

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52346; File No. SR-BSE-2005-16]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change Establishing a De Minimis Exception to the 80/20 Test Relating to Linkage Trades on the Boston Options Exchange

August 26, 2005.

#### I. Introduction

On May 19, 2005, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("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 seeking to amend its rules governing its operation of intermarket linkage on the Boston Options Exchange ("BOX"). Specifically, the Exchange is proposing to amend Chapter XII, Section 5(b) of the BOX Rules to establish a *de minimis* exception to the limitation on Principal Order<sup>3</sup> access imposed by the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan")<sup>4</sup> and related rules.

The proposed rule change was noticed for comment in the **Federal Register** on July 27, 2005.<sup>5</sup> The Commission received no comments on

the proposed rule change. This order approves the proposed rule change.

#### II. Description

The purpose of this proposed rule change is to implement proposed Joint Amendment No. 17 to the Linkage Plan. Section 8(b)(iii) of the Linkage Plan provides that Eligible Market Makers should send Principal Orders through the Linkage on a limited basis and not as a primary aspect of their business. Joint Amendment No. 17, together with this proposed rule change, would change Section 8(b)(iii) of the Linkage Plan and Chapter XII, Section 5(b) of the BOX Rules to establish an exemption from the provision in the rule that states that a Market Maker that effected 20 percent or more of its volume in a particular option by sending Principal Orders through the Linkage in a calendar quarter is prohibited from sending Principal Orders via the Linkage in such option during the following calendar quarter (the "80/20 Test").

The Exchange believes that applying the 80/20 Test has resulted in anomalies for Market Makers with limited volume in an eligible option class. Specifically, if a Market Maker has very little overall trading volume in an option, the execution of one or two Principal Orders during a calendar quarter could result in the Market Maker failing to meet the 80/20 Test. This would bar the Market Maker from using the Linkage to send Principal Orders for the following calendar quarter. The BOX contends that it was not its intention to bar Market Makers with limited volume from sending Principal Orders through the Linkage in these circumstances, since such trading does not constitute a primary aspect of their business. Thus, the Exchange's proposed rule would create a *de minimis* exemption from the 80/20 Test for Market Makers that have a total contract volume of less than 1,000 contracts in an options class for a calendar quarter.

#### III. Discussion

After careful review, 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>6</sup> In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act<sup>7</sup> 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 to protect investors and the public interest. The Commission believes that the proposed rule change will increase the availability of Linkage to members of the Participants by limiting the applicability of the 80/20 Test in situations where market makers have minimal trading volume in a particular options class.

The Commission recognizes that the Exchange does not believe that it is necessary to bar market makers with limited volume from sending Principal Orders through the Linkage, as such trading does not raise concerns that a member is sending such orders as "a primary aspect of their business." The Commission believes that the *de minimis* exemption from the 80/20 Test proposed by the Exchange for market makers that have a total contract volume of less than 1,000 contracts in an options class for a calendar quarter should ensure that market makers with relatively low volume in a particular options class can send a reasonable number of Principal Orders without being barred from using the Linkage by application of the 80/20 Test in the following calendar quarter.

#### IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-BSE-2005-16) is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>9</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> A "Principal Order" is an order for the principal account of an eligible market maker that does not relate to a customer order the market maker is holding. See Section 2(16)(b) of the Linkage Plan.

<sup>4</sup> On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage ("Linkage") proposed by the American Stock Exchange, LLC, Chicago Board Options Exchange, Inc., and the International Stock Exchange, Inc. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, the Philadelphia Stock Exchange, Inc., the Pacific Exchange, Inc. and the BSE joined 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 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

<sup>5</sup> See Securities Exchange Act Release No. 52071 (July 20, 2005), 70 FR 43472 (July 27, 2005).

<sup>6</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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

<sup>9</sup> 17 CFR 200.30-3(a)(12).