

accepting Linkage orders because access to such Participant Exchange's quote(s) is limited during such times. The Commission further believes that the Amex's existing rules establish appropriate procedures to notify promptly the affected Participant Exchange and Amex member firms of such removal and establish an appropriate standard for determining when to resume inclusion of the affected Participant Exchange's quote(s) in the Amex's NBBO.<sup>14</sup>

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-Amex-2005-066), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52501; File No. SR-BSE-2005-30]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving a Proposed Rule Change and Amendment No. 2 Thereto Relating to the Removal of Unreliable Quotes From the Exchange's Determination of the National Best Bid or Offer

September 23, 2005.

#### I. Introduction

On July 27, 2005, the Boston Stock Exchange, Inc. ("BSE"), 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 adopt a rule relating to the removal of unreliable quotes from the determination of the national best bid or offer ("NBBO"). The BSE filed Amendment No. 1 to the proposed rule change on August 5, 2005 and withdrew Amendment No. 1 on August 12, 2005. The BSE filed Amendment No. 2 to the proposed rule change on August 12, 2005.<sup>3</sup>

The proposed rule change, as amended, was published for comment in the **Federal Register** on August 24, 2005.<sup>4</sup> The Commission received one comment letter on the proposal.<sup>5</sup> This order approves the proposed rule change, as amended.

#### II. Description of the Proposed Rule Change

Pursuant to obligations to avoid trade-throughs under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan"),<sup>6</sup> the Boston Options Exchange ("BOX"), in general, filters certain orders to either trade on BOX, if the best BOX price is at the NBBO or, if the best BOX price is not at the NBBO, to access the best price for such orders through the intermarket option linkage ("Linkage").<sup>7</sup>

The BSE is proposing to add subsection (e) of Section 3 of Chapter XII of the BOX Rules to add provisions for declaring an away market's quotes in a particular class of options unreliable and to thereby exclude such quotes from BOX's NBBO determination when an away market: (i) Is disconnected from Linkage; (ii) disseminates non-firm quotes; or (iii) has other confirmed quoting problems. The BSE proposes to exclude unreliable quotes from BOX's NBBO determination, thereby including in BOX's NBBO determination only quotes that are reliable and accessible to investors. The BSE seeks only to exclude an away market's unreliable quotes in a particular option class from BOX's NBBO determination for the time that such quotes remain unreliable.

<sup>4</sup> See Securities Exchange Act Release No. 52296 (August 18, 2005), 70 FR 49689.

<sup>5</sup> See letter from Matthew Hinerfeld, Managing Director and Deputy General Counsel, Citadel Investment Group, L.L.C., on behalf of Citadel Derivatives Group LLC, to Jonathan G. Katz, Secretary, Commission, dated August 26, 2005 ("Citadel Letter").

<sup>6</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 American Stock Exchange LLC, 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). Subsequently, upon separate requests by the Philadelphia Stock Exchange, Inc., the Pacific Exchange, Inc., and the BSE, 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>7</sup> See subsection (i) of Section 1 of Chapter XII of the BOX Rules.

#### III. Comment Summary

As noted above, the Commission received one comment letter on the proposal.<sup>8</sup> The commenter supported the proposal and recommended that the Commission approve it. However, the commenter suggested that the BSE modify its proposal to allow the BOX to determine that an away market is disconnected from Linkage without having to get confirmation from the away market that the away market is disconnected. The commenter cited "the need for immediate action" as the basis for suggesting that the BSE amend its proposal to allow the BOX to make its determination that a market is disconnected from Linkage without first obtaining confirmation from the away market.<sup>9</sup>

#### IV. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act<sup>10</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>11</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>12</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 it is appropriate for BOX to remove an away market's disseminated quotes from BOX's determination of the NBBO when such quotes are unreliable. The Commission further believes that the proposed rule change establishes reasonable procedures to determine the unreliability of an away market's quotes and to notify promptly the affected away market, and establishes an appropriate standard for determining when to resume inclusion of the

<sup>8</sup> See *supra* note 5.

<sup>9</sup> The Citadel Letter also addressed File No. SR-Amex-2005-066, a proposal to allow the American Stock Exchange LLC ("Amex") to exclude an away market's quotes from the Amex's determination of the NBBO when such away market is disconnected from Linkage. The commenter strongly supported Amex's proposal. In addition, the commenter urged the Commission to address issues related to non-firm quotes that are outside the scope of these proposed rule changes.

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</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>12</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> See Amex Rules 933(g) and 933(g)-ANTE.

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

<sup>16</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> Amendment No. 2 added clarifying language and corrected typographical and technical errors.

affected away market's quotes in BOX's NBBO.

The Commission has considered the comments made in the Citadel Letter. The Commission recognizes that the provision in the proposed rule change requiring BOX to contact an away market to confirm that its quotes are unreliable (except in circumstances in which the BOX Market Operations Center received a message from OPRA, the OLA Administrator, or the relevant away market) differs slightly from the rules adopted by the other options exchanges. Nonetheless, the Commission believes that the proposed provision is consistent with the Act.

## V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-BSE-2005-30) as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52506; File No. SR-CBOE-2005-58]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change Relating to the Exchange's Preferred Designated Primary Market-Maker Program

September 23, 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 27, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" 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 CBOE. The Commission is publishing this notice to solicit

comments on the proposed rule change from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change.

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

The CBOE proposes to amend its rules governing its Preferred Designated Primary Market-Maker ("DPM") program to allow non-DPM Market-Makers to receive orders designated for a specific Market-Maker ("Preferred orders").<sup>3</sup> Proposed new language is in *italics*; proposed deletions are in [brackets].

\* \* \* \* \*

#### Rule 8.13 Preferred Market-Maker Program

(a) *Generally. The Exchange may allow, on a class-by-class basis, for the receipt of marketable orders, through the Exchange's Order Routing System when the Exchange's disseminated quote is the NBBO, that carry a designation from the member transmitting the order that specifies a Market-Maker in that class as the "Preferred Market-Maker" for that order. A qualifying recipient of a Preferred Market-Maker order shall be afforded a participation entitlement as set forth in subparagraph (c) below. The Preferred Market-Maker Program shall be in effect until June 2, 2006 on a pilot basis.*

(b) *Eligibility. Any Exchange Market-Maker type (e.g., Remote Market-Maker, Lead Market-Maker, and Designated Primary Market-Maker) may be designated as a Preferred Market-Maker, however, a recipient of a Preferred Market-Maker order will only receive a participation entitlement for such order if the following provisions are met:*

(i) *The Preferred Market-Maker must have an appointment/allocation in the relevant option class.*

(ii) *The Preferred Market-Maker must be quoting at the best bid/offer on the Exchange.*

(iii) *The Preferred Market-Maker must comply with the quoting obligations applicable to its Market-Maker type under Exchange rules and must provide continuous two-sided quotations in at least 90% of the series of each class for which it receives Preferred Market Maker orders.*

<sup>3</sup> With the permission of the CBOE, the Commission made clarifications to the description of the proposed rule change as noted herein. Telephone conversation between David Hsu, Special Counsel, Theodore Venuti, Attorney, Division of Market Regulation, Commission, and Angelo Evangelou, Senior Managing Attorney, CBOE, on August 11, 2005.

(c) *Entitlement Rate. Provided the provisions of subparagraph (b) above have been met, the Preferred Market-Maker participation entitlement shall be 40% when there are two or more Market-Makers also quoting at the best bid/offer on the Exchange, and 50% when there is only one other Market-Maker quoting at the best bid/offer on the Exchange. In addition, the following shall apply:*

(i) *A Preferred Market-Maker may not be allocated a total quantity greater than the quantity that the Preferred Market-Maker is quoting at the best bid/offer on the Exchange.*

(ii) *The participation entitlement rate is based on the number of contracts remaining after all public customer orders in the book at the best bid/offer on the Exchange have been satisfied.*

(iii) *If a Preferred Market-Maker receives a participation entitlement under this Rule, then no other participation entitlements set forth in Exchange Rules (e.g., Rule 8.87 Participation Entitlement of DPMs and e-DPMs and Rule 8.15B Participation Entitlement of LMMs) shall apply to such order.*

\* \* \* \* \*

#### Rule 6.45A.—Priority and Allocation of Equity Option Trades on the CBOE Hybrid System

Generally: The rules of priority and order allocation procedures set forth in this rule shall apply only to equity option classes designated by the Exchange to be traded on the CBOE Hybrid System and has no applicability to index option and options on ETF classes. The term "market participant" as used throughout this rule refers to a Market-Maker, an in-crowd DPM, an e-DPM, a Remote Market-Maker, and a floor broker representing orders in the trading crowd. The term "in-crowd market participant" only includes an in-crowd Market-Maker, in-crowd DPM, and floor broker representing orders in the trading crowd.

(a) Allocation of Incoming Electronic Orders: The Exchange shall apply, for each class of options, the following rules of trading priority.

(i) Ultimate Matching Algorithm ("UMA"): Under this method, a market participant who enters a quotation or order and whose quote or order is represented by the disseminated CBOE best bid or offer ("BBO") shall be eligible to receive allocations of incoming electronic orders for up to the size of its quote or order, in accordance with the principles described below. As an initial matter, if the number of contracts represented in the disseminated quote is less than the

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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