

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43168; File No. SR-BSE-99-07]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Boston Stock Exchange, Inc. Amending its Minor Rule Violation Plan

August 17, 2000.

I. Introduction

On June 1, 1999, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder, a proposed rule change. In its proposal, the BSE seeks to amend its Minor Rule Violation Plan ("Plan") and to incorporate this plan into the Boston Stock Exchange Guide, which is its rulebook. The proposed rule change was published for comment in the **Federal Register** on June 23, 2000.³ The Commission received no comments on the proposal and this order approves the filing as amended.⁴

II. Description of the Proposal

The BSE proposes to amend the Exchange's Plan to include the failure to attend Market Performance Committee BEACON training sessions in the Plan and to change the prohibition titled "Violation of the Exchange Smoking Policy" to prohibit all forms of tobacco use on the equity trading floor. The Plan provides an alternative method for the Exchange to use to discipline members who commit minor rule violations. The proposed addition to the Plan will enable the Exchange to ensure that all floor members are fully trained on the BEACON system following enhancements for the handling of orders or the release of new versions of BEACON software. The Exchange believes that this will ensure that all customer orders are accorded the same professional attention by all specialists. The Exchange proposes a written warning for an initial offense, a \$50 fine for the second offense, and a \$100 fine for subsequent offenses.

In addition, the Exchange proposes to prohibit all forms of tobacco use on the

Equity Trading Floor. Currently, only smoking is prohibited. The proposal also includes a fine for failing to designate an order "PPS."⁵ This abbreviation indicates that the order was executed during the Post Primary Session, which is from 4:00 pm to 4:15 pm. The Exchange also proposes to incorporate the BSE's Plan into the Boston Stock Exchange Guide, which is its rulebook.

III. Discussion

The Commission finds that the BSE proposal to include in its Plan failure to attend BEACON training sessions, failure to designate an order PPS, and tobacco use on the equity trading floor is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of sections 6(b)(1) and (6) of the Act.⁶ The Commission believes that the proposal is a reasonable means by which the Exchange may ensure the orderly conduct of business on its floor and in its administrative areas. Because the proposal defines the scope of the prohibited conduct, provides notice to members and staff, and is tailored to serve a legitimate Exchange regulatory interest, the proposal establishes a fair and reasonable policy for the regulation of BEACON training, order designation, and tobacco use at the BSE.

For the reasons set forth below, the Commission also finds that the BSE proposal to amend its Plan is consistent with the Act. In adopting Rule 19d-1, the Commission noted that the Rule was an attempt to balance the informational needs of the Commission against the reporting burdens of the SROs.⁷ In promulgating paragraph (c) of the Rule, the Commission was attempting further to reduce those reporting burdens by permitting, where immediate reporting was unnecessary, quarterly reporting of minor rule violations. The Rule is intended to be limited to violations of rules which can be adjudicated quickly and objectively.

⁵ The Commission notes that this proposed violation was included in Amendment No. 2 to the filing, but was not described in the Purpose section of the filing. Specifically, this proposed violation was included in Exhibit 2 of Amendment No. 2, which listed the existing and proposed Minor Rule Violations. The Commission deems this a technical amendment to the proposed rule change, which is not subject to notice and comment. As mentioned in the notice of the filing, copies of the filing and all subsequent amendments are available in the Commission's Public Reference Room and at the BSE.

⁶ 15 U.S.C. 78f(b)(1) and (6).

⁷ See Securities Exchange Act Release No. 13726 (July 8, 1977), 42 FR 36411 (July 14, 1977).

The Commission believes that the BSE's training, order designation, and tobacco use policies meet this criterion and should be added to the list of violations. In particular, the Commission believes that the BSE proposal regarding violations of the training, order designation, and tobacco use policies are easily determined and amendable to quick, objective determinations of compliance. Efficient and equitable enforcement of the policy should not entail the complicate factual and interpretive inquiries associated with more sophisticated Exchange disciplinary actions.

Further, the proposal is consistent with the section 6(b)(6) requirement that the rules of an exchange provides that its members and persons associated with its members be appropriately disciplined for violations of rules of the exchange. In this regard, the proposal will provide an efficient procedure for appropriate disciplining of members in those instances when a rule or policy violation is either technical and objective or minor in nature. Moreover, because the Plan provides procedural rights to the person fined and permits a discipline person to request a full hearing on the matter, the proposal provides a fair procedure for the disciplining of members and persons associated with members which is consistent with the requirements of sections 6(b)(7) and 6(d)(1) of the Act.⁸

The Commission also believes that the proposal is consistent with section 6(b)(6) of the Act in that it incorporates the Plan into the Exchange's rulebook. Specifically, the inclusion of the Plan in the rulebook should help increase member awareness of the prohibitions contained in the Plan and provide the BSE another method for enforcing its rules.

IV. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act⁹ and Rule 19d-1(c)(2) under the Act,¹⁰ that the proposed rule change (SR-BSE-99-07) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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⁸ 15 U.S.C. 78f(b)(7) and (d)(1).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 240.19b-4.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. (June 16, 2000), 65 FR 39215.

⁴ The BSE submitted two amendments to the proposed rule change, Amendment No. 1 on March 24, 2000, which was published in the notice, and Amendment No. 2 on May 30, 2000. See footnote 4.