

the commenter believes to be anti-competitive.

While the Commission does not necessarily find any of the above comments on this topic persuasive, the Commission believes that it is appropriate at this time to expand the number of Nasdaq/National Market securities an exchange Participant may trade. The Commission has not received evidence that expanding the number of securities would have a negative effect on the markets or the protection of investors. Due to the lack of comments concerning the previous effects of OTC/UTP trading on the quality of the affected markets and on investors, the Commission believes this limited expansion from 100 to 500 Nasdaq/National market securities provides a prudent approach that will enable the Participants and the Commission to gain useful, instructive experience concerning operation of the Joint OTC/UTP Plan and on its competitive effects.

#### IV. Outstanding Concerns

In the January 1995 Extension Order, the Commission also solicited comment on: (1) Whether the BBO calculation for the relevant securities should be based on price and time only (as currently is the case) or if the calculation should include size of the quoted bid or offer; and (2) whether there is a need for an intermarket linkage for order routing and execution and an accompanying trade-through rule.

The Commission received two comments in support of including size in the BBO calculation.<sup>16</sup> These commenters explain that, without including size in the BBO calculation, the BBO does not provide an accurate representation of the depth of the BBO.

The Commission requests further comment on the question of whether size should be included in the BBO. The Commission notes that the comments raised address more whether all inside bid and offer size should be aggregated, thereby displaying the true depth of the bid and offer, than whether size should be included in the BBO calculation. It is not clear whether the commenters actually recommend that aggregation of BBO size as the appropriate result, as compared to inclusion of size in the BBO calculation. For this reason, the Commission continues to solicit comment on whether the BBO calculation should include size, and why the greater size bid (offer) or the first-in-time bid (offer) should be displayed as best.

<sup>16</sup> See Mitchum, Jones & Templeton letter and Dempsey letter, *supra* note 9.

The Commission received one comment on the need for an intermarket linkage for order routing and execution and an accompanying trade-through rule.<sup>17</sup> The commenter believes that a linkage similar to that of the Intermarket Trading System would greatly enhance the effectiveness of the OTC/UTP program, and would give exchanges a great chance at improving the UTP marketplace for all investors. The Commission continues to solicit comment on the need for such a linkage, and also on whether any existing electronic trading system or systems, which may include those currently sponsored by one or more of the Participants to the Plan, could be used to gain the same or similar benefits for investors.

#### V. Solicitation of Comment

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 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. All submissions should refer to File No. S7-24-89 and should be submitted by September 12, 1995.

#### VI. Conclusion

The Commission finds that proposed Amendment No. 3 to the Plan to extend the financial negotiation period for an additional month is appropriate and in furtherance of Section 11A of the Act. The Commission finds further that extensions of the exemptive relief requested through September 12, 1995, as described above, also is consistent with the Act and the Rules thereunder. The Commission also finds that it is consistent with Section 11A of the Act to expand the number of Nasdaq/

<sup>17</sup> See Dempsey letter, *supra* note 9. The Commission notes that the Dempsey letter also comments on the practice of internalization. The Commission did not solicit comment on internalization with respect to the Plan, and the Commission believes that internalization is not under review in the present notice and order. That topic, therefore, is not included in the present analysis.

National Market securities that each exchange participant may trade from 100 to 500 securities. Specifically, the Commission believes that these extensions and the expansions should serve to provide the Participants with more time to conclude their financial negotiations and with more information to evaluate the effects of and proposed course of action for the pilot program. This, in turn, should further the objects of the Act in general, and specifically those set forth in Sections 12(f) and 11A of the Act and in Rules 11Aa3-1 and 11Aa3-2 thereunder.

*It is therefore ordered*, pursuant to Sections 12(f) and 11A of the Act and (c)(2) of Rule 11Aa3-2 thereunder, that Amendment No. 3 to the Joint Transaction Reporting Plan for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis is hereby approved, and trading pursuant to the Plan is hereby approved on a temporary basis through September 12, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(29).

**Margaret H. McFarland,**

*Deputy Secretary.*

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[Release No. 34-36100; File No. SR-BSE-95-02, Amendment No. 1]

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

August 14, 1995.

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 August 10, 1995, 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, II and III below, which Items have been prepared by the self-regulatory organization.<sup>1</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>1</sup> On February 6, 1995, the BSE filed the proposed rule change being amended herein. It was subsequently published for comment in Securities Exchange Act Release No. 35404 (February 22, 1995), 60 FR 10882 (February 28, 1995).

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

The BSE seeks to clarify the priority rule as it pertains to its Competing Specialist Initiative. The language of the proposed rule change is as follows where deletions are [bracketed] and additions are *italicized*:

*Because there is only one Exchange market in a security subject to competition, all limit [Limit] orders sent to the Exchange will be maintained by the BEACON System's central limit book and will be [entrusted to each competing specialist are to be represented and] executed strictly according to time priority as to receipt of the order in the BEACON System, irrespective of firm order routing procedures.*

### **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 amendment is to clarify the priority rule regarding the execution of limit orders on the central limit order book in securities subject to competition, which provides that limit orders will be executed in the same order in which they are received by the BEACON System, *i.e.*, according to strict time priority.

##### **2. Statutory Basis**

The BSE believes that the statutory basis for this proposal is Section 6(b)(5) of the Act in that it furthers the objectives 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*

The Exchange has neither solicited nor received written comments on the proposed rule change.

### **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 BSE. All submissions should refer to File No. SR-BSE-95-02,

Amendment No. 1 and should be submitted by September 12, 1995.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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[Release No. 34-36097; File No. SR-NSCC-95-09]

### **Self-Regulatory Organization; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Modifications to its Procedures to Allow the Processing of Voluntary Reorganizations With Protect Periods of Three Days or Greater**

August 11, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 27, 1995, National Securities Clearing Corporation ("NSCC") 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 primarily by NSCC. 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 text of the proposed rule change consists of modifications to NSCC's Procedures to allow the processing of voluntary reorganizations with protect periods of three days or greater.

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

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>2</sup>

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> These statements have been modified by the Commission.