

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48855; File No. SR-BSE-2003-07]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the Boston Stock Exchange, Inc. To Amend Its Listed Securities Requirements Relating to the Mandatory Establishment of Independent Audit Committees for All Listed Issuers

December 1, 2003.

I. Introduction

On July 16, 2003, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to add new requirements concerning audit committees to its Listed Securities Requirements in Section 10 of Chapter XXVII of the Rules of the Board of Governors of the BSE ("BSE Rules"). The proposed rule change would require each issuer listed on the BSE to establish an independent audit committee and to comply with other specified standards relating to audit committees, as mandated by section 10A(m) of the Act³ and Rule 10A-3 thereunder.⁴ The proposed rule change also includes certification, enforcement, and other compliance requirements, as well as a provision that sets forth the operative dates for the new requirements. The Exchange also committed to adopt additional listing policies and requirements pertaining to issuer corporate governance.

The proposed rule change was published for comment in the **Federal Register** on October 28, 2003.⁵ The Commission received no comments on the proposal. On November 19, 2003, the BSE submitted an amendment to the proposed rule change.⁶ This order

approves the proposal, publishes notice of Amendment No. 1, and approves Amendment No. 1 on an accelerated basis.⁷

II. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁸ Specifically, the Commission finds that the proposal relating to independent audit committees for listed companies is consistent with section 6(b)(5) of the Act,⁹ which requires, among other things, that the BSE's rules be designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. Moreover, the Commission believes that the BSE's proposal to add the new requirements concerning audit committees is appropriate and consonant with section 10A(m) of the Act¹⁰ and Rule 10A-3 thereunder relating to audit committee standards for listed issuers. The Commission notes that the BSE intends to file an additional rule proposal relating to other corporate governance listing standards.¹¹

Furthermore, the Commission finds good cause, consistent with section 19(b)(2) of the Act,¹² to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In Amendment No. 1, the BSE expanded, with respect to investment companies, the scope of the proposed provision regarding complaint procedures. Rule 10A-3 requires audit committees to establish procedures for "the confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters."¹³ The amended BSE proposal would require that audit committees of investment

procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters.

⁷ Rule 10A-3 requires each national securities exchange and national securities association to have rules that comply with its requirements approved by the Commission no later than December 1, 2003. By the Commission approving the proposed rule change, the Exchange can comply with this deadline.

⁸ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78j-1(m).

¹¹ See Notice at note .

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 240.10A-3(b)(3)(ii).

companies also establish procedures for the confidential, anonymous submission of such concerns by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company. This revision responds to a recommendation by the Commission that self-regulatory organizations take into account, in adopting rules to comply with Rule 10A-3, the fact that most services are rendered to an investment company by employees of third parties, such as the investment adviser, rather than by employees of the investment company.¹⁴ In Amendment No. 1, the Exchange also made several technical revisions to the rule text. The Commission believes that it is appropriate to accelerate approval of this amendment, because it conforms the rule text to similar rules of the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. that were approved by the Commission,¹⁵ and the amendment raises no new substantive issues.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 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 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 such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-BSE-2003-07 and should be submitted by December 26, 2003.

¹⁴ 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) (release adopting Rule 10A-3).

¹⁵ See Securities Exchange Act Release Nos. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (approval of, among other proposals, File Nos. SR-NYSE-2002-33 and SR-NASD-2002-141).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78j-1(m).

⁴ 17 CFR 240.10A-3.

⁵ See Securities Exchange Act Release No. 48668 (October 21, 2003), 68 FR 61494 ("Notice").

⁶ See letter from John Boese, Vice President, Legal and Compliance, BSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 18, 2003 ("Amendment No. 1"). In Amendment No. 1, the BSE made minor, non-substantive changes to the text of the proposed rule and, with respect to investment companies, expanded the scope of the requirement that audit committees establish