

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50921; File No. SR-BSE-2004-53)

December 22, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of
Proposed Rule Change and Amendment 1 Thereto by the Boston Stock Exchange, Inc.
Regarding Short Sales

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 December 3, 2004, the Boston Stock Exchange, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in items I, II, and III below, which items have been prepared by the self-regulatory organization. On December 13, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.³ The proposed rule change, as amended, was filed by the Exchange as a non-controversial filing, under Rule 19b-4(f)(6) of the Act.⁴ 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

The Exchange is seeking to make minor modifications to its rules which relate to short sales, in order to comply with the requirements set forth in the Commission’s recent

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Amendment No. 1 to the proposed rule change (December 13, 2004). Amendment No. 1 replaced the Exchange’s original filing in its entirety.

⁴ 17 CFR 240.19b-4(f)(6). For purposes of determining the effective date and calculating the sixty-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on December 13, 2004, the date the Exchange filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

release and final rule, Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004) (“SHO Release”) and accompanying orders, Securities Exchange Act Release No. 50104 (July 28, 2004), 69 FR 48032 (August 6, 2004) and Securities Exchange Act Release No. 50747 (November 29, 2004), 69 FR 70480 (December 6, 2004) (“Pilot Orders”). The text of the proposed rule change is available for viewing on the Exchange’s Web site, www.bostonstock.com, the Commission’s Web site, www.sec.gov/rules/sro.shtml, and at the Exchange and the Commission.

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 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 Exchange is seeking to make minor modifications to its rules that relate to short sales, in order to comply with the requirements set forth in the Commission’s SHO Release and accompanying Pilot Orders.

The Exchange need only make minor modifications to its current rules in order to comply with the requirements set forth in the Commission’s recent SHO Release. The first Exchange rule requiring minor modification is Rules of the Board of Governors of

the Boston Stock Exchange (“BSE Rules” or “Rules”), Chapter II, Dealings on the Exchange, Section 16, Short Sales. Section 16 is modeled after and is similar to the language appearing in 17 CFR 240.10a-1, prior to the SHO Release and the changes resulting therefrom. This proposed rule modifies the Exchange’s rule so that it continues to be modeled after and is consistent with the Commission’s rules and regulations regarding short sales.

The second Exchange rule requiring minor modification is BSE Rule Chapter II, Dealings on the Exchange, Section 39, Periodic Reports. Section 39 in the Supplementary Material uses a definition which is no longer applicable under the SHO Release. There is also a reference to a clause which no longer exists in the Commission’s rule. The proposed rule modifies the language and removes the clause to be consistent with the Commission’s rules.

The third Exchange rule requiring minor modification is BSE Rule Chapter II, Dealings on the Exchange, Section 40, Limit Order Display Rule. In order for the BSE Rule to be consistent with the SHO Release and the Pilot Orders, the proposed rule adds the following sentence: “However, a customer short sale limit should be displayed where the order is eligible for execution if the application of a price test has been suspended by Commission rule, motion or order.”

The fourth Exchange rule requiring minor modification is BSE Rule Chapter XXXV, Trading in Nasdaq Securities, Section 27, Short Sales. In order for the BSE Rule to be consistent with the SHO Release and the Pilot Orders, the proposed rule adds the following sentence: “The provisions of this rule shall not prohibit any transaction or

transactions which the Commission, upon written request or upon its own motion or order, exempts, either unconditionally or on specified terms and conditions.”

As stated above, the changes are required so that the Exchange’s rules are consistent with the SHO Release and the Pilot Orders. Accordingly, the Exchange is proposing the immediate effectiveness of its proposal.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(5) of the Act,⁵ 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 will impose any burden on competition 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

⁵ 15 U.S.C. 78f(b)(5).

The foregoing rule change, as amended, has been filed by the Exchange pursuant to Section 19(b)(3)(A) of the Act⁶ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁷ The Exchange has designated the proposed rule change as one that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. Therefore, the foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹ The Exchange requests that the Commission waive the 30-day pre-operative requirements contained in Rule 19b-4(f)(6)(iii).¹⁰ The Exchange believes good cause exists to grant such waiver because of the importance of short sale regulation to the protection of investors. The Exchange will implement this rule change immediately.

The Commission believes that waiving the 30-day pre-operative delay is consistent with the protection of investors and the public interest. The Commission believes that accelerating the operative date does not raise any new regulatory issues, significantly affect the protection of investors or the public interest, or impose any

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(6).

⁸ See supra note 6.

⁹ See supra note 7.

¹⁰ Under subparagraph (f)(6)(iii) of Rule 19b-4, the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. 17 CFR 240.19b-4(f)(6)(iii).

significant burden on competition. For these reasons, the Commission designates the proposed rule change as effective and operative immediately.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the 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.

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. 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-2004-53 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 File Number SR-BSE-2004-53. 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such 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 File Number SR-BSE-2004-53 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.¹¹

Margaret H. McFarland
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).