

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 No. SR-Amex-2006-45 and should be submitted on or before June 15, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53836; File No. SR-BSE-2006-17]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Change Its Hours of Operation for Trading in Nasdaq Securities

May 18, 2006.

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 May 1, 2006, 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<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> 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 amend Chapter XXXV, Trading in Nasdaq Securities, Section 7, Dealings On Floor—Hours. The text of the proposed rule change is available on the BSE Web site at <http://www.bostonstock.com>, at the

Office of the Secretary, and at 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 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 change its hours of operation for trading in Nasdaq Securities from 7 a.m. until 6:30 p.m., to 7 a.m. until 4:30 p.m. This change would decrease the Exchange's transacting of business in Nasdaq Securities during Nasdaq's after hours trading session by two hours, ending at 4:30 p.m. The BSE believes this change meets the current needs of its members.

###### 2. Statutory Basis

The BSE believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,<sup>5</sup> in general, and Section 6(b)(5)<sup>6</sup> in particular, in that it is designed to promote just and equitable principles of trade, and 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 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<sup>7</sup> and Rule 19b-4(f)(6) thereunder. 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.<sup>8</sup> The Commission believes such waiver is consistent with the protection of investors and the public interest, for it will allow BSE to implement a change that meets the current needs of its members. For this reason, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>9</sup>

#### 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-2006-17 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BSE-2006-17. This file

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>9</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>16</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>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6). The BSE provided the Commission with written notice of its intention to file the proposed rule change on April 6, 2006. The BSE asked the Commission to waive the 30-day operative delay. See 17 CFR 240.19b-4(f)(6).

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

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 the 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 the File Number SR-BSE-2006-17 and should be submitted on or before June 15, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53833; File No. SR-NASDAQ-2006-010]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change To Establish Certain Fees With Respect to Transactions Executed Through the Intermarket Trading System

May 18, 2006.

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 May 15, 2006, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed

rule change as described in Items I and II below, which Items have been prepared by Nasdaq. 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 enter into arrangements with other national securities exchanges to pass certain fees they have collected from members for transactions executed on another exchange through the Intermarket Trading System ("ITS"). This proposal does not require changes to Nasdaq rule text. Nasdaq will implement the proposed rule change immediately upon approval by 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 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 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

Section 31 of the Act<sup>3</sup> requires each national securities exchange to pay the Commission a fee based on the aggregate dollar amount of certain sales of securities ("covered sales"). Rules 31 and 31T, adopted by the Commission in June 2004,<sup>4</sup> established procedures for the calculation and collection of Section 31 fees on such covered sales. Rule 31 requires each national securities exchange that owes Section 31 fees to submit a completed Form R31 to the Commission each month, beginning with July 2004. Rule 31T required each exchange to submit a completed Form R31 for each of the months September 2003 to June 2004, inclusive. Each national securities exchange must report

its covered sales volume based on the data from a designated clearing agency, when available. The designated clearing agency for covered sales of equity securities is the National Securities Clearing Corporation ("NSCC"). These covered sales are reported in Part I of Form R31, and each exchange is required to "provide in Part I only the data supplied to it by a designated clearing agency."<sup>5</sup> The data supplied by NSCC for the period September 2003 through August 2004 did not accurately reflect the aggregate dollar value of the covered sales occurring on each exchange to permit reports to be made in accordance with new Rules 31 and 31T. In particular, the data NSCC reported to each national securities exchange included non-covered sales data for sales originating on one exchange and executed on another exchange through the ITS.<sup>6</sup>

Section 31 requires that national securities exchanges pay a fee based on the aggregate dollar amount of sales of securities transacted on the exchange. Given the specific language of Section 31, the Commission in the Adopting Release for Rules 31 and 31T advised that the current methodology for treating sales of securities that occur through ITS<sup>7</sup> was no longer appropriate and that "it would be simpler and more transparent for each covered [self-regulatory organization ("SRO")] to report all covered sales that occur on its market." The Commission further stated:

The Commission acknowledges that a covered SRO on which a covered sale occurs as a result of an incoming ITS order may not

<sup>5</sup> 17 CFR 240.31(b)(5).

<sup>6</sup> As a result of this and other inaccuracies in the data reported by NSCC, the national securities exchanges were unable to report accurate information on Form R31, unless they made adjustments to the NSCC data based on data other than that provided by NSCC. On October 6, 2004, the Commission's Division of Market Regulation ("Division") issued a "no-action" letter advising exchanges for whom NSCC acts as a designated clearing agency under Rule 31, that the Division staff would not recommend that the Commission take enforcement action if a national securities exchange adjusts the data provided by NSCC to accurately reflect covered sales occurring on the national securities exchange. See letter from Robert L.D. Colby, Deputy Director, Division, Commission to Ellen J. Neely, Senior Vice President and General Counsel, Chicago Stock Exchange, Inc. ("CHX"), dated October 6, 2004.

<sup>7</sup> In the Adopting Release, the Commission described the current methodology: "SRO A sends an ITS commitment to a member of SRO B to sell a security, and the commitment is executed on SRO B. Under existing arrangements, SRO A pays the Section 31 fee arising from this trade and passes the fee to its member that initiated the trade. \* \* \* [T]he SROs devised this system because SRO B does not have the ability to require members of SRO A to reimburse it for the cost of its Section 31 fees." Adopting Release, 69 FR at 41067.

<sup>10</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>3</sup> 15 U.S.C. 78ee.

<sup>4</sup> See Securities Exchange Act Release No. 49928 (June 28, 2004), 69 FR 41060 (July 7, 2004) ("Adopting Release").