

distribution and principal amount/aggregate market value requirements found in sections 107A(b) and (c), respectively, will otherwise be met by the Trust as issuer of the Units. Thus, the Units will initially conform to the listing guidelines under section 107A and the continued listing guidelines under sections 1001–1003 of the Company Guide, except for the assets and stockholder equity characteristics of the Trust. At the time of issuance, the Commission also notes that the Units will receive an investment grade rating from an NRSRO.

The Commission also believes that the listing and trading of the Units should not unduly impact the market for the Underlying Corporate Bonds or raise manipulative concerns. As discussed more fully above, the Exchange represents that, in addition to requiring the issuers of the Underlying Corporate Bonds meet the Exchange's section 107A listing requirements, the Underlying Corporate Bonds will be required to meet or exceed the Exchange's Bond and Debenture Listing Standards pursuant to section 104 of the Company Guide, which among other things, requires that underlying debt instrument receive at least in investment grade rating of "B" or equivalent from an NRSRO. Furthermore, at least 75% of the underlying basket is required to contain Underlying Corporate Bonds from issuances of \$100 million or more. The Amex has also represents that the basket of Underlying Corporate Bonds will not be managed and will remain static over the term of the Units. In addition, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

The Commission notes that the investors may obtain price information on the Underlying Corporate Bonds through market vendors such as Bloomberg, or through websites such as [www.investinbonds.com](http://www.investinbonds.com).

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to a recently approved proposal to list and trade asset-backed securities representing ownership interest in a trust consisting of a basket of investment-grade fixed-income securities,<sup>28</sup> several other equity-linked instruments currently listed and traded on the Amex,<sup>29</sup> and other asset-backed

securities currently listed and traded on the NYSE.<sup>30</sup> The Commission believes that the Units will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Units promptly.

Additionally, the Units will be listed pursuant to Amex's existing hybrid security listing standards as described above. Based on the above, the Commission believes that there is good cause, consistent with sections 6(b)(5) and 19(b)(2) of the Act,<sup>31</sup> to approve the proposal on an accelerated basis.

## V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>32</sup> that the proposed rule change (SR-Amex-2002-92), is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>33</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46911; File No. SR-BSE-2002-10]

### Self Regulatory Organizations; The Boston Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change To Eliminate the BSE's Current Revenue Sharing Program and To Establish Two Market Data Revenue Sharing Programs

November 26, 2002.

On July 22, 2002, The Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> a proposed rule change to eliminate its existing revenue sharing program and to establish two market data revenue sharing programs. The BSE amended the proposed rule change on August 2, 2002 and on August 20, 2002. The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on September 19, 2002.<sup>2</sup> The Commission received two comments on

the proposal.<sup>3</sup> On October 28, 2002, the BSE responded to the NYSE Letter.<sup>4</sup>

The BSE proposes to operate market data revenue sharing programs that are substantially similar to existing programs at other self-regulatory organizations.<sup>5</sup> As set forth in its July 2, 2002 Order of Summary Abrogation ("Abrogation Order"),<sup>6</sup> the Commission will continue to examine the issues surrounding market data fees, the distribution of market data rebates, and the impact of market data revenue sharing programs on both the accuracy of market data and on the regulatory functions of self-regulatory organizations. In the interim, the Commission believes it is reasonable to allow the BSE to operate market data revenue sharing programs that place the BSE on substantially similar footing as other self-regulatory organizations.

Thus, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>7</sup> and, in particular, the requirements of Section 6 of the Act<sup>8</sup> and the rules and regulations

<sup>3</sup> See October 21, 2002 letter from Meyer S. Frucher, Chairman and Chief Executive Officer, The Philadelphia Stock Exchange, Inc., to Jonathan G. Katz, Secretary, Commission ("Phlx Letter"); and October 21, 2002 letter from Darla C. Stuckey, Corporate Secretary, New York Stock Exchange, Inc. ("NYSE"), to Jonathan G. Katz, Secretary, Commission ("NYSE Letter"). The Phlx Letter took no position on the BSE proposal, but instead spoke generally about the regulation of market data fees and revenues. The NYSE Letter asked the Commission to institute disapproval proceedings "as a first step in eradicating all such [market data] rebate programs." Because neither letter specifically addresses the BSE proposed rule change, the Commission has not included a summary of comments in this order. The letters are available for review in the Public Reference Room at the Commission.

<sup>4</sup> See October 28, 2002 letter from John A. Boese, Assistant Vice President, Legal and Regulatory, BSE, to Jonathan Katz, Secretary, Commission ("BSE Response Letter"). The BSE did not respond to the Phlx Letter because it did not receive the Phlx letter until after the BSE submitted its response to the NYSE Letter. The Commission did not require the BSE to submit an additional response letter to address the comments in the Phlx Letter, because the Phlx Letter "expresses no view" on the BSE's proposed rule change. See Phlx Letter at p. 1. The BSE Response Letter is available for review in the Public Reference Room at the Commission.

<sup>5</sup> See e.g., Securities Exchange Act Release No. 41238 (March 31, 1999), 64 FR 17204 (April 8, 1999)(SR-CSE-99-03).

<sup>6</sup> Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002)(File Nos. SR-NASD-2002-61, SR-NASD-2002-68, SR-CSE-2002-06, and SR-PCX-2002-37)(Order of Summary Abrogation).

<sup>7</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f.

<sup>30</sup> See, e.g. *supra* note 12.

<sup>31</sup> 15 U.S.C. 78f(b)(5) and 78s(b)(2).

<sup>32</sup> 15 U.S.C. 78s(b)(2).

<sup>33</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> See Securities Exchange Act Release No. 46496 (September 13, 2002), 67 FR 59084.

<sup>28</sup> See *supra* note 13.

<sup>29</sup> See *supra* note 22.

thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>9</sup> in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The decision to allow the BSE to establish the market data revenue sharing programs described in this proposed rule change, however, is narrowly drawn, and should not be construed as resolving the issues raised in the Abrogation Order, and does not suggest what, if any, future actions the Commission may take with regard to market data revenue sharing programs.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-BSE-2002-10), as amended, be, and it hereby is, approved.

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. 34-46922; File No. SR-CBOE-2002-66]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Eliminate Certain CBOE *direct* Connectivity Fees

November 26, 2002.

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 hereby is given that on November 1, 2002, the Chicago Board Options Exchange, Incorporated ("CBOE" 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

CBOE is proposing to eliminate certain CBOE *direct* member connectivity charges. The text of the proposed rule change is available at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

#### 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 regarding 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

Currently, in order to set up a Trader Workstation to access the CBOE *direct* screen-based trading platform, CBOE members and member organizations are charged a one-time \$5,000 set up fee as well as an additional \$1,500 for each additional terminal beyond the first. The Exchange has determined that it can encourage greater use of the CBOE *direct* Trader Workstations by eliminating these fees, and therefore proposes to do so.

###### 2. Statutory Basis

CBOE believes that the proposed rule change is consistent with section 6(b) of the Act<sup>3</sup> in general and section 6(b)(4)<sup>4</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

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

CBOE does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of 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.

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

CBOE represents that the proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to section 19(B)(3)(A)(ii) of the Act<sup>5</sup> and subparagraph (f)(2) of rule 19b-4 thereunder.<sup>6</sup> At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### 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 at 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 No. SR-CBOE-2002-66 and should be submitted by December 26, 2002.

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

<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. 78f(b).

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

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).