

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57887; File No. SR-BSE-2008-31)

May 30, 2008

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Exchange Fees and Charges

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 28, 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, II, and III below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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

BSE proposes to amend the Fee Schedule of the Boston Options Exchange facility (“BOX”) to modify the fees and credits associated with the Liquidity Make or Take Pricing Structure. While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange designated the changes operative for June 2, 2008. The text of the proposed rule change is available at BSE, the Commission’s Public Reference Room, and [www.bse.com](http://www.bse.com).

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<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

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 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 amend Section 7 of the BOX Fee Schedule<sup>5</sup> to introduce Tier 1 and Tier 2 pricing for the Liquidity Make or Take Pricing Structure.<sup>6</sup> The proposed rule change will reduce the fees and credits that the Exchange charges and applies to transactions in the iShares Russell 2000® Index Fund (“IWM”), Powershares® QQQ Trust Series 1 (“QQQQ”), and the Standard & Poor’s Depository Receipts® (“SPY”) (collectively referred to as “Tier 2 Classes”) by fifteen cents (\$0.15). Under the proposal, Tier 2 Class transactions subject to the Liquidity Make or Take Pricing Structure will have a thirty cent (\$0.30) fee and fifteen cent (\$0.15) credit for Market Makers and thirty cent (\$0.30) fee and ten cent (\$0.10) credit for a firm or Public Customer. This will maintain the current fee/credit differential applied to each account type within the Liquidity Make or Take Pricing Structure, namely, fifteen cents (\$0.15) for a Market Maker and twenty cents (\$0.20) for a firm or Public Customer. Fees and credits for the proposed Tier 1 Classes will remain at the levels currently applied to transactions subject to the

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<sup>5</sup> The BOX Fee Schedule can be found on the BOX Web site at [www.bostonoptions.com](http://www.bostonoptions.com).

<sup>6</sup> Capitalized terms not otherwise defined herein shall have the meanings set forth in the BOX Rules.

Liquidity Make or Take Pricing structure.<sup>7</sup> Tier 1 pricing will continue to apply to all classes that currently participate in the Penny Pilot,<sup>8</sup> other than the aforementioned Tier 2 Classes.

Tier 2 Classes are among the most liquid and most actively traded options on BOX. Due to the vast liquidity in the Tier 2 Classes, BOX's cost to trade these classes is less than the costs of other classes traded on BOX. The Exchange believes that such lower costs should therefore result in decreased fees for trading in these Tier 2 Classes.

Furthermore, BOX proposes to distribute a complete list of the classes included in Tier 1 and Tier 2 pricing to participants via Regulatory Circular. The Exchange believes that distributing a Regulatory Circular containing the Tier 1 and Tier 2 Classes is the best method of notifying and informing Participants of the relevant pricing structure.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>9</sup> in general, and Section 6(b)(4) of the Act,<sup>10</sup> 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.

### 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 that is not necessary or appropriate in furtherance of the purposes of the Act.

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<sup>7</sup> Pursuant to the BOX Fee Schedule, Market Makers are currently subject to a forty-five cent (\$0.45) charge and receive a thirty cent (\$.030) credit. Firms and Public Customers are subject to a forty-five cent (\$0.45) charge and a twenty-five cent (\$0.25) credit.

<sup>8</sup> The rules pertaining to the Penny Pilot Program on BOX can be found in Section 33 of Chapter V of the BOX Rules. The Exchange has notified Participants of the classes included within the Penny Pilot Program via Regulatory Circular. See Boston Options Exchange Regulation LLC Regulatory Circular 2008-06.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii)<sup>11</sup> of the Act and Rule 19b-4(f)(2)<sup>12</sup> thereunder, because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the Exchange. 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.

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](mailto:rule-comments@sec.gov). Please include File Number SR-BSE-2008-31 on the subject line.

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

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-2008-31. 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, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing will also 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 No. SR-BSE-2008-31 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

Florence E. Harmon  
Acting Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).