

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*

The Exchange has neither solicited nor received written 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 Amex consents, the Commission will:

(A) By order approve the 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, 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, 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 No. SR-Amex-2002-112 and should be submitted by June 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 03-13608 Filed 5-30-03; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-47913; File No. SR-BSE-2003-06]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to the Exchange's Nasdaq Trading Rules**

May 22, 2003.

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 21, 2003, 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 and II 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 amend its Nasdaq trading rules by deleting inapplicable and outdated sections and making certain additions to the rule text. Set forth below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Chapter XXXV

Trading in Nasdaq Securities

Sec. 1—no change.

Sec. 2 (a)(i) Each Exchange specialist shall provide direct telephone *or other means of* access to the specialist post to Nasdaq System market makers, acting in their capacity as market makers, for each Nasdaq security in which the market maker is registered as a market maker. Access shall include appropriate procedures which assure the timely response to telephonic *or other* communications. Nasdaq System market makers may use such telephone *or other*

access to transmit orders for execution on the Exchange.

Any order received on the floor via telephone *or otherwise* from a Nasdaq System market maker shall be effected in accordance with the rules applicable to the making of bids, offers and transactions on the Floor (see Chapter II, Dealings on the Exchange, Chapter XV, Specialists). All limit orders shall be immediately displayed upon receipt, in accordance with Chapter II, Dealings on the Exchange, Section 40, Limit Order Display Rule.

(ii) Exchange specialists may send orders from the Floor for execution via telephone, *or otherwise*, to any Nasdaq System market maker in each Nasdaq security in which it is registered as specialist. All of the Boston Stock Exchange Rules related to the trading of securities shall be applicable to bids and offers transmitted by telephone, *or otherwise*, in the same way as they apply to orders transmitted via automated trading systems.

(iii) Comparisons of transactions effected with a Nasdaq System market maker via telephone access, *or otherwise*, will be made pursuant to procedures to be established between Nasdaq and the Exchange.

[(b)—Orders may be transmitted to a specialist via Nasdaq Workstation II ("NWII") at the election of a Nasdaq market maker originating the order. Orders transmitted through NWII may be executed by the system automatically or on a manual basis in accordance with the provisions of this Chapter XXXV.]

[(c)b)—[Specialists will have "Level III Service", as defined by the Nasdaq Unlisted Trading Privileges Plan, on the Nasdaq System. As such, specialists will have input and query ability with respect to quotations and sizes in securities included in the Nasdaq System. Access to the specialist via the Nasdaq System will be limited to floor brokers, BSE members, NASD members, NASD non-BSE members (including Electronic Communications Networks), and certain other member firms and other professionals represented by member firms ("clients"). Clients] *Members* may have access to enter orders to the specialist either electronically[, through the Nasdaq System,] or telephonically. Any order received by the specialist telephonically, or verbally in any manner other than electronically [through the Nasdaq System] must be memorialized in accordance with Chapter II, Dealings on the Exchange, Section 2, Recording of Sales, and Section 15, Record of Orders from Offices to Floor.

<sup>10</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.

[(d)—Access to the specialist via the Nasdaq System, or electronic access, includes

(i) Orders sent by clients through Nasdaq's ACES Pass Thru capability (which consolidates orders sent by various client systems to the Nasdaq System)

(ii) Orders sent by BSE floor brokers directly through the BSE Nasdaq trading system (currently Nasdaq Tools)

(iii) Orders sent by clients directly into the Nasdaq System and routed to the specialist; and,

(iv) Orders sent by Nasdaq and NASD Market Makers through the Nasdaq System.]

[Sec. 3—All transactions in Nasdaq securities shall be reported through the Automated Confirmation Transaction Reporting Service (“ACT”), in accordance with NASD Rule 4630, et. seq., unless other arrangements are made with, and approved by, the Exchange.]

Secs. 4–5—renumbered to become Sections 3 and 4, no substantive change.

Sec. [6]5—Pre-opening orders in Nasdaq securities must be accepted and filled at the Exchange opening trade price. In trading halt situations, orders will be executed based on the Exchange reopening price. [(Note: In the case of a trading halt in a Nasdaq security, notice will be provided via the Nasdaq “NEWS” frame, in accordance with NASD Rule 4120).]

Secs. 7–30—renumbered to become Sections 6–29, no substantive 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, the BSE included statements concerning the purpose of, and the 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 BSE 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 proposes to update, through deletions and minor additions, certain of the Exchange's Nasdaq rules contained in Chapter XXXV (“Nasdaq Rule Set”) of the Rules of the Board of Governors of the BSE (“BSE Rules”).

The Exchange's Nasdaq Rule Set was implemented in October, 2001, and was designed specifically for Nasdaq trading as it then existed on the Exchange. At the time, the BSE utilized a third-party Nasdaq trading system, and certain of the rules within the Nasdaq Rule Set were specifically designed to address functionalities of that system, and the manner in which BSE specialists were participating in the Nasdaq marketplace at that time.

The Exchange now seeks to make its Nasdaq Rule Set applicable to Nasdaq trading on the BSE in a more general manner, so that BSE specialists will not be limited in the ways that they participate in the Nasdaq marketplace, particularly due to the fact that rules which the Exchange is seeking to delete specifically addressed functionality which the Exchange no longer utilizes. None of the proposed deletions affect the manner in which BSE specialists are obligated to participate in the Nasdaq marketplace under the strictures of the Act or the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (“UTP Plan”). Rather, the Exchange is merely deleting inapplicable language and making minor additions. The BSE has therefore designated the rule filing as non-controversial in nature. Moreover, the Exchange is requesting a waiver of both the five-day pre-filing notice and the thirty-day operative delay period.

The majority of the proposed deletions occurs in section 2 of the Exchange's Nasdaq Rule Set, and are with regard to the transmission of orders to a BSE Nasdaq specialist. As previously written, the provisions addressed access to the specialist through means provided as a result of BSE's participation in SuperSoes, a Nasdaq trading system. The BSE is no longer a participant in SuperSoes, or its successor system, SuperMontage, so the access provisions pertaining to such participation are no longer valid. However, the access provisions which remain in the BSE rules, are substantively the same provisions in existence on at least two other exchanges that participate in Nasdaq trading under the UTP Plan. Specifically, the access provisions which remain in the BSE rules after the proposed deletions relating to telephone access (*i.e.*, section 2 (a)) are essentially the same rules in place on the American Stock Exchange LLC (“Amex”) and the Cincinnati Stock Exchange, Inc.

(“CSE”).<sup>3</sup> Moreover, the BSE is leaving in place a provision providing for electronic access to the BSE specialists. Again, such a provision leaves the BSE in a similar position as the Amex and CSE regarding electronic access.<sup>4</sup> Although the Rules of the AMEX and CSE do not specifically state that there shall be electronic access granted to their respective exchange specialists, their rules speak to functionalities of electronic access. The BSE actually goes further in specifically stating that there shall be electronic access to its specialists, while discussing essentially the same functionalities regarding automatic executions and other automated features as set forth in the Amex and CSE rules.

The BSE is also proposing to delete a section of its Nasdaq Rule Set regarding reporting through Nasdaq's Automated Confirmation Transaction (“ACT”) system. Again, ACT is a Nasdaq system, formerly utilized by BSE Nasdaq specialists who participated in the Nasdaq marketplace using functionality which enabled them to participate in SuperSoes. The Exchange no longer chooses to use ACT for the reporting of its transactions, and will thereby revert to its clearing rules as set forth elsewhere in its rules, and incorporated by reference. ACT usage was a specific exception to the Exchange's clearing and reporting rules, and that exception is simply being removed.

It is important to note that nothing in the Exchange's proposed deletions and additions will in any way effect the priority or in any other way effect how orders are treated on the Exchange. All other rules of the Nasdaq Rule Set, as well as applicable other sections of the BSE rules, will still apply. All of these provisions have been separately approved by the Commission at different times, and will not change as a result of the deletions and additions proposed herein.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>5</sup> in general, and the provisions of section 6(b)(5) of the Act,<sup>6</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 remove impediments to and perfect the mechanism of a free and open market and a national market system, and, is

<sup>3</sup> See *e.g.*, Amex Rule 118, Trading in Nasdaq National Market Securities, and CSE Rule 11.9, National Securities Trading System.

<sup>4</sup> *Id.*

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

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

not designed to permit unfair discrimination between customers, brokers, or dealers, or to regulate by virtue of any authority matters not related to the administration of the Exchange.

#### *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 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 with respect to the proposed rule change.

### **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) of the Act<sup>7</sup> and Rule 19b-4(f)(6)<sup>8</sup> thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change or the Commission waives such prior notice. At any time within 60 days of the filing of such 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.<sup>9</sup>

The BSE has requested that the Commission waive the five-day pre-filing notice and the 30-day operative delay. The Commission believes waiving the five-day pre-filing notice and the 30-day operative delay is consistent with the protection of investors and the public interest. Waiving the pre-filing notice and accelerating the operative date will

permit the BSE to reinstate its previously approved Nasdaq trading program by making certain deletions and minor additions to its Nasdaq trading rules. Moreover, the Commission believes that waiving both the five-day pre-filing notice and the 30-day operative delay will facilitate the BSE's expeditious reinstatement of a Nasdaq trading program that includes electronic access and is substantially similar to the programs of other national securities exchanges that currently trade Nasdaq securities. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>10</sup>

### **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 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 Exchange. All submissions should refer to File No. SR-BSE-2003-06 and should be submitted by June 23, 2003.

<sup>10</sup> For the 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). In addition, the Commission notes that BSE has represented to the Commission that BSE members will be able to access BSE specialists' quotations in person on the floor of the Exchange, by telephone, or by electronic access via industry standard Financial Information Exchange ("FIX") protocol interfaces. BSE has also represented that non-BSE members (*i.e.*, Nasdaq market makers) will be able to access the quotations of BSE specialists either by telephone or electronically through a major securities industry connectivity provider. Moreover, BSE's current rules regarding the priority of customer orders will remain in effect and will not be impacted by this rule filing. Finally, BSE has made assurances to the Commission that the BSE rule covering automatic execution of Nasdaq securities (BSE Nasdaq Rule Set, Section 4, Trading) will remain in effect. Meeting between Division of Market Regulation staff and BSE staff (May 9, 2003).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 03-13606 Filed 5-30-03; 8:45 am]

BILLING CODE 8010-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-47927; File No. SR-DTC-2003-05]

### **Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to an Enhancement to the Reorg Deposits Service**

May 23, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 14, 2003, The Depository Trust Company ("DTC") 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 primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The proposed rule change enhances (DTC's Reorg Deposits service to allow participants to submit affidavits of loss relating to certificates for securities currently eligible for DTC's Reorg Deposits service.<sup>2</sup>

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

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>3</sup>

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> For additional information concerning DTC's Reorg Deposits service, see Securities Exchange Act Release No. 34189 (June 9, 1994), 59 FR 30818 (June 15, 1994) [File No. SR-DTC-94-06].

<sup>3</sup> The Commission has modified the text of the summaries prepared by DTC.

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).