

contract at the time of the exchange. The broker/dealers that will be making recommendations to their customers regarding these offers are required to satisfy the suitability requirements. Therefore, while tacking is not present, the investor protection afforded by the suitability requirements imposed upon the broker/dealer and the additional disclosure will be.

10. By this Application, Applicants are seeking a "level playing field" to permit Lincoln to compete with offers of competitors to its longstanding contract owners. Absent the requested relief, there can be no such offers, as imposition of the Rule 11a-2 tacking requirement would make it unfeasible for the offers to be made.

11. Applicants assert that approval of the terms of the exchange offer is warranted, among other reasons, because it will promote competition in the variable annuity marketplace. Such approval will foster competition by allowing Lincoln Life to make an offer to its own contract owners that would provide an attractive additional option for contract owners' consideration.

#### Applicants' Conditions

If the requested order is granted, Applicants consent to the following conditions, which are intended to support the understanding that the 2% Bonus Exchange Offer is being made to contract owners who expect to persist:

1. The Offering document will contain concise, plain English statements that:

(a) the 2% Bonus Exchange Offer is suitable only for contract owners who expect to hold their contracts as long term investments; and

(b) if the new contract is surrendered during the initial surrender charge period:

i. the 2% bonus may be more than offset by the surrender charge; and  
ii. the contract owner may be worse off than if he or she had rejected the exchange offer.

2. The Offering Document will disclose in concise, plain English each aspect of the New Contract that will be less favorable than the Old Contract, including the fact that the MultiFund® 5 Contract has a lower, guaranteed minimum interest rate for investments in the fixed account than the MultiFund® 2, 3, and 4 Contracts.

3. Lincoln Life will send the Offering Document directly to eligible contract owners. A contract owner choosing the exchange offer will then complete and sign an internal exchange form, which will prominently restate in concise, plain English the statements required in Condition No. 1, and will return it to Lincoln Life. If the internal exchange

form is more than two pages long, the statements referred to in Condition No. 1 will be restated in a separate document, and Lincoln Life will obtain the contract owner's acknowledgement of receipt of that document.

4. Lincoln Life will maintain the following separately identifiable records in an easily accessible place, for the time periods specified below in this Condition No. 4 for review by the Commission upon request:

(a) Records showing the level of acceptances of the exchange offer and how these acceptances relate to the total number of contract owners eligible to participate in the offers (quarterly as a percentage of the number eligible);

(b) Copies of any form of Offering Document and any other written materials or scripts for presentations by representatives regarding the exchange offer that Lincoln Life either prepares or approves, including the dates that such Offering Document and materials were used;

(c) Records containing information about each exchange transaction that occurs, including the name of the contract owner, Old and New Contract numbers; the amount of surrender charge waived on surrender of the Old Contract; bonus paid; the name and CRD number of the registered representative soliciting the exchange, firm affiliation, branch office address, telephone number, and the name of the registered representative's broker-dealer; commission paid; the internal exchange form (and separate acknowledgement, if any) showing the name, date of birth, address, and telephone number of the contract owner and the date the internal exchange form (or separate acknowledgement) was signed; amount of contract value exchanged; and persistency information relating to the New Contract, including the date of any subsequent surrender and the amount of surrender charge paid on the surrender; and

(d) Logs showing a record of any contract owner complaint about the exchange; state insurance department inquiries about the exchange; or litigation, arbitration or other proceeding regarding any exchange. The logs will include the date of the complaint or commencement of the proceeding, name and address of the person making the complaint or commencing the proceeding, nature of the complaint or proceeding, and the persons named or involved in the complaint or proceeding.

Applicants will retain records specified in (a) and (d) for a period of six years after the date the records are created, records specified in (b) for a

period of six years after the date of last use, and records specified in (c) for a period of two years after the date that the initial surrender charge period of the New Contract ends.

#### Conclusion

For all the reasons discussed above, Applicants submit that (1) the 2% Bonus Exchange Offer offers substantial benefits to contract owners, will be advantageous for the great majority of owners to whom it will be offered, and does not contravene any policy or purpose of Section 11, and (2) approval of Applicants' offer of the exchange offer as described, and subject to the conditions set forth in this Application, is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Therefore, Applicants respectfully submit that the Commission should grant the approval sought by this Application.

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

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 03-26040 Filed 10-14-03; 8:45 am]

BILLING CODE 8010-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48596; File No. SR-BSE-2003-08]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Boston Stock Exchange, Inc. Relating to the Exchange's Instant Liquidity Access Service for Certain Limit Orders

October 7, 2003.

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 July 14, 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. On September 8, 2003, the Exchange submitted an amendment to the filing.<sup>3</sup>

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

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

<sup>3</sup> See letter from John Boese, Vice President, Legal and Compliance, BSE, to Nancy Sanow, Assistant Director, Division of Market Regulation,

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

The Exchange proposes to add provisions to its rules governing a new service that will provide for the instant execution of certain limit orders of a specified size. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

#### Chapter I

#### Definitions

#### Sec. 3.

##### *Instant Liquidity Access ("ILA") Order*

An ILA order is a round-lot limit order of no less than 100, nor more than 1000, shares priced at the Exchange's published offer (in the case of a buy) or at the Exchange's published bid (in the case of an order to sell), which a member or member-organization has entered for immediate execution in accordance with, and to the extent provided by, Chapter XXXIII, Section 8 (Instant Liquidity Access) of these Rules.

\* \* \* \* \*

#### Chapter XXXIII

#### Beacon

Sec. 8. [Year 2000 testing] *Instant Liquidity Access* (a) Each member and member organization shall participate in testing of computer systems designed to prepare for Year 2000, in a manner and frequency prescribed by the Exchange, and shall provide to the Exchange reports related to such testing as requested by the Exchange.

(b) The Exchange may exempt a member or member organization from this requirement if that member cannot be accommodated in the testing schedule by the organization conducting the test, if the member does not employ computers in its business, or for other good reasons.

Commission, dated September 5, 2003 ("Amendment No. 1"). In Amendment No. 1, the BSE: (1) Clarified that the proposal is substantially similar to the New York Stock Exchange, Inc. ("NYSE") rule related to the NYSE's Direct+ execution functionality; (2) corrected typographical errors in the purpose section; (3) clarified how trades will be reported to the Consolidated Tape Association; (4) noted that the proposed rule will be replacing an obsolete BSE rule related to year 2000 testing; and (5) and inserted a cross reference to other BSE rules that clarify instances in which BSE published quotes might not be "firm."

(c) Every member of the Exchange that clears securities transactions on behalf of other broker-dealers must take reasonable measures to ensure that each broker-dealer for which it clears securities transactions conducts testing with such member.

Adopted.

December 31, 1998.]

*This section applies to the facilitation of orders through Instant Liquidity Access, a mechanism offered by the Exchange. All other provisions of the Constitution and Rules of the Exchange are applicable unless superseded by this section.*

(a) *Only straight limit orders without tick restrictions are eligible for entry as instant execution or Instant Liquidity Access ("ILA") orders. ILA orders to buy shall be priced at the price of the published BSE offer. ILA orders to sell shall be priced at the price of the BSE bid. An ILA order shall receive an immediate, instant execution against orders reflected in the Exchange's published quotation and shall be immediately reported as BSE transactions, unless:*

(i) *the BSE's published quotation is not firm (in accordance with Rule 11Ac1-1 of the Act, as set forth in these Rules in Chapter III, "Dealings on the Exchange", Section 7, "Dissemination of Quotations");*

(ii) *the primary market's published quotation is spread away from the BSE quotation in an amount, as determined by the Market Performance Committee of the Exchange, which would warrant curtailing the availability of instant executions in a particular security (currently \$0.25). Such an amount can be altered by the Market Performance Committee, as market conditions warrant, from time to time;*

(iii) *with respect to a single-sided ILA order, a better price exists in another ITS participating market center;*

(iv) *with respect to a single-sided ILA order, the BSE's published bid or offer is 100 shares;*

(v) *trading in the subject security has been halted;*

(vi) *the primary market has executed a block size trade at a price inferior to the BSE bid or offer.*

*ILA orders that cannot be immediately executed shall be cancelled.*

(b) *Availability of ILA feature. ILA orders in a particular stock shall be eligible to receive an instant execution if entered after the Exchange has disseminated a published bid or offer in that stock until 4:00 p.m. or any other closing time of the exchange's floor market.*

(c) *Orders may not be broken into smaller amounts. An ILA order for any account in which the same person is directly or indirectly interested may only be entered at intervals of no less than 30 seconds between the entry of each such order in the book.*

(d) *Interaction with ITS orders. If an inbound ITS commitment has been processed and apportioned according to the rules set forth in Chapter XXXI, Intermarket Trading System, herein, based on orders in the BSE book, an ILA execution cannot take place against the same order.*

(e) *Partial executions. An ILA order which is for a size greater than that displayed on the BSE book will receive an instant execution up to the displayed size of the BSE quotation. Any excess will automatically be cancelled.*

\* \* \* \* \*

### 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 aspects of such statements.

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

##### 1. Purpose

The purpose of the proposed rule change is to add new sections to its rules concerning new trading system functionality to provide for the instant execution of limit orders of 1000 shares or less against trading interest in the Exchange's published quotation. This new functionality, Instant Liquidity Access ("ILA"), will accommodate Exchange customers seeking immediate execution or cancel, similar to services offered by other exchanges and Electronic Communications Networks ("ECNs"), such as the New York Stock Exchange's Direct+ service.<sup>4</sup>

<sup>4</sup> As noted above, the BSE's proposal is substantially similar to the existing NYSE Direct+ automatic execution functionality. It does, however, differ in the following four respects. First, inbound ILA orders to sell must be priced "at" (while the NYSE rule requires orders to be priced "at or above") the BSE published bid price and inbound orders to buy must be priced "at" (while the NYSE rule requires orders to be priced "at or below") the

It would not be mandatory that all limit orders of 1000 shares or less be entered as ILA orders; rather, the member organization entering the order can choose to enter an ILA order when such member organization believes that the speed and certainty of an execution at the Exchange's published bid or offer price is in its customer's best interest. In such a case, the member organization would enter an ILA order priced at the Exchange's published offer price (in the case of an ILA order to buy), or an ILA order priced at the Exchange's published bid price (in the case of an ILA order to sell). The ILA order would then receive an instant execution without being exposed to the auction market, provided the bid or offer is still available. If the ILA feature is not available for any reason, the ILA order will be cancelled. Moreover, any member organization that believes in any particular case that the customer's interests would be best served by affording the customer's order the opportunity for price improvement may enter a limit or market order into BEACON for representation in the auction market, rather than an ILA order.

ILA orders will be reported to the Consolidated Tape Association with a unique identifier, a ".e", to denote that they were instantly executed. The Exchange's published bid or offer would be automatically decremented to the extent of the size of the ILA order to reflect the ILA execution. The contra side of the ILA order would be the trading interest reflected in the Exchange's bid or offer, with such interest participating in the execution according to the Exchange's auction market principles of priority and parity. Additionally, if an inbound ITS commitment has been processed and apportioned according to the rules set forth in Chapter XXXI, Intermarket Trading System, based on orders on the BSE book, an ILA execution cannot take place against that same order. Finally, any ILA order, which is for a size greater than that displayed in the BSE book will receive an instant execution up to the

BSE published ask price. Second, the NYSE rule includes an exclusion, relating to an automatic execution trade being more than 5 cents away from the previous trade in that security executed on the NYSE. Third, the NYSE rule requires the display of any unexecuted portion of a Direct+ order or any Direct+ orders that cannot be immediately filled as limit orders regular way. The BSE proposal requires that such orders be canceled if not immediately filled. Finally, the BSE proposal includes an exclusion for such instances when the national best bid or offer spread is \$0.25 or more. Teleconference between John Boese, Vice President, Legal and Compliance, BSE, and Christopher B. Stone, Special Counsel, Division of Market Regulation, Commission (September 30, 2003).

displayed size of the BSE quotation. Any excess will automatically be cancelled.

The Exchange's proposal would implement a new set of rules, set forth in Section 8 of Chapter XXXIII, BEACON<sup>5</sup>, and an addition to Chapter 1, Definitions, Section 3, Orders.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act<sup>6</sup> and Section 6(b)(5) of the Act,<sup>7</sup> in particular, 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; and is not designed to permit unfair discrimination between brokers or dealers.

The Exchange also believes that the proposed rule change is designed to support the principles of section 11A(a)(1) of the Act<sup>8</sup> in that it seeks to assure economically efficient execution of securities transactions, makes it practicable for brokers to execute investor's orders in the best market and provide an opportunity for investors' orders to be executed without the participation of a dealer.

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

The Exchange does not believe that the proposed rule change 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

## 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

<sup>5</sup> The existing language in this Section will be deleted, as it applied to Y2K systems testing requirements, and replaced with provisions detailing the instant proposal.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 17 U.S.C. 78k-1(a)(1).

publishes its reasons for so finding or (ii) as to which the Exchange 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 proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-BSE-2003-08 and should be submitted by November 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 03-25975 Filed 10-14-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48595; File No. SR-PCX-2003-56]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Pacific Exchange, Inc. Relating to an Amendment to the PCX Plus Electronic Book Execution Feature and Implementation Date

October 6, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

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