

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48914; File No. SR-BSE-2003-22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Boston Stock Exchange, Inc. To Establish a General Revenue Sharing Program for Member Firms

December 12, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 9, 2003, the Boston Stock Exchange, Incorporated ("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. On December 10, 2003, the Exchange amended the proposed rule change.³ The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the BSE under section 19(b)(3)(A)(ii) of the Act,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The BSE proposes to establish a general revenue sharing program for Member Firms. The text of the proposed rule change is available at the BSE and at the Commission.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these

statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Transaction Fee Schedule to establish a new general revenue sharing program. In order to remain competitive with other market centers that trade Nasdaq National Market and Nasdaq SmallCap securities ("Nasdaq Securities"), including the Nasdaq Stock Market and National Stock Exchange (formerly the Cincinnati Stock Exchange), the BSE is implementing a general revenue sharing program based on National Stock Exchange's revenue sharing program, as adopted in 1999 and subsequently amended.⁵

The purpose of the proposed rule change is to provide general revenue sharing in certain securities on the BSE. To compete more effectively, the BSE proposes to provide incentive for Member Firms to execute trades on the BSE and recover costs by means of a quarterly revenue sharing program, without diminishing the quality of the market, including regulatory quality.⁶

The proposed rule change contemplates the Exchange sharing with Member Firms all or a portion of the BSE Member Firm's Operating Revenue ("MFOR") attributable to transactions in Nasdaq Securities after operating expenses and working capital needs have been met. MFOR is comprised of all operating revenue generated by trading activity on the Exchange and consists of transaction fees, technology fees, and market data revenue that is attributable to BSE Member Firm activity in Nasdaq Securities. All regulatory monies are excluded from MFOR.

Under the proposal, the Exchange's Board of Governors would have the authority to determine on an ongoing basis the appropriate amount of MFOR to be shared with Member Firms. In making this determination, the Board would be guided by the need to balance

the objective of maintaining the BSE's financial integrity.⁷ To simplify the administration of the revenue sharing program and smooth out monthly expense fluctuations, the program will operate on a quarterly basis. In addition, to the extent that Nasdaq market data revenue is subject to a year-end adjustment, revenues distributed to Member Firms are subject to adjustment accordingly, to ensure that Member receipts of market data revenue are consistent with the year-end true up procedures applied under the Nasdaq UTP Plan.

MFOR will be shared with Member Firms on a pro rata basis. After the BSE has accounted for operating expenses and working capital contributions, each Member Firm will receive a percentage of the MFOR to be shared that is equal to that firm's percentage contribution to the MFOR. In no event will the amount of revenue shared with Member Firms exceed MFOR.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act,⁸ in general, and with section 6(b)(4) of the Act,⁹ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

In addition, the BSE believes that the proposed rule change is consistent with section 6(b)(5) of the Act,¹⁰ in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect that mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The BSE believes that the proposed rule change will create incentives for Member Firms to actively quote and execute transactions on the Exchange, which will, in turn, enhance the National Market System.

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.

⁷ In particular, the BSE will not compromise its regulatory responsibilities by sharing revenue that would more appropriately be used to fund regulatory responsibilities. The Exchange will be mindful of its regulatory responsibilities when determining its working capital needs. See Securities Exchange Act Release No. 41286 (April 14, 1999), 64 FR 19843, 19844 (April 22, 1999) (SR-CSE-99-02).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See December 9, 2003 letter from John Boese, Vice President, Legal and Compliance, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, and attachments ("Amendment No. 1") Amendment No. 1 completely replaces and supersedes the original filing. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on December 10, 2003, the date the BSE filed Amendment No. 1.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ Securities Exchange Act Release Nos. 41082 (February 22, 1999), 64 FR 10035 (March 1, 1999) (SR-CSE-99-02) (notice); 41286 (April 14, 1999), 64 FR 19843 (April 22, 1999) (SR-CSE-99-02) (approval order); 46688 (October 18, 2002), 67 FR 65816 (October 28, 2002) (SR-CSE-2002-14) (notice of filing and immediate effectiveness).

⁶ See *infra* note 7.