

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54467; File No. SR-BSE-2006-37)

September 18, 2006

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendments No. 1 and No. 2 thereto, to Re-establish the Market Opening Pilot Program

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 September 1, 2006, 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 BSE. On September 8, 2006, the BSE filed Amendment No. 1 to the proposed rule change. On September 12, 2006, the BSE withdrew Amendment No. 1. On September 12, 2006, the BSE filed Amendment No. 2 to the proposed rule change.³ Pursuant to Section 19(b)(3)(A) of the Act⁴ and Rule 19b-4(f)(6) thereunder,⁵ the BSE has designated this proposal as “non-controversial,” which renders the proposed rule change effective immediately upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 2 the BSE requested the Commission waive the 5-day pre-filing notice requirement and 30-day operative date delay contained in Rule 19b-4(f)(6)(iii), and made additional clarifications to the proposal.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

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

The BSE is proposing to amend its rules to extend from September 1, 2006 to August 6, 2007 the pilot program related to market opening procedures on the Boston Options Exchange facility ("BOX"). That pilot program expired on August 6, 2006.⁶ The only change to the pilot program is an extension of the effective date from September 1, 2006 to August 6, 2007. The BSE does not propose making any substantive changes to the pilot program.

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, as amended, 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 BSE 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 original rule filing and Amendment No. 2 to the proposed rule is to re-establish BOX's market opening procedures pilot program which lapsed on August 6, 2006, for the time period September 1, 2006 through August 6, 2007.⁷ Since approval of the initial pilot program, BOX has followed the pilot program market

⁶ The BSE filed another proposed rule, SR-BSE-2006-36, to retroactively re-establish the market opening procedures pilot program for the time period August 6, 2006 through September 1, 2006.

⁷ See supra footnote 6.

opening procedures. Amendment No. 2 requests the Commission waive the standard five-day pre-filing and 30-day operative delay requirements as specified in Rule 19b-4(f)(6)(iii) of the Act,⁸ in order to re-establish the pilot program immediately. Amendment No. 2 also provides additional clarification to the original filing.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)⁹ of the Act in general, and Section 6(b)(5)¹⁰ of the Act in particular, that an exchange have rules that are designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for 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, as amended, will re-establish the market opening procedures pilot program, which provides a quick, efficient, fair and orderly market opening process.

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

The BSE does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁸ 17 CFR 240.19b-4(f)(6)(iii).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

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

This proposed rule change is filed pursuant to paragraph (A) of Section 19(b)(3) of the Act¹¹ and Rule 19b-4(f)(6)¹² thereunder. The proposed rule change, as amended, does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change, as amended, 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.¹³

The BSE requests the Commission waive the standard five-day pre-filing and thirty-day operative delay requirements as specified in Rule 19b-4(f)(6)(iii)¹⁴ so that BOX has a market opening procedure which commences immediately. The Commission waives the 5-day pre-filing requirement. In addition, the Commission believes that

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ See 15 U.S.C. 78(b)(3)(C). For the purpose of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on September 12, 2006, the date the BSE filed Amendment No. 2.

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow BOX to reinstate the opening procedures rules on a pilot basis immediately.¹⁵ For these reasons, the Commission designates the proposal, as amended, to be effective and operative upon filing with the Commission.

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 Number SR-BSE-2006-37 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-BSE-2006-37. 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

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

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, as amended, 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 also will 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 Number SR-BSE-2006-37 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.¹⁶

Nancy M. Morris
Secretary

¹⁶ 17 CFR 200.30-3(a)(12).