

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42585; File No. SR-BSE-00-01]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to its Specialist Performance Evaluation Program

March 28, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 14, 2000, the Boston Stock Exchange, Inc. ("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 Commission is publishing this notice to solicit comments on the proposed rule change 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 extend its Specialist Performance Evaluation Program ("SPEP") until March 31, 2001.

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

The Exchange seeks to extend its SPEP pilot program,³ until March 31, 2001. The current pilot program will

expire on March 31, 2000.⁴ Under the SPEP pilot program, the Exchange regularly evaluates the performance of its specialists by using objective measures, such as turnaround time, price improvements, depth and added depth. Generally, any specialist who received a deficient score in one or more objective measures may be required to attend a meeting with the Performance Improvement Action Committee or the Market Performance Committee.

At this time, all aspects of the pilot program will remain the same. The Exchange believes that the SPEP pilot program is an effective tool for measuring specialist performance. However, the Exchange represents that it is not seeking permanent approval of the SPEP pilot program at this time, because the Exchange would like to review the impact of decimal pricing on the SPEP and amend the program, if needed, prior to seeking permanent approval.⁵ Thus, the Exchange requests a 12-month extension of the pilot program at this time.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,⁶ in that it is designed 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 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 written comments.

⁴ See Securities Exchange Act Release No. 41563 (June 25, 1999), 64 FR 36058 (July 2, 1999) (extending SPEP pilot program until March 31, 2000).

⁵ Telephone conversation between William P. Cummings, Manager of Legal and Regulatory Affairs, Exchange, and Terri L. Evans, Attorney, Division of Market Regulation, Commission on March 21, 2000.

⁶ 15 U.S.C. 78f(b)(5).

III. 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, N.W., Washington, D.C. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to SR-BSE-00-01 and should be submitted by April 25, 2000.

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

The Commission finds that the Exchange's proposal to extend the SPEP pilot program until March 31, 2001, is consistent with the requirements of the Act and the rules and regulation thereunder. Specifically, the Commission finds that the amendment is consistent with Section 6(b)(5) of the Act,⁷ which requires that the rules of the Exchange be designed to promote just and equitable principles of trade, 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. The Commission believes that the proposed twelve-month extension of the pilot program should allow the Exchange to continue to assess specialist performance while allowing the Exchange adequate time to consider amending the SPEP program in response to decimal pricing.

The Commission expects that during the pilot the Exchange will continue to monitor threshold levels and propose adjustments as necessary and continue to assess whether each SPEP measure is assigned an appropriate weight.⁸ In

⁷ 15 U.S.C. 78f(b)(5).

⁸ See Securities Exchange Act Release No. 39730 (March 6, 1998), 63 FR 12847 (March 16, 1998) (order approving amendment to SPEP pilot

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The SPEP pilot program is codified at Section 17 of the Rules of Board of Governors of the Exchange.

addition, the Exchange should continue to closely monitor the conditions for review and should take steps to ensure that all specialists whose performance is deficient and/or diverges widely from the best units will be subject to meaningful review. Finally, the Commission repeats its request that the Exchange incorporate additional objective criteria into the SPEP, most importantly, a measure of quote performance.⁹ As previously noted, the Commission would have difficulty granting permanent approval to a SPEP that did not include a satisfactory response to the concerns described above.¹⁰

The Commission finds good cause for granting the Exchange's request for a twelve-month extension of the SPEP pilot prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Among the obligations imposed upon specialists by the Exchange, and by the Act and the rules promulgated thereunder, is the maintenance of fair and orderly markets in their securities. To ensure that specialists fulfill these obligations, it is important that the Exchange be able to evaluate specialist performance. The Exchange's SPEP pilot assists the Exchange in conducting its evaluation and accelerated approval of the proposed rule change permits the SPEP pilot program to continue on an uninterrupted basis. Therefore, the Commission believes good cause exists to approve the extension of the pilot program until March 31, 2001, on an accelerated basis. Accordingly, the Commission finds that granting accelerated approval of the requested extension is appropriate and consistent with Sections 6(b)(5) and 19(b)(2) of the Act.¹¹

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-BSE-00-01) is hereby approved on an accelerated basis through March 31, 2001.

program). In Securities Exchange Act Release No. 39730, the Commission stated certain terms and conditions for approving the SPEP pilot program on a permanent basis, including the need to provide a study to the Commission regarding the SPEP pilot program. Those terms and conditions are hereby incorporated by reference.

⁹ *Id.*

¹⁰ *Id.*

¹¹ 15 U.S.C. 78f(b)(5) and 78s(b)(2).

¹² 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-8223 Filed 4-3-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42578; File No. SR-DTC-00-02]

Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to Amendments to the Depository Trust Company's Organization Certificate and Rules in Order To Issue Preferred Stock

March 27, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on February 2, 2000, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on February 3, 2000, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The proposed rule change would allow DTC to issue \$75 million of preferred stock to participants and to decrease the amount of required deposits in the participants fund by \$75 million.

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

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.²

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by the DTC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In March 1999, DTC's organization certificate was amended to provide for up to \$150 million of preferred stock as thereafter authorized by the Board of Directors.³ The board has now determined to increase the capital of DTC by using \$75 million of series A preferred stock and to reduce the mandatory deposits to the participants fund by a like amount.⁴

The issuance of the \$75 million of series A preferred stock, the corresponding reduction of mandatory participants fund deposits, and the transition to the new arrangements will be governed by the following documents:⁵

(1) *Certificate of Amendment of the Certificate of Incorporation*. The certificate of amendment sets forth the relative rights (including a dividend which will provide an after-tax return comparable to the after-tax return on participant fund deposits), preferences, and limitations of the series A preferred stock.

(2) *Revised DTC Rules*. The revised rules set forth:

(a) The requirement that participants purchase and own shares of series A preferred stock;⁶

(b) The amount of series A preferred stock that participants are required to purchase and own, the manner in which that amount is to be periodically adjusted, the price at which shares of series A preferred stock are to be transferred among participants, the method and timing of payment for shares of series A preferred stock, and certain limitations on the transfer of shares of series A preferred stock;⁷

(c) The right of DTC, acting as agent and attorney-in-fact for its participants,

³ This Amended Certificate of Organization was the subject of a DTC rule filing approved by the Commission (Securities Exchange Act Release No. 41529 (June 15, 1999), 64 FR 33333 (June 22, 1999) [File No. SR-DTC-99-08]).

⁴ In connection with this proposed rule change, DTC has requested that the Commission advise that it will take no action with respect to DTC broker-dealer participants treating investments in DTC series A preferred stock as allowable assets for purposes of Section 15c(3)(1) of the Act. Letter from Leopold S. Rassnick, Managing Director and Senior Special Counsel, DTC, to Michael Macchiaroli, Associate Director, Division of Market Regulation, Commission (February 2, 2000).

⁵ A copy of DTC's proposed rule change and the attached exhibits, including the Certificate of Amendment of the Organization Certificate, the revised DTC Rules, and the Transition Procedures, are available at the Commission's Public Reference Section or through DTC.

⁶ Rule 4, Section 2.

⁷ *Id.*