

### 3. Modification of Order

The Commission may modify by order the terms, scope, or conditions of Euroclear's exemption from registration as a clearing agency granted to Euroclear Bank as operator of the Euroclear System if the Commission determines that such modification is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.<sup>18</sup> Furthermore, the Commission may limit, suspend, or revoke this exemption if the Commission finds that Euroclear Bank has violated or is unable to comply with any of the provisions set forth in this order if such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act for the protection of investors and the public interest.

### V. Conclusion

The Commission finds that the application by MGT-Brussels and Euroclear Bank to modify the exemption from registration as a clearing agency for Euroclear Bank as operator of the Euroclear System meets the standards and requirements deemed appropriate for such an exemption.

*It is Therefore Ordered*, pursuant to section 19(a)(1) of the Exchange Act, that the Modification Application to modify the exemption from registration as a clearing agency filed by MGT-Brussels and Euroclear Bank (File No. 601-01) be, and hereby is, approved subject to the conditions contained in this order.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

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<sup>18</sup> The exemption provided by this order is based upon representations by Euroclear Bank, its officers and attorneys, facts contained in Euroclear Bank's Modification Application, and other information known to the Commission regarding the substantive aspects of Euroclear Bank's proposal (collectively, "representations and facts"). In addition, as described in the 1998 Exemption Order, Euroclear Bank, like MGT-Brussels, will be required to file with the Commission amendments to its application for exemption on Form CA-1 if it makes any fundamental change affecting its clearance and settlement business with respect to eligible U.S. government securities. Any changes in the representations or facts as represented to the Commission may require a modification of this order. Responsibility for compliance with all applicable U.S. securities laws rests with Euroclear Bank and its U.S. participants, as appropriate. Euroclear Bank also is advised that this order does not exempt Euroclear Bank from the anti-fraud or anti-manipulation provisions of the Exchange Act or any of the rules promulgated thereunder.

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43766; File No. SR-BSE-00-13]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 2 and 3 to the Proposed Rule Change by the Boston Stock Exchange, Inc. to Issue Electronic Trading Permits for BEACON Remote Units

December 22, 2000.

#### I. Introduction

On September 21, 2000, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change that would add rules regarding the issuance of Electronic Trading Permits ("ETPs") to specialists and registered floor clerks of Exchange members for remote specialist operations. The ETPs will allow Exchange members access to the BEACON trading system from remote locations using authorized terminals and related equipment. The proposed rule change was published for comment in the **Federal Register** on October 12, 2000.<sup>3</sup> No comments were received on the proposal.

The Exchange filed Amendment No. 2 to the proposed rule on December 4, 2000 and on December 21, 2000, the Exchange filed Amendment No. 3. This order approves the proposed rule change and grants accelerated approval to Amendments No. 2 and 3 of the proposed rule change. The Commission is also soliciting comments on Amendments No. 2 and 3.

#### II. Description of the Proposal

In August 2000,<sup>4</sup> the Commission approved the Exchange's remote specialist program that generally permitted Exchange specialists to conduct regular trading activities off the Exchange's trading floor using the BEACON trading system. The Exchange's pending filing supplements its remote specialists filing. As noted by the Exchange, it is proposing to issue

ETPs primarily as a surveillance tool to monitor its remote specialists operations.<sup>5</sup>

The Exchange proposes to add paragraph (o) to Chapter XXXIII, Section 9, *BEACON Remote*, to require and establish guidelines for Electronic Trading Permits ("ETP") for remote specialist operations. Each BEACON Remote terminal will be individually identified and associated with (an) authorized and qualified specialist(s) and/or registered clerk(s). The Exchange will specifically authorize and approve each ETP based on certain qualifications. Each ETP will provide remote access to the BEACON system from remote locations using authorized terminals and related equipment. The ETP is in addition to the membership requirements, and even a specialist who holds a membership will be required to hold an ETP. Each Beacon remote specialist operation still requires a membership in the Exchange notwithstanding the ETP requirements. According to the Exchange, the ETP's are non-transferable permits that will be primarily used for surveillance purposes.<sup>6</sup>

The Exchange states that remote specialists and associated registered clerks with ETPs, like current Exchange floor specialist units, will receive orders, commitments over the Intermarket Trading system ("ITS") and administrative messages through the BEACON system. The existing Exchange systems and rules will support remote specialists as they currently support the physical trading floor. As noted above, the BSE has also adopted specific rules applicable to remote specialist operations. All executions occurring within BEACON, whether conducted on the floor or electronically from remote locations, will be considered to be executions occurring on the Exchange.

The proposal, among other things, requires that all registered specialists and clerks complete a floor-training program, unless waived as discussed below, as well as successfully complete a BSE floor examination and the Series 63 (NASAA Uniform State Law Exam).<sup>7</sup>

<sup>5</sup> The approval order was conditioned on the Exchange putting into place specific information barrier policies and surveillance policies that are consistent with the Exchange's existing rules and that are acceptable to the Commission's Office of Compliance Inspections and Examinations ("OCIE"). *Id.* at 49620. Nothing herein is intended to change the requirement that the Exchange get its surveillance plan approved by OCIE.

<sup>6</sup> See Letter from John A. Boese, Assistant Vice President, to Madge Hamilton, Division of Market Regulation, Commission, dated December 1, 2000 ("Amendment No. 2").

<sup>7</sup> The proposal originally allowed the floor examination to be waived. Amendment No. 3

<sup>1</sup> 15 U.S.C. 78s(b)(1). This notice incorporated typographical changes made by the Exchange in letter Amendment No. 1 filed September 29, 2000.

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

<sup>3</sup> Securities Exchange Act Release No. 43394 (September 29, 2000), 65 FR 60705.

<sup>4</sup> Securities Exchange Act Release No. 43127 (August 14, 2000), 65 FR 49617.

Amendment No. 2 clarified when the two week on-floor training requirement could be waived for ETP applicants. Training would be waived for current floor specialists and registered clerks who transfer to remote specialist operations. The two week on-site floor training period could also be waived for other people in exceptional circumstances, if other arrangements are made with and approved by the Exchange. In such exceptional circumstances, a waiver will only be permitted if the Exchange is assured that the person requesting the waiver has made other arrangements that ensure that the person meet all of the training requirements listed in the BSE proposal.<sup>8</sup> However, the two week on-site floor training period could not be waived for easily remedied reasons such as geographical location or inconvenience. Furthermore, Amendment No. 2 clarified that a registered clerk in a remote specialist operation, who qualified for an ETP, would be operating under the direct supervision of a registered specialist, just as a registered clerk is supervised in the on-floor environment.

### III. Discussion

The Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act<sup>9</sup> and section 11A of the Act.<sup>10</sup> Section 6(b)(5) of the Act<sup>11</sup> requires, among other things, that the rules of an exchange be 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. Section 11A of the Act promotes, among other things, the development of a national market system for securities to assure economically efficient execution of

deletes the provision that permitted this waiver. BSE notes that this deletion will ensure the remote specialist examination requirements are consistent with the floor examination requirements for on-floor specialists and registered clerks. These requirements currently do not permit waivers.

<sup>8</sup> The on-site floor training includes, among other things: communication procedures with Floor Brokers, Front Desk Operations, Surveillance, Systems Support, and ITS coordination with the Floor; Competing Specialist Initiative and Unlisted Trading Privilege applications and procedures, stock allocation procedures; trading halt procedures; and books and records/reports available.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78k(a)(1)(B).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

securities transactions and fair competition among brokers and dealers, among exchange markets and markets other than exchange markets.<sup>12</sup>

After having carefully reviewed the proposal, the Commission finds that the proposed rule is designed to protect investors and the public interest by permitting the Exchange to better surveil the activities of specialists and registered clerks that utilize the BEACON remote access system.<sup>13</sup> The Commission also finds for the same reasons that the proposed rule is designed to promote just and equitable principles of trade.

Each BEACON Remote terminal will be specifically identified and associated, by the use of the ETP, with an authorized and qualified specialist or registered clerk.<sup>14</sup> Any activity taking place on each terminal will be directly attributable to an individual specialist or registered clerk. According to the Exchange, the ETP is a necessary device which should assist it in attempting to replicate the visual surveillance of user terminals on the Exchange floor.

Although BEACON Remote registered clerks will be required to obtain an ETP, there is nothing in the ETP which will grant them any more rights or privileges than a current on-floor registered clerk possesses. Registered clerks will be under the direct physical supervision of a specialist at all times. It should also be noted that if an ETP registered clerk were to leave a firm a new ETP application would be required for a new clerk.

Under the Exchange's proposal, ETPs must be approved by the Exchange. In addition, each specialist unit must have a registered seat assigned to it and meet certain other requirements to issue an ETP, such as completion of the required floor training program; successful

<sup>12</sup> 15 U.S.C. 78k-1.

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

<sup>14</sup> The Commission notes that the Exchange's ETPs are separate and distinct from other trading permits that the Commission has previously reviewed. The Exchange's ETP will be a non-transferable permit which will be used primarily for surveillance purposes, by allowing the BSE to identify each BEACON terminal with an individual specialist or registered clerk. Each BEACON Remote Specialist operation requires a membership in the Exchange. Therefore, only specialists and registered clerks who work for a member can be issued an ETP. The ETP is in addition to the membership requirement of the Exchange. The Exchange notes that the ETP does not constitute membership on the Exchange, nor does it carry with it any of the benefits or responsibilities of membership. Accordingly, the ETPs do not raise the same fair representation issue that have been at issue with other trading permits that confer certain membership rights to non-members.

completion of the Exchange floor examination within 90 days of application; successful completion of the Series 63 (NASAA Uniform State Law Exam) and registrations with the Commonwealth of Massachusetts; and submission of fingerprint records to the Exchange. The Commission generally believes that the ETPs should provide the BSE with an adequate monitoring tool for remote operations. In addition, the training and examination requirements should help to ensure that remote specialists are adequately trained to operate from a remote location.

The proposed rule requires all specialists to complete a floor training program.<sup>15</sup> Under the Exchange's rule, there is a mandatory two-week training period required of all ETP applicants. This two week training period would be waived for current on floor specialists and registered clerks who transfer to remote specialist operations. The Commission believes this waiver is reasonable because these on-floor specialists and registered clerks already have had the required training.

The rule also allows for a waiver of the floor training requirement in exceptional circumstances if other arrangements are made with and approved by the Exchange. The BSE may only grant the waiver if it is assured that the person requesting the waiver has made other arrangements that ensure the person meets all of the specific training requirements designated in the BSE rule. The rule also states that the on-floor training period will not be waived for easily remedied reasons such as geographical location or inconvenience. The BSE stated, however, that there may be other situations whereby the Exchange may deem it appropriate to accept an alternative training venue or program. In justification for this waiver the Exchange has stated that it does not want to limit itself from considering other circumstances which may arise in the future, which could delay or prevent a firm from commencing or conducting business.

While the Commission would be extremely concerned about waivers of appropriate training, it appears that the Exchange has drafted its rule narrowly to only deal with exceptional circumstances. Further, the rule specifically requires anyone receiving a waiver to be appropriately trained and

<sup>15</sup> This requirement is in concert with the two-week training program mandated in BEACON Remote rule for specialists specifically (see Chapter XXXIII, BEACON, Section 9, BEACON Remote, Commentary).

meet all the training requirements.<sup>16</sup> Accordingly, the Commission has decided to approve this portion of the Exchange's proposal. The Commission, however, requests the Exchange to carefully monitor the use of exceptional waivers to ensure they are only used in accordance with the standards in the rule.

The Commission also finds that the proposed rule should assist the Exchange in promoting economically efficient execution of securities transactions and fair competition consistent with section 11A of the Act.<sup>17</sup> The proposed rule is designed to support remote access of the BEACON trading system. Each specialist unit identified by the member firm will be assigned an account ("give up") and will be evaluated under the Exchange's Specialist Performance Evaluation Program, which currently measures performance in several separate categories comprising a relative overall performance ranking. This provision, along with other provisions of the proposed rule, should assist the Exchange in efficient and effective market operations.

In summary, the Commission believes that the issuance of ETPs under the requirements outlined above should aid and support the development of the Exchange's remote specialists operation. All of the requirements in the remote specialists rules will remain in place and must be followed. As noted above, the ETPs are not intended to transfer any specialist membership or trading rights but are primarily a surveillance tool. In addition, remote specialists and registered clerks are not permitted to do anything different from Exchange specialist units operating on the floor. Based on the above, the Commission believes the proposal should be approved consistent with the Act.

The Commission finds good cause for approving Amendments No. 2 and 3 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 2 clarifies when BSE may waive the required two week on-floor training for ETP applicants. In addition, Amendment No. 2, clarifies that a registered clerk in a remote specialist operation, who has qualified for an ETP, will be operating under the direct supervision of a registered specialist, just as a registered clerk is supervised on the floor of the Exchange. Amendment No. 3 deletes the provision that permitted BSE to waive the floor examination requirement for BEACON

Remote specialists. Both Amendments clarify and strengthen BSE's proposal. In addition, the Amendments modify the proposal to make it consistent with other BSE rules. Those Amendments did not change the underlying nature of the original proposal that was noticed for comment, and for which no comments were received. Based on the above the Commission believes that good cause exists, consistent with section 6(b)(5)<sup>18</sup> and 19(b)(2)<sup>19</sup> of the Act, to accelerate approval of Amendments No. 2 and 3.

### III Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendments No. 2 and 3, including whether it 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 above-mentioned self-regulatory organization. All submissions should refer to file number SR-BSE-00-13 and should be submitted by January 25, 2001.

### V. Conclusion

*It is Therefore Ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule change SR-BSE-00-13, including Amendments, No. 1, No. 2 and No. 3, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43768; File No. SR-NASD-00-74]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis Until January 31, 2001 of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to EWN II Fees for Subscribers Who Are Not NASD Members

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 December 14, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "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.

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

The National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") is herewith filing a proposed rule change to increase the fees associated with the Enterprise Wide Network II ("EWN II") to pass on costs related to increasing its capacity. The proposed rule change is intended to amend the current fee schedule for subscribers who are not members of the NASD. Nasdaq is filing a parallel rule filing to effect the same amendments to the EWN II fee structure to apply to NASD members. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

#### NASD Rule 7010. System Services

(a)-(e) No Change

(f) Nasdaq Workstation Service

(1) No Change

(2) The following charges shall apply to the receipt of Level 2 or Level 3 Nasdaq Service via equipment and communications linkages prescribed for the Nasdaq Workstation II Service:

<sup>16</sup> See *supra* note 8.

<sup>17</sup> 15 U.S.C. 78k-1.

<sup>18</sup> 15 U.S.C. 78f(b)(5).

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</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.