

Commission received no comments on the proposal.

II. Description of the Proposal

The Exchange proposed the following amendments to BOXR's By-laws: (1) Replace the requirement in Section 4 that the BSE Chairman be a member of the BOXR Board with the requirement that at least one Governor of the BSE Board of Governors must be a member of the BOXR Board; (2) replace the requirement in Section 14 that the BSE Chairman must be a member of BOXR's Executive Committee with the requirement that at least one Governor of the BSE Board of Governors, who shall also be a member of the BOXR Board, must be a member of BOXR's Executive Committee; and (3) eliminate language in both Sections 3 and 4 that provides that the BSE Chairman shall not be considered a member of the BOXR Board for "qualification purposes." Section 4 of BOXR's By-laws provides that at least 50% of the Directors on the BOXR Board must be Public Directors⁸ and at least 20% of the Directors on the BOXR Board must be representatives of BOX Options Participants.⁹ However, currently, the BSE Chairman is not considered to be a Public Director, BOX Options Participant Director or Industry Director¹⁰ and is not taken into account when determining whether the composition of the BOXR Board complies with the composition requirements of Section 4, although the BSE Chairman is a voting member of the BOXR Board. The proposed rule change, however, would require BOXR to consider the BSE Governor representative on the BOXR Board for the purpose of determining compliance with the composition requirements of Section 4, whether the BSE Governor representative is the BSE's Chairman or another member of the BSE Board of Governors.

III. Discussion and Commission Findings

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 exchange¹¹ and, in particular,

the requirements of Section 6(b) of the Act¹² and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change, as amended, is consistent with Section 6(b)(1) of the Act,¹³ in that the proposal is designed so that the Exchange is organized and has the capacity to carry out the purposes of the Act; Section 6(b)(3) of the Act,¹⁴ in that the proposal is designed so the rules of the Exchange assure a fair representation of its members in the selection of its directors and the administration of its affairs; and Section 6(b)(5) of the Act,¹⁵ in that the proposal is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

The Commission notes that the proposal is designed to provide the Exchange with greater flexibility with respect to the appointment of a BSE Governor to serve on the BOXR Board and Executive Committee. The Exchange's Constitution permits, but does not mandate, that the Exchange's Chairman and Chief Executive Officer ("CEO") positions be separated. If the positions are in fact held by two individuals, then the Exchange's Chairman would be responsible for the regulatory functions of the Exchange and it would be consistent with BOXR's regulatory mandate to have the BSE Chairman be a member of the BOXR Board and Executive Committee. However, in the event that the positions are held by a single individual, then the Exchange's Board would be able to appoint a BSE Governor other than the BSE Chairman to the BOXR Board. The Commission considers it appropriate for the Exchange to have a BSE Governor other than the Exchange's Chairman be appointed to the BOXR Board and Executive Committee, particularly in light of the Exchange's goal to maintain an adequate separation between its business and regulatory functions.

In addition, the proposal would allow the BSE Governor that serves on the BOXR Board to be considered for the purpose of determining the qualification percentages of the BOXR Board. The Commission notes that this provision would not alter the current requirement of the BOXR By-laws that at least 20% of the BOXR Directors (but no fewer than two Directors) be officers or directors of a firm approved as a BOX

Option Participant. Therefore, in the Commission's view, the proposal is consistent with the Act's requirement that the Exchange assure the fair representation of members in the selection of its directors and administration of its affairs.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁶ that the proposed rule change (SR-BSE-2004-58), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5-3274 Filed 6-23-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51881; File No. SR-BSE-2005-15]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to Listing Fees

June 20, 2005.

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 May 31, 2005, 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 Exchange proposes to amend its Listing Fees schedule by increasing its listing fees. The text of the proposed rule change appears below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

LISTING FEE SCHEDULE

Stocks

Listing Application Fee: [\$250.00]
\$500 per original listing application. Fee is non-refundable, but will be applied

⁸ See Definitions, Paragraph (p) of the BOXR By-laws.

⁹ See Definitions, Paragraph (o) of the BOXR By-laws.

¹⁰ See Article II, Section 1 of the BSE Constitution.

¹¹ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(1).

¹⁴ 15 U.S.C. 78f(b)(3).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

toward the [\$7,500.00] \$10,000 original listing application fee upon acceptance for listing.

Original Listing Fee: [\$7,500 each] \$10,000 for one security applied for in the original listing application on the date of filing and \$15,000 for two or more securities applied for in the original listing application on the date of filing.

Annual Listing Maintenance Fee: [\$1,000] \$1,500 for the first and \$750 for each subsequent issue, payable on the anniversary date of listing.

Listing Fees for Additional Shares: In the event that a listed corporation applies for listing of additional shares subsequent to the original listing, a fee will be charged on the basis of $[\frac{1}{2}]$ 1 cent for each additional share applied for, not to exceed [\$5,000] \$7,500 (i.e., if the additional amount applied for exceeds [1,000,000] 750,000 shares the fee is [\$5,000] \$7,500 regardless of the amount). The minimum fee for each such applicant is [\$250] \$500.

The original listing fee schedule also shall be applied, but not limited, to the following circumstances where a listed company:

- Authorizes a change of a listed security where, in the opinion of the exchange, a new security is created or such change alters any of the listed security's rights, preferences or privileges;
- Merges or consolidates with another listed company which results in the creation of a new company or into an unlisted company which becomes listed; or
- Creates a holding company or a new company is created by operation of law or through an offer to exchange shares.

In the event that a listed corporation reduces its outstanding stock through an exchange of shares whereby the shares listed on the Exchange are exchangeable for a lesser amount, the fee for the listing of the number of shares of new stock issuable in exchange for shares previously listed will be charged on the basis of $[\frac{1}{2}]$ 1 cent for each new share. The maximum fee on each such application is [\$5,000] \$7,500; the minimum fee is [\$250] \$500.

Supplemental Applications: Should a listed corporation change its name or the par value of its listed shares without any increase or decrease in outstanding stock, the fee for such application will be the minimum of [\$250] \$500.

Bonds

Original Listing Fee: \$7,500 for each class of indenture applied for in the original listing application on the date of filing. For additional listing under the same indenture, the fee is \$50 per one million dollars face value in a maximum

fee of \$2,500 and a minimum fee of [\$250] \$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 parts of such statements.

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

1. Purpose

The BSE proposes to amend its Listing Fee schedule by increasing its listing fees. The purpose of this change is to better reflect the Exchange's costs and the value of the services that the Exchange provides.³

2. Statutory Basis

The BSE believes that the proposed rule change is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁵ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The BSE 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 with respect to the proposed rule change.

³ The Commission notes that the Exchange has not raised its listing fees since 1991. See Securities Exchange Act Release No. 29276 (June 5, 1991), 56 FR 27060 (June 12, 1991).

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

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.

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. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BSE-2005-15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-BSE-2005-15. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 filing also will be available for inspection and copying at the principal office of the BSE. All comments received will be posted

without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BSE-2005-15 and should be submitted on or before July 15, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5-3294 Filed 6-23-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51880; File No. SR-CBOE-2005-38]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Sales Value Fee

June 20, 2005.

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 May 13, 2005, the Chicago Board Options Exchange, Inc. ("CBOE" 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 CBOE. The Exchange filed a proposed rule change as a "non-controversial" rule change

pursuant to Rule² 19b-4(f)(6) under the Act,³ 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 parties.

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

The CBOE proposes to amend its Fees Schedule and rules and issue a Regulatory Circular relating to its "Sales Value Fee." The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

Chicago Board Options Exchange, Inc.—Fees Schedule

[May 2] *May 13*, 2005

1.—4. Unchanged.

Notes: (1)–(15) Unchanged.

5. ETFs, STRUCTURED PRODUCTS, RIGHTS, WARRANTS (per round lot):

(A) TRANSACTION FEES:	MAXIMUM FEE:
Customer \$.00	N/A
Member Firm Proprietary .10	\$100 per side
Market Maker .05	\$100 per side
(B) LISTING FEES:	
Initial Fee (minimum) \$10,000.	
Annual Fee 2,500—10,000.	
(C) SEC VALUE FEE:	
\$0.00252 for every \$100 of value sold (seller only)].	

6. SALES VALUE FEE:

The Sales Value Fee ("Fee") is assessed by CBOE to each member for sales of securities on CBOE with respect to which CBOE is obligated to pay a fee to the SEC under Section 31 of the Exchange Act. To the extent there may be any excess monies collected under this Section 6, the Exchange may retain those monies to help fund its general operating expenses. The sales transactions to which the Fee applies are sales of options (other than options on a security index), sales of non-option securities, and sales of securities resulting from the exercise of physical-delivery options traded on CBOE. The Fee is collected indirectly from members through their clearing firms by OCC on behalf of CBOE with respect to options sales and options exercises. CBOE collects the Fee indirectly from members through their clearing firms with respect to non-option sales. Consistent with CBOE Rule 3.23, the Fee is collected by billing the member's designated clearing firm for the amount owed by the

member to the Exchange. The amount of the Fee is calculated as described below.

Calculation of Fee for Options Sales and Options Exercises: The Sales Value Fee is equal to (i) the Section 31 fee rate multiplied by (ii) the member's aggregate dollar amount of covered sales resulting from options transactions occurring on the Exchange during any computational period. *Calculation of Fee for Non-Options Sales: The Sales Value Fee is calculated using the same formula as the formula above for options transactions, except as applied only to the member's covered sales other than those resulting from options transactions.*

6.—9. Renumbered 7.—10. Otherwise unchanged.

[10. {Reserved}]

11.—23. Unchanged.

Remainder of Fee Schedule—Unchanged.

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CHAPTER XXX

Stocks, Warrants and Other Securities

[Rule 30.60. Securities and Exchange Commission Transaction Fee There shall be paid to the Exchange by each member and member organization, in such manner and at such time as the Exchange shall direct, the sum of one cent for each \$300 or fraction thereof of the dollar volume of securities sold by such member or member organization on the Exchange. The monies so paid to the Exchange shall be paid to the Securities and Exchange Commission as the transaction fee imposed upon the Exchange under the Exchange Act.

* * * Interpretations and Policies:

.01 The fee required to be paid under this Rule does not apply to any bond, debenture, or other evidence of indebtedness, or any security which the Securities and Exchange Commission may, by rule, exempt from imposition of the fee.]

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).