

desks, etc.) without the prior written authorization of the Exchange could result in a \$250 fine for the initial offense and a \$500 fine for subsequent offenses by the Exchange for any damage to a post and/or the removal of materials and/or equipment.

The proposed Summary Fines regarding Comm Room Rules provides that not obtaining a permit number from the Exchange prior to any installation or servicing of hardware or telecommunications equipment (i.e., voice and data); unauthorized vendor access to the Comm Room or the Trading Floor without prior notification to the Exchange and accompaniment by an authorized Exchange staff member or floor member; and/or unauthorized equipment removal from any Exchange location could result in a \$250 fine for the initial offense and a \$500 fine for subsequent offenses. It further provides that these fines are in addition to any costs incurred by the Exchange for any loss of, damage to and/or removal of equipment.

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,<sup>5</sup> in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; 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 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 Act.

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

No written comments were either solicited or received.

### **III. 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. 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 BSE. All submissions should refer to File No. SR-BSE-98-12 and should be submitted by January 28, 1999.

### **IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change**

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 and, in particular, the requirements of Section 6 of the Act.<sup>6</sup> Section 6(b)(5)<sup>7</sup> of the Act states that the rules of an exchange must be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating securities transactions. These rules also must help to remove impediments to and perfect the mechanism of a free and open market. The Commission believes the proposed Summary Fines regarding the Post Rules and Comm Rules are consistent with this provision of the Act in that they will enable the Exchange to appropriately address violations of these rules.

The Exchange's proposal is also consistent with the requirements in Sections 6(b)(1)<sup>8</sup> and 6(b)(6)<sup>9</sup> of the Act that the rules of an exchange enforce compliance with and provide appropriate discipline for violations of the Exchange's rules and the rules under the Act. Moreover, because BSE Chapter XVIII Section 4 provides procedural rights to the person fined, the proposal provides a fair procedure for the disciplining of members and persons associated with members, consistent with 6(b)(7)<sup>10</sup> and 6(d)(1)<sup>11</sup> of the Act.

Pursuant to Section 19(b)(2),<sup>12</sup> the Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the

date of publication of notice thereof in the **Federal Register**.<sup>13</sup> The Commission notes that the Exchange moves to its new trading floor on January 4, 1999, and believes that accelerated approval of the proposed rule change will enable the Exchange to better enforce compliance with its Post Rules and Comm Rules without any unnecessary delay. In addition, the Commission notes that the proposed rule change is generally administrative in nature and, as such, does not raise any competitive or investor protection issues.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change, as amended, (SR-BSE-98-12) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

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

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-40844; File No. SR-BSE-98-07]

### **Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to a Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Its Specialist Performance Evaluation Program**

December 28, 1998.

#### **I. Introduction**

On October 8, 1998, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to 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 to amend the depth measure calculations in its Specialist Performance Evaluation Program ("SPEP") pilot program and to seek permanent approval of the program at the expiration of the pilot on December 31, 1998. The Exchange submitted to the Commission

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

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

<sup>8</sup> 15 U.S.C. 78f(b)(1).

<sup>9</sup> 15 U.S.C. 78f(b)(6).

<sup>10</sup> 15 U.S.C. 78f(b)(7).

<sup>11</sup> 15 U.S.C. 78f(d)(1).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</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.

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

Amendment No. 1 to its proposed rule change on November 13, 1998.<sup>3</sup>

The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on December 11, 1998.<sup>4</sup> On December 17, 1998, the BSE submitted Amendment No. 2 to the proposed rule change.<sup>5</sup> This order approves Amendment No. 2, which extends the SPEP pilot for a six-month period ending on June 30, 1999, or until the Commission approves the proposal seeking to amend the program and to make the program permanent, whichever occurs first.

### Background

The Exchange regularly evaluates the performance of its specialists under the SPEP pilot program. Under the SPEP pilot, specialists are evaluated based on objective measures, such as turnaround time, price improvements, depth and added depth. Generally, any specialist who receives a deficient score in one or more objective measures may be required to attend a meeting with the Performance Improvement Action Committee or the Market Performance Committee.

The Exchange has submitted a proposal seeking to amend its SPEP pilot by modifying the two depth measure calculations and the overall program score. In addition, the Exchange is requesting permanent approval of the program, which is set to expire on December 31, 1998. The Commission is currently in the process of reviewing the Exchange's proposal seeking to amend and permanently approve the SPEP pilot.

### II. Description

In the current amendment, the Exchange is proposing to extend the SPEP pilot for a six-month period ending on June 30, 1999, or until the Commission approves the proposal seeking to amend the program and have it approved permanently, whichever occurs first. The proposed rule language, as amended, follows. Deletions are bracketed.

<sup>3</sup> See Rule 19b-4 filing, SR-BSE-98-07, dated November 6, 1998 ("Amendment No. 1").

<sup>4</sup> Securities Exchange Act Release No. 40746 (Dec. 3, 1998), 63 FR 68490 (Dec. 11, 1998).

<sup>5</sup> In Amendment No. 2, the Exchange (1) requested an extension of the SPEP program for a six-month period ending on June 30, 1999, or until the Commission approves the Exchange's proposal to revise the SPEP and to make it permanent, whichever occurs first, and (2) made a technical change to its rule.

### Chapter XV

#### Specialists

#### Specialist Performance Valuation Program

\* \* \* \* \*

Sec. 17(a) [The Specialist Performance Evaluation Program is a 12-month pilot program.]

### III. Discussion

The Commission finds that the BSE's proposal to extend the SPEP pilot program until June 30, 1999, or until the Commission approves the proposal seeking to amend the program and to make the program permanent, whichever occurs first, is consistent with the requirements of the Act and the rules and regulation thereunder. Specifically, the Commission finds that the amendment is consistent with Section 6(b)(5) of the Act,<sup>6</sup> which requires that the rules of the Exchange be designed to promote just and equitable principles of trade, 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. The Commission believes that the proposed six-month extension of the pilot program should continue to provide necessary oversight of Exchange specialist while allowing the Commission adequate time to consider the BSE's proposal seeking to amend its two depth measure calculations and to make its program permanent.

The Commission finds good cause for granting the Exchanges' request for a six-month extension of the SPEP pilot prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Among the obligations imposed upon specialists by the Exchange, and by the Act and the rules promulgated thereunder, is the maintenance of fair and orderly markets in their securities. To ensure that specialists fulfill these obligations, it is important that the Exchange conduct effective oversight of their performance. The BSE's SPEP pilot is critical to this oversight. Therefore, the Commission believes good cause exists to approve the extension of the pilot program until June 30, 1999, or until the Commission approves the Exchange's proposal seeking to amend its two depth measure calculation and to make its program permanent, on an accelerated basis.

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

Accordingly, the Commission believes that granting accelerated approval of the requested extension is appropriate and consistent with Sections 6(b)(5) and 19(b)(2) of the Act.<sup>7</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, 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, N.W., Washington, D.C. 20549. Copies of the submissions, 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 at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal offices of the Exchanges. All submissions should refer to File No. SR-BSE-98-07 and should be submitted by January 28, 1999.

### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that Amendment No. 2 to the proposed rule change, SR-BSE-98-07, which extends the SPEP pilot until June 30, 1999, or until the Commission approves the proposal seeking to amend the program and to make the program permanent, whichever occurs first, is approved.<sup>9</sup>

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99-3018 Filed 1-6-99; 8:45 am]

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<sup>7</sup> 15 U.S.C. 78f(b)(5) and 78s(b)(2).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> In approving Amendment No. 2, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 17 CFR 200.303(a)(12).