

**RECORD SOURCE CATEGORIES:**

Records are obtained from the position control system and from the individual.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

By the Commission.

Dated: April 23, 2003.

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 03-10601 Filed 4-29-03; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-47720; File No. SR-BSE-2003-02]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Extending Its Operating Hours for the Trading of Nasdaq Securities**

April 23, 2003.

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 March 17, 2003, the Boston Stock Exchange, Inc. ("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. On April 10, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> 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 the Nasdaq trading rules set forth in the

Rules of the Board of Governors of the Exchange to allow for extended hours for the trading of Nasdaq securities.

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

\* \* \* \* \*

**Chapter XXXV**

**Trading in Nasdaq Securities**

\* \* \* \* \*

**Dealings on the Floor—Hours**

Section 8. [Pursuant to Chapter I-B, Sec. 2, Dealings on the Floor—Hours, no member or member organization shall make any bid, offer or transaction upon the floor of the Exchange, issue a commitment to trade through ITS or send an order for a Nasdaq security to a Nasdaq System market maker other than during the hours the Exchange is open for the transaction of business. Nasdaq securities will not be eligible to participate in the Post Primary Session.] *For the purposes of transacting business in Nasdaq securities only, the Exchange shall be open from 7 a.m. until 6:30 p.m. Only transactions in Nasdaq securities will be permitted outside the hours of 9:30 a.m. and 4:15 p.m., in accordance with Chapter I-B, Business Hours, Section 1, Primary Session, and Section 1(a) Post Primary Session.*

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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 is proposing an alteration of the hours the Exchange is to be open for trading Nasdaq securities. Presently, Chapter XXXV of the Rules, *Trading in Nasdaq Securities*, Section 8, *Dealings on the Floor—Hours*, limits the hours of trading in Nasdaq securities on the Exchange to the hours of 9:30 a.m. to 4 p.m. The Exchange would delete

the present rule and replace it with one which would permit the transaction of business, in Nasdaq securities only, between the hours of 7 a.m. and 6:30 p.m. The Exchange believes that such an extension of hours would allow Exchange members who trade Nasdaq securities to remain competitive with their counterparts on other exchanges that trade Nasdaq securities pursuant to unlisted trading privileges, as well as NASD members who are permitted to conduct transactions in Nasdaq securities during this extended period. Furthermore, the Exchange believes that such extended hours are contemplated and permitted by Article XI of the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis ("OTC/UTP Plan")<sup>4</sup>

**2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,<sup>5</sup> in general, and Section 6(b)(5) of the Act,<sup>6</sup> in particular, 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 and perfect the mechanism of a free and

<sup>4</sup> The OTC/UTP Plan was initially approved in 1990. See Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990). It has subsequently been amended. See also Securities Exchange Act Release Nos. 34371 (July 13, 1994), 59 FR 37103 (July 20, 1994); 35221 (January 11, 1995), 60 FR 3886 (January 19, 1995); 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995); 36226 (September 13, 1995), 60 FR 49029 (September 21, 1995); 36368 (October 13, 1995), 60 FR 54091 (October 19, 1995); 36481 (November 13, 1995), 60 FR 58119 (November 24, 1995); 36589 (December 13, 1995), 60 FR 65696 (December 20, 1995); 36650 (December 28, 1995), 61 FR 358 (January 4, 1996); 36934 (March 6, 1996), 61 FR 10408 (March 13, 1996); 36985 (March 18, 1996), 61 FR 12122 (March 25, 1996); 37689 (September 16, 1996), 61 FR 50058 (September 24, 1996); 37772 (October 1, 1996), 61 FR 52980 (October 9, 1996); 38457 (March 31, 1997), 62 FR 16880 (April 8, 1997); 38794 (June 30, 1997), 62 FR 36586 (July 8, 1997); 39505 (December 31, 1997), 63 FR 1515 (January 9, 1998); 40151 (July 1, 1998), 63 FR 36979 (July 8, 1998); 40896 (December 31, 1998), 64 FR 1834 (January 12, 1999); 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999); 42268 (December 23, 1999), 65 FR 1202 (January 6, 2000); 43005 (June 30, 2000), 65 FR 42411 (July 10, 2000); 44099 (March 23, 2001), 66 FR 17457 (March 30, 2001); 44348 (May 24, 2001), 66 FR 29610 (May 31, 2001); 44552 (July 13, 2001), 66 FR 37712 (July 19, 2001); 44694 (August 14, 2001), 66 FR 43598 (August 20, 2001); 44804 (September 17, 2001), 66 FR 48299 (September 19, 2001); 45081 (November 19, 2001), 66 FR 59273 (November 27, 2001); 46381 (August 19, 2002), 67 FR 164 (August 23, 2002); 46729 (October 25, 2002), 67 FR 212 (November 1, 2002).

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

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

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

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

<sup>3</sup> In Amendment No. 1, the Exchange amended the proposal to state that it deemed the proposed rule change to be non-controversial in nature (rather than concerned solely with the administration of the Exchange) and sought immediate effectiveness of the proposed rule change pursuant to Section 19(b)(3)(A) of the Act and waiver of the 30-day operative period for the effectiveness of the rule change proposal. See Letter dated April 10, 2003, from John Boese, Vice President, Legal and Compliance, Exchange, to Katherine England, Assistant Director, Division of Market Regulation, Commission. For purposes of calculating the 60-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 the period to commence on April 10, 2003, the date the Exchange filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).