

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45799; File No. SR-BSE-2001-09]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Clearly Erroneous Transactions in Nasdaq Securities

April 22, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> notice is hereby given that on December 26, 2001, the Boston Stock Exchange ("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 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 proposes to establish a rule governing the resolution of clearly erroneous transactions in The Nasdaq Stock Market, Inc. ("Nasdaq") securities. The text of the proposal is below. All language is new.

##### Chapter XXXV Clearly Erroneous Transactions

Sec. 30. For the purposes of this section, the terms of a transaction are clearly erroneous when there is an obvious error in any term, such as price, number of shares (or other unit of trading), or identification of the security.

Officers of the Nasdaq Stock Market ("Nasdaq") shall have the authority to review any transaction arising from the use of a Nasdaq system, including, but not limited to, SuperSoes, SelectNet, or SuperMontage. Exchange specialists authorized to trade Nasdaq securities are obligated to cooperate with officers of Nasdaq in their review of clearly erroneous transactions, and to abide by the procedures set forth in Nasdaq Rule 11890 (b) and (c).

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

###### 1. Purpose

The Exchange is proposing to add a section to Chapter XXXV of its rules, which pertains to the trading of Nasdaq securities on the Exchange. Proposed Section 30 would govern situations in which there is an obvious error in any part of a Nasdaq security transaction. In large part, the proposed Section 30 conforms to Nasdaq Rule 11890, Clearly Erroneous Transactions, and obliges Exchange specialists to cooperate with officers of Nasdaq in their review of clearly erroneous transactions occurring on a Nasdaq system.

###### 2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act<sup>2</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 open market and a national market system, and, in general, to protect investors and the public interest; and are 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. 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 Exchange 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 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 20549-0609. 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 Exchange. All submissions should refer to File No. SR-BSE-2001-09 and should be submitted by May 21, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>3</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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

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

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