

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- 54476; File No. SR-BSE-2006-31)

September 20, 2006

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Removing Its Short Sale Price Test Rule

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 September 6, 2006, the Boston Stock Exchange, Inc. (“BSE” or “Exchange”) 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 the self-regulatory organization. BSE has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by 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

BSE proposes amending its rules related to trading in Nasdaq securities to remove the short sale price test rule, or “bid test” rule, applicable to Nasdaq Global Market securities and Nasdaq Capital Market securities (“Nasdaq Securities”) traded on facilities of the BSE. That rule is presently set forth in Chapter XXXV, Section 26 of the BSE Rules.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4.

In addition to removing the BSE “bid test” rule for short sales of Nasdaq Securities from the BSE Rules, the proposed amendment is intended to clarify that all Nasdaq Securities traded on BSE facilities will be exempt from the requirements of any short sale price test applicable to Nasdaq Securities, including, but not limited to, the short sale price test set forth in Rule 10a-1 of the Act.

Regulation SHO Rule 202T established procedures to allow the Commission to temporarily suspend short sale price tests so that the Commission could study the effectiveness of short sale price tests (the “Pilot”).⁴ The Pilot is designed to assist the Commission in assessing whether changes to short sale regulation are necessary in light of current market practices and the purposes underlying short sale regulation. To determine whether additional rulemaking is necessary, Commission staff will evaluate the results of the Pilot. After completion of the Pilot Program or at such other time if the Commission determines that such exemptions are no longer necessary or appropriate in the public interest or consistent with the protection of investors, the BSE will amend its rules accordingly, if necessary. The text of the proposed rule change is available from the principal office of the Exchange and from the Commission’s Public Reference Room.

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 self-regulatory organization 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. The self-regulatory organization has

⁴ See Exchange Act Release No. 50104 (July 28, 2004), 69 FR 48032 (August 6, 2004).

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 or about August 1, 2006, The NASDAQ Stock Market LLC (“Nasdaq”) became a national securities exchange. As a result of Nasdaq becoming a national securities exchange, Nasdaq Securities became exchange listed securities subject to the short sale “tick test” provisions of Rule 10a-1 under the Act, which governs short sales of any security registered on, or admitted to, unlisted trading privileges on a national securities exchange if such transactions are made pursuant to an effective transaction reporting plan as defined in Rule 600 of Regulation NMS.⁵

Both the Chicago Stock Exchange, Inc. and Nasdaq requested, and have been granted, an exemption from the “tick test” provisions of Rule 10a-1 for Nasdaq listed securities while the Regulation SHO Pilot Program (the “Pilot Program”) remains pending or until such other time as the Commission determines that such exemptions are no longer necessary or appropriate in the public interest or consistent with the protection of investors.⁶ The BSE intends to rely upon the exemption from the “tick test” provisions of Rule 10a-1 set forth in the Commission’s July 20, 2006 letter to the Chicago Stock Exchange, Inc. As such, transactions in Nasdaq Securities on the BSE will be exempt from the “tick test” provisions of Rule 10a-1 just as transactions in Nasdaq

⁵ See the July 20, 2006 letter from James Brigagliano, Acting Associate Director, Securities and Exchange Commission, Division of Market Regulation to David C. Whitcomb, Jr., at the Chicago Stock Exchange, Inc.

⁶ See *id.*

Securities on the Chicago Stock Exchange, Inc. are exempt. The BSE will not apply a “tick test” for Nasdaq Securities until the Pilot Program is completed or the Commission directs otherwise.

Even though the BSE will not be applying the “tick test” to Nasdaq Securities traded on the BSE, the BSE does have a short sale price test rule that requires Nasdaq Securities traded by specialists be subject to a “bid test.”⁷ The BSE “bid test” rule is presently set forth in Chapter XXXV, Section 26 of the BSE Rules and states, in relevant part, that “No specialist shall effect a short sale for the account of a customer or for his own account in a Nasdaq security at or below the current best (inside) bid when the current best (inside) bid is below the preceding best (inside) bid in the security.” This proposed amendment is intended to remove the short sale “bid test” rule applicable to Nasdaq Securities traded by specialists on the BSE. This proposed amendment would allow short sales of Nasdaq Securities traded by specialists on the BSE without a short sale price test rule until December 31, 2006, after which the BSE will be trading Nasdaq Securities solely on its fully electronic Boston Equities Exchange (“BeX). As of January 1, 2007 there will no longer be any specialist traded stocks on the BSE or any of its facilities. As such, BeX traded securities are not subject to Chapter XXXV, Section 26 of the BSE Rules because they are not traded by specialists.

The BSE has not traded a Nasdaq security on the Exchange since or about September of 2004. BSE began receiving nominal specialist-traded Nasdaq crossing business in August 2006. In August, BSE received one cross transaction. BSE expects

⁷ Prior to Nasdaq becoming a national securities, NASD’s short sale “bid test” Rule 3350, now Rule 5100, was not applicable to a National Securities Exchange trading Nasdaq securities on an unlisted trading privileges basis. Therefore there was no requirement for the BSE to have a short sale “bid test” rule for Nasdaq securities.

that the specialist-traded Nasdaq crossing business, which will conclude when BSE begins trading Nasdaq securities on the fully electronic BeX on January 1, 2007, will continue to be a nominal amount in overall Nasdaq security trading volume and should not have any material effect on the Pilot. The BSE believes if it did not remove its current short sale “bid test” rule it would be at a competitive disadvantage to other regional market centers.

2. Basis

BSE states that the proposed amendment is designed to prevent the BSE from being at a competitive disadvantage to other regional market centers that may be able to attract order flow as a result of their not having any short sale price test applicable to Nasdaq Securities until completion of the Pilot Program or until such other time as the Commission determines that such exemptions are no longer necessary or appropriate in the public interest or consistent with the protection of investors. Except for some nominal Nasdaq crossing business that began in August 2006 and will conclude on January 1, 2007, BSE has not traded Nasdaq securities since September 2004. In addition, the proposed amendment will delete a rule that will be rendered obsolete on January 1, 2007, when BSE begins trading Nasdaq securities on the BeX on a fully electronic basis without specialists. As such, the Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,⁸ in general, and Section 6(b)(5) of the Act,⁹ in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

system, and, in general, to protect investors and the public interest.

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

The Exchange has neither solicited nor received comments on the proposed rule change.

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

(a) This proposed rule change is filed pursuant to paragraph (A) of section 19(b)(3) of the Act.

(b) Because the foregoing rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

At any time within 60 days of the filing of the 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.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

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. Please include File Number SR-BSE-2006-31 on 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 No. SR-BSE-2006-31. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. 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 the File Number SR-BSE-2006-31 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.¹²

Nancy M. Morris
Secretary

¹² 17 CFR 200.30-3(a)(12).