

Auditing Standards, AU section 543). Depending on the significance of the portion of the financial statements audited by the other auditor, the principal auditor may divide responsibility with the other auditor by making reference to the audit of the other auditor in his or her report, or the principal auditor may take responsibility for the work of the other auditor by not making any reference to the other auditor.

In either event, the entire audit must be performed in accordance with the Board's standards. Section 103 of the Act, and the Board's Rule 3100, require registered public accounting firms, and associated persons thereof, to comply with all applicable auditing and related professional practice standards in connection with the preparation and issuance of audit reports on the financial statements of issuers. Whether the other auditor is a registered public accounting firm or an associated person of a registered public accounting firm, the other auditor must comply with the standards of the PCAOB.

Another commenter asked the Board to clarify whether non-U.S. public accounting firms—who are not required to register with the PCAOB until 2004—will be permitted, until registered with the PCAOB, to continue to reference “auditing standards generally accepted in the United States of America” when reporting on an issuer's financial statements. Like the Board's interim standards, with which a public accounting firm is required to comply even before the firm's mandatory registration date, during the period preceding the mandatory registration date, standards of the PCAOB apply to firms engaged in work that requires their registration. Therefore, non-U.S. public accounting firms that have not yet registered, that engage in work that would require them to be registered as of the mandatory registration date, are nevertheless required to reference “the standards of the Public Company Accounting Oversight Board (United States).”

Another commenter recommended that the Board expand the proposed standard to specifically address the various scenarios that auditors will encounter with respect to reporting in conjunction with initial public offerings. The SEC's Rule 3-01 of Regulation S-X requires that, like other SEC filings that must comply with Regulation S-X, a registration statement filed in connection with an initial public offering must include or otherwise incorporate “for the registrant and its subsidiaries consolidated, audited balance sheets as of the end of

each of the two most recent fiscal years.” (17 CFR 210.3-01). In addition, Rule 3-02 of Regulation S-X requires that there “be filed, for the registrant and its subsidiaries consolidated and for its predecessors, audited statements of income and cash flows for each of the three fiscal years preceding the date of the most recent audited balance sheet.” (17 CFR 210.3-02). Thus an issuer desiring to register a transaction involving the sale of securities must have financial statements audited in accordance with standards as required by the securities laws.

In Section 103 of the Act, Congress has provided the Board authority to establish auditing and related professional practice standards “to be used by registered public accounting firms in the preparation and issuance of audit reports.” In addition, the PCAOB has adopted, and the SEC has approved, PCAOB Rule 3100, which requires registered public accounting firms to comply with all applicable auditing and related professional practice standards of the PCAOB in connection with the preparation and issuance of audit reports on the financial statements of issuers. Accordingly, audit reports on the financial statements of issuers must now comply with—and under Auditing Standard No. 1 auditors must state that they performed the audit in accordance with—the standards of the PCAOB. So long as audits that were performed prior to April 25, 2003, were performed in accordance with then-prevailing generally accepted auditing standards, an auditor need not re-audit any financial statements that relate to periods preceding April 25, 2003. Further, as discussed above, because the Board adopted the “generally accepted auditing standards” in effect as of April 16, 2003, the Board believes it is appropriate to require auditors who issue or reissue reports on periods prior to the date Auditing Standard No. 1 becomes effective to state that their audits were performed in accordance with PCAOB standards, so long as they were performed in accordance with the “generally accepted auditing standards” prevailing at the time the audits were performed.

### III. Date of Effectiveness of the Proposed Rule 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 Board consents, the Commission will:

- (a) By order approve such proposed rule; or
- (b) Institute proceedings to determine whether the proposed rule 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 rules are consistent with the Act. Comments may be submitted electronically or by paper. Electronic comments may be submitted by: (1) Electronic form on the SEC Web site (<http://www.sec.gov>) or (2) e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Mail paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. All submissions should refer to File No. PCAOB-2003-10; this file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet Web site (<http://www.sec.gov>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. We do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All comments should be submitted on or before April 30, 2004.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49525; File No. SR-BSE-2004-12]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Boston Stock Exchange, Inc. to Retroactively Apply and Extend Its Specialist Evaluation Program Pilot

April 2, 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 March 23, 2004 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 BSE. On April 1, 2004 and April 2, 2004, the Commission received Amendment Nos. 1<sup>3</sup> and 2,<sup>4</sup> respectively, to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposal, on an accelerated basis.

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

The Exchange proposes to extend its Specialist Performance Evaluation Program ("SPEP") pilot retroactively from September 30, 2002 and to renew it prospectively until September 30, 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 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**

The Exchange seeks a two-year extension of its SPEP pilot to be applied retroactively from September 30, 2002, and prospectively until September 30, 2004.<sup>5</sup>

Under the SPEP pilot program, the Exchange regularly evaluates the performance of its specialists by using objective measures, such as turnaround time, price improvement, depth, and added depth. Generally, any specialist who receives a deficient score in one or more measures may be required to attend a meeting with the Performance Improvement Action Committee, or the Market Performance Committee.

While the Exchange believes that the SPEP program has been a very successful and effective tool for measuring specialist performance, it believes that modifications are necessitated as a result of changes in the industry, particularly decimalization. Accordingly, the Exchange is seeking to extend the pilot period of this program so that evaluation and modification can be undertaken before permanent approval is requested. The Exchange requests accelerated approval of the extension of the pilot program so that the Exchange will be able to continue evaluating the performance of its specialists without interruption, pending approval by the Commission of the Exchange's anticipated proposed changes to the program.

##### **2. Statutory Basis**

BSE believes that the statutory basis for the proposed rule change is Section 6(b)(5) of the Act,<sup>6</sup> in that the proposed rule change is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, 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, 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 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*

The Exchange has neither solicited nor received comments on 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, 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-BSE-2004-12. This file number should be included on the subject line if e-mail is used. To help the Commission 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, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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-BSE-2004-12 and should be submitted by April 30, 2004.

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

After careful review, the Commission finds that the Exchange's proposal to retroactively extend the SPEP pilot from September 30, 2002 until September 30, 2004 is consistent with the requirements of the Act and rules and regulations thereunder. Specifically, the Commission finds that the proposed rule change, as amended, is consistent

<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 Boese, Vice President, Legal and Compliance, BSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 31, 2004 ("Amendment No. 1"). In Amendment No. 1, BSE requested a two-year extension of its Specialist Performance Evaluation Program pilot applied retroactively from September 30, 2002 to September 30, 2004 (the original proposal sought only an extension of the pilot through June 30, 2004). In addition, BSE changed the basis of the proposal from Section 19(b)(3)(A) of the Act to Section 19(b)(2) of the Act and requested accelerated approval.

<sup>4</sup> See letter from John Boese, Vice President, Legal and Compliance, BSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated April 2, 2004 ("Amendment No. 2"). In Amendment No. 2, the BSE conformed its rule text to reflect the extension of the pilot until September 30, 2004.

<sup>5</sup> See Securities Exchange Act Release No. 46220 (July 17, 2002), 67 FR 48236 (July 23, 2002) (extending the SPEP pilot until September 30, 2002). See also Amendment No. 1, *supra* note 3 (requesting retroactive approval).

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

with Section 6(b)(5) of the Act,<sup>7</sup> which requires that the rules of the Exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, 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, to protect investors and the public interest. The Commission believes that the retroactive application of the SPEP pilot should allow the Exchange to continue to assess specialist performance without interruption, while allowing the Exchange adequate time to evaluate the program.

The Commission expects that, during the SPEP pilot, the Exchange will continue to monitor threshold levels and propose adjustments, as necessary, and continue to assess whether each SPEP measure is assigned an appropriate weight. In addition, the Exchange should continue to closely monitor the conditions for review and should take steps to ensure that all specialists whose performance is deficient and/or diverges widely from the best units will be subject to meaningful review.

The Commission finds good cause for granting the Exchange's request for a two-year extension of the SPEP pilot prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.<sup>8</sup> Among the obligations imposed upon specialists by the Exchange, and by the Act and rules promulgated thereunder, is the maintenance of fair and orderly markets in their securities. To ensure that specialists fulfill these obligations, it is important that the Exchange be able to evaluate specialist performance. The Exchange's SPEP pilot assists the Exchange in conducting its evaluation of specialist performance and accelerated approval of the proposed rule change would permit the SPEP pilot to continue on an uninterrupted basis. Therefore, the Commission believes good cause exists to approve the extension of the SPEP pilot from September 30, 2002 until September 30, 2004, on an accelerated basis. Accordingly, the Commission finds that granting accelerated approval of the requested extension is appropriate and

consistent with Sections 6(b)(5) and 19(b)(2) of the Act.<sup>9</sup>

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-BSE-2004-12), as amended is hereby approved on an accelerated basis until September 30, 2004.

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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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49524; File No. SR-CBOE-2004-18]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to an Extension of Its Prospective Fee Reduction Program

April 2, 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 March 26, 2004, 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 CBOE. CBOE filed this proposal pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2)<sup>4</sup> thereunder, as one establishing or changing a due, fee, or other charge imposed by the Exchange, which renders the proposal effective upon filing with the Commission. 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 the Substance of the Proposed Rule Change

CBOE proposes to make a change to its Fee Schedule to extend the Prospective Fee Reduction Program

through the close of the current Exchange Fiscal Year on June 30, 2004.

Below is the text of the proposed rule change. Proposed new language is *italics*; proposed deletions are in [brackets].

\* \* \* \* \*

#### FEE SCHEDULE—APRIL 1, 2004

1-18 No Change.

#### 19 PROSPECTIVE FEE REDUCTION PROGRAM

A Prospective Fee Reduction Program will be in effect for February [and March] *through June 2004*. CBOE Market Maker (as defined in CBOE Rule 8.1) transaction fees will be reduced from standard rates by \$.02 per contract side. In addition, floor brokerage fees will be reduced by \$.003 (three-tenths of one cent) per contract side.

Remainder of Fee Schedule No Change.

\* \* \* \* \*

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

In its filing with the Commission, CBOE 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. CBOE 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

CBOE represents that in recognition of high trading volume and positive financial results to date during its current fiscal year, the Exchange recently re-implemented a Prospective Fee Reduction Program for February and March 2004.<sup>5</sup> The Exchange now proposes to extend the current Prospective Fee Reduction Program through the close of the current CBOE fiscal year on June 30, 2004. Under the extended program, CBOE Market-Makers (as defined in CBOE Rule 8.1) will continue to have their transaction fees reduced from standard rates by \$.02 per contract side. In addition, under the extended program, CBOE will continue to reduce all floor brokerage fees by

<sup>9</sup> 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78s(b)(2).

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

<sup>11</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> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>5</sup> See Securities Exchange Act Release No. 49341 (March 1, 2004), 69 FR 10492 (March 5, 2004).

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

<sup>8</sup> The Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).