

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50154; File No. SR-BSE-2003-09)

August 5, 2004

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

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

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.

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

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).

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.

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 particular, 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 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.

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).

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

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).