

day operative delay is consistent with the protection of investors and the public interest because it will allow the expeditious and accurate publication of Amex rules.<sup>11</sup> The Commission has also determined to waive the five-day pre-filing notice requirement. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed 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.

#### 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 SR-Amex-2004-56 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 SR-Amex-2004-56. 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 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 SR-Amex-2004-56 and should be submitted on or before August 23, 2004.

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

Jill M. Peterson,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50083; File No. SR-BSE-2004-30]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. To Allow for the Pricing of the Options Leg(s) of Stock-Option Orders in Penny Increments

July 26, 2004.

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 16, 2004, 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 and II below, which Items have been prepared by the BSE. The BSE submitted the proposed rule change under section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 BSE proposes to revise the procedures for executing stock-option orders on the Boston Options Exchange Facility ("BOX") by allowing for the

pricing of the options leg(s) of stock option orders in penny increments. In addition, the proposed rule change corrects a typographical error in the original rule text. The text of the proposed rule change is below. Proposed new language is *italicized*; proposed deletions are in brackets.

\* \* \* \* \*

#### Chapter V Doing Business on BOX

##### Sec. 27 Complex Orders

\* \* \* \* \*

(b) Applicability of BOX Rules. Except as otherwise provided in this Section, Complex Orders shall be subject to all other BOX Rules that pertain to orders generally.

i. Minimum Increments. Bids and offers on [c]Complex [o]Orders may be expressed in any decimal price pursuant to Section 6 of this Chapter V (Minimum Trading Increments), *and the option leg(s) of a stock-option order may be executed in one cent increments*, regardless of the minimum increments otherwise [appropriate] *applicable* to the individual *option* legs of the order. Complex [o]Orders expressed in net price increments that are not multiples of the minimum increment are not entitled to the same priority under subparagraph (b)(ii) of this Section 27 as such orders expressed in increments that are multiples of the minimum increment.

\* \* \* \* \*

#### 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 and is set forth in Sections A, B, and C below.

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

###### 1. Purpose

The Exchange proposes to revise the procedures for executing stock-option orders on BOX by allowing for the pricing of the options leg(s) of stock-option orders in penny increments. In addition, the proposed rule change corrects a few typographical errors in the original rule text. The proposed rule change is based on

<sup>11</sup> For purposes only of accelerating the operative date of 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>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> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

International Securities Exchange, Inc. ("ISE") Rule 722(b)(1).<sup>5</sup>

Because the options leg(s) of a stock-option order must be executed in \$.05 increments (for options trading below \$3) and \$.10 increments (for options trading at or above \$3),<sup>6</sup> while the stock leg(s) of a stock-option order trades in \$.01 increments, it is not always possible to achieve a proposed net price for stock-option orders. For example, suppose an investor proposes to buy stock and sell options at a net price of \$8.50. If the stock is \$11.72 bid to \$11.74 offered, and the option is \$3.20 bid to \$3.30 offered, a net price of \$8.50 cannot be achieved without executing the option leg at \$3.22, \$3.23, or \$3.24.<sup>7</sup> Therefore, the Exchange proposes to allow for the execution of the option leg(s) of stock-option combination orders in one-cent increments to allow investors greater opportunities to receive execution of their stock-option orders. The options leg(s) of a stock-option order will continue to be reported through the Options Price Reporting Authority with a code that indicates that the trade was part of a complex order. The actual price of the trade will be reported.

## 2. Statutory Basis

The Exchange believes that its proposed rule change 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 remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange further believes that the execution of the options leg(s) of a stock-option order in \$.01 minimum increments would improve investors' ability to receive execution of their orders.

<sup>5</sup> See also Securities Exchange Act Release No. 49251 (February 13, 2004), 69 FR 8252 (February 23, 2004) (order approving File No. SR-ISE-2003-37) (revising the ISE's procedures for executing stock-option orders by automating the transmission of the stock leg(s) of a stock-option combination order to a broker-dealer on behalf of ISE members and allowing for the pricing of the options leg(s) of stock-option combination orders in penny increments).

<sup>6</sup> See Chapter V, Section 6 of the BOX rules.

<sup>7</sup> To execute the order within the bid and offer for the stock and the option, a net price of \$8.50 could only be achieved by (1) executing the stock at \$11.72 and the option at \$3.22 (\$11.72-\$8.50); (2) executing the stock at \$11.73 and the option at \$3.23 (\$11.73-\$8.50); or (3) executing the stock at \$11.74 and the option at \$3.24 (\$11.74-\$8.50).

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

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

## 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 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

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 BSE has filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act<sup>10</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>11</sup> Because the foregoing rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder. As required under Rule 19b-4(f)(6)(iii), the BSE provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to filing the proposal with the Commission or such shorter period as designated by the Commission.

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.

## IV. 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-2004-30 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-2004-30. 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 offices 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-2004-30 and should be submitted on or before August 23, 2004.

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

**Jill M. Peterson,**

*Assistant Secretary.*

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

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

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