

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56226; File No. SR-BSE-2007-35)

August 8, 2007

Self-Regulatory Organizations; Boston Stock Exchange, Inc; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Market Opening Procedures of the Rules of the Boston Options Exchange

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 August 3, 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 and II below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

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

The BSE is proposing to amend Chapter V, Section 9(e) of the rules of the Boston Options Exchange (“BOX”) to establish a permanent market opening procedure and to also define the relationship between the opening of an underlying stock in its primary market and the opening of the option on BOX during such times when the underlying stock’s primary market has not opened. The text of the proposed rule change is available

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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> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

on the BSE's Web site at <http://www.bostonoptions.com>, at BSE's principle 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 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

On February 4, 2004, the Commission approved the market opening guidelines, as set forth in the BOX Rules, on a pilot basis through August 6, 2004<sup>5</sup> and has since extended the Pilot Program through August 6, 2007.<sup>6</sup> The purpose of this rule filing is to make these market opening guidelines permanent. The Exchange proposes to make its market opening guidelines permanent since they have successfully opened the market since BOX's inception.<sup>7</sup>

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<sup>5</sup> See Securities Exchange Act Release No. 49192 (February 4, 2004), 69 FR 7051 (February 12, 2004) (SR-BSE-2004-05).

<sup>6</sup> See Securities Exchange Act Release Nos. 50163 (August 6, 2004) 69 FR 50230 (August 13, 2004) (SR-BSE-2004-28); 52166 (July 29, 2005), 70 FR 44957 (August 4, 2005) (SR-BSE-2005-34); 54507 (September 26, 2006) 71 FR 58020 (October 2, 2006) (SR-BSE-2006-36); and 54467 (September 18, 2006) 71 FR 55530 (September 22, 2006) (SR-BSE-2006-37).

<sup>7</sup> The BOX market first opened on February 6, 2004.

In addition, the purpose of this rule filing is also to define the relationship between the opening of the underlying stock in its primary market and the opening of the option on BOX during such times when the underlying stock's primary market has not opened.<sup>8</sup> The BSE seeks to establish a process that allows for BOX to have the proper flexibility to open its market in an option in the morning when all other option Exchanges are open for trading and BOX rules currently do not allow for the opening of said options.

In establishing this process, the BSE seeks to delegate to the Exchange the authority to decide whether BOX should open the market in an option when the underlying stock has not opened in the primary market, and all other Exchanges are trading the option. The Exchange presently has no express authority within the BOX Rules to authorize said opening of the market. The BSE seeks to establish this process to allow BOX to have the same authority as other Exchanges,<sup>9</sup> to eliminate a competitive disadvantage and to provide additional liquidity and competitive quotes into the marketplace. Specifically, the Exchange will delay opening an option until the underlying security has opened unless the Exchange determines that the interests of a fair and orderly market are best served by opening trading in the option.

## 2. Statutory Basis

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<sup>8</sup> The proposed rule will deem an underlying security to have opened on the primary market when the primary market has reported a transaction in the underlying security, or disseminated opening quotations for the underlying security and not given an indication of a delayed opening, whichever occurs first.

<sup>9</sup> See ISE Rules 701(b)(2) and 701(b)(3).

The basis under the Act for this proposed rule change is the requirement under Section 6(b) in general,<sup>10</sup> and Section 6(b)(5) of the Act,<sup>11</sup> in particular, that an exchange have rules that are designed to prevent fraudulent and manipulative 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. In particular, the proposed rule change will define the relationship between the opening of the stock in its primary market and the opening of the option on BOX during outages which will provide for a quick, efficient, fair and orderly market opening process.

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

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

<sup>11</sup> 15 U.S.C. 78f(b)(5).

19(b)(3)(A)(iii) of the Act<sup>12</sup> and subparagraph (f)(6) of Rule 19b-4<sup>13</sup> thereunder because it does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. 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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Under Rule 19b-4(f)(6) of the Act,<sup>14</sup> the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative date, so that the Exchange may have a market opening procedure which commences immediately. The Commission believes that the proposed rule change does not raise any new regulatory issues and, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative date, so that the proposal may become operative upon filing.<sup>15</sup>

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> Id.

<sup>15</sup> For purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

#### 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 Number SR-BSE-2007-35 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BSE-2007-35. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. 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-2007-35 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>16</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).