

between the applicant and the Prudential Multi-Sector Fund, Inc. (the "Multi-Sector Fund"). The Multi-Sector Fund was incorporated under Maryland law and SEC records indicate that it is registered as an open-end, non-diversified management investment company.

3. The Board approved the reorganization because declining assets had resulted in increased expense ratios and the reorganization was expected to achieve economies of scale by eliminating duplicative expenses.

4. The Multi-Sector Fund and applicant have the same investment adviser, Prudential Mutual Fund Management, Inc., and applicant and the Multi-Sector Fund accordingly may be deemed to be affiliated persons. Applicant therefore relied on the exemption provided by rule 17a-8 under the Act to effect the merger.<sup>1</sup> In accordance with the rule, the directors of applicant determined that the sale of applicant's assets to the Multi-Sector Fund was in the best interest of applicant and that the interests of the shareholders of applicant would not be diluted by the exchange of Class A shares, Class B shares and Class C shares of applicant for Class A shares, Class B shares and Class C shares of the Multi-Sector Fund, respectively.

5. Proxy materials were filed with the SEC on April 27, 1995 and distributed to applicant's shareholders on or about that date. On June 9, 1995, applicant's shareholders approved the Agreement.

6. On June 23, 1995, the effective date of the merger, applicant had total net assets of \$180,586,169, comprising 8,583,943 Class A shares at a rounded net asset value of \$16.31 per share, 2,524,094 Class B shares at a rounded net asset value of \$16.06 per share and 4,337 Class C shares at a rounded net asset value of \$16.05 per share.

7. Pursuant to the Agreement, on June 23, 1995 the applicant transferred all of its assets to the Multi-Sector Fund, and the Multi-Sector Fund assumed all of applicant's liabilities, in exchange for 10,248,304.170 Class A shares, 3,001,830.667 Class B shares and 5,157.037 Class C shares of the Multi-Sector Fund. Such Class A shares, Class B shares and Class C shares of the Multi-Sector Fund were distributed *pro rata* to the Class A, Class B and Class C shareholders of applicant. The number of shares of the Multi-Sector Fund distributed to shareholders of the

Strategist Fund was determined by dividing the net asset value of each share of each class of the Strategist Fund by the net asset value of each share of each class of the Multi-Sector Fund.

8. Total expenses of the merger were \$110,550 for printing expenses, \$48,000 for solicitation expenses, \$99,500 for legal fees and expenses, and \$74,100 for mailing expenses. The expenses will be paid by applicant and the Multi-Sector Fund in proportion to their respective asset levels. Because applicant has no assets and the Multi-Sector Fund has assumed all applicant's liabilities, these expenses will be satisfied from the assets of the Multi-Sector Fund.

9. As of the date of the application, applicant had no shareholders, assets, or liabilities. There are no shareholders to whom distributions in complete liquidation of their interests have not been made. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

10. Applicant intends to file Articles of Dissolution with the Department of Assessments and Taxation of the State of Maryland as soon as practicable.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

*Deputy Secretary.*

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[Release No. 34-37134; File No. SR-BSE-96-03]

**Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Incorporated Relating to Stopping Stock in Minimum Variation Markets**

April 22, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on April 19, 1996, the Boston Stock Exchange, Incorporated ("BSE" or "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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and grant accelerated approval.

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

The Exchange seeks permanent approval of its rule, as proposed be to amended, regarding stopping stock in minimum variation markets.<sup>1</sup>

**II. Self-Regulatory Organization's Statement of the Proposed, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization 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 self-regulatory organization 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 purpose of the proposed rule change is to eliminate those provisions of the current pilot program regarding the execution of stopped orders in minimum variation markets that provide for the execution of stopped orders ahead of same priced limits with priority through the execution of 500 shares on the book. The Exchange seeks permanent approval of all other aspects of the rule regarding stopping stock in minimum variation markets.

The proposed rule will require the execution of stopped orders in minimum variation markets (a) after a transaction takes place on the primary market at the stopped price or higher in the case of a buy order (lower in the case of a sell order) or (b) at an improved price after the applicable Exchange share volume at that improved price has been exhausted. In no event will a stopped order be

<sup>1</sup> The Commission initially approved the BSE's proposal to codify procedures for stopping stock and to establish a separate pilot program for stopping stock in minimum variation markets in Securities Exchange Act Release No. 35068 (Dec. 8, 1994), 59 FR 64717 (Dec. 15, 1994) (File No. SR-BSE-94-09) ("1994 Pilot Approval Order"). The Commission subsequently extended the pilot program in Securities Exchange Act Release Nos. 35474 (Mar. 10, 1995), 60 FR 14471 (Mar. 17, 1995) (File No. SR-BSE-95-03) ("March 1995 Pilot Approval Order"); 36004 (July 21, 1995), 60 FR 38872 (July 28, 1995) ("July 1995 Pilot Approval Order"). This pilot program expires after April 21, 1996. In this filing, the Exchange proposes a modified version of its pilot program for stopping stock in minimum variation markets.

<sup>1</sup> Rule 17a-8 provides relief from the affiliated transaction prohibition of section 17(a) of the Act for a merger of investment companies that may be affiliated person of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

executed at a price inferior to the stop price. The Exchange states that, as in the case of greater than minimum variation markets, the proposed rule will continue to benefit customers because they might receive a better price than the stop price, yet it also protects prior-entered same-price limit orders on the book.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it furthers the objectives to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, 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 discrimination between customers, issuers, brokers or dealers.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

No written comments were either solicited or received.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions

should refer to File No. SR-BSE-96-03 and should be submitted by May 17, 1996.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission has determined to approve permanently the proposed rule change. For the reasons discussed below, 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, and, in particular, with Section 6(b)(5)<sup>2</sup> and Section 11(b)<sup>3</sup> of the Act.

Historically, the Commission has had mixed reactions about the practice of stopping stock. The 1963 Report of the Special Study of the Securities Markets found that unexecuted customer limit orders on the specialist's book might be bypassed by the stopped orders.<sup>4</sup> The Commission, nevertheless, has allowed the practice of stopping stock in markets where the spread is at least twice the minimum variation because the possible harm to orders on the book is offset by the reduced spread that results and the possibility of price improvement. Although the procedures for stopping stock in minimum variation markets do not reduce the spread between the quotes, the Commission has allowed, on a pilot basis, the practice on the Exchange in limited circumstances.<sup>5</sup>

The Exchange now proposes procedures for stopping stock in minimum variation markets that have been modified from its pilot program.

<sup>2</sup> 15 U.S.C. § 78f.

<sup>3</sup> 15 U.S.C. § 78k.

<sup>4</sup> See SEC, Report of the Special Study of Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 95, 88th Cong., 1st Sess., Pt. 2 (1963).

When stock is stopped, limit book orders on the opposite side of the market do not receive an immediate execution. Consequently, if the stopped order then receives an improved price, limit orders at the stop price are bypassed and, if the market turns away from that limit, may never be executed.

<sup>5</sup> Recently, the Commission permanently approved other exchanges' programs for stopping stock in minimum variation markets, which did not raise the concerns that the BSE's pilot program raised with respect to limit orders on the same side of the market as the stopped orders. In this filing, the BSE amends its program to alleviate such concerns. See Securities Exchange Act Release Nos. 36399 (Oct. 20, 1995), 60 FR 54900 (Oct. 26, 1995) (permanently approving New York Stock Exchange's pilot program for stopping stock in minimum variation markets); 36400 (Oct. 20, 1995), 60 FR 54886 (Oct. 26, 1995) (permanently approving American Stock Exchange's pilot program for stopping stock in minimum variation markets); 36401 (Oct. 20, 1995), 60 FR 54893 (Oct. 26, 1995) (permanently approving Chicago Stock Exchange's pilot program for stopping stock in minimum variation markets).

The BSE's pilot program allowed BSE specialists to elect to fill a stopped order at a better price before the limit order interest on the Exchange was exhausted provided that the specialists adhered to certain procedures.<sup>6</sup> In approving this portion of the BSE's pilot program, the Commission noted its serious concerns that limit orders on the same side of the market as the stopped orders may be bypassed when such stopped orders are execute at an improved price.<sup>7</sup> The stopping stock program currently being proposed, however, would only allow specialists to execute stopped stock when volume equal to all the pre-existing limit orders ahead of the stopped order prints in the primary market. Specifically, the specialist would be required to execute stopped market orders in minimum variation markets either (1) at the stopped price after a transaction takes place on the primary market at the bid price or lower for a sell order (or the offering price or higher for a buy order) on the primary market or (2) at an improved price after the displayed BSE share volume has been exhausted.

The Commission believes that the Exchange's proposed procedures for stopping stock in minimum variation markets are consistent with the Act in that they will assist specialists in providing an opportunity for primary market price protection to the customer whose order is stopped, without requiring that specialists execute all pre-existing bids or offers when such executions otherwise would not be required under Exchange rules. Moreover, the Exchange's currently proposed procedures for stopping stock in minimum variation markets eliminate the potential for bypassing prior-entered limit orders on the specialist's book on the same side of the market as the

<sup>6</sup> The BSE's pilot had a unique provision regarding the execution of stopped orders at an improved price before pre-existing limit order interest at the price is exhausted.

<sup>7</sup> As a result, in the orders approving the BSE's pilot procedures, the Commission asked the Exchange to study the effects of stopping stock in minimum variation markets. In the July 1995 Pilot Approval Order, the Commission requested that the BSE calculate data based on twenty stocks chosen by the Commission during three different days showing (1) how many orders and shares were stopped in each stock, (2) the average number of limit orders and the average number of shares on the book ahead of the stopped stock, (3) how many orders and shares received price improvement, and (4) how many orders and shares were on the limit order book at the time each order was stopped and the number of such limit orders and shares that were not executed by the end of the trading day. After submitting the data to the Commission, the Exchange proposed to amend its procedures for stopping stock in minimum variation to disallow specialists from filling stopped stock at the better price before the pre-existing limit orders ahead of the stopped order.

stopped orders. The BSE's program, as currently proposed, would be substantially similar to the program already in place in the Chicago Stock Exchange, Incorporated ("CHX").<sup>8</sup>

For the above reasons, the Commission believes that the BSE proposal is consistent with Section 6(b)(5) of the Act. Moreover, the Commission also believes that the proposal is consistent with the Rule 11b-1(a)(2)(ii) of the Act.<sup>9</sup> Rule 11b-1(a)(2)(ii) requires that a specialist engage in a course of dealings for his own account that assist in the maintenance, so far as practicable, of a fair and orderly market. The Commission believes that the proposal is consistent with the objectives of this Rule because the implementation of the proposal should help the specialist to provide an opportunity for price improvement to the customer whose stop order is granted, without placing a burden on specialists by requiring that specialists execute other pre-existing bids or offers when such executions would not be otherwise required under Exchange rules.

The Commission also believes that the proposal is consistent with the prohibition in Section 11(b) against providing discretion to a specialist in the handling of an order.<sup>10</sup> Section 11(b) was designed, in part, to address potential conflicts of interest that may arise as a result of the specialist's dual role as agent and principal in executing stock transactions. In particular, Congress intended to prevent specialists from unduly influencing market trends through their knowledge of market interest from the specialist's book and their handling of discretionary agency orders.<sup>11</sup> The Commission has stated that, pursuant to Section 11(b), all orders other than market or limit orders are discretionary and therefore cannot be accepted by specialists.<sup>12</sup>

The Commission believes that it is appropriate to treat stopped orders as

equivalent to limit orders. A limit order is an order to buy or sell a stated amount of security at a specified price, or better if obtainable. The Commission believes that stopped orders are equivalent to limit orders, in this instance, because the orders would be automatically elected after a transaction takes place on the primary market at the stopped price. The Commission, therefore, believes that the requirements imposed on the specialist for granting stops in minimum variation markets provide sufficiently stringent guidelines to ensure that the specialist will implement the proposed rule change in a manner consistent with his market making duties and Section 11(b).<sup>13</sup>

In permanently approving the Exchange's proposal, the Commission expects the Exchange to continue monitoring the practice of stopping stock in minimum variation markets and to take appropriate action in the event BSE identifies any instances of specialist non-compliance with the program's procedures.

Finally, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. Accelerating the approval of the proposal would allow the BSE specialists to continue stopping stock in minimum variation markets although they will no longer be able to execute stopped stock ahead of prior-entered same priced limit orders. Moreover, the BSE's program, as currently proposed, is substantially similar to the CHX's procedures, which were published in the Federal Register for the full comment period and were approved by the Commission on October 20, 1995.<sup>14</sup>

## V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-BSE-96-03) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

Jonathan G. Katz,

Secretary.

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[Release No. 34-37133; File No. SR-PSE-96-11]

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange Incorporated, Relating to the FLEX Equity Options

April 19, 1996.

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 April 5, 1996, the ("PSE" or "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. 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 proposes to reduce from five to three the minimum number of market makers who must be qualified to trade flexible exchange options ("FLEX Options") on an underlying equity security ("FLEX Equity Option") before such options may be traded on that security. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

### 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. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (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

On February 14, 1996, the Commission approved an Exchange proposal to list and trade FLEX Equity Options.<sup>3</sup> Pursuant to that rule change, if the Exchange trades FLEX Equity

<sup>8</sup> In permanently approving the CHX's pilot program for stopping stock in minimum variation markets, the Commission noted that unintended consequences may arise from the interplay between a regional exchange's price protection rules and its procedures for stopping stock. In this regard, the Commission believed that the benefits of stopping stock in minimum variation markets sufficiently offset the possible harm to the limit orders on the book. For similar reasons, the Commission is approving the BSE program, as proposed to be amended, on a permanent basis. See Securities Exchange Act Release No. 36401 (Oct. 20, 1995), 60 FR 54893 (Oct. 26, 1995).

<sup>9</sup> 17 CFR 240.11b-1(a)(2)(ii).

<sup>10</sup> Section 11(b) permits a specialist to accept only market or limit orders.

<sup>11</sup> See H. Rep. No. 1383, 73d Cong. 2d Sess. 22, S. Rep. 792, 73d Cong. 2d Sess. 18 (1934).

<sup>12</sup> See Special Study, *supra* note 4.

<sup>13</sup> Moreover, stopped orders as "limit orders" would not bypass pre-existing limit orders on the same side of the market. Under the BSE's new procedures being approved herein, specialists may not execute a stopped order before the limit order interest on the Exchange (at the same price as the stopped order) is exhausted.

<sup>14</sup> See *supra* note 7.

<sup>15</sup> 15 U.S.C. § 78s(b)(2).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 36841 (February 14, 1996), 61 FR 6666 (February 21, 1996).