

were audited or reviewed, as required by applicable Commission requirements, by an independent public accountant that was, at the time of issuance of such financial statements, either registered with the PCAOB, or, for financial statements issued prior to the time the auditor was required to register with PCAOB, enrolled in the AICPA or equivalent peer review program.

In evaluating either the initial or continued listing eligibility of an issuer, the Exchange would consider the extent to which any PCAOB regulatory finding or action, a modified or adverse peer review opinion, or other regulatory issue with respect to a listed company's auditor raises concerns with respect to the reliability or integrity of the company's financial statements. As warranted, the Exchange would take action pursuant to its general authority to exclude issuers raising public interest concerns from listing (*i.e.*, sections 101 and 1003(f)(iii) of the *Amex Company Guide*) to either deny the listing application or delist the issuer.<sup>5</sup> In determining whether a public interest concern exists, the Exchange would consider the substance of the issue(s) raised, the independent accountant's response, including whether corrective action was taken, as well as any follow-up review or action by PCAOB or AICPA.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>7</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

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

<sup>5</sup> Any such action would be subject to appropriate appeal procedures as set forth in Part 12 of the *Amex Company Guide*.

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

### *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. 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 Exchange 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.

### **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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-Amex-2003-86. 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, comments should be sent in hard copy or by e-mail but not by both methods. 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 Exchange. All submissions should refer to file number SR-Amex-2003-86 and should be submitted by March 22, 2004.

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

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

[FR Doc. 04-4435 Filed 2-27-04; 8:45 am]

BILLING CODE 8010-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-49300; File No. SR-BSE-2004-07]

### **Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Boston Stock Exchange, Inc. Relating to the Extension of a Linkage Fee Pilot Program**

February 23, 2004.

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 February 11, 2004, the Boston Stock Exchange, Inc. ("Exchange" or "BSE") 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 February 20, 2004, the BSE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposed rule change, as amended, on an accelerated basis, until July 31, 2004.

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

The BSE proposes to extend the current pilot program applicable to Options Intermarket Linkage ("Linkage") fees<sup>4</sup> for six months until July 31, 2004.

The proposed fee schedule is available at the Exchange and at the Commission.

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

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

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

<sup>3</sup> See letter from John A. Boese, Assistant Vice President, Legal and Compliance, BSE, to Nancy J. Sanow, Assistant Director, Commission, dated February 19, 2004 ("Amendment No. 1"). In Amendment No. 1, the Exchange made technical corrections to the proposed rule change.

<sup>4</sup> See Exchange Act Release No. 49066 (January 13, 2004), 69 FR 2773 (January 20, 2004) (SR-BSE-2003-17) (Approving Linkage fees on a pilot basis to expire January 31, 2004).

## 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 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 BSE proposes to extend the current pilot program for the effectiveness of its Linkage fees on its Boston Options Exchange ("BOX") facility through July 31, 2004. BOX's current fee structure for Principal ("P") and Principal Acting as Agent ("P/A") orders<sup>5</sup> executed on BOX is operating under a pilot program which expired on January 31, 2004.<sup>6</sup> Because all Linkage Orders received by BOX are for the account of a market maker on another exchange, the fees applicable to P and P/A Orders would be the same as fees applicable to market makers on other exchanges that submit orders to BOX outside of Linkage. The side of a BOX trade opposite an inbound P or P/A order would be billed normally as any other BOX trade. Also, consistent with the Linkage Plan, no fees would be charged to a party sending a Satisfaction request ("S" order) to BOX. However, a fee would be charged to the BOX Options Participant that was responsible

<sup>5</sup> Under the Options Intermarket Linkage Plan ("Plan" or "Linkage Plan") and Chapter XII of the BOX Rules, which tracks the language of the Plan, a "Linkage Order" means an Immediate or Cancel order routed through the Linkage as permitted under the Plan. There are three types of Linkage orders:

(i) "P/A Order," which is an order for the principal account of a Market Maker (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent;

(ii) "P Order," which is an order for the principal account of a market maker (or equivalent entity on another Participant exchange) and is not a P/A Order; and

(iii) "Satisfaction Order," which is an order sent through the Linkage to notify a Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

<sup>6</sup> See *supra* note 4.

for the trade-through that caused the S order to be sent.

The BSE now proposes to extend the pilot program to July 31, 2004, and have the requested extension applied retroactively to February 1, 2004, in order to remain consistent with the other options exchanges concerning these fees. The Exchange notes that BOX did not commence trading until February 6, 2004, and therefore the Linkage fees would not be applicable until that date.

#### 2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,<sup>7</sup> in general, and section 6(b)(4),<sup>8</sup> in particular, 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 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 solicited or received with respect to the proposed rule change.

## III. 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-BSE-2004-07. 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, comments should be sent in hardcopy or by e-mail but not by both methods. 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

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

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 Exchange. All submissions should be submitted by March 22, 2004.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange,<sup>9</sup> and, in particular, with the requirements of section 6(b) of the Act<sup>10</sup> and the rules and regulations thereunder. The Commission finds that the proposed rule change, as amended, is consistent with section 6(b)(4) of the Act,<sup>11</sup> which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Commission believes that the extension of the Exchange's Linkage fee pilot program until July 31, 2004 will give the Exchange and the Commission opportunity to evaluate whether such fees are appropriate.

The BSE has requested that the Commission approve the extension of the pilot retroactively to February 1, 2004. The Commission notes that BOX did not commence trading until February 6, 2004 and, therefore, the Linkage fees would not be applicable until that date. The Commission believes that applying the fees retroactively will enable BOX to charge fees for Linkage Orders in a manner consistent with the charges for Linkage fees imposed pursuant to the rules of the other options exchanges, which were previously approved by the Commission.

The Commission finds good cause, pursuant to section 19(b)(2) of the Act,<sup>12</sup> for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice of the filing thereof in the

<sup>9</sup> In approving this rule, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

**Federal Register.** The Commission believes that granting accelerated approval of the proposed rule change will allow the Exchange to implement its existing pilot program for Linkage fees as the BSE and the Commission consider the appropriateness of Linkage fees.

## V. Conclusion

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-BSE-2004-07), as amended, is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-4429 Filed 2-27-04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49305; File No. SR-BSECC-2003-01]

### Self-Regulatory Organizations; Boston Stock Exchange Clearing Corporation; Order Approving Proposed Rule Change To Clarify Liability and Clearing Agency Services

February 23, 2004.

#### I. Introduction

On May 29, 2003, the Boston Stock Exchange Clearing Corporation ("BSECC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-BSECC-2003-01 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> On July 21, 2003, August 25, 2003, and September 12, 2003, BSECC amended the proposed rule change. Notice of the proposal was published in the **Federal Register** on January 13, 2004.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

#### II. Description

The purpose of the proposed rule change is to delete or amend certain sections of the BSECC Rules to clarify BSECC's liability and clearing agency services.

BSECC is seeking to make several changes to its Rules as they pertain to

BSECC's liability in order to maintain a consistent approach with the Boston Stock Exchange's ("BSE") recently approved proposed rule change clarifying BSE's liability with respect to its members' contractual obligations.<sup>3</sup> These changes being made by BSECC:

(1) Clarify in Rule II, Section 1, that BSECC's clearing fund is to make good losses suffered by BSECC without the losses of its members having priority;

(2) Eliminate a provision in Rule II, Section 5(e), which allows the retained earnings of BSECC to be used to satisfy any loss or liability resulting from a BSECC member's default;

(3) Eliminate language in Rule III, Section 3(a), stating that BSECC guarantees settlement of all trades executed on the floor of BSE;<sup>4</sup>

(4) Amend Rule III, Section 3(e), to make BSECC loans to members to complete settlement with the National Securities Clearing Corporation ("NSCC") discretionary, not automatic. The current automatic loan provision is inconsistent with the purpose of the proposed rule change that members will be solely liable for their transactions and that BSECC is not the ultimate guarantor for its members;

(5) Amend Rule XI, Section 3, to increase the maximum fine for any offense of BSECC Rules from \$1,000 to \$5,000 and increase from \$5,000 to \$30,000 the amount that fines imposed in the last six months must exceed before BSECC is required to give the member notice of its right to appeal; and

(6) Strengthen BSECC's indemnification clause found in Rule XII, Section 6, by stating that each member will remain "solely responsible" and liable for its transactions; The proposed rule change also deletes all references to Boston Representative Broker/Dealer Accounts, BSE Service Corporation, and Institutional Members. Such references are no longer applicable as they relate to services or lines of business in which BSECC is no longer involved. Also, BSECC has in various places added references to NSCC due to the merger of NSCC and The Depository Trust Company.

BSECC is not making these amendments in response to any recent or perceived action by any of its

<sup>3</sup> The Commission approved a companion proposed rule change filed by the Boston Stock Exchange to amend various Articles of its Constitution and sections of its Rules to clarify the liability of the exchange with respect to its members' contractual obligations. Securities Exchange Act Release No. 49304 (February 23, 2004), [File No. SR-BSE-2002-06].

<sup>4</sup> BSE guarantees exchange trades until they are accepted by the National Securities Clearing Corporation.

members. Rather, BSECC is seeking to clarify, by eliminating inconsistencies and providing succinct language, and to enhance its position which it holds with respect to liability on the part of its members.

#### III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.<sup>5</sup> The Commission finds that BSECC's proposed rule change is consistent with this requirement because it will clarify and enhance BSECC's Rules so that it can better protect itself and its members from the risk of default.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-BSECC-2003-01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-4433 Filed 2-27-04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49304; File No. SR-BSE-2002-06]

### Self-Regulatory Organizations; Boston Stock Exchange; Order Approving Proposed Rule Change To Clarify Exchange Liability

February 23, 2004.

#### I. Introduction

On September 26, 2002, the Boston Stock Exchange ("BSE") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-BSE-2002-06 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> On November 5, 2002, May 29, 2003, and July 21, 2003, BSE amended the proposed rule change.

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

<sup>13</sup> *Id.*

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Securities Exchange Act Release No. 49027 (January 6, 2004), 69 FR 2027.