

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52414; File No. SR-Amex-2005-046]

### Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto To Amend the Exchange's Trade-Through and Locked Markets Rules

September 13, 2005.

On April 28, 2005, the American Stock Exchange LLC ("Amex"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change 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> to implement Amendment No. 15 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage<sup>3</sup> by amending Amex Rules 940 and 943 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. On July 6, 2005, the Amex filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on August 5, 2005.<sup>5</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

Under the proposed rule change, an Amex member 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>6</sup> is sent contemporaneously to the market(s) disseminating the NBBO

<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 Amex, 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 Boston Stock Exchange, Inc., the Commission issued orders 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 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

<sup>4</sup> In Amendment No. 1, the Amex revised the rule text to use terms consistent with Amex's current rules and made clarifying changes in the purpose, statutory basis, and burdens sections.

<sup>5</sup> See Securities Exchange Act Release No. 52172 (July 29, 2005), 70 FR 45449.

<sup>6</sup> See Amex Rule 940(b)(10).

to satisfy all interest at the NBBO price. The proposed rule change also would provide that an Amex member may book an order 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 Amex 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>7</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>9</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 should help to implement the Linkage Plan by facilitating the ability of Amex's members 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>10</sup> that the proposed rule change (SR-Amex-2005-046) as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Jonathan G. Katz,**

*Secretary.*

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<sup>7</sup> 15 U.S.C. 78f.

<sup>8</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>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52428; File No. SR-Amex-2005-047]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Definition of Firm Customer Quote Size and the Removal of Certain Restrictions on Sending Principal Acting as Agent (P/A) Orders Through the Linkage

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 April 28, 2005, the American Stock Exchange LLC ("Amex" 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 Amex. On September 12, 2005, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> 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 its rules governing the operation of the intermarket option linkage to conform with a proposed amendment<sup>4</sup> to the Plan for the Purpose of Creating and Operating an Intermarket Linkage ("Linkage Plan").<sup>5</sup> Accordingly, the Exchange is proposing to amend Amex Rules 940 and 941 to modify the

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

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

<sup>3</sup> In Amendment No. 1, the Exchange made clarifying changes to the proposed rule text relating to the availability of Participant exchanges' automatic execution system.

<sup>4</sup> See Securities Exchange Act Release No. 34-52401 (September 9, 2005) (File No. 4-429) ("Amendment No. 16").

<sup>5</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 Amex, 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 Boston Stock Exchange, Inc. the Commission issued 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).

definition of "Firm Customer Quote Size" ("FCQS")<sup>6</sup> to provide automatic executions of the Principal Acting as Agent Orders ("P/A Orders")<sup>7</sup> up to the full size of the Exchange's disseminated quotation and to eliminate the 15-second waiting period between the sending of P/A Orders.

The text of the proposed rule change is available on the Amex's Web site at <http://www.amex.com>, the Office of the Secretary, the Amex 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 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 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 purpose of this proposed rule change is to conform Amex's rules to proposed Amendment No. 16. Amendment No. 16, together with this proposed rule change, would change the definition of FCQS and eliminate the 15-second limitation in connection with the sending of P/A Orders. The change to the definition of FCQS is intended to reflect current practices of the Linkage Plan participants ("Participants") relating to disseminated size not in existence at the time the Plan was originally adopted. At the time of the Linkage Plan's adoption, options quote sizes were generally not disseminated through the Options Price Reporting Authority, and most Participants employed automatic execution systems that guaranteed automatic executions on orders under a certain contract size. Accordingly, the FCQS was calculated based on the number of contracts the sending and receiving exchange guaranteed they would automatically execute. Now that all the Participants disseminate dynamic quotes with size, the Exchange believes it is appropriate to calculate the FCQS based on the size of the disseminated quotation of the

Participant receiving the P/A Order. Therefore, the Exchange proposes to amend Amex Rule 940(b)(7) to define FCQS as the size of the disseminated quotation of the Participant receiving the P/A Order.

This proposal also seeks to eliminate the 15-second wait period for sending a second P/A Order. Specifically, Amex Rule 941(b)(2), which governs the manner in which a P/A Order larger than the FCQS can be broken into smaller P/A Orders. Currently, Amex Rule 941(b)(2) provides that an initial P/A Order may be sent to a Participant for execution at the FCQS and, if the same Participant continues to disseminate the same price 15 seconds after the execution of the initial P/A Order, the specialist may send a second P/A Order, subject to certain restrictions. The Exchange proposes to eliminate the 15-second wait period because the Participants now employ dynamic quotes with size, obviating the need for a manual quote refresh period for P/A Orders. The Exchange also proposes to amend Amex Rule 941 to clarify that an automatic execution of a P/A Order is not required if the P/A Order is larger than the FCQS.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>9</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 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.

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

The Amex does not believe that the proposed rule change, as amended, would 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

Written comments were neither solicited nor 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 Amex consents, the Commission will:

- A. By order approve such proposed rule change, as amended; or
- B. Institute proceedings to determine whether the proposed rule change, as amended, 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. 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-Amex-2005-47 on the subject line.

### Paper Comments

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

All submissions should refer to File Number SR-Amex-2005-047. 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 Exchange. All comments received will be posted

<sup>6</sup> See Exchange Rule 940(b)(7).

<sup>7</sup> See Section 2(16)(a) of the Linkage Plan and Exchange Rule 940(b)(10)(i).

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

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

without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-Amex-2005-047 and should be submitted on or before October 11, 2005.

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

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52404; File No. SR-BSE-2005-21]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to a Proposal To Transfer a Portion of Its Ownership Interest in Boston Options Exchange Facility

September 9, 2005.

On July 27, 2005, the Boston Stock Exchange ("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 announcing BSE's intention to transfer a portion of its ownership interest in BOX LLC, the operator of its Boston Options Exchange facility ("BOX"), such that its aggregate percentage interest will fall below 20%.<sup>3</sup> The purpose of the transfer would be to assist BSE in funding its equities-related business interests and initiatives related thereto.

The proposed rule change was published for comment in the **Federal Register** on August 5, 2005.<sup>4</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

The Commission has reviewed carefully BSE's proposed rule change

and finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,<sup>5</sup> and with the requirements of Section 6(b).<sup>6</sup> In particular, the Commission finds that the proposal furthers the objectives of Section 6(b)(1),<sup>7</sup> in that it will help ensure that the Exchange is so organized and has the capacity to carry out the purposes of the Act and to comply and to enforce compliance by the Exchange's members with the Act, the rules and regulations of the Act, and the rules of the Exchange; and Section 6(b)(5),<sup>8</sup> in that it is designed to facilitate transactions in securities; 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.

Although BSE does not presently have a transferee designated, BSE represented in its proposed rule change that: (1) Any transferee will need to sign and be bound by the provisions of the LLC Agreement; and (2) any Transfer,<sup>9</sup> including a Transfer that will result in BSE's Percentage Interest falling below the 20% threshold, will be subject to the various limitations set forth in the LLC Agreement, throughout Article 8 and elsewhere, regarding suitability and other regulatory and business requirements.<sup>10</sup>

<sup>5</sup> In approving this proposed rule change, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>7</sup> 15 U.S.C. 78f(b)(1).

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

<sup>9</sup> Under the terms of the LLC Agreement, a "Transfer" occurs when any LLC Member would "dispose of, sell, alienate, assign, exchange, participate, subparticipate, encumber, or otherwise transfer in any manner \* \* \* all or any part or portion of its Units" (ownership interest).

<sup>10</sup> For example, BSE would be prohibited, under Section 8.1(d), from Transferring any of its Units to anyone other than a Member, an affiliate of a Member, or Interactive Brokers Group LLC ("IB") (according to the terms set forth in Section 8.6(d)), until the earlier of the second anniversary of the Launch Date of BOX or the date on which IB's percentage interest has been reduced to no more than 8.00%. Further, pursuant to Section 8.1(a) of the LLC Agreement, except for: (i) Transfers among Members; (ii) certain transfers by IB; and (iii) transfers to Affiliates of a Member, prior to any transfer, the proposed transferee must be approved by the BOX LLC Board. To be eligible for approval, the proposed transferee must: (i) Be of high professional and financial standing; (ii) be able to

Further, the BSE represented that its proposed transfer of Units will not affect additional provisions of the LLC Agreement that make special accommodations for BSE as the SRO of the BOX facility. For example, Section 4.1(b) of the LLC Agreement provides that, with its present ownership interest, BSE is entitled to maintain two seats on the BOX LLC Board. Because BSE is not proposing to make any transfers that would result in BSE's percentage interest in BOX LLC going below 8.00%, which is the threshold amount established in Section 4.1(b) for BSE to maintain two directors on the Board, this entitlement will remain. In addition, pursuant to Section 4.1 of the LLC Agreement, BSE has an absolute right to designate at least one director on the BOX LLC Board regardless of whether it maintains any ownership interest in BOX LLC.

BSE also noted that, as a facility of an exchange, BOX is an integral part of a self-regulatory organization registered pursuant to the Act and is subject to the requirements of the Act. Although BOX LLC itself will not carry out any regulatory functions, all of its activities must be consistent with the Act. These obligations continue as long as BOX is a facility of BSE, regardless of the size of BSE's ownership interest in BOX LLC. BSE also represented that because the Exchange is the SRO for the BOX facility, it will, independent of its ownership interest, ensure that BOX LLC conducts the facility's business in a manner consistent with the regulatory and oversight responsibilities of the BSE and with the Act.

Finally, BSE represented that neither its proposal nor the actual transfer of any BSE units will alter or modify the terms or the enforcement of the LLC Agreement.

The Commission believes that because the proposed transfer of Units by the BSE pursuant to the proposed rule change and the terms of the LLC Agreement will not affect BOX's responsibilities as a facility of BSE, or the Exchange's rights and obligations as the SRO for the BOX facility, including the Exchange's right to designate at least one director on the Board of BOX LLC, the proposed transfer of Units is consistent with the requirements of the Act and the rules and regulations

carry out their duties as a Member; and (iii) be under no regulatory or governmental bar or disqualification. In addition, pursuant to Section 8.4(e) of the LLC Agreement, BOX would be required to provide the Commission with notice ten days prior to the closing date of any acquisition that results in a BOX Member's ownership percentage interest meeting or crossing the threshold level of 5%, or the successive 5% percentage interest levels of 10% and 15%.

<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> In the proposed rule change, BSE acknowledged that pursuant to Section 8.4(f) of the operating agreement of BOX LLC (the "LLC Agreement"), any transfer that would result in a reduction of BSE's aggregate Percentage Interest in BOX LLC to below 20% is subject to the rule filing process pursuant to Section 19(b)(1) of the Act (15 U.S.C. 78s(b)(1)) and Rule 19b-4 thereunder (17 CFR 240-19b-4).

<sup>4</sup> See Securities Exchange Act Release No. 52169 (July 29, 2005), 70 FR 45451.