

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*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become immediately effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder<sup>14</sup> because: (i) It does not significantly affect the protection of investors or the public interest; (ii) it does not impose any significant burden on competition; and (iii) by its terms, it does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange provided the Commission 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.

Although Rule 19b-4(f)(6) under the Act<sup>15</sup> requires that an Exchange submit a notice of its intent to file at least five business days prior to the filing date, the Commission waived this requirement at the Exchange's request. The Exchange has also requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the operative delay will allow the Exchange to expeditiously update its options rules to accurately reflect the disclosure requirements with respect to providing prospectuses. For these reasons, the Commission designates the proposal to be operative upon filing with the Commission.<sup>16</sup>

At any time within sixty (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.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-Amex-2004-94 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-Amex-2004-94. 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 the filing also will be available for inspection and copying at the principal office of the Amex. 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-Amex-2004-94 and should be submitted by January 19, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-50902; File No. SR-Amex-2004-103]

**Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise Amex Rule 903C To Permit the Listing of Long-Term Index Options Series With a Duration of Up to Sixty Months Until Expiration**

December 21, 2004.

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 December 14, 2004, the American Stock Exchange LLC ("Amex" 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 Amex. The Exchange filed the proposed rule change 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.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Amex seeks to revise Amex Rule 903C to permit the listing of long-term index options series ("LEAPS") with a duration of up to 60 months (five years) until expiration. The text of the proposed rule change is available at the Amex and at the Commission.

<sup>17</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.

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

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

<sup>5</sup> The Amex provided the Commission with written notice of its intent to file the proposed rule change on December 3, 2004. Amex asked the Commission to waive the 30-day operative delay. See Section 19(b)(3)(A) of the Act, and Rule 19b-4(f)(6)(iii) thereunder. 15 U.S.C. 78s(b)(1), 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f). 17 CFR 200.30-3(a)(12).

## 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 Amex 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 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 permit the Exchange to list index LEAPS with a duration of up to 60 months (five years) until expiration.<sup>6</sup> Presently, the Exchange has authority pursuant to Amex Rule 903C to list index LEAPS that expire up to 36 months from the time they are listed. The Exchange represents that there has been increasing member firm and customer interest in longer term instruments. The Exchange, therefore, is proposing to amend Amex Rule 903C to permit the listing of index options with up to 60 months until expiration.

Currently, institutional customers use index options to hedge the risks associated with holding diversified equity portfolios.<sup>7</sup> Allowing investors to lock in their hedges with longer-term index LEAPS will permit institutions to protect better their portfolios from adverse market moves.<sup>8</sup> The Amex believes that index LEAPS with up to five years until expiration will allow this protection at a known and limited cost.<sup>9</sup> The proposal will provide institutions with an additional securities product with which to hedge their portfolios as an alternative to hedging with futures positions or off-exchange customized index options.<sup>10</sup> The Amex notes that the Chicago Board Options Exchange, Inc. ("CBOE") increased the possible duration of

LEAPS to 60 months (five years) until expiration in 1995.<sup>11</sup>

#### 2. Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6 of the Act<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>13</sup> in particular, in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest, and promote just and equitable principles of trade.

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

The proposed rule change will impose no 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

No written comments were either solicited or received by the Exchange on this proposal.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Amex has asked that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) under the Act.<sup>16</sup> The Commission believes such waiver is consistent with the protection of investors and the public interest, for it will allow the Amex to compete without unnecessary delay with other market entities that

offer LEAPS with a duration of up to 60 months until expiration. For these reasons, the Commission designates the proposal to be operative upon filing with the Commission.<sup>17</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2004-103 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-Amex-2004-103. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. 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-Amex-

<sup>6</sup> The proposal would permit five-year LEAPS on both broad-based and narrow-based indexes on which LEAPS have been approved for trading on the Amex.

<sup>7</sup> See Securities Exchange Act Release No. 35617 (April 17, 1995), 60 FR 20132 (April 24, 1995) (order approving SR-CBOE-95-02).

<sup>8</sup> See Securities Exchange Act Release No. 24853 (August 27, 1987), 52 FR 33486 (September 3, 1987) (order approving SR-CBOE-87-24).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> See CBOE Rule 24.9(b).

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>17</sup> For purposes only of waiving the 30-day pre-operative period, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

2004–103 and should be submitted on or before January 19, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50921; File No. SR–BSE–2004–53]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment 1 Thereto by the Boston Stock Exchange, Inc., Regarding Short Sales

December 22, 2004.

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 December 3, 2004, the Boston Stock Exchange, Inc., (“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 self-regulatory organization. On December 13, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as amended, was filed by the Exchange as a non-controversial filing, under Rule 19b–4(f)(6) of the Act.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is seeking to make minor modifications to its rules which relate to short sales, in order to comply with the requirements set forth in the Commission’s recent release and final rule, Securities Exchange Act Release

No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004) (“SHO Release”) and accompanying orders, Securities Exchange Act Release No. 50104 (July 28, 2004), 69 FR 48032 (August 6, 2004) and Securities Exchange Act Release No. 50747 (November 29, 2004), 69 FR 70480 (December 6, 2004) (“Pilot Orders”). The text of the proposed rule change is available for viewing on the Exchange’s Web site, <http://www.bostonstock.com>, the Commission’s Web site, <http://www.sec.gov/rules/sro.shtml>, and at the Exchange and the Commission.

#### 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 self-regulatory organization 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 self-regulatory organization 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 Exchange is seeking to make minor modifications to its rules that relate to short sales, in order to comply with the requirements set forth in the Commission’s SHO Release and accompanying Pilot Orders.

The Exchange need only make minor modifications to its current rules in order to comply with the requirements set forth in the Commission’s recent SHO Release. The first Exchange rule requiring minor modification is Rules of the Board of Governors of the Boston Stock Exchange (“BSE Rules” or “Rules”), Chapter II, *Dealings on the Exchange*, Section 16, *Short Sales*. Section 16 is modeled after and is similar to the language appearing in 17 CFR 240.10a–1, prior to the SHO Release and the changes resulting therefrom. This proposed rule modifies the Exchange’s rule so that it continues to be modeled after and is consistent with the Commission’s rules and regulations regarding short sales.

The second Exchange rule requiring minor modification is BSE Rule Chapter II, *Dealings on the Exchange*, Section 39, *Periodic Reports*. Section 39 in the Supplementary Material uses a

definition which is no longer applicable under the SHO Release. There is also a reference to a clause which no longer exists in the Commission’s rule. The proposed rule modifies the language and removed the clause to be consistent with the Commission’s rules.

The third Exchange rule requiring minor modification is BSE Rule Chapter II, *Dealings on the Exchange*, Section 40, *Limit Order Display Rule*. In order for the BSE Rule to be consistent with the SHO Release and the Pilot Orders, the proposed rule adds the following sentence: “However, a customer short sale limit should be displayed where the order is eligible for execution if the application of a price test has been suspended by Commission rule, motion or order.”

The fourth Exchange rule requiring minor modification is BSE Rule Chapter XXXV, *Trading in Nasdaq Securities*, Section 27, *Short Sales*. In order for the BSE Rule to be consistent with the SHO Release and the Pilot Orders, the proposed rule adds the following sentence. “The provisions of this rule shall not prohibit any transaction or transactions which the Commission, upon written request or upon its own motion or order, exempts, either unconditionally or on specified terms and conditions.”

As stated above, the changes are required so that the Exchange’s rules are consistent with the SHO Release and the Pilot Orders. Accordingly, the Exchange is proposing the immediate effectiveness of its proposal.

###### 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and section 6(b)(5) of the Act,<sup>5</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 not necessary or appropriate in furtherance of the purposes of the Act.

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

<sup>18</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.

<sup>3</sup> See Amendment No. 1 to the proposed rule change (December 13, 2004). Amendment No. 1 replaced the Exchange’s original filing in its entirety.

<sup>4</sup> 17 CFR 240.19b–4(f)(6). For purposes of determining the effective date and calculating the sixty-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 that period to commence on December 13, 2004, the date the Exchange filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).