

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52071; File No. SR-BSE-2005-16]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Establishing a De Minimis Exception to the 80/20 Test Relating to Linkage Trades on the Boston Options Exchange

July 20, 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 May 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 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 proposes to amend its rules governing its operation of intermarket linkage ("Linkage") on the Boston Options Exchange ("BOX"). Specifically, the Exchange is proposing to amend Chapter XII, Section 5(b) of the BOX Rules to establish a "*de minimis*" exception to the limitation on Principal Order access imposed by the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan")<sup>3</sup> and related rules. The proposed change would provide a *de minimis* exception from the 80/20 Test, which provides that Market Makers effecting transactions that represent 20 percent or more of their contract volume in a particular calendar quarter by sending Principal Orders<sup>4</sup> to other exchanges via the

Linkage may not send Principal Orders in that option during the following calendar quarter.

The text of the proposed rule change is available on the BSE's Web site at <http://www.bostonstock.com>, 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 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. 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 implement proposed Joint Amendment No. 17 to the Linkage Plan. Section 8(b)(iii) of the Linkage Plan provides that Eligible Market Makers should send Principal Orders through the Linkage on a limited basis and not as a primary aspect of their business. Joint Amendment No. 17, together with this proposed rule change, would change Chapter XII, Section 5(b) of the BOX Rules to establish an exemption from the provision in the rule that states that a Market Maker that effected 20 percent or more of its volume in a particular option by sending Principal Orders through the Linkage in a calendar quarter is prohibited from sending Principal Orders via the Linkage in such option during the following calendar quarter.

The Exchange believes that applying the 80/20 Test has resulted in anomalies for Market Makers with limited volume in an eligible option class. Specifically, if a Market Maker has very little overall trading volume in an option, the execution of one or two Principal Orders during a calendar quarter could result in the Market Maker failing to meet the 80/20 Test. This would bar the Market Maker from using the Linkage to send Principal Orders for the following calendar quarter. It was not the intent of the BOX to bar Market Makers with

limited volume from sending Principal Orders through the Linkage in these circumstances, since such trading does not constitute a primary aspect of their business.

Thus, the Exchange's proposed rule would create a *de minimis* exemption from the 80/20 Test for Market Makers that have a total contract volume of less than 1,000 contracts in an options class for a calendar quarter.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>5</sup> in general and furthers the objectives of Section 6(b)(5)<sup>6</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms 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 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

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 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 Exchange 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. Comments may be submitted by any of the following methods:

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<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 options market linkage ("Linkage") proposed by the American Stock Exchange, LLC, Chicago Board Options Exchange, Inc. and the International Securities Exchange, Inc. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, the Philadelphia Stock Exchange, Inc., the Pacific Exchange, Inc. and the BSE joined 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> The Exchange defines a Principal Order as an order for the principal account of a market maker

that does not relate to a customer order the market maker is holding. See Chapter XII, Section I (j)(ii) of the BOX Rules.

*Electronic Comments*

- Use the Commission's Internet comment form at <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 No. SR-BSE-2005-16 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 No. SR-BSE-2005-16. 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, 100 F Street, NE., 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-2005-16 and should be submitted on or before August 17, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-52068; File No. SR-CBOE-2005-57]

**Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the 80/20 Test of the Plan for the Purpose of Creating and Operating an Intermarket Linkage**

July 20, 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 July 19, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. 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 Linkage ("Linkage"). The Exchange is proposing to modify the "80/20 Test" in determining limitations on Principal Order access. The text of the proposed rule change is available on CBOE's Web site (<http://www.cboe.com>), at the CBOE'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, CBOE 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 CBOE 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 the filing is to modify the so-called "80-20 Test" ("Test") in Exchange Rule 6.85. The Rule states that Market-Makers should send Principal Orders through the Linkage on a limited basis and not as a primary aspect of their business.<sup>3</sup> The Test implements this general principle by prohibiting a Market-Maker from sending Principal Orders in an eligible option class if, in the last calendar quarter, the Market-Maker's Principal Order contract volume is disproportionate to the Market-Maker's contract volume executed against customer orders in its own market.

The Exchange believes that applying the Test has resulted in anomalies for Market-Makers with limited volume in an eligible option class. Specifically, if a Market-Maker has very little overall trading volume in an option, the execution of one or two Principal Orders during a calendar quarter could result in the Market-Maker failing to meet the Test. This would bar the Market-Maker from using the Linkage to send Principal Orders in that options class for the following calendar quarter. The Exchange believes that it was not the intent of the Participants to bar Market-Makers with limited volume from sending Principal Orders through the Linkage in these circumstances since such trading clearly was not "a primary aspect of their business." Thus, the filing proposes to create a *de minimis* exemption from the Test for Market-Makers that have total contract volume of less than 1000 contracts in an options class for a calendar quarter.

This filing comports to Linkage Plan Joint Amendment No. 17, which is currently pending Commission approval.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act<sup>4</sup> in general and furthers the objectives of Section 6(b)(5)<sup>5</sup> in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system,

<sup>3</sup> A Principal Order is an order for the account of an Eligible Market-Maker that does not relate to a customer order the Market-Maker is holding. See Exchange Rule 6.80(12)(ii).

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

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

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

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

<sup>7</sup> 17 CFR 200.30-3(a)(12).