

unnecessary multiple examinations and regulatory duplication.<sup>9</sup> With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d-1 and Rule 17d-2 under the Act.<sup>10</sup> Rule 17d-1, adopted on April 20, 1976,<sup>11</sup> authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with financial responsibility requirements imposed by the Act, or by Commission or SRO rules. When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with applicable financial responsibility rules.

On its face, Rule 17d-1 deals only with an SRO's obligations to enforce broker-dealers' compliance with the financial responsibility requirements. Rule 17d-1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices, and trading activities and practices.

To address regulatory duplication in these other areas, on October 28, 1976, the Commission adopted Rule 17d-2 under the Act.<sup>12</sup> This rule permits SROs to propose joint plans allocating regulatory responsibilities with respect to common members. Under paragraph (c) of Rule 17d-2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to and foster the development of a national market system and a national clearance and settlement system, and in conformity with the factors set forth in Section 17(d) of the Act. Commission

approval of a plan filed pursuant to Rule 17d-2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

## II. Discussion

The Commission finds that the proposed plan is consistent with the factors set forth in Section 17(d) of the Act<sup>13</sup> and Rule 17d-2(c)<sup>14</sup> in that the proposed plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among self-regulatory organizations, or to remove impediments to and foster the development of the national market system. In particular, the Commission believes that the proposed plan is an achievement of cooperation between the ISE and NASD which will reduce unnecessary regulatory duplication by allocating to NASD certain responsibilities related to options-related sale practice regulation for members that belong to both the ISE and NASD. Furthermore, because the ISE and NASD will coordinate their regulatory functions in accordance with the plan, the plan will promote investor protection.

## III. Conclusion

This order gives effect to the plan, as amended, filed with the Commission that is contained in File S7-966. The parties shall notify all members affected by the plan, as amended, of their rights and obligations under the amended plan.

*It Is Therefore ordered*, pursuant to Sections 17(d)<sup>15</sup> and 11A(a)(3)(B)<sup>16</sup> of the Act, that the plan of the ISE and NASD, as amended, filed pursuant to Rule 17d-2,<sup>17</sup> is approved.

*It Is Therefore ordered* that the ISE is relieved of those responsibilities allocated to NASD under the plan, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48080; File No. SR-BSE-2003-11]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange Relating to an Extension of a Temporary Exemption Concerning an Interpretation of Its Execution Guarantee Rule

June 24, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 16, 2003, the Boston Stock Exchange ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons and to grant accelerated approval retroactively to June 5, 2003.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend a temporary exemption related to an interpretation of its Execution Guarantee Rule in response to Commission action regarding *de minimis* trades through of certain Exchange Traded Funds ("ETFs") in the Intermarket Trading System ("ITS").

#### 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.

<sup>9</sup> 15 U.S.C. 78q(d). See also Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Session, 32 (1975).

<sup>10</sup> 17 CFR 240.17d-1 and 17 CFR 240.17d-2.

<sup>11</sup> See Securities Exchange Act Release No. 12352, 41 FR 18809 (May 3, 1976).

<sup>12</sup> See Securities Exchange Act Release No. 12935, 41 FR 49093 (November 8, 1976).

<sup>13</sup> 15 U.S.C. 78q(d).

<sup>14</sup> 17 CFR 240.17d-2(c).

<sup>15</sup> 15 U.S.C. 78q(d).

<sup>16</sup> 15 U.S.C. 78k-1(a)(3)(B).

<sup>17</sup> 17 CFR 240.17d-2.

<sup>18</sup> 17 CFR 200.30-3(a)(34).

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

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