

Dated: May 6, 2005.

**Ethel D. Briggs,**

*Executive Director.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51651; File No. SR-BSE-2005-01]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change, and Amendment No. 1 Thereto, Relating to the Price Improvement Period Under the Rules of the Boston Options Exchange Facility

May 3, 2005.

On January 4, 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 to modify the rules of the Boston Options Exchange Facility ("BOX") relating to the BOX's Price Improvement Period (the "PIP"). On March 22, 2005, the BSE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on March 29, 2005.<sup>4</sup> The Commission received no comments on the proposal. This Order approves the proposed rule change, as amended.

The BSE proposes to amend the BOX Rules to eliminate certain restrictions on the ability of Order Flow Providers, Market Makers, and Public Customers to participate in the PIP. The proposal would allow Order Flow Providers to submit "Improvement Orders"<sup>5</sup> to the PIP on behalf of Public Customers through any type of instruction they wish to accept, so long as the Improvement Order is identified as a Public Customer Order when it is submitted.<sup>6</sup> The BSE also proposes to

eliminate the current requirement that an Options Participant<sup>7</sup> that is not assigned as a Market Maker in the relevant class that wishes to participate in a PIP must have an order on the BOX Book for its proprietary account equal to the best BOX price before the PIP commences (unless the participant submitted the Primary Improvement Order<sup>8</sup> or holds a Customer PIP Order). In addition, the BSE proposes to eliminate all references to "PIP Proprietary Orders" because, under the proposal, all Options Participants (except for the Order Flow Provider or Market Maker that submits the relevant Primary Improvement Order to the PIP) would now be able to submit Improvement Orders for their proprietary accounts without the above restrictions, and as such, this separate order type would no longer be necessary.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>9</sup> and, in particular, the requirements of Section 6(b) of the Act<sup>10</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,<sup>11</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

rounded five cent or ten cent increments, as appropriate, at which the order is to be placed in the BOX Book (the "BOX Book Reference Price"); and a specific price stated in one cent increments at which the Public Customer wishes to participate in any PIP that may occur while his order is on the BOX Book. A Customer PIP Order can participate in a PIP only if the BOX Book Reference Price is equal to the best BOX price at the time a PIP commences. See further at Section 18(g) of Chapter I of the BOX Rules.

<sup>7</sup> An "Options Participant" is a firm or organization that is registered with the Exchange for purposes of participating in options trading on the BOX as an Order Flow Provider or Market Maker. See Section 1(40) of Chapter I of the BOX Rules.

<sup>8</sup> When an Options Participant submits a Customer Order to the PIP, the Options Participant also submits a matching contra order, the "Primary Improvement Order," on the opposite side of the market than that of the Customer Order, and at a higher bid (lower offer) than that of the national best bid or offer (NBBO) at the time of the commencement of the PIP.

<sup>9</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>11</sup> 15 U.S.C. 78f(b)(5).

system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change will increase opportunities for Public Customers and BOX Options Participants to participate in the PIP, and should thereby enhance competition and the possibility of price improvement for Customer Orders submitted to the PIP.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-BSE-2005-01), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Docket No. 34-51658; File No. SR-NASD-2005-033]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change Relating to Taping Rule "Opt Out" and Exemption Provisions

May 5, 2005.

On March 22, 2005, the National Association of Securities Dealers, Inc. ("NASD") 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 to amend paragraph (L) of NASD Rule 3010(b)(2) ("Taping Rule"). The proposed rule change would (1) require member firms that are seeking an exemption from the Taping Rule to submit their exemption requests to NASD within 30 days of receiving notice from NASD or obtaining actual knowledge that they are subject to the provisions of the Taping Rule and (2) clarify that firms that trigger application of the Taping Rule for the first time can elect to either themselves of the one-time "opt out provision" or seek an exemption from the Taping Rule, but they may not seek both options.<sup>3</sup> The proposal also

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</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> According to the NASD, it will announce the effective date of the proposed rule change in a Notice to Members ("NTM") to be published no later

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

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

<sup>3</sup> Amendment No. 1 superseded and replaced the original filing in its entirety.

<sup>4</sup> See Securities Exchange Act Release No. 51418 (March 23, 2005), 70 FR 15955.

<sup>5</sup> Generally, an "Improvement Order" is an order submitted to the PIP to compete on the contra side for a Customer Order entered into the PIP under the procedures detailed in Section 18 of Chapter I of the BOX Rules. Improvement Orders are submitted in increments of one cent, as set forth with additional clarity in the proposed rule change.

<sup>6</sup> Currently, a public customer may participate in a PIP only if it has provided an Order Flow Provider with a "Customer PIP Order," an order that includes a specific order size; a price stated in

replaced, as a technical change, several references to "Association" and "NASD Regulation" in NASD Rule 3010(b)(2) with "NASD."

The proposed rule change was published for comment in the **Federal Register** on April 4, 2005.<sup>4</sup> The Commission received no comments on the proposed rule change.

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 association,<sup>5</sup> and, in particular, the requirements of Section 15A of the Act<sup>6</sup> and the rules and regulations thereunder. The Commission specifically finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act<sup>7</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change should ensure that members use the opt and exemption provisions of the Taping Rule consistent with the investor protection concerns that the Taping Rule is intended to address.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (File No. SR-NASD-2005-033) be, and it hereby 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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than 60 days following Commission approval. The effective date would be 30 days following publication of the *NtM* announcing Commission approval.

<sup>4</sup> See Securities Exchange Act Release No. 51434 (March 24, 2005), 70 FR 17134.

<sup>5</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78o-3.

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

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

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

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51661; File No. SR-NYSE-2005-15]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc. Relating to Elimination of Exchange Rules 499 and 501A

May 5, 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 February 9, 2005, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The proposed rule change has been filed by the NYSE as a "non-controversial" rule change pursuant to Rule 19b-4(f)(6) under the Act.<sup>3</sup> On March 16, 2005, NYSE filed Amendment No. 1 to the proposed rule change.<sup>4</sup> On April 22, 2005, NYSE filed Amendment No. 2 to the proposed rule change.<sup>5</sup> 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 proposes to eliminate NYSE Rules 499 and 501A. NYSE Rule 499 relates to the same requirements set out in Sections 801.00 to 804.00 of the Exchange's Listed Company Manual (the "LCM") and NYSE Rule 501A restates Section 12(d) of the Act.<sup>6</sup> The Exchange also proposes to eliminate references to NYSE Rule 499 in Section 801.00 of the NYSE LCM. The text of the proposed rule change is available on the NYSE's Web site (<http://www.nyse.com>), at the NYSE's Office of the Secretary, and at the Commission's Public Reference Room.

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> In Amendment No. 1, NYSE clarified that NYSE Rule 499 has not been updated to reflect all of the current requirements of Sections 801.00 through 804.00 of the NYSE Listed Company Manual.

<sup>5</sup> Amendment No. 2 superseded the originally-filed proposed rule change and Amendment No. 1 in their entirety.

<sup>6</sup> 15 U.S.C. 78l(d).

#### 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 IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to eliminate NYSE Rules 499 and 501A. NYSE Rule 499 (Suspension from Dealings or Removal from List by Action of the Exchange) sets forth the requirements for the continued listing of securities on the NYSE, as well as the procedures for delisting securities that do not meet the continued listing criteria. These requirements and procedures are also set forth as NYSE Listed Company Manual Sections 801.00 through 804.00, although NYSE Rule 499 has not been updated to reflect all of the current requirements of Sections 801.00 through 804.00. For example, NYSE Rule 499 Supplementary Material .20, Numerical and Other Criteria, Item 8—REITS sets forth a quantitative continued listing standard for REITs of \$30,000,000 in both total market capitalization and stockholders' equity. For purposes of the equivalent Listed Company Manual Section 802.01 requirement, this standard was amended in July 1999<sup>7</sup> and June 2001<sup>8</sup> so that the current continued financial listing standard for REITs is average market capitalization over 30 consecutive trading days of at least \$15,000,000. Another example of the outdated nature of NYSE Rule 499 is Supplementary Material .20, Numerical and Other Criteria, Item 17—"A Class of Non-Voting Common Stock is Created." This item was actually eliminated from Section 802.01D of the Listed Company Manual in 1996.<sup>9</sup>

<sup>7</sup> See Securities Exchange Act Release No. 42194 (December 1, 1999), 64 FR 69311 (December 10, 1999) (File No. SR-NYSE-99-29).

<sup>8</sup> See Securities Exchange Act Release No. 44481 (June 27, 2001), 66 FR 35303 (July 3, 2001) (File No. SR-NYSE-2001-02).

<sup>9</sup> See Securities Exchange Act Release No. 37238 (May 22, 1996), 61 FR 27123 (May 30, 1996) (File No. SR-NYSE-96-06).