

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53774; File No. SR-BSE-2006-10)

May 9, 2006

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change to Establish Fees Per Contract Traded for Improvement Orders Submitted Into a Price Improvement Period by a Public Customer That are not Submitted as Customer PIP Orders

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 6, 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 substantially by the BSE. 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 the Fee Schedule of the Boston Options Exchange ("BOX") to establish fees per contract traded for Improvement Orders,³ submitted into a Price Improvement Period ("PIP") by a Public Customer⁴ that are not submitted as Customer PIP Orders ("CPO's").

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term "Improvement Orders" is defined in the BOX Rules Chapter V, Section 18(e)(i).

⁴ "Public Customer" means a person that is not a broker or dealer in securities. BOX Rules Chapter I, Section 1(a)(50).

The BOX Fee Schedule is available on the BOX Web site at: www.bostonoptions.com. The text of the proposed rule change is provided below, with additions underlined and deletions in [brackets].

Boston Options Exchange Facility

Fee Schedule

Sec. 1 Trading Fees For Public Customer Accounts

[None] \$0.20 per contract traded for Improvement Orders submitted into a Price Improvement Period (“PIP”) by a Public Customer, that are not submitted as Customer PIP Orders (“CPO’s”).

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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 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 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

Currently, there are two ways Public Customer Orders can be submitted into a PIP auction as an Improvement Order. The first way is a CPO, which is an order a Public Customer provides to her/his BOX Order Flow Provider (“OFP”) that contains a standard

limit order price in a nickel increment and the CPO PIP Reference Price⁵ in a penny increment. The premise of a CPO order is for a Public Customer to provide a standard limit order price to be submitted to the BOX book, and the additional penny auction limit price to be submitted into a PIP auction should one occur while her/his limit order is on the BOX book. The CPO PIP Reference Price provided by the Public Customer to OFP allows the Public Customer to participate in PIP auction by the OFP submitting Improvement Orders on her/his behalf up to the CPO PIP Reference Price. The CPO order allows the average investor to participate in penny price PIP auctions when she/he already has an order on the BOX book for that particular series.

The second way a Public Customer Order can be submitted into a PIP auction as an Improvement Order is by submitting instructions to an OFP to submit an Improvement Order on her/his behalf under any instructions the OFP wishes to accept. These Public Customer Improvement Orders that are not submitted as CPO's do not have a limit order on the BOX book coupled with their Improvement Order. These Improvement Orders are being submitted in reaction to the PIP auction broadcast.⁶

A Public Customer receiving and reacting to the PIP broadcast needs highly developed technology similar to the technology used by BOX OFPs and Market Makers, which is not readily available to the average investor. This technology is necessary for the Public Customer to receive significant amounts of data at an extremely high rate of

⁵ The term "CPO Reference Price" is defined in BOX Rules Chapter V, Section 18(g)(i).

⁶ The PIP broadcast is disseminated once a PIP is initiated and is distributed solely to BOX Options Participants. The broadcasting of this message advises the Options Participants: (1) that a Primary Improvement Order, as that term is defined in the BOX Rules Chapter V, Section 18(e), has been processed; (2) of

speed and to react to the PIP broadcast, within the time frame of the three-second PIP auction. Typically, a Public Customer who can receive a PIP broadcast and react to it by submitting an Improvement Order would be a sophisticated investor possessing the aforementioned technology. The sophisticated Public Customer investor's possession of the technology, similar to BOX OFPs and Market Makers, allows this Public Customer to compete in PIPs on the same level playing field as OFPs and Market Makers.

The BOX proposes to charge a \$0.20 per contract traded fee for Improvement Orders submitted into a PIP by a Public Customer that are not submitted as CPO's. The BOX believes this fee is reasonable because these orders are submitted into a PIP auction, which is a special trading mechanism within the BOX Trading Host that utilizes the PIP broadcast to create these orders. The BOX believes it is fair that customers behaving as "options professionals" should be subject to the same trading fees in the interests of a level playing field. The BOX is not proposing to charge a fee for Public Customer Improvement Orders, which are submitted as CPO's. All other Public Customer Orders traded on BOX, including marketable orders, which interact with a PIP already underway, will continue to be free.

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)(4) of the Act,⁸ in particular, in that

information concerning series, size, price and side of market, and; (3) when the PIP will conclude ("PIP Broadcast").

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

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 believes that the proposed rule change would not impose any burden on competition that is 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 not solicited or received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve such proposed rule change; or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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 No. SR-BSE-2006-10 on the subject line.

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-2006-10. 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. 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-2006-10 and should be submitted by [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Nancy M. Morris
Secretary

⁹ 17 CFR 200.30-3(a)(12).