

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-50341; File No. SR-BSE-2004-14)

September 9, 2004

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, by the Boston Stock Exchange, Inc. to Amend its Intermarket Options Linkage Rules

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 April 6, 2004, the Boston Stock Exchange, Inc. (“BSE” or “Exchange”) submitted to 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. On June 9, 2004, the BSE submitted Amendment No. 1 to the proposed rule change.<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 proposes to amend its rules relating to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan").

The text of the proposed rule change, as amended, is below. Proposed additions are in italics.

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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 Letter from John Boese, BSE, to Nancy Sanow, Assistant Director, Division of Market Regulation (“Division”), Commission, dated June 8, 2004 (“Amendment No. 1”). In Amendment No. 1, the BSE amended the proposed rule text to clarify that the general requirement that the Exchange’s Firm Customer Quote Size (“FCQS”) and Firm Principal Quote Size (“FPQS”) be at least 10 contracts would not apply if the BSE were disseminating a quotation of fewer than 10 contracts. In that case, the Exchange may establish a FCQS or FPQS equal to its disseminated size.

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**RULES OF THE BOSTON OPTIONS EXCHANGE FACILITY****Trading of options contracts on BOX****Chapter XII Intermarket Linkage Rules****Sec. 1 Definitions**

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- (g) "Firm Customer Quote Size" with respect to a P/A Order means the lesser of (a) the number of option contracts that the Participant sending a P/A Order guarantees it will automatically execute at its disseminated quotation in a series of an Eligible Option Class for Customer orders entered directly for execution in that market; or (b) the number of option contracts that the Participant receiving a P/A Order guarantees it will automatically execute at its disseminated quotation in a series of an Eligible Option Class for Customer orders entered directly for execution in that market. This number shall be at least 10 contracts unless the receiving Participant Exchange is disseminating a quotation of less than 10 contracts, in which case this number may equal such quotation size.
- (h) "Firm Principal Quote Size" means the number of option contracts that a Participant Exchange guarantees it will execute at its disseminated quotation for incoming Principal Orders in an Eligible Option Class. This number shall be 10. However, if the Participant Exchange is disseminating a quotation size of less than 10 contracts, this number may equal such quotation size.

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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 had 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 make the rules of the Boston Options Exchange (“BOX”), a facility of the BSE, consistent with the other participants in the Linkage Plan (“Participants”) with regard to the "natural size" of quotations under the Linkage Plan.<sup>4</sup> Specifically, the Linkage Plan currently requires that the Participants be firm for both Principal Acting as Agent (“P/A”) and Principal Orders for at least 10 contracts. Concurrent with proposed Joint Amendment No. 13, the current proposed rule change would eliminate this requirement, permitting BOX to be firm for the actual size of its quotation, even if this amount is less than 10 contracts. This change would enable BOX to conform its quotation requirements for incoming Principal and P/A Orders to be consistent with its quotation requirements for non-Linkage orders.

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<sup>4</sup> The Participants have filed an amendment to the Linkage Plan to change the definitions of “Firm Customer Quote Size” (“FCQS”) and “Firm Principal Quote Size” (“FPQS”) (Joint Amendment No. 13). See Securities Exchange Act Release No. 50211 (August 18, 2004), 69 FR 52050 (August 26, 2004) (File No. 4-429).

## 2. Statutory Basis

The BSE believes that the proposed rule is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>6</sup> in particular 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 protect investors and the public interest.

### 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

No written comments were solicited or received with respect to 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, as amended; or
- (B) institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

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

<sup>6</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 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-2004-14 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-BSE-2004-14. 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such 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-2004-14 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>7</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12).