

Dated: November 3, 1999.

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42074; File No. SR-BSE-99-11]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Implementing a Post Primary Session

October 29, 1999.

I. Introduction

On July 13, 1999, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to implement a Post Primary Session ("PPS").

The proposed rule change was published for comment in the **Federal Register** on September 8, 1999. No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

The Exchange proposes to extend the close of trading on the BSE from 4 p.m. to 4:15 p.m. Eastern Time, creating a new PPS. Pursuant to Chapter I-B, Section 1 (Primary Session), the current trading hours at the Exchange are from 9:30 a.m. until 4:00 p.m. Eastern Time. The proposal will extend these hours for an additional fifteen minutes, until 4:15 p.m. Eastern Time. Under the proposal, all Exchange rules applicable to floor trading during the Exchange's Primary Session will continue to apply during the PPS, with the following exceptions: (1) Only orders that are designated "PPS" will be eligible for execution; (2) limit order on the book from the Primary Session will not be eligible for execution, but will carry over to the next day; (3) there will be no automated executions; (4) there will be no application of the Execution Guarantee Rule,³ and (5) GTX⁴ orders will be executable after the close of the PPS (i.e., GTX orders are executable after

4:15 p.m. instead of 4:00 p.m. Eastern Time). Accordingly, the Exchange proposes to amend the following rules: (1) Chapter I-B, Sections 2 and 3, and (2) Chapter IIB, Sections 1 and 3.

PPS Eligible Orders

Pursuant to the proposed amendment of Chapter IIB, Section 3, only orders designated "PPS" will be eligible for execution during the PPS. Since the PPS is merely an extension of the Exchange's auction market, wherein bids and offers are continuously updated for trading under normal auction market principles, Exchange rules will continue to apply. Thus, to be designated as eligible for execution in the PPS, a market, limit, or contingent order must be acceptable under current Exchange rules.

Under the proposal, limit orders on the book from the Primary Session are not eligible for the PPS, and must be carried over to the next day. Also, those limit orders that are received during the PPS (and thus PPS eligible) remain subject to the Limit Order Display Rule.⁵

GTX Orders

A GTX Order is an agency limit order that is good until canceled, and is eligible for primary market protection based on the volume that prints on the after-hours trading session of the New York Stock Exchange or the American Stock Exchange. Thus, a GTX Order may be executed during regular trading hours or after the PPS, at 5 p.m. Eastern Time, but no GTX Order may be executed during the PPS.

BEACON as a Routing System

"BEACON" is the acronym for the Boston Exchange Automated Communication Order-routing Network. It provides a system for the automatic execution of orders on the Exchange under predetermined conditions. Orders accepted under the system may be executed on a fully automated or manual basis. The Exchange proposes to amend Chapter IIB, Section 3(b), to indicate that BEACON will continue to operate as a routing system for PPS eligible orders, but will not provide an automatic execution mechanism.

Operation of the ITS System During the PPS

In the amendment to Chapter IIB, Section 3(a), the BSE represents that ITS will be available for both inbound and outbound commitments during the PPS to the extent that other market centers (i.e., the Pacific Exchange, Inc.

("PCX"),⁶ the Philadelphia Stock Exchange, Inc. ("PHLX")⁷ and the Chicago Stock Exchange, Inc. ("CHX"))⁸ are open for trading. The BSE also represents that it will perform surveillance during the PPS in the same manner and using the same techniques as those used during the Primary Session. To facilitate the surveillance of the PPS, BSE's surveillance staff will remain on-site during the PPS and for any necessary additional time period after the close of the PPS.

Execution Guarantee Does Not Apply

The Execution Guarantee provides that Specialists must guarantee execution on all agency market and marketable limit orders from 100 up to and including 1,299 shares. According to the proposed amendments to Chapter IIB, Section 3(d), the Execution Guarantee will not be available in any form during the PPS.

III. Discussion

The Commission has reviewed carefully the BSE's proposed rule change⁹ and finds, for the reasons set forth below, that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b).¹⁰ In particular, the Commission finds the proposal is consistent with the Section 6(b)(5)¹¹ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public, in that it is reasonably designed to promote just and equitable principles of trade, and, in general, perfect the mechanism of a free and open national market system. The implementation of the BSE's Post Primary Session should enhance

⁶ PCX's regular equity session closes at 4:30 p.m. Eastern Time. During the crossing session, PCX does not utilize ITS. See PCX Rule 4.2, Commentary .02.

⁷ PHLX operates a Post Primary Session from 4 p.m. until 4:15 p.m. Eastern Time which is an extension of its regular auction market. During the Post Primary Session, PHLX utilizes ITS to the same extent it does during regular trading hours. See PHLX Rule 101.

⁸ CHX's primary session closes at 4 p.m. Eastern Time. CHX conducts an Extended Session from 4 p.m. until 4:30 p.m. Eastern Time. Both sessions utilize ITS. See generally Article 20, CHX Rules 20, 37, 39, 40 and 41.

⁹ In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See BSE Rules, Paragraph 2039A, Section 33.

⁴ For a description of GTX Orders, see "GTX Orders" *infra*.

⁵ See Chapter II, Section 40, Paragraph 2039B7.

competition in the expanding after-hours market.

The Commission finds that the implementation of the Exchange's PPS does not raise any new regulatory concerns. The Exchange will provide full transparency by disseminating quotes through the Consolidated Quotation System and reporting trades to the consolidated tape. The Commission notes that investors are accustomed to trading after-hours on regional exchanges between 4 p.m. and 4:30 p.m.,¹² and that the implementation of BSE's PPS does not significantly alter the after-hours market with regard to regional exchanges during that time period. In addition, the Commission has not received any comment letters from the public or BSE members raising any regulatory issues in connection with the implementation of the PPS.

The Commission believes that it is reasonable for the Exchange to implement the rule changes discussed above¹³ during the PPS. Given that the after-hours trading market is in its nascent stage, with differences in volatility, liquidity, and volume as compared to the traditional trading session, the Commission believes it is reasonable to require investors to affirmatively choose to participate in the developing after-hours market. The Commission believes investors will be better protected if the Exchange requires them to knowingly opt-in to the PPS.

The Commission also finds that the proposal is consistent with Section 11A(a)(1)(C) of the Act.¹⁴ Congress found in those provisions that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities, and to assure the practicability of brokers executing investors' orders in the best market.¹⁵ The proposed rule change accomplishes the objectives of the Act by providing an opportunity for investors to trade outside of traditional market hours, complete with the safeguards and standards upon which investors have come to rely during traditional market hours.

The Commission further notes that BSE has represented it intends to implement surveillance procedures during the PPS. Such surveillance

should assist BSE in satisfying the requirements of Section 6(b)(5) of the Act¹⁶ that Exchange rules be designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade. Accordingly, the Commission does not believe that the Exchange's implementation of a PPS will have an adverse effect on the maintenance of fair and orderly markets of disadvantage public customers.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR-BSE-99-11) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42089; File No. SR-CHX-99-23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Amending Membership Dues and Fees Schedule for Transactions Occurring During the E-Session

November 2, 1999.

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 October 15, 1999, the Chicago Stock Exchange, Incorporated ("CHX" 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 Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under Section 19(b)(3)(A)(ii) of 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 persons.

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

The Exchange proposes to amend its membership dues and fees schedule to eliminate, through December 31, 1999, all transaction, order processing and floor broker fees for transactions that occur during the Exchange's after-hours trading session ("E-Session").⁴ The text of the proposal is available upon request from the CHX or the Commission.

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 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 proposed rule change amends the CHX schedule of membership dues and fees to eliminate, through December 31, 1999, order processing, transaction and floor broker fees for transactions that occur during the E-Session.⁵ The Exchange seeks this change to allow CHX members to participate in the E-Session without incurring the fees normally associated with their CHX transactions.⁶

⁴ On October 13, 1999, the Commission approve, on a pilot basis, the CHX's proposed rule change that allows the CHX to implement an after-hours trading session. See Securities Exchange Act Release No. 42004 (October 13, 1999) (SR-CHX-99-16). The E-Session takes place from 3:30 p.m. to 5:30 p.m. Central Time, Monday through Friday, and began on October 29, 1999.

⁵ The fees which CHX seeks to eliminate through December 31, 1999 with this proposed rule change include OTC agency orders in Nasdaq/NMS securities transacted by floor brokers, which were recently reviewed by the Commission. See Securities Exchange Act Release No. 41947 (September 29, 1999), 64 FR 54703 (October 7, 1999) (SR-CHX-99-15).

⁶ The Exchange notes that the vast majority of securities that initially will be eligible for trading in the E-Session are already subject to order processing and transaction fee waivers under the Exchange's current fee schedule because they are either Nasdaq/NMS issues or issues within the S&P 500. The Exchange does not anticipate much floor

¹² See *supra* footnotes 6-8.

¹³ See *supra* Section II, *PPS Eligible Orders, GTX Orders, and Execution Guarantee Does Not Apply*.

¹⁴ 15 U.S.C. 78k-1(a)(1)(C).

¹⁵ *Id.*

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).