

particular in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among the Amex's members and issuers and other persons using its facilities.

#### *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*

No written comments were solicited or received with respect to the proposed rule change.

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

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup> 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.

The Amex has requested that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay. The Commission believes waiving the 5-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the notice requirement and acceleration of the operative date will permit the Amex to suspend these fees immediately. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>12</sup>

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 in 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 file number SR-Amex-2002-71 and should be submitted by October 8, 2002.

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

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 02-23537 Filed 9-16-02; 8:45 am]

**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-46480; File No. SR-BSE-2002-07]**

### **Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Competing Specialists and Objections to Competing Specialist Competition**

September 10, 2002.

#### **I. Introduction**

On June 25, 2002, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change related to competing specialists and objections to competing specialist competition. The proposed rule change was published for comment in the

<sup>13</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.

**Federal Register** on July 30, 2002.<sup>3</sup> No comments were received on the proposal. This order approves the proposed rule change.

#### **II. Description of the Proposal**

The Exchange proposes to amend the section of the Exchange's Competing Specialist Initiative ("CSI") procedures relating to objections to competition filed by a regular specialist. The Exchange is seeking to implement a procedure that would permit competition pending a final review of any objection to competition filed by a regular specialist.

Under current CSI procedures set forth in Chapter XV, *Dealer Specialists*, Section 18, *Procedures for Competing Specialists*, any objection to competition by a regular specialist will prevent a competing specialist from trading, and competing with the regular specialist, in the security at issue, until the objection is adjudicated by the Exchange's Market Performance Committee ("MPC"). In order to streamline this process, the Exchange is proposing that a majority of the floor members of the MPC be able to vote to permit competition in a security pending the formalization of a regular specialist's objection and the subsequent convening of a full meeting of the MPC to review the objection.

#### **III. Discussion**

The Commission finds that the proposed rule change is consistent with the provisions of section 6(b) of the Act,<sup>4</sup> in general, and section 6(b)(5) of the Act,<sup>5</sup> in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating 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 not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.<sup>6</sup>

The Commission believes that the proposal should enhance competition to the ultimate benefit of investors, while still offering the regular specialist the opportunity to formalize an objection, and have that objection fully considered. Moreover, the Commission

<sup>3</sup> See Securities Exchange Act Release No. 46238 (July 19, 2002), 67 FR 49378.

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

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

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

believes that the proposal should prevent a disingenuous regular specialist from abusing the competition objection process by objecting to specialist competition solely as leverage for objections unrelated to specialist competition.

#### IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-BSE-2002-07) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-23532 Filed 9-16-02; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46482; File No. SR-BSE-2002-13]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to an Interpretation of Its Execution Guarantee Rule

September 10, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 4, 2002, 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 self-regulatory organization. On September 10, 2002, 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 from interested persons.

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

The Exchange proposes to implement an interpretation of its Execution Guarantee Rule in response to Commission action regarding *de*

*minimis* trades through of certain Exchange Traded Funds ("ETFs") in ITS.

#### 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 purpose of the proposed rule change is to add Paragraph .07 to the Interpretations and Policies section of Chapter II, *Dealings on the Exchange*, Section 33, *Execution Guarantee*, of the BSE Rules. This proposed rule change is in response to a Commission Order issued August 28, 2002, granting a *de minimis* exemption for transactions in certain ETFs from the Trade-Through Provisions of the Intermarket Trading System ("ITS") Plan ("Order").<sup>4</sup>

As of the implementation date of the Order, September 4, 2002, certain executions that take place according to the rules of the Exchange may be deemed violative of the provisions thereof. Accordingly, the Exchange is seeking to implement this proposed rule change on a temporary basis, for a period of thirty days.

In Chapter II, *Dealings on the Exchange*, Section 33, *Execution Guarantee* of the BSE Rules, paragraph (c)(2) states that "All agency limit orders will be filled if one of the following conditions occur \* \* \* (2) there has been price penetration of the limit in the primary market. \* \* \*" Moreover, in various sections of Chapter XV, *Dealer Specialists*, there are similar provisions.<sup>5</sup> These provisions, in

particular those set forth in Chapter II, guarantee that a limit order in a BSE specialist's book will be filled if the primary market trades through the limited price. The BSE specialist provides this protection to its customer limit orders in part due to the fact that the specialist can seek relief through ITS in the event of a trade-through.

As a result of the Commission's Order, certain primary market trades-through in ETFs will constitute exempt trades-through, but will still, under BSE Rules, trigger an obligation on the part of a BSE specialist to provide trade-through protection. However, the specialist will no longer be able to seek recourse to seek satisfaction through ITS from the primary market. Accordingly, the BSE specialist will be competitively disadvantaged if this section of its rules is strictly enforced, while the *de minimis* exemption exists for other ITS participants. Therefore, the BSE is seeking to implement an Interpretation of Chapter II, Section 33(c)(2) of its rules permitting the Exchange to not enforce the provision following a *de minimis* trade through of certain ETFs outlined in the Order.

###### 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of section 6(b) of the Act<sup>6</sup> and furthers the objectives of Section 6(b)(5),<sup>7</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate 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, in that it is designed 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.

to buying and selling on a principal basis while holding unexecuted orders in his book; Section 2, *Responsibilities*, which sets forth, in part, a specialist's primary duties as agent; Section 4, *Precedence to Orders in the Book*, which sets forth the precedence parameters a specialist must adhere to; and Section 18, *Procedures for Competing Specialists*, which sets forth, in various paragraphs, obligations which may conflict with the *de minimis* exemption in the Order.

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>4</sup> See Securities Exchange Act Release No. 46428 (August 28, 2002). Participants of the ITS Plan are exempt from Section 8(d) of the Plan for the period of September 4, 2002 until June 4, 2003 with respect to transactions in QQQs, DIAMONDS, and SPDRs, that are executed at a price that is no more than three cents lower than the highest bid displayed in CQS and no more than three cents higher than the lowest offer displayed in CQS.

<sup>5</sup> See, e.g., Commentary to Section 1, *Specialists*, which sets forth a specialist's obligations in relation

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-2(a)(12).

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

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

<sup>3</sup> See letter from John Boese, Assistant Vice President, Legal and Regulatory, BSE, to Alden Adkins, Associate Director, Division of Market Regulation, Commission, dated September 9, 2002 ("Amendment No. 1").