

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 Amex. All submissions should refer to File No. SR-Amex-2003-104 and should be submitted by February 3, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Jill M. Peterson,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49024; File No. SR-AMEX-2003-78]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change by American Stock Exchange Relating to Resolving Uncompared Options Transactions

January 6, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,¹ notice is hereby given that on August 27, 2003, the American Stock Exchange LLC ("Amex") 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 Amex. 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

Amex proposes to amend Amex Rule 970 (Comparison of Option Transactions Excluded From Clearance) to make the processes for resolving uncompared transactions in its intra-day options and equities comparison systems more consistent.

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 Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.²

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

Amex Rule 970 sets forth the process by which Amex members reconcile uncompared option transactions on the business day following the trade date, or T+1.³ Specifically, Rule 970 requires that, at a time designated by Amex on T+1, each member or member organization must review their contract sheets listing all uncompared option trades and option advisory trades. For each uncompared option trade, members must deliver to the contra-party a Rejected Option Transaction Notice ("ROTN"), which details the terms of the uncompared trade. The contra-party or an authorized representative must then accept ("OK") or reject ("DK") and sign the ROTN no later than one-half hour (fifteen minutes if the transaction was executed by a specialist or floor broker) prior to the opening of trading on T+1.

In July 1992, Amex introduced the Intra-day Comparison System for Options (the "IDCO") to facilitate the intra-day comparison of option trades and the reconciliation of uncompared option trades. The IDCO provides an electronic input and correction facility for option transactions executed on Amex. Specifically, the system displays uncompared options trades and option advisory trades and delivers an electronic ROTN to the appropriate contra-party. In addition, the system allows members or member organizations to accept or reject a ROTN, to correct or delete uncompared trades, and to add new trades for comparison where necessary.

Amex proposes to amend Rule 970 by adopting a format consistent with that of Amex Rule 731, which sets forth a similar process for resolving uncompared equity transactions and the use of the Intra-Day Comparison System for Equities ("IDCE"). With login and password safeguards to protect members against unauthorized rejections and acceptances of electronic ROTNs, Amex believes that the use of the IDCO

renders unnecessary the requirement that members manually sign paper ROTNs for each uncompared option transaction. With the exception of eliminating the manual signature requirement for paper ROTNs, Amex does not propose any other change to the comparison process for option transactions. For clarity and consistency, Amex proposes to supplement and preserve the current language of Rule 970 in new Commentary.

Amex believes that the proposed rule change is consistent with section 6(b) of the Act⁴ in general and furthers the objectives of section 6(b)(5) of the Act⁵ in particular because 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 to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

Amex 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

No written comments were solicited or received with respect to the proposed rule change.

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

Within thirty-five days of the date of publication of this notice in the **Federal Register** or such longer period (i) as the Commission may delegate up to ninety days of such date if it finds such longer period to be appropriate and published 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.

² The Commission has modified the text of the summaries prepared by Amex.

³ An uncompared transaction is one in which trade data is received from one member but no corresponding data is received from a contra-member.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549-0069. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-AMEX-2003-78. 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, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the rule filing that are filed with the Commission, and all written communications relating to the rule filing between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at Amex's principal office. All submissions should refer to File No. SR-AMEX-2003-78 and should be submitted within by February 3, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49026; File No. SR-BSE-2002-06]

Self-Regulatory Organizations; Boston Stock Exchange; Notice of Filing of Proposed Rule Change to Clarify Exchange Liability

January 6, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on September 26, 2002, the Boston Stock Exchange ("BSE") filed with the Securities and Exchange Commission ("Commission") and on November 4, 2002, May 29, 2003, and July 21, 2003, amended the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by BSE. The Commission is

publishing this notice to solicit comments on the proposed rule change from interested parties.

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

BSE is seeking to amend various Articles of its Constitution and Sections of its Rules to clarify the liability of BSE in relation to its members' contractual obligations.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, BSE 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. BSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these 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 is to amend certain sections of the BSE Constitution and Rules to clarify BSE's liability in relation to its members' contractual obligations.

In particular, BSE is seeking to modify Articles XII and XIII of its Constitution to insure that any BSE member who is a party to a transaction remains solely liable for the transaction. This language is consistent with similar language and approaches of other exchanges in limiting the liability of an exchange with respect to contracts entered into by members.⁴ In Article XIII of its Constitution, the BSE is also seeking to add certain language from the BSECC Participant Hypothecation Agreement. The provision to be inserted into the Constitution would prevent BSE from becoming a de facto guarantor of an insolvent member's contractual obligations.

² The Boston Stock Exchange Clearing Corporation ("BSECC") has filed a proposed rule change to amend various Sections of its Rules as they pertain to BSECC's liability in order to maintain a consistent approach with the BSE's proposed rule changes. Securities Exchange Act Release No. 49027 (January 6, 2004), [File No. SR-BSECC-2003-01].

³ The Commission has modified the text of the summaries prepared by BSE.

⁴ See, e.g., New York Stock Exchange Rules 137 and 142; Chicago Stock Exchange Rules, Article XXV, Rule 11; and Philadelphia Stock Exchange Rule 254.

Likewise, BSE is seeking to amend other sections of its rules consistent with this theme. In Chapter III, "Comparisons—Liability on Contracts," Section 4, "Failures to Compare," the proposed language would state that BSE shall have no liability to any of the original parties to a contract entered into by a member. Also, in Chapter VI, "Failure to Fulfill Contracts," Section 1, "Closing Contracts," the proposed language would make clear that no action taken by BSE in closing or assisting to close a contract entered into by a BSE member shall have the effect of transferring any liability related to that contract to BSE. Chapter VI, Section 2, "Notice of Closing Contracts," would echo this approach for instances in which BSE takes action to attempt to close a contract on behalf of a member in default. None of these changes are in response to any recent circumstance. They are only aimed at clarifying BSE's unique position in relation to assisting its members in other contractual matters exclusively linked to conducting transactions in the buying and selling of equity securities.

BSE believes that the proposal is consistent with the requirements of Section 6(b) of the Act and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, 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, in that it is designed 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

BSE 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

BSE has neither solicited nor received comments on the proposed change.

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

Within thirty-five 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 ninety days of such date if it finds such

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).