

## 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 BSE states that the purpose of the proposed rule change is to add a rule to its Listed Securities Requirements in Chapter XXVII of the BSE Rules to address the requirements of Rule 10A-3 under the Act<sup>4</sup> relating to the mandatory establishment of independent audit committees for all listed issuers. Specifically, under the Exchange's proposed rule, the Exchange will be prohibited from listing, or continuing to list, any issuer that is not in compliance with certain requirements by July 31, 2005 for foreign private issuers and small business issuers, and the earlier of the first annual shareholders meeting after January 15, 2004, but in no case later than October 31, 2004 for all other issuers.

First, listed issuers will be required to establish an audit committee that shall be defined as: "An independent committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the Company and audits of the financial statements of the Company; and if no such body exists with respect to the Company, the entire board of directors." For the purposes of this rule, an audit committee member shall not be considered independent if: (1) such member accepts, either directly or indirectly, any consulting, advisory, or other compensatory fee from the issuer; or (2) is an affiliated person of the issuer or any subsidiary thereof.

Second, audit committees of listed issuers must be directly responsible for the appointment, compensation, retention and oversight of the work of any registered public accounting firm

engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the issuer, and each such registered public accounting firm must report directly to the audit committee. Further, each audit committee must establish procedures for the receipt, retention and treatment of the complaints regarding accounting, internal accounting controls or auditing matters, including procedures for the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters. To such end, each audit committee must have the authority to engage independent counsel and other advisors, as it determines necessary to carry out its duties, and each issuer must provide adequate funding for the audit committee.

The Exchange notes that this filing is restricted to the audit committee rules required by Rule 10A-3 under the Act.<sup>5</sup> The Exchange intends to file additional proposed rule changes relating to other corporate governance listing standards.<sup>6</sup> The Exchange is confident that the steps outlined above demonstrate a commitment to corporate governance and restoration of investor confidence to the U.S. securities markets. In particular, the Exchange believes that the rules outlined above will foster independent and vigilant audit committees with meaningful authority. In turn, these audit committees will ensure that investors receive accurate and reliable corporate financial information from BSE listed companies. The Exchange believes that such information is not only fundamental to the liquidity and vibrancy of the markets, but will also serve to restore confidence in the national market system.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>8</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest.

<sup>5</sup> See Securities Act Release No. 8220, Securities Exchange Act Release No. 47654, and Investment Company Act Release No. 26001 (April 9, 2003), 68 FR 18788 (April 16, 2003).

<sup>6</sup> Telephone conversation between Anthony Stankiewicz, Vice-President and Corporate Secretary, BSE, and Ira L. Brandriss, Special Counsel, Division of Market Regulation, Commission, on October 21, 2003.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

### 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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 such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to file number SR-BSE-2003-07 and should be submitted by November 18, 2003.

<sup>4</sup> 17 CFR 240.10A-3.