

planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: November 12, 2003.

**Sher Bahadur,**

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03-29018 Filed 11-19-03; 8:45 am]

BILLING CODE 7590-01-P

**NUCLEAR REGULATORY COMMISSION**

**Advisory Committee on Reactor Safeguards; Meeting of the Subcommittee on Plant License Renewal; Notice of Meeting**

The ACRS Subcommittee on Plant License Renewal will hold a meeting on December 3, 2003, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Wednesday, December 3, 2003—8 a.m.—11:30 a.m.*

The purpose of this meeting is to discuss the Virgil C. Summer Nuclear Station license renewal application and the NRC staff's draft Safety Evaluation Report. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, South Carolina Electric and Gas Company, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Marvin D. Sykes (telephone 301-415-8716), five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days

prior to the meeting to be advised of any potential changes to the agenda.

Dated: November 13, 2003.

**Sher Bahadur,**

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03-29019 Filed 11-19-03; 8:45 am]

BILLING CODE 7590-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-48787; File No. SR-BSE-2003-17]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Establishing Fees for the Proposed Boston Options Exchange Facility**

November 14, 2003

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 November 14, 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, 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 BSE seeks to enact fees for the proposed Boston Options Exchange ("BOX") facility. Proposed new language is *italicized*.

\* \* \* \* \*

**Fee Schedule**

*Sec. 1 Trading Fees for Public Customer Accounts*

None.

*Sec. 2 Trading Fees Broker Dealer Proprietary Accounts*

a. *\$0.20 per contract traded;*

—or—

b. *\$ 0.40 per contract traded against an order the Trading Host filters to prevent trading through the NBBO, pursuant to the procedures set forth in*

*Chapter V, Section 16(b) of the BOX Rules.*

c. *Plus, where applicable, any surcharge for options on ETFs that are passed through by BOX. The applicable surcharges are as follows:*

(1) *\$ 0.10 per contract for options on the ETF Nasdaq 100 ("QQQs").*

*Sec. 3 Market Maker Trading Fees*

a. *Per contract trade execution fee:*

1. *\$ 0.20 per contract traded in assigned classes;*

—or—

2. *\$ 0.20 per contract traded in unassigned classes;*

-or-

3. *\$ 0.40 per contract traded against an order the Trading Host filters to prevent trading through the NBBO, pursuant to the procedures set forth in Chapter V, Section 16(b) of the BOX Rules.*

4. *Plus, where applicable, any surcharge for options on ETFs that are passed through by BOX. For a list of applicable ETF surcharges, see Section 2(c), above.*

b. *Minimum Activity Charge ("MAC")*

*The "notional MAC" per options class (see table below) is the building block for the determination of the BOX Market Maker's monthly total MAC which is payable at the end of each month if the per contract fee of \$ 0.20 per contract traded, when multiplied by the Market Maker's actual trade executions for the month, does not result in a total trading fee payable to BOX at least equal to the monthly total MAC.*

*The MAC is totaled across all classes assigned to a Market Maker so that volume for one class is fungible against other classes for that Market Maker. As a result, although the volume on a given class needed to reach an implicit cost of \$0.20 a contract may not be achieved, this can be compensated by volume in excess of the MAC on another class.*

1. *MAC "Levels."*

*The table below provides the MAC for each of the six "categories" of options classes listed by BOX. The category for each class is determined by its total trading volume across all U.S. options exchanges as determined by OCC data. The classifications will be adjusted at least twice annually (in January and July, based on the average daily volume for the preceding six month period).*

<i>Class category</i>	<i>OCC average daily volume (# of contracts)</i>	<i>MAC per market maker per appointment per month</i>
A .....	<100,000 .....	\$15,000

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

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

Class category	OCC average daily volume (# of contracts)	MAC per market maker per appointment per month
B .....	50,000 to 99,999 .....	3,000
C .....	25,000 to 49,999 .....	2,000
D .....	10,000 to 24,999 .....	750
E .....	5,000 to 9,999 .....	250
F .....	Less than 5,000 .....	100

2. MAC "Adjustments."

The MAC will not be applied during the first three calendar months following launch. Furthermore, the MAC will be "indexed" to BOX's overall market share as determined by OCC clearing volumes. At the beginning of each calendar month, BOX will calculate its market share for the previous month (market share equals total BOX traded volume divided by the total OCC cleared volume for the classes that BOX has listed). If BOX's overall market share is less than 10%, BOX will reduce the MAC applicable for each Market Maker according to the following table.

BOX market share	MAC applicable rate
0% to 4.99% .....	33.3%
5% to 9.99% .....	66.7%
10% and more .....	full MAC

c. Volume discount on total volume traded across all assigned classes (calculated on monthly basis)

BOX will provide volume discounts to Market Makers who are particularly active on BOX. The discount is applied only after a Market Maker meets the minimum level of activity necessary to avoid paying a MAC for assigned classes. This discount is calculated monthly for the previous calendar month's total trading volume across all the classes that the Market Maker holds an appointment as follows:

Average daily volume as appointed Market Maker (applicable only if MAC thresholds are achieved)	Per contract
For all contracts up to a volume of 25,000 contracts .....	0
For the contracts traded between 25,000 and 50,000 (First Discount Threshold) ....	\$0.03
For the contracts traded above a total of 50,000 (Second Discount Threshold) .....	\$0.05

Example: Suppose that, in a given month which had twenty (20) trading days, a BOX Market Maker executed 1.2 million contracts. Of this total, 1.1 million executions were in the 100 classes for which he holds a market

maker appointment; the total trading fees due to BOX before discount is \$220,000 (\$0.20 multiplied by 1.2 million contracts).

The total volume across his appointments is an average daily volume ("ADV") of 55,000 contracts per day. 25,000 of these contracts (the excess over the first "threshold" of 25,000 ADV up to the second threshold of 50,000 ADV) are subject to a discount of \$0.03; an additional 5,000 of these contracts are subject to the second tier discount of \$0.05.

- First threshold discount: 25,000 × \$0.03 × 20 days = \$15,000
- Second threshold discount: 5,000 × \$0.05 × 20 days = \$5,000
- Total discount: \$20,000
- Net trading fees due to BOX for month: \$200,000 (\$220,000 – \$20,000)
- "Implied" trading fee per contract for Market Maker in assigned classes: \$200,000/1,100,000 = \$0.1818

Sec. 4 InterMarket Linkage

The following fees are in effect on a Pilot basis, to expire on January 31, 2004.

a. Per contract, billed to BOX Participant

1. BOX trade triggered by an away market Satisfaction ("S") request .....	\$0.40
Billed to BOX Participant having executed the offending side of the trade subject to the S request.	
2. Routing by BOX of PA and P orders, and S requests to away market .....	Free

b. Per contract, billed to away market

1. S request received from away market and executed on BOX. ....	Free
2. Inbound P and PA orders .... Same as if were BOX Participant.	\$0.20

Sec. 5 Technology Fees

a. Point of Presence ("PoP") Connection Fee

BOX's Points of Presence are the sites where BOX Participants connect to the

BOX network for communication with the BOX Trading Host. Each of these PoPs is operated by a third party supplier under contract to BOX. The amount to be paid by each BOX Participant is variable based on his particular configuration, the determining factors being the number of physical connections a BOX Participant has and the bandwidth associated with each.

- "Installation" and "Hosting" costs are related to the physical installation of equipment (generally routers though possibly other hardware) at the PoP site. BOX Participants will be required to pay this fee only if they have physical installations at the BOX PoP and for which BOX incurs fees from its own service suppliers

- "Cross Connect" fees are per physical connection and vary by size from the smallest (T-1) to the largest (CAT 5)

Setup (one time change, not applicable for BOX Participants connected prior to launch)

Installation .....	\$350
Cross connect per T-1 .....	\$250
Cross connect per T-3 .....	\$350
Cross connect per CAT 5 .....	\$500

Monthly (applicable only after launch)

Hosting .....	\$200
Cross connect per T-1 .....	\$100
Cross connect per T-3 .....	\$200
Cross connect per CAT 5 .....	\$250

b. CMS Order Routing Service

This service is optional for BOX Participants and is offered as an alternative to the FIX and proprietary gateways to the BOX Trading Host.

The CMS Gateway is a service provided by BOX to those BOX Participants who use the CMS protocol for routing orders. CMS may only be used for agency activities (and not for proprietary orders and market maker activities).

Monthly (applicable only after launch)

Per firm .....	\$250
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*c. Back Office Trade Management Software ("TMS")*

TMS is optional software which BOX Participants may subscribe to in order to manage their BOX trades prior to their transmission by BOX to OCC.

*Monthly Per User Within the Same BOX Participant (applicable only after launch)*

Users 1 to 5 .....	\$300
Users 6 to 10 .....	\$250
Users 11 and up .....	\$200

*d. Testing/Support for Third Party Service Providers*

*Third Party Service Providers, generally either Independent Software Vendors ("ISVs") who provide "front end" trading software systems or service bureaus which provide and operate order routing systems for broker dealers, may connect to the BOX Trading Host test platform. This is necessary both to establish initial compatibility of their software as well as to maintain this connectivity as the BOX Trading Host implements upgrades and evolutions. This fee is charged directly to the Third Party Service Provider, not the Options Participant, and is not charged to BOX Participants who connect their proprietary software systems to the BOX Trading Host.*

*One Time (not applicable for providers connected prior to launch)*

Connection setup .....	\$10,000
Disconnection .....	\$500

*Monthly (applicable only after launch)*

Maintenance Fee .....	\$500
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*Sec. 6. Compliance Examination Assessment*

*Monthly*

Firms for which BOX assumes examination responsibilities .....	\$1,500
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**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 Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

In conjunction with the anticipated launch of the proposed BOX, the BSE is proposing fees related to the BOX market. The fees would apply to the following three constituents in the BOX market:

- Public Customers,<sup>3</sup>
- broker-dealers, and
- Market Makers.<sup>4</sup>

The BSE believes that the fees for each of these constituents, in combination with unfettered access to the BOX market for Market Makers and broker-dealers, would establish a low cost structure that would attract order flow to BOX and would promote competitive pricing.

**a. Public Customers**

Orders on behalf of Public Customers would not be subject to a trading fee. Also, the BSE notes that in keeping with the Exchange's flat and open philosophy for BOX, BOX Options Participants<sup>5</sup> who act as agents on behalf of Public Customers (i.e. Order Flow Providers ("OFF"))<sup>6</sup> would not have to pay seat, lease, or access fees. BSE believes some of this cost savings would be passed on to Public Customers in the form of price improvement. In fact, the BSE believes that the only cost to an Options Participant, acting solely as agent for orders on behalf of Public Customers, would be, in most cases, the Point of Presence Connection Fee.

**b. Broker Dealer Proprietary Accounts**

As a base trading fee, executions on behalf of broker-dealer proprietary accounts would be charged a \$0.20 per contract trade execution fee or a \$0.40

<sup>3</sup> A Public Customer is a person that is not a broker or dealer in securities.

<sup>4</sup> A Market Maker is a firm or organization that is registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of the proposed BOX Rules.

<sup>5</sup> The term "Options Participant" or "Participant" means a firm, or organization that is registered with the Exchange for purposes of participating in options trading on BOX as an "Order Flow Provider" or "Market Maker."

<sup>6</sup> The terms "Order Flow Provider" or "OFF" mean those Options Participants representing as agent Customer Orders on BOX and those non-Market Maker Participants conducting proprietary trading.

fee for executions which result from the NBBO filter process. In addition to the base trading fee, executions on behalf of broker-dealer proprietary accounts would be charged any passed through licensing fees for Exchange-Traded funds ("ETF"), if applicable.<sup>7</sup> These fees would be competitive with other electronic exchanges and would be significantly lower than the fees charged for orders executed through the auto-execution systems of the floor based exchanges.<sup>8</sup> Additionally, unlike most options exchanges, there would be no Payment-for-Order-Flow or marketing surcharges.

As noted above, there would be a \$0.40 per contract fee for the execution against the exposure of an order which BOX's automatic trading system ("Trading Host") filters against trading through the national best bid or offer ("NBBO"), pursuant to the NBBO filter procedures set forth in Chapter V, Section 16(b) of the proposed BOX Rules. The Exchange would be levying this fee to broker-dealers for the costs of providing a service, the NBBO filter process, which would not be offered on any other options exchange. The BSE notes that the services provided by other options exchanges, such as "step-up-and-match" capabilities (which the BSE believes fall short of BOX's NBBO filter process) are not available to broker-dealers.

**c. Market Makers**

As a base trading fee, Market Makers would be charged a \$0.20 per contract trade execution fee for both assigned and unassigned classes or \$0.40 for executions which result from the NBBO filter process. In addition to the base trading fee, Market Makers would be charged any passed through licensing fees for ETF, if applicable. As discussed below, a Market Maker would be charged a higher fee if the Market Maker does not meet certain minimum trade volume thresholds. In addition, a Market Maker would receive a discount if other trade volume thresholds are exceeded.

<sup>7</sup> \$0.10 per contract for options on Nasdaq 100 ("QQQ") is the only surcharge on ETFs that would be applicable upon BOX's launch.

<sup>8</sup> For example, the International Securities Exchange ("ISE") charges a non-public customer (a broker-dealer) a \$0.12-\$0.21 (depending on ISE A.D.V.) per contract execution fee plus a \$0.03 comparison fee. The Chicago Board Options Exchange ("CBOE") charges a non-public customer for an equity option RAES execution a \$0.30 RAES fee + \$0.20 transaction fee + \$0.05 trade match fee for a total fee of \$0.55. BOX would charge a non-public customer a \$0.20 per contract trading fee or a \$0.40 per contract trading fee for executions resulting from the NBBO filter process, as set forth in Chapter V, Section 16(b) of the proposed BOX Rules. See Section 2 of the BOX Fee Schedule.

As stated in the previous paragraph, similar to the fee charged to broker-dealers, there is a \$0.40 per contract fee for the execution against the exposure of an order which the Trading Host filters against trading through the NBBO, pursuant to the NBBO filter procedures set forth in Chapter V, Section 16(b) of the proposed BOX Rules. However, the motivation behind charging this fee to Market Makers is different than the motivation behind levying this fee to broker-dealers. The Exchange proposes to apply this fee to Market Makers so as to incent Market Makers to aggressively post quotations at the NBBO. That is, if a Market Maker establishes, or quotes at, the NBBO, the Market Maker would not be charged this fee as the NBBO filtering process would not be required. However, the BSE believes that this fee would not be of such a level so as to deter Market Makers from executing with orders exposed through the filtering process.

The BSE represents that the BOX market model features very low barriers to entry for Market Makers. All other U.S. options exchanges have costly barriers to entry for market making firms in their expenses for the purchase or lease of seats or trading bins, which run, in some cases, to as much as \$16,000,000. For example, on the ISE, a recent sale of a Series B-2 (CMM trading privileges) share was for \$1.6 million in Bin 5 on October 8, 2003, a bin covering only 60 of the 600 options classes presently listed on the ISE. Purchase of all 10 bins at that price would equal \$16,000,000.<sup>9</sup> BOX has no such costly seat or bin purchase or lease requirements and has structured its fees so as to render Market Maker appointments accessible to qualified firms. In addition, efficiencies gained by Market Makers using the BOX technology would allow them to manage more classes with less resources, significantly reducing operating costs when compared to traditional floor based exchanges.

#### i. Comparison of Market Maker Costs on BOX versus Floor-Based Exchange

The BSE estimates that a member-firm of a floor based options exchange would need a minimum of fifteen individuals to act as Market Makers in order to be able to effectively manage the trading of 250 classes. On BOX, the same result can be achieved with two to three traders acting in the capacity of Market Makers, thus accruing substantial cost

<sup>9</sup>BSE also notes that the last sale of a Primary Market Maker ("PMM") membership on the ISE was \$7.5 million on September 29, 2003. BOX has no PMM equivalent and therefore lacks this significant entry cost.

savings in salaries, bonuses and other personnel related costs alone, which, under a conservative estimate, could be at least \$1 million annually.

Additionally, all of the existing floor based options exchanges have various facility and floor related fees (which, in the case of some of the floor-based exchanges, are set forth in several pages of detail in their schedules of miscellaneous fees). These types of fees simply do not exist on BOX. Because of the considerable franchise related and other fixed costs<sup>10</sup> on the existing floor-based exchanges, it is difficult to make a meaningful item-by-item comparison with an all-electronic market structured like BOX. Nevertheless, the BSE believes that when all relevant costs are considered there is a strikingly higher overall trading cost to market makers for trading on one of the floor-based exchanges when compared to the cost of trading on BOX. While the per contract execution fees on BOX would be competitive with the existing exchanges, BOX Market Makers would not have to bear nearly the same level of fixed costs as do members of the existing exchanges.

#### ii. BOX Minimum Activity Charge ("MAC")

Another key feature of the BOX market model is an "open" policy regarding the number of Market Makers that are allowed to be appointed to any class after the first six months of trading, as compared to a "closed model" of specialists, Designated Primary Market Makers ("DPMs"), and PMMs on the other options exchanges. This unique approach is not without costs to BOX however. The key factor driving BOX costs is the total number of Market Maker appointments,<sup>11</sup> as BOX's hardware and telecommunication infrastructure must accommodate the heavy message traffic generated by Market Makers. Trade executions are expected to represent a small percentage of the overall BOX traffic, yet would

<sup>10</sup>For instance, on the CBOE, in addition to the substantial up front cost of buying a seat (last sale on October 21, 2003 was \$280,000), there are numerous one time and recurring facility charges such as booth fees, facilities fees, storage fees, access fees, in-crowd phone fees, maintenance fees, phonemail fees, coat room service fees, charges for lost or damaged jackets, badge fees, on-floor line fees, shelf rental fees, in-house pager fees, handset fees, satellite television fees, terminal rental fees, technology fees, paper ticket fees, and several others to which the BOX market has no counterpart.

<sup>11</sup>The total number of Market Maker appointments refers to the number of registered Market Makers per class. For example, if there are 100 classes with an average of ten Market Makers per class, there are 1,000 appointments.

account for the majority of BOX's revenue.

The BSE believes that the low barriers to entry for the BOX market, coupled with the pent up demand for the ability to make markets in the U.S. options industry, as demonstrated by the number of market making applications for the proposed BOX market, would result in BOX having significantly more Market Makers per class than other markets.<sup>12</sup> Accordingly, the BSE could experience a financial burden in relation to its proposed BOX facility if it attempted to accommodate this extra demand by adding capacity to the BOX trading engine without some guaranteed off-setting revenue. Therefore, the pricing model proposed for the Market Maker firms is comprised of a Minimum Activity Charge (MAC) and a volume discount. The base trading fee per contract executed for a Market Maker is \$0.20. If a Market Maker's monthly trading activity is low, the MAC may be applicable. The actual MAC for a given options class would vary periodically with industry-wide trading volume, as determined by Options Clearing Corporation ("OCC") clearing data (see MAC Level chart below). If the total trading fees for a Market Maker in a given month do not exceed the total MAC for the classes for which a Market Maker holds appointments, Market Makers would be charged the MAC, rather than the trading fee. In no case would the MAC be charged in addition to the trading fees.<sup>13</sup>

Throughout the BOX development process, the BSE has strived to minimize the cost of entry to participants, while at the same time ensuring that BOX would recoup its operating costs. The MAC for each class was established to accomplish three objectives: (1) Recoup BOX's monthly operating costs; (2) provide one of the most cost competitive fee schedules in the U.S. options market; and (3) provide proper incentives for OFPs to send order flow to BOX.

<sup>12</sup>The BSE has received 54 Market Maker applications. 32 Market Makers are ready for the BOX launch and participated in the initial allocation of class appointments. Based on the appointments allocated, BOX would have an average of 14 Market Makers per class after the first six months of trading.

<sup>13</sup>For instance, if the total contracts traded in 25 classes in which a Market Maker holds appointments in a given month is 75,000 which, at the base trading fee rate of \$ 0.20 represent total trading fees of \$15,000, but the total MAC for the 25 classes is \$16,400, the Market Maker will be obligated to pay the MAC of \$16,400 for the month, rather than the calculated rate of \$15,000.

iii. Determination of the MAC for a Given Options Class

For purposes of determining the MAC for each options class listed by BOX, the

options classes listed by BOX would be divided into six classes, based on the total trading volume of each class across all U.S. options exchanges as determined by OCC data. The

classifications would be adjusted at least twice annually (in January and July, based on the average daily volume for the preceding six month period).

Class category	OCC average daily volume (# of contracts)	MAC per market maker per appointment per month
A .....	>100,000 .....	\$15,000
B .....	50,000 to 99,999 .....	3,000
C .....	25,000 to 49,999 .....	2,000
D .....	10,000 to 24,999 .....	750
E .....	5,000 to 9,999 .....	250
F .....	Less than 5,000 .....	100

The proposed MAC represents the OCC market share per Market Maker of approximately 1% with an implicit transaction fee per contract of \$0.20. For example, for options on Nasdaq 100 shares (QQQ) (Class Category A because of its high daily trading volume), the execution volume required by each Market Maker that results in an effective rate of \$0.20 per contract would be 3,750 contracts. This is equivalent to 0.9% of OCC volume on this class. The MAC for QQQ would be \$15,000 per month, which is equal to 3,750 contracts per day (\$15,000/\$0.20/20 trading days).

Although a Market Maker may not achieve enough trades to meet its MAC in a class in a given month, its implicit cost per contract would only increase by minimal amounts. For instance, if a Market Maker is assigned to all the currently proposed 250 classes, based on first and second quarter 2003 OCC volume, the monthly MAC for that Market Maker would be \$104,400. To reach an effective cost of \$0.20 per contract, this Market Maker would need to trade at least 522,000 contracts (and the Trading Fee, rather than the MAC, would apply). If the Market Maker traded only 400,000 contracts, his implicit cost per contract would be \$0.26. The MAC is totaled across all

classes assigned to a Market Maker so that volume for one class is fungible against other classes for that Market Maker. As a result, although the volume on a given class needed to reach an implicit cost of \$0.20 a contract may not be achieved, this can be compensated for by volume in excess of the MAC on another class, as the following table exemplifies.

In the example below, a Market Maker holds appointments on eleven options classes. The related MAC for each class is shown in the second column; the total of this column is the Market Maker's Total MAC for that month. The Market Maker's actual traded volume for each class for the month is provided in the third column. If the fees payable to BOX for his traded volume, at a rate of \$0.20 per contract, do not total to at least the total MAC for a given month, he would instead be billed the Total MAC (\$12,100).

Since the Total MAC in the above table is greater than the Total Trading Fee calculated from actual volume for the month, the Market Maker must pay the Total MAC. This gives him an implied trading fee per contract of slightly more than \$0.21 (\$12,100 divided by 57,500) which is, of course, still very competitive with the other

options exchanges, particularly when factoring in the substantial fixed costs of seat or bin memberships, either leased or owned that have no counterpart on BOX.

In summary, the "notional MAC" per options class is the building block for the determination of each Market Maker's monthly MAC. At the end of each month, a Market Maker would be obligated to pay the Total MAC, instead of the Total Trading Fee, if the per contract trading fee of \$0.20, when multiplied by the Market Maker's actual trade executions for the month, does not result in a Total Trading Fee payable to BOX at least equal to the MAC.

The MAC would not be applied during the first three calendar months following launch. Furthermore, the MAC would be "indexed" to BOX's overall market share as determined by OCC clearing volumes. At the beginning of each calendar month, BOX would calculate its market share for the previous month (market share equals the total BOX traded volume divided by the total OCC cleared volume for the classes that BOX has listed). If BOX's overall market share is less than 10%, BOX would reduce the MAC applicable for each Market Maker according to the following table:

TABLE A.—SAMPLE MONTHLY MAC FOR A MARKET MAKER

Appointed Class	MAC \$	Actual volume traded	Trading fee \$
A .....	3,000	15,000	3,000
B .....	2,000	12,000	2,400
C .....	2,000	10,000	2,000
D .....	2,000	7,000	1,400
E .....	750	2,000	400
F .....	750	2,000	400
G .....	750	2,500	500
H .....	250	1,500	300
I .....	250	1,000	200
J .....	250	2,500	500
K .....	100	2,000	400
Totals .....	12,100	57,500	11,500

BOX market share	MAC applicable rate
0% to 4.99% .....	33.3%
5% to 9.99% .....	66.7%
10% and more .....	full MAC

The BSE has determined that a fixed dollar amount for the MAC, rather than a percentage of OCC volume for each class, is preferable for determining the MAC. With a fixed dollar amount, Market Makers would be better able to know in advance their costs and be able to adjust their operations, minimize other costs and react to ensure they meet their monthly fee objectives. A percentage calculation would not allow Market Makers to achieve this objective as the fee would be variable monthly and Market Makers would not be able to plan their activities accordingly. The Exchange believes that a fixed dollar amount is easier to manage and thus is more in line with the spirit of the MAC.

iv. Adjustment of MAC Categories

The BSE would review the MAC categories at least twice per year in January and July. Although the MAC applicable to each category would remain constant, the category applicable to each class would be reviewed to reflect new OCC volume data for each class. The January review would be based on actual OCC volume for the last 6 months of the previous year, and the June review would be based on the first 6 months of current year. If exceptional events or news occur in a given class, the Exchange may review the MAC level for that class at anytime. The BSE would file with the Commission any changes to its fees pursuant to section 19 of the Act.<sup>14</sup>

v. Volume Discounts

The Exchange would also provide a volume discount if a Market Maker's average daily volume in a given month exceeds certain thresholds, including the minimum level of activity necessary to avoid paying a MAC for assigned classes. A Market Maker's activity will first be applied to meeting his MAC requirement. The volume discount will apply to any additional activity. The BSE believes that the volume levels are realistic and achievable, and that the discount levels are substantial so as to incent Market Makers to participate in the BOX market and provide customers with the beneficial effects of both low cost trading, as well as enhanced price improvement opportunities through BOX's unique Price Improvement

Period. The Volume Discounts would be as follows:

Average daily volume as appointed Market Maker (applicable only if MAC thresholds are achieved)	Per contract
For all contracts up to a volume of 25,000 contracts .....	0
For the contracts traded between 25,000 and 50,000 (First Discount Threshold) ....	\$0.03
For the contracts traded above a total of 50,000 (Second Discount Threshold) .....	0.05

As an example of how the Volume Discount would apply, suppose that, in a given month which had twenty (20) trading days, a Market Maker executed 1.2 million contracts. Of this total, 1.1 million executions were in the 100 classes for which he holds a market maker appointment; the total trading fees due to BOX before discount would be \$220,000 (\$0.20 multiplied by 1.1 million executions).

The total volume across his appointments would be an average daily volume ("ADV") of 55,000 contracts per day. 25,000 of these contracts (the excess over the first "threshold" of 25,000 ADV up to the second threshold of 50,000 ADV) would be subject to a discount of \$0.03; an additional 5,000 of these contracts would be subject to the second tier discount of \$0.05. The following discounts would apply:

- First threshold discount: 25,000 × \$0.03 × 20 days = \$15,000
- Second threshold discount: 5,000 × \$0.05 × 20 days = \$5,000
- Total discount: \$20,000
- Net trading fees due to BOX for month: \$200,000 (\$220,000 – \$20,000)
- "Implied" trading fee per contract for Market Maker in assigned classes: \$200,000/1,100,000 = \$0.1818

The Exchange believes that the total actual trading costs for Market Makers on the proposed BOX market, when compared to the actual total costs of trading on all of the existing options exchanges, pose very low barriers to access and entry into the U.S. options trading arena. The BSE strongly believes that lower total costs for Market Makers in combination with unfettered access (i.e., no purchase or lease requirements and open class appointments) and automated price time priority trading would create a competitive market on BOX in which Market Makers would have the proper incentives to pass on their cost savings in the form of better quotes, tighter spreads and price improvement to all market participants.

d. Other Fees

i. InterMarket Linkage

The Exchange is also proposing various other fees, including fees for trades executed via the InterMarket Linkage ("Linkage"). These Linkage fees include charges to Options Participants, such as those for a trade in the BOX market which is triggered by an away market's satisfaction request,<sup>15</sup> as well as a charge levied on away markets for inbound Principal ("P") and Principal as Agent ("PA") orders. This charge to an away market would not be in addition to any other per contract charges on BOX and is equivalent to the regular trading fee for Market Maker and broker-dealer accounts on BOX. The side of a BOX trade opposite an inbound P or PA order would be billed normally as any other BOX trade.<sup>16</sup>

As with all of the existing exchanges, the BSE is proposing that its fees related to the Linkage be approved on a pilot basis, until January 31, 2004. If, in concert with the other options exchanges, the BSE seeks to extend the pilot period for the effectiveness of these fees, such an extension would be the basis of a subsequent rule filing.

ii. Compliance Assessment if BSE is DOEA

Also included in the proposed fee schedule for the BOX market is a monthly compliance assessment for firms for which the BSE assumes examination responsibilities under the inter exchange allocation process pursuant to Rule 17d-2 of the Act.<sup>17</sup>

iii. Technology and Other Fees

The proposed fee schedule also includes certain technology fees. These include fees for services such as installation and hosting fees for Point of Presence Connection. BOX's Points of Presence ("PoP") are the sites where BOX Participants connect to the BOX network for communication with the BOX Trading Host. Each of these PoPs is operated by a third party supplier under contract to BOX. Through connection fees, BOX would recuperate the fees charged by each PoP contractor for the use of the facility by a BOX Participant. The amount to be paid by each BOX Participant is variable based

<sup>15</sup> Consistent with the plan governing the operation of the Linkage, no fees will be charged to the parties sending the Satisfaction request to BOX. Rather, the fee will be charged to the BOX Options Participant that was responsible for the trade-through that caused the Satisfaction request to be sent.

<sup>16</sup> See section 4 of the proposed BOX Fee Schedule.

<sup>17</sup> See section 6 of the proposed BOX Fee Schedule.

<sup>14</sup> 15 U.S.C. 78s.

on his particular configuration, the determining factors being the number of physical connections a BOX Participant has and the bandwidth associated with each.<sup>18</sup>

Additionally, there would be certain installation and hosting costs which are related to the physical installation of equipment (generally routers, though possibly other hardware) at the PoP site. BOX Participants would be required to pay this fee only if they have physical installations at the BOX PoP and for which BOX incurs fees from its own service suppliers.

Finally, there is also a "Cross Connect" fee per physical connection which varies by size from the smallest (T-1) to the largest (CAT 5).<sup>19</sup>

There also would be fees for optional services such as:

*CMS Order Routing Service Fee.* This service is optional for BOX Participants and is offered as an alternative to the FIX and proprietary gateways to the BOX Trading Host. The CMS Gateway is a service provided by BOX to those BOX Participants who use the CMS protocol for routing orders. CMS may only be used for agency activities (and not proprietary orders and market maker activities). BOX has subcontracted with a software bureau for the operation of this gateway; the per firm, per month fee is to recuperate some of the costs BOX incurs in paying the software supplier to provide this service.<sup>20</sup> *Back*

*Office Trade Management Software ("TMS") Fee.* TMS is optional software which BOX Participants may subscribe to in order to manage their BOX trades prior to their transmission by BOX to OCC. It is useful only to BOX Participants acting as agent for public customers or other broker-dealer accounts. If a firm is able to include all relevant clearing data on an order prior to sending it to BOX, this software is not required since the order entry formats of BOX messages allow the BOX Participant to achieve straight through processing.<sup>21</sup>

*Testing and Support for Third Party Providers Fee.* Third Party Service Providers, generally either Independent Software Vendors ("ISVs") who provide "front end" trading software systems or service bureaus which provide and operate order routing systems for broker dealers, may connect to the BOX Trading Host test platform. This is

<sup>18</sup> See section 5(a) of the proposed BOX Fee Schedule.

<sup>19</sup> See section 5(a) of the proposed BOX Fee Schedule.

<sup>20</sup> See section 5(b) of the proposed BOX Fee Schedule.

<sup>21</sup> See section 5(c) of the proposed BOX Fee Schedule.

necessary both to establish initial compatibility of their software as well as to maintain this connectivity as the BOX Trading Host implements upgrades and evolutions. This fee is charged directly to the Third Party Service Provider, not the Options Participant, and is not charged to BOX Participants who connect their proprietary software systems to the BOX Trading Host.<sup>22</sup>

None of the technology related fees would be billed prior to the launch of trading on BOX.

In all instances, the Exchange has strived to structure its fees to eliminate complexity and hidden charges in its BOX fee schedule, and, to that end, is proposing a minimal number of fees at very competitive rates.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements under section 6(b) of the Act,<sup>23</sup> in general, and furthers the objective of section 6(b)(4) of the Act,<sup>24</sup> 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*

The Exchange did not solicit or receive written comments on 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.

<sup>22</sup> See section 5(d) of the proposed BOX Fee Schedule.

<sup>23</sup> 15 U.S.C. 78f(b).

<sup>24</sup> 15 U.S.C. 78f(b)(4).

## 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. 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 filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-BSE-2003-17 and should be submitted by December 11, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>25</sup>

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

[FR Doc. 03-29095 Filed 11-18-03; 9:31 am]

BILLING CODE 8010-01-P

## DEPARTMENT OF STATE

[Public Notice 4541]

### Culturally Significant Objects Imported for Exhibition Determinations: "Gilbert Stuart"

AGENCY: Department of State.

ACTION: Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985, 22 U.S.C. 2459], the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681 *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended by Delegation of Authority No. 236-3 of August 28, 2000 [65 FR 53795], and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibit, "Gilbert Stuart", imported from abroad for the

<sup>25</sup> 17 CFR 200.30-3(a)(12).