

simultaneously transmitted a 10-contract P/A Order to Exchange B to pay \$1.95. Assuming an execution is obtained from Exchange B, the customer would receive the 10-contract fill and the rest of the customer's order will be displayed as a \$1.95 bid on Exchange A. The national best offer would likely be \$2.00. As proposed, this would not be deemed a "locked" market for purposes of the Plan.

## 2. Statutory Basis

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

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

The proposed rule change does not impose any 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

change, as amended, 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-2005-046 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-2005-046. 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-2005-046 and should be submitted on or before August 26, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52132; File No. SR-BSE-2005-15]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Listing Fees

July 27, 2005.

## I. Introduction

On May 31, 2005, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), 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> a proposed rule change to amend its Listing Fees schedule by increasing its listing fees. The proposed rule change was published in the **Federal Register** on June 24, 2005.<sup>3</sup> No comments were received on the proposed rule change. This order approves the proposed rule change.

## II. Description of the Proposal

The Exchange proposes to amend its Listing Fees schedule by increasing its listing fees. The Exchange proposes to increase its original listing fee, annual listing maintenance fee and listing fee for additional shares, among other things.<sup>4</sup>

## III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange,<sup>5</sup> particularly section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of section 6(b)(4) of the Act,<sup>7</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

The Commission notes that the Exchange has not raised its listing fees since 1991.<sup>8</sup> According to the Exchange,

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

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

<sup>3</sup> See Securities Exchange Act Release No. 51881 (June 20, 2005), 70 FR 36674.

<sup>4</sup> The Exchange's revised Listing Fees schedule was fully set forth in the proposed rule change published for comment. See *id.*

<sup>5</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact of efficiency, competition, and capital formation. See 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> See Securities Exchange Act Release No. 29276 (June 5, 1991), 56 FR 27060 (June 12, 1991).

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

the increased fees better reflect the Exchange's costs and the value of the services that the Exchange provides. Given the passage of time since the Exchange last raised its listing fees, the actual dollar amount of the fee increases being proposed,<sup>9</sup> and the fact that no commenters objected to the Exchange's proposed fees, the Commission believes the increases in fees are reasonable.

#### IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-BSE-2005-15) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52169; File No. SR-BSE-2005-21]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Proposal To Transfer a Portion of Ownership Interest in Boston Options Exchange Facility

July 29, 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 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, II and III below, which items have been prepared by the self-regulatory organization. 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 proposes to transfer a portion of its ownership interest in its Boston Options Exchange facility ("BOX") such that its aggregate percentage interest will fall below 20%.

<sup>9</sup> For example, the original listing fee is increasing from \$7,500 to \$10,000 and the annual maintenance fee would increase from \$1,000 to \$1,500 for the first listed security.

<sup>10</sup> See 15 U.S.C. 78s(b)(2).

<sup>11</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.

#### 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

On January 13, 2004, the Commission approved four BSE proposals that together established BOX as a facility of the Exchange.<sup>3</sup> This proposal relates to section 8.4(f) of the operating agreement of BOX LLC (the "LLC Agreement"), which requires that any Transfer<sup>4</sup> that would result in a reduction of BSE's aggregate Percentage Interest<sup>5</sup> in BOX LLC to below 20% be subject to the rule filing process pursuant to section 19(b)(1) of the Act<sup>6</sup> and Rule 19b-4 thereunder.<sup>7</sup>

The BSE is proposing to Transfer a portion of its Units, which would result in the BSE's Percentage Interest falling below the 20% threshold. Any such Transfer would be subject to the various limitations set forth elsewhere in the LLC Agreement, throughout Article 8 and elsewhere, regarding suitability and other regulatory and business requirements.<sup>8</sup> Although the BSE does

<sup>3</sup> See Securities Exchange Act Release Nos. 49066 (January 13, 2004), 69 FR 2773 (January 20, 2004) (establishing a fee schedule for the proposed BOX facility); 49065 (January 13, 2004), 69 FR 2768 (January 20, 2004) (creating Boston Options Exchange Regulation LLC to which the BSE would delegate its self regulatory functions with respect to the BOX facility); 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (approving trading rules for the BOX facility); and 49067 (January 13, 2004), 69 FR 2761 (January 20, 2004) (approving certain regulatory provisions of the operating agreement of BOX LLC).

<sup>4</sup> Under the terms of the LLC Agreement, a "Transfer" occurs when any LLC member would "dispose of, sell, alienate, assign, exchange, participate, subparticipate, encumber, or otherwise transfer in any manner . . . all or any part portion of its Units" (ownership interests).

<sup>5</sup> Under the terms of the LLC Agreement, "Percentage Interest" is defined as the ratio of the number of Units held by an LLC member to the total of all of the issued Units, expressed as a percentage.

<sup>6</sup> 15 U.S.C. 78s(b)(1).

<sup>7</sup> 17 CFR 240.19b-4.

<sup>8</sup> For example, the BSE would be prohibited, under Section 8.1(d), from Transferring any of its

not presently have a transferee designated, any such transferee would need to sign and be bound by the provisions of the LLC Agreement. The purpose of the Transfer would be to assist the BSE to fund its equities-related business interests and initiatives related thereto.

Nothing about BSE's transfer of Units will affect additional provisions of the LLC Agreement that make special accommodations for BSE as the SRO of the BOX facility. For example, Section 4.4(a) of the LLC Agreement provides that BOX may not take any major action unless such action is approved by a majority of the BOX LLC Board, including the affirmative vote of all of the directors designated by the BSE. Section 4.1(b) of the LLC Agreement provides that, with its present ownership interest, BSE is entitled to maintain two seats on the Board. Since the BSE does not at this time anticipate that any foreseen Transfers would result in BSE's Percentage Interest of BOX LLC going below 8.00% (the threshold established in this Section to maintain at least two directors on the Board), then this entitlement will remain. Nevertheless, Section 4.1(b) also gives the BSE a perpetual right to designate at least one director on the BOX LLC Board regardless of whether it maintains any ownership interest.

In addition, although BOX LLC itself will not carry out any regulatory functions, all of its activities must be consistent with the Act. For example, provisions set forth in Sections 4.2(a) and 5.3 of the LLC Agreement state that each unitholder and director of BOX cooperate with the Commission and the BSE in carrying out their regulatory responsibilities. These provisions reinforce the notion that BOX, as a facility of an exchange, is not solely a commercial enterprise; it is an integral part of an SRO registered pursuant to the Act, and is subject to the obligations imposed by the Act. These obligations endure so long as BOX is a facility of the Exchange, regardless of the size of BSE's ownership interest in BOX LLC.

The Commission has stated, in a similar case involving the establishment of ArcaEx as a facility of the Pacific Exchange ("PCX"), that a national securities exchange need not have a significant ownership interest in the

Units to anyone other than a Member, affiliate of a Member, or IB (according to the terms set forth in Section 8.6(d)), until after the earlier of the second anniversary of the Launch Date of BOX or the date on which IB's percentage interest has been reduced to no more than 8.00%.