

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52296; File No. SR-BSE-2005-30)

August 18, 2005

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

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 Boston Stock Exchange, Inc. ("BSE") 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 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 Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The BSE is proposing to add subsection (e) of Section 3 of Chapter XII of the Boston Options Exchange ("BOX") Rules to add provisions for declaring an away market's quote(s) in a particular class of option(s) unreliable, and to thereby exclude quote(s) from BOX's NBBO determination when an away market: 1) is disconnected from the Intermarket Option Linkage ("Linkage"); 2) disseminates non-firm quotes; or 3) has other quoting problems. The text of the

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

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

<sup>3</sup> See Form 19b-4 dated August 12, 2005 ("Amendment No. 2"). Amendment No. 2 added clarifying language and corrected typographical and technical errors.

proposed rule change is available on the BSE's Web site (<http://www.bostonstock.com>), at 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 BSE 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 proposed rule change is to allow BOX to exclude an away market's quote(s) from BOX's NBBO determination in a particular option class(es) when that away market's quote(s) are unreliable. The BOX Trading Host, pursuant to obligations to avoid trade-throughs under the Intermarket Option Linkage Plan, 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 order through Linkage. In certain circumstances, away markets disseminate unreliable or inaccessible quotes in a particular option class(es) to OPRA. BOX proposes to eliminate such away market unreliable or inaccessible quote(s) in a particular class(es) in BOX's NBBO determination, thereby only including in BOX's NBBO determination market quotes that are reliable and accessible to investors. BOX seeks only to exclude an away market's unreliable quote(s) in a particular class(es) from BOX's NBBO determination for such

time that the quote(s) remain unreliable. Utilizing only reliable accessible quotes in the NBBO determination provides for a more appropriate NBBO determination and a significantly more efficient marketplace.

The procedure for declaring an away market's quote(s) unreliable would be for the Market Operations Center ("MOC") to either: a) receive a message from the away market, OPRA, or the OLA Administrator; or b) confirm with the affected market, that the away market's particular quote(s) in a class(es) are unreliable. Then the MOC would request the Options Official declare the away market's quote(s) in a particular class(es) unreliable. Upon a declaration that the away market's quote(s) is unreliable, the MOC will both remove the quote(s) from BOX's NBBO determination and promptly notify the affected away market. Additionally, the MOC will continue to monitor the reliability of the affected away market's quote(s) and resume inclusion of the affected away market's quote(s) in BOX's NBBO determination at the end of the trading day or once the quote(s) is confirmed to be reliable, whichever occurs first. Quotes of an away market are confirmed to be reliable once: a) a message stating a quote(s) in a particular option class is reliable has been received from the affected away market, OPRA, or the OLA Administrator; or b) the MOC has verbally received confirmation of such from the affected away market.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is that BOX believes that its proposal is consistent with Section 6(b) of the Act,<sup>4</sup> and furthers the objectives of Section 6(b)(5)

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

of the Act<sup>5</sup> in that the proposed rule change is designed to perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and promote just and equitable principles of trade. Excluding unreliable quotes from BOX's determination of the NBBO would help BOX provide better executions to customers. Currently, the execution of customer orders is delayed when another market appears to be at the NBBO but such market's quotes are inaccessible.

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

The BSE does not believe 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 BSE 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

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 BSE 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.

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

#### 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-2005-30 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 Number SR-BSE-2005-30. 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 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-2005-30 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>6</sup> 17 CFR 200.30-3(a)(12).