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–Amex–2004–11 on the subject line.

Paper Comments

• Send 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 Number SR–Amex–2004–11. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of this filing also will be available for inspection and copying at the principal office of the Amex. 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–Amex–2004–11 and should be submitted on or before March 24, 2005.

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

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, that are applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act,[10] which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.[11] New Amex Rule 135A will set forth formal procedures to be followed by an Exchange member that seeks to have a trade nullified or revised when the parties to the trade have not agreed that the trade should be cancelled or revised, or by an Amex Floor Governor who seeks to nullify or revise trades on his or her own motion. The Commission believes that it is proper for trade nullification and revision procedures to be codified and thus made transparent to Amex members who are parties to trades that are deemed to be clearly erroneous and to Amex Floor Officials who are called upon to review such trades. The new rule also sets forth the procedure to be followed in the event of any appeal of a determination made by an Exchange Floor Official or Floor Governor pursuant to proposed Amex Rule 135A. The Commission believes that this procedure is designed to help ensure that Amex Rule 135A is exercised in a fair and reasonable manner. In addition, the Commission believes that proposed Amex Rules 135(b) and 135A(d), which allow a member to share in customer losses that were caused in whole or in part by the member's action or inaction, are consistent with the Act.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission notes that the proposed rule change would provide members trading non-Nasdaq equity securities with essentially the same procedures recently approved by the Commission for the nullification or adjustment of clearly erroneous transactions involving Nasdaq National Market Securities.[12] The Commission believes that because the proposal raises no new issues of regulatory concern, it is appropriate to accelerate approval of the proposed rule change so that members who trade any kind of equity securities that are admitted to dealings on the Exchange will be afforded similar processes in the event that a particular trade to which they are a party is claimed to be clearly erroneous.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change, as amended (SR–Amex–2004–11), is hereby approved, on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–845 Filed 3–2–05; 8:45 am]

BILLING CODE 8010–01–P

[10] *Id.*

[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] *See* Securities Exchange Act Release No. 49941, *supra* note 6.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51251; File No. SR–BSE–2004–27]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Boston Stock Exchange, Inc., Relating to the Reporting of Riskless Principal Transactions

February 24, 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 December 3, 2004, the 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 the Exchange. On December 23, 2004, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice and order to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval to the proposal.

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

BSE is proposing to adopt a rule pertaining to the reporting of riskless principal transactions. Proposed new language is *italicized.*

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No.1 superseded and replaced the original proposal in its entirety.

Chapter II

Dealings on the Exchange

Secs. 1–43 No change.

Riskless Principal Transactions

Sec. 43

(1) A ''riskless principal transaction'' is a two-legged transaction in which a member, (i) after having received an order to buy a security that it holds for execution on the Exchange, contemporaneously purchases the security as principal at the same price, exclusive of markups, markdowns, commissions and other fees, to satisfy all or a portion of the order to buy or (ii) after having received an order to sell a security that it holds for execution on the Exchange, contemporaneously sells the security as principal at the same price, exclusive of markups, markdowns, commissions and other fees, to satisfy all or a portion of the order to sell.

(2) A last sale report for only the initial principal leg of the transaction shall be submitted in accordance with the rules and procedures of the market where the transaction occurred. The second ''riskless principal'' leg of the transaction must still be submitted and executed on the Exchange as with any other order, but the Exchange will not report that leg of the transaction to the respective consolidated tape. As applicable, the riskless principal leg may be submitted to the Exchange for execution as either (i) a non-tape, clearing-only order with a ''CTA no-print'' indicator if a clearing report is necessary to clear the transaction; or (ii) a non-tape, non-clearing order with a ''CTA no-print'' indicator if a clearing report is not necessary to clear the transaction.

(3) A member must have written policies and procedures to assure that its riskless principal transactions comply with this Section. At a minimum these policies and procedures must require that the customer order be received prior to the offsetting transactions, and that the offsetting transactions be executed contemporaneously with the original transaction. A member must also have supervisory systems in place that produce records that enable the member and the Exchange to accurately and readily reconstruct, in a time-sequenced manner, all orders for which a member relies on the riskless principal exemption.

* * * * *

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. 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

Under the proposed rule change, if a member of the Exchange is acting as principal for its own account, its trade would be considered a ''riskless principal transaction'' to the extent that: (i) After having received an order to buy a security that the member holds for execution on the Exchange, the member purchases the security from another firm or market to offset a contemporaneous sale to satisfy all or a portion of the original buy order at the same price, exclusive of any markup, markdown, commission, or other fee; or (ii) after having received an order to sell a security that the member holds for execution on the Exchange, the member sells the security to another firm or market to offset a contemporaneous purchase to satisfy all or a portion of the original sell order at the same price, exclusive of any markup, markdown, commission, or other fee.

The Exchange is proposing to adopt a trade reporting rule applicable to riskless principal transactions in any securities traded on the Exchange.[4] Under this proposal, the ''initial principal'' leg (the ''first leg'') of the transaction is reported to the consolidated tape by whichever market on which the trade occurs. Pursuant to this rule filing, the BSE member would apply a special marker to the second ''riskless principal'' leg (the ''second leg'') and the BSE would not report that leg to the consolidated tape. The first leg of the transaction will continue to be matched and executed on the Exchange or on another market, whichever the case may be, and disseminated for publication to the respective consolidated tape in accordance with the relevant market's requirements. For the second leg of the transaction, to the extent that any of the order is offset by the initial principal execution, the member would designate in its trade report to the BSE the proprietary order as riskless. According to BSE, this BEACON[5] modification will contemporaneously prevent priority violations.

The Exchange represents that BEACON will systematically capture every first leg of every transaction even if it occurs on another market.[6] BEACON will automatically match the first and second leg of the transaction by utilizing tag numbers to ensure that the special marker was used in a riskless principal transaction. More specifically, where a BSE member is executing a trade on another market, BEACON will automatically attach a tag number. This tag number will be matched to the second leg of the transaction. The Exchange will not report the second leg of the transaction to the respective consolidated tape.

Example: A member receives an order to sell 100 shares at $50 and holds that order for execution on the Exchange. Thereafter the member, as principal, sells 100 shares to another firm at $50 (the first leg) and then, as principal, fills the original order at $50 (the second leg). The member designates the filling of the customer order (the second leg) as the ''riskless principal'' leg of a riskless principal transaction. The Exchange reports the first leg of the transaction to the consolidated tape, but not the second leg.

Procedurally, if the first leg of the transaction occurs on the Exchange, the Exchange will report the first leg of the transaction to the consolidated tape pursuant to its rules. If the first leg of the transaction occurs on another market, that market would report the trade to the consolidated tape according to its rules. The BSE member who has a duty to report the execution[7] shall report the execution as either: (i) a non-tape, clearing-only order with a capacity indicator of ''CTA no-print,'' if a clearing report is necessary to clear the transaction; or (ii) a non-tape, non-clearing order with a capacity indicator

[4] The Exchange currently trades on an unlisted trading privilege basis securities that are listed on the New York Stock Exchange or ''Tape A'' program, the American Stock Exchange or the ''Tape B'' program, and the Nasdaq Stock Market or ''Tape C'' program.

[5] The Boston Exchange Automated Communication Order-routing Network, which is known as BEACON, is the order-routing and execution system utilized on the Exchange.

[6] *See* Letter from John Boese, Chief Regulatory Officer, BSE, to Michael Gaw, Senior Special Counsel, Division of Market Regulation, Commission, dated February 10, 2005.

[7] *See* Rules of the Board of Governors of the Boston Stock Exchange, Chapter II, Dealings on the Exchange, Section 2.

of ''CTA no-print,'' if a clearing report is not necessary to clear the transaction.

In addition to the automatic matching of orders, the Exchange will conduct surveillance to determine that both legs of a riskless principal transaction correlate to each other, particularly if one leg occurs on another market. The Exchange will also review to see that members implement written policies and procedures as described below to assure compliance with this proposed rule. To determine that there is a matched order, the two legs of the riskless principal transaction would be electronically reviewed as part of the audit trail used by the Exchange to surveil and regulate trading. On a daily basis, for each execution with an indicator of ''CTA no-print,'' the electronic review will confirm that a contemporaneous order was placed after the customer order was received and the order was executed prior to the execution of the customer order. The electronic review will also confirm that each leg of the riskless principal transaction was executed at the identical price and size. If there is no corresponding matched order, an exception will be generated, and surveillance will conduct a manual review to determine whether the execution was actually a riskless principal transaction and whether the execution should be considered a covered sale.

The Exchange believes that, if the member complies with all aspects of the proposed rule, the sell side of the second leg would be a ''recognized riskless principal sale,'' as defined in Rule 31(a)(14) of the Act.[8] Therefore, this sale would not be a ''covered sale'' as defined in Rule 31(a)(6) under the Act[9] for which the Exchange would incur a liability to the Commission under section 31 of the Act.[10] Accordingly, the second ''riskless principal'' leg would not increase the amount of fees that the member owes the Exchange pursuant to Chapter XXIII, section 2, of the Exchange's rules.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, consistent with section 6(b) of the Act,[11] in general, and section 6(b)(5) of the Act,[12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and 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.

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

BSE does not believe that the proposed rule change, as amended, will impose any inappropriate burden on competition.

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 in connection with the proposed rule change, as amended.

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. 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–2004–27 on the subject line.

Paper Comments

- Send 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 Number SR–BSE–2004–27. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of 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–2004–27 and should be submitted on or before March 24, 2005.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

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 exchange.[13] Specifically, the Commission believes the proposal is consistent with section 6(b)(5) of the Act,[14] which requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 rule proposed by BSE is substantially similar to NASD Rule 6420(d)(3)(B) relating to the reporting of riskless principal transactions. The Commission previously has found the NASD riskless principal rule to be consistent with the Act.[15] The Commission believes that BSE's proposal raises no new or significant regulatory issues and is also, therefore, consistent with the Act. Based on the information provided by BSE in support of this proposed rule change, the proposal appears reasonably designed to ensure that the two contemporaneous trades for which an Exchange member acts as principal can be matched and are indeed riskless for the member.

Assuming all the requirements of BSE's rule are met, a second offsetting sale occurring on the Exchange would be a ''recognized riskless principal sale'' as defined in Rule 31(a)(14) under the Act.[16] Therefore, the sale also would be an ''exempt sale'' as defined in Rule

[8] 17 CFR 240.31(a)(14).

[9] 17 CFR 240.31(a)(6).

[10] 15 U.S.C. 78ee.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

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

[14] 15 U.S.C. 78f(b)(5).

[15] *See, e.g.*, Securities Exchange Act Release No. 41606 (July 8, 1999), 64 FR 38226 (July 15, 1999).

[16] 17 CFR 240.31(a)(14).

31(a)(11) under the Act [17] and not a ''covered sale'' as defined in Rule 31(a)(6) under the Act.[18] The Commission notes, however, that BSE members must have written policies and procedures and supervisory systems in place before reporting trades as riskless pursuant to Chapter II, Section 43 of the Exchange's rules.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after publication in the **Federal Register**. The Commission believes that the rule proposed by BSE is substantially similar to NASD Rule 6420(d)(3)(B) and thus raises no new or significant regulatory issues. As such, the Commission believes that accelerated approval is appropriate.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[19] that the proposed rule change (File No. SR–BSE–2004–27), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–847 Filed 3–2–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51252; File No. SR–CBOE–2004–16]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Setting Aside Earlier Order Issued by Delegated Authority and Granting Approval to a Proposed Rule Change and Amendment No. 1 Thereto Relating to an Interpretation of Paragraph (b) of Article Fifth of Its Certificate of Incorporation and an Amendment to Rule 3.16(b)

February 25, 2005.

I. Introduction

On March 4, 2004, the Chicago Board Options Exchange, Inc. (''CBOE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend CBOE Rule 3.16(b). The proposed amendment would interpret certain terms used in paragraph (b) of Article Fifth of the CBOE Certificate of Incorporation (''Article Fifth(b)''). On April 9, 2004, the CBOE filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on May 3, 2004.[4] The Commission received one comment letter on the proposed rule change.[5] On May 25, 2004, the CBOE submitted a response to the comment letter,[6] and two of the original commenters replied to CBOE's response in a letter submitted on June 14, 2004.[7] On July 15, 2004, the Commission approved, by authority delegated to the Division of Market Regulation, the proposed rule change, as amended.[8]

On August 23, 2004, Marshall Spiegel (''Petitioner'') filed with the Commission a notice of intention to file a petition for review of the Commission's approval by delegated authority,[9] and on September 13, 2004, Petitioner filed a petition for review.[10] On September 17, 2004, the Commission acknowledged receipt of these documents from Petitioner and confirmed that the automatic stay provided in Rule 431(e) of the Commission's Rules of Practice was in effect.[11]

The Commission has considered the petition and for the reasons described below, has determined to set aside the earlier action taken by delegated authority and grant approval of the proposed rule change, as amended.[12]

II. Description of the Proposed Rule Change

A. Background

As compensation for the time and money that the Board of Trade of the City of Chicago (''CBOT'') had expended in the development of the CBOE, a member of the CBOT is entitled to become a member of the CBOE without having to acquire a separate CBOE membership. This entitlement is established by Article Fifth(b) of the CBOE's Certificate of Incorporation (''Article Fifth(b)''). Article Fifth(b) provides, in relevant part:

> [E]very present and future member of the [CBOT] who applies for membership in the [CBOE] and who otherwise qualifies shall, so long as he remains a member of [the CBOT], be entitled to be a member of the [CBOE] notwithstanding any limitation on the number of members and without the necessity of acquiring such membership for consideration or value from the [CBOE] (''Exercise Rights'').

Article Fifth(b) also explicitly states that no amendment may be made to it without the approval of at least 80% of those CBOT members who have ''exercised'' their right to be CBOE members and 80% of all other CBOE members.

In 1992, the Commission approved the CBOE's proposed interpretation of the meaning of the term ''member of the [CBOT]'' as used in Article Fifth(b). The interpretation proposed by the CBOE was one agreed upon by the CBOE and the CBOT, is embodied in an agreement dated September 1, 1992 (''1992 Agreement''), and is reflected in CBOE Rule 3.16(b). CBOE Rule 3.16(b) states that ''for the purpose of entitlement to membership on the [CBOE] in accordance with * * * [Article Fifth(b)] * * * the term ''member of the [CBOT],'' as used in Article Fifth(b), is interpreted to mean an individual who is either an ''Eligible CBOT Full Member'' or an ''Eligible CBOT Full Member Delegate,'' as those terms are defined in the [1992 Agreement] * * * [13]

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[17] 17 CFR 240.31(a)(11).

[18] 17 CFR 240.31(a)(6).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Arthur B. Reinstein, Deputy General Counsel, CBOE, to Lisa N. Jones, Special Counsel, Division of Market Regulation (''Division''), Commission, dated April 8, 2004 (''Amendment No. 1'').

[4] Securities Exchange Act Release No. 49620 (April 26, 2004), 69 FR 24205 (May 3, 2004).

[5] Letter from Thomas A. Bond, Norman Friedland, Gary P. Lahey, Marshall Spiegel, Anthony Arciero, Peter C. Guth, Robert Kalmin, Sheldon Weinberg, David Carman and Jeffrey T. Kaufmann, Members, CBOE, to Jonathan G. Katz, Secretary, Commission, dated April 28, 2004 (''April 28th Comment Letter''). This comment letter includes comments on another CBOE proposed rule change, SR–CBOE–2002–01, that was withdrawn on April 7, 2004. *See* Letter from Arthur B. Reinstein, Deputy General Counsel, CBOE, to Lisa N. Jones, Special Counsel, Division, Commission, dated April 6, 2004. *See also* letters from Marshall Spiegel to Margaret H. McFarland, dated November 4, 2004 (''November 2004 Letter'') and December 22, 2004 (''December 2004 Letter'').

[6] Letter from Joanne Moffic-Silver, General Counsel and Corporate Secretary, CBOE, to Jonathan G. Katz, Secretary, Commission, dated May 24, 2003.

[7] Letter from Thomas A. Bond and Gary P. Lahey, Members, CBOE, to Jonathan G. Katz, Secretary, Commission, dated June 8, 2004 (''June 8th Letter'').

[8] Securities Exchange Act Release No. 50028 (July 15, 2004), 69 FR 43644 (July 21, 2004) (''July 15th Order'').

[9] Letter from Marshall Spiegel, CBOE Equity Member, to Margaret H. McFarland, Deputy Secretary, Office of Secretary, Commission, dated August 23, 2004.

[10] Letter from Marshall Spiegel, CBOE Equity Member, to Margaret H. McFarland, Deputy Secretary, Office of the Secretary, Commission, dated September 13, 2004 (''Petition for Review'').

[11] Letter from Margaret H. McFarland, Deputy Secretary, Office of the Secretary, Commission, to Marshall Spiegel, CBOE Equity Member, dated September 17, 2004.

[12] *See* July 15th Order, *supra* note 8.

[13] In the 1992 Agreement, an ''Eligible CBOT Full Member'' is defined as an individual who at the