

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57630; File No. SR-BSE-2008-22)

April 7, 2008

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Amending Its Make or Take Linkage Transaction Fees

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 April 3, 2008, the Boston Stock Exchange (“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 substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons and is approving the proposed rule change on an accelerated basis.

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

The Exchange is proposing to amend, retroactively effective to March 28, 2008, the Liquidity Make or Take Pricing Structure (“Make or Take Pricing”) - Intermarket Linkage Transaction fees (“Linkage Fees”) portion of the Fee Schedule of the Boston Options Exchange (“BOX”).³ The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and www.bostonoptions.com.

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.

³ Capitalized terms not otherwise defined herein shall have the meanings prescribed under the BOX Rules.

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 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

The Exchange is proposing to amend, retroactively effective to March 28, 2008, Section 7(c) of the BOX Fee Schedule in order to revise the Make or Take Pricing Linkage Fees portion of the BOX Fee Schedule, so as to conform it with fee changes the Exchange recently proposed for Make or Take Pricing within non-Penny Pilot Program classes.⁴

Executions on BOX resulting from orders sent via the Intermarket Option Linkage ("Linkage Orders") are subject to the same billing treatment as other broker-dealer orders. On September 6, 2007, the Exchange introduced the Make or Take Pricing for all classes contained in the Penny Pilot Program.⁵ Since Linkage Orders that are sent to and executed on BOX take liquidity, such orders are assessed a \$0.45 per contract fee for executed transactions in issues participating in the Penny Pilot Program.⁶

⁴ See Securities Exchange Act Release No. 57618 (April 4, 2008) (SR-BSE-2008-21) (eliminating the Make or Take Pricing Structure for non-Penny Pilot Program classes).

⁵ See Securities Exchange Act Release No. 56371 (September 7, 2007), 72 FR 52401 (September 13, 2007) (SR-BSE-2007-43). The Exchange may trade options contracts in one-cent increments in certain approved issues as part of the Penny Pilot Program through March 27, 2009. See Securities Exchange Act Release No. 56566 (September 27, 2007), 72 FR 56400 (October 3, 2007) (SR-BSE-2007-40).

⁶ See Securities Exchange Act Release No. 56371 (September 7, 2007), 72 FR 52401, 52402 (September 13, 2007) (SR-BSE-2007-43), which provides that "Linkage Orders that are not executed upon receipt are rejected back to the sender and are never posted in

Furthermore, on November 30, 2007, the Exchange filed a rule proposal with the Commission, which added the twenty five (25) most actively traded options classes on BOX that at that time were not included within the Penny Pilot Program (“M or T Non-Penny Pilot Classes”) to the Make or Take Pricing.⁷ Recently, nineteen (19) of these M or T Non-Penny Pilot Classes were included in an expansion of the Penny Pilot Program.⁸ As a result, on March 28, 2008, the Exchange filed with the Commission a proposal that eliminates the Make or Take Pricing for M or T Non-Penny Pilot Classes.⁹

In conjunction with the elimination of this fee, the Exchange is now proposing to also eliminate the \$0.50 per contract Make or Take Pricing for Linkage Orders in these M or T Non-Penny Pilot Classes. Consequently, the Linkage Fees associated with the Make or Take Pricing will only apply to Linkage Orders in any class of options that is included in the Penny Pilot Program. The standard Linkage Fees shall apply to those options classes that are not part of the Penny Pilot Program.¹⁰ The standard Linkage Fee is \$0.20 per contract. Because the Make or Take Pricing for M or T Non-Penny Pilot Classes was eliminated on March 28, 2008, and the Exchange is seeking to reduce the fee charged, the Exchange requests that the effective date of the proposed rule change be retroactive to March 28, 2008.

the BOX Book. Therefore, a Linkage Order would never be eligible to receive a credit of the Transaction Fee.”

⁷ See Securities Exchange Act Release No. 56948 (December 12, 2007), 72 FR 72426 (December 20, 2007) (SR-BSE-2007-52).

⁸ See Securities Exchange Act Release No. 57566 (March 26, 2008), 73 FR 18013 (April 2, 2008) (SR-BSE-2008-20). This most recent expansion added twenty eight (28) of the most actively-traded multiply-listed options classes, according to Clearing Corporation volume, to the Penny Pilot Program.

⁹ See note 4 supra.

¹⁰ The BOX Fee Schedule can be found on the BOX Web site at www.bostonoptions.com.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,¹¹ in general, and Section 6(b)(4) of the Act,¹² in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities for the purpose of executing Linkage Orders that are routed to the Exchange from other market centers.

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. 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-2008-22 on the subject line.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

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-BSE-2008-22. 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 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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-2008-22 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

After careful consideration, 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 exchange¹³ and, in particular, with the requirements of Section 6(b) of the Act.¹⁴ In particular, the Commission finds that the Exchange's proposal is consistent with Section 6(b)(4) of the Act,¹⁵ which requires that the rules of the Exchange provide for the equitable allocation or reasonable dues, fees, and other charges among its members and other persons using its facilities. The Commission notes that the proposal conforms Linkage Fees with those fees charged on other broker-dealer executions.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁶ for approving the proposed rule change prior to the 30th day after the date of publication of the notice of the filing thereof in the Federal Register. The Commission notes that the Make or Take Pricing for M or T Non-Penny Pilot Classes was eliminated on March 28, 2008.¹⁷ Further, because the Exchange is proposing to reduce the fee charged from \$0.50 per contract to \$0.20 per contract for those M or T Non-Penny Pilot Classes not included in the Penny Pilot Program expansion, granting accelerated approval on a retroactive basis would allow the Exchange to implement a lower fee for market participants executing Linkage Orders at the same time as the Exchange's related fee changes, which should benefit investors and reduce confusion.¹⁸

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act¹⁹ that the

¹³ In approving this rule, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4).

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ See note 4 supra.

¹⁸ See note 8 supra and accompanying text.

¹⁹ 15 U.S.C. 78s(b)(2).

proposed rule change (SR-BSE-2008-22) is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Florence E. Harmon
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12)