

which require specialized training, experience, and physical qualifications, are required to be either "certified" or "qualified". The regulations recognized State certification and qualification programs. However, under the Federal Mine Safety and Health Act of 1977 and MSHA standards, where State programs do not exist, MSHA may certify and qualify persons for as long as they continue to satisfy the requirements needed to obtain the certification or qualification, fulfill any applicable retraining requirements, and remained employed at the same mine or by the same independent contractor.

Applications for Secretarial qualification or certification are submitted to the MSHA Qualification and Certification Unit in Denver, Colorado. Form 5000-41 provides the coal mining industry with a standardized reporting format that expedited the certification and qualification process while ensuring compliance with the regulations. MSHA uses the form's information to determine if applicants satisfy the requirements to obtain the certification or qualification sought. Persons must meet certain minimum experience requirements depending on the type of certification or qualification.

Sections 75.155 and 77.105 of Title 30 of the CFR explain the qualifications to be a qualified hoisting engineer or a qualified hoist man on a slope or shaft sinking operation. Sections 75.100 and 77.100 pertain to the certification of certain persons to perform specific examinations and tests. Under §§ 75.160, 75.161, 77.107 and 77.107-1, the mine operator must have an approved training plan developed to train and retrain the qualified and certified people to effectively perform their tasks.

Sections 75.159 and 77.106 requires the operator of a mine to maintain a list of all certified and qualified persons designated to perform certain duties, which require specialized expertise at underground and surface coal mines, *i.e.*, conduct test for methane and oxygen deficiency, conduct tests of air flow, perform electrical work, repair energized surface high-voltage lines, and perform duties of hoisting engineer. The recorded information is necessary to ensure that only persons who are properly trained and have the required number of years of experience are permitted to perform these duties. MSHA does not specify a format for the recordkeeping; however, it normally consists of the names of the certified and qualified person listed in two columns on a sheet of paper. One

column is for certified persons and the other is for qualified persons.

## II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection requirement related to the Qualification/Certification Program and Man Hoist Operators Physical Fitness. MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **ADDRESSES** section of this notice or viewed on the Internet by accessing the MSHA Home page (<http://www.msha.gov>) and then choosing "Statutory and Regulatory Information" and "Federal Register Documents."

## III. Current Actions

This request for collection of information contains provisions whereby persons may be temporarily qualified or certified to perform tests and examinations; requiring specialized expertise; related to inner safety and health at coal mines.

*Type of Review:* Extension.

*Agency:* Mine Safety and Health Administration.

*Title:* Qualification/Certification Program and Man Hoist Operators Physical Fitness.

*OMB Number:* 1219-0127.

*Frequency:* Quarterly and on occasion.

*Affected Public:* Business or other for-profit.

*Number of Respondents:* 1,989.

*Estimated Time per Respondent:* 9 hours.

*Recordkeeping:* One year.

*Total Burden Hours:* 17,723.  
*Total Burden Cost (capital/startup):* 0.  
*Total Burden Cost (operating/maintaining):* \$902.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 23rd day of November, 2004.

**David L. Meyer,**

*Director, Office of Administration and Management*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50726; File No. SR-Amex-2004-92]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the American Stock Exchange LLC to Correct a Cross-Reference in Section 220 of the Amex Company Guide

November 23, 2004.

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 November 19, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in items I and III below, which items have been prepared by the Amex. 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

Amex proposes to amend a cross-reference in Section 220 of the *Amex Company Guide*. New text is in italics. Proposed deletions are in brackets.

\* \* \* \* \*

#### Sec. 220.

##### ORIGINAL LISTING APPLICATIONS OF FOREIGN ISSUERS—GENERAL

- (a) No change.
- (b) Listing Fee—For companies listed on foreign stock exchanges, the original listing fee, including the one-time charge, is 50% of the rate for domestic companies, with a maximum fee of

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

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

[\$25,000] \$32,500 (see § 140).

Additional and annual fees are the same as charged for domestic companies (see §§ 141 and 142).

\* \* \* \* \*

## 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 Amex 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 Amex 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 the Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

On December 6, 2001, the Exchange submitted a proposal amending multiple sections of the Amex *Company Guide* relating to the initial and annual listing fees, fees for listing additional shares, and the one-time charge for listing shares issued in connection with the acquisition of a listed company by an unlisted company. Specifically, an amendment was made to Section 140 of the Amex *Company Guide* to increase the maximum original listing fees charged to non-U.S. companies that are listed on a foreign stock exchange from \$25,000 to \$32,500.<sup>3</sup> Unfortunately, at the time of the proposed rule change, a cross-reference to this exact fee in Section 220(b) of the Amex *Company Guide* was overlooked and, therefore, not updated. Section 220(b) currently, and inaccurately, reads that the maximum fee charged in the abovementioned circumstance is \$25,000. The Amex is proposing to correct the cross-reference in Section 220(b) to read \$32,500 in order to keep its published rules accurate.

#### 2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act,<sup>4</sup> in general and furthers the objectives of section 6(b)(5) of the Act,<sup>5</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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 Amex 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

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and
- (iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Amex has requested that the Commission waive the 30-day operative delay period. The Commission believes that allowing the Exchange to correct

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Amex complied with this requirement.

this cross-reference in its rules is consistent with the protection of investors and the public interest, and therefore waives the 30-day operative delay.<sup>8</sup>

## 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. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rulecomments@sec.gov](mailto:rulecomments@sec.gov). Please include File Number SR-Amex-2004-92 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2004-92. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2004-92 and should

<sup>8</sup> For purposes of waiving the operative period date of this proposal only, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>3</sup> See Securities Exchange Act Release No. 45403 (February 6, 2002), 67 FR 6553 (February 12, 2002) (approving File No. SR-Amex-2001-100).

<sup>4</sup> 15 U.S.C. 78(b).

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

be submitted on or before December 22, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E4-3408 Filed 11-30-04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50733; File No. SR-BSE-2004-50]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate a Restriction Precluding a BSE Specialist From Trading Both Nasdaq-Listed and New York Stock Exchange-Listed Securities Simultaneously

November 24, 2004.

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 November 22, 2004, the Boston Stock Exchange, Inc., ("BSE" or "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 BSE filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. 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 BSE proposes to eliminate the restrictions precluding a BSE specialist from trading both Nasdaq-listed and New York Stock Exchange ("NYSE")-listed securities at the same time. The text of the proposed rule change is below. Proposed deletions are in brackets.<sup>5</sup>

<sup>9</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> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> With the instant proposed rule change, the BSE eliminated Section 11 of Chapter XXXV ("Limitations on Specialists"). As a result, all subsequent Sections in Chapter XXXV are renumbered.

## Chapter XXXV

### Limitations on Specialists

[Sec. 11. Any individual member who is registered as a specialist is not permitted to maintain a book, as defined in Chapter XV, Specialists, Section 6, The Specialist's Book, in both Nasdaq securities and listed securities. Nasdaq securities must comprise a separate book which must be solely traded by a separate specialist. A specialist who is qualified under the provisions of this Chapter XXXV, and the provisions of Chapter XV, Specialists, Section 1, Registration, to trade either listed or Nasdaq securities, or both, cannot accept orders in, nor effect transactions in, both types of securities, at the same time.

Nothing in this section shall preclude any duly qualified specialist from occasionally substituting for, or acting as an alternate for, another specialist in either listed or Nasdaq securities, in accordance with Article XVI of the Constitution of the Boston Stock Exchange, Officers and Associates, Section 7, Alternates for Members Absent. A specialist substituting for another specialist in accordance with the provisions of this section will be permitted to trade both Nasdaq and listed securities at the same time, during the period of substitution. In the case of an extended or permanent absence of a specialist qualified to trade Nasdaq securities, the firm from which the specialist is absent must promptly notify the Exchange and make arrangements to permanently replace the absent specialist in a reasonable amount of time, as determined by the Exchange. The Exchange reserves the right to temporarily reassign some or all of the Nasdaq securities comprising an absent specialist's book in the event that a firm does not make suitable or timely arrangements for the replacement of the absent specialist.]

\* \* \* \* \*

#### 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 eliminate the restrictions, as set forth in Chapter XXXV, Trading in Nasdaq Securities, Section 11, Limitations on Specialists. This Section precludes a BSE specialist from trading both Nasdaq-listed and NYSE-listed securities at the same time.

Originally, the primary reason for the restriction was to separate specialists' books so that the BSE would be able to ensure that specialists maintained adequate levels of capital in their respective accounts. When the rule was first proposed,<sup>6</sup> the Exchange anticipated that individual BSE specialists might seek to trade large numbers of Nasdaq-listed securities, and the Exchange was concerned that such a practice would lead to an undue concentration of stocks within a single specialist book. The Exchange was also concerned that differences in the marketplaces for Nasdaq-listed and NYSE-listed securities necessitated a requirement that a specialist concentrate on trading in either the Nasdaq or NYSE-listed marketplace, but not both at the same time.

Since the rule was approved,<sup>7</sup> BSE specialist trading practices have gradually evolved to the point that the specialists are limiting their trading to a much more limited number of securities. As a result, the concern regarding undue concentration of stocks within a single specialist book has lessened considerably. Also, regardless of the number of stocks within a specialist's book, the Exchange consistently monitors all of its specialist accounts regarding proper capitalization and risk levels, and is confident in its ability to proactively manage that risk, regardless of the types of securities within an account.

Moreover, with the proposal set forth in Regulation NMS<sup>8</sup> that all securities, regardless of listing market, be considered NMS securities, and the proposals to apply uniform rules (such as the trade-through rule proposal<sup>9</sup>) to all securities, the Exchange no longer believes that it is necessary, or prudent, to distinguish between Nasdaq-listed

<sup>6</sup> See Securities Exchange Act Release No. 44476 (June 26, 2001), 66 FR 35293 (July 3, 2001) (SR-BSE-2001-01).

<sup>7</sup> See Securities Exchange Act Release No. 44952 (October 18, 2001), 66 FR 54039 (October 25, 2001) (SR-BSE-2001-01).

<sup>8</sup> See Securities Exchange Act Release No. 49325 (February 26, 2004), 69 FR 11126 (March 9, 2004).

<sup>9</sup> *Id.* at 69 FR 11129-11153.