

thereunder applicable to a national securities exchange.

The Commission expects, and BSE has represented, that should there be any changes in the terms of the LLC Agreement between the date of the publication of this proposal and the proposed transfer of BSE's Units that would result in the BSE's Percentage Interest falling below the 20% threshold, the Exchange will submit a new proposed rule change in order for the Commission to consider the transfer of Units in light of any changes made to the LLC Agreement.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-BSE-2005-21) is approved.

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

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52415; File No. SR-BSE-2005-29]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving a Proposed Rule Change To Amend the Exchange's Trade-Through and Locked Markets Rules

September 13, 2005.

On August 1, 2005, the Boston Stock Exchange, Inc. ("BSE"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 10(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² to implement Amendment No. 15 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage³ by amending Sections 1 and 4

of chapter XII of the Boston Options Exchange Facility ("BOX") Rules to add a "trade and ship" exception to the definition of "Trade-Through" and add a "book and ship" exception to the provision relating to locked markets, respectively. The proposed rule change was published for comment in the **Federal Register** on August 10, 2005.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change.

Under the proposed rule change, a BOX Options Participant could trade an order at a price that is one minimum quoting increment inferior to the national best bid or offer ("NBBO") if a Linkage Order⁵ is sent contemporaneously to the market(s) disseminating the NBBO to satisfy all interest of the NBBO price. The proposed rule change also would provide that a BOX Options Participant may book an order on BOX that would otherwise lock another market if a Linkage Order is sent contemporaneously to such other market to satisfy all interest at the lock price and only the remaining portion of the order is booked. The BSE proposes that, under trade and ship, any execution received from the market disseminating the NBBO must (pursuant to agency obligations) be reassigned to the customer order that is underlying the Linkage Order that was sent to trade with the market disseminating the NBBO.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act⁶ and the rules and regulations thereunder applicable to a national securities exchange.⁷ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁸ which requires, among other things, that the rules of an exchange be 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, in general, to protect investors and the public interest. The Commission believes that the proposed rule change

should help to implement the Linkage Plan by facilitating the ability of BOX Options Participants to execute their customer orders in a timely manner and potentially could decrease the incidence of Trade-Throughs and locked markets.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-BSE-2005-29) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52412; File No. SR-BSE-2005-38]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to the Exchange's Transaction Fees and Tape a Revenue Sharing Program for Electronically Routed Cross Trades

September 13, 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 August 19, 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, II and III below, which Items have been prepared by the Exchange. The BSE filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act,³ and Rule 19b-4(f)(2) thereunder,⁴ as one establishing or changing a due, fee or other charge imposed by the BSE, which renders the proposal effective upon filing with the Commission. On September 9, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.⁵ On September 12, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.⁶ The Commission

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket option linkage proposed by the American Stock Exchange LLC, the Chicago Board Options Exchange, Incorporated, and the International Securities Exchange, Inc. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) ("Linkage Plan"). Subsequently, upon separate requests by the Philadelphia Stock Exchange, Inc., the Pacific Exchange, Inc., and the BSE, the Commission issued order to permit these exchanges to participate in the Linkage Plan. See Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850

(November 28, 2000); and 40198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

⁴ See Securities Exchange Act Release No. 52205 (August 4, 2005), 70 FR 46551.

⁵ See Section 1, subsection (j) of Chapter XII of the BOX Rules.

⁶ 15 U.S.C. 78f.

⁷ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ The BSE withdrew Amendment No. 1 on August 12, 2005 for technical and formatting reasons.

⁶ In Amendment No. 2, the Exchange: (1) provided additional detail about the Exchange's