

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54832; File No. SR-BSE-2006-46)

November 29, 2006

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Amending Rules to Require Securities Become Eligible for a Direct Registration System

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> notice is hereby given that on October 26, 2006, the Boston Stock Exchange, Inc. (“BSE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by BSE. 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

BSE proposes to amend its rules to require securities of all listed companies become eligible to participate in a Direct Registration System (“DRS”) administered by a clearing agency registered under Section 17A of the Act.

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

In its filing with the Commission, BSE 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. BSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>2</sup>

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

<sup>2</sup> The Commission has modified portions of the text of the summaries prepared by BSE.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

DRS, as administered by The Depository Trust Company ("DTC"), is an electronic system that allows an investor to establish either through the issuer's transfer agent or through the investor's broker-dealer a book-entry position on the books of the issuer and to electronically transfer her position between the transfer agent and the broker-dealer.<sup>3</sup> DRS, therefore, allows an investor to have securities registered in her name without having a certificate issued to her and to electronically transfer, thereby eliminating the risk and delays associated with the use of certificates, her securities to her broker-dealer in order to effect a transaction. Ownership is recorded in book-entry form, and instead of receiving a physical certificate from the issuer or its transfer agent, the investor receives a statement of holdings as evidence of ownership.

BSE believes that DRS will be an important step in reducing the use of securities certificates, which should facilitate transfers in securities and could eventually lead to lower risks and costs for issuers and investors.<sup>4</sup> To encourage the use of DRS, the BSE proposes to require

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<sup>3</sup> Currently, the only registered clearing agency operating a DRS is DTC. For a description of DRS and the DRS facilities administered by DTC, see Securities Exchange Act Release Nos. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996), [File No. SR-DTC-96-15] (order granting approval to establish DRS) and 41862 (September 10, 1999), 64 FR 51162 (September 21, 1999), [File No. SR-DTC-99-16] (order approving implementation of the Profile Modification System).

<sup>4</sup> In that regard, in March 2004 the Commission published a concept release that discussed, among other things, whether more should be done to reduce the use of physical securities certificates by individual investors. The Commission noted that the use of physical certificates increases the costs and risks of clearing and settling securities transactions, costs that most often are ultimately borne by investors. Securities Exchange Act Release No. 8398 (March 11, 2004), 69 FR 12922 (March 18, 2004). Issuers may save money by not having to print or process physical certificates but may incur other ongoing expenses to maintain book-entry records, such as mailing statements to shareholders.

that all listed securities be eligible to participate in DRS. Under the proposed rule change, BSE would add Section 3 to Chapter XXVII that would require any security initially listing on BSE on or after January 1, 2007, to be eligible for a DRS that is operated by a clearing agency registered under Section 17A of the Act. This requirement, however, would not extend to (i) securities of companies which already have securities listed on BSE, (ii) securities of companies which immediately prior to such listing had securities listed on another securities exchange in the U.S., or (iii) non-equity securities which are book-entry only. Under the proposed rule, on and after January 1, 2008, all securities listed on BSE, other than non-equity securities which are book-entry only, must be eligible for a DRS that is operated by a clearing agency registered under Section 17A of the Act.<sup>5</sup> While this proposal would require that securities be DRS eligible, it would not mandate the elimination of securities certificates and, subject to applicable state law and the company's governing documents, an investor could still elect to receive a securities certificate if an issuer elects to issue securities certificates.

In order for a security to be eligible for the only DRS in operation today, the issuer is required to use a transfer agent that meets certain insurance and connectivity requirements.<sup>6</sup> As a result, some transfer agents may have to make changes to comply with their requirements. In addition, certain issuers may have to make amendments to their governing documents, such as their by-laws or corporate charters, to be eligible to issue book-entry positions. To allow

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<sup>5</sup> The exact text of the BSE's proposed rule change is set forth in its filing, which can be found at [http://www.bostonstock.com/legal/pending\\_rule\\_filings.html](http://www.bostonstock.com/legal/pending_rule_filings.html).

<sup>6</sup> DTC's rules require that a transfer agent (including an issuer acting as its own transfer agent) acting for a company issuing securities in DRS must be a DRS Limited Participant. Securities Exchange Act Release No. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996), [File No. SR-DTC-96-15].

sufficient time for these changes, BSE proposes implementing the proposed requirement on January 1, 2008, for issuers with securities already listed on BSE or another listed marketplace when the rule is approved. Companies listing for the first time would have greater flexibility to adopt any required changes and therefore the proposed requirement would be applicable to new listings beginning January 1, 2007.

(2) Statutory Basis

The statutory basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act, which requires, among other things, that the rules of an exchange are 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 perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.<sup>7</sup> BSE believes that the proposed rule is consistent with its obligations under Section 6(b)(5) because requiring securities to be eligible to use DRS should increase the trading of securities in held book-entry forms, which should in turn facilitate the processing of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

BSE 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.

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

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

BSE 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 thirty-five 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 ninety 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 self-regulatory organization 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. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BSE-2006-46 in the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BSE-2006-46. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Section, 100 F Street, NE, Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal office of BSE and on BSE's Web site, [www.bse.com](http://www.bse.com). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BSE-2006-46 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Nancy M. Morris  
Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).