

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549-0069. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-AMEX-2003-78. 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 rule filing that are filed with the Commission, and all written communications relating to the rule filing between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at Amex's principal office. All submissions should refer to File No. SR-AMEX-2003-78 and should be submitted within by February 3, 2004.

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

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49026; File No. SR-BSE-2002-06]

### Self-Regulatory Organizations; Boston Stock Exchange; Notice of Filing of Proposed Rule Change to Clarify Exchange Liability

January 6, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on September 26, 2002, the Boston Stock Exchange ("BSE") filed with the Securities and Exchange Commission ("Commission") and on November 4, 2002, May 29, 2003, and July 21, 2003, amended the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by BSE. The Commission is

publishing this notice to solicit comments on the proposed rule change from interested parties.

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

BSE is seeking to amend various Articles of its Constitution and Sections of its Rules to clarify the liability of BSE in relation to its members' contractual obligations.<sup>2</sup>

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

In its filing with the Commission, 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 IV below. BSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>3</sup>

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

The purpose of the proposed rule change is to amend certain sections of the BSE Constitution and Rules to clarify BSE's liability in relation to its members' contractual obligations.

In particular, BSE is seeking to modify Articles XII and XIII of its Constitution to insure that any BSE member who is a party to a transaction remains solely liable for the transaction. This language is consistent with similar language and approaches of other exchanges in limiting the liability of an exchange with respect to contracts entered into by members.<sup>4</sup> In Article XIII of its Constitution, the BSE is also seeking to add certain language from the BSECC Participant Hypothecation Agreement. The provision to be inserted into the Constitution would prevent BSE from becoming a de facto guarantor of an insolvent member's contractual obligations.

<sup>2</sup> The Boston Stock Exchange Clearing Corporation ("BSECC") has filed a proposed rule change to amend various Sections of its Rules as they pertain to BSECC's liability in order to maintain a consistent approach with the BSE's proposed rule changes. Securities Exchange Act Release No. 49027 (January 6, 2004), [File No. SR-BSECC-2003-01].

<sup>3</sup> The Commission has modified the text of the summaries prepared by BSE.

<sup>4</sup> See, e.g., New York Stock Exchange Rules 137 and 142; Chicago Stock Exchange Rules, Article XXV, Rule 11; and Philadelphia Stock Exchange Rule 254.

Likewise, BSE is seeking to amend other sections of its rules consistent with this theme. In Chapter III, "Comparisons—Liability on Contracts," Section 4, "Failures to Compare," the proposed language would state that BSE shall have no liability to any of the original parties to a contract entered into by a member. Also, in Chapter VI, "Failure to Fulfill Contracts," Section 1, "Closing Contracts," the proposed language would make clear that no action taken by BSE in closing or assisting to close a contract entered into by a BSE member shall have the effect of transferring any liability related to that contract to BSE. Chapter VI, Section 2, "Notice of Closing Contracts," would echo this approach for instances in which BSE takes action to attempt to close a contract on behalf of a member in default. None of these changes are in response to any recent circumstance. They are only aimed at clarifying BSE's unique position in relation to assisting its members in other contractual matters exclusively linked to conducting transactions in the buying and selling of equity securities.

BSE believes that the proposal is consistent with the requirements of Section 6(b) of the Act and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and 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, in that it is designed 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

BSE 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

BSE has neither solicited nor received comments on the proposed change.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety days of such date if it finds such

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

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

longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization 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 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-2002-06. This file number should be included on the subject line if e-mail is used. To help us process and review 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 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of BSE.

All submissions should refer to File No. SR-BSE-2002-06 and should be submitted by February 3, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49027; File No. SR-BSECC-2003-01]

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

January 6, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on May 29, 2003, the Boston Stock Exchange Clearing Corporation ("BSECC") filed with the Securities and Exchange Commission ("Commission") and on July 21, 2003, August 25, 2003, and September 12, 2003, amended the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by BSECC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

BSECC is seeking to delete or amend certain Sections of its Rules to clarify BSECC's liability and clearing agency services.

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

In its filing with the Commission, BSECC 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. BSECC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>2</sup>

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

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") proposed rule changes clarifying BSE's liability in relation to its members' contractual obligations.<sup>3</sup> In sum, these changes:

- 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;
- 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;
- Eliminate Rule III, Section 4, stating that BSECC guarantees settlement of all trades executed on the floor of BSE;<sup>4</sup>
- Strengthen the BSECC indemnification clause, Rule XII, section 6, by stating that each member will remain "solely responsible" and liable for its transactions;
- Amend Rule III, section 3(e), to make BSECC loans to members 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; and
- Amend Rule XI, section 3 to increase the fine from \$5,000 to \$30,000 for violations of BSECC Rules.

The proposed rule change would delete 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 to make consistent BSECC's references to NSCC in its Rules and to clarify that BSECC will perform functions for the usual settlement of transactions with NSCC and DTC on behalf of BSECC members upon request.

BSECC is not seeking these amendments in response to any recent or perceived action by any of its members. Rather, BSECC is seeking to clarify, by eliminating inconsistencies and providing succinct language, the position which it holds with respect to liability on the part of its members. Moreover, BSECC is seeking to maintain a consistent approach in the application of its various regulatory responsibilities

<sup>3</sup> The Boston Stock Exchange has filed a proposed rule change to amend various Articles of its Constitution and Sections of its Rules to clarify the liability of the exchange in relation to its members' contractual obligations. Securities Exchange Act Release No. 49026 (January 6, 2004), [File No. SR-BSE-2002-06].

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

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

<sup>2</sup> The Commission has modified the text of the summaries prepared by BSECC.

<sup>5</sup> 17 CFR 200.30-3(a)(12).