

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50834; File No. SR-BSE-2004-55)

December 10, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Boston Stock Exchange, Inc. Relating to Trading Hours for Options Contracts Overlying the Nasdaq 100 Index Trading Stock® on the Boston Options Exchange

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 December 1, 2004, 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 Exchange. On December 3, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Exchange filed the proposal, as amended, as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁴ and Rule 19b-4(f)(6) thereunder.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend a section of the Boston Options Exchange (“BOX”) rules regarding the hours during which options transactions may be made on BOX. The text of the proposed rule change, as amended, is set forth below.

Proposed new language is in italics.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 superseded and replaced the proposed rule change in its entirety.

⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

⁵ 17 CFR 240.19b-4(f)(6).

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CHAPTER V. DOING BUSINESS ON BOX

Sec. 1-2 **No Change.**

Sec. 3 **Days and Hours of Business**

(a) No change.

(b) Except for unusual conditions as may be determined by the Board, hours during which transactions in options on individual stocks may be made on BOX shall correspond to the normal business days and hours for business set forth in the rules of the primary market trading the securities underlying BOX options; provided, however, that transactions may be effected in an options class on BOX until two (2) minutes after the primary market on which the underlying security trades closes for trading. (See BSE Rules Chapter I-B, “Business Hours”, Section 1, “Primary Session”). Notwithstanding the foregoing, transactions may be effected in options contracts overlying the Nasdaq 100 Index Trading Stock® on BOX until 4:15 p.m.

(c) No change.

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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 statutory 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 Exchange proposes to permit the hours during which options contracts overlying the Nasdaq 100 Index Trading Stock® (the "Index Trading Stock") may be made on BOX to remain unchanged after the Index Trading Stock lists on the Nasdaq Stock Market ("Nasdaq") beginning December 1, 2004. Prior to December 1, 2004, the Index Trading Stock was listed on the American Stock Exchange and trading in the options contracts overlying the Index Trading Stock traded on BOX until 4:15 p.m. Eastern Time.

Currently, Chapter V, Section 3(b) of BOX's rules provides that hours during which transactions in options on individual stocks may be made on BOX shall correspond to the normal business days and hours for business set forth in the rules of the primary market trading the securities underlying BOX options; provided, however, that transactions may be effected in an options class on BOX until two (2) minutes after the primary market on which the underlying security trades closes for trading. Because Nasdaq will trade the Index Trading Stock until 4:00 p.m. Eastern Time, under its current rules, BOX can only trade in the options contracts overlying the Index Trading Stock until 4:02 p.m. Eastern Time.

BOX Market Makers have requested that BOX consider maintaining the status quo, and allow trading in options contracts overlying the Index Trading Stock to continue until 4:15 p.m. Eastern Time. The rules of other options exchanges currently provide for trading in these options contracts to continue until this time.⁶ BOX believes the investment community would benefit from maintaining continuity and consistency in the marketplace. As a result, the

⁶ See Rule 7.1, commentary .02 of the rules of the Pacific Exchange.

Exchange proposes to amend Chapter V, Section 3(b) of BOX's rules to allow trading in options contracts overlying the Index Trading Stock to continue until 4:15 p.m. Eastern Time.

2. Statutory Basis

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 prevent fraudulent and manipulative acts and practices, 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.

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

The Exchange has designated the proposed rule change, as amended, as a "non-controversial" rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁰ The Exchange represents that the foregoing rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6).

consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay period for “non-controversial” proposals and make the proposed rule change, as amended, effective and operative upon filing.

The Commission has determined to waive the five-day pre-filing notice requirement and the 30-day operative delay period.¹¹ The Commission notes that accelerating the operative date will allow the trading hours for options contracts overlying the Index Trading Stock to remain unchanged and provide continuity to the marketplace. Therefore, the foregoing rule change has become immediately effective and operative upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

At any time within 60 days of the filing of the 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.¹⁴

¹¹ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on December 3, 2004, the date the Exchange filed Amendment No. 1 to the proposed rule change. See 15 U.S.C. 78s(b)(3)(C).

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-2004-55 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-BSE-2004-55. 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, 450 Fifth Street, NW, Washington, DC 20549. 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-2004-55 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).