

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, 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 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 Amex. All submissions should refer to File No. SR-Amex-00-41 and should be submitted by September 29, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43234; File No. SR-BSE-00-10]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Boston Stock Exchange, Inc. To Provide Generic Listing Standards for Portfolio Depositary Receipts Pursuant to Rule 19b-4(e) Under the Securities Exchange Act of 1934

August 31, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder, notice is hereby given that on August 7, 2000, the Boston Stock Exchange, Inc. ("Exchange" or "BSE") 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. On August 28, 2000, the BSE filed Amendment No. 1 to the proposed rule change.² The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal as amended, on an accelerated basis.

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

The Exchange seeks to amend Chapter XXIV of the BSE rules, *Portfolio Depositary Receipts*, to provide standards that permit listing and trading, or trading pursuant to unlisted trading privileges ("UTP"), of certain products pursuant to Rule 19b-4(e) under the Act.

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 currently trades a number of securities pursuant to UTP under its listing standards for Portfolio Depositary Receipts ("PDRs").³ These standards, found in BSE Chapter XXIV, are similar to those maintained by other exchanges.⁴ The Exchange's proposed amendments to Chapter XXIV would permit it to list and trade PDRs pursuant to Rule 19b-4(e) under the Act.⁵ The

Exchange believes that application of Rule 19b-4(e) to these securities will further the intent of that Rule by allowing trading to begin in these securities, subject to the proposed generic standards, without the need for notice and comment and Commission approval. The Exchange believes that this new procedure has the potential to reduce the time frame for bringing these securities to market or for trading them pursuant to UTP.

a. *Generic Listing Criteria.* The Exchange proposes to implement generic listing criteria to ensure that a substantial portion of the weight of a portfolio underlying PDRs is composed of securities with substantial market capitalization and trading volume. The proposed amendments to Chapter XXIV provide that the Exchange may approve for listing pursuant to Rule 19b-4(e) a series of PDRs if the components that, in the aggregate, account for at least 90% of the weight of the underlying portfolio have a minimum market value of at least \$75 million. In addition, the component stocks representing at least 90% of the weight of the portfolio must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares.

Moreover, the most heavily weighted component stocks in an underlying portfolio cannot together exceed 25% of the weight of the portfolio, and the five most heavily weighted component stocks cannot together exceed 65% of the weight of the portfolio. The portfolio must include a minimum of 13 stocks,⁶ and all securities in an underlying portfolio must be listed on a national securities exchange or The Nasdaq Stock Market (including The Nasdaq SmallCap Market). Finally, any series of PDRs traded pursuant to generic standards must meet these eligibility criteria as of the date of the initial deposit of securities and cash into the trust.

Under the proposed amendments to Chapter XXIV, the underlying portfolio

derivatives products that comply with existing SRO trading rules, procedures, surveillance programs and listing standards, without submitting a proposed rule change under Section 19(b) of the Act. 17 CFR 240.19b-4(e). See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

⁶ Thirteen stocks is the minimum number to permit qualification as a regulated investment company under Subchapter M of the Internal Revenue Code. Under subchapter M of the Internal Revenue Code, for a fund to qualify as a regulated investment company the securities of a single issuer can account for no more than 25% of a fund's total assets, and at least 50% of a fund's total assets must be comprised of cash (including government securities) and securities of single issuers whose securities account for less than 5% of the fund's total assets.

² In Amendment No. 1, the BSE added sections to the proposed rule text on minimum price variation, surveillance procedures and the applicability of other rules. See Letter from Esther Radovsky, Listings Analyst, BSE, to Heather Traeger, Attorney, Division of Market Regulation, Commission, dated August 25, 2000 ("Amendment No. 1").

³ See Securities Exchange Act Release No. 39660 (February 12, 1998), 63 FR 9026 (February 28, 1998).

⁴ See e.g., American Stock Exchange ("Amex") Rule 1000, *et seq.* (Portfolio Depositary Receipts) and Chicago Stock Exchange ("CHX") Article XXVIII, Rule 25 (Portfolio Depositary Receipts).

⁵ Rule 19b-4(e) permits self-regulatory organizations ("SROs") to list and trade new

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology. In addition, if the portfolio is maintained by a broker-dealer, the broker-dealer must erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the portfolio must be calculated by a third party who is not a broker-dealer. The current index value must be disseminated every 15 seconds over the Consolidated Tape Association's Network B.⁷ Additionally, the Reporting Authority must disseminate for each series of PDRs an estimate, updated every 15 seconds, of the value of a share of each series. This estimate may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series.

A minimum of 100,000 shares of a series of PDRs must be outstanding at the time trading begins. The Exchange believes that this minimum number is sufficient to establish a liquid Exchange market at the start of trading. The minimum trading variation for a series of PDRs must be $\frac{1}{64}$ of \$1.00.

The Exchange will use existing surveillance procedures for the PDRs that it trades pursuant to Rule 19b-4(e). In addition, the Exchange will comply with the recordkeeping requirements of Rule 19b-4(e), and will file Form 19b-4(e) for each series of PDRs within five business days of commencement of trading.⁸

The provisions of Chapter XXIV will apply to all series of PDRs listed under Rule 19b-4(e). In addition, PDRs will be subject to Exchange procedures and rules, discussed below, comparable to those applied to existing PDRs.

PDRs are subject to the Exchange's rule relating to trading halts due to extraordinary market volatility (Chapter II, Section 34A) and the Exchange's rule that provides discretion to Exchange officials to halt trading in specific securities under certain circumstances (Chapter II, Section 34B). In exercising the discretion described in Chapter II, Section 34B, appropriate Exchange officials may consider a variety of factors, including the extent to which trading is not occurring in a stock underlying the portfolio and whether other unusual conditions or circumstances detrimental to the

maintenance of a fair and orderly market are present.

Further, the Exchange will issue a Bulletin to Members for each series to be listed pursuant to Rule 19b-4(e). The Bulletin will describe the characteristics of the securities and will inform members of any obligation to deliver a written product description or prospectus, as applicable, to purchasers of PDRs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act⁹ in general, and in particular, with section 6(b)(5) of the Act,¹⁰ in that it is 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 to protect investors and the public interest.

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. The BSE believes that the proposed rule change will encourage competition among markets by allowing more than one exchange to list and trade the products described in the proposed rule change pursuant to Rule 19b-4(e).

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, including whether the proposal, as amended, 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 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 BSE. All submissions should refer to File No. SR-BSE-00-10 and should be submitted by September 29, 2000.

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

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(5).¹¹

PDRs represent interests in a unit investment trust that holds securities that comprise an index or portfolio. Each trust is intended to provide investors with an instrument that closely tracks the underlying securities index or portfolio, that trades like a share of common stock, and that pays holders a periodic cash payment proportionate to the dividends paid on the underlying portfolio of securities, less certain expenses, as described in the applicable trust prospectus.

As noted above, the Commission has previously approved Chapter XXIV of the BSE rules that permits the trading of PDRs. In approving these securities for trading, the Commission considered the structure of these securities, their usefulness to investors and to the markets, and the BSE rules that govern their trading. The Commission's approval of the proposed generic listing standards for these securities will allow series of PDRs that satisfy those standards to start trading under Rule 19b-4(e), without the need for notice and comment and Commission approval. Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by an SRO shall not be deemed a proposed rule change; pursuant to paragraph (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to section 19(b) of the Act, the SRO's trading rules, procedures and listing standards for the product class that include the new derivative securities product class, and the SRO has surveillance program for the product class.¹² The Exchange's ability to rely on Rule 19b-4(e) for these products potentially reduces the time frame for bringing these securities to the market or for permitting the trading of

⁷ The BSE represents that it understands that the information described in this section will be disseminated by or through the primary exchange or another entity working with that exchange.

⁸ 17 CFR 240.19b-4(e).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78f(b)(5).

¹² See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

these securities pursuant to UTP, and thus enhances investors' opportunities. Accordingly, the Commission finds that the Exchange's proposal will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general protect investors and the public interest consistent with section 6(b)(5) of the Act.¹³ The Commission notes that while the proposal will reduce the Exchange's regulatory burden, the Commission maintains regulatory oversight over any products listed under the generic standards through regular inspection oversight.

The Commission also finds that the proposal contains adequate rules and procedures to govern the trading of PDRs under Rule 19b-4(e). All series of PDRs listed under the generic standards will be subject to the full panoply of BSE rules and procedures that now govern the trading of existing PDRs on the Exchange or pursuant to UTP.

Accordingly, any new series of PDRs listed and traded under Rule 19b-4(e) will be subject to BSE rules governing the trading of equity securities, including, among others, rules and procedures governing trading halts, disclosures to members, responsibilities of the specialist, account opening and customer suitability requirements, the election of a stop or limit order, and margin.

In addition, the BSE has developed specific listing criteria for series of PDRs qualifying for Rule 19b-4(e) treatment that will help to ensure that a minimum level of liquidity will exist to allow for the maintenance of fair and orderly markets. The Commission believes that the proposed generic listing standards ensure that the securities composing the indexes and portfolios underlying the PDRs are well capitalized and actively traded. These capitalization and liquidity criteria serve to prevent fraudulent or manipulative acts and are therefore consistent with section 6(b)(5) of the Act.

In addition, as previously noted, all series of PDRs listed or traded under the generic standards will be subject to the Exchange's existing continuing listing criteria. This requirement allows the BSE to consider the suspension of trading and the delisting of a series if an event occurs that makes further dealings in such securities inadvisable. The

Commission believes that this will give the BSE flexibility to delist PDRs if circumstances warrant such action.

The BSE will rely upon existing BSE surveillance procedures governing PDRs and equities for PDRs listed under the generic standards. The Commission believes that these surveillance procedures are adequate to address concerns associated with listing and trading PDRs under the generic standards. Accordingly, the commission believes that the rules governing the trading of such securities provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest, consistent with section 6(b)(5) of the Act.¹⁴ The Exchange further represents that it will file form 19b-4(e) with the commission within five business days of commencement of trading a series under the generic standards, and will comply with all Rule 19b-4(e) recordkeeping requirements.

The Commission also notes that certain concerns are raised when a broker-dealer is involved in both the development and maintenance of a stock index upon which a product such as PDRs is based. The proposal requires that, in such circumstances, the broker-dealer must have procedures in place to prevent the misuse of material, non-public information regarding changes and adjustments to the index and that the index value be calculated by a third party who is not a broker-dealer. The commission believes that these requirements should help address concerns raised by a broker-dealer's involvement in the management of such an index.

Finally, the commission believes that the Exchange's proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading PDRs. Members and member organizations will be required to provide to all purchasers of PDRs a written description of the terms and characteristics of these securities, to include their product description in sales materials provided to customers or the public, to include a specific statement relating to the availability of the description in other types of materials distributed to customers or the public, and to provide a copy of the prospectus, when requested by a customer.

The Commission also notes that upon the initial listing, or trading pursuant to UTP, of any PDRs under the generic standards, the Exchange will issue a circular to its members explaining the

unique characteristics and risks of this particular type of security. The circular also will note the Exchange members' prospectus or product description delivery requirements, and highlight the characteristics of purchases in a particular series of PDRs. The circular also will inform members of their responsibilities under Chapter XXIV of the BSE rules in connection with customer transactions in these securities. The Commission believes that these requirements ensure adequate disclosure to investors about the terms and characteristics of a particular series and are consistent with section 6(b)(5) of the Act.¹⁵

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** pursuant to section 19(b)(2) of the Act. The Commission notes that the proposed rule change is based on the generic listing standards in Amex Rule 1000 *et seq.* (PDRs) and CHX, Chapter XXVIII, Rule 25 (PDRs), which the Commission previously approved after soliciting public comment on the proposals pursuant to section 19(b)(1) of the Act.¹⁶ The Commission does not believe that the proposed rule change raises novel regulatory issues that were not addressed in the other filings. Accordingly, the Commission believes it is appropriate to permit investors to benefit from the flexibility afforded by these new instruments by trading them as soon as possible. Accordingly, the Commission finds that there is good cause, consistent with section 6(b)(5) of the Act,¹⁷ to approve the proposal, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-BSE-00-10), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,

Deputy Secretary.

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¹³ 15 U.S.C. 78f(b)(5). In approving this rule, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ See Securities Exchange Act Release No. 42787 (May 15, 2000), 65 FR 33598 (May 24, 2000) (Amex) and Securities Exchange Act Release No. 42975 (June 22, 2000), 65 FR 40712 (June 30, 2000) (CHX).

¹⁷ 15 U.S.C. 78s(b)(5).

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).