

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.

A. Surveillance

Information sharing agreements with primary markets are an important part of a self-regulatory organization's ability to monitor for trading abuses in derivative products. The Commission believes that the Exchange's comprehensive surveillance sharing agreements with the LME and the Hong Kong Stock Exchange for the purpose of providing information in connection with trading of the Index components and commodity futures contracts on which the Notes are based create the basis for Amex to monitor for fraudulent and manipulative practices in the trading of the Notes. The Exchange represents that all of the other trading venues on which current Index components are traded are members of the ISG and the Exchange has access to all relevant trading information with respect to those contracts without any further action.

Moreover, Amex Rule 1204A requires Exchange specialists to provide the Exchange with information relating to their trading in physical commodities and related futures contracts and options thereon or any other related commodities derivative. The Commission believes that these rules provide Amex with the tools necessary to adequately surveil trading in the Notes.

B. Dissemination of Information

The Commission believes that sufficient venues exist for obtaining reliable information so that investors in the Notes can monitor the underlying Index relative to the indicative value of their Notes. There is a considerable amount of information about the Index and its components available through public Web sites and professional subscription services, including Reuters and Bloomberg. The Index is calculated in real time by FXI and published every minute during the index period (09:15–16:00 Local Hong Kong Time) or (17:15–24:00 U.S. PDT) and is available, by subscription, directly from FTSE and from the following vendors: Reuters, Bloomberg, Telekurs, FTID, and LSE/Proquote.

The closing prices and daily settlement prices for the futures contracts on copper, lead, nickel and zinc are publicly available on the Web sites of the LME at <http://www.lme.com>. In addition, various data vendors and news publications publish futures

prices and data. The Exchange has represented that futures quotes and last sale information for the commodities underlying the Index are widely disseminated through a variety of market data vendors worldwide, including Bloomberg and Reuters.

The Exchange will calculate and disseminate an indicative basket value once each trading day. The Commission believes that this daily dissemination of an indicative basket amount is appropriate because the Notes are a bond traded on Amex's debt floor, the value of which is linked to the basket but at maturity is at least 100% of the principal investment amount, and there will be no creation or redemption of shares as there would be with an ETF. The end of day index value, based on last sale prices, is distributed at 16:15 (Local Hong Kong Time) and is available through the Financial Times Asia edition and other major newspapers and on the FTSE Index Services Web site: <http://www.ftse.com>. In addition, the daily closing index value, historical values, constituents' weighting, constituents' market capitalization and daily percentage changes, as well as, all corporate actions and rules relating to the management of the indices, are publicly available from <http://www.ftsexinhua.com>. The commodity prices are determined by the cash settlement price of each respective commodity futures contract traded on the LME. Wachovia will determine the value of the Notes at maturity, which will consist of at least 100% of the principal investment amount, plus the Basket Performance Amount.

C. Listing and Trading

The Commission finds that the Exchange's proposed rules and procedures for the listing and trading of the proposed Notes are consistent with the Act. The Notes will trade as debt securities subject to Amex rules including, among others, rules governing equity margins, specialist responsibilities, account opening and customer suitability requirements. The Commission believes that the listing and delisting criteria for the Notes should help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Notes. Finally, the Commission notes that the circular that the Exchange will distribute will inform members and member organizations about the terms, characteristics and risks in trading the Notes, including their prospectus delivery obligations.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-Amex-2005-105), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁶

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54035; File No. SR-BSE-2006-20]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 3 Thereto To Create a New Electronic Trading Facility, the Boston Equities Exchange ("BeX"), To Be Operated by BSX Group, LLC

June 22, 2006.

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 5, 2006, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the BSE. BSE filed Amendment No. 1 to the proposed rule change on June 1, 2006.³ BSE filed Amendment No. 3 to the proposed rule change on June 15, 2006.⁴ 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 Exchange is proposing to create a new electronic trading facility, the Boston Equities Exchange ("BeX"), to be operated by BSX Group, LLC ("BSX"). This rule filing sets forth the proposed governance structure of BSX and

²⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 superseded and replaced the original filing in its entirety. Amendment No. 2 was withdrawn by BSE on June 9, 2006.

⁴ Amendment No. 3 supersedes and replaces the original filing and Amendment No. 1 in their entirety.

proposed changes regarding BSE membership relating to the creation of BeX. Changes to the BSE's equity trading rules are set forth in a separate filing.⁵

The text of the proposed rule change is available on the Exchange's Web site (<http://www.bostonstock.com>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room. The text of the proposed rule change is also available on the Commission's Web site (<http://www.sec.gov/rules/sro.shtml>).

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, as amended, and discussed any comments it received on the proposed rule change, as amended. 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 BSE proposes to create a new electronic trading facility, as that term is defined in section 3(a)(2) of the Act,⁶ called BeX. BeX, which is to be developed, owned, and operated by BSX, would be an electronic securities communications and trading facility intended for the use of BSE members, including the new category of "Electronic Access Members" (described below) and their customers.

a. Relationship of the BSE to BSX

The BSE is entered into various agreements with BSX, under which BSX, of which the Exchange is currently a majority owner, would operate BeX as a facility of the BSE. All of the assets

and liabilities that solely support the equities trading business and equities clearing business of the BSE will be transferred to BSX. Upon restructuring, however, the BSE will continue to be the self-regulatory organization ("SRO") for BeX, and will continue to regulate the equities market under its current rule framework.⁷ The BSE also proposes to create a new category of BSE Members called Electronic Access Members ("EAMs") that will be entitled to trade equity securities on BeX. All of the proposed changes to facilitate this restructuring would be set forth in the BSX Group LLC Operating Agreement ("Agreement"), and reflected in changes to the Exchange's Constitution and a related provision in the Exchange's Rules of the Board of Governors ("BSE Rules"). The BSE Members approved the proposed changes to the Constitution. Although some additional changes may be required to BSE Rules, such changes are not the subject of this filing.⁸

The relationship between the BSE, BSX, and BeX is explained further in proposed Article XXI of the BSE Constitution and the Agreement. Under Article XXI, the books, records, and premises of BSX would be deemed to be the books, records, and premises of the BSE subject to oversight pursuant to the Act. The books and records of BSX would be subject at all times to inspection and copying by the BSE and the Commission. In addition, proposed Article XXI states that "[a]ll officers, directors employees and agents of BSX Group, LLC are the officers, directors, employees and agents of the Exchange for the purposes of the Act." As set forth in proposed Article XXI and the Agreement, these provisions would not be deemed to create any rights or benefits for any person or entity other than the SEC and the BSE.⁹

The structure of the proposed BSX would be substantially the same as that which the Exchange has established for its options trading business. For its options business, the Exchange established the BOX Market, which is controlled by the BOXG. The BSE is a

founding member and owned about a 30% interest in BOXG at its inception.¹⁰ BOXG operates the BOX Market, which is the BSE's marketplace for trading options. BOXR, a wholly owned substantially of the BSE, regulates the BOX Market. Similarly, the proposed BSX would operate BeX, which is the proposed BSE marketplace for trading equities. The BSE would own a controlling interest in BSX of approximately 58.33% at inception, which is approximately twice the percentage that the BSE initially owned of BOXG. The BSE would regulate the BeX market via a contract, rather than through a separate wholly owned substantially to which it delegates its self-regulatory responsibilities.

b. The BeX Market

There are two principal reasons the BSE proposes to create the BeX and to institute a system of EAMs.¹¹ First, by restructuring the control of its equities business as a limited liability company with business control and management by the directors and officers of BSX, the Exchange believes that the new entity will have greater flexibility to build and execute approaches designed to improve its competitive position, including the development of strategic relationships. Furthermore, the BSE anticipates that by restructuring so that a separately controlled organization is responsible for the operation of its equities business, the management of BSX will be better able to respond quickly to competitive pressures and to make changes to the operation as market conditions warrant.

Second, the BSE intends to increase the revenue of its equities business by conferring trading privileges on EAMs that do not bear the costs of seat ownership.¹²

The proposed BeX structures, although representing a departure from the way the BSE currently operates its equities business, is not significantly different from the way the Exchange currently conducts its options trading marketplace, as discussed above. Moreover, the proposed structure is similar in many ways to the composition of PCX/Arca. However, with both BOX and PCX/Arca, regulatory authority was delegated to SRO subsidiaries. In BeX, the BSE will

⁵ On May 10, 2006, the Exchange filed with the Commission a proposed rule change to implement rules governing BeX (SR-BSE-2006-22).

⁶ Under the Act, the "term 'facility' when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service." See 15 U.S.C. 78c(a)(2).

⁷ The proposed restructuring would not affect the Boston Options Exchange facility ("BOX Market") which is controlled by the Boston Options Exchange Group, LLC ("BOXG"). The BSE is a founding member and owner of the BOXG, and the BOX Market is regulated by Boston Options Exchange Regulation, LLC ("BOXR"), a wholly-owned subsidiary of the BSE to which the BSE has delegated regulatory oversight authority for the BOX Market.

⁸ See note 5, *supra*.

⁹ The Commission notes that proposed Article XXI does not expressly state that it would "not be deemed to create any rights or benefits for any person or entity other than the SEC and the BSE."

¹⁰ The BSE currently owns about 1 17% interest in BOXG.

¹¹ "EAMs" is used in this filing to refer both to Electronic Access Members and Electronic Access Memberships.

¹² The BSE intends to keep fees imposed upon EAMs consistent with the applicable fees imposed upon non-EAMs. A separate rule filing will address all fees related to the BeX, including EAM and non-EAM fees.

continue to directly regulate its equities trading business, without delegation to any subsidiary or facility. The BSE believes that it will be able to optimize its regulatory oversight of its equities business through the proposed approach. The Exchange notes that this model is in congruence with recent governance change at the Exchange, whereby the Exchange separated its Chairman and Chief Executive Officer roles,¹³ and in a separate BSE Board of Governors action established a Regulatory Oversight Committee, so as to more effectively protect the integrity of the Exchange's regulatory function.

c. BSX

The BSE states that BSX will be run by its management with limited policy direction by Exchange members. The entity will be controlled by its own Board of Directors, which will be responsible for the commercial governance of BeX, subject at all times to BSE's overriding regulatory responsibility. Currently, there are six "Members" of BSX ("BSX Members") who have a direct controlling interest in BSX ("direct controlling parties"): The BSE (approximately 58.33%), and Citigroup Financial Strategies Inc. ("Citi"); Credit Suisse First Boston Next Fund Inc. ("CSFB"); LB 1 Group, Inc. ("Lehman"), Fidelity Global Brokerage Group, Inc. ("Fidelity"); and Merrill Lynch L.P. Holdings Inc. ("Merrill") (each approximately 8.33%) (collectively, the "Founding Members").

In this filing, the BSE is submitting the Agreement, and specifically discussing those provisions related to the control and governance of BSX that will ensure that the BSE has the authority within BSX to maintain its responsibility for all regulatory functions related to the BeX. The Exchange's discussion of the Agreement will focus on the provisions of the Agreement related to BSE's authority for all regulatory functions of the proposed BeX facility.

(i) Governance of BSX

Section 4.2(b) of the Agreement gives the Board of Directors of BSX ("Board") the power and responsibility to manage the business of BSX, select and evaluate the performance of the Senior Executive, and establish and monitor capital and operating budgets. Section 4.1(a) provides that the Board will consist of between five and 15 directors. Section 4.1(b) provides that, initially, the BSE will be entitled to designate two

directors, while Citi, CSFB, Lehman, Fidelity and Merrill will each be entitled to designate one director. Moreover, for as long as BeX remains a facility of the Exchange, BSE will have the right to designate at least one director. Section 4.1(d) provides that any new Member that acquires a prescribed percentage interest in BSX also would be entitled to designate one director.¹⁴ Section 4.8 provides that, except as otherwise expressly provided in the Agreement or as requested by the Board, no BSX Member shall take part in the day-to-day management or operation of the business or affairs of BSX.

Pursuant to Section 4.1(c) of the Agreement, a director shall be terminated by the Board: (i) In the event such director has violated any provision of the Agreement or state or federal securities laws; or (ii) if the Board determines that such action is necessary or appropriate in the public interest or for the protection of investors. In addition, Section 4.2(a) requires each director to agree to comply with the federal securities laws and the rules and regulations thereunder and to cooperate with the Commission and BSE pursuant to their regulatory authority and the provisions of the Agreement. Furthermore, the Agreement provides that each director must take into consideration whether his or her actions as a director would cause BSX to engage in conduct that fosters and does not interfere with BSX's ability to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

(ii) Regulation of BeX

BSE states that it will regulate BeX as a facility of the Exchange. BSE has responsibility under the Act for the BeX facility. BSX, as owner and operator of the BeX facility, will also be subject to the Commission's jurisdiction. In this regard, Sections 12.1 and 15 of the Agreement each provide that the books, records, premises, officers, directors, agents, and employees of BSX shall be

deemed to be the books, records, premises, officers, directors, agents, and employees of BSE for the purpose of and subject to oversight pursuant to the Act. Moreover, under Section 5.3 of the Agreement, each BSX Member agrees to comply with the federal securities laws and the rules and regulations thereunder and to cooperate with the Commission and BSE pursuant to their regulatory authority and the provisions of the Agreement.

Section 5.8 of the Agreement further provides that, after appropriate notice and opportunity for hearing, the Board, by a two-thirds vote, including the affirmative vote of BSE and excluding the vote of the Member subject to sanction, may suspend or terminate a BSX Member's voting privileges or ownership: (i) In the event such Member is subject to a statutory disqualification, as defined in Section 3(a)(39) of the Act; (ii) in the event such Member has violated any provision of the Agreement or any federal or state securities law; or (iii) if the Board determines that such action is necessary or appropriate in the public interest or for the protection of investors.

In addition, Section 4.4(a) of the Agreement provides that BSX may not take any "Super Major Action" unless such action is approved by 75% of the Board, including four of the Founding Members and the affirmative vote of all of the directors designated by BSE. A "Super Major Action" is defined in Section 4.4(b) to include, among other things: A merger or consolidation involving BSX; a sale of any material portion of its assets; appointing directors to afford representation to BSX Members, other than Founding Members, having a percentage interest less than 5.00% operating the BeX with a Regulatory Services Provider other than the BSE or an affiliate of the BSE; making a material change to the market structure of BeX; the acquisition of any BSX Units ("Units")¹⁵ by any person that results in such person holding an aggregate percentage interest in BSX equal to or greater than 20%; altering the provisions for Board membership for the Founding Members; entry by BSX

¹⁵ The Agreement defines "Units" as "equal units of limited liability company interest in the Company, including an interest in the ownership and profits and losses of the Company and the right to receive distributions from the Company as set forth in this Agreement. For the avoidance of doubt, the ownership or possession of Units shall not in and of itself entitle the owner or holder thereof to vote or consent to any action with respect to the Company (which rights, except as otherwise specifically provided in this Agreement with respect to BSE, shall be vested in only duly admitted members of the Company), or to exercise any right of a member of the Company under this Agreement, the Act or other applicable law."

¹³ See Securities Exchange Act Release No. 49611 (April 23, 2004), 69 FR 23833 (April 30, 2004) (File No. SR-BSE-2004-10).

¹⁴ The Commission notes that Section 4.1(d) of the Agreement states that "the Board shall determine the number of Board seats, if any, to be designated by the new or Transfree Member and will determine the disposition of the Board seats designated by any Transferring Member."

into any other line of business other than the development, operation, and ownership of the BeX; except as expressly contemplated by the Agreement and the Related Agreements, as defined in the Agreement; entering into any agreement, commitment, or transaction with a BSX Member or any of its affiliates other than transactions or agreements upon commercially reasonable terms that are no less favorable to BSX than BSX would obtain in a comparable transaction or agreement with a third party; taking any action which would effect the voluntary, or which would precipitate an involuntary, dissolution or winding up of BSX; and entering into any partnership, joint venture or other similar joint business undertaking.

Section 16.2(a) of the Agreement generally provides that a BSX Member may not disclose any confidential information of BSX to any person, except as expressly provided by the Agreement. However, Section 16.2(b) provides exceptions for, among other things, disclosure required by the federal securities laws or in response to a request by the Commission pursuant to the Act, by the BSE or by another applicable SRO. Similarly, Section 16.5 of the Agreement provides that nothing in the Agreement should be interpreted as to limit or impede the rights of the Commission or BSE to access or examine BSX confidential information, or to limit or impede the ability of Members, or their officers, directors, agents, or employees, to disclose BSX confidential information to the Commission, or BSE.

(iii) Changes in Ownership of BSX

Section 8.1(a) of the Agreement defines a "Transfer" to be the direct or indirect, whether voluntary or involuntary, by operation of law or otherwise, transfer, disposition of, sale, lending, pledging, hypothecation, encumbrance, assignment, exchange, participation, subparticipation, or other transfer, in any manner, of Units, and provides that, except in certain limited circumstances, no person may directly or indirectly transfer any Units, or any rights arising thereunder, without the prior approval of the Board. To be eligible for such approval, the proposed transferee must: (1) Have sufficient financial assets to support such a Transfer; (2) be able to carry out its duties as a BSX Member under the Agreement (if admitted); and (3) be under no regulatory or governmental disqualification. Section 8.1(b) provides, in addition, that a person shall be admitted to BSX as a Member only upon (i) such person's execution of a

counterpart of the Agreement to evidence its written acceptance of the terms and provisions of the Agreement, and acceptance thereof by resolution of the Board, which acceptance may be given or withheld in the sole discretion of the Board, (ii) if such person is a transferee, its agreement in writing to its assumption of the obligations of its assignor under the Agreement and acceptance thereof by resolution of the Board, which acceptance may be given or withheld in the sole discretion of the Board, (iii) if such person is a transferee, confirmation by the Board that the Transfer was permitted by the Agreement, and (iv) approval of the Board. Whether or not a transferee who acquired any Units has accepted in writing the terms and provisions of the Agreement and assumed in writing the obligations of its predecessor in interest, the transferee shall be deemed, by the acquisition of those Units, to have agreed to be subject to and bound by all the obligations of the Agreement with the same effect and to the same extent as any predecessor in interest of such transferee.

Section 8.4(a) provides that no Transfer of Units may take place if such transaction: (i) In the opinion of tax counsel to the BSX, could cause a termination of the BSX within the meaning of Section 708 of the United States Internal Revenue Service Code or, (ii) in the opinion of the Board, based on advice of tax counsel, could cause a termination of the Company's status as a partnership or cause the Company to be treated as a publicly traded partnership for federal income tax purposes, (iii) is prohibited by any state, Federal or provincial securities laws, or (iv) is prohibited by the Agreement. Section 8.4(c) provides that any Transfer of Units, whether direct or indirect, voluntary or involuntary, by operation of law or otherwise, in contravention of any of the provisions of Article 8 of the Agreement would be void *ab initio*, and ineffectual, and would not bind or be recognized by BSX.

Section 8.4(d) of the Agreement provides that, beginning after Commission approval of this proposed rule change, BSX would be required to provide the Commission with written notice ten days prior to the closing date of any acquisition that results in a BSX Member's percentage ownership interest in BSX, alone or together with any affiliate, meeting or crossing either the 5%, 10%, or 15% thresholds.

Section 8.4(e) provides that any Transfer of Units that results in the acquisition and holding by any person, alone or together with any affiliate, of an interest that meets or crosses the 20%

threshold or any successive 5% threshold (*i.e.*, 25%, 30%, etc.), would trigger an amendment to the Agreement that would constitute a proposed rule change that BSE would be required to file with the Commission under section 19(b) of the Act. In addition, section 8.4(e) provides that an amendment to the Agreement resulting from a Transfer of Units that reduces BSE's ownership in BSX to below the 20% threshold would require a proposed rule change under section 19(b) of the Act. Additionally, SEC approval would be required to permit any person, alone or together with any affiliate, to control greater than 20% of the Total Votes (as defined in section 4.4(a) of BSX).

Section 8.4(f) of the Agreement provides for indirect changes in control of BSX. Any person that acquires a controlling interest (*i.e.*, an interest of 25% or greater) in a BSX Member that holds 20% or more of the Units would be required to agree to become a party to the Agreement and abide by its terms. The amendment to the Agreement caused by the addition of the indirect controlling party would trigger a proposed rule change that BSE would be required to file with the Commission pursuant to section 19(b) of the Act. The rights and privileges of the direct controlling party would be suspended until that proposed rule change became effective under the Act or until the indirect controlling party ceased to have a controlling interest in the direct controlling party.

Section 8.5 addresses BSX ownership concentration limits. Section 8.5(a) limits any person who, either alone or with its affiliates, is a BeX Market Participant¹⁶, from owning in the aggregate more than 20% of the outstanding units of BSX (the "Ownership Concentration Limit"). Section 8.4(b) sets forth any Person that is not a BeX Market Participant that, alone or together with affiliates exceeds the Ownership Concentration Limit, and subsequently becomes a BeX Market Participant, must, within 180 days, transfer sufficient interest so that the Person who is also a BeX Market Participant does not exceed the Ownership Concentration Limit.¹⁷

In addition to the requirements for proposed rule changes relating to direct

¹⁶ The Agreement defines "BeX Market Participant" as "a firm, or organization that is registered with the BSE pursuant to the BSE Rules for purposes of participating in equities trading on the BeX."

¹⁷ The Commission notes that while Section 8.5(b) of the Agreement provides for a cure period of 180 days, Chapter XVIII of the BSE Rules, Section 6 provides for a cure period of only 15 calendar days.

and indirect changes in control of BSX, section 4.3(c) of the Agreement prohibits BSX Members from entering into voting trust agreements with respect to their ownership interests in BSX.

(iv) Commission Jurisdiction Over Owners of BSX

Pursuant to section 18.6(a), each Member of BSX, by becoming party to the Agreement, would acknowledge that, to the extent that they are related to BSX activities, the books, records, premises, officers, directors, agents, and employees of the BSX Member will be deemed to be the books, records, premises, officers, directors, agents, and employees of BSE for the purpose of and subject to oversight pursuant to the Act. Pursuant to section 18.6(b), BSX and its Members, by becoming party to the Agreement, would agree that BSX's officers, directors, agents, and employees, as well as the officers, directors, agents and employees of BSX Members must irrevocably submit to the jurisdiction of the U.S. Federal courts, the Commission, and BSE for the purposes of any suit, action, or proceeding pursuant to the U.S. Federal securities laws and the rules or regulations thereunder, arising out of or relating to BSX activities or section 18.6(a). Also as provided in section 18.6(b) of the Agreement, each Member, officer, director, agent and employee of BSX, as well as the officers, directors, agents, and employees of BSX Members would waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action, or proceeding, any claim that they are not personally subject to the jurisdiction of the Commission; that the suit, action or proceeding is an inconvenient forum; that the venue of the suit, action, or proceeding is improper; or that the subject matter of the suit, action, or proceeding may not be enforced in or by such courts or agency. Section 18.6(c) of the Agreement would require the BSE and each other BSX Member to take such action as is necessary to ensure that such Member's officers, directors, and employees consent to the application of section 18.6 with respect to their BSX-related activities.

d. Electronic Access Members

As a second part of the proposed reorganization, the BSE is seeking to permit a new type of member and membership, EAMs, which will allow persons or firms to conduct business on the Exchange without having to purchase seats. The Exchange would issue EAMs to persons or entities that wish to engage in equity transactions on

the Exchange. Those seeking to become EAMs would need to satisfy all of the requirements for membership on the Exchange, as set forth in the Exchange Constitution and Rules, with the exception of purchasing a seat.

These Electronic Access memberships would provide access to the BeX, but would not confer the same rights and privileges as are conferred by Exchange seats. Specifically, EAMs would be represented on the BSE Board of Governors and on its various constitutional committees in the same capacity and to the same extent as BSE Members and will also have the right to vote in the same capacity as BSE Members, except with respect to Exchange ownership matters—specifically those matters related to mergers, consolidations, dissolution, liquidation, transfer, or conversion of assets of the Exchange. For the purposes of the Act, EAMs would be considered statutory Members of the BSE. There would be no limit to the number of EAMs issued, provided that, in the determination of the BSE Board of Governors, sufficient operational capacity existed to grant additional EAMs.

BSE seat holders would also have access to the BeX, and so would not need to separately be approved as EAMs. Seat holders would also retain ownership interests in the BSE and, by extension, in all BSE facilities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,¹⁸ in general, and furthers the objectives of section 6(b)(1),¹⁹ in particular, in that it is designed to enforce compliance by the Exchange's members with the rules and regulations of the Act and the rules of the Exchange; and section 6(b)(5),²⁰ in particular, in that it is designed to facilitate transactions in securities; to prevent fraudulent and manipulative acts and practices; 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.

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(1).

²⁰ 15 U.S.C. 78f(b)(5).

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

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition 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 has neither solicited nor received comments on the proposed rule change, as amended.

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 self-regulatory organization consents, the Commission will:

- A. By order approve such proposed rule change, as amended; or
- B. Institute proceedings to determine whether the proposed rule change, as amended, 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, as amended, 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-2006-20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BSE-2006-20. 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 Exchange. All comments received will be posted without change, the Commission does not edit personal identifying information from submission. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BSE-20067-20 and should be submitted on or before July 20, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Nancy M. Morris,
Secretary

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54034; File No. SR-BSE-2006-22]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto To Implement the Boston Equities Exchange ("BeX") Trading System

June 22, 2006.

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 10, 2006, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the BSE. BSE filed Amendment No. 1 to the proposed rule change on June 2, 2006.³ BSE filed Amendment No. 2 to the proposed rule

change on June 9, 2006.⁴ BSE filed Amendment No. 3 to the proposed rule change on June 15, 2006.⁵ 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 Exchange is proposing the implementation of the Boston Equities Exchange ("BeX") trading system, a fully-automated electronic book for the display and execution of orders in securities listed otherwise than on The Nasdaq Stock Market ("Nasdaq") for which the BSE obtains unlisted trading privileges ("UTP") after June 30, 2006.⁶

The text of the proposed rule change is available on the Exchange's Web site (<http://www.bostonstock.com>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

The text of the proposed rule change also appears below.⁷ Proposed new language is *italicized*.

RULES OF THE BOSTON STOCK EXCHANGE

Chapter II—Dealings on the Exchange

Sections 1 through 40. No Change.

SEC. 41. Minimum Price Variation

The Minimum Price Variation shall be 0.01. Those securities trading in fractions shall continue to trade in Minimum Price Variations as currently approved by the Exchange. *Mid-Point Cross Orders may be executed and reported in increments as small as one-half of the Minimum Price Variation.*

⁴ Amendment No. 2 replaces and supersedes the original filing and Amendment No. 1 in their entirety.

⁵ Amendment No. 3 replaces and supersedes the original filing, Amendment No. 1 and Amendment No. 2 in their entirety.

⁶ The rules governing trading in Nasdaq stocks (BSE Rules, Chapter XXXV) and the rules governing trading in listed securities assigned to a specialist (BSE Rules, Chapters I, II, III, XV, XVI, XVII, XIX, and XXXIII) remain unchanged. Separate from this rule filing, the BSE intends to apply for UTP in all stocks listed otherwise than on The Nasdaq Stock Market for which we do not yet have UTP.

⁷ The Commission notes that the rule text submitted by the Exchange contained several technical errors, which, for the purpose of this notice, have been corrected. In addition, the reference to "Market" orders contained in the last sentence of proposed Chapter XXXVII, Section 3(f)(ii) should instead be "At the Close" orders. The Exchange has committed to address these errors formally in an amendment to the proposed rule change following publication of this notice. Telephone conversation among John Curtain, Assistant Vice President Corporate Legal and Contracts Attorney, BSE; Jennifer Colihan, Special Counsel, Division of Market Regulation ("Division"), Commission; and David Michehl, Special Counsel, Division, Commission on June 22, 2006.

Sections 42 through 43. No Change.
Chapter XXXVII—Boston Equities Exchange ("BeX") Trading System
The Boston Equities Exchange ("BeX") trading system is a fully-automated facility of the Exchange, which allows eligible orders in eligible securities to electronically match and execute against one another.

Section 1. BeX Eligible Securities
(a) Eligible Securities. All securities eligible for trading on the Exchange that are listed otherwise than on The Nasdaq Stock Market for which the BSE obtains unlisted trading privileges ("UTP") after June 30, 2006 shall be eligible for trading through BeX. Any specialist request to remove a security from BeX shall be considered by the appropriate Board Committee.

Section 2. Eligible Orders
(a) All orders sent to BeX must be round lot market or limit orders, specifically designated in the manner specified by the Exchange for trading in BeX.

(b) All orders sent to BeX must be for regular way settlement.

(c) Eligible order types:

(i) Orders eligible for execution in BeX may be designated as one of the following existing BSE order types as defined in Chapter I, Section 3 except that any reference in the existing BSE Rules to the execution of Orders as soon as "represented at the specialist's post" shall for purposes of this Section be understood to mean "entered in BeX":

(A) At the Opening or At the Opening Only Order.

(B) Day Order.

(C) Do Not Increase (DNI).

(D) Do Not Reduce (DNR).

(E) Fill or Kill.

(F) Good "Till Cancel Order.

(G) Immediate or Cancel.

(H) Limit, Limited Order or Limited

Price Order.

(I) At the Close.

(J) Market Order.

(K) Stop Limit Order.

(L) Stop Order.

With the exception of Fill or Kill and Immediate or Cancel Orders, a customer may append to an Order an instruction that the Order be cancelled or routed to the market(s) displaying the National Best Bid or Offer if the Order would trade through the National Best Bid or Offer if executed on the BeX.

(ii) Orders eligible for execution in BeX may also be designated as one of the following additional order types:

(A) "Cross": An order to buy and sell the same security at a specific price better than the best bid and offer displayed in BeX and equal to or better than the National Best Bid and Offer. A Cross Order may represent interest of one or more BSE Members.

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaces and supersedes the original filing in its entirety.