

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-49964; File No. SR-BSE-2004-17)

July 2, 2004

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto by the Boston Stock Exchange, Inc. Relating to the Handling of Satisfaction Orders Pursuant to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage

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, 2004, the Boston Stock Exchange, Inc. (“BSE” or “Exchange”) submitted to 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 BSE. The Exchange submitted Amendment No. 1 to the proposed rule change on June 14, 2004.<sup>3</sup> The Commission 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 BSE is proposing to amend the requirements in the rules of the BSE related to the trading of options contracts on the Boston Options Exchange (“BOX”), a facility of the Exchange,

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

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

<sup>3</sup> See Letter from John Boese, Chief Regulatory Officer, BSE to Nancy J. Sanow, Assistant Director, Commission, dated June 9, 2004 (“Amendment No. 1”). In Amendment No. 1, the Exchange submitted a new Form 19b-4, which replaced and superceded the original filing in its entirety.

regarding how its members handle Satisfaction Orders<sup>4</sup> pursuant to the Linkage Plan.

The text of the proposed rule change, as amended, is available at the Exchange 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 BSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item III 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 filing is to implement a proposed rule change related to proposed Joint Amendment No. 11 to the Linkage Plan.<sup>5</sup> That amendment to the Linkage Plan, together with this proposed rule change, will enhance the manner in which the BOX processes Satisfaction Orders following a Trade-Through. If the displayed price that is traded through represents a customer order, the BOX Market Maker or a member of another participant in the

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<sup>4</sup> A "Satisfaction Order" is defined as an order sent through the Options Intermarket Linkage ("Linkage") to notify a Participant of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through. A "Trade-Through" is a transaction in an options series at a price that is inferior to the National Best Bid or Offer. See Sections 2(16)(c) and 2(29) of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the "Linkage Plan"), respectively.

<sup>5</sup> See Securities Exchange Act Release No. 49691 (May 12, 2004), 69 FR 28954 (May 19, 2004) (File No. 4-429) (Notice of filing Joint Amendment No. 11 to the Linkage Plan).

Linkage Plan (“Participant”)<sup>6</sup> can send a Satisfaction Order requiring the member on the exchange who caused the Trade-Through to satisfy the customer order.<sup>7</sup> While the BSE believes that this process generally works well, the experience with the Linkage to date has led the options exchanges to agree to implement three changes to Satisfaction Order processing.

First, Section 8(c)(ii)(C) of the Linkage Plan and Chapter XII, Section 3 of the BSE Rules related to the trading of options contracts on the BOX (the “Rule”) currently permit a BOX Market Maker to send a Satisfaction Order for the full size of the customer order traded through, regardless of the size of the transaction that caused the Trade-Through (although the Participant receiving the Satisfaction Order that elects to execute it must limit its execution to the size of the Trade-Through). This proposed rule change would provide that the size of the Satisfaction Order be limited to the lesser of the size of the customer order traded through and the size of the transaction that caused the Trade-Through.

Second, the Linkage Plan and the Rule currently permit a BOX Market Maker to reject an execution (“fill”) of a Satisfaction Order if the customer order that underlies the Satisfaction Order either has been filled on the BOX or has been canceled while the Satisfaction Order is being processed. However, if the order is filled or canceled, there is no current requirement to cancel the pending Satisfaction Order, which leads to the rejection of Satisfaction Order fills that may have been avoided had the Satisfaction Order been canceled. To address this issue, the

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<sup>6</sup> A “Participant” is defined as an Eligible Exchange whose participation in the Linkage Plan has become effective pursuant to Section 4(c) of the Linkage Plan. See Section 2(24) of the Linkage Plan. Currently, the Participants in the Linkage Plan are the International Securities Exchange, Inc., the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the Pacific Exchange, Inc., the Philadelphia Stock Exchange, Inc. and the BSE.

<sup>7</sup> See Sections 7(a)(ii)(D) and 8(c)(ii) of the Linkage Plan.

proposed rule change would require the Market Maker to cancel a pending Satisfaction Order as soon as practical if the underlying customer order is filled or canceled.

Third, as noted above, a BOX Market Maker can reject a Satisfaction Order fill if the underlying customer order is executed or canceled while the Satisfaction Order is pending. However, it is possible that the Market Maker itself could trade against the customer order before the Market Maker receives a notice that the Satisfaction Order has been filled. In this case, the BSE believes that it would be inappropriate to reject the fill. Accordingly, the proposed rule change would provide that the Market Maker must accept the fill of the Satisfaction Order in that scenario.

## 2. Statutory Basis

The BSE believes that the proposed rule is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>9</sup> in particular, in that it is 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 protect investors and the general public.

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

The BSE does not believe that the proposed rule change will impose any burden on competition 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.

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

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

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-2004-17 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-BSE-2004-17. 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the BSE. 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-2004-17 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>10</sup> In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act<sup>11</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 to protect investors and the public interest. The Commission believes that the proposed rule change should facilitate the handling of Satisfaction Orders in an efficient and fair manner.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice thereof in the Federal Register. As noted above, the proposed rule change incorporates changes into the BSE Rules that correspond to changes made to the Linkage Plan through Joint Amendment No. 11, which was published for

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<sup>10</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

public comment in the Federal Register on May 19, 2004.<sup>12</sup> The Commission received no comments in response to publication of Joint Amendment No. 11. The Commission believes that no new issues of regulatory concern are being raised by BSE's proposed rule change. The Commission believes, therefore, that granting accelerated approval of the proposed rule change, as amended, is appropriate and consistent with Sections 6 and 19(b) of the Act.<sup>13</sup>

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change, as amended, (SR-BSE-2004-17) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>12</sup> See supra note 5.

<sup>13</sup> 15 U.S.C. 78f and 78s(b).

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12).