6(b)(5) and 19(b) of the Act,[45] to approve Amendment No. 2 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, 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, NW., Washington, DC 20549. 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 File No. SR–AMEX–98–29 and should be submitted by January 4, 1999.

## IV. Conclusion

*It is therefore ordered,* pusuant to Section 19(b)(2) of the Act,[46] that the proposed rule change (SR–AMEX–98–29), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[47]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98–32962 Filed 12–10–98; 8:45 am]

**BILLING CODE 8010–01–M**

[45] 15 U.S.C. 78f(b) and 78s(b).

[46] 15 U.S.C. 78s(b)(2).

[47] 17 CFR 299.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–40746; File No. SR–BSE–98–7]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Boston Stock Exchange, Inc. Relating to its Specialist Performance Evaluation Program

December 3, 1998.

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 October 8, 1998, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change. The Exchange submitted Amendment No. 1 to its proposal on November 13, 1998.[3] The proposed rule change, as amended, is 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.

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

The Exchange proposes to amend the depth measure calculations in its Specialist Performance Evaluation Program pilot program (''SPEP'') and to seek permanent approval of the program at the expiration of the pilot on December 31, 1998.[4] The text of the proposed rule change is as follows: new text is italicized and deleted text is bracketed.

**Chapter XV**

*Specialists*

**Specialist Performance Evaluation Program**

* * * * *

Sec. 17(c)(iii) Exceptions. Where Specialists have threshold scores in each measure at the following levels (subject to change pursuant to Commission approval), they will be deemed to have adequately performed:

Overall Evaluation Score—at or above weighted score of [5.00] *7.00*

Turnaround Time—below 21.0 seconds (5 points)(5%)

Holding Orders Without Action—below 21.0% (5 points)(5%)

Price Improvement in <8th Markets—at or above 2.0% (5 points)(20%)

Price Improvement in 8th Markets—at or above 15.0% (5 points)(15%)

Price Improvement in>8th Markets—at or above 25.0% (5 points)(15%)

*Combined Depth (10 points) (40%)*

*(a)* Depth—at or above 75.0% [(5 points)(20%)]

*(b)* Added Depth—at or above 1.0% [(5 points)(20%)]

* * * * *

[3] In Amendment No. 1, the Exchange seeks permanent approval of the Specialist Performance Evaluation Program and deletes its request for accelerated approval and retroactive implementation of the proposed rule change. *See* Rule 19b–4 filing, SR–BSE–98–07 (Am. 1), dated November 6, 1998 (''Amendment No. 1'').

[4] *Id.*

### 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 seeks to amend its SPEP pilot by modifying the two depth measure calculations and the overall program score. All other aspects of the pilot program will remain the same. In addition, the Exchange is requesting permanent approval of the program, which has been in effect since 1992[5] with periodic modification over the years.[6] The Exchange believes that the SPEP is an effective tool for measuring specialist performance if continuously monitored and modified to meet the changing needs of the industry and the types of business sent to the Exchange, as well as changes in technology. The current pilot program will expire on December 31, 1998.

The Exchange has two depth measure calculations, which are Depth and Added Depth. The Depth measure (which measures the percentage of shares exceeding the displayed NBBO size that are executed at or better than the displayed NBBO price, for those orders that at the time of receipt exceed the displayed NBBO size) is currently weighted at 20% of the overall total score with a minimum threshold of 75%, *i.e.*, no points for any executions below 75% of the NBBO size.[7] The

[5] The Commission initially approved the SPEP in Securities Exchange Act Release No. 22993 (March 10, 1986), 51 FR 8298 (March 14, 1986). The BSE was permitted to incorporate objective measures of specialist performance into its pilot program in Securities Exchange Act Release No. 31890 (Feb. 19, 1993), 58 FR 11647 (Feb. 26, 1993), at which point the initial pilot program ceased to exist as a separate program.

[6] *See* Amendment No. 1, *supra* note 3.

[7] For example, assume the NBBO size is 500 shares displayed and the BSE specialist receives an order for 1200 shares. If the specialist executes 600 shares at the NBBO price, the specialist would receive credit for 600 shares out of 1200 shares, or 50%. *See* Securities Exchange Act Release No. 39730 (March 6, 1998); 63 FR 12847 (March 16,

Added Depth measure (which measures the relative percentage of overall BSE depth attributable to each specialist at the displayed NBBO price and in excess of the displayed NBBO size at the time the order is received) is currently weighted at 20% of the overall total score with a minimum threshold of 1%, *i.e.*, no points for contributions less than 1% to the added depth of all BSE specialists.[8]

After reviewing two quarters of performance statistics, the Exchange has determined that four firms on the floor cannot meet the 1% Added Depth threshold, even if they were to achieve a Depth measure of 100%, because their volume of business is de minimus in comparison to some of the larger firms. However, the Exchange believes that the combination of the Added Depth and Depth measures balances out the performance results: where small firms tend to score extremely high relative to the larger firms on the Depth measure, firms with a significant amount of business tend to score higher relative to the smaller firms on the Added Depth measure.

Rather than eliminate the Added Depth measure in its entirety, the Exchange is proposing to combine the range points of the two depth measures and weight the overall combined score at 40%, as opposed to the current calculation which separately weights the range points of each measure at 20% each. This will result in the inclusion of both measures in the performance program, but will eliminate the requirement that a specialist appear before the Market Performance Committee for failure of a single measure that is mathematically impossible for that specialist to attain a passing score on. Under the proposed change, a specialist who failed the Added Depth category, but performed at some level above the range covered by the minimum threshold of 75%–79.9% for the Depth measure would end up over the minimum threshold for the combined score.

The current range point scales and weighted scores for each of the depth measures are as follows:

| Depth | | | Added Depth | | |
|---|---|---|---|---|---|
| Percentage of orders | Points | Weighted score (20%) | Percentage of orders | Points | Weighted score (20%) |
| <75.0 | 0 | 0 | <1.0 | 0 | 0 |
| 75.0–79.9 | 5 | 1 | 1.0–1.9 | 5 | 1 |
| 80.0–84.9 | 10 | 2 | 2.0–3.9 | 10 | 2 |
| 85.0–89.9 | 15 | 3 | 4.0–5.9 | 15 | 3 |
| >=90.0 | 20 | 4 | >=6.0 | 20 | 4 |

The proposed range point scales for each of the depth measures and the combined weighted score are as follows:

| Depth | | Added Depth | | Combined depth | |
|---|---|---|---|---|---|
| Percentage of orders | Points | Percentage of orders | Points | Total points | Weighted score (40%) |
| <75.0 | 0 | <1.0 | 0 | 0 | 0 |
| 75.0–79.9 | 5 | 1.0–1.9 | 5 | 5 | 2 |
| 80.0–84.9 | 10 | 2.0–3.9 | 10 | 10 | 4 |
| 85.0–89.9 | 15 | 4.0–5.9 | 15 | 15 | 6 |
| >=90.0 | 20 | >=6.0 | 20 | 20 | 8 |
| | | | | 25 | 10 |
| | | | | 30 | 12 |
| | | | | 35 | 14 |
| | | | | 40 | 16 |

The following results occur under the current and proposed depth measure calculations for (1) a specialist who scores 82% on the Depth measure and 0.7% on the Added Depth measure and (2) a specialist who scores 76% on the Depth measure and 4% on the Added Depth measure:

| Specialist (1) | Specialist (2) |
|---|---|
| **Current Calculation** | |
| Depth 82% (10 pts) ... Added Depth 0.7% (0 pts). | Depth 76% (5 pts). Added Depth 4% (15 pts). |

| Specialist (1) | Specialist (2) |
|---|---|
| Weighted Scores total 2. | Weighted Scores total 4. |
| **Proposed Calculation** | |
| Depth 82% (10 pts) ... | Depth 76% (5 pts). |

1998) (''March 1998 Order''). Points are allocated based on the specialist's raw score. In this example, the specialist would not receive any points for the Depth measure, because the specialist's Depth percentage is below 75%. The points for each measure are weighted to obtain an overall weighted score for all the measures.

[8] For example, assume the NBBO size is 500 shares displayed and the BSE specialist receives an order for 1200 shares, and that the specialist executes 600 shares at the displayed NBBO price. The number of shares over the NBBO size the specialist executed is calculated by subtracting 500 from 600. The specialist has 100 shares of ''added depth.'' Then calculate the added depth for each qualifying order for each specialist, add the added depth for each specialist for each qualifying order, and total the added depth for all specialists combined. Next compare each specialist's added depth to the overall added depth for the floor to arrive at the percentage for each specialist relative to the other specialists. For example, 100 added depth for Specialist A / 10,000 added depth for all specialists = 10% added depth for specialists A. *See* March 1998 Order, *supra* note 7. Points are allocated based on the specialist's raw score. In this example, the specialist would receive points for the Added Depth measure, because the specialist's Added Depth percentage is equal to or greater than 1%. After points have been assigned for each measure under the SPEP, the points for each measure are assigned a weight to obtain an overall weighted score for all the measures.

| Specialist (1) | Specialist (2) | Weighted Score totals 4. | Weighted Score totals 8. |
|---|---|---|---|
| Added Depth 0.7% (0 pts). | Added Depth 4% (15 pts). | | |
| Combined Depth (10 pts). | Combined Depth (20 pts). | | |

In addition, the minimum threshold level for the Overall Program weighted score, which is currently set at ''at or above 5.00'', is being changed to compensate for the change in the depth calculations and will be set at ''at or above 7.00.''

Under the pilot, assuming that a specialist performed at the minimum threshold level for each measure, the breakdown of weighted points would be as follows:

| Measure | Weight percent | Points | Weighted points |
|---|---|---|---|
| Turnaround Time | 5 | 5 | 0.25 |
| Holding Orders Without Action | 5 | 5 | 0.25 |
| Price Improvement (<⅛) | 20 | 5 | 1.00 |
| Price Improvement (⅛) | 15 | 5 | 0.75 |
| Price Improvement (>⅛) | 15 | 5 | 0.75 |
| Depth | 20 | 5 | 1.00 |
| Added Depth | 20 | 5 | 1.00 |
| Overall Weighted Score | | | 5.00 |

Under the proposed rule change, assuming that a specialist performed at the minimum threshold level for each measure, the breakdown of weighted points would be as follows:

| Measure | Weight percent | Points | Weighted points |
|---|---|---|---|
| Turnaround Time | 5 | 5 | 0.25 |
| Holding Orders Without Action | 5 | 5 | 0.25 |
| Price Improvement (<⅛) | 20 | 5 | 1.00 |
| Price Improvement (⅛) | 15 | 5 | 0.75 |
| Price Improvement (>⅛) | 15 | 5 | 0.75 |
| Depth and Added Depth | 40 | 10 | 4.00 |
| Overall Weighted Score | | | 7.00 |

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act.[9] Specifically, the Exchange believes that the proposal 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.

[9] 15 U.S.C. 78f(b)(5).

*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 with respect to 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 self-regulatory organization consents, the Commission will:

(A) by order approve 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. 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. 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 in Washington, D.C.Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–BSE–98–7 and should be submitted by January 4, 1999.

For the Commission, by the Division of Market Regulations, pursuant to delegated.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98–32963 Filed 12–10–98; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–40752; File No. SR–DTC–98–23]**

## Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees

December 7, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 16, 1998, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') 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 persons.

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

The proposed rule change amends DTC's service fee schedule to establish a fee for transactions processed through DTC's two-way link with Deutsche Borse Clearing AG (''DBC'').[2]

### 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. 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 such statements.[3]

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

The purpose of the proposed rule change, which became effective for services provided on or after November 17, 1998, is to establish a new surcharge designed to recover DTC's costs to implement an enhanced two-way link with DBC from DTC participants whose transactions are processed through the link. DTC proposes to make the following revision to its service fee schedule:

| Service | Present fee | Proposed fee |
|---|---|---|
| IX. Automated Deliver Orders:<br>• A surcharge for each item delivered or received through the DTC/DBC link facility ..... | None ..... | $3.65 |

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder because fees will more equitably be allocated among DTC participants.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

DTC 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*

Comments on the proposed rule change were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and pursuant to Rule 19b–4(e)(2)[6] thereunder because the proposal establishes or changes a due, fee, or other charge imposed by DTC. At any time within sixty 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.

### 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. 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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–98–23 and should be submitted by January 4, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98–32959 Filed 12–10–98; 8:45 am]

BILLING CODE 8010–01–M

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] See Exchange Act Release No. 40660 (November 10, 1998), 63 FR 64135 (order approving DTC's proposal to establish a two-way link with DBC).

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(e)(2).

[7] CFR 200.30–3(a)(12).