

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53854; File No. SR-BSE-2006-23)

May 24, 2006

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Decreasing the Exposure Period for Crossing Orders under Chapter V, Section 17, Supplementary Material .02 and .03

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 11, 2006, the Boston Stock Exchange, Inc. (“BSE”) 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. The BSE filed the proposed rule change as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) 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

The BSE proposes to decrease the exposure period for crossing orders under Chapter V, Section 17, Supplementary Material .02 and .03 of the Boston Options Exchange (“BOX”) rules from 30 seconds to 3 seconds. The text of the proposed rule amendment is provided below.

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(Additions are underlined; deletions are [bracketed], unless otherwise indicated)

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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)(6).

## Rules of the Boston Options Exchange Facility

### CHAPTER V. DOING BUSINESS ON BOX

#### Sec. 17 Customer Orders and Order Flow Providers

(a) through (c) No Change.

#### Supplementary Material to Section 17

.01 No Change

.02 If an Options Participant fails to expose its Customer Order[s]<sup>5</sup> on BOX, it will be a violation of this Section 17 for an Options Participant to cause the execution of an order it represents as agent on BOX through the use of orders it solicited from Options Participants and/or non-Participant broker-dealers to transact with such orders, whether such solicited orders are entered into the BOX market directly by the Options Participant or by the solicited party (either directly or through another Participant), unless the agency order is first exposed to the BOX Book for at least [~~thirty (30)~~]three (3) seconds.

.03 An OFP may not execute as principal an order it represents as agent unless, (i) the agency order is first exposed to the BOX Book for at least [~~thirty (30)~~]three (3) seconds, or (ii) the OFP has been bidding or offering on BOX for a least [~~thirty (30)~~]three (3) seconds prior to

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<sup>5</sup> The “s” and surrounding brackets appear in the current rule text, and are not intended to be deletions under the proposed rule change.

receiving an agency order that is executable against such bid or offer; or (iii) the OFP sends the agency order to the Price Improvement Period process pursuant to Section 18 of this Chapter V.

.04 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 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 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

An Options Participant (“Participant”) may not execute an order it represents as agent with a facilitation or a solicited order (referred to herein as “crossing orders”) unless it complies with the order exposure requirements contained in Chapter V, Section 17, Supplementary Material .03 and .02 respectively. Specifically, when a Participant is not submitting an order to the Price Improvement Period process, it may not execute a facilitation cross unless (i) the agency order is first exposed to the BOX Book for at least 30 seconds; or (ii) the Participant has been bidding or offering on BOX for at least 30 seconds prior to receiving the agency order that is executable against such bid or offer. Similarly, a Participant may not execute a solicitation cross unless the agency order is first exposed to the BOX Book for 30 seconds.

The BSE proposes to shorten the duration of the exposure period contained in the rules governing such transactions from 30 seconds to 3 seconds. This shortened exposure period is fully consistent with the electronic nature of the BOX's market. Market participants on the BOX market have implemented systems that monitor any updates to the BOX market, including any changes resulting from orders being entered into the market, and can automatically respond based on pre-set parameters. Thus, an exposure period of 3 seconds will permit exposure of orders on BOX in a manner consistent with its electronic market.

By reducing the exposure time to 3 seconds, the BSE believes that Participants will be able to provide liquidity to their customers' orders on a timelier basis, thus providing investors with more speedy executions. Timely and accurate executions are consistent with the principles under which the BOX's electronic market was developed.

## 2. Statutory Basis

The BSE believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>6</sup> in general, and Section 6(b)(5) of the Act,<sup>7</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and 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 of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposal will permit members to provide liquidity to customer orders on a timelier basis, thus

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

providing investors with more speedy executions. At the same time, it will preserve a reasonable period for orders to interact in the auction market.

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

The BSE 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.

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

The BSE 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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

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.

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

prior to 30 days after the date of filing.<sup>10</sup> However, Rule 19b-4(f)(6)(iii)<sup>11</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The BSE provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of filing of the proposed rule change. In addition, the BSE has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change is based on rules recently approved by the Commission for two other exchanges.<sup>12</sup> For this reason, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>13</sup>

#### 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-

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<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>11</sup> Id.

<sup>12</sup> See Securities Exchange Act Release Nos. 53567 (March 29, 2006), 71 FR 17529 (April 6, 2006) (SR-CBOE-2006-09) and 53609 (April 6, 2006), 71 FR 19224 (April 13, 2006) (SR-NYSEArca-2006-01).

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

2006-23 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-2006-23. 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 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-2006-23 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.<sup>14</sup>

Nancy M. Morris  
Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).