

It is therefore ordered, pursuant to sections 17(d)¹⁷ and 11A(a)(3)(B)¹⁸ of the Act, that the amended plan of the Amex, BSE, CBOE, ISE, NASD, NYSE, PCX, and Phlx filed pursuant to Rule 17d-2¹⁹ is approved.

It is further ordered that those SRO participants that are not the DOEA as to a particular member are relieved of those responsibilities allocated to the member's DOEA under the amended plan.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49192; File No. SR-BSE-2004-05]

Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto by the Boston Stock Exchange, Inc. To Establish a Six-Month Pilot for Market Opening Procedures of the Boston Options Exchange

February 4, 2004.

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 February 4, 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, II, and III below, which Items have been prepared by the Exchange. On February 4, 2004, the Exchange submitted Amendment No. 1 to the proposal.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated

approval of the proposed rule change, as amended for a six-month pilot period.

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

The Exchange proposes to add a provision to its Boston Options Exchange trading rules to provide for a six-month pilot regarding market opening procedures, that will expire on August 6, 2004. Proposed new language is *italicized*. Proposed deletions are in [brackets].

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RULES OF THE BOSTON STOCK EXCHANGE

RULES OF THE BOSTON OPTIONS EXCHANGE FACILITY

Trading of Options Contracts on BOX

Chapter V Doing Business on BOX

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Sec. 9 Opening the Market

The following rules are in effect until August 6, 2004.

(a) Pre-Opening Phase. [Orders may be submitted, modified and cancelled throughout the pre-opening phase preceding the start of the market. Customers may only submit Market-On-Opening or limit orders pursuant to Section 14(c) of this Chapter V. In addition, any open and unexecuted orders from the previous trading session, which are still valid, will remain on the BOX Book during the pre-opening phase. Market Makers shall submit orders during the pre-opening phase pursuant to their obligations under Chapter VI of these Rules. No trade matches are to occur during the pre-opening phase. BOX will calculate a theoretical opening price ("TOP") and broadcast it to all BOX market participants throughout this period. The TOP is the price at which opening trades would occur if the opening were to commence at that given moment.

(b) Opening Match. BOX will determine a single price at which a particular option series will be opened. BOX will calculate the optimum number of options contracts that could be matched at a price, taking into consideration all the orders on the BOX Book.

i. The opening match price is the price which will result in the matching of the highest number of options contracts.

ii. Should two or more prices satisfy the maximum quantity criteria, the price which will leave the fewest resting orders in the BOX Book will be selected as the opening match price.

iii. Should there still be two or more prices which meet both criteria in paragraphs (i) and (ii), the price which is closest to the previous day's closing price will be selected as the opening match price.

(c) The determination of the opening match price in each series of options shall be held promptly following the opening of the underlying security in the primary market where it is traded. An underlying security shall be deemed to be opened on the primary market where it is traded if such market has (i) reported a transaction in the underlying security, or (ii) disseminated opening quotations for the underlying security and not given an indication of a delayed opening, whichever first occurs.

(d) The opening match in any options class shall be delayed until the underlying security has opened for trading in the primary market, unless BOXR determines that the interests of a fair and orderly market are best served by opening trading in the options class. In the event that the underlying security has not opened within a reasonable time after 9:30 a.m. est, an Options Official shall report the delay to the Market Regulation Center and an inquiry shall be made to determine the cause of the delay.

(e) BOXR may delay the opening match in any class of options in the interests of a fair and orderly market.]

For some period of time before the opening in the underlying security (as determined by BOXR but not less than one hour and distributed to all BOX Participants via regulatory circular from BOXR), the BOX Trading Host will accept orders and quotes. During this period, known as the Pre-Opening Phase, orders and quotes are placed on the BOX Book but do not generate trade executions. Complex Orders and contingency orders (except "Market-on-Opening", Minimum Volume, and Fill and Kill orders) do not participate in the opening and are not accepted by the BOX Trading Host during this Pre-Opening Phase. BOX-Top Orders and Price Improvement Period orders are not accepted during the Pre-Opening Phase.

(b) Calculation of Theoretical Opening Price. From the time that the BOX Trading Host commences accepting orders and quotes at the start of the Pre-Opening Phase, the BOX Trading Host will calculate and provide the Theoretical Opening Price ("TOP") for the current resting orders and quotes on the BOX Book during the Pre-Opening Phase. The TOP is that price at which the Opening Match would occur at the current time, if that time were the opening, according to the Opening Match procedures described in

¹⁷ 15 U.S.C. 78q(d).

¹⁸ 15 U.S.C. 78k-1(a)(3)(B).

¹⁹ 17 CFR 240.17d-2.

²⁰ 17 CFR 200.30-3(a)(34).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from John A. Boese, Vice President Legal and Compliance, BSE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 4, 2004 ("Amendment No. 1"). In Amendment No. 1, the Exchange made a technical correction to the rule text.

paragraph (e) below. The quantity that would trade at this price is also calculated. The TOP is re-calculated and disseminated every time a new order or quote is received, modified or cancelled and where such event causes the TOP price or quantity to change.

A TOP can only be calculated if an opening trade is possible. An opening trade is possible if: (i) The BOX Book is crossed (highest bid is higher than the lowest offer) or locked (highest bid equals lowest offer), or there are Market-on-Opening Orders in the BOX Book and (ii) at least one order or quote on the opposite side of the market.

(c) Broadcast Information During Pre-Opening Phase. The BOX Trading Host will disseminate information to all BOX Participants about resting orders in the BOX Book that remain from the prior business day and any orders or quotes sent in before the Opening Match. This information will be disseminated in the usual BOX format of five best limits and associated quantity, aggregating all orders and quotes at each price level. This broadcast will also include the TOP and the quantity associated with the TOP. Any orders or quotes which are at a price better (i.e. bid higher or offer lower) than the TOP, as well as all Market-on-Opening orders will be shown only as a total quantity on the BOX Book at a price equal to the TOP.

(d) Market Maker Obligations During Pre-Opening Phase. BOX Market Makers holding an assignment on a given options class are obliged, as part of their obligations to ensure a fair and orderly market, to provide continuous two-sided quotes according to the BOX minimum standards commencing with the minute preceding the scheduled opening of the market for the underlying security.

(e) Opening Match.

(i) Complex Orders and contingency orders do not participate in the Opening Match or in the determination of the opening price. The BOX Trading Host will establish the opening price at the time of the Opening Match. The opening price is the TOP at the moment of the Opening Match. The BOX Trading Host will process the series of a class in a random order, starting at the first round minute after the opening for trading of the underlying security, and at each round minute thereafter. If the opening of a particular class is to occur within 15 seconds of the next round minute, the opening of that class will take place at the next subsequent round minute after the round minute that is 15 or less seconds away (i.e. within 75 seconds). In determining the priority of orders to be filled, the BOX Trading Host will give priority to Market-on-Opening orders first, then to Limit Orders whose price

is better than the opening price, and then to resting orders on the BOX Book at the opening price. One or more series of a class may not open because of conditions cited in paragraph (f) of this Section 9.

(ii) The BOX Trading Host will determine a single price at which a particular option series will be opened. BOX will calculate the optimum number of options contracts that could be matched at a price, taking into consideration all the orders on the BOX Book.

(1) The opening match price is the price which will result in the matching of the highest number of options contracts.

(2) Should two or more prices satisfy the maximum quantity criteria, the price which will leave the fewest resting contracts in the BOX Book will be selected as the opening match price.

(3) Should there still be two or more prices which meet both criteria in subparagraphs (1) and (2), the price which is closest to the previous day's closing price will be selected as the opening match price. For new classes in which there is no previous day's closing price, BOX will utilize the price assigned to the class by BOX at the time the class was created ("reference price").

(f) As the Opening Match price is determined by series, the BOX Trading Host will proceed to move the series from the Pre-Opening Phase to the continuous or regular trading phase and disseminate to OPRA and to all Options Participants the opening trade price, if any. At this point, the BOX trading system is open for trading and all orders and quotes are accepted and processed according to the BOX trading rules. When the BOX Trading Host cannot determine an opening price, but none of the reasons exist for delaying an opening as outlined in paragraph (g) of this Section 9, below, the series will nevertheless move from Pre-Opening Phase to the continuous trading phase.

(g) The BOX Trading Host will not open a series if one of the following conditions is met:

i. The opening price is not within an acceptable range as determined by the MRC, and will be announced to all BOX Participants via the Trading Host. (In making this determination the MRC will consider, among other factors, all prices that exceed a variance greater than either \$.50 or 20% to the previous day's closing price.)

ii. There is a Market-on-Opening order with no corresponding order or quote on the opposite side.

(h) If one of the conditions in paragraph (g) of this Section 9 is met,

the MRC will not open the series but will send a RFQ. MRC will delay the opening of the series until such time as responses to the RFQ from the BOX Market Makers assigned to the class, or other interested trading parties, have been received and booked by the BOX Trading Host and the consequent opening price is deemed compatible with an orderly market.

(i) MRC may order a deviation from the standard manner of the opening procedure, including delaying the opening in any option class, when it believes it is necessary in the interests of a fair and orderly market.

(j) The procedure described in this Section 9 may be used to reopen a class after a trading halt.

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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 Exchange 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 III below. The Exchange 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 add a new section to the Rules of the Boston Options Exchange on a six-month pilot basis relating to opening the market. Chapter V, Doing Business on BOX, Section 9, Opening the Market, establishes guidelines regarding market opening procedures.

The BOX Opening the Market process is designed to maximize the transparency of the opening process, enable the widest possible participation and ensure that the principles of price and time priority are respected. Achieving these three goals should ensure a fair and orderly market opening at a price determined by the convergence of all buy and sell interests at that moment. The BSE believes that the BOX Pre-Opening Phase and Opening Match process would be transparent and encourage participation of all market participants by treating all orders equally.

General Description

Prior to the start of trading each day, the BOX Trading Host would be in Pre-Opening Phase. This Pre-Opening Phase would commence at least one hour prior to the scheduled Opening Match. All BOX Options Participants would be informed of the precise time of the Pre-Opening Phase via a regulatory circular disseminated by BOXR (BOXR currently plans to start the Pre-Opening Phase at 7:45 a.m. est). During the Pre-Opening Phase Options Participants would be able to enter, modify and cancel orders and quotes, including Limit Orders, Fill and Kill orders, Market-on-Opening orders and quotes. Moreover, Limit Orders from previous trading sessions which are still valid (e.g. GTC orders) would be automatically brought to the new Pre-Opening Phase and also would be available for modification and cancellation. During the Pre-Opening Phase the Trading Host would prohibit BOX-Top and Price Improvement Period ("PIP") orders. A Theoretical Opening Price ("TOP"), which is the price which would be the opening price if the Opening Match were to occur at that moment, would be calculated and broadcast continuously to all BOX Options Participants during the Pre-Opening Phase; however, no orders would be matched, nor trades executed. All Pre-Opening Phase allowable orders and quotes may continue to be entered, modified and cancelled up to the moment of the Opening Match. Any orders or quotes remaining on the BOX Book after the Opening Match would be accessible for modification or cancellation during regular trading.

Theoretical Opening Price

From the time that the BOX Trading Host commences accepting orders and quotes at the start of the Pre-Opening Phase, the BOX Trading Host would calculate and provide the TOP for the current orders and quotes on the BOX Book during the Pre-Opening Phase.

The TOP is that price at which the greatest number of options contracts in the BOX Book would be traded. If there is more than one price that would satisfy this criteria, the TOP is the price that would then leave the fewest number of resting, options contracts on the BOX Book after execution of all eligible quantities at the TOP. If there is still more than one price satisfying both these criteria, the TOP would be the price closest to the previous day's closing price.

The quantity that would theoretically trade at the TOP also would be calculated. The TOP would be recalculated and disseminated every time

a new order or quote is received, modified or cancelled and where such event causes the TOP price or quantity to change. A TOP can only be calculated if an opening trade is possible. An opening trade is possible if: (1) the BOX Book is crossed (highest bid is higher than the lowest offer) or locked (highest bid equals lowest offer), or there are Market-on-Opening orders in the BOX Book and (2) at least one order on the opposite side of the market, which may include another Market-on-Opening order.

Broadcast During Pre-Opening Phase

Throughout the Pre-Opening Phase, Options Participants would receive the BOX broadcast that includes the "five best limits" (total quantity of contracts and number of orders for each price on each side of the market), which is identical to that provided by BOX during the regular trading day. In addition, during the Pre-Opening Phase, the BOX broadcast would include the TOP as well as the total quantity of contracts and orders on each side of the market that could execute at that price. This quantity would include Limit Orders and quotes equal to or better than the TOP, as well as Market-on-Opening orders. As with all BOX market data broadcasts, the orders and quotes are anonymous.

Opening Match

The Opening Match would be at the conclusion of the Pre-Opening Phase when the eligible orders would be executed. The Opening Match price would be the TOP at the moment of the Opening Match. In determining which orders would be executed at the opening price in the case of an imbalance between bids and offers, the BOX Trading Host would give priority to Market-on-Opening orders first, then to Limit Orders whose price is better than the opening price, and then to resting orders on the BOX Book at the opening price. Immediately following the Opening Match, the options series would move into a continuous, or regular trading phase. The BOX Trading Host would process the series of a class in a random order, starting at the first round minute after the opening for trading of the underlying security, and at each round minute thereafter. If the opening of a particular class would occur within 15 seconds of the next round minute, the opening of that class would take place at the next subsequent round minute after the round minute that is 15 or less seconds away (*i.e.* within 75 seconds). The BSE estimates that the entire process for a class generally would take fewer than five

seconds. As the Opening Match price is determined for each series, the BOX system would proceed to move that series from the Pre-Opening Phase to the continuous or regular trading phase and would disseminate to the Options Price Reporting Authority and to all Options Participants the opening trade price, if any. At this point, the BOX trading system would be open for trading in that series and all orders and quotes would be accepted and processed according to the BOX trading rules.

When there is no Opening Match possible due to the absence of matching orders or quotes and none of the reasons exist for delaying an opening as outlined in paragraph (g) of Section 9 and as described below, the series would nevertheless move from the Pre-Opening Phase to the continuous or regular trading phase. This situation would occur when no orders or quotes are on the BOX Book at the time of the scheduled Opening Match calculation. Consequently, the series would be open for trading under the BOX market rules and procedures for the continuous or regular trading phase, and BOX would be able to receive orders and quotes as they are submitted. BOX would send an advisory message to all Options Participants when any option series has been opened and moved into the continuous or regular trading phase, including those where no opening match trade was possible.

BOX Market Makers During Pre-Opening Phase

The BOX Market Maker obligations provide that each Market Maker in an appointed class should begin to assume his quoting obligations no later than one minute prior to the scheduled opening of the underlying security. This time (at present 9:29 EST) will be communicated to Options Participants via regulatory circular from BOXR. BOX Market Maker obligations also provide that Market Makers are responsible for ensuring a fair and orderly opening of the market and that they must respond within three seconds with a bid and offer for at least ten contracts if an RFQ is issued on a class where they do not already have a quote.

Delayed Opening

BOX would delay the opening of an options series if it is determined by the Market Regulation Center ("MRC") and announced to all BOX Participants via the Trading Host that the Opening Match price (as indicated by the TOP) would be outside an acceptable price range. In making such a determination the MRC would consider, among other factors, prices that exceed a variance

greater than either \$0.50 or 20% to the previous day's closing price. BOX would also delay the opening of an options series if there is no order or quote on the opposite side of the market from a Market-on-Opening order. In each case, the MRC would issue an RFQ obliging BOX Market Makers to furnish additional orders and quotes such that the options series may open fairly.

Pursuant to Section 19(b)(2) of the Act,⁴ the BSE requests that the Commission find good cause to accelerate the effectiveness of this rule filing. The Exchange believes accelerated approval is warranted because the proposed rule change will provide standardized market open procedures for BOX that the BSE can surveil for and enforce, that will be in place on the first day that trading begins on BOX. Because the proposed rule change is a pilot, the BSE will be able to assess the proposed rule change before requesting permanent approval of the BOX's market open rules. The BSE also requests acceleration of effectiveness for business considerations. The BSE acknowledges that it may be required to amend BOX's market open rules before the Commission will approve them on a permanent basis. Accordingly, the BSE requests that the Commission accelerate the effectiveness of the proposed rule change prior to the 30th day after its publication in the **Federal Register**.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements under Section 6(b) of the Act,⁵ in general, and furthers the objective of Section 6(b)(5) of the Act,⁶ 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 general public by standardizing procedures during market openings.

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

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is 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 Exchange did not solicit or receive written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, as amended, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-BSE-2004-05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should be submitted by March 4, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review of the proposal, as amended, the Commission finds that the proposed rule change to establish BOX Market Opening procedures for a six-month pilot period is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 of the Act.⁷ Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁸ which requires, in part, that the rules of an exchange be

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, and 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.⁹ The Commission believes that the proposed rules should help to ensure that the opening of the BOX Market is conducted in a fair and orderly fashion.

Pursuant to Section 19(b)(2) of the Act,¹⁰ the Commission may not approve any proposed rule change, or amendment thereto, prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding. The Commission hereby finds good cause for approving the proposed rule change prior to the 30th day after publishing notice of the proposal in the **Federal Register**.

The Commission notes that many of the proposed revisions to the provisions of the BOX Market Opening procedures are modeled on existing rules of the other options exchanges. The Commission believes that accelerating approval of these rules for the BOX Market Opening is appropriate because these revisions do not raise new regulatory issues. Other revisions, although not based on existing exchange rules, were not material to the overall proposal because such revisions clarify the proposed BOX Market Opening procedures and ensure that each series will open in a fair and orderly fashion in the absence of a specialist or primary market maker. Further, the Commission believes that granting accelerated approval of the proposal will allow the BSE to expeditiously implement the pilot program to launch the BOX Market without any unnecessary delay. Accordingly, pursuant to Section 19(b)(2),¹¹ the Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, as amended, (SR-BSE-2004-05) is hereby approved on an

⁴ 15 U.S.C. 78s(b)(2).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(5).

⁹ In approving the Exchange's proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 15 U.S.C. 78s(b)(2).

accelerated basis, for a six-month pilot period until August 6, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49191; File No. SR-BSE-2004-04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Boston Stock Exchange, Inc. To Add a New Section to the Rules of the Boston Options Exchange Relating to the Exercise and Delivery of Options Contracts

February 4, 2004.

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 January 29, 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 February 4, 2004, the BSE amended the proposed rule change.³ 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 Exchange proposes to amend the Rules of the Boston Options Exchange (the "BOX Rules") regarding the exercise and delivery of options contracts. Below is the text of the proposed rule change, as amended. Proposed new language is italicized; proposed deleted text is [bracketed].

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RULES OF THE BOSTON STOCK EXCHANGE

RULES OF THE BOSTON OPTIONS EXCHANGE FACILITY

Trading of options contracts on BOX

Chapter VII. Exercises and Deliveries

Sec. 1 Exercise of Options Contracts

(a) Subject to the restrictions set forth in Chapter III, Section 9 of these Rules (Exercise Limits) and to such restrictions as may be imposed pursuant to Chapter III, Section 12 of these Rules (Other Restrictions on Options Transactions and Exercises) or pursuant to the Rules of the Clearing Corporation, an outstanding options contract may be exercised during the time period specified in the Rules of the Clearing Corporation by the tender to the Clearing Corporation of an exercise notice in accordance with the Rules of the Clearing Corporation. An exercise notice may be tendered to the Clearing Corporation only by the Clearing Participant in the account of which such options contract is carried with the Clearing Corporation. *Participants may establish fixed procedures as to the latest time they will accept exercise instructions from customers.*

[(b) The exercise cutoff time for all non cash-settled options shall be 5:30 p.m. EST on the business day immediately prior to the expiration date. This is the latest time at which an exercise instruction for expiring non cash-settled options positions may be:

- i. Prepared by a Clearing Participant for positions in its proprietary trading account;
- ii. Submitted to a Clearing Participant by an Options Participant for positions in the Options Participant's account or error account;
- iii. Accepted by an Options Participant from any customer for its positions in the customer's account.

(c) Notwithstanding the foregoing, Options Participants may receive and Options Participants may submit exercise instructions after the exercise cutoff time but prior to expiration in the circumstances listed below. A memorandum setting forth the circumstance giving rise to instructions after the exercise cutoff time shall be maintained by the Participant and a copy thereof shall be promptly filed with BOXR. An exercise instruction after the exercise cutoff may be received or submitted:

- i. in order to remedy mistakes or errors made in good faith;
- ii. where exceptional circumstances relating to a customer's or person's ability to communicate exercise

instructions to the Participant (or the Participant's ability to receive exercise instructions) prior to such cutoff time warrant such action.

(d) Submitting or preparing an exercise instruction after the exercise cutoff time in any expiring options on the basis of material information released after the cutoff time is activity inconsistent with just and equitable principles of trade.

(e) For purposes of this Chapter VII with respect to any Options Participant, the word "customer" shall mean every person or organization other than a Market Maker, broker or the Participant itself. The term "exercise instruction," with respect to a Market Maker, broker and Clearing Participant, shall also mean a notice either not to exercise an options position which would otherwise be exercised, or to exercise an options position which would otherwise not be exercised, by operation of the Rules of the Clearing Corporation, or to modify or withdraw a previously submitted instruction. All exercise instructions must be time stamped at the time they are prepared.

(f) No Options Participant may prepare, time stamp or submit an exercise instruction prior to the purchase of the exercised contracts if the Options Participant knew or had reason to know that the contracts had not yet been purchased.

(g) Clearing Participants must follow the procedures of the Clearing Corporation when exercising expiring non cash-settled equity options contracts. Options Participants also must follow the procedures set forth below with respect to the exercise of non cash-settled equity options contracts which would otherwise not be exercised, or the non exercise of contracts which otherwise would be exercised, by operation of Clearing Corporation Rule 804:

i. For all contracts so exercised or not exercised, a "contrary exercise advice," must be delivered by the Market Maker, broker or clearing firm, as applicable, in such form or manner prescribed by BOXR no later than 5:30 p.m. est.

ii. Subsequent to the delivery of a "contrary exercise advice," should the Market Maker, broker, customer or firm determine to act other than as reflected on the original advice form, the Market Maker, broker, or clearing firm, as applicable, must also deliver an "advice cancel," in such form or manner prescribed by BOXR no later than 5:30 p.m. est.

iii. Options Participants shall properly communicate to BOX final exercise decisions in respect of

¹² 17 CFR 200.30(a)(12).

¹³ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from John A. Boese, Vice President, Legal and Compliance, BSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated February 4, 2004 ("Amendment No. 1"). In Amendment No. 1, the BSE made technical corrections to its rule text, changing two references of the term "Exchange" to "BOX."