

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48622; File No. SR-BSE-2003-18]

### 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. To Adopt an Anti-Money Laundering Compliance Program

October 10, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 24, 2003, 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 and II below, which Items have been prepared by the Exchange. The Exchange amended the proposal on October 3, 2003 and October 9, 2003. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval to the proposed rule change.

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

The Exchange proposes to adopt a new section entitled "Anti-Money Laundering Compliance Program" to its Rules under Chapter II, Dealings on the Exchange. The text of the proposed rule change follows. Additions are in *italics*.

\* \* \* \* \*

#### Chapter II

##### Dealings on the Exchange

Secs. 1-41, no change

##### Anti-Money Laundering Compliance Program

*Sec. 42. Each member organization and each member not associated with a member organization shall develop and implement a written anti-money laundering program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act (31 U.S.C. 5311, et seq.), and the implementing regulations promulgated thereunder by the Department of the Treasury. Each member organization's anti-money laundering program must be approved,*

*in writing, by a member of senior management.*

*The anti-money laundering programs required by this Section shall, at a minimum:*

*(1) Establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder;*

*(2) Establish and implement policies and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder;*

*(3) Provide for independent testing for compliance to be conducted by Participant personnel or by a qualified outside party;*

*(4) Designate, and identify to the Exchange (by name, title, mailing address, e-mail address, telephone number, and facsimile number) a person or persons responsible for implementing and monitoring the day-to-day operations and internal controls of the program and provide prompt notification to the Exchange regarding any change in such designation(s); and*

*(5) Provide ongoing training for appropriate persons.*

\* \* \* \* \*

#### 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

In response to the events of September 11, 2001, President Bush signed into law on October 26, 2001 the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "Patriot Act")<sup>3</sup> to address terrorist threats through enhanced

<sup>3</sup> Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56, 115 Stat. 272 (2001).

domestic security measures, expanded surveillance powers, increased information sharing and broadened anti-money laundering requirements. The Patriot Act amends, among other laws, the Bank Secrecy Act, as set forth in Title 31 of the United States Code.<sup>4</sup> Certain provisions of Title III of the Patriot Act, also known as the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 ("MLAA"), impose affirmative obligations on a broad range of financial institutions, including broker-dealers, specifically requiring the establishment of anti-money laundering monitoring and supervisory programs.

MLAA Section 352 required all financial institutions (including broker-dealers) to establish anti-money laundering programs that include, at a minimum: (i) Internal policies, procedures and controls; (ii) the specific designation of an anti-money laundering compliance officer; (iii) an ongoing employee training programs; and (iv) an independent audit function to test the anti-money laundering program.

The Commission has approved NASD's and several other exchanges' proposals to adopt rules requiring their members and member organizations to establish anti-money laundering compliance programs with the minimum standards described above.<sup>5</sup> Proposed BSE Section 42, entitled "Anti-Money Laundering Compliance Program" of Chapter II, Dealings on the Exchange, of the Rules of the Board of Governors of the Boston Stock Exchange, Inc. involves similar requirements. Adoption of the proposed rule would establish a regulatory framework for members and member organizations to comply with the requirements of the Patriot Act in this area.

###### 2. Statutory Basis

The Exchange believes that the statutory basis for the proposed rule change is 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, and is not designed to permit unfair

<sup>4</sup> 31 U.S.C. 5311, et seq.

<sup>5</sup> See, e.g., Securities Exchange Act Release No. 45798 (April 22, 2002), 67 FR 20854 (April 26, 2002) (Order approving SR-NASD-2002-24 and SR-NYSE-2002-10).

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

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

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

discrimination between customers, issuers, brokers or dealers.

#### *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.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, and 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 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 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 Exchange. All submissions should refer to File No. SR-BSE-2003-18 and should be submitted by November 7, 2003.

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

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. In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>7</sup> which, among other things, requires that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices,

<sup>7</sup> 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

and, in general, protect investors and the public interest.

The Commission believes that the Exchange's proposal to adopt an Anti-Money Laundering Compliance Program accurately, reasonably, and efficiently implements the requirements of the Patriot Act as it applies to their members. The Commission also recognizes that anti-money laundering compliance programs will evolve over time, and that improvements to these programs are inevitable as members find new ways to combat money laundering and to detect suspicious activities.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that the Rule is substantially similar to anti-money laundering compliance program rules that the Commission has previously approved for other self-regulatory organizations.<sup>8</sup> Accordingly, the Commission believes that there is good cause, consistent with Section 19(b) of the Act,<sup>9</sup> to approve the proposed rule change on an accelerated basis.

### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change, as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>8</sup> See Securities Exchange Act Release Nos. 45798 (April 22, 2002), 67 FR 20854 (April 26, 2002) (Order approving SR-NASD-2002-24 and SR-NYSE-2002-10); 46041 (June 6, 2002), 67 FR 40366 (June 12, 2002) (Order Approving SR-Phlx-2002-29); 46258 (July 25, 2002), 67 FR 49715 (July 31, 2002) (Order Approving SR-Amex-2002-52); 446462 (September 5, 2002), 67 FR 58665 (September 17, 2002) (Notice of Filing and Order Granting Accelerated Approval of SR-CBOE-2002-45); 46468 (September 6, 2002), 67 FR 58095 (September 13, 2002) (Notice of Filing and Immediate Effectiveness of SR-PCX-2002-44); and 46739 (October 29, 2002), 67 FR 67432 (November 5, 2002) (Notice of Filing and Immediate Effectiveness of SR-NASD-2002-146).

<sup>9</sup> 15 U.S.C. 78f(b)(5) and 78s(b).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48623; File No. SR-CBOE-2003-43]

#### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated To Make Changes to Its Fee Schedule Involving the Exchange's Hybrid Trading System and Retail Automatic Execution System Orders**

October 10, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on October 1, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to 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 CBOE. On October 7, 2003, the CBOE filed an amendment to the proposed rule change. 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 CBOE proposes to make four changes to its Fee Schedule. The first three changes involve fees connected to the Exchange's Hybrid trading system. The fourth change involves the access fee for Retail Automatic Execution System ("RAES") orders. The text of the proposed rule change, as amended, to the fee schedule is available at the Office of the Secretary, the CBOE, 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 CBOE included statements concerning the purpose of and basis for the proposed rule change, as amended, 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 CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

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