

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50220; File No. SR-BSE-2004-37)

August 19, 2004

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change to Extend Its Clean Cross Rule to the Trading of Exchange-Listed Securities

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 August 18, 2004, 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to replicate a section of its Nasdaq trading rules relating to orders to buy and sell the same security into its rules applicable to the trading of exchange-listed securities.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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RULES OF THE BOSTON STOCK EXCHANGE

Chapter II

Dealings on the Exchange

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Sec. 18 Orders to Buy and Sell the Same Security

When a member has an order to buy and an order to sell the same security, he shall audibly offer such security, if bonds, at 1/8 of 1%, and if stocks, at the approved Minimum Price Variation ("MPV") (as defined in Chapter II, Section 41), higher than his bid before making a transaction with himself.

When a member has an order to buy and an order to sell an equivalent amount of the same security, and both orders are for 5,000 shares or more and are for accounts other than the accounts of the executing member, the member may cross such orders at a price which is at or within the prevailing bid or offer. The member's bid or offer shall be entitled to priority at such cross price, provided that the proposed cross transaction is of a size greater than the aggregate size of all of the interest communicated on the Exchange floor at that price. Another member may trade with either the bid or offer side of the presented cross transaction only to provide a price which is better than the cross price as to all or part of such bid or offer. A member who is providing a better price to one side of the cross transaction must trade with all other market interest having priority at that price before trading with any part of the cross transaction.

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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 Exchange included statements concerning the purpose of, and the 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 III below. The Exchange has 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

The purpose of the proposed rule change is to restate a section of the Rules of the Board of Governors of the Exchange (the “BSE Rules”) relating to Orders to Buy and Sell the Same Security (“Clean Cross Rule”). Currently, the Exchange has a Clean Cross Rule set forth in Chapter XXXV of the BSE Rules, which is applicable to the trading of Nasdaq securities.³ The Exchange is seeking to restate this rule, verbatim, in Chapter II of the BSE Rules, so that it would also apply to the trading of exchange-listed securities. In extending its Clean Cross Rule to exchange-listed securities, the BSE believes it would be on a competitive par with other exchanges that have Clean Cross Rules. The BSE notes, for example, that the American Stock Exchange (“Amex”) has a Clean Cross Rule upon which the BSE Clean Cross Rule is based.⁴

³ See Chapter XXXV, § 6 of the BSE Rules.

⁴ See Amex Rule 126, Commentary .02. See also, e.g., Article XX, Rule 23 of the Chicago Stock Exchange, Incorporated (Order to Buy and Sell the Same Security); Rule 126 of the Philadelphia Stock Exchange, Inc. (“Crossing” Orders).

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,⁵ in general, and with Section 6(b)(5) of the Act,⁶ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and is not designed to permit unfair discrimination between customers, brokers, or dealers, or to regulate, by virtue of any authority, matters not related to the administration of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition.

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. 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

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BSE-2004-37 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to SR-BSE-2004-37. 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 Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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 SR-BSE-2004-37 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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 Act and the rules and regulations under the Act applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁷ in that it is designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.⁸

The rule change will allow a member to initiate a clean cross transaction in an exchange-listed security of 5,000 shares or more at a price at or within the prevailing bid or offer. The Commission believes that such a rule strikes a reasonable balance between allowing floor brokers on the Exchange to execute crossing transactions and allowing specialists and market makers to provide price improvement. The Commission also believes that the 5,000 share threshold will ensure that the proposed rule change will apply primarily to larger block-sized orders where the depth of the prevailing bid or offer may be less likely to satisfy either side of the clean cross. The Commission notes that the proposed rule change preserves the auction market principle of price improvement by permitting the cross transaction to be broken up at a better price.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register.

⁷ 15 U.S.C. 78f(b)(5).

⁸ In approving this rule change, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Because it previously has approved similar rules on other exchanges⁹ as well as a substantively identical BSE rule that provides for clean cross transactions in Nasdaq securities,¹⁰ the Commission believes that accelerated approval of a BSE rule that provides for clean cross transactions in exchange-listed securities is appropriate.

V. Conclusion

IS IT THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-BSE-2004-37) be, and it hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland
Deputy Secretary

⁹ See, e.g., Amex Rule 126, Commentary .02. See also Securities Exchange Act Release No. 44123 (March 28, 2001), 66 FR 18124 (April 5, 2001) (SR-Amex-01-02) (approving Amex Rule 126, Commentary .02); Securities Exchange Act Release No. 47345 (February 11, 2003), 68 FR 8316 (February 20, 2002) (SR-Amex-2002-89) (reducing minimum number of shares eligible for Amex Clean Cross Rule to 5,000).

¹⁰ See Chapter XXXV, § 6 of the BSE Rules. See also Securities Exchange Act Release No. 44952 (October 18, 2001), 66 FR 54039 (October 25, 2001) (SR-BSE-2001-01) (approving Chapter XXXV, § 6 of the BSE Rules).

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).