

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-49806; File No. SR-BSE-2004-22)

June 4, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. to Extend a Pilot Program under Which it Lists Options on Selected Stocks Trading Below \$20 at One-Point Intervals Until June 5, 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 June 3, 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 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 BSE proposes to extend its pilot program under which it lists options on selected stocks trading below \$20 at \$1 strike price intervals (“Pilot Program”) until June 5, 2005. The text of the proposed rule change is available at the Office of the Secretary, the BSE, and the Commission.

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

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

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

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 extend the Pilot Program under the Rules of the Boston Options Exchange (the "BOX Rules") relating to the interval between strike prices of series of options on individual stocks. Chapter IV, Section 6 of the Box Rules establishes guidelines regarding the addition of series for trading on BOX. The BOX Rules include a Pilot Program that expires on June 5, 2004, which allows Boston Options Exchange Regulation, LLC ("BOXR"), the wholly owned subsidiary of the BSE that has been delegated regulatory authority over BOX,<sup>3</sup> list options on up to five underlying equities trading below \$20 at one-point intervals and to list \$1 strike prices on any equity option included in the \$1 strike price pilot program of any other options exchange.<sup>4</sup> This proposal seeks to extend the operation of the Pilot Program until June 5, 2005.

In sum, for options selected for the Pilot Program, BOXR may list strike prices at \$1 intervals from \$3 to \$20, but no \$1 strike price may be listed that is greater than \$5 from the underlying stock's closing price in its primary market on the previous day. BOXR also may list

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<sup>3</sup> See Securities Exchange Act Release No.49065 (January 13, 2004) 69 FR 2768 (January 20, 2004).

<sup>4</sup> See Securities Exchange Act Release No. 49292 (February 20, 2004), 69 FR 8993 (February 26, 2004) (Notice of Filing and Immediate Effectiveness of File No. SR-BSE-2004-01).

\$1 strikes on any other option class designated by another securities exchange that employs a similar Pilot Program under their respective rules. BOXR cannot list long-term option series (“LEAPS”®) at \$1 strike price intervals for any class selected for the Pilot Program. BOXR also is restricted from listing any series that would result in strike prices being \$0.50 apart.

## 2. Statutory Basis

The BSE believes that its proposal is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>6</sup> specifically, in that it is 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 is not designed to permit unfair discrimination between customers, brokers, or dealers, or to regulate by virtue of any authority matters not related to the administration of the BSE.

### 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 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the

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

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

Act<sup>7</sup> and subparagraph (f)(6) of Rule 19b-4<sup>8</sup> thereunder because it does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and BSE has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. 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.

Under Rule 19b-4(f)(6)(iii) of the Act,<sup>9</sup> the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest and BSE is required to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. BSE has requested that the Commission waive the five-day pre-filing notice requirement and 30-day operative delay so that the Pilot Program may continue without interruption after it would have otherwise expired on June 5, 2004. For this reason, the Commission, consistent with the protection of investors and the public interest, has determined to waive the five-day pre-filing notice requirement and 30-day operative delay,<sup>10</sup> and, therefore,

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>10</sup> For purposes only of waiving the five-day pre-filing notice requirement and 30-day

the proposal is effective and operative upon filing with the Commission.<sup>11</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-BSE-2004-22 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and

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operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> In the event that the BSE proposes to extend the Pilot Program beyond June 5, 2005, expand the number of options eligible for inclusion in the Pilot Program, or seek permanent approval of the Pilot Program, it should submit a Pilot Program report to the Commission along with the filing of such proposal. The report must cover the entire time the Pilot Program was in effect, and must include: (1) data and written analysis on the open interest and trading volume for options (at all strike price intervals) selected for the Pilot Program; (2) delisted options series (for all strike price intervals) for all options selected for the Pilot Program; (3) an assessment of the appropriateness of \$1 strike price intervals for the options the BSE selected for the Pilot Program; (4) an assessment of the impact of the Pilot Program on the capacity of the BSE's, OPRA's, and vendors' automated systems; (5) any capacity problems or other problems that arose during the operation of the Pilot Program and how the BSE addressed them; (6) any complaints that the BSE received during the operation of the Pilot Program and how the BSE addressed them; and (7) any additional information that would help to assess the operation of the Pilot Program. The Commission expects the BSE to submit a proposed rule change at least 60 days before the expiration of the Pilot Program in the event the BSE wishes to extend, expand, or seek permanent approval of the Pilot Program.

Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-BSE-2004-22. 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, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of 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-2004-22 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>12</sup>

Margaret H. McFarland  
Deputy Secretary

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