

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58999; File No. SR-BSE-2008-54)

November 21, 2008

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. to Amend Certain BOX Rules Related to the PIP to Eliminate the Requirement That There be at Least Three Market Makers Quoting in a Relevant Options Class in Order for a PIP to Commence

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 November 17, 2008, 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 self-regulatory organization. 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 amend certain Rules of the Boston Options Exchange Group, LLC (“BOX”) related to the Price Improvement Period (“PIP”) to eliminate the requirement that there be at least three market makers quoting in a relevant options class in order for a PIP to commence. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission’s Public Reference Room and also on the Exchange’s Internet website at http://nasdaqtrader.com/Trader.aspx?id=Boston_Stock_Exchange.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

In its filing with the Commission, the self-regulatory organization 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 self-regulatory organization 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

In order to provide additional opportunities for price improvement, the Exchange proposes to expand the PIP. The PIP permits Participants to provide penny price improvement for Customer Orders.³ Current BOX rules require, among other things, that there are at least three Market Makers quoting in the relevant series before a PIP may commence. The Exchange is now proposing to eliminate this requirement.

The Exchange does not believe that orders should be denied the benefits of the PIP simply because there may be less than three Market Makers quoting in a relevant series. The BOX Rules provide for broad participation in a PIP auction. Allowing all types of Participants on BOX, including Market Makers, OFPs and Public Customers to compete within the PIP increases competition to provide price improvement, benefiting the Customer Order. Any concern regarding a PIP starting with a lower number of Market Makers quoting in the relevant series is offset by the broad participation and competition that is present in a PIP auction once commenced. The Exchange believes that this proposed rule change is a reasonable modification

³ See Section 18 of Chapter V of the BOX Rules.

designed to provide additional flexibility for Participants to obtain executions on behalf of their customers while continuing to provide a meaningful, competitive auction.

In support of its proposal, the Exchange notes that the Commission recently approved a similar proposal of the International Securities Exchange (“ISE”) to remove an identical requirement within its Price Improvement Mechanism (“PIM”) rules.⁴ The ISE PIM now permits price improvement in non-standard increments without the condition that there be a minimum number of market makers quoting in the particular series.⁵ The PIP and PIM share the same purpose and goal of providing opportunities for customer price improvement. The Exchange believes that the PIP, and in turn the customers that benefit from the PIP, would be disadvantaged if the three Market Maker requirement remained as a condition to start a PIP.⁶ Because ISE is currently able to offer its customers price improvement in a non-standard increment without a minimum quoter requirement in the PIM, the Exchange believes it is essential for competitive reasons to be able to offer the same opportunities for price improvement on BOX through the PIP.

2. Statutory Basis

⁴ See Securities Exchange Act Release No. 58710 (October 1, 2008), 73 FR 59008 (October 8, 2008) (SR-ISE-2008-63).

⁵ See ISE Rule 723.

⁶ Both PIP and PIM have certain characteristics in common with each other. Both provide for the opportunity for customer price improvement, both have certain periods where the initial orders are exposed for potential price improvement, both have certain guidelines regarding the types of orders that may be eligible for this price improvement and both have certain defined rules related to the allocation of trades within these price improvement auctions.

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,⁷ in general, and Section 6(b)(5) of the Act,⁸ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to prevent fraudulent and manipulative acts, 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. In particular, the proposed rule change will allow Participants to guarantee executions and provide additional price improvement opportunities to their customers' orders. The Exchange believes that this proposed rule change is a reasonable modification designed to provide additional flexibility for Participants to obtain executions on behalf of their customers while continuing to provide a meaningful, competitive auction.

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 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 comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act normally does not become operative for 30 days after the date of filing.¹¹ However, Rule 19b-4(f)(6)(iii)¹² permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange asserts that waiver of the operative delay is appropriate in order to allow the Exchange to remain competitive with the ISE and to prevent delaying the benefits that the proposed rule change will confer to customers. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that it recently approved a substantially similar rule change for ISE's PIM, and BSE's proposal raises no new regulatory issues.¹³ The Commission also notes that ISE's proposal was subject to full notice and comment, and the Commission received no comments on that proposal. Accordingly, the Commission designates that the proposed rule change become operative immediately.¹⁴

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) under the Act requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this notice requirement.

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

¹² Id.

¹³ See supra note 4.

¹⁴ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

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. 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-BSE-2008-54 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-BSE-2008-54. 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 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the self-regulatory organization. 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-BSE-2008-54 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon
Acting Secretary

¹⁵ 17 CFR 200.30-3(a)(12).