

investors and the purposes of the 1940 Act.

2. Applicants request an order pursuant to section 26(b) of the 1940 Act approving the Substitution and related transactions. Applicants assert that the purposes, terms, and conditions of the proposed Substitution and related transactions are consistent with the protection of investors and the purposes fairly intended by the 1940 Act. Applicants further assert that the Substitution will not result in the type of costly forced redemption against which section 26(b) was intended to guard.

3. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any of the persons described above, from purchasing any security or other property from such registered investment company.

4. If Substitution is effected through an in-kind transfer of securities from the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust to the International Equity Series of the GCG Trust through transfers to and from the Separate Accounts, the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust could be said to be selling portfolio securities to an affiliate and the International Equity Series of the GCG Trust could be said to be purchasing portfolio securities from an affiliate.

5. Applicants request an order pursuant to section 17(b) of the 1940 Act exempting said redemptions and purchases or the in-kind transfer of portfolio securities from the provision of section 17(a) of that Act. Section 17(b) of the 1940 Act provides that the Commission may grant an order exempting a proposed transaction from section 17(a) if evidence establishes that; (i) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (ii) the proposed transaction is consistent with the investment policy of each registered investment company concerned; and (iii) the proposed transaction is consistent with the general purposes of the 1940 Act.

6. Applicants represent that the terms of the redemptions and purchases or the in-kind transfer are reasonable and fair and do not involve overreaching on the part of any person concerned and that the interest of Contractholders will not be diluted. The redemptions and

purchases or the in-kind transfer will be done at values consistent with the policies of both the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust and the International Equity Series of the GCG Trust. Applicant Insurance Companies and DSI will review all asset transfers to assure that the assets meet the objectives of the International Equity Series of the GCG Trust and that they are valued under the appropriate valuation procedures of the Series. The Applicants represent that the transactions are consistent with Rule 17a-7(d) under the 1940 Act, no brokerage commissions, fees or other remuneration will be paid by the International Equity Portfolio of the Credit Suisse Warburg Pincus Trust or the International Equity Series of the GCG Trust or Affected Contractholders in connection with the transactions, and that the transactions are consistent with the policies of each investment company involved and the general purposes of the 1940 Act, and comply with the requirements of section 17(b) of the 1940 Act.

7. Applicants represent that the purchase and sale transactions described in the Application will be effected based on the net asset value of the investment company shares held in the subaccounts and the value of the units of the subaccount involved. Therefore, there will be no change in value to any Contractholder.

Applicants' Conditions

The Substitution and related transactions described in the Application will not be completed unless all of the following conditions are met.

1. The Commission shall have issued an order (i) approving the Substitution under section 26(b) of the 1940 Act; and (ii) exempting the in-kind redemptions from the provisions of section 17(a) of the 1940 Act as necessary to carry out the transactions described in this Application.

2. Each Affected Contractholder will have been sent a copy of (i) a supplement informing shareholders of the Application; (ii) a prospectus for the International Equity Series of the GCG Trust; and (iii) a second supplement setting forth the Effective Date and advising Affected Contractholders of their right to reconsider the Substitution and, if they so choose, any time prior to the Effective Date, they may reallocate or withdraw amounts under their affected Variable Contract or otherwise terminate their interest thereof in accordance with the terms and conditions of their variable Contract.

3. Applicant Insurance Companies shall have satisfied themselves, that (i) the Variable Contracts allow the substitution of investment in the manner contemplated by the Substitution and related transactions described herein; (ii) the transactions can be consummated as described in this Application under applicable insurance laws; and (iii) that any regulatory requirements in each jurisdiction where the Variable Contracts are qualified for sale, have been complied with to the extent necessary to complete the transactions.

Within five business days of the Effective Date of the Substitutions, the Applicants will forward to Affected Contractholders a copy of the Substitution Notice.

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the Substitution and related transactions involving redemptions should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-27127 Filed 10-26-01; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44971; File No. SR-BSE-2001-06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange Amending the Transaction Fee Schedule and the Floor Operations Fee Schedule

October 23, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 29, 2001, the Boston Stock Exchange ("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 BSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The Exchange proposes to amend the Exchange's Transaction Fee Schedule to revise the monthly transaction related revenue the BSE must generate before it shares excess revenue with eligible firms. Additionally, the Exchange proposes to amend the Exchange's current Floor Operations Fee Schedule to include fees for the trading of securities listed on The Nasdaq Stock Market, Inc. ("Nasdaq").

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

In its filing with the Commission, BSE included statements concerning the purpose of and the 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. BSE 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 purpose of the proposed rule change is to amend the Revenue Sharing Program highlighted on the BSE's Transaction Fee Schedule. Currently, the minimum amount of monthly transaction related revenue the BSE must generate before it shares excess revenue with eligible member firms is \$1,500,000. The BSE proposes to revise this amount to \$1,700,000 to meet the budgeted costs of operating the Exchange in the upcoming fiscal year.

The Exchange also proposes to implement a transaction fees schedule for the trading of Nasdaq securities, similar to the transaction fee schedule currently in place for exchange-listed securities. However, three exceptions will apply. First, all Specialist Trade Processing Fees will be capped for all Nasdaq specialists for a period of two years, commencing with the inception of Nasdaq trading on the BSE. Presently, the Exchange caps these fees in instances in which there are competing specialists, under the Exchange's Competing Specialist Initiative, in listed securities. The BSE is not seeking to extend the Competing Specialist Initiative to the trading of Nasdaq securities at this time. Nevertheless, the Exchange proposes to extend similar

Specialist Trade Processing Fee caps to Nasdaq specialists to allow the Nasdaq trading program to develop and mature over a two-year period.

The second exception applies to the way in which securities are ranked for transaction fee caps. Presently, the Exchange categorizes listed securities into various tiers for this purpose. The securities are categorized based on Consolidated Tape Association ("CTA") Trade Rank. Obviously, this measure is not applicable to Nasdaq securities, so the Exchange is proposing to use Nasdaq share volume as an equivalent standard. The Nasdaq share volume will serve the same purposes as the CTA Trade Rankings, and will allow the Exchange to categorize Nasdaq securities in a similar fashion to listed securities, in various tiers.

Lastly, the Exchange proposes to "pass through" all third party fees billed to the Exchange on behalf of the specialists who are trading Nasdaq securities. The fees will pass through on a pro rata basis for all fixed fees, and on an actual basis for all variable fees.

2. Statutory Basis

BSE believes that the proposed rule change is consistent with the provisions of section 6(b)(4)³ and section 6(b)(5)⁴ of the Act, which require, among other things, that the BSE's rules be designed to provide for the equitable allocation of reasonable dues, fees and other charges among the Exchange's members and other persons using its facilities, that the BSE's rules must be designed 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.⁵

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

BSE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

³ 15 U.S.C. 78f(b)(4).

⁴ 15 U.S.C. 78f(b)(5).

⁵ The Commission added Section 6(b)(4) of the Act to the Statutory Basis Section of the notice at the request of the BSE. Telephone discussion between John Boese, Attorney, BSE, and Christopher B. Stone, Attorney Advisor, Division of Market Regulation, Commission (Oct. 19, 2001).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)⁶ of the Act and Rule 19b-4(f)(2) thereunder⁷ as establishing or changing a due, fee, or other charge paid solely by members of the BSE. 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.⁸

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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR-BSE-2001-06 and should be submitted by November 19, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-27132 Filed 10-26-01; 8:45 am]

BILLING CODE 8010-01-M

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(2).

⁸ See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

⁹ 17 CFR 200.30-3(a)(12).