

11. Applicants submit that the bonus amount provisions are generally beneficial to Owners. The recapture provisions temper this benefit somewhat, but only if an Owner redeems his or her money under the circumstances described herein. While there would be a small downside in a declining market where an Owner would bear any losses attributable to the bonus amounts up to the maximum recapture amount percentage, it is the converse of the benefits an Owner would receive on the bonus amounts in a rising market. As any earnings on bonus amounts applied would not be subject to recapture and thus would be immediately available to an Owner, likewise any losses on bonus amounts would also not be subject to recapture and thus would be immediately available to an Owner. The bonus amount recapture provision does not diminish the overall value of the bonus amounts.

12. MLLIC's or MLNY's recapture of bonus amounts is designed to prevent anti-selection against it. The risk of anti-selection would be that an Owner could make significant premium payments into the Contract solely in order to receive a quick profit from the bonus amounts. By recapturing the bonus amounts, the Companies protect themselves against the risk that an Owner will make such large premium payments, receive the bonus amounts, and then withdraw his or her money from the Contract. The Companies generally protect themselves from this kind of anti-selection, and recover their costs in situations where an Owner withdraws his or her money early in the life of a Contract, by imposing a surrender charge. However, where an Owner withdraws his money during the Free Look Period or a death benefit is paid, the Companies do not apply this charge.

13. The Applicants seek relief herein not only for themselves with respect to the support of the Contracts, but also with respect to Future Accounts or Future Contracts described herein. The Applicants represent that the terms of the relief requested with respect to any Contracts or Future Contracts funded by the Separate Accounts or Future Accounts are consistent with the standards set forth in Section 6(c) of the Act and Commission precedent. The Commission has previously granted class relief (from certain specified provisions of the Act for separate accounts that support variable annuity contracts) that is materially similar to the relief described in the application.

14. In addition, the Applicants seek relief herein with respect to Future

Underwriters (*i.e.*, a class consisting of NASD member broker-dealers that may also act as principal underwriter of the Contracts and Future Contracts). The Commission has regularly granted relief to "future underwriters" that are not named, and are not affiliates of the applicants. The Applicants represent that the terms of the relief requested with respect to any Future Underwriters are consistent with the standards set forth in Section 6(c) of the Act and Commission precedent.

15. Applicants argue that without the requested class relief, exemptive relief for any Future Account, Future Contract, or Future Underwriter would have to be requested and obtained separately. These additional requests for exemptive relief would present no issues under the Act not already addressed herein. If the Applicants were to repeatedly seek exemptive relief with respect to the same issues addressed herein, investors would not receive additional protection or benefit, and investors and the Applicants could be disadvantaged by increased costs from preparing such additional requests for relief. The requested class relief is appropriate in the public interest because the relief will promote competitiveness in the variable annuity market by eliminating the need for the Companies to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. Elimination of the delay and the expense of repeatedly seeking exemptive relief would, the Applicants opine, enhance the Applicants' ability to effectively take advantage of business opportunities as such opportunities arise. The Applicants' request for class exemptions is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and that an order of the Commission including such class relief, should, therefore, be granted. Any entity that currently intends to rely on the requested exemptive order is named as an Applicant. Any entity that relies upon the requested order in the future will comply with the terms and conditions contained in the application.

Conclusion

Applicants submit that their request for an amended order meets the standards set out in Section 6(c) of the Act and that an order amending the Existing Order should, therefore, be granted.

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

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 54374; File No. SR-BSE-2005-09]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Its Minor Rule Violation Plan

August 28, 2006.

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 7, 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 Exchange. The Exchange filed Amendment No. 1 to the proposed rule change on July 7, 2006, and Amendment No. 2 on August 18, 2006.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange seeks to amend and make additions to its minor rule violation plan ("MRVP"). The text of the proposed rule change is available on the Exchange's Web site (<http://www.bostonstock.com/legal/index.html>), at the Exchange's principal office, 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 proposal, and discussed any comments it received on the proposed rule change. The text of these statements

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced and superseded the original filing, and Amendment No. 2 superseded and replaced Amendment No. 1.

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

The proposal modifies BSE Rule Chapter XXX ("Disciplining of Members—Denial of Membership") and BSE Rule Chapter XXXIV ("Minor Rule Violations") in several areas. Most notably, the Exchange proposes adding to BSE Rule Chapter XXX new language setting forth "Principal Considerations in Determining Sanctions." In addition, the Exchange proposes moving its Acceptance Waiver and Consent Procedures ("AWC") from BSE Rule Chapter XXXIV to BSE Rule Chapter XXX. The Exchange also proposes adding to BSE Rule Chapter XXX a "late charge" where a member fails to pay a fine on a timely basis. Also, BSE proposes clarifying language and restructuring of the fine levels of several existing rule violations listed in the MRVP, as well as the addition of a new paragraph addressing violations of the Exchange's rules governing the Intermarket Trading System ("ITS"). Each of these changes is discussed below.

The Exchange proposes three changes to BSE Rule Chapter XXX. First, the Exchange proposes new language setting forth "Principal Considerations in Determining Sanctions" by providing a list of factors to be considered when determining whether sanctions should be imposed. The purpose is to provide factors that should be considered in conjunction with the imposition of sanctions. The Exchange recognizes, as other exchanges have, that mitigating factors may exist in certain instances, and those circumstances should be considered when determining whether sanctions should be imposed. Second, the Exchange proposes moving the AWC currently provided in the MRVP to the Exchange's formal disciplinary procedures (BSE Rule Chapter XXX).⁴ When the AWC was initially proposed, the intent and application was for the AWC to apply to all disciplinary matters, not just minor rule violations. Therefore, the current placement has caused some confusion. In addition, the Exchange proposes to change the references to the "Chief Regulatory Officer" found in the original AWC to the "General Counsel or his/her

delegatee."⁵ Third, the Exchange proposes to provide a late charge where a member fails to pay a fine or fee on a timely basis.⁶

Furthermore, the Exchange proposes a number of changes to its MRVP. In Section 2(c) of BSE Rule Chapter XXXIV (Failure to Display Limit Orders), Section 2(f) (Floor Order Facilitation), Section 2(n) (Failure to Designate an Order (PPS)), and Section 2(o) (Dealings Outside of Exchange Operating Hours), the Exchange proposes to restructure the fine levels resulting from violations. The Exchange proposes to increase some of the fine amounts and provide for their application through a defined number of violations. Also, because existing Section 1 of BSE Rule Chapter XXXIV provides for formal disciplinary action at the discretion of the Exchange at any level of offense, the Exchange is not precluded from proceeding with more stringent action at any point, regardless of the listed fine levels. The Exchange represents that it is structuring its fines to address repeat offenses, so that fine levels increase as the number of offenses increase.

In Section 2(j) of BSE Rule Chapter XXXIV, the Exchange proposes adjusting the fine levels for short sale violations to increase as the number of violations increase and providing that offenses in excess of ten, over a 12-month rolling period, would result in formal disciplinary action. In so doing, the Exchange believes that the proposed change provides progressively significant punitive measures for short sale rule violations.

The Exchange also proposes the addition of a new MRVP provision establishing sanctions for violations of the Exchange's rules governing ITS. In the past, the Exchange has levied fines on its member specialists under Section 2(f) of BSE Rule Chapter XXXIV for the failure to execute valid ITS commitments. Now, in proposed Section 2(p) of BSE Rule Chapter XXXIV, the Exchange seeks to identify the failure to execute valid ITS commitments as its own specific offense, rather than continuing to enforce compliance through a broader "catch-all" provision of its MRVP. The Exchange believes that this new provision would impose liability for each violation, with progressively significant penalties as the number of violations increases.

⁵ The Exchange has recently undergone a restructuring. The General Counsel is now a member of the BSE Regulatory Department.

⁶ See proposed BSE Rule Chapter XXX, Section 11.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act⁷ in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, to remove impediments to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change, as amended, would 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 either solicited or received.

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 self-regulatory organization 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 proposal, 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. Please include File Number SR-2005-09 on the subject line.

⁴ See proposed BSE Rule Chapter XXX, Section 10.

⁷ 15 U.S.C. 78f(b)(5).

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-BSE-2005-09. 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 changes 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 will also be available for inspection and copying at the principal office of the BSE. 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 No. SR-BSE-2005-09 and should be submitted on or before September 22, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Nancy M. Morris,
Secretary.

[FR Doc. E6-14530 Filed 8-31-06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54364; File No. SR-BSE-2006-20]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1 and 3 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 5 To Create a New Electronic Trading Facility, the Boston Equities Exchange ("BeX"), To Be Operated by BSX Group, LLC

August 25, 2006.

I. Introduction

On May 5, 2006, 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, as amended ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change relating to the creation of a new electronic trading facility, the Boston Equities Exchange ("BeX"), which is owned and will be operated by BSX Group, LLC ("BSX"). On June 1, 2006, the BSE filed Amendment No. 1 to the proposed rule change.³ On June 15, 2006, the BSE filed Amendment No. 3 to the proposed rule change.⁴ The proposed rule change, as amended, was published for comment in the **Federal Register** on June 29, 2006.⁵ The Commission received no comments regarding the proposal, as amended. On August 25, 2006, the BSE filed Amendment Nos. 4 and 5 to the proposed rule change.⁶ This order approves the proposed rule change, as amended, grants accelerated approval to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 superseded and replaced the original filing in its entirety. Amendment No. 2 was withdrawn by BSE on June 9, 2006.

⁴ Amendment No. 3 superseded and replaced the original filing and Amendment No. 1 in their entirety.

⁵ See Securities Exchange Act Release No. 54035 (June 22, 2006), 71 FR 37135.

⁶ Amendment No. 5 replaced Amendment No. 4, which was withdrawn due to a technical problem in transmission. In Amendment No. 5, the BSE made changes to the proposed rule change to clarify its discussion of the BSX Operating Agreement and correct several inconsistencies between the description of the BSX Operating Agreement and the agreement's text. In addition, Amendment No. 5 amended proposed Section 6 of Chapter XVIII of the BSE Rules to align the cure period for a violation of the Ownership Concentration Limit with that contained in Section 8.5(b) of the BSX Operating Agreement. Amendment No. 5 also updated Schedule 2 of the BSX Operating Agreement to provide current information on the ownership interests of the BSX Members, and made other technical, non-substantive changes to the proposed rule change.

Amendment No. 5 to the proposed rule change, and solicits comments from interested persons on Amendment No. 5.

II. Description of the Proposal*A. Overview*

The Exchange proposes to establish a new electronic trading facility,⁷ BeX, for the use of BSE members, including the new category of "Electronic Access Members" ("EAMs"),⁸ and their customers. BeX is owned and will be operated by BSX, of which the Exchange is currently a majority owner. The Exchange seeks the Commission's approval of the proposed governance structure of BSX as reflected in the amended and restated operating agreement of BSX⁹ ("BSX Operating Agreement"),¹⁰ and changes to its Constitution to provide for EAMs and to its Constitution and rules to further transfer and ownership provisions of the BSX Operating Agreement. Separately, the Commission is approving the trading rules governing the first phase of the BeX trading system.¹¹

⁷ Pursuant to Section 3(a)(2) of the Act, the term "facility" when used with respect to an exchange, includes "its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service." 15 U.S.C. 78c(a)(2).

⁸ The term "EAMs" is used herein to signify both Electronic Access Members and Electronic Access Memberships, as applicable.

⁹ The rules of an exchange, as defined in Section 3(a)(27) of the Act, 15 U.S.C. 78c(a)(27), include the constitution of the exchange, its articles of incorporation, bylaws, and rules. Thus, any changes to these BSE instruments need to be filed pursuant to Section 19(b) of the Act and Rule 19b-4 thereunder. The operating agreement of the BSX is the organizational document of BSX, not the BSE. Nevertheless, certain provisions in agreements of this nature may be deemed the rules of an exchange when they are the stated policies, practices, and interpretations, as defined in Rule 19b-4 under the Act, of the exchange. Any proposed rule or any proposed change in, addition to, or deletion from any such rules of an exchange must be filed pursuant to Section 19(b) of the Act and Rule 19b-4 thereunder.

¹⁰ Unlike a corporation's charter or bylaws, the BSX Operating Agreement is a signed contract among the Members of BSX. These Members are currently the sole owners, or "unitholders," of BSX. While ownership interests in a corporation are generally referred to as "shares" or "stock," ownership interests in an LLC are referred to as "units." See *infra* note 16 and accompanying text for a definition of "Member," as used in the BSX Operating Agreement.

¹¹ See Securities Exchange Act Release No. 54365 (August 25, 2006). The Commission notes that the BSE has filed another proposed rule change setting forth proposed rules to implement the second phase of BeX and to comply with the Commission's

Continued

⁸ 17 CFR 200.30-3(a)(12).