

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48622; File No. SR-BSE-2003-18]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Boston Stock Exchange, Inc. To Adopt an Anti-Money Laundering Compliance Program

October 10, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 24, 2003, 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 Exchange amended the proposal on October 3, 2003 and October 9, 2003. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval to the proposed rule change.

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

The Exchange proposes to adopt a new section entitled "Anti-Money Laundering Compliance Program" to its Rules under Chapter II, Dealings on the Exchange. The text of the proposed rule change follows. Additions are in *italics*.

\* \* \* \* \*

#### Chapter II

##### Dealings on the Exchange

Secs. 1-41, no change

##### Anti-Money Laundering Compliance Program

*Sec. 42. Each member organization and each member not associated with a member organization shall develop and implement a written anti-money laundering program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act (31 U.S.C. 5311, et seq.), and the implementing regulations promulgated thereunder by the Department of the Treasury. Each member organization's anti-money laundering program must be approved,*

*in writing, by a member of senior management.*

*The anti-money laundering programs required by this Section shall, at a minimum:*

*(1) Establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder;*

*(2) Establish and implement policies and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder;*

*(3) Provide for independent testing for compliance to be conducted by Participant personnel or by a qualified outside party;*

*(4) Designate, and identify to the Exchange (by name, title, mailing address, e-mail address, telephone number, and facsimile number) a person or persons responsible for implementing and monitoring the day-to-day operations and internal controls of the program and provide prompt notification to the Exchange regarding any change in such designation(s); and*

*(5) Provide ongoing training for appropriate persons.*

\* \* \* \* \*

#### 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

In response to the events of September 11, 2001, President Bush signed into law on October 26, 2001 the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "Patriot Act")<sup>3</sup> to address terrorist threats through enhanced

domestic security measures, expanded surveillance powers, increased information sharing and broadened anti-money laundering requirements. The Patriot Act amends, among other laws, the Bank Secrecy Act, as set forth in Title 31 of the United States Code.<sup>4</sup> Certain provisions of Title III of the Patriot Act, also known as the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 ("MLAA"), impose affirmative obligations on a broad range of financial institutions, including broker-dealers, specifically requiring the establishment of anti-money laundering monitoring and supervisory programs.

MLAA Section 352 required all financial institutions (including broker-dealers) to establish anti-money laundering programs that include, at a minimum: (i) Internal policies, procedures and controls; (ii) the specific designation of an anti-money laundering compliance officer; (iii) an ongoing employee training programs; and (iv) an independent audit function to test the anti-money laundering program.

The Commission has approved NASD's and several other exchanges' proposals to adopt rules requiring their members and member organizations to establish anti-money laundering compliance programs with the minimum standards described above.<sup>5</sup> Proposed BSE Section 42, entitled "Anti-Money Laundering Compliance Program" of Chapter II, Dealings on the Exchange, of the Rules of the Board of Governors of the Boston Stock Exchange, Inc. involves similar requirements. Adoption of the proposed rule would establish a regulatory framework for members and member organizations to comply with the requirements of the Patriot Act in this area.

###### 2. Statutory Basis

The Exchange believes that the statutory basis for the proposed rule change is section 6(b)(5) of the Act,<sup>6</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 and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and is not designed to permit unfair

<sup>4</sup> 31 U.S.C. 5311, et seq.

<sup>5</sup> See, e.g., Securities Exchange Act Release No. 45798 (April 22, 2002), 67 FR 20854 (April 26, 2002) (Order approving SR-NASD-2002-24 and SR-NYSE-2002-10).

<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> Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56, 115 Stat. 272 (2001).