

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51068; File No. SR-BSE-2005-02]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Its Instant Liquidity Access Rules

January 21, 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 January 7, 2005, the Boston Stock Exchange, Inc. ("Exchange" or "BSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule as described in Items I and II below, which Items have been prepared by the Exchange. The proposed rule change has been filed by the Exchange as a non-controversial filing pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

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

The Exchange proposes to amend its rules regarding Instant Liquidity Access ("ILA").

#### 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 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. 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 amend a section of the Rules of the Board of Governors of the Boston Stock Exchange ("BSE Rules") relating to ILA. In Chapter I, Section 3 of the BSE Rules "Instant Liquidity Access (ILA) Order" is defined as "a round-lot limit order of no less than 100, nor more than 1000, shares priced at the Exchange's published offer (in the case of a buy) or at the Exchange's published bid (in the case of an order to sell), which a member or member organization has entered for immediate execution in accordance with, and to the extent provided by, Chapter XXXIII, Section 8 (Instant Liquidity Access) of these Rules." The Exchange is proposing to remove the phrase "nor more than 1000" from the definition, thereby removing any size restriction of ILA orders, aside from the requirement that they be round-lot orders of at least 100 shares.

When the ILA rules were originally drafted, the Exchange built certain protections, including the 1000 share size limit of an ILA order, into its rules to provide Exchange specialists time to adjust to the new type of execution being offered through ILA. The Exchange and its specialists have now had several months of experience with ILA, and both Exchange customers and specialists have requested that various aspects of the ILA rules be changed so that ILA can be utilized for a larger percentage of orders. For example, the Exchange recently filed a rule proposal with the Commission to remove rule language which prevented orders being entered by one customer in intervals less than thirty seconds.<sup>5</sup> The concern in that filing centered on the potential for rapid-fire orders overwhelming the BSE specialists. However, the BSE has addressed that concern through systemic enhancements which, according to ILA rules, automatically cancel an ILA order if it cannot be immediately executed. Accordingly, because systemic enhancements have obviated the need for such a restriction, the Exchange sought to abolish the limitation.

Similarly, in the present proposal, systemic enhancements have made the

1000 share limitation unnecessary. The Exchange's BEACON trading system is able to respond to orders of all sizes equally and there is no need for a size limitation. Accordingly, the BSE and its specialists seek to encourage more customers to utilize ILA, and thereby have their orders, regardless of size, instantly executed.

##### 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act<sup>6</sup> in general, and Section 6(b)(5)<sup>7</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 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 Exchange.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange 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 Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6)<sup>9</sup> thereunder.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change effective as of the

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

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

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

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

<sup>5</sup> See Securities Exchange Act Release No. 51031 (January 12, 2005), 70 FR 3404 (January 24, 2005) (SR-BSE-2004-46).

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(a).

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

date of this order.<sup>10</sup> The Commission believes that the proposal could provide investors with orders larger than 1000 shares with more efficient and orderly executions.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the proposed 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.

#### 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 E-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BSE-2005-02 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-2005-02. 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 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-2005-02 and should be submitted on or before February 22, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51069; File No. SR-BSE-2005-05]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change Relating to Position Limits and Exercise Limits on the Boston Options Exchange for Options on Standard and Poor's Depository Receipts

January 21, 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 January 20, 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change.

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

The Exchange proposes to amend its Boston Options Exchange Rules ("BOX Rules") to increase position limits and exercise limits for options on Standard and Poor's Depository Receipts ("SPDRs"). The text of the proposed rule change is available on the Exchange's Web site (<http://www.bostonstock.com>), at the BSE's

Office of the Secretary, 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 Exchange 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 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 BSE began trading options on SPDRs on January 10, 2005 on the Boston Options Exchange. Currently, under BOX Rules Chapter III Section 7 and Section 9, position limits and exercise limits for options on SPDRs are 75,000 contracts on the same side of the market. The Exchange proposes to amend Supplementary Material .01 to Section 7 of Chapter III and Supplementary Material .01 to Section 9 of Chapter III of the BOX Rules to increase position limits and exercise limits for options on SPDRs to 300,000 contracts on the same side of the market.

Given the expected institutional demand for options on SPDRs, the BSE believes the current equity position limit of 75,000 contracts to be too low and a deterrent to the successful trading of the product. Options on SPDRs are 1/10th the size of options on the Standard and Poor's 500 Index ("SPX").<sup>3</sup> Thus, a position limit of 75,000 contracts in SPDR options is equivalent to a 7,500 contract position limit in SPX options. Traders who trade SPDR options to hedge positions in SPX options are likely to find a position limit of 75,000 contracts in SPDR options too restrictive, which may adversely affect BOX's ability to provide liquidity in this product.

Comparable products such as options on the Nasdaq-100 Index Tracking Stock ("QQQ") are subject to a 300,000-contract limit.<sup>4</sup> The BSE proposes that

<sup>3</sup> Options on SPX are traded on the Chicago Board Options Exchange.

<sup>4</sup> See Supplementary Material .01 to Section 7 of Chapter III and Supplementary Material .01 to Section 9 of Chapter III of the BOX Rules.

<sup>10</sup> For purposes only of waiving the 30-day operative period, the Commission has considered the rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

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