 in Tape B revenue for the

month of January, and executed a total of 25,000 Tape B trades for the month.

- BSE revenue in Tape B for the month—\$90,000
- Less monthly licensing fees for various Tape B Products (e.g. QQQ, SPY, DIA, MDY)—(\$35,000)
- Total net monthly Tape B revenue—\$55,000
- Total BSE Tape B trades for the month—25,000
- Net Tape B revenue per trade (total net monthly revenue divided by total Tape B trades for the month, or \$55,000/25,000)—\$2.20
- Multiply net revenue per trade by 50% (proposed Tape B revenue sharing) to reach the total amount of available credit per trade to be shared—\$1.10

## 2. Statutory Basis

The BSE believes that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>6</sup> in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

### 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.

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

No written comments were either solicited or received.

## 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 such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the BSE 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.

<sup>6</sup> 15 U.S.C. 78f(b)(5).

#### IV. Solicitation of Comments

On July 2, 2002, the Commission issued an Order abrogating certain proposed rule changes relating to market data revenue sharing programs.<sup>7</sup> In that Order, the Commission expressed concern that the subject proposed rule changes raised "serious questions as to whether they are consistent with the Act and with the protection of investors." Specifically, the Commission questioned the effect of market data rebates on the accuracy of market data, and on the regulatory functions of self-regulatory organizations.

The Commission now solicits comment on the BSE proposed rule change, and in general, on (1) market data fees; (2) the collection of market data fees; (3) the distribution of market data rebates; (4) the effect of market data revenue sharing programs on the accuracy of market data; and (5) the impact of market data revenue sharing programs on the regulatory functions of self-regulatory organizations.

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. 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 such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to file number SR-BSE-2002-10 and should be submitted by October 21, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-23814 Filed 9-18-02; 8:45 am]

**BILLING CODE 8010-01-P**

#### DEPARTMENT OF STATE

##### [Public Notice 4127]

#### Department of State Performance Review Board Members (At-Large Board)

In accordance with Section 4314(c)(4) of the Civil Service Reform Act of 1978 (Pub. L. 95-454), the Executive Resources Board of the Department of State has appointed the following individuals to the Department of State Performance Review Board (At-Large):

Christopher H. Flaggs, Managing Director, Office of Financial Policy, Reporting and Analysis, Bureau of Resource Management, Department of State;

Janice H. Brambilla, Senior Advisor, Office of the Under Secretary for Public Diplomacy And Public Affairs, Department of State;

David S. Mathias, Assistant Legal Adviser, Office of the Legal Adviser, United Nations Affairs, Department of State;

Barry L. Wells, Deputy Director, Foreign Service Institute, Department of State; Cathleen E. Lawrence, Executive Director, Bureau of Nonproliferation, Department of State;

Lawrence R. Baer, Executive Director, Bureau of East Asian and Pacific Affairs, Department of State.

Dated: September 13, 2002.

**Linda S. Taglialatela,**

*Deputy Assistant Secretary, Bureau of Human Resources, Department of State.*

[FR Doc. 02-23810 Filed 9-18-02; 8:45 am]

**BILLING CODE 4710-15-P**

#### OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

#### Request for Comments and Notice of Public Hearing Concerning Market Access in the Doha Development Agenda Negotiations in the World Trade Organization (WTO)

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Request for comments and notice of public hearing concerning market access and services issues in the

WTO Doha Development Agenda negotiations.

**SUMMARY:** The interagency Trade Policy Staff Committee (TPSC) will convene public hearings Monday, October 21 and Wednesday November 6 to obtain public comment on the effects of the reduction of tariffs and nontariff barriers to trade in agriculture and non-agricultural goods and services, and other market liberalization among WTO members in the Doha Development Agenda negotiations. Comments submitted pursuant to an earlier **Federal Register** notice need not be resubmitted in response to this Notice.

**DATES:** Persons wishing to testify orally at the hearing on agricultural and non-agricultural goods market access must provide written notification of their intention, as well as their testimony, by Wednesday, October 9, 2002. A hearing on agricultural and non-agricultural goods market access will be held in Washington, DC, beginning on Monday, October 21, 2002 and will continue as necessary on subsequent days. Persons wishing to testify orally at the hearing on services market access must provide written notification of their intention, as well as their testimony, by Monday, October 28, 2002. A hearing for services will be held in Washington, DC, beginning on Wednesday November 6, 2002, and will continue as necessary on subsequent days. Written comments on all issues are due by noon, Friday November 8, 2002.

**ADDRESSES:** *Submissions by electronic mail:*

*FR0032@ustr.gov* (Notice of intent to testify and written testimony for non-agricultural and agricultural goods);

*FR0033@ustr.gov* (Notice of intent to testify and written testimony for services);

*FR0035@ustr.gov* (written comments for agriculture, non-agriculture goods, and services).

*Submissions by facsimile:* Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at 202/395-6143.

The public is strongly encouraged to submit documents electronically rather than by facsimile. (See requirements for submissions below.)

**FOR FURTHER INFORMATION CONTACT:** For procedural questions concerning written comments or participation in the public hearing, contact Gloria Blue, (202) 395-3475. Further information on the World Trade Organization and can be obtained via Internet at the WTO Web site [www.wto.org](http://www.wto.org), the Office of the U.S. Trade Representative at [www.ustr.gov](http://www.ustr.gov). Questions on WTO agriculture negotiations should be directed to Jason

<sup>7</sup> Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002) (File Nos. SR-NASD-2002-61, SR-NASD-2002-68, SR-CSE-2002-06, and SR-PCX-2002-37)(Order of Summary Abrogation).

<sup>8</sup> 17 CFR 200.30-3(a)(12).