

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54556; File No. SR-BSE-2005-09)

October 2, 2006

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Its Minor Rule Violation Plan

On February 7, 2005, 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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend BSE Rule Chapter XXX (“Disciplining of Members – Denial of Membership”) and BSE Rule Chapter XXXIV (“Minor Rule Violations”). The Exchange filed Amendment No. 1 to the proposed rule change on July 7, 2006, and Amendment No. 2 on August 18, 2006. The proposed rule change, as amended, was published for comment in the Federal Register on September 1, 2006.<sup>3</sup> The Commission received no comments regarding the proposal.

BSE proposed to make the following changes:

- add “Principal Considerations in Determining Sanctions” to BSE Rule Chapter XXX;
- move Acceptance Waiver and Consent Procedures (“AWC”) from BSE Rule Chapter XXXIV to BSE Rule Chapter XXX;
- change references to the “Chief Regulatory Officer” in the AWC to the “General Counsel or his/her delegatee”;
- add a provision in BSE Rule Chapter XXX imposing a late charge when a member

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 54374 (August 28, 2006), 71 FR 52183.

fails to pay a fine on a timely basis;

- add violations of the Exchange's rules governing the Intermarket Trading System to BSE Rule Chapter XXXIV;
- restructure the fine levels of violations in BSE Rule Chapter XXXIV pertaining to Failure to Display Limit Orders, Floor Order Facilitation, Failure to Designate an Order (PPS), and Dealings Outside of Exchange Operating Hours; and
- adjust the fine levels for short sale violations in BSE Rule Chapter XXXIV.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>4</sup> In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,<sup>5</sup> because delineating factors to be considered in determining sanctions should promote transparency of the Exchange's disciplinary process and the ability to impose a late charge for the failure to pay fines should help the Exchange carry out its supervisory responsibilities.

The Commission further believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,<sup>6</sup> which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. In addition, because BSE Rule Chapter XVIII provides procedural rights to contest the fine for any violation of an Exchange rule and permits disciplinary proceedings on the matter, the Commission believes BSE Rule Chapter XXXIV, as amended by this proposal, provides a fair procedure for the disciplining of

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<sup>4</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>6</sup> 15 U.S.C. 78f(b)(1) and 78f(b)(6).

members and persons associated with members, consistent with Sections 6(b)(7) and 6(d)(1) of the Act.<sup>7</sup>

Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act<sup>8</sup> which governs minor rule violation plans. The Commission believes that the proposed change to BSE Rule Chapter XXXIV will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In approving this proposed rule change, as amended, the Commission in no way minimizes the importance of compliance with BSE rules and all other rules subject to the imposition of fines under the minor rule violation plan of the Exchange. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, the Exchange's minor rule violation plan under BSE Rule Chapter XXXIV provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that BSE will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the minor rule violation plan or whether a violation requires formal disciplinary action under BSE Rule Chapter XXX.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act<sup>9</sup> and Rule

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<sup>7</sup> 15 U.S.C. 78f(b)(7) and 78f(d)(1).

<sup>8</sup> 17 CFR 240.19d-1(c)(2).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

19d-1(c)(2) under the Act,<sup>10</sup> that the proposed rule change (SR-BSE-2005-09), as amended, be, and hereby is, approved and declared effective.

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

Nancy M. Morris  
Secretary

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<sup>10</sup> 17 CFR 240.19d-1(c)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(44).