

investment to the aggregate of such Fund's and the Company Affiliate's (including the interest of the Adviser or Adviser Affiliate) remaining funds available for investment. The applicable Fund will participate in such investment to the extent that the Required Majority determines that it is in such Fund's best interest. The acquisition of follow-on investments as permitted by this condition will be subject to the other conditions set forth in the application.

6. The Required Majority will be provided quarterly for its review all information concerning co-investment transactions, including investments made by the Adviser, Adviser Affiliate and Company Affiliates in which a Fund declined to participate, so that the Required Majority may determine whether all investments made during the preceding quarter, including those investments in which the Fund declined to participate, comply with the conditions of the order. In addition, the Required Majority will consider at least annually the continued appropriateness of the standards established for co-investment by a Fund, including whether the use of the standards continues to be in the best interest of the Funds and its shareholders and does not involve overreaching on the part of any person concerned.

7. Other than as provided in condition 1(d)(iv), neither the Adviser nor any Adviser Affiliate nor any director of the Funds will participate in a co-investment with the Funds unless a separate exemptive order with respect to such co-investment is obtained.

8. None of the Adviser, Adviser Affiliates, Company Affiliates or the Funds will be involved in the sponsorship of any portfolio company.

9. None of the Adviser, Adviser Affiliates, Company Affiliates or the Funds will be involved in the structuring of any portfolio company or of any security issued by any portfolio company, except that the Adviser may take part in the negotiation of the terms (such as coupon, final maturity, average life, sinking funds, conversion price, registration, put rights and call protection) and appropriate restrictive covenants governing the securities purchased in a co-investment transaction.

10. Each of the Funds will maintain and preserve all records that are required by section 31 of the Act and any other provisions of the Act and the rules and regulations under the Act applicable to the Funds. The Funds also will maintain the records required by section 57(f)(3) of the Act as if each of the Funds were a business development

company and the co-investments and any follow-on investments were approved under section 57(f).

11. None of the Adviser, Adviser Affiliates, Company Affiliates or the Funds will "make available significant managerial assistance," within the meaning of section 2(a)(47) of the Act, to any portfolio company whose securities were acquired pursuant to the requested order.

12. None of the Adviser, Adviser Affiliates, or Company Affiliates will receive any transaction fees (including, without limitation, monitoring, "topping," breakup, and termination fees) in connection with any investment made pursuant to the requested order.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42661; File No. SR-BSE-00-02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Rescinding Chapter II, Section 23, Dealings on Other Exchanges, or Publicly Outside the Exchange

April 10, 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 9, 2000, the Boston Stock Exchange, Inc. ("Exchange" or "BSE") filed with the Securities and Exchange Commission ("Commission" or "SEC") 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.

The Exchange's proposed rule change raises issues similar to those raised by the New York Exchange's ("NYSE") proposal to repeal NYSE Rule 390, which rule generally prohibits NYSE members and their affiliates from effecting transactions in certain NYSE-listed securities away from a national securities exchange. The Commission recently issued the notice of filing for the NYSE's proposal ("NYSE Notice") and solicited comment on a number of

important issues that have broad implications for the structure of the U.S. securities markets.³ Specifically, the Commission requested comment on market fragmentation—the trading of orders in multiple locations without interaction among those orders—and on several options for addressing market fragmentation. To promote a comprehensive discussion of off-board trading restrictions and related market fragmentation issues, the Commission requests that persons interested in the Exchange's proposal refer to the NYSE Notice and submit comments that respond to the questions presented in the NYSE Notice.⁴

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

The Exchange proposes to rescind Chapter II, Section 23, "Dealings on Other Exchanges or Publicly Outside the Exchange," which will remove the Exchange's off-board trading restrictions. The text of the proposed rule change is available at 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 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 Exchange proposes to rescind its restrictions on off-board trading under

³ See Securities Exchange Act Release No. 42450 (Feb. 23, 2000), 65 FR 10577 (Feb. 28, 2000) (File No. SR-NYSE-99-48). The Commission notes that similar proposals have been filed by the American Stock Exchange, Securities Exchange Act Release No. 42460 (February 25, 2000), 65 FR 11618 (March 3, 2000) (File No. SR-Amex-00-05); the Philadelphia Stock Exchange, Securities Exchange Act Release No. 42459 (Feb. 25, 2000), 65 FR 11619 (March 3, 2000) (File No. SR-CHX-99-28); the Philadelphia Stock Exchange, Securities Exchange Act Release No. 42458 (Feb. 25, 2000), 65 FR 11628 (March 3, 2000) (File No. SR-Phlx-00-12); and the Pacific Exchange, SR-PCX-00-11.

⁴ The Commission notes that the NYSE Notice is available on the Commission's website at: <http://www.sec.gov/rules/sros/ny9948n.htm>.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Chapter II, Section 23, "Dealings on Other Exchanges or Publicly Outside the Exchange." Originally, Chapter II, Section 23 prohibited Exchange members from trading over-the-counter in certain securities. Off-board trading restrictions in general provided an additional incentive for members to purchase regional specialist units which promoted internalization of order flow and limited fragmentation.

However, the Commission narrowed the scope of exchange off-board trading restrictions by the adoption of Rules 19c-1 and 19c-3 under the Act.⁵ Rule 19c-1 enabled Exchange members to execute agency trades with a market maker who is not an exchange member. Rule 19c-3 permits Exchange members to execute proprietary trades in securities listed after April 26, 1979. On a practical basis, the purchase of a regional specialist unit allowed a member firm to internalize its small retail order flow without violating an exchange's off-board principal trading restrictions.

The Exchange believes it is appropriate to rescind its restrictions on off-board trading at this time. Advances in the application of technology have resulted in the creation of new competitors to the regional exchanges, such as Alternative Trading Systems. As such, the Exchange recognizes the need for exchanges and their members to take part in the greater level of free market trading. The NYSE also filed to rescind NYSE Rule 390. In light of these developments (as well as the Commission's request that the Exchange review its restrictions on off-board trading), the Exchange now proposed to rescind Chapter II, Section 23.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act⁶ 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, and dealers.

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

The Exchange believes that the proposed rule change will not 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 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 approved 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. The Commission also invites interested persons to submit written data, views, and arguments on the market fragmentation issues presented in the NYSE Notice.⁷ 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 persons, 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 at the Exchange. All submissions should refer to File No. SR-BSE-00-02 and should be

submitted by May 8, 2000. Comments responding to the Commission's request for comment on market fragmentation issues should refer to File No. SR-NYSE-99-48 and should be submitted by April 28, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42657; File No. SR-CSE-99-05]

Self-Regulatory Organizations; Order Approving the Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Cincinnati Stock Exchange Enabling Members To Trade Nasdaq/NM Securities

April 10, 2000.

I. Introduction

On December 10, 1999, the Cincinnati Stock Exchange ("CSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "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 enable its members to trade Nasdaq/NM securities.

The proposed rule change was published for comment in the **Federal Register** on January 27, 2000.³ No comments were received on the proposal. On April 7, 2000, the Exchange submitted Amendment No. 1, making several technical changes to the proposed rule text.⁴ This order approves the proposed rule change, as amended.

II. Description of the Proposal

The proposed rule change would amend the CSE Rules to permit members to trade Nasdaq/NM⁵ securities traded on The Nasdaq Stock

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 42352 (January 20, 2000), 65 FR 4455.

⁴ See letter from Jeffrey T. Brown, Vice President Regulation and General Counsel, CSE, to Heather Traeger, Attorney, Division of Market Regulation, SEC, dated April 4, 2000 ("Amendment No. 1"). Because of the technical nature of this amendment, the Commission is not required to solicit comment on it.

⁵ The Exchange amended the text of the proposed rule change to replace "NASDAQ" with "Nasdaq." *id.*

⁵ 17 CFR 240.19c-1 and 17 CFR 240.19c-3.

⁶ 15 U.S.C. 78f(b)(5).

⁷ See *supra* notes 3 and 4.