Committee and the Debtors as of the date of the Disclosure Statement Order. Thus, virtually all of the decisions that will need to be made with respect to, among other things, (i) the disposition of the Debtors' Remaining Assets, (ii) the reconciliation of Claims and (iii) the prosecution or settlement of numerous claims and causes of action (other than specific litigation involving the Creditors' Committee, as set forth above), will be made by Reorganized Enron through its agents, and the board of Reorganized Enron appointed after consultation with the Creditors' Committee and the ENA Examiner will oversee such administration. The Debtors believe that the foregoing post-Effective Date administration is consistent with the goals of reducing the expenses in the Chapter 11 cases and will thereby maximize recoveries to creditors entitled to distributions under the Plan.

The Plan does provide, however, that the ENA Examiner may have a continuing role during the post-Effective Date period. Within 20 days after the Confirmation Date, the ENA Examiner or any creditor of ENA or its subsidiaries will be entitled to file a motion requesting that the Bankruptcy Court define the duties of the ENA Examiner for the period following the Effective Date. If no such pleading is timely filed, the ENA Examiner's role will conclude on the Effective Date. The Plan's flexibility in this regard is not intended nor will it be deemed to create a presumption that the role or duties of the ENA Examiner should or should not be continued after the Effective Date; provided, however, that in no event will the ENA Examiner's scope be expanded beyond the scope approved by orders entered as of the date of the Disclosure Statement Order. In the event that the Bankruptcy Court enters an order defining the post-Effective Date duties of the ENA Examiner, notwithstanding the narrower scope of the Creditors' Committee envisioned by the Plan, the Creditors' Committee will continue to exist following the Effective Date to exercise all of its statutory rights, powers and authority until the date the ENA Examiner's rights, powers and duties are fully terminated pursuant to a Final Order. The Debtors and the Creditors' Committee intend to object to the continuation of the ENA Examiner during the post-Effective Date period.

The Plan also provides for the appointment of a Reorganized Debtor Plan Administrator (''Administrator'') on the Effective Date for the purpose of carrying out the provisions of the Plan. Pursuant to Section 1.226 of the Plan, the Administrator would be Stephen Forbes Cooper, LLC, an entity headed by Stephen Forbes Cooper, Enron's Acting President, Acting Chief Executive Officer and Chief Restructuring Officer.[34] In accordance with Section 36.2 of the Plan, the Administrator shall be responsible for implementing the distribution of the assets in the Debtors' estates to the Debtors' creditors, including, without limitation, the divestiture of Portland General common stock or the sale of that stock followed by the distribution of the proceeds to the Debtors' creditors. In addition, pursuant to the Plan, as of the Effective Date, the Reorganized Debtors will assist the Administrator in performing the following activities: (i) Holding the Operating Entities, including Portland General, for the benefit of Creditors and providing certain transition services to such entities, (ii) liquidating the Remaining Assets, (iii) making distributions to Creditors pursuant to the terms of the Plan, (iv) prosecuting Claim objections and litigation, (v) winding up the Debtors' business affairs, and (vi) otherwise implementing and effectuating the terms and provisions of the Plan.

Finally, in connection with the prosecution of litigation claims against financial institutions, law firms, accounting firms and similar defendants, a joint task force comprised of the Debtors, Creditors' Committee representatives and certain of their professionals was formed in order to maximize coordination and cooperation between the Debtors and the Creditors' Committee. Each member of the joint task force is entitled to, among other things, notice of, and participation in, meetings, negotiations, mediations, or other dispute resolution activities with regard to such litigation. Following the Effective Date, the Creditors' Committee representatives, together with the Creditors' Committee's professionals, may continue to participate in the joint task force.

[34] Mr. Cooper assumed this role at Enron on January 29, 2002, after Enron filed for bankruptcy under Chapter 11. Mr. Cooper is also the chairman of Kroll Zolfo Cooper, LLC (''Kroll''), and Kroll's Corporate Advisory and Restructuring Group. Kroll is a consulting company that provides services in corporate recovery and crisis management, forensic accounting, technology, intelligence, investigations and background screening. The Debtors state that Mr. Cooper, in his capacity as Enron's CEO, has worked with the Enron board, the Creditors' Committee, and other stakeholders in the bankruptcy process to sell non-core businesses, rehabilitate assets, prosecute the Debtors' claims against banks and professional advisors, and to assist employees. Mr. Cooper works under the supervision of Enron's board of directors, which is comprised of four individuals with extensive business and energy industry experience. The Enron board is wholly independent and each has the support of the Creditors' Committee.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–3112 Filed 2–11–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49197; File No. S7–966]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing and Order Granting Approval of Amendment to the Plan for the Allocation of Regulatory Responsibilities Among the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc., the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

February 5, 2004.

Notice is hereby given that the Securities and Exchange Commission (''SEC'' or ''Commission'') has issued an Order, pursuant to sections 17(d)[1] and 11A(a)(3)(B)[2] of the Securities Exchange Act of 1934 (''Act''), granting approval of an amendment to the plan for allocating regulatory responsibility filed pursuant to Rule 17d–2 of the Act,[3] by the American Stock Exchange LLC (''Amex''), the Boston Stock Exchange, Inc. (''BSE''), the Chicago Board Options Exchange, Inc. (''CBOE''), the International Securities Exchange, Inc. (''ISE''), the National Association of Securities Dealers, Inc. (''NASD''), the New York Stock Exchange, Inc. (''NYSE''), the Pacific Exchange, Inc. (''PCX''), and the Philadelphia Stock Exchange, Inc. (''Phlx'') (collectively the ''SRO participants'').

I. Introduction

Section 19(g)(1) of the Act,[4] among other things, requires every national securities exchange and registered securities association (''SRO'') to examine for, and enforce, compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant

[1] 15 U.S.C. 78q(d).

[2] 15 U.S.C. 78k–1(a)(3)(B).

[3] 17 CFR 240.17d–2.

[4] 15 U.S.C. 78s(g)(1).

to section 17(d) or 19(g)(2)[5] of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (''common members''). This regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[6] With respect to a common member, section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules and regulations, or to perform other specified regulatory functions.

To implement section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.[7] Rule 17d–1, adopted on April 20, 1976,[8] authorizes the Commission to name a single SRO as the designated examining authority (''DEA'') to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules. When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with applicable financial responsibility rules.

On its face, Rule 17d–1 deals only with an SRO's obligations to enforce broker-dealers' compliance with the financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the Federal securities laws governing matters other than financial responsibility, including sales practices, and trading activities and practices.

To address regulatory duplication in these other areas, on October 28, 1976, the Commission adopted Rule 17d–2 under the Act.[9] This rule permits SROs to propose joint plans allocating regulatory responsibilities with respect to common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to and foster the development of a national market system and a national clearance and settlement system, and in conformity with the factors set forth in section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. The Plan

On September 8, 1983, the Commission approved the SRO participants' plan for allocating regulatory responsibilities pursuant to Rule 17d–2.[10] On May 23, 2000, the Commission approved an amendment to the plan that added the ISE as a participant.[11] On November 8, 2002, the Commission approved another amendment that replaced the original plan in its entirety and, among other things, allocated regulatory responsibilities among all the participants in a more equitable manner.[12] The plan reduces regulatory duplication for a large number of firms currently members of two or more of the SRO participants by allocating regulatory responsibility for certain options-related sales practice matters to one of the SRO participants.

Generally, under the plan, the SRO participant responsible for conducting options-related sales practice examinations of a firm, and investigating options-related customer complaints and terminations for cause of associated persons of that firm, is known as the firm's ''Designated Options Examining Authority'' (''DOEA''). Pursuant to the plan, any other SRO of which the firm is a member is relieved of these responsibilities during the period the firm is assigned to a DOEA.

III. Proposed Amendment to the Plan

On February 5, 2004, the parties submitted a proposed amendment to the plan. The primary purpose of the amendment is to include the BSE, which proposes establish a new options trading facility to be known as the Boston Options Exchange (''BOX''), as an SRO participant. The amended agreement replaces the previous agreement in its entirety. The text of the proposed amended 17d–2 plan is as follows (additions are italicized; deletions are bracketed):[13]

Agreement among the American Stock Exchange LLC, *the Boston Stock Exchange, Inc.,* the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc., the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., the Pacific Exchange Inc., and the Philadelphia Stock Exchange, Inc., Pursuant to Rule 17d–2 under the Securities Exchange Act of 1934.

This Agreement, among the American Stock Exchange LLC, *the Boston Stock Exchange, Inc.,* the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc., the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., the Pacific Exchange Inc., and the Philadelphia Stock Exchange, Inc., hereinafter collectively referred to as the Participants, is made this [first] *14th* day of [July, 2002] *January, 2004* pursuant to the provisions of Rule 17d–2 under the Securities Exchange Act of 1934 (the ''Act''), which allows for plans among self-regulatory organizations to allocate regulatory responsibility.

WHEREAS, the Participants are desirous of allocating regulatory responsibilities with respect to their common members (members of two or more of the Participants) for compliance with common rules relating to the conduct by broker-dealers of accounts for listed options or index warrants (collectively, ''Covered Securities''); and

WHEREAS, the Participants are desirous of executing a plan for this purpose pursuant to the provisions of Rule 17d–2 and filing such plan with the Securities and Exchange Commission (''SEC'' or the ''Commission'') for its approval;

NOW, THEREFORE, in consideration of the mutual covenants contained hereafter, the Participants agree as follows:

I. Except as otherwise provided herein, each Participant shall assume Regulatory Responsibility (as hereinafter

[5] 15 U.S.C. 78s(g)(2).

[6] *See* Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session. 32 (1975).

[7] 17 CFR 240.17d–1 and 17 CFR 240.17d–2.

[8] *See* Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18809 (May 3, 1976).

[9] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49093 (November 8, 1976).

[10] *See* Securities Exchange Act Release No. 20158 (September 8, 1983), 48 FR 41256 (September 14, 1983).

[11] *See* Securities Exchange Act Release No. 42816 (May 23, 2000), 65 FR 24759 (May 31, 2000). This Amendment also updated the corporate names of the Amex, the Midwest Stock Exchange (now known as the Chicago Stock Exchange, Inc.), and the Pacific Stock Exchange Incorporated (now known as the Pacific Exchange, Inc.).

[12] *See* Securities Exchange Act Release No. 46800 (November 8, 2002), 67 FR 69774 (November 19, 2002).

[13] Changes are marked from the most recent plan approved by the Commission on November 8, 2002. *See supra* note 12.

defined) for its members that are both (i) members of more than one Participant (hereinafter the ''Common Members'') and (ii) allocated to it in accordance with the terms hereof. For purposes of this Agreement, a Participant shall be considered to be the Designated Options Examining Authority (''DOEA'') of each Common Member allocated to it.

II. As used herein, the term ''Regulatory Responsibility'' shall mean the inspection, examination and enforcement responsibilities relating to compliance by the Common Members and persons associated therewith with the rules of the applicable Participant that are substantially similar to the rules of the other Participants (the ''Common Rules'') and the provisions of the Act and the rules and regulations thereunder, insofar as they apply to the conduct of accounts for Covered Securities. In discharging its Regulatory Responsibility, a DOEA may act directly and perform such responsibilities itself or may make arrangements for the performance of such responsibilities on its behalf by The Options Clearing Corporation, a national securities exchange registered with the SEC under Section 6(a) of the Act or a national securities association registered with the SEC under Section 15A of the Act, but excluding an association registered for the limited purpose of regulating the activities of members who are registered as brokers or dealers in security futures products. Without limiting the foregoing, a non-exhaustive list of the current, Common Rules of each Participant applicable to the conduct of accounts for Covered Securities is attached hereto as Exhibit A. Notwithstanding anything herein to the contrary, it is explicitly understood that the term ''Regulatory Responsibility'' does not include, and each of the Participants shall (unless allocated pursuant to Rule 17d–2 otherwise than under this Agreement) retain full responsibility for:

(a) surveillance and enforcement with respect to trading activities or practices involving its own marketplace, including without limitation its rules relating to the rights and obligations of specialists and other market makers;

(b) registration pursuant to its applicable rules of associated persons;

(c) discharge of its duties and obligations as a Designated Examining Authority pursuant to Rule 17d–1 under the Act;

(d) evaluation of advertising, responsibility for which shall remain with the Participant to which a Common Member submits same for approval; and

(e) any rules of a Participant that are not substantially similar to the rules of all of the other Participants.

III. Apparent violations of another Participant's rules discovered by a DOEA, but which rules are not within the scope of the discovering DOEA's Regulatory Responsibility, shall be referred to the relevant Participant for such action as the Participant to which such matter has been referred deems appropriate. Notwithstanding the foregoing, nothing contained herein shall preclude a DOEA in its discretion from requesting that another Participant conduct an enforcement proceeding on a matter for which the requesting DOEA has Regulatory Responsibility. If such other Participant agrees, the Regulatory Responsibility in such case shall be deemed transferred to the accepting Participant. Each Participant agrees, upon request, to make available promptly all relevant files, records and/or witnesses necessary to assist another Participant in an investigation or enforcement proceeding.

IV. This Agreement shall be administered by a committee known as the Options Self-Regulatory Council (the ''Council''). The Council shall be composed of one representative designated by each of the Participants. Each Participant shall also designate one or more persons as its alternate representative(s). In the absence of the representative of a Participant, such alternate representative shall have the same powers, duties and responsibilities as the representative. Each Participant may, at any time, by notice to the then Chair of the Council, replace its representative and/or its alternate representative on such Council. A majority of the Council shall constitute a quorum and, unless specifically otherwise required, the affirmative vote of a majority of the Council members present (in person, by telephone or by written consent) shall be necessary to constitute action by the Council. From time to time, the Council shall elect one member of the Council to serve as Chair and another to serve as Vice Chair (to substitute for the Chair in the event of his or her unavailability) for such term as shall be designated and until his or her successor is duly elected, provided that in the event a Participant replaces a representative who is acting as Chair or Vice Chair, such representative shall also assume the position of Chair or Vice Chair, as applicable. All notices and other communications for the Council shall be sent to it in care of the Chair or to each of the representatives.

V. The Council shall determine the times and locations of Council meetings, provided that the Chair, acting alone, may also call a meeting of the Council in the event the Chair determines that there is good cause to do so. To the extent reasonably possible, notice of any meeting shall be given at least ten business days prior thereto. Notwithstanding anything herein to the contrary, representatives shall always be given the option of participating in any meeting telephonically at their own expense rather than in person.

VI. For the purpose of fulfilling the Participants' DOEA Regulatory Responsibilities, the Council shall allocate Common Members that conduct a public options business among Participants from time to time in such manner as the Council deems appropriate, provided that any such allocation shall be based on the following [principals] *principles* except to the extent all affected Participants consent:

(a) The Council may not allocate a member to a Participant unless the member is a member of that Participant.

(b) To the extent practical, Common Members that conduct a public options business shall be allocated among the Participants of which they are members in such manner as to equalize as nearly as possible the allocation among such Participants. For example, if sixteen Common Members that conduct a public options business are members only of three Participants, such members shall be allocated among such Participants such that no Participant is allocated more than six such members and no Participant is allocated less than five such members.

(c) To the extent practical, the allocation of Common Members shall take into account the amount of customer activity conducted by each member in Covered Securities such that Common Members shall be allocated among the Participants of which they are members in such manner as most evenly divides the Common Members with the largest amount of customer activity among such Participants.

(d) Insofar as practical, it is intended that allocation of Common Members to Participants will be rotated among the applicable Participants and, more specifically, that Common Members shall not be allocated to a Participant as to which such member was allocated within the previous two years.

(e) The Council shall make general reallocations of Common Members from time-to-time as it deems appropriate.

(f) Whenever a Common Member ceases to be a member of its DOEA, the DOEA shall promptly inform the Council, which shall promptly review the matter and allocate the Common Member to another Participant.

(g) A DOEA may request that a Common Member that is allocated to it be reallocated to another Participant by giving thirty days written notice thereof. The Council, in its discretion, may approve such request and reallocate such Common Member to another Participant.

(h) All determinations by the Council with respect to allocations shall be by the affirmative vote of a majority of the Participants that, at the time of such determination, share the applicable Common Member being allocated; a Participant shall not be entitled to vote on any allocation relating to a Common Member unless the Common Member is a member of such Participant.

(i) Allocations for calendar years [2003 and] 2004 *and 2005* shall also be subject to the provisions set forth at Appendix A hereof, which provisions shall control in the event of any conflict between them and the provisions set forth above.

VII. Each DOEA shall conduct a routine inspection and examination of each Common Member allocated to it on a cycle not less frequently than determined by the Council. The other Participants agree that, upon request, relevant information in their respective files relative to a Common Member will be made available to the applicable DOEA. At each meeting of the Council, each Participant shall be prepared to report on the status of its examination program for the previous quarter and any period prior thereto that has not previously been reported to the Council. In the event a DOEA believes it will not be able to complete the examination cycle for its allocated firms, it will so advise the Council. The Council will undertake to remedy this situation by allocating selected firms and, if necessary, lengthening the cycles for selected firms.

VIII. Each Participant will, upon request, promptly furnish a copy of the report, or applicable portions thereof relating to Covered Securities, of any examination made pursuant to the provisions of this Agreement to each other Participant of which the Common Member examined is a member.

IX. Each Participant will, routinely, forward to each other Participant of which a Common Member is a member, copies of all communications regarding deficiencies relating to Covered Securities noted in a report of examination conducted by each Participant. If an examination relating to Covered Securities conducted by a Participant reveals no deficiencies, such fact will also, upon request, be communicated to each other Participant of which the Common Member concerned is a member.

X. Each DOEA's Regulatory Responsibility shall include investigations into terminations ''for cause'' of associated persons relating to Covered Securities, unless such termination is related solely to another Participant's market. In the latter instance, that Participant to whose market the termination for cause relates shall discharge Regulatory Responsibility with respect to such termination for cause. In connection with a DOEA's examination, investigation and/or enforcement proceeding regarding a Covered Security-related termination for cause, the other Participants of which the Common Member is a member shall furnish, upon request, copies of all pertinent materials related thereto in their possession. As used in this Section, ''for cause'' shall include, without limitation, terminations characterized on Form *U5* [U–5] under the label ''Permitted to Resign,'' ''Discharge'' or ''Other.''

XI. Each DOEA shall discharge the Regulatory Responsibility relative to a Covered Securities-related customer complaint or Form *U4* [U–4] filing[,] unless such complaint or filing is uniquely related to another Participant's market. In the latter instance, the DOEA shall forward the matter to that Participant to whose market the matter relates, and the latter shall discharge Regulatory Responsibility with respect thereto. If a Participant receives a customer complaint for a Common Member related to a Covered Security for which the Participant is not the DOEA, the Participant shall promptly forward a copy of such complaint to the DOEA.

XII. Any written notice required or permitted to be given under this Agreement shall be deemed given if sent by certified mail, return receipt requested, to each Participant entitled to receipt thereof, to the attention of the Participant's representative on the Council at the Participant's then principal office or by e-mail at such address as the representative shall have filed in writing with the Chair.

XIII. The costs incurred by each Participant in discharging its Regulatory Responsibility under this Agreement are not reimbursable. However, any Participants may agree that one or more will compensate the other(s) for costs.

XIV. The Participants shall notify the Common Members of this Agreement by means of a uniform joint notice approved by the Council.

XV. This Agreement may be amended in writing duly approved by each Participant.

XVI. Any of the Participants may manifest its intention to cancel its participation in this Agreement at any time upon the giving to the Council of written notice thereof at least 90 days prior to such cancellation. Upon receipt of such notice the Council shall allocate, in accordance with the provisions of this Agreement, those Common Members for which the petitioning party was the DOEA. Until such time as the Council has completed the reallocation described above, the petitioning Participant shall retain all its rights, privileges, duties and obligations hereunder.

XVII. The cancellation of its participation in this Agreement by any Participant shall not terminate this Agreement as to the remaining Participants. This Agreement will only terminate following notice to the Commission, in writing, by the then Participants that they intend to terminate the Agreement and the expiration of the applicable notice period. Such notice shall be given at least six months prior to the intended date of termination, provided that in the event a notice of cancellation is received from a Participant that, assuming the effectiveness thereof, would result in there being just one remaining member of the Council, notice to the Commission of termination of this Agreement shall be given promptly upon the receipt of such notice of cancellation, which termination shall be effective upon the effectiveness of the cancellation that triggered the notice of termination to the Commission.

Limitation of Liability

No Participant nor the Council nor any of their respective directors, governors, officers, employees or representatives shall be liable to any other Participant in this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibility as provided hereby or for the failure to provide any such Responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or more of the Participants and caused by the willful misconduct of one or more of the other participants or their respective directors, governors, officers, employees or representatives. No warranties, express or implied, are made by any or all of the Participants or the Council with respect to any Regulatory

Responsibility to be performed by each of them hereunder.

Relief From Responsibility

Pursuant to Section 17(d)(1)(A) of the Securities Exchange Act of 1934 and Rule 17d–2 promulgated pursuant thereto, the Participants join in requesting the Securities and Exchange Commission, upon its approval of this Agreement or any part thereof, to relieve those Participants which are from time to time participants in this Agreement which are not the DOEA as to a Common Member of any and all Regulatory Responsibility with respect to the matters allocated to the DOEA.

In Witness Whereof, the Participants hereto have executed this Agreement as of the date and year first above written.

APPENDIX A—ALLOCATION PROVISIONS FOR CALENDAR YEARS [2003 AND] 2004 *AND 2005*

The allocation for calendar year [2003] *2004* shall be performed in accordance with the provisions of Section VI, provided that *there shall be a partial allocation to the Boston Stock Exchange, Inc. whereby the Boston Stock Exchange, Inc. is allocated one-half of its share of the total number of Common Members. For calendar year 2005, there shall be a reallocation whereby the Boston Stock Exchange, Inc. shall receive from the other DOEAs a number of Common Members to make the allocation equitable* [immediately following the initial allocation there shall be a partial reallocation whereby one-half of the Common Members allocated to the International Stock Exchange, Inc., the Pacific Exchange, Inc. and the Philadelphia Stock Exchange, Inc. (such Participants being herein called the ''New DOEAs'') are reallocated among the other Participants that have such member in common. In the event that an initial allocation results in a New DOEA being allocated an odd number of Common Members, for purposes of the reallocation, such number shall be deemed to be increased by one or decreased by one to the extent this will result in the number of Common Members allocated to the remaining DOEAs being more equal. For example, if sixteen Common Members are members of one New DOEA as well as two DOEAs that are not New DOEAs, such members shall be allocated among such DOEAs in the normal manner such that two DOEAs are allocated five such members and the remaining DOEA is allocated six members. Thereafter and assuming only five Common Members were allocated to the New DOEA, three of the members allocated to the New DOEA would be reallocated among the DOEAs that are not New DOEAs such that the New DOEA shall end up with two Common Members allocated to it and the remaining two DOEAs shall both end up with seven Common Members. Again by way of example, if twenty-one Common Members are members of one New DOEA as well as three DOEAs that are not New DOEAs and the New DOEA received an allocation of five members and two of the remaining DOEAs also received an allocation of five members with the fourth DOEA receiving an allocation of six members, only two of the five Common Members allocated to the New DOEA would be reallocated since such reallocation would result in an equal allocation of six each among the remaining DOEAs. For calendar year 2004, the Common Members reallocated from the New DOEAs to the remaining DOEAs as part of the allocation for calendar year 2003 shall be reallocated back to the New DOEA to which such Common Member was originally allocated].

Exhibit A [14]—Participant Rules Applicable to the Conduct of Covered Securities: Rules Enforced Under 17d–2 Agreement

Opening of Accounts
AMEX—Rules 411 and 921
CBOE—Rule 9.7
ISE—Rule 608
NASD—Rule 2860(b)(16); IM–2860–2
NYSE—Rules 721 and 405
PHLX—Rule 1024(b)
PCX—Rule 9.2(a) and Rule 9.18(b)
BSE/BOX—Chapter XI, Section 9
Supervision
AMEX—Rules 411 and 922
CBOE—Rule 9.8
ISE—Rule 609
NASD—Rule 2860(b)(20)
NYSE—Rules 722, 342 and 343
PHLX—Rule 1025
PCX—Rule 9.2(b)
BSE/BOX—Chapter XI, Section 10
Suitability
AMEX—Rule 923
CBOE—Rule 9.9
ISE—Rule 610
NASD—Rule 2860(b)(19)
NYSE—Rule 723
PHLX—Rule 1026
PCX—Rule 9.18(c)
BSE/BOX—Chapter XI, Section 11

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amended plan is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–966. 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, comments should be sent in hard copy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the amended plan that are filed with the Commission, and all written communications relating to the amended plan 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. Copies of such filing will also be available for inspection and copying at the principal office of each of the SROs. All submissions should refer to File No. S7–966 and should be submitted by March 4, 2004.

V. Discussion

The Commission continues to believe that the proposed plan is an achievement in cooperation among the SRO participants, and will reduce unnecessary regulatory duplication by allocating to the designated SRO the responsibility for certain options-related sales practice matters that would otherwise be performed by multiple SROs. The plan promotes efficiency by reducing costs to firms that are members of more than one of the SRO participants. In addition, because the SRO participants coordinate their regulatory functions in accordance with the plan, the plan promotes, and will continue to promote, investor protection.

Under paragraph (c) of Rule 17d–2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective.[15] In this instance, the Commission believes that appropriate notice and comment can take place after the proposed amendment is effective. The primary purpose of the amendment is to add the BSE as an SRO participant. By approving it today, the amendment can be implemented prior to the BSE's options trading facility, BOX, beginning its operations. In addition, the prior plan, which this amends, was published for comment, and no comments were received.[16] The Commission does not believe that the amendment raises any new regulatory issues.

This order gives effect to the amended plan submitted to the Commission that is contained in File No. S7–966. The SRO participants shall notify all members affected by the amended plan of their rights and obligations under the amended plan.

[14] This is a partial list of the rules provided to the Commission. The full list of rules provided to the Commission is available at the principal offices of each of the SROs and at the Commission's Public Reference Room.

[15] 17 CFR 240.17d–2(c).

[16] *See supra* note 12.

It is therefore ordered, pursuant to sections 17(d) [17] and 11A(a)(3)(B) [18] of the Act, that the amended plan of the Amex, BSE, CBOE, ISE, NASD, NYSE, PCX, and Phlx filed pursuant to Rule 17d–2 [19] is approved.

It is further ordered that those SRO participants that are not the DOEA as to a particular member are relieved of those responsibilities allocated to the member's DOEA under the amended plan.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–3024 Filed 2–11–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49192; File No. SR–BSE–2004–05]

Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto by the Boston Stock Exchange, Inc. To Establish a Six-Month Pilot for Market Opening Procedures of the Boston Options Exchange

February 4, 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 February 4, 2004, 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. On February 4, 2004, the Exchange submitted Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change, as amended for a six-month pilot period.

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

The Exchange proposes to add a provision to its Boston Options Exchange trading rules to provide for a six-month pilot regarding market opening procedures, that will expire on August 6, 2004. Proposed new language is *italicized.* Proposed deletions are in [brackets].

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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

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Sec. 9 Opening the Market

The following rules are in effect until August 6, 2004.

(a) Pre-Opening Phase. [Orders may be submitted, modified and cancelled throughout the pre-opening phase preceding the start of the market. Customers may only submit Market-On-Opening or limit orders pursuant to Section 14(c) of this Chapter V. In addition, any open and unexecuted orders from the previous trading session, which are still valid, will remain on the BOX Book during the pre-opening phase. Market Makers shall submit orders during the pre-opening phase pursuant to their obligations under Chapter VI of these Rules. No trade matches are to occur during the pre-opening phase. BOX will calculate a theoretical opening price (''TOP'') and broadcast it to all BOX market participants throughout this period. The TOP is the price at which opening trades would occur if the opening were to commence at that given moment.

(b) Opening Match. BOX will determine a single price at which a particular option series will be opened. BOX will calculate the optimum number of options contracts that could be matched at a price, taking into consideration all the orders on the BOX Book.

i. The opening match price is the price which will result in the matching of the highest number of options contracts.

ii. Should two or more prices satisfy the maximum quantity criteria, the price which will leave the fewest resting orders in the BOX Book will be selected as the opening match price.

iii. Should there still be two or more prices which meet both criteria in paragraphs (i) and (ii), the price which is closest to the previous day's closing price will be selected as the opening match price.

(c) The determination of the opening match price in each series of options shall be held promptly following the opening of the underlying security in the primary market where it is traded. An underlying security shall be deemed to be opened on the primary market where it is traded if such market has (i) reported a transaction in the underlying security, or (ii) disseminated opening quotations for the underlying security and not given an indication of a delayed opening, whichever first occurs.

(d) The opening match in any options class shall be delayed until the underlying security has opened for trading in the primary market, unless BOXR determines that the interests of a fair and orderly market are best served by opening trading in the options class. In the event that the underlying security has not opened within a reasonable time after 9:30 a.m. est, an Options Official shall report the delay to the Market Regulation Center and an inquiry shall be made to determine the cause of the delay.

(e) BOXR may delay the opening match in any class of options in the interests of a fair and orderly market.]

For some period of time before the opening in the underlying security (as determined by BOXR but not less than one hour and distributed to all BOX Participants via regulatory circular from BOXR), the BOX Trading Host will accept orders and quotes. During this period, known as the Pre-Opening Phase, orders and quotes are placed on the BOX Book but do not generate trade executions. Complex Orders and contingency orders (except ''Market-on-Opening'', Minimum Volume, and Fill and Kill orders) do not participate in the opening and are not accepted by the BOX Trading Host during this Pre-Opening Phase. BOX-Top Orders and Price Improvement Period orders are not accepted during the Pre-Opening Phase.

(b) Calculation of Theoretical Opening Price. From the time that the BOX Trading Host commences accepting orders and quotes at the start of the Pre-Opening Phase, the BOX Trading Host will calculate and provide the Theoretical Opening Price (''TOP'') for the current resting orders and quotes on the BOX Book during the Pre-Opening Phase. The TOP is that price at which the Opening Match would occur at the current time, if that time were the opening, according to the Opening Match procedures described in

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[17] 15 U.S.C. 78q(d).

[18] 15 U.S.C. 78k–1(a)(3)(B).

[19] 17 CFR 240.17d–2.

[20] 17 CFR 200.30–3(a)(34).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from John A. Boese, Vice President Legal and Compliance, BSE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated February 4, 2004 (''Amendment No. 1''). In Amendment No. 1, the Exchange made a technical correction to the rule text.