

state that West Penn will service the ITCs and will remit monthly (or more frequently) all amounts collected from the ITCs to a collection account maintained by the indenture trustee for the benefit of the bondholders of the New Transition Bonds ("Collection Account").⁶⁴ Under the terms of the servicing agreement, Applicants propose that West Penn will be entitled to compensation in the form of a service fee for its activities and reimbursement for certain of its expenses.⁶⁵

As additional servicing compensation, West Penn also requests authority to retain all investment earnings on ITC collections from the time of collection until the time of remittance to the Collection Account. Amounts collected by West Penn for the ITC will be remitted monthly (or possibly more frequently if required by the rating agencies) to the Collection Account.

Applicants state that, to satisfy the rating agency requirements for a "bankruptcy remote" entity, the servicing fee must be an arm's-length fee that would be reasonable and sufficient for a third party performing similar services.⁶⁶ Applicants request authority to enter into the fee arrangements.

Applicants also request that West Penn be authorized to subcontract with other companies to carry out some of its servicing responsibilities, so long as the ratings of the Transition Bonds are neither reduced nor withdrawn.

5. Service Agreements With Allegheny Energy Service Corporation

WP Funding and WPF LLC request authority to enter into service agreements with AE Service Corp. Although WP Funding will have its own employees, Applicants propose that personnel employed by AE Service

Corp. also provide services on an as-needed basis to WP Funding, as well as WPF LLC, under administrative service agreements ("Service Agreements") to be entered into between WP Funding and AE Service Corp., and WPF LLC and AE Service Corp. The services will consist primarily of corporate housekeeping matters relating to WPF LLC and WP Funding, such as providing notices related to the Transition Bond documentation, consolidating corporate books and records into Allegheny's financial statements and overseeing corporate governance. Under the Service Agreements, WPF LLC and WP Funding will reimburse AE Service Corp. for the cost of services provided, computed in accordance with rules 90 and 91, as well as other applicable rules and regulations.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51778; File No. SR-BSE-2005-18]

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

June 2, 2005.

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 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, 2005.³ The BSE filed the proposal pursuant to Section 19(b)(3)(A) of the Act,⁴ and Rule

19b-4(f)(6) thereunder,⁵ which renders the proposal effective upon filing with the Commission.⁶ 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 ("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 Program⁷ 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

required to achieve AAA (or equivalent) rating from the rating agencies.

⁶⁴ Quarterly or semiannually, WPF LLC will pay out of the Collection Account, among other things authorized by the QRO, the trustee fees, servicing fees, administrative costs, operating expenses, accrued but unpaid interest (except for interest accrued prior to the collection period for the related ITCs, which will be capitalized) and principal (to the extent scheduled) on the New Transition Bonds. Any remaining balance in the Collection Account will be used to restore the capital subaccount, fund and replenish the overcollateralization subaccount (to the extent scheduled) and then be added to a reserve subaccount. The ITC will be adjusted at least annually to ensure sufficient revenues, after application of amounts in the reserve subaccount, to cover all these expenses.

⁶⁵ Specific compensation details will be contained in the documentation applicable to each series.

⁶⁶ The rating agency requirement is meant to assure that the subsidiaries would be able to stand on their own and accordingly the fee must be sufficient to retain a third party servicer if for any reason West Penn could not continue to perform these services.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

⁶ 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).

⁷ 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).

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, 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 affecting 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,⁸ in general, and of Section 6(b)(5) of the Act,⁹ 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.

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 Act¹⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹¹ 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.

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, 2006.¹² For this reason, the Commission designates that the proposal become operative on June 5, 2005.¹³

¹² 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).

¹³ 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

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

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.¹⁴

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 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

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.

¹⁴ 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.

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 June 29, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5-2940 Filed 6-7-05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51779; File No. SR-CBOE-2004-71]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Thereto To Modify the Distribution of the DPM Participation Entitlement for Orders Specifying a Preferred DPM Under CBOE Rule 8.87

June 2, 2005.

I. Introduction

On November 10, 2004, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² to modify the distribution of the Designated Primary Market-Maker ("DPM") participation entitlement for orders specifying a certain DPM or e-DPM ("Preferred DPM") under CBOE Rule 8.87. The proposed rule change was published for comment in the **Federal Register** on December 1, 2004.³ The Commission received four comment

letters on the proposal.⁴ On January 13, 2005, the CBOE sent a response to the comment letters.⁵

On April 22, 2005, the CBOE filed Amendment No. 1 to the proposed rule change.⁶ This order approves the proposed rule change and simultaneously provides notice of filing and grants accelerated approval of Amendment No. 1.

II. Description of the Proposed Rule Change

The CBOE proposes to modify the participation entitlement for orders designated to a Preferred DPM on a one-year pilot basis. Only a DPM or e-DPMs allocated a particular option class would be eligible for the "preferred" designation in such class, and the Preferred DPM participation entitlement would only be granted if the Preferred DPM were quoting at the National Best Bid or Offer ("NBBO") at the time the order is received and executed electronically by the CBOE Hybrid System. In addition, the participation entitlement is based on the number of contracts remaining after public customer orders on the book have been filled. The proposed participation entitlement for the Preferred DPM is as follows:

- If the Preferred DPM is an e-DPM, and the DPM is also quoting at the NBBO, then $\frac{2}{3}$ of the participation entitlement would be allocated to the Preferred DPM and the balance of the participation entitlement would be allocated to the DPM;
- If the Preferred DPM is an e-DPM, and the DPM is not quoting at the NBBO but one or more other e-DPMs are quoting at the NBBO, then $\frac{2}{3}$ of the participation entitlement would be

⁴ See letter from Michael J. Simon, General Counsel and Secretary, International Securities Exchange, Inc. ("ISE"), to Jonathan G. Katz, Secretary, Commission, dated December 31, 2004 ("ISE Letter"); letter from Michael J. Simon, General Counsel and Secretary, ISE, to Jonathan G. Katz, Secretary, Commission, dated January 13, 2005 ("ISE Letter #2"); letter from Kenneth R. Leibler, Chairman, Boston Options Exchange Regulation ("BOXR"), to Jonathan G. Katz, Secretary, Commission, dated January 19, 2004 (*sic*) ("BOXR Letter"); and letter from Matthew Hinerfeld, Managing Director and Deputy General Counsel, Citadel Investment Group, L.L.C., on behalf of Citadel Derivatives Group LLC ("Citadel"), to Jonathan G. Katz, Secretary, Commission, dated April 6, 2005 ("Citadel Letter").

⁵ See letter from Angelo Evangelou, Managing Senior Attorney, Legal Division, CBOE, to Jonathan G. Katz, Secretary, Commission, dated January 13, 2004 ("CBOE Letter").

⁶ Amendment No. 1 added language to the proposed rule text to clarify that if an e-DPM is the Preferred DPM for an order and the DPM is not quoting at the NBBO, any remainder of the participation entitlement that is not allocated to the Preferred DPM would be divided evenly among the remaining e-DPMs quoting at the NBBO.

¹⁵ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 50732 (November 23, 2004), 69 FR 69967.