

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51317; File No. SR-BSE-2005-10)

March 3, 2005

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Position Limits and Exercise Limits on the Boston Options Exchange Facility

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 March 1, 2005, 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 BSE. On March 2, 2005 the BSE filed Amendment No. 1 to the proposed rule change.³ On March 3, 2005 the BSE filed Amendment No. 2 to the proposed rule change.⁴ The Exchange has filed the proposal as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act⁵ and Rule 19b-4(f)(6) thereunder,⁶ which renders it effective upon filing with the Commission. 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 BSE proposes to amend Section 7 (Position Limits), Section 8 (Exemptions from Position Limits), and Section 9 (Exercise Limits) of Chapter III of the Rules of the Boston Options Exchange (“BOX”) to increase the standard position and exercise limits for equity

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 corrected an error in Exhibit 5 to the filing.

⁴ Amendment No. 2 corrected an error in Exhibit 5 to the filing.

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(6).

options contracts and options on the Nasdaq-100 Index Tracking Stock (“QQQQ”) for a pilot program of six months. The text of the proposed rule change is available on the BSE’s Web site (<http://www.bostonstock.com>), at the BSE’s Office of the Secretary, and at the Commission’s Public Reference Room.

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 BSE 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 Exchange is proposing several changes to Section 7 (Position Limits), Section 8 (Exemptions from Position Limits), and Section 9 (Exercise Limits) of Chapter III of the BOX Rules. Section 7 of Chapter III of the BOX Rules subjects equity options to one of five different position limits depending on the trading volume and outstanding shares of the underlying security. Section 8 of Chapter III of the BOX Rules establishes certain qualified hedging transactions and positions that are exempt from established options position limits as prescribed under Section 7 of Chapter III of the BOX Rules. Section 9 of Chapter III of the BOX Rules establishes exercise limits for the corresponding options at the same levels as the corresponding security’s position limits. On February 23, 2005, the Commission granted accelerated approval

of a rule change proposed by the Chicago Board Options Exchange, Inc. (“CBOE”) relating to position and exercise limits.⁷

Standard Position and Exercise Limits

The Exchange is proposing to adopt for BOX a pilot program for a period of six months during which the standard position and exercise limits for options on the QQQQ and for equity option classes traded on BOX would be increased to the following levels:

Current Equity Option Contract Limit	Proposed Equity Option Contract Limit
13,500 contracts	25,000 contracts
22,500 contracts	50,000 contracts
31,500 contracts	75,000 contracts
60,000 contracts	200,000 contracts
75,000 contracts	250,000 contracts
Current QQQQ Option Contract Limit	Proposed QQQQ Option Contract Limit
300,000 contracts	900,000 contracts

The BOX’s standard position limits have been in effect since the BOX commenced trading in February 2004. These standard position limits are the same as the standard position limits at the other options exchanges at that time, which were last increased on December 31, 1998.⁸ Since that time, there has been a steady increase in the number of accounts on the options exchanges that, (a) approach the position limit; (b) exceed the position limit; and (c) are granted

⁷ See Securities Exchange Act Release No. 51244 (February 23, 2005), 70 FR 10010 (March 1, 2005) (SR-CBOE-2003-30).

⁸ See Securities Exchange Act Release No. 40875 (December 31, 1998), 64 FR 1842 (January 12, 1999) (SR-CBOE-98-25) (approval of increase in position limits and exercise limits).

an exemption to the standard limit. Several member firms have petitioned the options exchanges to either eliminate position limits, or in lieu of total elimination, increase the current levels and expand the available hedge exemptions. A review of available data indicates that the majority of accounts that maintain sizable positions are in those option classes subject to the 60,000 and 75,000 tier limits. There also has been an increase in the number of accounts that maintain sizeable positions in the lower three tiers. In addition, overall volume in the options market has consistently increased over the past five years. The Exchange believes that the increase in options volume and lack of evidence of market manipulation occurrences during that same period justifies the proposed increases in the position and exercise limits.

The Exchange also proposes the adoption of a new equity hedge exemption to the existing exemptions currently provided under Section 8 of Chapter III of the BOX Rules. Specifically, new subparagraph (a)(v) of Section 8 of Chapter III of the BOX Rules would allow for a “reverse collar” hedge exemption to apply when a long call position is accompanied by a short put position, and the long call expires with the short put. In addition, the strike price of the long call must equal or exceed the short put, and each long call and short put position must be hedged with 100 shares of the underlying security (or other adjusted number of shares). Neither side of the long call short put can be in-the-money at the time the position is established. The Exchange believes this is consistent with existing subparagraph (a)(iv) of Section 8 of Chapter III of the BOX Rules, which provides for an exemption for a “collar,” and subparagraphs (a)(ii) and (a)(iii) of Section 8 of Chapter III of the BOX Rules, which provide for a hedge exemption for reverse conversions and conversions, respectively.

Manipulation

The Exchange believes that position and exercise limits, at their current levels, no longer serve their stated purpose. The Commission has previously stated that:

Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.⁹

The Exchange believes that the existing surveillance procedures and reporting requirements at the BOX, other options exchanges, and at the several clearing firms are capable of properly identifying unusual and/or illegal trading activity. In addition, when the Commission reviewed BOX's regulatory program before allowing BOX to begin trading, the Commission did not uncover any material inconsistencies or shortcomings in the manner in which BOXR's market surveillance of BOX would be conducted. These procedures utilize daily monitoring of market movements via automated surveillance techniques to identify unusual activity in both options and in underlying stocks.

⁹ See Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR-CBOE-97-11) (approval of increase in position limits and exercise limits for OEX index options).

Furthermore, large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G.¹⁰ Options positions are part of any reportable positions and, thus, cannot be legally hidden. In addition, Section 10 of Chapter III of the BOX Rules, which requires members to file reports with the Exchange for any customer or member who held aggregate long or short positions of 200 or more option contracts of any single class for the previous day, will remain unchanged and will continue to serve as an important part of the Exchange's surveillance efforts.

The Exchange believes that restrictive equity position limits prevent large customers, such as mutual funds and pension funds, from using options to gain meaningful exposure to individual stocks. This can result in lost liquidity in both the options market and the stock market. In addition, the Exchange has found that restrictive limits and narrow hedge exemption relief restrict member firms from adequately facilitating customer order flow and offsetting the risks of such facilitations in the listed options market. The fact that position limits are calculated on a gross rather than a delta basis also is an impediment.

Financial Requirements

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns that a member or its customer may try to maintain an inordinately large unhedged position in an equity option. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer. Also, the Commission's net capital rule, Rule 15c3-1 under the Act,¹¹

¹⁰ 17 CFR 240.13d-1.

¹¹ 17 CFR 240.15c3-1.

imposes a capital charge on members to the extent of any margin deficiency resulting from the higher margin requirement.

Finally, equity position limits have been gradually expanded from 1,000 contracts in 1973 to the current level of 75,000 contracts for options on the largest and most active underlying securities. To date, the Exchange believes that there have been no adverse affects on the market as a result of these past increases in the limits for equity option contracts.

QQQQ

The Exchange also proposes to change the references to the Nasdaq-100 Index Tracking Stock that are currently in Sections 7 and 9 of Chapter III of the BOX Rules from “QQQ” to “QQQQ” to correspond to the symbol change that occurred when the listing moved from the American Stock Exchange to the Nasdaq Stock Market.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,¹² in general, and of Section 6(b)(5) of the Act,¹³ in particular, in that it is designed to promote just and equitable principles of trade, and 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.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

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

The proposed rule change has been designated by the BSE as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act¹⁴ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁵

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 consistent with the protection of investors and the public interest. Consequently, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷

Pursuant to Rule 19b-4(f)(6)(iii), a proposed “non-controversial” rule change does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, and the BSE gave 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.¹⁸ The BSE has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission has determined that it is consistent with the protection of investors and the public interest to waive the five-day pre-filing notice requirement

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

and the 30-day operative delay.¹⁹ Waiving the pre-filing requirement and accelerating the operative date will allow the BSE to immediately conform the BOX's position and exercise limits and the BOX's equity hedge exemption strategies to those of the CBOE, which were recently approved by the Commission.²⁰

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 Act.²¹

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 No. SR-BSE-2005-10 on the subject line.

¹⁹ For the 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).

²⁰ See Securities Exchange Act Release No. 51244 (February 23, 2005), 70 FR 10010 (March 1, 2005) (SR-CBOE-2003-30).

²¹ For purpose 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 March 3, 2005, the date that the BSE filed Amendment No. 2.

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 No. SR-BSE-2005-10. 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 will also be available for inspection and copying at the principal office of the BSE. 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 No. SR-BSE-2005-10 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.²²

Margaret H. McFarland
Deputy Secretary

²² 17 CFR 200.30-3(a)(12).