

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54733; File No. SR-BSE-2006-36)

November 9, 2006

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to the Market Opening Pilot Program for the Boston Options Exchange Facility

On September 1, 2006, the Boston Stock Exchange, Inc. (“BSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to retroactively reinstate the pilot program rules related to market opening procedures on the Boston Options Exchange facility (“BOX”) of the Exchange for the period August 6, 2006 through September 1, 2006. On September 18, 2006, BSE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as amended, was published for comment in the Federal Register on October 2, 2006.<sup>4</sup> The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national

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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 the original filing in its entirety.

<sup>4</sup> See Securities Exchange Act Release No. 54507 (September 26, 2006), 71 FR 58020.

securities exchange.<sup>5</sup> In particular, the Commission believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act<sup>6</sup> in general, and Section 6(b)(5) of the Act<sup>7</sup> in specific, which requires that an exchange have rules that are 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 for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the proposed rule change, as amended, will retroactively reinstate the rules governing the market opening pilot program currently in use on BOX for the period August 6, 2006 through September 1, 2006.<sup>8</sup> Thus, upon approval of this proposed rule change, there will effectively be no interruption of the pilot program rules governing the market opening on BOX.<sup>9</sup> The Commission finds that the BOX market opening pilot program procedures provide a quicker, more efficient, fair and orderly market opening process to the benefit of BOX market participants and investors.

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<sup>5</sup> The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

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

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

<sup>8</sup> On September 1, 2006, BSE filed a proposed rule change, which was immediately effective, to extend the market opening pilot program from September 1, 2006 through August 6, 2007. See Securities Exchange Act Release No. 54467 (September 18, 2006), 71 FR 55530 (September 22, 2006).

<sup>9</sup> Prior to approval of this proposed rule change, however, BOX's market opening was operating without effective rules for the period August 6, 2006 through September 1, 2006.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (File No. SR-BSE-2006-36), as amended, be, and hereby is, approved.

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>10</sup> 15 U.S.C. 78s(b)(2).

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