

the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-2003-81 and should be submitted by November 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48650; File No. SR-BSE-2003-19]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to the LLC Operating Agreement of the Proposed New Exchange Facility To Be Operated by the Boston Options Exchange Group LLC

October 17, 2003.

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 October 16, 2003, 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

As discussed in detail in the BOX Proposing Release,³ the BSE proposes to establish rules for BOX,⁴ a new Exchange facility, as that term is defined in Section 3(a)(2) of the Act.⁵ BOX would be operated by Boston Options

Exchange Group LLC ("BOX LLC"), a Delaware limited liability company ("LLC"). The BSE is filing the Operating Agreement of BOX LLC ("Operating Agreement" or "Agreement") to establish BOX LLC's governance and operating authority for the facility. The Operating Agreement functions as the source of the company's governance and operating authority and, therefore, functions in a similar manner as by-laws or articles of incorporation function for a corporation. The BSE is requesting confidential treatment of the sections of the Operating Agreement which are confidential business information and which do not relate to the control and governance of BOX LLC. The redacted text of the Operating Agreement appears below; redacted portions are noted in brackets.

* * * * *

Boston Options Exchange Group LLC
Second Amended and Restated
Operating Agreement

This AMENDED AND RESTATED OPERATING AGREEMENT is made as of July 25, 2003, by and among Bourse de Montreal Inc., a company incorporated in Quebec, Canada (the "Bourse"), Boston Stock Exchange, Inc., a company incorporated in Delaware, USA ("BSE"), Interactive Brokers Group LLC, a limited liability company organized under the laws of Connecticut ("IB"), Boston Options Exchange Group LLC, a limited liability company organized under the laws of Delaware ("BOX") and all other Persons who become a party hereto as Members of BOX in accordance with the terms hereof, for the purpose of recording their agreement regarding the affairs of BOX and the conduct of its business.

WHEREAS, on January 16, 2002 the Bourse, BSE and IB caused a Certificate of Formation (the "Certificate") in the form of *Exhibit 1* hereto to be filed with the Office of the Secretary of State of the State of Delaware for the purpose of commencing the existence of BOX pursuant to the Act (as defined below);

WHEREAS, the Bourse, BSE, and IB formed BOX for the purpose of developing and operating an electronic market as a facility of the BSE for trading (i) options on Individual U.S. Equities, U.S. equity indices and U.S. Exchange traded funds and (ii) single stock futures; and

WHEREAS, subsequent to the execution of this Agreement, it is anticipated that BOX will enter into each of the Related Agreements;

WHEREAS, the Bourse, BSE, IB and BOX are parties to that certain Operating Agreement of BOX, dated as

of January 17, 2002 (the "Original Operating Agreement"), as amended by an Amended and Restated Operating Agreement dated as of June 21, 2002 (the "Amended Operating Agreement"); and

WHEREAS, the Members desire to amend and restate the Amended Operating Agreement upon the terms and conditions hereinafter set forth.

Accordingly, the parties hereby agree to amend and restate the Amended Operating Agreement as follows:

Article 1—Definitions

1.1 *Certain Defined Terms:* As used in this Agreement, the following capitalized terms have the following meanings.

"Act" means the Delaware Limited Liability Company Act, 6 Del. G.L. § 18-101, *et seq.*, as amended and in effect from time to time, and any successor statute.

"Additional Capital Contribution" means any Capital Contribution effected after completion of the Initial Capital Contributions pursuant to Section 7.3 hereof.

"Advisors" means, with respect to any Person, any of such Person's attorneys, accountants or consultants.

"Affiliate" means, with respect to any Person, any other Person controlling, controlled by or under common control with, such Person. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise with respect to such Person. A Person is presumed to control any other Person, if that Person: (i) Is a director, general partner, or officer exercising executive responsibility (or having similar status or performing similar functions); (ii) directly or indirectly has the right to vote 25 percent or more of a class of voting security or has the power to sell or direct the sale of 25 percent or more of a class of voting securities of the Person; or (iii) in the case of a partnership, has contributed, or has the right to receive upon dissolution, 25 percent or more of the capital of the partnership.

"Agreement" means this Operating Agreement, including all exhibits and schedules hereto, as amended, restated or supplemented from time to time.

"Bankruptcy" has the meaning ascribed thereto in Section 18-304 of the Act.

"Board" has the meaning set forth in Section 4.1 hereof.

"Bourse" has the meaning set forth in the preamble.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 47186 (January 14, 2003), 68 FR 3062 (January 22, 2003) (SR-BSE-2002-15) ("BOX Proposing Release").

⁴ The term "BOX" means the Boston Options Exchange or Boston Stock Exchange Options Exchange, an options trading facility of the Exchange under Section 3(a)(2) of the Act. See proposed BOX Rules, Chapter I, *General Provisions*, § 1(a)(6) (definition of "BOX").

⁵ 15 U.S.C. 78c(a)(2).