

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52150; File No. SR-Amex-2005-079]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Extend the Linkage Fee Pilot Program

July 28, 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 July 25, 2005, 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 substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis for a pilot period through July 31, 2006.

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

The Exchange proposes to extend for one (1) year until July 31, 2006, the current pilot program regarding transaction fees for trades submitted through the intermarket option linkage ("Linkage") and executed on the Exchange. The text of the proposed rule change is available on the Exchange's Web site (<http://www.amex.com>), at the Exchange'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 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 Exchange is proposing to extend for one (1) year until July 31, 2006, the current pilot program establishing Exchange fees for Principal Orders ("P Orders") and Principal Acting as Agent Orders ("P/A Orders") submitted through Linkage and executed on the Exchange. The fees in connection with the pilot program are scheduled to expire on July 31 2005.<sup>3</sup>

The current fees applicable to P Orders and P/A Orders executed on the Exchange are as follows: (i) \$0.10 per contract side options transaction fee for equity options (including exchange-traded fund shares (ETFs) and OEF options); (ii) \$0.21 per contract side options transaction fee for index options; (iii) \$.05 per contract side options comparison fee; (iv) \$0.05 per contract side options floor brokerage fee; (v) \$0.20 per contract side options licensing fee for SPDR O-Strip options; (vi) \$0.15 per contract side options licensing fee for the ONEQ, MNX and NDX options; (vii) \$0.10 per contract side options licensing fee for SPY, QQQQ, LQD, SHY, IEF, TLT, AGG and TIP options; (viii) \$0.09 per contract side options licensing fee for ICF; and (ix) \$0.05 per contract side options licensing fee for OEF. These are the same fees charged to specialists and registered option traders ("ROTs") for transactions executed on the Exchange. The Exchange does not charge for the execution of Satisfaction Orders sent through Linkage.

As was the case in the original pilot program and subsequent extensions, the Exchange believes that the existing fees currently charged to Exchange specialists and ROTs should also apply to executions resulting from Linkage orders.

Based on the experience to date, the Exchange believes that an extension of the pilot program for one (1) year until July 31, 2006 is appropriate.

##### 2. Statutory Basis

The Exchange believes that the proposed fee change is consistent with Section 6(b)(4) of the Act<sup>4</sup> regarding the equitable allocation of reasonable dues, fees and other charges among exchange members and other persons using exchange facilities.

<sup>3</sup> See Securities Exchange Act Release No. 50116 (July 29, 2004), 69 FR 47473 (August 5, 2004) (SR-Amex-2004-54).

<sup>4</sup> 15 U.S.C. 78f(b)(4).

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

The Exchange believes that 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 solicited or received with respect to the proposed rule change.

### III. 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-2005-079 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-Amex-2005-079. 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying

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

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

information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2005-079 and should be submitted on or before August 24, 2005.

#### IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,<sup>5</sup> and, in particular, the requirements of Section 6(b) of the Act<sup>6</sup> and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>7</sup> which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Commission believes that the extension of the Linkage fee pilot until July 31, 2006 will give the Exchange and the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission believes that granting accelerated approval of the proposed rule change will preserve the Exchange's existing pilot program for Linkage fees without interruption as the Exchange and the Commission further consider the appropriateness of Linkage fees.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-Amex-2005-079) is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52149; File No. SR-BSE-2005-22]

#### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend a Pilot Program That Allows for No Minimum Size Order Requirement for the Price Improvement Period Process

July 28, 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 July 22, 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 BSE filed the proposal 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 the proposal 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

The Exchange is proposing to amend Supplementary Material .01 to Chapter V, Section 18 of the rules of the Boston Options Exchange ("BOX"), an options trading facility of the BSE, to extend its existing Price Improvement Period ("PIP") pilot program that allows for no minimum size order requirement ("PIP Pilot Program") from August 7, 2005 until July 18, 2006. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in [brackets].

\* \* \* \* \*

<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 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). See also discussion *infra* Section III.

#### Chapter V, Section 18

\* \* \* \* \*

#### Supplementary Material to Section 18

.01 [Initially, and for at least] *During the extended Pilot Period from August 7, 2005 to July 18, 2006* [of eighteen months from the commencement of trading on BOX], there will be no minimum size requirement for Customer Orders to be eligible for the PIP process. During this *extended* Pilot Period, BOXR will *continue* to submit certain data, periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size PIP orders, that there is significant price improvement for all orders executed through the PIP, and that there is an active and liquid market functioning on BOX outside of the PIP mechanism. Any data which is submitted to the Commission by BOXR will be provided on a confidential basis.

.02 No change.

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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. 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 extend the PIP Pilot Program under the rules of the BOX.<sup>6</sup> The PIP Pilot Program allows BOX to have no minimum size requirement for orders entered into the PIP. The proposed rule change retains the text of the Supplementary Material to Section 18 of Chapter V of the BOX Rules, as currently approved on an eighteen-month pilot basis, and seeks to extend the operation of the PIP Pilot Program until July 18, 2006.

The PIP Pilot Program provides small customer orders with benefits not available under the rules of most other

<sup>6</sup> See Securities Exchange Act Release No. 49068 (January 13, 2004), 69 FR 2768 (January 20, 2004) (SR-BSE-2003-04) ("PIP Pilot Program Approval Order").

<sup>5</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

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

<sup>10</sup> 17 CFR 200.30-3(a)(12).