

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 Exchange. 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-2005-056 and should be submitted on or before October 21, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52503; File No. SR-Amex-2005-066]

### Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Exchange's Determination of the National Best Bid or Offer When Another Exchange Is Disconnected From the Intermarket Option Linkage

September 23, 2005.

#### I. Introduction

On June 17, 2005, the American Stock Exchange LLC ("Amex"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change 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> to amend Amex Rules 933(g) and 933(g)-ANTE regarding the determination of the National Best Bid or Offer ("NBBO") when another participant in the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage

("Linkage Plan")<sup>3</sup> is disconnected from the Linkage.<sup>4</sup> On August 4, 2005, the Amex filed Amendment No. 1 to the proposed rule change.<sup>5</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on August 23, 2005.<sup>6</sup> The Commission received one comment letter on the proposal.<sup>7</sup> This order approves the proposed rule change, as amended.

#### II. Description of the Proposed Rule Change

The Amex proposes to amend Amex Rules 933(g) and 933(g)-ANTE to add a provision regarding the determination of the NBBO when another Participant Exchange<sup>8</sup> is disconnected from the Linkage. Amex Rules 933(g) and 933(g)-ANTE currently provide that a Floor Governor or Exchange Official may determine that certain quotes from another Participant Exchange are not reliable when such other Participant Exchange either (i) declares its quotes non-firm and directly communicates or disseminates a message through Options Price Reporting Authority (OPRA), or (ii) communicates to the Amex that such Participant Exchange is experiencing systems or other problems affecting the reliability of its disseminated quotes.

The Amex proposes to add to Amex Rules 933(g) and 933(g)-ANTE that when another Participant Exchange is disconnected from the Linkage and is not accepting Linkage orders, a Floor Governor or Exchange Official may determine the quotes from such Participant Exchange are unreliable and may exclude such quotes from the Amex's determination of the NBBO. The

<sup>3</sup> 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 Amex, 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). Subsequently, upon separate requests by the Philadelphia Stock Exchange, Inc., the Pacific Exchange, Inc., and the Boston Stock Exchange, Inc., the Commission issued orders 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 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

<sup>4</sup> See Amex Rule 940(b)(9).

<sup>5</sup> Amendment No. 1 superseded and replaced the original filing in its entirety.

<sup>6</sup> See Securities Exchange Act Release No. 52270 (August 16, 2005), 70 FR 49335.

<sup>7</sup> See letter from Matthew Hinerfeld, Managing Director and Deputy General Counsel, Citadel Investment Group, L.L.C., on behalf of Citadel Derivatives Group LLC, to Jonathan G. Katz, Secretary, Commission, dated August 26, 2005.

<sup>8</sup> A "Participant Exchange" is a registered national securities exchange that is a party to the Linkage Plan. See Amex Rule 940(b)(14).

Amex believes that adding this third circumstance is necessary because there are times when due to system malfunctions, a Participant Exchange is disconnected from the Linkage but has not declared its quotes to be "non-firm" and has not informed the other exchanges that the disconnected Participant Exchange may have quote problems. As a result, access to the disconnected Participant Exchange is limited, and the Amex believes such Participant Exchange's quotes should be excluded from the Amex's determination of the NBBO.

#### III. Comment Received

As noted above, the Commission received one comment letter on the proposal.<sup>9</sup> The commenter was strongly supportive of the Amex's proposed rule change, including the Amex's proposed method of determining that a Participant Exchange's quote is unreliable.<sup>10</sup>

#### IV. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act<sup>11</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>12</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>13</sup> which requires, among other things, that the rules of the Amex 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 it is appropriate for the Amex to remove a Participant Exchange's disseminated quote(s) from the Amex's determination of the NBBO when such Participant Exchange is disconnected from Linkage and is not

<sup>9</sup> See *supra* note 7.

<sup>10</sup> The comment letter also addressed File No. SR-BSE-2005-30, a proposal to allow the Boston Options Exchange ("BOX") to exclude a Participant Exchange's quotes from BOX's determination of the NBBO when, among other circumstances, such Participant Exchange is disconnected from Linkage. The commenter supported the Boston Stock Exchange, Inc.'s proposal, but suggested a modification to the proposal, as discussed in an order issued separately. See Securities Exchange Act Release No. 52501 (September 23, 2005). In addition, the commenter urged the Commission to address issues related to non-firm quotes that are outside the scope of these proposed rule changes.

<sup>11</sup> 15 U.S.C. 78f.

<sup>12</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>13</sup> 15 U.S.C. 78f(b)(5).

<sup>8</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.

accepting Linkage orders because access to such Participant Exchange's quote(s) is limited during such times. The Commission further believes that the Amex's existing rules establish appropriate procedures to notify promptly the affected Participant Exchange and Amex member firms of such removal and establish an appropriate standard for determining when to resume inclusion of the affected Participant Exchange's quote(s) in the Amex's NBBO.<sup>14</sup>

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-Amex-2005-066), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52501; File No. SR-BSE-2005-30]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving a Proposed Rule Change and Amendment No. 2 Thereto Relating to the Removal of Unreliable Quotes From the Exchange's Determination of the National Best Bid or Offer

September 23, 2005.

#### I. Introduction

On July 27, 2005, the Boston Stock Exchange, Inc. ("BSE"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change 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> to adopt a rule relating to the removal of unreliable quotes from the determination of the national best bid or offer ("NBBO"). The BSE filed Amendment No. 1 to the proposed rule change on August 5, 2005 and withdrew Amendment No. 1 on August 12, 2005. The BSE filed Amendment No. 2 to the proposed rule change on August 12, 2005.<sup>3</sup>

The proposed rule change, as amended, was published for comment in the **Federal Register** on August 24, 2005.<sup>4</sup> The Commission received one comment letter on the proposal.<sup>5</sup> This order approves the proposed rule change, as amended.

#### II. Description of the Proposed Rule Change

Pursuant to obligations to avoid trade-throughs under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan"),<sup>6</sup> the Boston Options Exchange ("BOX"), in general, filters certain orders to either trade on BOX, if the best BOX price is at the NBBO or, if the best BOX price is not at the NBBO, to access the best price for such orders through the intermarket option linkage ("Linkage").<sup>7</sup>

The BSE is proposing to add subsection (e) of Section 3 of Chapter XII of the BOX Rules to add provisions for declaring an away market's quotes in a particular class of options unreliable and to thereby exclude such quotes from BOX's NBBO determination when an away market: (i) Is disconnected from Linkage; (ii) disseminates non-firm quotes; or (iii) has other confirmed quoting problems. The BSE proposes to exclude unreliable quotes from BOX's NBBO determination, thereby including in BOX's NBBO determination only quotes that are reliable and accessible to investors. The BSE seeks only to exclude an away market's unreliable quotes in a particular option class from BOX's NBBO determination for the time that such quotes remain unreliable.

<sup>4</sup> See Securities Exchange Act Release No. 52296 (August 18, 2005), 70 FR 49689.

<sup>5</sup> See letter from Matthew Hinerfeld, Managing Director and Deputy General Counsel, Citadel Investment Group, L.L.C., on behalf of Citadel Derivatives Group LLC, to Jonathan G. Katz, Secretary, Commission, dated August 26, 2005 ("Citadel Letter").

<sup>6</sup> 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). Subsequently, upon separate requests by the Philadelphia Stock Exchange, Inc., the Pacific Exchange, Inc., and the BSE, the Commission issued orders 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 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

<sup>7</sup> See subsection (i) of Section 1 of Chapter XII of the BOX Rules.

#### III. Comment Summary

As noted above, the Commission received one comment letter on the proposal.<sup>8</sup> The commenter supported the proposal and recommended that the Commission approve it. However, the commenter suggested that the BSE modify its proposal to allow the BOX to determine that an away market is disconnected from Linkage without having to get confirmation from the away market that the away market is disconnected. The commenter cited "the need for immediate action" as the basis for suggesting that the BSE amend its proposal to allow the BOX to make its determination that a market is disconnected from Linkage without first obtaining confirmation from the away market.<sup>9</sup>

#### IV. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act<sup>10</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>11</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>12</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 a national market system, and, in general, to protect investors and the public interest. The Commission believes that it is appropriate for BOX to remove an away market's disseminated quotes from BOX's determination of the NBBO when such quotes are unreliable. The Commission further believes that the proposed rule change establishes reasonable procedures to determine the unreliability of an away market's quotes and to notify promptly the affected away market, and establishes an appropriate standard for determining when to resume inclusion of the

<sup>8</sup> See *supra* note 5.

<sup>9</sup> The Citadel Letter also addressed File No. SR-Amex-2005-066, a proposal to allow the American Stock Exchange LLC ("Amex") to exclude an away market's quotes from the Amex's determination of the NBBO when such away market is disconnected from Linkage. The commenter strongly supported Amex's proposal. In addition, the commenter urged the Commission to address issues related to non-firm quotes that are outside the scope of these proposed rule changes.

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 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).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> See Amex Rules 933(g) and 933(g)-ANTE.

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

<sup>16</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> Amendment No. 2 added clarifying language and corrected typographical and technical errors.