

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49742; File No. SR-BSE-2004-20)

May 19, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to its Boston Options Exchange Trading Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4² thereunder, notice is hereby given that on May 14, 2004, the Boston Stock Exchange (“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 BSE. The Exchange has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Boston Options Exchange (“BOX”) facility of the BSE pursuant to Section 19(b)(3)(A)(i) of the Act,³ and Rule 19b-4(f)(1) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(i).

⁴ 17 CFR 240.19b-4(f)(1).

The Exchange proposes to clarify a section of the BOX rules relating to market opening procedures. The text of the proposed rule change is set forth below. Proposed new language is in italics.

RULES OF THE BOSTON STOCK EXCHANGE

RULES OF THE BOSTON OPTIONS EXCHANGE FACILITY

Trading of options contracts on BOX

Chapter V Doing Business on BOX

Sec. 9 Opening the Market

(a) – (d) No change.

(e) Opening Match.

(i) Complex Orders and contingency orders do not participate in the Opening Match or in the determination of the opening price. The BOX Trading Host will establish the opening price at the time of the Opening Match. The opening price is the TOP at the moment of the Opening Match. The BOX Trading Host will process the series of a class in a random order, starting at the first round minute after the opening for trading of the underlying security in the primary market, and at each round minute thereafter. If the opening of a particular class is to occur within 15 seconds of the next round minute, the opening of that class will take place at the next subsequent round minute after the round minute that is 15 or less seconds away (i.e. within 75 seconds). In determining the priority of orders to be filled, the BOX Trading Host will give priority to Market-on-Opening orders first, then to Limit Orders whose price is better than the opening price, and then to resting orders on the BOX Book at the opening price. One or more series of a class may not open because of conditions cited in paragraph (f) of this Section 9.

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 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 BSE proposes to provide clarifying language to Section 9 of Chapter V of the BOX Rules relating to guidelines regarding market opening procedures. Currently, the language of Chapter V, Section 9 states that BOX will process the opening starting at the first round minute after the opening of trading of the underlying security. The Exchange now seeks to add clarifying language to indicate that the opening of trading must occur on the security's primary market. This would ensure that the price received is, in most instances, the most reliable opening price available, and will serve to assist in a fair and orderly opening on BOX.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of

Section 6(b) of the Act,⁵ in general, and Section 6(b)(5) of the Act,⁶ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest by standardizing procedures during market openings.

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 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)(i) of the Act⁷ and subparagraph (f)(1) of Rule 19b-4⁸ thereunder because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the BOX facility of the BSE. Accordingly, the proposal has taken effect upon filing with the Commission. 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

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(3)(A)(i).

⁸ 17 CFR 240.19b-4(f)(1).

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. Please include File Number SR-BSE-2004-20 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-BSE-2004-20. 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 the 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-2004-20 and should be submitted by [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.⁹

Margaret H. McFarland
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).

