

neither the member nor its associated person may retain any compensation in the connection with effecting the transaction except as provided in the Rule.

In a letter dated May 20, 2004,³² the Amex represents that transactions effected on ANTE satisfy the conditions of Rule 11a2-2(T). Based on these representations, the Commission finds that the order execution algorithm of ANTE complies with the requirements of section 11(a) of the Exchange Act and Rule 11a2-2(T) thereunder.

In particular, the Amex states that ANTE "will place all users of the Exchange's ANTE System, members and non-members, on the 'same footing'" and that "at no time following the submission of an order will a broker-dealer who enters an order retain any ability to control the timing of an execution or otherwise enjoy the kind of special order-handling advantages inherent in being on an exchange floor." Specifically, orders sent to ANTE will be transmitted from remote locations (via the member interface) directly to ANTE by electronic means. Once an order is submitted to ANTE, the order is executed against another order based on an established matching algorithm. As the Amex explains, the execution does not depend on the broker-dealer but rather upon what other orders are entered into ANTE at or around the same time as the subject order, what orders are on the specialist's book and where the order is ranked based on the price-time priority ranking algorithm. Accordingly, members do not control or influence the result or timing of orders submitted to ANTE. Finally, Amex represents that ANTE will continue the program currently in place, which allows orders for the accounts of broker-dealers to be eligible for execution through the Exchange's Auto-Ex system. The Commission notes that the staff of the Division previously provided interpretive guidance to the Amex regarding its Auto-Ex system.³³ Based on Amex's representations, the staff believed that the execution of broker-dealer orders in the Amex Auto-Ex system satisfied the effect v. execute rule.

Based on the Amex's representations regarding ANTE, the Commission finds that ANTE's electronic order submission and execution process also satisfies the

four conditions of Rule 11a2-2(T).³⁴ First, all orders are electronically submitted through remote terminals off the exchange floor. Second, because a member relinquishes control of its order after it is submitted to ANTE and will not be able to influence or guide the execution of its order, the member would not be participating in the execution of its order. Third, although the rule contemplates having an order executed by an exchange member who is not affiliated with the member initiating the order, the Commission recognizes that this requirement is satisfied when automated exchange facilities are used.³⁵ Fourth, the Amex states that members that rely on Rule 11a2-2(T) for a managed account transaction must comply with the limitations on compensation set forth in the rule.

V. Accelerated Approval of Amendment No. 7

The Commission finds good cause for approving Amendment No. 7 to the proposed rule change prior to the thirtieth day after the amendment is published for comment in the **Federal Register** pursuant to section 19(b)(2) of the Act.³⁶ Amendment No. 7 addresses

³⁴ The Commission and its staff, on numerous occasions, have considered the application of Rule 11a2-2(T) to electronic trading and order routing systems. See, e.g., Securities Exchange Act Release Nos. 49068 (January 13, 2004) (Order approving the Boston Options Exchange as an options trading facility of the Boston Stock Exchange); 44983 (October 25, 2001) (Order approving the Archipelago Exchange as the equities trading facility of PCX Equities Inc.); 29237 (May 31, 1991) (regarding NYSE's Off-Hours Trading Facility); 15533 (January 29, 1979) (regarding the Amex Post Execution Reporting System, the Amex Switching System, the Intermarket Trading System, the Multiple Dealer Trading Facility of the Cincinnati Stock Exchange, the PCX's Communications and Execution System, and the Phlx's Automated Communications and Execution System); and 14563 (March 14, 1978) (regarding the NYSE's Designated Order Turnaround System). See also Letter from Larry E. Bergmann, Senior Associate Director, Division, Commission, to Edith Hallahan, Associate General Counsel, Phlx (March 24, 1999) (regarding Phlx's VWAP Trading System); letter from Catherine McGuire, Chief Counsel, Division, Commission, to David E. Rosedahl, PCX (November 30, 1998) (regarding Optimark); and Letter from Brandon Becker, Director, Division, Commission, to George T. Simon, Foley & Lardner (November 30, 1994) (regarding Chicago Match).

³⁵ In considering the operation of automated execution systems operated by an exchange, the Commission noted that while there is no independent executing exchange member, the execution of an order is automatic once it has been transmitted into the systems. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2-2(T). See Securities Exchange Act Release No. 15533 (January 29, 1979).

³⁶ 15 U.S.C. 78s(b)(2).

concerns raised by Commission staff by clarifying in proposed Amex Rule 951-ANTE, Commentary .01 that if the bid or offer of a specialist or registered options trader locks or crosses the ABBO, the ANTE System would revise the bid by the minimum price variations so that the bid or offer submitted does not lock or cross the ABBO, provided, however, if the ABBO represents an off-floor limit order, the ANTE System would execute the order and allocate the trade pursuant to the post trade allocation process. The Commission believes that the proposed change in Amendment No. 7, which provides for a clearer understanding of the operation in the ANTE System of Amex Rule 951-ANTE, Commentary .01, raises no new issues of regulatory concern and, therefore, believes that accelerated approval of Amendment No. 7 is appropriate.

VI. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with section 6(b)(5) of the Act.³⁷

It is therefore ordered, pursuant to section 19(b)(2) of the Act,³⁸ that the proposed rule change (SR-Amex-2003-89) and Amendments No. 1, 2, 3, 4, 5 and 6 thereto are approved, and that Amendment No. 7 thereto is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49742; File No. SR-BSE-2004-20]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Its Boston Options Exchange Trading Rules

May 19, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

³⁷ 15 U.S.C. 78f(b)(5).

³⁸ 15 U.S.C. 78s(b)(2).

³⁹ 17 CFR 200.30-3(a)(12).

³² See letter from Claire McGrath, Senior Vice President and Deputy General Counsel, Amex, to Kelly Riley, Division, Commission, dated May 20, 2004.

³³ See letter from Paula R. Jenson, Deputy Chief Counsel, Division, Commission, to Jeffrey P. Burns, Assistant General Counsel, Amex, dated July 9, 2002.

("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on May 14, 2004, the Boston Stock Exchange ("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 BSE. The Exchange has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Boston Options Exchange ("BOX") facility of the BSE pursuant to section 19(b)(3)(A)(i) of the Act,³ and Rule 19b-4(f)(1) thereunder,⁴ which renders the proposal 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 clarify a section of the BOX rules relating to market opening procedures. The text of the proposed rule change is set forth below. Proposed new language is in *italics*.

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

Sec. 9 Opening the Market

(a)–(d) No change.

(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 in the primary market, 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.

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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 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 BSE proposes to provide clarifying language to Section 9 of Chapter V of the BOX Rules relating to guidelines regarding market opening procedures. Currently, the language of Chapter V, Section 9 states that BOX will process the opening starting at the first round minute after the opening of trading of the underlying security. The Exchange now seeks to add clarifying language to indicate that the opening of trading must occur on the security's primary market. This would ensure that the price received is, in most instances, the most reliable opening price available, and will serve to assist in a fair and orderly opening on BOX.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,⁵ in general, and 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 public interest 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 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

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 foregoing rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act⁷ and subparagraph (f)(1) of Rule 19b-4⁸ thereunder because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the BOX facility of the BSE. Accordingly, the proposal has taken effect upon filing with the Commission. At any time within 60 days of the filing of such 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.

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 Number SR-BSE-2004-20 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-2004-20. This file number should be included on the subject line if e-mail is used. To help the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(i).

⁴ 17 CFR 240.19b-4(f)(1).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(3)(A)(i).

⁸ 17 CFR 240.19b-4(f)(1).

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 the 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-2004-20 and should be submitted by June 17, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49754; File No. SR-ISE-2003-22]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the International Securities Exchange, Inc., Relating to Permanent Approval of the Pilot Program for Quotation Spreads

May 21, 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 September 24, 2003, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been

prepared by the ISE.³ On May 20, 2004, the ISE filed Amendment No. 1 to the proposed rule change. 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

On March 19, 2003, the Commission approved an ISE proposal to establish a pilot program permitting the allowable quotation spread for options on up to 50 equity securities to be \$5, regardless of the price of the bid ("Pilot Program").⁴ The Pilot Program was extended several times, most recently until June 29, 2004, and expanded to include all equity options trading on the ISE.⁵ The ISE proposes to make the Pilot Program permanent and to expand the Pilot Program to include index options as well as equity options. The text of the proposed rule change appears below. Additions are italicized; deletions are bracketed.

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Rule 803. Obligations of Market Makers

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(b) Appointment. With respect to each options class to which a market maker is appointed under Rule 802, the market maker has a continuous obligation to engage, to a reasonable degree under the existing circumstances, in dealings for his own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of and demand for a particular options contract, or a temporary distortion of the price relationships between options contracts of the same class. Without limiting the foregoing, a market maker is expected to perform the following

³ See letter from Michael J. Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 19, 2004 and accompanying Form 19b-4 ("Amendment No. 1").

⁴ See Securities Exchange Act Release No. 47532, 68 FR 14728 (March 26, 2003) (order approving File No. SR-ISE-2001-15) ("Pilot Program Approval Order").

⁵ See Securities Exchange Act Release Nos. 48514 (September 22, 2003), 68 FR 55685 (September 26, 2003) (notice of filing and immediate effectiveness of File No. SR-ISE-2003-21) (extending the Pilot Program through January 31, 2004); 49149 (January 29, 2004) 69 FR 05627 (notice of filing and immediate effectiveness of File No. SR-ISE-2004-02) (extending the Pilot Program through March 31, 2004); and 49509 (March 31, 2004) 69 FR 18411 (April 7, 2004), (notice of filing and immediate effectiveness of File No. SR-ISE-2004-10) (extending the Pilot Program through June 29, 2004, and expanding the Pilot Program to include all equity options listed on the ISE) ("Pilot Expansion Notice").

activities in the course of maintaining a fair and orderly market:

* * * * *

(4) To price options contracts fairly by, among other things, bidding and offering so as to create differences of no more than \$5 between the bid and offer following the opening rotation in an equity or index options contract. Prior to the opening rotation, spread differentials shall be no more than ¼ of \$1 between the bid and offer for each options contract for which the bid is less than \$2, no more than ¾ of \$1 where the bid is at least \$2 but does not exceed \$5, no more than ½ of \$1 where the bid is more than \$5 but does not exceed \$10, no more than ¾ of \$1 where the bid is more than \$10 but does not exceed \$20, and no more than \$1 where the bid is \$20 or greater, provided that the Exchange may establish differences other than the above for one or more options series. The bid/offer differentials stated above shall not apply to in-the-money options series where the underlying securities market is wider than the differentials set forth above. For these series, the bid/ask differential may be as wide as the quotation on the primary market of the underlying security.

* * * * *

Supplementary Material to Rule 803

[.01 Pursuant to paragraph (b)(4) of Rule 803, during a pilot period expiring on June 29, 2004, all options classes may be quoted with a difference not to exceed \$5 between the bid and offer regardless of the price of the bid.]

[.02] .01 A Primary Market Maker must act with due diligence in handling orders of Public Customers and must accord priority to such orders addressed pursuant to paragraph (c) of this Rule over the Primary Market Maker's principal orders.

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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 ISE 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 ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.