

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55606; File No. SR-BSE-2006-11)

April 10, 2007

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendments No. 1 and 2 Relating to the Boston Options Exchange's Minor Rule Violation Plan

On March 6, 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")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Chapter X of the Boston Options Exchange ("BOX") Rules, BOX's minor rule violation plan ("BOX MRVP"). The Exchange filed Amendments No. 1 and 2 to the proposed rule change on June 28, 2006, and July 14, 2006, respectively. The proposed rule change, as amended, was published for comment in the Federal Register on March 7, 2007.³ The Commission received no comments regarding the proposal. This order approves the proposed rule change, as modified by Amendments No. 1 and 2.

The Exchange proposed to make the following actions subject to the BOX MRVP:

- contrary exercise advice infractions (in violation of BOX Rule Chapter VII, Section 1(c),(d),(f), and (g));
- locked and crossed market infringements (in violation of BOX Rule Chapter XII, Section 4);
- Market Maker assigned activity violations (in violation of BOX Rule Chapter VI, Section 4(e));

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 55373 (February 28, 2007), 72 FR 10276.

- Market Maker’s failure to respond to a request for a quote within the designated time limit (in violation of BOX Rule Chapter VI, Section 6(b)(ii) - (iii)); and
- trade-through violations (in violation of BOX Rule Chapter XII, Section 3(a)).

The sanctions imposed would include the application of a fine for each violation and an increased fine amount for repeat violations. In the instance of a trade-through violation, the rule proposal would also allow BOX Regulation to require the Options Participant⁴ to disgorge any gains from transactions in violation of the trade-through rules.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵ In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,⁶ which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and 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. The Commission further believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,⁷ which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. In addition, because BSE Rule Chapter XVIII provides procedural rights to contest the fine imposed pursuant to the

⁴ See BOX Rule Chapter I, Section 1(a)(40) for definition of “Options Participants.”

⁵ In approving this proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78f(b)(1) and 78f(b)(6).

BOX MRVP and permits disciplinary proceedings on the matter, the Commission believes that BOX Rule Chapter X, as amended by this proposal, provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d)(1) of the Act.⁸

Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act⁹ which governs minor rule violation plans. The Commission believes that the proposed rule change would strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In approving this proposed rule change the Commission in no way minimizes the importance of compliance with BOX rules and all other rules subject to the imposition of fines under the BOX MRVP. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, the BOX MRVP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that BSE would continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the BOX MRVP or whether a violation requires formal disciplinary action under BSE Rule Chapter XXX.

⁸ 15 U.S.C. 78f(b)(7) and 78f(d)(1).

⁹ 17 CFR 240.19d-1(c)(2).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act¹⁰ and Rule 19d-1(c)(2) under the Act,¹¹ that the proposed rule change (SR-BSE-2006-11), as modified by Amendments No. 1 and 2, be, and hereby is, approved and declared effective.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Florence E. Harmon
Deputy Secretary

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 240.19d-1(c)(2).

¹² 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(44).