

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 54374; File No. SR-BSE-2005-09)

August 28, 2006

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Its Minor Rule Violation Plan

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 February 7, 2005, 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. The Exchange filed Amendment No. 1 to the proposed rule change on July 7, 2006, and Amendment No. 2 on August 18, 2006.<sup>3</sup> 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 seeks to amend and make additions to its minor rule violation plan (“MRVP”). The text of the proposed rule change is available on the Exchange’s Web site (<http://www.bostonstock.com/legal/index.html>), at the Exchange’s principal office, and at the Commission's Public Reference Room.

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 proposal, and discussed any comments it received on the proposed rule change.

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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> Amendment No. 1 replaced and superseded the original filing, and Amendment No. 2 superseded and replaced Amendment No. 1.

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

The proposal modifies BSE Rule Chapter XXX (“Disciplining of Members – Denial of Membership”) and BSE Rule Chapter XXXIV (“Minor Rule Violations”) in several areas. Most notably, the Exchange proposes adding to BSE Rule Chapter XXX new language setting forth “Principal Considerations in Determining Sanctions.” In addition, the Exchange proposes moving its Acceptance Waiver and Consent Procedures (“AWC”) from BSE Rule Chapter XXXIV to BSE Rule Chapter XXX. The Exchange also proposes adding to BSE Rule Chapter XXX a “late charge” where a member fails to pay a fine on a timely basis. Also, BSE proposes clarifying language and restructuring of the fine levels of several existing rule violations listed in the MRVP, as well as the addition of a new paragraph addressing violations of the Exchange’s rules governing the Intermarket Trading System (“ITS”). Each of these changes is discussed below.

The Exchange proposes three changes to BSE Rule Chapter XXX. First, the Exchange proposes new language setting forth “Principal Considerations in Determining Sanctions” by providing a list of factors to be considered when determining whether sanctions should be imposed. The purpose is to provide factors that should be considered in conjunction with the imposition of sanctions. The Exchange recognizes, as other exchanges have, that mitigating factors may exist in certain instances, and those circumstances should be considered when determining whether sanctions should be imposed. Second, the Exchange proposes moving the AWC currently provided

in the MRVP to the Exchange's formal disciplinary procedures (BSE Rule Chapter XXX).<sup>4</sup> When the AWC was initially proposed, the intent and application was for the AWC to apply to all disciplinary matters, not just minor rule violations. Therefore, the current placement has caused some confusion. In addition, the Exchange proposes to change the references to the "Chief Regulatory Officer" found in the original AWC to the "General Counsel or his/her delegatee."<sup>5</sup> Third, the Exchange proposes to provide a late charge where a member fails to pay a fine or fee on a timely basis.<sup>6</sup>

Furthermore, the Exchange proposes a number of changes to its MRVP. In Section 2(c) of BSE Rule Chapter XXXIV (Failure to Display Limit Orders), Section 2(f) (Floor Order Facilitation), Section 2(n) (Failure to Designate an Order (PPS)), and Section 2(o) (Dealings Outside of Exchange Operating Hours), the Exchange proposes to restructure the fine levels resulting from violations. The Exchange proposes to increase some of the fine amounts and provide for their application through a defined number of violations. Also, because existing Section 1 of BSE Rule Chapter XXXIV provides for formal disciplinary action at the discretion of the Exchange at any level of offense, the Exchange is not precluded from proceeding with more stringent action at any point, regardless of the listed fine levels. The Exchange represents that it is structuring its fines to address repeat offenses, so that fine levels increase as the number of offenses increase.

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<sup>4</sup> See proposed BSE Rule Chapter XXX, Section 10.

<sup>5</sup> The Exchange has recently undergone a restructuring. The General Counsel is now a member of the BSE Regulatory Department.

<sup>6</sup> See proposed BSE Rule Chapter XXX, Section 11.

In Section 2(j) of BSE Rule Chapter XXXIV, the Exchange proposes adjusting the fine levels for short sale violations to increase as the number of violations increase and providing that offenses in excess of ten, over a 12-month rolling period, would result in formal disciplinary action. In so doing, the Exchange believes that the proposed change provides progressively significant punitive measures for short sale rule violations.

The Exchange also proposes the addition of a new MRVP provision establishing sanctions for violations of the Exchange's rules governing ITS. In the past, the Exchange has levied fines on its member specialists under Section 2(f) of BSE Rule Chapter XXXIV for the failure to execute valid ITS commitments. Now, in proposed Section 2(p) of BSE Rule Chapter XXXIV, the Exchange seeks to identify the failure to execute valid ITS commitments as its own specific offense, rather than continuing to enforce compliance through a broader "catch-all" provision of its MRVP. The Exchange believes that this new provision would impose liability for each violation, with progressively significant penalties as the number of violations increases.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act<sup>7</sup> in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, to remove impediments to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change, as amended, would impose

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

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

No written comments were either solicited or received.

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

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 proposal, 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 Number SR-BSE-2005-09 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-2005-09. 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 changes 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 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 No. SR-BSE-2005-09 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>8</sup>

Nancy M. Morris  
Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).