

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55197; File No. SR-BSE-2007-02)

January 30, 2007

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Boston Options Exchange Fee Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 22, 2007, 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 substantially prepared by the BSE. The BSE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the BSE under Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> and Rule 19b-4(f)(2) 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 Exchange proposes the following changes to the Fee Schedule for the Boston Options Exchange (“BOX”). The first proposed change to the Fee Schedule relates to the Penny Pilot Program.<sup>5</sup> This proposed change will allow BOX to introduce lower fees for those instruments that are included in the Penny Pilot Program, which trade in increments of one cent.

---

<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)(ii).

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

<sup>5</sup> See Securities Exchange Release No. 54789 (November 20, 2006), 71 FR 68654 (November 27, 2006) (SR-BSE-2006-49).

The second proposed change is to amend the Fee Schedule to permanently eliminate a fee that is currently waived. Finally, the Exchange proposes to amend the Minimum Activity Charge (“MAC”) contained in the BOX Fee Schedule. The proposed change is to account for the effect that current market conditions have had on the MAC. The text of the proposed rule change is available at the BSE, the Commission’s Public Reference Room, and <http://www.bostonstock.com/legal/filings/07-02.pdf>.

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

The Exchange proposes the following changes to the BOX Fee Schedule. The first proposed change to the Fee Schedule relates to the Penny Pilot Program. This proposed change will allow BOX to introduce lower fees for those instruments that are included in the Penny Pilot Program, which trade in increments of one cent. The second proposed change is to amend the Fee Schedule to permanently eliminate a fee that is currently waived. Finally, the Exchange proposes to amend the MAC contained in the BOX Fee Schedule. The proposed change is to account for the effect that current market conditions have had on the MAC. The three proposed changes to the Fee Schedule are discussed in further detail below.

a) Reduction in Fees Related to the Penny Pilot Program

The Exchange is proposing to lower fees for those instruments that are included in the Penny Pilot Program, which trade in increments of one cent. This proposed change will reduce the trading fees for those instruments from the standard trading fee of \$0.20 per contract traded to a fee of \$0.15 per contract traded. BOX believes that this reduction in fees will encourage trading for those classes traded in the Penny Pilot Program.

b) Removal of Fee Which is No Longer Charged

BOX does not currently charge the \$0.40 per contract fee for contracts for Broker Dealer Proprietary Accounts and Market Makers traded against an order the Trading Host filters to prevent trading through the NBBO. BOX proposes to delete the charge from the BOX Fee Schedule to conform the Fee Schedule to reflect BOX's current practice. The proposed change will accurately reflect the charges that BOX levies on its Participants.<sup>6</sup>

c) Changes to the MAC

Recent increases in options trading have resulted in many BOX listed classes to be reclassified into higher MAC categories. BOX is seeking to amend its existing MAC program to provide uniform fee relief to its Participants. The proposed change alters the month in which the MAC reclassifications are calculated from January to July. The changes to the MAC program are being proposed to prevent unnecessary fee increases for BOX Participants.<sup>7</sup> Moving the

---

<sup>6</sup> The Exchange clarified that the \$0.40 per contract fee is being deleted from the Fee Schedule because BOX has been waiving the fee for Broker Dealer Proprietary Accounts and Market Makers. Telephone conference between Lisa Fall, General Counsel, BOX; Brian Donnelly, Assistant Vice President, Regulation and Compliance, BSE; David Liu, Senior Special Counsel, Commission; and Jan Woo, Attorney, Commission, on January 26, 2007.

<sup>7</sup> The Exchange clarified that moving the reclassification to July may provide relief to BOX Participants for six months. Id.

month of reclassification to July will afford BOX the opportunity to keep the current MAC classifications the same for an additional six months, thus keeping fees to Participants the same.<sup>8</sup> No changes are being sought to alter the fundamental structure of the existing program.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>9</sup> in general, and Section 6(b)(4) of the Act,<sup>10</sup> in particular, which requires that an exchange 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 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 rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(2)<sup>12</sup> thereunder because it changes a fee imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is

---

<sup>8</sup> Id.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 19b-4(f)(2).

necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### 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 No. SR-BSE-2007-02 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 Number SR-BSE-2007-02. 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-2007-02 and should be submitted on or before [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.<sup>13</sup>

Florence E. Harmon  
Deputy Secretary

---

<sup>13</sup> 17 CFR 200.30-3(a)(12).