be submitted on or before December 22, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3408 Filed 11–30–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50733; File No. SR–BSE–2004–50]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate a Restriction Precluding a BSE Specialist From Trading Both Nasdaq-Listed and New York Stock Exchange-Listed Securities Simultaneously

November 24, 2004.

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 November 22, 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 and II, below, which Items have been prepared by the Exchange. The BSE filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with 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

The BSE proposes to eliminate the restrictions precluding a BSE specialist from trading both Nasdaq-listed and New York Stock Exchange (''NYSE'')-listed securities at the same time. The text of the proposed rule change is below. Proposed deletions are in brackets.[5]

Chapter XXXV

Limitations on Specialists

[Sec. 11. Any individual member who is registered as a specialist is not permitted to maintain a book, as defined in Chapter XV, Specialists, Section 6, The Specialist's Book, in both Nasdaq securities and listed securities. Nasdaq securities must comprise a separate book which must be solely traded by a separate specialist. A specialist who is qualified under the provisions of this Chapter XXXV, and the provisions of Chapter XV, Specialists, Section 1, Registration, to trade either listed or Nasdaq securities, or both, cannot accept orders in, nor effect transactions in, both types of securities, at the same time.

Nothing in this section shall preclude any duly qualified specialist from occasionally substituting for, or acting as an alternate for, another specialist in either listed or Nasdaq securities, in accordance with Article XVI of the Constitution of the Boston Stock Exchange, Officers and Associates, Section 7, Alternates for Members Absent. A specialist substituting for another specialist in accordance with the provisions of this section will be permitted to trade both Nasdaq and listed securities at the same time, during the period of substitution. In the case of an extended or permanent absence of a specialist qualified to trade Nasdaq securities, the firm from which the specialist is absent must promptly notify the Exchange and make arrangements to permanently replace the absent specialist in a reasonable amount of time, as determined by the Exchange. The Exchange reserves the right to temporarily reassign some or all of the Nasdaq securities comprising an absent specialist's book in the event that a firm does not make suitable or timely arrangements for the replacement of the absent specialist.]

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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 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 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 proposes to eliminate the restrictions, as set forth in Chapter XXXV, Trading in Nasdaq Securities, Section 11, Limitations on Specialists. This Section precludes a BSE specialist from trading both Nasdaq-listed and NYSE-listed securities at the same time.

Originally, the primary reason for the restriction was to separate specialists' books so that the BSE would be able to ensure that specialists maintained adequate levels of capital in their respective accounts. When the rule was first proposed,[6] the Exchange anticipated that individual BSE specialists might seek to trade large numbers of Nasdaq-listed securities, and the Exchange was concerned that such a practice would lead to an undue concentration of stocks within a single specialist book. The Exchange was also concerned that differences in the marketplaces for Nasdaq-listed and NYSE-listed securities necessitated a requirement that a specialist concentrate on trading in either the Nasdaq or NYSE-listed marketplace, but not both at the same time.

Since the rule was approved,[7] BSE specialist trading practices have gradually evolved to the point that the specialists are limiting their trading to a much more limited number of securities. As a result, the concern regarding undue concentration of stocks within a single specialist book has lessened considerably. Also, regardless of the number of stocks within a specialist's book, the Exchange consistently monitors all of its specialist accounts regarding proper capitalization and risk levels, and is confident in its ability to proactively manage that risk, regardless of the types of securities within an account.

Moreover, with the proposal set forth in Regulation NMS[8] that all securities, regardless of listing market, be considered NMS securities, and the proposals to apply uniform rules (such as the trade-through rule proposal[9]) to all securities, the Exchange no longer believes that it is necessary, or prudent, to distinguish between Nasdaq-listed

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] With the instant proposed rule change, the BSE eliminated Section 11 of Chapter XXXV (''Limitations on Specialists''). As a result, all subsequent Sections in Chapter XXXV are renumbered.

[6] *See* Securities Exchange Act Release No. 44476 (June 26, 2001), 66 FR 35293 (July 3, 2001) (SR–BSE–2001–01).

[7] See Securities Exchange Act Release No. 44952 (October 18, 2001), 66 FR 54039 (October 25, 2001) (SR-BSE–2001–01).

[8] *See* Securities Exchange Act Release No. 49325 (February 26, 2004), 69 FR 11126 (March 9, 2004).

[9] *Id.* at 69 FR 11129–11153.

and NYSE-listed securities for the purposes of restricting a specialist's trading activities. Recently enacted Regulation SHO [10] also does not distinguish between NYSE-listed and Nasdaq-listed securities in its application. The BSE is seeking to proactively respond to the trend of treating all securities as one type, and as part of a single national market system.

Most importantly, however, is that, on November 9, 2004, Nasdaq officially announced that it would be assuming the listing of the Nasdaq-100 Index Tracking Stock (the ''QQQs''), effective December 1, 2004. Several BSE specialists currently trade the QQQs as an NYSE-listed security. As a result of the prohibition currently set forth in the BSE's rules, those specialists would no longer be able to transact business in the QQQs on the BSE. Since the BSE is the only UTP Exchange that currently has this restriction in place, BSE specialists, and the BSE, would be placed at a severe competitive disadvantage, as a result of actions beyond the Exchange's control, if the BSE does not remove this restriction.

Accordingly, the Exchange has asked the Commission to waive the 30-day operative delay of the proposed rule change, to allow it to be both effective and operative upon filing with the Commission.

2. Statutory Basis

The BSE believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[11] in general, and Section 6(b)(5)[12] 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.

[10] *See* Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

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

Because the foregoing proposed 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 Act [13] and Rule 19b–4(f)(6) thereunder.[14] 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.

The BSE has asked that the Commission waive the 30-day operative delay contained in Rule 19b–4(f)(6)(iii) under the Act.[15] The Commission believes such waiver is consistent with the protection of investors and the public interest, for it will allow BSE specialists that currently trade the QQQs as a NYSE-listed security to continue to do so as of December 1, 2004, when Nasdaq will assume the listing of the QQQs. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[16]

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.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization provide the Commission written notice of its intent to file a proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change with the Commission. The BSE complied with this requirement.

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2004–50 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–2004–50. 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 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–2004–50 and should be submitted on or before December 22, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3405 Filed 11–30–04; 8:45 am]

BILLING CODE 8010–01–P

[17] 17 CFR 200.30–3(a)(12).