

rules. Accordingly, the Commission finds that good cause exists, consistent with sections 6(b)(5)<sup>9</sup> and 19(b) of the Act,<sup>10</sup> to accelerate approval of Amendment No. 2 to the proposed rule change.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether the amendment 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 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 Amex. All submissions should refer to the File No. SR-AMEX-2001-14 and should be submitted by July 24, 2001.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-AMEX-2001-14), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44466; File No. SR-BSE-2001-03]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Boston Stock Exchange, Inc. Relating to Its Specialist Performance Evaluation Program

June 22, 2001.

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 June 7, 2001, the Boston Stock Exchange ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I and II below, which Items have been prepared by the Exchange. On June 15, 2001, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval to the proposed rule change, as amended.

#### I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend its SPEP Pilot until March 31, 2002. The text of the proposed rule change follows. New text is italicized.

#### Chapter XV

##### Specialists

##### Specialist Performance Evaluation Program

Sec. 17(a)-(e) no change

*(f) This program will expire on March 31, 2002, unless further action is taken by the Exchange.*

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

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

<sup>3</sup> In Amendment No. 1, the Exchange requested to have the one-year extension of its Specialist Performance Evaluation Pilot Program ("SPEP Pilot") applied retroactively to April 1, 2001. In addition, the Exchange added rule text language that sets forth the expiration date of the SPEP Pilot. See letter from John A. Boese, Assistant Vice President, Rule Development and Market Structure, Exchange, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 14, 2001 ("Amendment No. 1").

## 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 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 III 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 Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange seeks to have a one-year extension of its SPEP Pilot applied retroactively from April 1, 2001, until March 31, 2002.<sup>4</sup> Under the SPEP Pilot program, the Exchange regularly evaluates the performance of its specialists by using objective measures, such as turnaround time, price improvement, depth, and added depth. Generally, any specialist who receives a deficient score in one or more measures may be required to attend a meeting with the Performance Improvement Action Committee, or the Market Performance Committee.

While the Exchange believes that the SPEP Pilot has been a very successful and effective tool for measuring specialist performance, it realizes that modifications are necessitated as a result of recent changes in the industry, particularly decimalization. Accordingly, the Exchange is seeking to extend the pilot period of this program so that evaluation and modification can be undertaken before permanent approval is requested.

##### 2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,<sup>5</sup> in that the proposed rule change 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

<sup>4</sup> The SPEP Pilot expired on March 31, 2001. See Securities Exchange Act Release No. 42585 (March 28, 2000), 65 FR 17687 (April 4, 2000); see also Amendment No. 1, *supra* note 3 (requesting retroactive approval).

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

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

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.

#### *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 comments on the proposed rule change.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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, D.C. 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 and Amendment No. 1 thereto, 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 Exchange. All submissions should refer to SR-BSE-2001-03 and should be submitted by July 24, 2001.

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

The Commission finds that the Exchange's proposal to retroactively extend the SPEP Pilot from April 1, 2001 until March 31, 2002 is consistent with the requirements of the Act and the rules and regulation thereunder. Specifically, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,<sup>6</sup> which requires that the rules of the Exchange be designed to promote just

and equitable principles of trade, 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. The Commission believes that the retroactive extension of the SPEP Pilot should allow the Exchange to continue to assess specialist performance without interruption, while allowing the Exchange adequate time to consider amending the SPEP Pilot program in response to decimal pricing.

The Commission expects that during the SPEP Pilot the Exchange will continue to monitor threshold levels and propose adjustments as necessary and continue to assess whether each SPEP measure is assigned an appropriate weight.<sup>7</sup> In addition, the Exchange should continue to closely monitor the conditions for review and should take steps to ensure that all specialists whose performance is deficient and/or diverges widely from the best units will be subject to meaningful review. Finally, the Commission repeats its request that the Exchange incorporate additional objective criteria into the SPEP, most importantly, a measure of quote performance.<sup>8</sup> As previously noted, the Commission would have difficulty granting permanent approval to a SPEP that did not include a satisfactory response to the concerns described above.<sup>9</sup>

The Commission finds good cause for granting the Exchange's request for a twelve-month extension of the SPEP Pilot prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.<sup>10</sup> Among the obligations imposed upon specialists by the Exchange, and by the Act and the rules promulgated thereunder, is the maintenance of fair and orderly markets in their securities. To ensure that specialists fulfill these obligations, it is important that the Exchange be able to evaluate specialist performance. The Exchange's SPEP Pilot assists the Exchange in conducting its evaluation and accelerated approval of

<sup>7</sup> See Securities Exchange Act Release No. 39730 (March 6, 1998), 63 FR 12847 (March 16, 1998) (order approving amendment to SPEP Pilot). In Securities Exchange Act Release No. 39730, the Commission stated certain terms and conditions for approving the SPEP Pilot program on a permanent basis, including the need to provide a study to the Commission regarding the SPEP Pilot program. Those terms and conditions are hereby incorporated by reference.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

the proposed rule change permits the SPEP Pilot to continue on an uninterrupted basis. Therefore, the Commission believes good cause exists to approve the extension of the SPEP Pilot from April 1, 2001 until March 31, 2002, on an accelerated basis. Accordingly, the Commission finds that granting accelerated approval of the requested extension is appropriate and consistent with Sections 6(b)(5) and 19(b)(2) of the Act.<sup>11</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change, as amended, (SR-BSE-2001-03) is hereby approved on an accelerated basis through March 31, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-16637 Filed 7-2-01; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44476; File No. SR-BSE-2001-01]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Boston Stock Exchange, Inc. Relating to the Trading of Nasdaq Securities on the Floor of the Exchange

June 26, 2001.

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 May 15, 2001, 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 Exchange. On June 15, 2001, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>1</sup> 15 U.S.C. 78f(b)(5) and 78s(b)(2).

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

<sup>3</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> See Form 19b-4 dated June 14, 2001 ("Amendment No. 1").

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