

thereunder applicable to a national securities exchange.

The Commission expects, and BSE has represented, that should there be any changes in the terms of the LLC Agreement between the date of the publication of this proposal and the proposed transfer of BSE's Units that would result in the BSE's Percentage Interest falling below the 20% threshold, the Exchange will submit a new proposed rule change in order for the Commission to consider the transfer of Units in light of any changes made to the LLC Agreement.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-BSE-2005-21) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 05-18615 Filed 9-19-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52415; File No. SR-BSE-2005-29]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving a Proposed Rule Change To Amend the Exchange's Trade-Through and Locked Markets Rules

September 13, 2005.

On August 1, 2005, the Boston Stock Exchange, Inc. ("BSE"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 10(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> to implement Amendment No. 15 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage<sup>3</sup> by amending Sections 1 and 4

of chapter XII of the Boston Options Exchange Facility ("BOX") Rules to add a "trade and ship" exception to the definition of "Trade-Through" and add a "book and ship" exception to the provision relating to locked markets, respectively. The proposed rule change was published for comment in the **Federal Register** on August 10, 2005.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

Under the proposed rule change, a BOX Options Participant could trade an order at a price that is one minimum quoting increment inferior to the national best bid or offer ("NBBO") if a Linkage Order<sup>5</sup> is sent contemporaneously to the market(s) disseminating the NBBO to satisfy all interest of the NBBO price. The proposed rule change also would provide that a BOX Options Participant may book an order on BOX that would otherwise lock another market if a Linkage Order is sent contemporaneously to such other market to satisfy all interest at the lock price and only the remaining portion of the order is booked. The BSE proposes that, under trade and ship, any execution received from the market disseminating the NBBO must (pursuant to agency obligations) be reassigned to the customer order that is underlying the Linkage Order that was sent to trade with the market disseminating the NBBO.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act<sup>6</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires, among other things, that the rules of an exchange be 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, in general, to protect investors and the public interest. The Commission believes that the proposed rule change

(November 28, 2000); and 40198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

<sup>4</sup> See Securities Exchange Act Release No. 52205 (August 4, 2005), 70 FR 46551.

<sup>5</sup> See Section 1, subsection (j) of Chapter XII of the BOX Rules.

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

should help to implement the Linkage Plan by facilitating the ability of BOX Options Participants to execute their customer orders in a timely manner and potentially could decrease the incidence of Trade-Throughs and locked markets.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-BSE-2005-29) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 05-18618 Filed 9-19-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52412; File No. SR-BSE-2005-38]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to the Exchange's Transaction Fees and Tape a Revenue Sharing Program for Electronically Routed Cross Trades

September 13, 2005.

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 August 19, 2005, 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 BSE filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> as one establishing or changing a due, fee or other charge imposed by the BSE, which renders the proposal effective upon filing with the Commission. On September 9, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>5</sup> On September 12, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>6</sup> The Commission

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</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)(ii).

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

<sup>5</sup> The BSE withdrew Amendment No. 1 on August 12, 2005 for technical and formatting reasons.

<sup>6</sup> In Amendment No. 2, the Exchange: (1) provided additional detail about the Exchange's

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<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</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> On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket option linkage proposed by the American Stock Exchange LLC, the Chicago Board Options Exchange, Incorporated, and the International Securities Exchange, Inc. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) ("Linkage Plan"). Subsequently, upon separate requests by the Philadelphia Stock Exchange, Inc., the Pacific Exchange, Inc., and the BSE, the Commission issued order to permit these exchanges to participate in the Linkage Plan. See Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850

is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend its Transaction Fee Schedule in relation to electronically routed cross trade executions. The text of the proposed rule change is available on the Exchange's Web site (<http://www.bostonstock.com>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### **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 BSE proposes to amend its Transaction Fee Schedule by eliminating all fees for cross trades delivered electronically to the Exchange.<sup>7</sup> Specifically, the Exchange

rules and procedures regarding electronically routed cross trades; (2) clarified that the proposed changes will not adversely affect the BSE's regulatory responsibilities; and (3) amended the proposed rule text regarding the Exchange's Tape A revenue sharing program to clarify how the revenue sharing will be calculated. The effective date of the original proposed rule change is August 19, 2005, and the effective date of Amendment No. 2 is September 12, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on September 12, 2005, the date on which the Exchange filed Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

<sup>7</sup> Upon entry into the BEACON trading system, all orders are transmitted to a BSE specialist. Depending on factors such as order size and type, the orders are either automatically or manually executed. Cross trades would automatically execute, provided that no customer orders existed on the book which held priority over either side of the cross and could "break up" the cross. See Chapter II, "Dealings on the Exchange," Section 6, "Bids and Offer for Stocks," and Section 18, "Orders to Buy and Sell the Same Security" of the Rules of the Board of Governors of the BSE ("BSE

proposes to waive all Value Charges and Trade Recording Fees on cross trades that are electronically routed to the BSE for execution. The current fee structure for Automated Portfolio Crosses will also be eliminated. The category of Automated Portfolio Crosses was created in the Transaction Fee Schedule several years ago for a specific type of business related only to cross trades that would be routed to the Exchange as part of a larger basket of trades. The BSE no longer receives this type of specialized cross trade. Therefore, the separate category of fees for Automated Portfolio Crosses is no longer required. The BSE believes that these changes to its Transaction Fee Schedule will allow the Exchange to attract a new segment of business to the Exchange, which will, in turn, allow the Exchange to remain competitive in the overall marketplace.

The BSE is now proposing to eliminate all fees for all electronically delivered cross trades. Since the Exchange requires that all orders submitted to a BSE specialist by members be transmitted through the BEACON trading system, all cross trades submitted to BSE specialists for execution would be considered to be electronically routed, with the exception of those entered by a BSE Floor Broker. While floor brokered orders must also be entered into the BEACON trading system for transmission to a BSE specialist, the Exchange does not consider floor brokered orders to be electronically routed cross trades, due to the intervention of and handling by the floor broker. Thus, the proposed fee waiver would not apply to floor broker entered cross trades, even though such cross trades are entered through the BEACON trading system, but would apply to all other cross trades submitted to BSE specialists through BEACON.

The Exchange also proposes to amend its Tape A revenue sharing program to further encourage its member firms to electronically route cross trades to the BSE. Under this proposal, electronically routed cross trades would be excluded from the current Tape A revenue sharing program, which requires that a pre-determined Exchange-wide Tape A revenue target be achieved, and requires that a member firm generate a minimum of \$50,000 in overall monthly transaction fees before being eligible to participate in a 50% revenue share for Tape A business. The BSE is proposing that member firms that electronically

Rules"). Additionally, cross trades of 5,000 shares or more are considered, under Chapter II, Section 18 of the BSE Rules, to be "clean crosses," which can execute within the prevailing bid and offer given a set of qualifying conditions.

route cross trades to the BSE for execution be permitted to receive 50% of the Tape A revenue generated by such electronically routed cross trades, regardless of whether the Exchange has met its pre-determined Tape A revenue target, and regardless of the amount of the firm's overall monthly transaction fees. The 50% revenue sharing would be a flat rate, calculated on a trade-by-trade basis. Thus, a BSE member would receive 50% of the Tape A revenue generated by each electronically routed cross trade that the member routes to the BSE for execution.

The Exchange is cognizant of its surveillance and compliance responsibilities as a self-regulatory organization. Although this proposal involves the waiver of certain fees and amendments to the Tape A revenue sharing program, which could result in a reduction of revenue to the BSE, the Exchange represents that its responsibilities as a self-regulatory organization will in no way be compromised by the implementation of the changes proposed herein.

##### **2. Statutory Basis**

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>9</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

#### *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.

#### *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 comments on the proposed rule change.

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

The proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>10</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>11</sup> because it establishes or changes a due, fee or other charge

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

imposed by the BSE. At any time within 60 days of the filing of such 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.<sup>12</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 [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BSE-2005-38 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-BSE-2005-38. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. 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-BSE-2005-38 and should be submitted on or before October 11, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Jonathan G. Katz,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52429; File No. SR-BSE-2005-39]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to the Definition of Firm Customer Quote Size and Limitations on Sending of Multiple P/A Orders on the Boston Options Exchange

September 14, 2005.

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 September 13, 2005, 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 BSE. 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 is proposing to amend its rules governing the operation of the intermarket option linkage ("Linkage") on the Boston Options Exchange ("BOX") to conform with a proposed amendment<sup>3</sup> to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan").<sup>4</sup> The Exchange is proposing: (i)

<sup>13</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> See Securities Exchange Act Release No. 52401 (September 9, 2005) (File No. 4-429) ("Amendment No. 16").

<sup>4</sup> On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket option market linkage proposed by the American Stock Exchange, LLC, Chicago Board Options Exchange, Incorporated, and International Securities Exchange, Inc. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, upon separate requests by the Philadelphia Stock Exchange, Inc., Pacific Exchange, Inc., and BSE, the Commission issued

To amend the definition of "Firm Customer Quote Size" ("FCQS")<sup>5</sup> to provide automatic executions for Principal Acting as Agent Orders ("P/A Orders")<sup>6</sup> sent via Linkage up to the full size of a Participant's disseminated quotation; and (ii) to eliminate a 15-second waiting period between the sending of P/A Orders.

The text of the proposed rule amendment is available on BSE's Web site at <http://www.bostonstock.com>, at the BSE's Office of the Secretary, and at the Commission's public reference room.

#### 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 rules governing Linkage in two areas: the definition of FCQS and limitations on sending multiple P/A Orders.

The Linkage Plan participants ("Participants") provide automatic execution to P/A Orders up to the FCQS, if automatic execution is available. At the time the Participants adopted the Linkage Plan, options quote sizes were not disseminated through the Options Price Reporting Authority, and the floor-based Participants employed automatic execution systems that guaranteed automatic fills on orders under a certain contract size (which generally was a static number). As such, the FCQS was calculated based on the number of contracts the sending and receiving Participants guaranteed they would automatically execute. Now that

orders to permit these exchanges to participate in the Linkage Plan. See Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000), 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000) and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

<sup>5</sup> See Section 2(11) of the Linkage Plan and Chapter XII, Section 1(g) of BOX's Rules.

<sup>6</sup> See Section 2(16)(a) of the Linkage Plan and Chapter XII, Section 1(j)(i) of BOX's Rules.

<sup>12</sup> See *supra* note 6.