

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51778; File No. SR-BSE-2005-18)

June 2, 2005

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 to Extend until June 5, 2006, a Pilot Program for Listing Options on Selected Stocks Trading Below \$20 at One-Point Intervals

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 May 27, 2005, 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 the BSE. The BSE filed Amendment No. 1 to the proposal on June 1, 2005.<sup>3</sup> The BSE filed the proposal pursuant to Section 19(b)(3)(A) of the Act,<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission.<sup>6</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 Supplementary Material .02 to Chapter IV, Section 6, "Series of Options Contracts Open for Trading," of the rules of the Boston Options Exchange

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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> As discussed in greater detail in note 13, infra, Amendment No. 1 states that the BSE will provide the Commission with a report assessing the operation of the \$1 strikes pilot program in the event that the BSE seeks to extend, expand, or seek permanent approval of the pilot program.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> The BSE has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. See Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii).

("BOX") to extend until June 5, 2006, the pilot program for listing options series on selected stocks trading below \$20 at one-point intervals ("Pilot Program"). The text of the proposed rule change is available on the BSE's Web site (<http://www.bostonstock.com>), at the BSE's principal office, 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 extend the Pilot Program<sup>7</sup> under the BOX Rules for an additional year, until June 5, 2006. The Pilot Program allows the Boston Options Exchange Regulation, LLC ("BOXR"), the wholly owned subsidiary of the BSE with the delegated regulatory authority over BOX, to list options on a pilot basis on up to five selected underlying equities trading below \$20 at \$1 strike price intervals, as provided under the terms of the Pilot Program. The Pilot Program also allows BOX to list \$1 strike prices on any equity option included in the \$1 strike price pilot program of any other options exchange until June 5,

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<sup>7</sup> The BSE implemented the Pilot Program in February 2004 and extended it through June 5, 2005. See Securities Exchange Act Release Nos. 49292 (February 20, 2004), 69 FR 8993 (February 26, 2004) (notice of filing and immediate effectiveness of File No. SR-BSE-2004-01) (establishing the Pilot Program); and 49806 (June 4, 2004), 69 FR 32640 (June 10, 2004) (notice of filing and immediate effectiveness of File No. SR-BSE-2004-22) (extending the Pilot Program through June 5, 2005).

2005. The proposed rule change retains the text of Supplementary Material .02 to Section 6 of Chapter IV of the BOX Rules, as currently established on a pilot basis, and seeks to extend the operation of the Pilot Program for another year.

Chapter IV, Section 6 of the Box Rules establishes guidelines regarding the addition of options series for trading on BOX. Under the Pilot Program, to be eligible for selection into the Pilot Program, the underlying stock must close below \$20 on its primary market on the previous trading day. If selected for the Pilot Program, BOX 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 on its primary market on the previous day. BOX also may list \$1 strikes on any other options class designated by another options exchange that employs a similar pilot program under its rules. BOX may not list long-term option series ("LEAPS"®) at \$1 strike price intervals for any class selected for the Pilot Program. BOX also is restricted from listing any series that would result in strike prices being \$0.50 apart.

The Pilot Program initially was proposed in reaction to the general decrease in stock prices and the proliferation of stocks trading below \$20, including some of the most widely held and actively traded equity securities listed on the New York Stock Exchange, the American Stock Exchange, and Nasdaq. The BSE notes that many of these stocks are still trading below \$20, including, for example, Oracle, Micron Technology, EMC Corp, and Motorola.

When a stock underlying an option trades at a lower price, it requires a larger percentage gain in the price of the stock for an option to become in-the-money. For example, if a stock trades at \$10, an investor that wants to purchase a slightly out-of-the-money call option would have to buy the \$12.50 call. At these levels, the stock price would need to increase by 25% to reach in-the-money status. The BSE notes that a 25% or higher gain in the price of the

underlying stock is especially large given the lessened degree of volatility that recently has accompanied many stocks and options. According to the BSE, listing additional strike prices on these classes has allowed BOX Participants to provide their customers with greater trading flexibility in achieving their investment strategies. In further support of this proposed rule change, the Exchange submitted to the Commission a Pilot Program Report, attached as Exhibit 3, offering detailed data from and analysis of the Pilot Program.

2. Statutory Basis

The Exchange believes that the data demonstrates that there is sufficient investor interest and demand to extend the Pilot Program for another year, without adversely effecting systems capacity. The proposed rule change is designed to provide investors with greater trading opportunities, and the flexibility and ability to more closely tailor their investment strategies and decisions to the movement of the underlying security. Accordingly, the Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>8</sup> in general, and of Section 6(b)(5) of the Act,<sup>9</sup> in particular, in that it is designed 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.

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 that is not necessary or appropriate in the furtherance of the purposes of the Act.

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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 BSE has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>11</sup> Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. 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. In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written 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. The BSE has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay to allow the Pilot Program to continue to operate without interruption.

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

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

The Commission waives the five-day pre-filing notice requirement. In addition, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Pilot Program to continue without interruption through June 5, 2006.<sup>12</sup> For this reason, the Commission designates that the proposal become operative on June 5, 2005.<sup>13</sup>

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>14</sup>

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<sup>12</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> In the event that the BSE proposes to: (1) extend the Pilot Program beyond June 5, 2006; (2) expand the number of options eligible for inclusion in the Pilot Program; or (3) seek permanent approval of the Pilot Program, the BSE will submit a Pilot Program report to the Commission along with the filing of its proposal to extend, expand, or seek permanent approval of the Pilot Program. The BSE will file any such proposal and the Pilot Program report with the Commission at least 60 days prior to the expiration of the Pilot Program. The Pilot Program report will cover the entire time the Pilot Program was in effect and will 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, the Options Price Reporting Authority'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. See Amendment No. 1, supra note 3.

<sup>14</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 proposal to have been filed on June 1, 2005, the date the BSE filed Amendment No. 1 to the proposal.

#### 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 No. SR-BSE-2005-18 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-0609.

All submissions should refer to File No. SR-BSE-2005-18. 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. Copies of such filing will also 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 No. SR-BSE-2005-18 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>15</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).