

director at the time of the director's permanent disability or death.

5. Applicant's officers and employees, including employee directors, are eligible or have been eligible to receive options under applicant's 1996 Employee Stock Option Plan (the "1996 Employee Plan"), which expired on May 21, 2006, and the 2006 Employee Stock Option Plan (the "2006 Employee Plan", and, together with the 1996 Employee Plan, the "Employee Plans"). Eligible Directors are not eligible to receive stock options under the Employee Plans. The remaining 2,061,304 shares of applicant's common stock subject to issuance to officers and employees under the Employee Plans represent 11.78% of the 17,502,515 shares of applicant's common stock outstanding as of June 30, 2007. Eligible Directors are eligible or have been eligible to participate in applicant's Director Plans under which 175,749 shares of applicant's common stock remain for issuance, representing 1.00% of shares of applicant's common stock outstanding as of June 30, 2007. The 100,000 shares of applicant's common stock that may be issued to Eligible Directors under the 2006 Director Plan represent 0.57% of shares of applicant's common stock outstanding as of June 30, 2007. Therefore, the maximum number of applicant's voting securities that would result from the exercise of all outstanding options issued and all options issuable to directors, officers, and employees under the Director Plans and the Employee Plans would be 2,237,053 shares of applicant's common stock, or approximately 12.78% of shares of applicant's common stock outstanding as of June 30, 2007. Applicant has no outstanding warrants, options, or rights to purchase its voting securities, other than the options granted or to be granted to its directors, officers, and employees under the Director Plans and the Employee Plans.

#### Applicant's Legal Analysis

1. Section 63(3) of the Act permits a BDC to sell its common stock at a price below current net asset value upon the exercise of any option issued in accordance with section 61(a)(3). Section 61(a)(3)(B) provides, in pertinent part, that a BDC may issue to its non-employee directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (a) The options expire by their terms within ten years; (b) the exercise price of the options is not less than the current market value of the underlying securities at the date of the issuance of the options, or if no market exists, the current net asset value of the

voting securities; (c) the proposal to issue the options is authorized by the BDC's shareholders, and is approved by order of the Commission upon application; (d) the options are not transferable except for disposition by gift, will or intestacy; (e) no investment adviser of the BDC receives any compensation described in section 205(a)(1) of the Investment Advisers Act of 1940, except to the extent permitted by clause (b)(1) or (b)(2) of that section; and (f) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

2. In addition, section 61(a)(3) provides that the amount of the BDC's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the BDC's outstanding voting securities, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to the BDC's directors, officers, and employees pursuant to an executive compensation plan would exceed 15% of the BDC's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance will not exceed 20% of the outstanding voting securities of the BDC.

3. Applicant represents that its proposal to grant certain stock options to Eligible Directors under the 2006 Director Plan meets all the requirements of section 61(a)(3)(B). Applicant states that the Board is actively involved in the oversight of applicant's affairs and that it relies extensively on the judgment and experience of its Board. In addition to their duties as Board members generally, applicant states that the Eligible Directors provide guidance and advice on financial and operational issues, credit and loan policies, asset valuation and strategic direction, as well as serving on committees. Applicant believes that the availability of options under the 2006 Director Plan will provide significant at-risk incentives to Eligible Directors to remain on the Board and devote their best efforts to ensure applicant's success. Applicant states that the options will provide a means for the Eligible Directors to increase their ownership interests in applicant, thereby ensuring close identification of their interests with those of applicant and its stockholders. Applicant asserts that by providing incentives such as options, applicant will be better able to maintain continuity in the Board's membership and to attract and retain the highly

experienced, successful and motivated business and professional people who are critical to applicant's success as a BDC.

4. Applicant states that the maximum amount of voting securities that would result from the exercise of all outstanding options issued or issuable to the directors, officers, and employees under the Director Plans and Employee Plans would be 2,237,053 shares of applicant's common stock, or approximately 12.78% of applicant's shares of common stock outstanding as of June 30, 2007, which is below the percentage limitations in the Act. Applicant asserts that, given the relatively small amount of common stock issuable to Eligible Directors upon their exercise of options under the 2006 Director Plan, the exercise of such options would not, absent extraordinary circumstances, have a substantial dilutive effect on the net asset value of applicant's common stock.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Nancy M. Morris,**  
Secretary.

[FR Doc. E7-15058 Filed 8-2-07; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56159; File No. SR-Amex-2007-76]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to an Extension of the Penny Quoting Pilot Program

July 27, 2007.

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 25, 2007, the American Stock Exchange LLC ("Amex" 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 substantially prepared by the Amex. On July 27, 2007, the Exchange filed Amendment No. 1 to the proposal. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to section 19(b)(3)(A) of the

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

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

Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which rendered 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 Exchange proposes to extend through September 27, 2007 the current pilot program that permits quoting of a limited number of options classes in pennies (the "Penny Quoting Pilot Program"). The text of the proposed rule change is available at Amex, the Commission's Public Reference Room, and <http://www.amex.com>.

### **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 Exchange 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 Amex is proposing to extend the current Penny Quoting Pilot Program through September 27, 2007. The Exchange believes that an extension of the Penny Quoting Pilot Program is appropriate for the purpose of further studying the effects of penny quoting. In this manner, a measured and deliberate expansion of the Penny Quoting Pilot Program, if warranted, can be better implemented by the options exchanges.

As approved by the Commission, the current Penny Quoting Penny Quoting Pilot Program consists of thirteen (13) options classes.<sup>5</sup> The quoting requirements in connection with the Penny Quoting Pilot Program provide for: (i) A minimum price variation ("MPV") of \$0.01 for options with premiums of up to \$3; or (ii) a MPV of \$0.05 for options with premiums of \$3 or greater, except for QQQQ options

which trade at an MPV of \$0.01 for all premiums. As required by the Commission's approval order, the Amex previously filed its pilot report (the "Amex Pilot Report") comparing quotation and trading activity in the three (3) months prior to the Penny Quoting Pilot Program to the first three (3) months of the Penny Quoting Pilot Program.

As part of the Penny Quoting Pilot Program, the Exchange also implemented a quote mitigation strategy due to concerns regarding system capacity. The Exchange believes that the quote mitigation strategies in place since the introduction of the Penny Quoting Pilot Program have been effective. Therefore, in this filing, the Exchange is also proposing to extend the effectiveness of the quote mitigation strategies through September 27, 2007.

The Amex Pilot Report made the following findings: (1) Spreads narrowed meaningfully in all series in the Pilot classes with the greatest effect occurring in the lowest premium options; (2) Quoted size at the top of the book decreased sharply in all series and the most in the series with \$0.01 MPVs; (3) Volume growth, while difficult to accurately analyze, was largely limited to 2 of the 13 Pilot classes; (4) Quote traffic grew at very significant rates; and (5) Only 3 of the 13 Pilot classes achieved the "most beneficial results" of tighter spreads and higher volume and all 3 were "index-based" products (SMH, QQQQ, and IWM). The Exchange believes that an extension of the Penny Quoting Pilot Program is warranted so that the Commission and the options exchanges may better study and understand the effects of penny quoting.

Based on the experience to date, the Exchange believes that an extension of the Penny Quoting Pilot Program through September 27, 2007 is appropriate.

##### **2. Statutory Basis**

The Exchange believes that its proposed rule change is consistent with section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>7</sup> in particular, in that it is designed prevent fraudulent and manipulative acts and practices, 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.

#### *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 that is 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 either solicited or received by the Exchange.

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

The proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder,<sup>9</sup> because the foregoing proposed rule does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) 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.

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30-days after the date of filing.<sup>10</sup> However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.<sup>11</sup> The Exchange has requested that the Commission waive the 5-day pre-filing requirement and the 30-day operative delay. The Commission believes that waiving the 5-day pre-filing requirement and the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will ensure continuity of the Exchange's rules and will allow the Penny Quoting Pilot Program to remain in effect without interruption. For these reasons, the Commission designates the proposal to be operative upon filing with the Commission.<sup>12</sup>

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

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

<sup>12</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the

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

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

<sup>5</sup> See Securities Exchange Act Release No. 55162 (January 24, 2007), 72 FR 4738 (February 1, 2007).

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

At any time within 60 days of the filing of the 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.<sup>13</sup>

#### 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 File Number SR-Amex-2007-76 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2007-76. 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, on official business days between the hours of 10 a.m. and 3 p.m.

proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers the period to commence on July 27, 2007, the date on which Amex submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

Copies of the filing also will be available for inspection and copying at the principal office of the Amex. 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-Amex-2007-76 and should be submitted on or before August 24, 2007.

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

Nancy M. Morris,  
Secretary.

[FR Doc. E7-15059 Filed 8-2-07; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56167; File No. SR-BSE-2007-33]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1 To Extend the Linkage Fee Pilot Program

July 30, 2007.

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 9, 2007, 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 substantially prepared by the Exchange. On July 25, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. This order provides notice of the proposed rule change, as modified by Amendment No. 1, and approves the proposed rule change, as amended, on an accelerated basis.

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

The BSE proposes to amend the Fee Schedule of the Boston Options Exchange ("BOX"), the options trading facility of the BSE, to extend until July 31, 2008, the current pilot program applicable to the options intermarket linkage ("Linkage") fees and to make some technical changes to the Fee

Schedule. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.bostonstock.com>.

#### 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 Exchange 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 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 Exchange's fees for Principal ("P") and Principal Acting as Agent ("P/A") Orders<sup>3</sup> executed on BOX currently operate under a pilot program scheduled to expire on July 31, 2007.<sup>4</sup> The BSE proposes to extend the current pilot program for such Linkage fees through July 31, 2008. Because all Linkage Orders received by BOX are for the account of a market maker on another exchange, Linkage fees that are applicable to P Orders and P/A Orders are the same as fees applicable to market makers on other exchanges that submit orders to BOX outside of Linkage. The side of a BOX trade opposite a P Order or P/A Order would be billed normally as any other BOX trade. Consistent with the Plan for the Purpose of Creating and Operating Linkage, no fees will be charged to a party sending a Satisfaction Order to BOX. Rather, a fee will be

<sup>3</sup> Under Chapter XII, Section 1(j) of the BOX Rules, a "Linkage Order" means an Immediate or Cancel order routed through Linkage. There are three types of Linkage Orders:

(i) "P/A Order," which is an order for the principal account of a Market Maker (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the Market Maker is acting as agent;

(ii) "P Order," which is an order for the principal account of a market maker (or equivalent entity on another Participant Exchange) and is not a P/A Order; and

(iii) "Satisfaction Order," which is an order sent through Linkage to notify a Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

<sup>4</sup> See Securities Exchange Act Release No. 54225 (July 27, 2006), 71 FR 44056 (August 3, 2006) (SR-BSE 2006-26).

<sup>14</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.