

and the various levels of testing occurring today will help to identify where additional work is required. Thus the Exchange seeks to mandate compliance with testing guidelines and will discipline members that fail to participate in the required Y2K testing and reporting of progress to the Exchange.

Testing requirements may include participation in Securities Industry Association ("SIA") sponsored industry-wide point-to-point tests and extended point-to-point tests. Reporting requirements may include compliance with Commission-mandated B/D reports and any Exchange requested reports, questionnaires or surveys regarding preparations, preparedness and/or results.<sup>3</sup>

In addition, the Exchange proposes to exempt members and member organizations from this requirement if they cannot be accommodated in the testing schedule by the organization conducting the test, if they do not employ computers in their business, or for other good reasons. Furthermore, the Exchange proposes to require that any member of the Exchange that clears securities transactions on behalf of other broker-dealers must take reasonable measures to ensure that each broker-dealer for which it clears securities transactions conducts testing with such member.

## 2. Basis

The Exchange believes that the statutory basis for the proposed rule change is section 6(b)(5) of the Act,<sup>4</sup> which requires that an exchange have rules that are 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 to 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*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>3</sup>The potential scope of BSE's testing and reporting requirements was clarified during a conversation between Karen Aluise, Vice President, BSE, and Joshua Kans, Attorney, Division of Market Regulation, Commission, December 22, 1998.

<sup>5</sup> 15 U.S.C. 78f(b)(5).

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

No written comments were either solicited or received.

### **III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

After careful consideration, the Commission has concluded, for the reasons set forth below, that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. Mandating Year 2000 testing and reporting is consistent with section 6(b)(5) of the Act, which, among other aspects, requires that the rules of an exchange 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, and remove impediments to and perfect the mechanism of a free and open market and a national market system. The Commission believes that the proposed rule change will facilitate the BSE's and member firms' efforts to ensure the securities markets' continued smooth operation during the period leading up to and beyond January 1, 2000.

The Exchange has requested that the Commission approve the proposed rule change prior to the 30th day after the date of publication of notice of the filing in the **Federal Register** to ensure that as many firms as possible participate in Year 2000 testing. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of the filing in the **Federal Register**. It is vital that self-regulatory organizations ("SROs") such as the BSE have the authority to mandate that their member firms participate in Year 2000 testing and that they report test results (and other Year 2000 information) to the SROs. The proposed rule change will help the BSE participate in coordinating Year 2000 testing, including industry-wide testing, and in remediating any potential Year 2000 problems. This, in turn, will help ensure that the industry-wide tests and the BSE's Year 2000 efforts are successful. The proposed rule change will also help the BSE work with its member firms, the SIA, and other SROs to minimize any possible disruptions the Year 2000 may cause.

### **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, N.W., Washington, DC 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 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-98-15 and should be submitted by February 2, 1999.

### **V. Conclusion**

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>5</sup> that the proposed rule change (SR-BSE-98-15) is hereby approved on an accelerated basis.<sup>6</sup>

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-40883; File No. SR-BSE-98-11]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to its Competing Specialist Initiative**

January 5, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup>

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> In approving the proposal, the Commission has considered the rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 23, 1998, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Item I, II and III below, which Items have been prepared by the Exchange. 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 seeks to amend its Procedures for Competing Specialists to modify the procedures by which a regular specialist may object to competition in a stock.

### **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 propose 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 Propose of, and Statutory Basis, for, the Proposed Rule Change**

##### **(1) Purpose**

The purpose of the proposed rule change is to amend the Procedures for Competing Specialists, which are set forth in Chapter XV, section 18 of the Exchange's rules, to address certain administrative and procedural issues regarding a specialist's ability to object to another specialist's request that the Exchange permit competition in a security. The Exchange seeks to clearly outline the procedural process by which a regular specialist may object to competition, as well as the appeal process in the event that the Market Performance Committee rules against the objection.

The current rules provide that a regular specialist may object to competition with or without cause. Only the regular specialist can object to competition in a stock. The Commission's order approving the Exchange's Competing Specialist

Initiative noted that the Market Performance Committee may not deny applications based solely on such an objection, but only in circumstances wherein the stock at issue requires special treatment such that an entering competitor could jeopardize the fair and orderly market maintained by the regular specialist.<sup>3</sup>

The Exchange's current procedure requires the regular specialist to object in writing within 48 hours of notice of another specialist's application to compete in a stock. This objection is then reviewed by the Market Performance Committee, which determines whether to permit competition. Currently, if the Market Performance Committee rules in favor of competition, the Procedures for Competing Specialists permit the regular specialist to appeal that ruling to the Executive Committee of the Exchange. Moreover, a regular specialist may appeal a decision of the Executive Committee to the Board of Governors of the Exchange.<sup>4</sup> Competition may not begin during the appeal process.<sup>5</sup>

The Exchange seeks to streamline the procedural process for objection and appeal. The Exchange proposes to require that a regular specialist submit an objection on an Exchange designated form within 48 hours after receiving notice of the request to compete, and that the regular specialist submit in writing the reasons for objecting within 24 hours of the objection. The Exchange further proposes to schedule a Market Performance Committee meeting and to permit the regular specialist to appear before that committee to discuss the reasons for objection. Under the proposal, if the regular specialist appeals the decision of the Market Performance Committee, the appeal will be heard by the full Board of Governors of the Exchange, eliminating the interim step of review by the Executive Committee.

In addition, the Exchange seeks to provide that, if the Market Performance Committee rules in favor of competition, competition will commence pending the outcome of any appeal. The Exchange believes that the Market Performance Committee is best situated to determine whether a regular specialist has a

<sup>3</sup> See Securities Exchange Act Release No. 37045 (March 29, 1996), 61 FR 15318 (April 5, 1996).

<sup>4</sup> See BSE Constitution, Art. II, section 6, which provides that certain persons affected by a decision of a committee acting under powers delegated by the Board of Governors may require that the Board review the decision.

<sup>5</sup> The Exchange's existing procedures for handling objections to competition were clarified during a conversation between Karen Aluise, Vice President, BSE, and Joshua Kans, Attorney, Division of Market Regulation, Commission, December 2, 1998.

legitimate claim for objection. Once that determination has been made, the appeal process could potentially last several months or longer, effectively prohibiting competition. Permitting the commencement of competition will permit the specialist seeking to compete to satisfy the needs of his customers.

##### **(2) Basis**

The Exchange believes that the statutory basis for the proposed rule change is section 6(b)(5) of the Act,<sup>6</sup> in that it is 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.

#### **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 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**

No written comments were either solicited or received.

### **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, 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, including whether the proposed rule

<sup>2</sup> 17 C.F.R. 19b-4.

<sup>6</sup> 15 U.S.C. 78f(b)(5).

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. 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 Room, 450 Fifth Street, NW., Washington, DC 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-98-11 and should be submitted by February 2, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40879; File No. SR-BSE-98-13]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Portfolio Depository Receipts

January 4, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 8, 1998, 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.<sup>3</sup> 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 BSE seeks to amend section 5 of Chapter XXIV of its rules regarding Portfolio Depository Receipts to insert trademark information concerning Standard & Poor's products. The text of the proposed rule change is available at the Office of the Secretary, the BSE and at 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 BSE 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 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 Section 5 of Chapter XXIV of BSE rules regarding Portfolio Depository Receipts to insert a footnote regarding Standard & Poor's standard trademark information and the Exchange's right to limited use of those marks pursuant to a license agreement with Standard & Poor's.

###### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b)<sup>4</sup> of the Act, in general, and furthers the objectives of section 6(b)(5),<sup>5</sup> in particular, in that it is designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and 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, in general, to protect investors and the public interest.

of Market Regulation, Commission, dated December 18, 1998.

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

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

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

No written comments were either solicited or received on the proposed rule change.

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

Because the foregoing proposed rule change: (1)— Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from December 8, 1998, the date on which it was filed, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>6</sup> and subparagraph (e)(6) of Rule 19b-4 thereunder.<sup>7</sup> Although Rule 19b-4(e)(6) requires that an Exchange submit a notice of its intent to file at least five days prior to the filing date, the Commission waived this period for the proposed rule change at the Exchange's request.

At any time within 60 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, 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. 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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(e)(6).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The BSE submitted Amendment No. 1 to the proposed rule change, which made certain non-substantive textual changes and redesignated the proposal as immediately effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4(e)(6) thereunder. See letter from Karen A. Aluise, Vice President, BSE, to Anitra Cassas, Attorney, Division