

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54105; File No. SR-BSE-2006-12)

July 6, 2006

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Changes to the Minimum Activity Charge

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 June 23, 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 Exchange. On June 30, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Exchange filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</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, as amended, from interested persons.

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

With respect to the BOX Fee Schedule, the Exchange proposes to (a) amend the Minimum Activity Charge (“MAC”) for certain classes of options, (b) exempt new BOX Market

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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> In Amendment No. 1, the Exchange (a) clarified in the proposed rule text that all Boston Options Exchange (“BOX”) Market Makers would be continually subject to the standard per contract charge, (b) made non-substantive, formatting changes to conform the proposed rule text with the current provisions of the Fee Schedule, and (c) clarified the purpose and scope of the proposed rule change.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

Makers from the MAC for the first three months as a BOX participant, (c) change the frequency at which the MAC classifications will be adjusted annually, and (d) change the indexing of the MAC Applicable Rates from overall market share to class-by-class market share. The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in [brackets].

## **Boston Options Exchange Facility**

### **Fee Schedule**

(as of July 2006)

**Sec. 1** through **Sec. 2** No Change

### **Sec. 3 Market Maker Trading Fees**

- a. No Change
  
- b. Minimum Activity Charge (“MAC”)

The “notional MAC” per options class (see table below) is the building block for the determination of the BOX Market Maker’s monthly total MAC which is payable at the end of each month if the per contract fee of \$ 0.20 per contract traded, when multiplied by the Market Maker’s actual trade executions for the month, does not result in a total trading fee payable to BOX at least equal to the monthly total MAC.

New Market Maker’s activity will be subject to the standard Market Maker per contract charge.

However, new Market Makers to BOX will be exempt from the MAC during the first three months as a BOX market participant.

The MAC is totaled across all classes assigned to a Market Maker so that volume for one class is fungible against other classes for that Market Maker. As a result, although the volume on a given class needed to reach an implicit cost of \$0.20 a contract may not be achieved, this can be compensated by volume in excess of the MAC on another class.

1. MAC “Levels”

- a. For Classes that have been trading on any options exchange for at least six calendar months

The table below provides the MAC for each of the six “categories” of options classes listed by BOX. The category for each class is determined by its total trading volume across all U.S. options exchanges as determined by OCC data. The classifications will be adjusted at least [twice] annually (in January [and July], based on the average daily volume for the preceding [six month period] year).

Class	OCC average daily volume (# of contracts)	MAC per Market Maker per appointment per month
Category		

A	>100,000	[\$15,000] <u>\$10,000</u>
B	50,000 to 99,999	[\$3,000] <u>\$3,500</u>
C	25,000 to 49,999	[\$2,000] <u>\$2,500</u>
D	10,000 to 24,999	\$750
E	5,000 to 9,999	\$250
F	Less than 5,000	\$100

- b. For Classes that have not been trading on any options exchange for at least six calendar months

A class will not be placed into a MAC category until a class has been trading on any options exchange for a full calendar month. After a class has been trading for a full calendar month, the MAC category for such class will be determined, applying the criteria set forth in the table above, based on the average daily volume for such full calendar month across all U.S. options exchanges as determined by OCC data. The classification will be adjusted at the beginning of each new calendar month thereafter based on the average daily trading volume for the previous calendar months in which the options class was traded for the entire month, until the class has been trading for six full calendar months. Thereafter, the classification will be adjusted at least [twice] annually (in January [and July], based on the average daily volume for the preceding [six month period] year) as set forth in subsection 1.a. above. Until an options class is placed

in a MAC category, only per contract trade execution fees will apply to trades in that class.

## 2. MAC “Adjustments”

With respect to market makers appointed to classes traded by BOX Market Makers on the date of such appointment, if the market maker is not already a BOX Market Maker in at least one other class, the MAC will be applied the earlier of either (i) the date the Market Maker commences quoting the class, or (ii) three months after the date of such appointment. However, if the market maker is already a BOX Market Maker in at least one other class, the MAC will not be applied until the earlier of either (i) the date the Market Maker commences quoting the class, or (ii) the eleventh trading day after the date of such appointment.

With respect to market makers appointed to classes not traded by BOX Market Makers on the date of such appointment, if the market maker is not already a BOX Market Maker in at least one other class, the MAC will be applied [the earlier of either (i) the date the Market Maker commences quoting the class, or (ii)] three months after the date of such appointment. However, if the market maker is already a BOX Market Maker in at least one other class, the MAC will be applied the date the class is listed on BOX.

Any MAC that becomes applicable on a day other than the first trading day of a calendar month is applied on a pro rata basis based on the number of trading days in that month for which the class was traded on BOX.

Furthermore, the MAC will be “indexed” to BOX’s [overall] market share as determined by OCC clearing volumes on a class-by-class basis. At the beginning of each calendar month, BOX will calculate its market share for the previous month (market share equals total BOX traded volume divided by the total OCC cleared volume for the classes that BOX has listed). If BOX’s [overall] market share in that particular class is less than 10%, BOX will reduce the MAC applicable for each Market Maker according to the following table.

[BOX Market Share]	[MAC Applicable Rate]
[0% to 4.99%]	[33.3%]
[5% to 9.99%]	[66.7%]
[10% and more]	[Full MAC]

<u>Market Share</u>	<u>MAC Applicable Rate</u>
<u>0% to 1.99%</u>	<u>\$.20 per contract</u>

<u>2% to 3.99%</u>	<u>20%</u>
<u>4% to 4.99%</u>	<u>40%</u>
<u>5% to 5.99%</u>	<u>40%</u>
<u>6% to 7.99%</u>	<u>60%</u>
<u>8% to 9.99%</u>	<u>80%</u>
<u>10%+</u>	<u>100%</u>

These adjustments are subject to subsection 1.b. above.

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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 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

BOX levies a monthly fixed fee to its participant Market Makers for each option class traded by such participants. BOX classifies its traded classes into six categories (A through F), and the fee for each category is determined by overall OCC cleared volume. For example, classes trading less than 5,000 average daily OCC cleared contracts are assigned to category F, classes trading between 5,000 and 9,999 average daily OCC cleared contracts are assigned to

category E, etc. The MAC amounts increase with higher traded volumes and range from \$100 per month for Category F to \$15,000 per month for Category A. Monthly discounts are subsequently applied to each firm's MAC based on overall OCC market share that BOX achieves on a monthly basis. The following are proposed changes to the MAC:

(a) Changes to the Activity Levels:

BSE proposes to amend BOX's Fee Schedule to account for the effect that current market conditions have had on the MAC. Recent increases in options trading have resulted in many BOX listed classes to be reclassified into higher MAC categories. BOX therefore seeks to amend its existing MAC program to modify the MAC for certain classes of options and provide uniform fee adjustments to BOX's participants. No changes are being sought to alter the fundamental structure of the existing MAC program.

(b) Exemption for New Market Makers:

BSE proposes to exempt new Market Makers from the MAC for the first three months as a BOX participant. BSE believes that it would be more equitable to allow new Market Maker participants to become familiar with BOX before imposing a fee based on a minimum level of activity.

(c) Changing the Frequency of MAC Reclassifications:

BSE proposes to change the frequency of MAC reclassifications from at least twice annually to at least once annually. BSE believes that this change would lessen the impact that market volatility has on BOX market participants.

(d) Indexing the MAC on a Class-by-Class Basis:

BSE proposes to change the indexing of the MAC from overall market share to class-by-class market share. BSE believes that this new structure would be more equitable and that

Market Makers should pay for the level of liquidity in each class in which they trade.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>7</sup> in particular, because it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among members of the Exchange.

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.

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.

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

The foregoing proposed rule change, which has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and Rule 19b-4(f)(2)<sup>9</sup> thereunder, is effective upon filing with the Commission. 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.<sup>10</sup>

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).

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

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</sup> The effective date of the original proposed rule change is June 23, 2006, and the effective date of Amendment No. 1 is June 30, 2006. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change

#### 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](mailto:rule-comments@sec.gov). Please include File No. SR-BSE-2006-12 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 No. SR-BSE-2006-12. 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 will also be available for inspection and copying at the principal office of the Exchange. All comments

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under Section 19(b)(3)(C) of the Act, the Commission considers such period to commence on June 30, 2006, the date on which the Exchange filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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-2006-12 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>11</sup>

Nancy M. Morris  
Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).