

common control with, the other person. Applicants state that MS&Co. is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3) of the Act. Applicants state that, as a result of the Injunction, they would be subject to the prohibitions of section 9(a).

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting them from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standards for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that none of their officers or employees who are engaged in the provision of investment advisory, depositor or underwriting services to the Funds participated in any way in the conduct underlying the Injunction. Applicants further state that the conduct underlying the Injunction did not involve any Funds.

5. Applicants state that the inability to continue providing advisory services to the Funds and the inability to continue serving as principal underwriter or depositor to the Funds would result in potentially severe hardships for the Funds and their shareholders. Applicants also state that they have distributed, or will distribute as soon as is reasonably practical, written materials, including an offer to meet in person to discuss the materials, to the boards of directors or trustees of the Funds (the "Boards"), including the directors or trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Funds and their independent legal counsel, as defined in rule 0-1(a)(6) under the Act, if any, regarding the Injunction, any impact on the Funds, and the application.<sup>4</sup> The Applicants will

<sup>4</sup> With respect to Funds that are unit investment trusts ("UITs"), Applicants will provide written notification to the trustee for each of the UITs

provide the Boards with all information concerning the Injunction and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the Federal securities laws.

6. Applicants also assert that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. Applicants state that they have committed substantial resources over more than thirty years to establish an expertise in advising and underwriting Funds. Applicants recently applied for an exemption pursuant to section 9(c) of the Act for conduct relating to certain research analysts' conflicts of interest.<sup>5</sup> In addition, Dean Witter Reynolds Inc., the predecessor of Morgan Stanley DW Inc., previously sought and received an exemption under section 9(c) of the Act.<sup>6</sup>

#### Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

#### Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly, it is hereby ordered, pursuant to section 9(c) of the Act, that Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Injunction, subject to the condition in the application, until the date the Commission takes final action on an application for a permanent order.

concerning the Injunction, any impact on the UITs, and the application, and will provide any other related information that may be requested by the trustee.

<sup>5</sup> Morgan Stanley Investment Advisers Inc., Investment Company Act Release No. 26236 (Oct. 31, 2003) (notice and temporary order).

<sup>6</sup> Dean Witter Reynolds Inc., Investment Company Act Release Nos. 17887 (Nov. 29, 1990) (notice and temporary order) and 18119 (Apr. 29, 1991) (permanent order).

By the Commission.

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

[FR Doc. E5-577 Filed 2-10-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51137; File No. SR-BSE-2005-06]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Its Minor Rule Violation Plan

February 4, 2005.

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> notice is hereby given that on January 31, 2005, 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 Exchange designated its filing as non-controversial pursuant to section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6).<sup>4</sup> Accordingly, the proposed rule change became effective upon filing. 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 seeks to amend its rules related to its Minor Rule Violation Plan ("MRVP"). The text of the proposed rule change is available on BSE's Web site (<http://www.bostonstock.com/legal/index.html>), at BSE's principal office, and at 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 Exchange 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

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

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 Exchange is proposing to add a new section to its MRVP which would set forth procedures for a member against whom formal disciplinary action is taken by the Exchange to consent to the charges being levied and waive formal disciplinary hearing. These procedures would be similar to those set forth in NASD Rule 9216, "Acceptance, Waiver, and Consent; Plan Pursuant to SEC Rule 19d-1(c)(2)," and provide that a BSE member may, upon being notified of disciplinary charges by the Exchange's Enforcement Department, execute a written letter which (1) accepts the charges, (2) consents to the imposition of a sanction, and (3) agrees to waive the right to a hearing of appeal to challenge the validity of the letter. In proposing such procedures, the Exchange is seeking to provide its members with an intermediary disciplinary step, short of a formal hearing, which would permit its members to avoid formal proceedings in instances where they accept liability from the outset.

2. Statutory Basis

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 promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, to remove impediments to perfect the mechanism of a free and open market and a national market 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 any comments on this proposed rule change.

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

BSE asserts that the foregoing rule has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder<sup>7</sup> because it does not significantly affect the protection of investors or the public interest or impose any significant burden on competition. BSE has requested that the Commission waive the requirement that the rule change not become operative for 30 days after the date of the filing, as set forth in Rule 19b-4(f)(6)(iii).<sup>8</sup> The Commission finds good cause for the proposed rule change to become operative prior to the 30th day after the date of publication of notice of filing in the *Federal Register*. The Commission notes that the proposed rule is substantially similar to NASD Rule 9216,<sup>9</sup> which was previously approved by the Commission after notice and comment and, therefore, does not raise any new regulatory issues.<sup>10</sup>

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.

**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](mailto:rule-comments@sec.gov). Please include File Number SR-BSE-2005-06 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission,

<sup>6</sup> 5 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

<sup>8</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>9</sup> See Securities Exchange Release No. 32383 (May 28, 1993), 58 FR 31768 (June 4, 1993) (SR-NASD-93-6).

<sup>10</sup> Rule 19b-4(f)(6) also requires a self-regulatory organization to give written notice of a proposed rule change filed pursuant to this subsection at least five business days prior to filing. BSE complied with this requirement.

450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-BSE-2005-06. 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. Copies of such filing also will be available for inspection and copying at the principal office of BSE. 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-2005-06 and should be submitted on or before March 4, 2005.

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

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

[FR Doc. E5-581 Filed 2-10-05; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-51145; File No. SR-PCX-2005-02]

**Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Market Maker Cleanup Order Administrative Change**

February 7, 2005.

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> notice is hereby given that on January 21, 2005, the Pacific Exchange, Inc.

<sup>11</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).