

requirements of the Act and the rules and regulations thereunder.⁶ The Commission believes that the proposed OPRA Plan amendment is consistent with section 11A of the Act⁷ and Rule 11Aa3-2 thereunder⁸ in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system.

Specifically, given the expiration of the fee exemption pilot for accessing OPRA information, the Commission finds that it is appropriate to eliminate any references within the OPRA Plan to such fee exemption so as to avoid confusion. Moreover, the Commission believes that subjecting all devices used to access OPRA information, whether on-floor or off-floor, to OPRA's information fees should help to ensure that the various participants do not receive disparate treatment under the OPRA Plan. The Commission also believes that OPRA's proposed amendments to the definitions of "vendor" and "subscriber" and the deletion of language concerning the introduction of its BBO Service should promote clarity within the language of the OPRA Plan.

It is therefore ordered, pursuant to section 11a of the Act,⁹ and Rule 11Aa3-2 thereunder,¹⁰ that the proposed OPRA Plan amendment (SR-OPRA-2004-02), as modified by Amendment No. 1, be, and it hereby 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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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50154; File No. SR-BSE-2003-09]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to the Extension of Certain Listed Trading Rules to the Trading of Nasdaq Securities

August 5, 2004.

On July 2, 2003, 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")¹ and Rule 19b-4 thereunder,² a proposed rule change to extend certain of its listed trading rules to the trading of Nasdaq securities. On April 5, 2004, the Exchange amended the proposed rule change.³ On May 6, 2004, the Exchange amended the proposed rule change.⁴

The proposed rule change was published for comment in the *Federal Register* on June 7, 2004.⁵ The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

The proposed rule change would add two new sections to the BSE's Rules relating to the trading of Nasdaq securities on the Exchange. The first proposed new section, "Section 30. Competing Specialist Initiative," would permit specialists who trade Nasdaq securities on the BSE to avail themselves of the Exchange's competing specialist program. The second proposed new section, "Section 31. Remote Trading in Nasdaq Securities," would extend the BSE's BEACON Remote trading program to include Nasdaq trading.⁶ In both cases, the proposed new rules would track the

language contained in corresponding existing rules relating to listed securities. For example, the BEACON Remote trading program requirements currently applicable to the trading of listed securities, including the applicability of other BSE Rules, confidentiality, "Chinese Walls," communications, and Electronic Trading Permits ("ETPs"), would apply with respect to the remote trading of Nasdaq securities.

The Commission notes that the Exchange has represented that, as with current BEACON Remote locations, the Exchange's Compliance Department will physically inspect each remote Nasdaq location. Likewise, the proposed rule change includes ETP provisions that require, among other things, that all registered specialists and clerks complete a floor-training program, unless waived under certain exceptional circumstances, as well as successfully complete the BSE floor examination and the Series 63 (NASAA Uniform State Law Exam).⁷ In addition, each registered clerk in a remote location who qualifies for an ETP would be required to operate under the direct supervision of a registered specialist at such remote location, just as a registered clerk is supervised in the on-floor environment.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁸ The Commission believes that the proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5),¹⁰ in that it is designed to prevent fraudulent and manipulative acts and practices, 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. Specifically, the

⁷ According to the BSE, the on-site floor training includes, among other things: Communication procedures with Front Desk Operations, Surveillance, Systems Support; Competing Specialist Initiative and Unlisted Trading Privilege applications and procedures; stock allocation procedures; trading halt procedures; and availability of books and records.

⁸ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from John Boese, Vice President, Legal and Compliance, Exchange, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 2, 2004 ("Amendment No. 1"). In Amendment No. 1, the Exchange restated the proposed rule change in its entirety.

⁴ See letter from John Boese, Chief Regulatory Officer, Exchange, to Nancy Sanow, Assistant Director, Division, Commission, dated May 5, 2004 ("Amendment No. 2"). In Amendment No. 2, the Exchange restated the proposed rule change in its entirety.

⁵ See Securities Exchange Act Release No. 49771 (May 25, 2004), 69 FR 31851.

⁶ The BSE's BEACON Remote trading system was approved by the Commission on August 8, 2000. See Securities Exchange Act Release No. 43127 (August 8, 2000), 65 FR 49617 (August 14, 2000) (SR-BSE-99-1).

⁶ In approving this proposed OPRA Plan amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78k-1.

⁸ 17 CFR 240.11Aa3-2.

⁹ 15 U.S.C. 78k-1.

¹⁰ 17 CFR 240.11Aa3-2.

¹¹ 17 CFR 200.30-3(29).

Exchange's proposal permits BSE members who trade Nasdaq securities to trade from a remote location subject to the same requirements and surveillance that are currently in place with respect to remote trading of listed securities.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change, as amended (SR-BSE-2003-09), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50158; File No. SR-NASD-2004-117]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Extending the Operative Date for the Short-Sale ACT Reporting Requirements for Certain Securities

August 5, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 2, 2004, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. Nasdaq has filed this proposed rule change pursuant to Section 19(b)(3)(A)(i) of the Act³ and Rule 19b-4(f)(1) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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

Nasdaq proposes to extend, for certain securities, the operative date of NASD IM-6130 ("Trade Reporting of Short Sales") regarding members' obligations to indicate on their transaction reports whether a sale is a short sale or a short sale exempt transaction. Specifically, Nasdaq proposes to extend the operative date to September 26, 2004, with respect to securities eligible to be quoted on the Over the Counter Bulletin Board ("OTCBB") or other non-Nasdaq equity securities. No changes to the text of the NASD rules are required by this proposed rule change.

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

In its filing with the Commission, Nasdaq 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. Nasdaq 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

On May 20, 2004, Nasdaq filed a proposed rule change that established NASD IM-6130 regarding members' obligations to indicate on their transaction reports whether a transaction was a short sale or short exempt.⁵ That proposed rule change was immediately effective, but Nasdaq delayed its operative date for sixty days, until July 26, 2004, to allow members adequate time to comply with their obligations.

Based upon feedback received in a comment letter⁶ and from the staff of the Division of Market Regulation of the Commission, Nasdaq has determined to extend the operative date for NASD IM-6130 for an additional sixty days with respect to certain stocks. Specifically, a commenter stated that it will be unable to comply with its obligations under

NASD IM-6130 with respect to securities eligible to be quoted on the OTCBB or in other non-Nasdaq equity securities.⁷ In response to such comments, Nasdaq proposes to allow firms, with respect to OTCBB and non-Nasdaq equity securities, an additional 60-day period to re-program their systems in order to comply with NASD IM-6130. Therefore, the operative date for compliance with NASD IM-6130 will remain July 26, 2004 for all Nasdaq National Market, SmallCap, and exchange-listed securities and the operative date for OTCBB and non-Nasdaq equity securities will be extended to September 24, 2004.

NASD will publish a Notice to Members announcing the new operative date for compliance with NASD IM-6130 for OTCBB and non-Nasdaq securities.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁸ in general and with Section 15A(b)(6) of the Act,⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Nasdaq believes the proposed rule change is consistent with the Act in that it clarifies short sale reporting requirements and promotes compliance with and regulation of short sale requirements.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in 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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act,¹⁰ and Rule 19b-4(f)(1) thereunder,¹¹ because it constitutes a stated practice with respect

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ See Securities Exchange Act Release No. 49833 (June 8, 2004) 69 FR 33969 (June 17, 2004).

⁶ Letter from R. Cromwell Coulson, Chief Executive Officer, Pink Sheets LLC, to Jonathan G. Katz, Secretary, Commission, dated June 24, 2004 ("Pink Sheets Letter").

⁷ *Id.*

⁸ 15 U.S.C. 78o-3.

⁹ 15 U.S.C. 78o-3(b)(6).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(i).

¹¹ 17 CFR 240.19b-4(f)(1).