

mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 7, 1999, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW, Washington, DC 20549-0609. Applicant, 1950 Stemmons Freeway, Suite 3026, Dallas, TX 75207.

FOR FURTHER INFORMATION CONTACT: Nadya B. Roytblat, Assistant Director, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Preference Branch, 450 5th Street NW, Washington, DC 20549-0102 (tel. 202-942-8090).

Applicant's Representations

1. Applicant is a Delaware corporation formed in 1997. Applicant, through its wholly-owned subsidiaries, is a facilities-based provider of telecommunications services. Applicant owns and operates certain portions of the telecommunications networks, primarily telecommunication switches, through which applicant provides telecommunications services to its customers ("Service"). Applicant is actively engaged in deploying telecommunications networks in 24 of the largest metropolitan markets in the United States through which it plans to provide an integrated set of telecommunications services to business, government and other institutional users.

2. To finance the acquisition and construction of its network facilities in each of its target markets, applicant requires a significant amount of capital. In addition, as a key element of its strategy, applicant has developed a financing plan predicated on pre-funding each market's expansion to the point at which such market's operating cash flow is sufficient to fund both the operating costs (including working capital, debt service and cash flow deficits) and capital expenditures. Consistent with this financing plan, applicant has raised capital whenever it is available on attractive terms and may do so in the future in order to pre-fund intended markets.

3. As of March 31, 1999, applicant had invested approximately 232.4 million in property, plant and equipment, and had approximately \$351.9 million invested in short-term U.S. Government securities, money market funds, certificates of deposit, and commercial paper rated A-1/P-1 (the "Qualified Investments"). Applicant currently has allocated a significant portion of its investments to Government securities. Applicant states that it holds Qualified Investments with the objective of preserving capital and maintaining liquidity to meet daily cash needs.

Applicant's Legal Analysis

1. Under section 3(a)(1)(C) of the act, an issuer is an investment company if it "is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 percent of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis." Section 3(a)(2) of the Act defines "investment securities" to include all securities except government securities, and securities which are issued by majority-owned subsidiaries of the owner which are not investment companies, and are not relying on the exception from the definition of investment company in section 3(c)(1) or 3(c)(7) of the Act.

2. Applicant states that, pending utilization in the development of the Service, capital raised by applicant may be held in "investment securities" within the meaning of section 3(a)(2) of the Act. As of March 31, 1999, approximately 56% of applicant's total assets consisted of Qualified Investments. Applicant states, therefore, that it may come within the definition of investment company in section 3(a)(1)(C) of the Act.

3. Section 6(c) of the Act permits the SEC to exempt any person, security, or transaction from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicant requests an exemption under section 6(c) from all provisions of the Act until the earlier of one year from the date the requested order is issued or the date applicant ceases to be an investment company. Applicant believes that within this period it will have sufficient expenditures of funds on the development and operation of the

Service to cure its temporary status under section 3(a)(1)(C) of the Act.

5. Applicant states that, as a company that was created to develop competitive local exchange networks in major metropolitan areas through the U.S., applicant is not the type of entity that was intended to be governed by the Act. Applicant states that, since its inception, its principal activities have been primarily the procurement of governmental authorizations, the acquisition of telecommunications equipment and facilities, the hiring of management and other key personnel, the raising of capital, the development, acquisition and integration of operations support systems and other back office systems and the negotiation of interconnection agreements with incumbent local exchange carriers. Applicant thus asserts that the requested relief is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant's Conditions

Applicant agrees that the requested exemption will be subject to the following conditions:

1. Applicant will not purchase or otherwise acquire any investment securities other than Qualified Investments.
2. Applicant will not hold itself out as being engaged in the business of investing, reinvesting, owning, holding, or trading in securities.
3. Applicant will allocate and utilize its accumulated cash and securities for the purpose of funding the development of its networks and competitive local exchange business.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 99-12664 Filed 5-19-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41396; File No. SR-BSE-99-04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Its Minor Rule Violation Plan

May 13, 1999.

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 26, 1999, 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, 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 seeks to amend the Summary Fine Schedule of the Minor Rule Violation Plan through the addition of violations of Rule 11Ac1-4 under the Act ("Display Rule").³ The text of the proposed rule change is available at the Office of the Secretary, BSE, 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 amend its Minor Rule Violation Plan ("Plan") to include violations of the Display Rule.⁴ By amending the Summary Fine Schedule of the Plan, the Exchange will address certain violations of the Display Rule, which are deemed to be inadvertent, or without special aggravating or intentional purposes, through the use of fines rather than a full disciplinary procedure. Where violations of the Display Rule are intentional, however, the Exchange is not limited nor precluded from initiating more formal Disciplinary Proceedings under Chapter XXX or imposing sanctions of more or less than

the recommended fines (not to exceed \$2,500 in any event).

The Plan as amended would provide that failure to display a customer limit order immediately (no later than 30 seconds) after receipt (without a specific exclusion provided by the Display Rule) will result in a written warning for the initial offense; a \$50 fine for the second offense; and a \$100 fine for subsequent offenses.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,⁵ in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Additionally, the BSE believes the proposal is consistent with Section 11A(a)(1)(C)(iii) and (iv) of the Act.⁶ In adopting Section 11A, Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities, and to assure the practicability of brokers executing investors' orders in the best market.⁷

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

The Exchange does not believe that the proposed rule change will result in 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 either solicited or received.

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, 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 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 Exchange. All submissions should refer to file number SR-BSE-99-04 and should be submitted by June 20, 1999.

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. 34-41397; File No. SR-NYSE-97-18]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Specialists' Entry of Bids and Offers in Electronic Communications Networks and Other Market Centers

May 13, 1999.

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 June 2,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.11Ac1-4.

⁴ 17 CFR 240.11Ac1-4.

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78k-1(a)(1)(C)(iii) and (iv).

⁷ *Id.*

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.