

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52205; File No. SR-BSE-2005-29)

August 4, 2005

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Amendments to the Exchange's Trade-Through and Locked Markets Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 1, 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 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 is proposing to amend its rules governing the operation of the intermarket option linkage ("Linkage") on the Boston Options Exchange ("BOX"). The BSE is proposing to amend the trade-through and locked markets rules to allow a market maker to "trade and ship" or "book and ship" an order. The text of the 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 BSE proposes to amend its rules governing Linkage trading with respect to trade-throughs and locked markets. The amendment will provide that BOX Options Participants may: (i) trade an order at a price that is one minimum quoting increment inferior to the national best bid or offer ("NBBO") if the Options Participant contemporaneously transmits to the market(s) disseminating the NBBO Linkage Orders³ to satisfy all interest at the NBBO price ("trade and ship"); and (ii) place on the BOX book an order that would lock another exchange if the Options Participant contemporaneously sends a Linkage Order to such other exchange to satisfy all interest at the lock price ("book and ship"). Under the trade and ship proposal, pursuant to agency obligations, any execution the Options Participant receives from the market disseminating the NBBO must be reassigned to any customer order underlying the Linkage Order that was transmitted to trade against the market disseminating the NBBO. Below are

³ The BSE defines "Linkage Order" in Section 1, subsection (j) of Chapter XII of BOX Rules.

examples illustrating the applications of these concepts:

- Trade and Ship Example – BOX is disseminating an offer of \$2.00 for 100 contracts.

Exchange B is disseminating the national best offer of \$1.95 for 10 contracts. No other market is at \$1.95. A BOX market maker receives a 100 contract customer buy order to pay \$2.00. Under this proposal, the BOX market maker could execute 90 contracts (or 100 contracts) of the customer order at \$2.00 provided the BOX market maker contemporaneously transmits a 10 contract P/A Order⁴ to Exchange B to pay \$1.95. Assuming an execution is obtained from Exchange B, the customer would receive the 10 contract fill at \$1.95 and 90 contracts at \$2.00 (if the customer order was originally filled in its entirety at \$2.00, an adjustment would be required to provide the customer with the \$1.95 price for 10 contracts reflecting the P/A Order execution). As proposed, this would not be deemed a Trade-Through.

- Book and Ship Example – BOX is disseminating a \$1.85 - \$2.00 market. Exchange B is disseminating a \$1.80 - \$1.95 market. The \$1.95 offer is for 10 contracts. No other market is at \$1.95. A BOX market maker receives a customer order to buy 100 contracts at \$1.95. Under this proposal, the BOX market maker could book 90 contracts of the customer buy order at \$1.95 provided the BOX market maker contemporaneously transmits a 10 contract P/A Order to Exchange B to pay \$1.95. Assuming an execution is obtained from Exchange B, the customer would receive the 10 contract fill and the rest of the customer's order will be displayed as a \$1.95 bid on the BOX. The national best offer would likely be \$2.00. As proposed, this would not be deemed a "locked" market for purposes of the Intermarket Option Linkage Plan.

⁴ The BSE defines "Principal Acting as Agent ("P/A") Order" in Section 1, subsection (j)(i) of Chapter XII of BOX rules.

2. Statutory Basis

The BSE believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)⁵ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. In particular, the proposed rule change will provide greater automatic execution of orders through Linkage and facilitate the ability of market makers to execute or book their customer orders.

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:

⁵ 15 U.S.C. 78f(b)(5).

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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. Please include File Number SR-BSE-2005-29 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-2005-29. 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-2005-29 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.⁶

J. Lynn Taylor
Assistant Secretary

⁶ 17 CFR 200.30-3(a)(12).