

Section 19(b)(3)(A) of the Act.⁸ Pursuant to the Generic Index Approval Order, the Amex may not list options for trading on the Index prior to thirty days after June 3, 1996, the date the proposed rule change was filed with the Commission.⁹ At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-96-20 and should be submitted by July 11, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Jonathan G. Katz,

Secretary.

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[Release No. 34-37308; File No. SR-BSE-96-05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Its Specialist Performance Evaluation Program

June 12, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 11, 1996, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On June 11, 1996 the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.¹ The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 thereto from interested persons.

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

The BSE seeks to amend its Specialist Performance Evaluation Program ("SPEP").²

¹ See Letter from Karen Aluise, Assistant Vice President, BSE, to Sharon Lawson, Senior Special Counsel, SEC, dated June 11, 1996 ("Amendment No. 1"). Amendment No. 1 corrects typographical errors in the original filing as to the existing and proposed program weight assigned to the Turnaround Time measure. Amendment No. 1 also adds a proposal to raise the overall score at which a specialist will be deemed to have adequately performed from 5.80 to 6.70 in order to account for the proposed changes to the threshold levels and weights.

² The SEC initially approved the BSE's SPEP pilot program in Securities Exchange Act Release No. 22993 (March 10, 1986), 51 FR 8298 (March 14, 1986) (File No. SR-BSE-84-04). The SEC subsequently extended the pilot program in Securities Exchange Act Release Nos. 26162 (October 6, 1988), 53 FR 40301 (October 14, 1988) (File No. SR-BSE-87-06); 27656 (January 30, 1990), 55 FR 4296 (February 7, 1990) (File No. SR-BSE-90-01); 28919 (February 26, 1991), 56 FR 9990 (March 8, 1991) (File No. SR-BSE-91-01); and 30401 (February 24, 1992), 57 FR 7413 (March 2, 1992) (File No. SR-BSE-92-01). The BSE was permitted to incorporate objective measures of specialist performance into its pilot program in Securities Exchange Act Release No. 31890 (February 19, 1993), 58 FR 11647 (February 26, 1993) (File No. SR-BSE-92-04), at which point the initial pilot program ceased to exist as a separate program. The current pilot program was subsequently extended in Securities Exchange Act Release Nos. 33341 (December 15, 1993), 58 FR 67875 (December 22, 1993) (File No. SR-BSE-93-16); 35187 (December 30, 1994), 60 FR 2406 (January 9, 1995) (File No. SR-BSE-94-12); and 36668 (January 2, 1996), 61 FR 672 (January 9, 1996) (File No. SR-BSE-95-16) ("January 1996 Approval Order"). SEC approval of the current pilot program expires on December 31, 1996.

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 self-regulatory organization 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 self-regulatory organization 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 modify the current SPEP measures' threshold levels, weights, and review standards.³ The Exchange has been continuously monitoring the performance of its specialists in relation to the current SPEP standards, and has determined the following:

- (1) The Trading Between the Quote threshold level, currently at 26.0, should be raised to 31.0;
- (2) Executions in Size Greater Than BBO threshold level, currently at 76.0, should be raised to 81.0;
- (3) The Turnaround Time program weight, currently at 15%, should be increased to 20%;
- (4) The Holding Orders Without Action program weight, currently at 15%, should be decreased to 5%;
- (5) The Trading Between the Quote program weight, currently at 25%, should be increased to 35%;
- (6) The Executions in Size Greater Than BBO program weight, currently at 25%, should be increased to 35%;
- (7) The Questionnaire program weight, currently at 20%, should be decreased to 5%;
- (8) The standard for Performance Improvement Action Committee review for

³ The BSE's SPEP currently consists of five measures of performance, each accounting for a certain percentage of a specialist's overall evaluation score: Turnaround Time (15%); Holding Orders Without Action (15%); Trading Between the Quote (25%); Executions in Size Greater Than BBO (25%) and Questionnaire (20%). The Exchange has set thresholds at which a specialist will have been deemed to have adequately performed overall, and with regard to each measure, on the SPEP: Overall Evaluation Score—at or above weighted score of 5.80; Turnaround Time—below 21 seconds (8 points); Holding Orders Without Action—below 21% (7 points); Trading Between the Quote—at or above 26.0% (5 points); Executions in Size Greater Than BBO—at or above 76% (6 points); and Questionnaire—at or above weighted score of 50.0 (4 points). For a detailed description of each of the measures of performance and the review standards applicable to specialists performing below the set thresholds, see January 1996 Approval Order, *supra* note 2.

⁸ 15 U.S.C. 78s(b)(3)(A) (1988).

⁹ As noted above, see *supra* note 4, pursuant to the Generic Index Approval Order, the Exchange must provide to the Commission written representations that both the Amex and the OPRA have the necessary systems capacity to support the new series of options before the Amex may list and trade options on the Index.

¹⁰ 17 CFR 200.30-3(a)(12).

substandard performance in any one objective measure, currently set at two out of three consecutive review periods, will be changed to the first instance of substandard performance;

(9) The standard for Market Performance Committee review for substandard performance in any one objective measure, currently set at three out of four consecutive review periods, will be changed to two out of three consecutive review periods;

(10) The standard for Market Performance Committee review for substandard performance on the overall program, currently set at two out of three consecutive review periods, will be changed to the first instance of substandard performance; and

(11) The Overall Program score, currently at 5.80, should be increased to 6.70 to account for the proposed changes to the threshold levels and weights.

The threshold levels for Turnaround Time, Holding Orders Without Action and the Questionnaire, as well as the staff review standards, will remain unchanged. The Exchange believes that together, these modifications will enhance the SPEP by providing:

(A) More appropriate threshold levels when overall performance has improved beyond the current limits;

(B) More effective measure weightings which reflect the industry's current market quality focus; and,

(C) A more realistic approach to committee review in view of the time horizon required to address substandard performance.

In addition, the Exchange is currently reviewing additional market quality statistics in an effort to develop other measures of performance for inclusion in the SPEP, and hopes to file for additional modifications to the program in the near future.

2. Statutory Basis

The basis under the Act for the proposed rule change is Section 6(b)(5) of the Act⁴ in that the SPEP results weigh heavily in stock allocation decisions and, as a result, specialists are encouraged to improve their market quality and administrative duties, thereby promoting just and equitable principles of trade and aiding in the perfection of a free and open market and a national market system.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary and 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

Comments on the proposed rule change were neither solicited nor received.

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

Within 35 days of the 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 the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-BSE-96-05 and should be submitted by July 11, 1996.

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

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-37302; File No. SR-NASD-95-42, Amendment No. 2]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 2 to Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the NAQcess System and Accompanying Rules of Fair Practice

June 11, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on June 6, 1996,² the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") an amended version of the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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

Pursuant to Section 19(b)(1) of the Act, the NASD and The Nasdaq Stock Market, Inc. ("Nasdaq") propose to amend the proposed rules governing the operation of Nasdaq's NAQcess system, a new system that would offer nationwide limit order protection and price improvement³ opportunities for orders entered in the proposed system. Specifically, the NASD is proposing several amendments to NAQcess designed to allow the entry into NAQcess of: (1) Proprietary orders by registered Nasdaq market makers and

¹ 15 U.S.C. § 78s(b)(1) (1988).

² The NASD initially filed the proposed rule change on September 22, 1995 and, on November 9, 1995, the NASD filed Amendment No. 1. Notice of the original filing and Amendment No. 1 was provided by publication in the Federal Register. Securities Exchange Act Release No. 36548 (Dec. 1, 1995), 60 FR 63092 (Dec. 8, 1995).

³ Commission Note: The NASD's use of the term "price improvement" in this proposal differs from the use of the term in recent Commission releases. Specifically, the Commission has used the term when referring to the opportunity to receive a price that is superior to best bid or offer. See, e.g., 17 CFR 11Ac1-3(a)(2); Securities Exchange Act Release No. 34902 (Oct. 27, 1994), 59 FR 55006 (Nov. 2, 1994) at text accompanying n. 32. The NASD's use of the term in this proposal, on the other hand, refers to the opportunity to receive a price that is better than the best market maker quotation, which may not be the best bid or offer to the extent NAQcess limit orders are included. In its recent rule proposal concerning the obligations of market makers executing customer orders, the Commission asked for comment on whether automated systems that include the possibility of the interaction of market orders with limit orders should be deemed to satisfy the proposal's requirement that market orders be provided with an opportunity for price improvement. Securities Exchange Act Release No. 36310 (Sept. 29, 1995), 60 FR 52792 (Oct. 10, 1995).

⁴ 15 U.S.C. 78f(b)(5).