

Now that the Nasdaq exchange registration application has been approved,<sup>9</sup> the Commission is approving the amendments detailed in Category 1 of Amendment 13, as published in the **Federal Register**.<sup>10</sup>

The Commission received one comment letter on the 13th Amendment from BrokerageAmerica ("BA").<sup>11</sup> However, this comment letter discussed changes proposed in Categories 2, 3, and 4 of Amendment 13, and the comment letter was discussed fully in the Partial Temporary Approval of Amendment No. 13.<sup>12</sup>

The Commission finds that the Category 1 changes included in the 13th Amendment are consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, Section 12(f)<sup>13</sup> and Section 11A(a)(1)<sup>14</sup> of the Act and Rules 601 and 608 thereunder.<sup>15</sup> Section 11A of the Act directs the Commission to facilitate the development of a national market system for securities, "having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets," and cites as an objective of that system "fair competition \* \* \* between exchange markets and markets other than exchange markets."<sup>16</sup> When the Commission first approved the Plan on a pilot basis, it found that the Plan "should enhance market efficiency and fair competition, avoid investor confusion, and facilitate surveillance of concurrent exchange and OTC trading."<sup>17</sup> The Commission believes

unless the sponsors of such amendment consent to an extension. The sponsors of the 13th Amendment consented to final action on the Category 1 amendments being contingent upon a subsequent trigger event. See letter from Jeffrey T. Brown, Chairman, Operating Committee, to Jonathan G. Katz, Secretary, Commission, dated May 30, 2002 ("13th Amendment Filing").

<sup>9</sup> See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

<sup>10</sup> See *supra* note 4, 13th Amendment Notice.

<sup>11</sup> See letter from Sam Guidetti, Senior Vice President & Chief Compliance Officer, BrokerageAmerica, to Jonathan Katz, Secretary, Commission, dated September 17, 2002.

<sup>12</sup> See *supra* note 7.

<sup>13</sup> 15 U.S.C. 78(f). The Commission finds that extending the Plan is consistent with fair and orderly markets, the protection of investors and the public interest, and otherwise in furtherance of the purposes of the Act. The Commission has taken into account the public trading activity in securities traded pursuant to the Plan, the character of the trading, the impact of the trading of such securities on existing markets, and the desirability of removing impediments to, and the progress that has been made toward the development of a national market system.

<sup>14</sup> 15 U.S.C. 78k-1(a)(1).

<sup>15</sup> 17 CFR 242.601 and 17 CFR 242.608.

<sup>16</sup> 15 U.S.C. 78k-1(a).

<sup>17</sup> See Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990).

that amending the Plan to incorporate the amendments detailed in Category 1 of Amendment 13 furthers these goals.

*It is therefore ordered*, pursuant to Sections 12(f) and 11A of the Act<sup>18</sup> and paragraph (b)(4) of Rule 608 thereunder,<sup>19</sup> that the operation of the Plan, as modified by the amendments detailed in Category 1 of Amendment 13 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53244; File No. SR-Amex-2006-003]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto To Adjust the Close of Normal Trading Hours in Equity Options and Narrow-Based Index Options

February 7, 2006.

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 January 5, 2006, the American Stock Exchange LLC ("Amex" 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 Amex. On January 31, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to approve the amended proposal on an accelerated basis.

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

The Amex proposes to amend Exchange Rules 1, 918—ANTE, 936C—ANTE and 903C to adjust the close of normal trading hours in equity options

<sup>18</sup> 15 U.S.C. 78(f) and 15 U.S.C. 78k-1.

<sup>19</sup> 17 CFR 242.608(b)(4).

<sup>20</sup> 17 CFR 200.30-3(a)(27).

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

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

<sup>3</sup> In Amendment No. 1, the Exchange requested that the implementation date for the new closing time be changed from February 1, 2006, as was originally proposed, to February 13, 2006.

and options based on stock index industry groups ("narrow-based index options") from 4:02 p.m. eastern time ("e.t.") to 4 p.m. e.t. The Exchange proposes that these changes be implemented on February 13, 2006.<sup>4</sup> The text of the proposed rule change, as amended, is available on the Amex's Web site at (<http://www.amex.com>), at the Amex's Office of the Secretary, 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 proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item III 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

###### 1. Purpose

According to the Exchange, the purpose of the proposed rule change, as amended, is to amend the Amex's rules to conform to an industry-wide consensus to change the close of trading hours for equity options and narrow-based index options from 4:02 p.m. e.t. to 4 p.m. e.t. After the change, the time of the close of trading in these Amex options will correspond to the normal time set for the close of trading on the primary exchanges listing the stocks underlying the Amex options. The primary exchanges generally close at 4 p.m. e.t.

The Exchange notes that, on May 14, 1997, the Amex received approval to move the close of equity options trading from 4:10 p.m. to 4:02 p.m.<sup>5</sup> The change was prompted by improvements in the dissemination of closing prices in the underlying securities, the limited ability of public customers to reach as quickly as professional traders news announcements in the last ten minutes of trading, and the difficulties experienced by options specialists and

<sup>4</sup> *Id.*

<sup>5</sup> See Securities Exchange Act Release No. 38640 (May 14, 1997), 62 FR 28081 (May 22, 1997). According to the Exchange, from 1978 through 1997, equity options were traded until 4:10 p.m. to allow investors to trade options based upon the final closing prices of the underlying securities.

registered options traders to make orderly markets without the ability to hedge or otherwise offset market risk with transactions in the underlying stock.

The rationale to continue trading options for a period of time after the close of trading on the primary markets for the underlying securities was that the extended time period allowed options traders to respond to later reports of closing prices over the consolidated tape. If the price of a late reported trade on an underlying security was substantially different from the previous reported price, the extended trading session would give options traders the opportunity to bring options quotes in line with the closing price of the underlying security.

However, the Exchange submits that because of technological advances in the processing and reporting of transactions, this two minute time period is no longer necessary to trade options after the underlying securities close trading. Additionally, price aberrations can occur if an option is traded when the underlying stock is no longer trading, since there is a close relationship in the price of the underlying stock and the overlying options. As a result, it is difficult for the market to price options accurately when the underlying security is not trading.

The Exchange also proposes to change the closing time for narrow-based index options, as defined in Amex Rule 900C, because such indexes are subject to the same pricing problems as options on individual stocks. A significant news announcement on one component of a narrow-based index could have a significant effect on that index. The Exchange is not at this time proposing to change the closing time of 4:15 p.m. for options on a broad-based index, as defined in Amex Rule 900C, because it is unlikely that a significant news announcement by the issuer on one component stock of a broad-based index is likely to have a significant effect on the price of that broad-based index.

The Exchange notes that all options exchanges have determined to make similar uniform changes to their rules, to modify the closing time in equity options and narrow-based index options from 4:02 p.m. e.t. to 4 p.m. e.t. on a coordinated basis. These industry-wide changes are proposed to be effective on February 13, 2006.<sup>6</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is

consistent with section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>8</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms 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 Amex does not believe that the proposed rule change, as amended, will 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 solicited or received with respect to the proposed rule change, as amended.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, 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 at (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2006-003 on the subject line.

### *Paper Comments*

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

All submissions should refer to File Number SR-Amex-2006-003. 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

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

<sup>8</sup> 15 U.S.C. 78f(b)(5). The statutory basis with which the Exchange believes that the proposed rule change is consistent has been corrected from Section 6(b)(4) of the Act to Section 6(b)(5) of the Act. Telephone conversation between Nyjeri Nazarian, Assistant General Counsel, Amex, and Johnna B. Dumler, Attorney, Division of Market Regulation, Commission, on January 11, 2006.

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 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 Section. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. 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-2006-003 and should be submitted on or before March 8, 2006.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, 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> In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,<sup>10</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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 notes that the Exchange believes that the need to continue trading options for some period of time after the close of trading in the underlying securities markets is no longer necessary because improvements in the processing and reporting of transactions have obviated

<sup>9</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>10</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> See Amendment No. 1, *supra* note 3.

the need to respond to late reports of closing prices over the consolidated tape in order to bring options quotes in line with the closing price of the underlying security. Moreover, the Exchange believes that allowing two additional minutes of options trading after trading on the underlying primary exchanges has ended may actually result in pricing aberrations. Because the two minute delay between the close of normal trading in equity options and narrow-based index options and the corresponding underlying equity markets is no longer necessary, the Commission believes that eliminating the delay is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets. Therefore, the Commission finds that it is consistent with the Act for the Exchange to amend its rules to change the close of normal trading hours in equity and narrow-based index options from 4:02 p.m. (e.t.) to 4 p.m. (e.t.).

The Commission finds good cause for approving this proposed rule change, as amended, before the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission notes that all of the options exchanges have filed substantially similar proposals and seek to implement these industry-wide changes simultaneously on February 13, 2006.<sup>11</sup> For example, on December 20, 2005, the Commission published for comment in the **Federal Register** a similar proposed rule change submitted by the Chicago Board Options Exchange, Incorporated (“CBOE”).<sup>12</sup> The Commission received no comments on the CBOE’s proposed rule change. The Commission believes that the Amex’s proposed rule change, as amended, raises no new issues or novel regulatory questions. Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,<sup>13</sup> for approving the proposed rule change, as amended, prior to the thirtieth day after publication in the **Federal Register**. In addition, because the existence of dissimilar closing times among the options exchanges could lead to confusion for options investors and broker-dealers, the Commission finds good cause to accelerate approval of the proposed rule change, as amended, to enable the six options exchanges to simultaneously amend their hours of

trading on an industry-wide basis in a uniform manner.<sup>14</sup>

## V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change and Amendment No. 1 thereto (SR-Amex-2006-003) be, and hereby are, approved on an accelerated basis.

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

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53245; File No. SR-BSE-2006-02]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto To Amend and Clarify Its Rules Governing the Hours of Trading on the Boston Options Exchange

February 7, 2006.

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 January 11, 2006, 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 and II below, which Items have been prepared by the BSE. On February 2, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to approve the amended proposal on an accelerated basis.

<sup>14</sup> The Commission notes that it is simultaneously approving similar proposals from the other options exchanges. See Securities Exchange Act Release Nos. 53245 (SR-BSE-2006-02); 53446 (SR-CBOE-2005-104); 53248 (SR-ISE-2005-58); 53249 (SR-PCX-2005-138); and 53247 (SR-Phlx-2006-01) (February 7, 2006).

<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> In Amendment No. 1, the Exchange requested that the implementation date for the new closing time be changed from February 1, 2006, as was originally proposed, to February 13, 2006.

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

The BSE proposes to amend and clarify its rules governing its hours of trading on the Boston Options Exchange (“BOX”). The Exchange proposes that these changes be implemented on February 13, 2006.<sup>4</sup> The text of the proposed rule change, as amended, is available on the BSE’s Web site (<http://www.bostonstock.com>), at the principal office of the BSE, 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 proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item III 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

#### 1. Purpose

According to the Exchange, the purpose of the proposed rule change, as amended, is to amend and clarify its rules with respect to the hours of trading on BOX. Currently, Chapter V, Section 3(a) of BOX’s rules states that the Boston Options Exchange Regulation LLC (“BOXR”) Board shall determine the days BOX shall be open for options business and the hours of such days during which options transactions may be made on BOX. When BOX launched trading in February of 2004, the BOXR Board set the closing time for the hours of business for options trading on individual stocks at 4:02 p.m. e.s.t. to conform to the business hours of the other five options exchanges.<sup>5</sup> It is the BSE’s understanding that all of the options exchanges collectively have determined to change their rules to adjust the closing time in options on individual stocks from 4:02 p.m. e.s.t. to

<sup>4</sup> *Id.*

<sup>5</sup> According to the Exchange, the BOXR Board has also set the hours of business for options on Fund Shares, as defined in Chapter 4, Section 3(i) of BOX Rules, to be 4:15 p.m. e.s.t.

<sup>11</sup> See note 14, *infra*.

<sup>12</sup> See Securities Exchange Act Release No. 52949 (December 13, 2005), 70 FR 75513 (December 20, 2005) (SR-CBOE-2005-104). See also Securities Exchange Act Release No. 53055 (January 5, 2006), 71 FR 2279 (January 13, 2006) (SR-ISE-2005-58).

<sup>13</sup> 15 U.S.C. 78s(b)(2).