

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50163; File No. SR-BSE-2004-28)

August 6, 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 Regarding Market Opening Procedures

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 26, 2004, 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 prepared by the BSE. Pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ the BSE has designated this proposal as non-controversial, which renders the proposed rule change effective immediately upon filing. 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 BSE proposes to extend the pilot program for a provision of its Boston Options Exchange (“BOX”) trading rules regarding its market opening procedures for one year through August 6, 2005. The text of the proposed rule change is available at the Office of the Secretary, the BSE, and at the Commission.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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 purpose of the proposed rule change is to extend the pilot program ("Pilot Program") for a section of the Rules of the BOX (the "BOX Rules") relating to opening the market until August 6, 2005. Chapter V, Doing Business on BOX, Section 9, Opening the Market, establishes guidelines regarding market-opening procedures ("Market Opening Rules"). On February 4, 2004, the Commission approved these guidelines, as set forth in the BOX Rules, on a pilot basis through August 6, 2004.⁵ The BSE now seeks to extend the pilot for one year, until August 6, 2005.

According to the BOX Market Opening Rules, for a period of at least one hour prior to the start of trading each day, the BOX Trading Host is in Pre-Opening Phase. During the Pre-Opening Phase Options Participants are able to enter, modify and cancel orders and quotes, and Limit Orders from previous trading sessions which are still valid (e.g., Good 'Till Cancelled

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

orders) are automatically brought to the new Pre-Opening Phase and are available for modification and cancellation. A Theoretical Opening Price (“TOP”), which is the price which would be the opening price if the Opening Match were to occur at that moment, is calculated and broadcast continuously to all BOX Options Participants during the Pre-Opening Phase; however no orders are matched, nor trades executed until the primary market opens for each underlying security. At that point, an Opening Match is conducted and any orders or quotes remaining on the BOX Book after the Opening Match are accessible for modification or cancellation during regular trading.

2. Statutory Basis

The BSE believes that the proposal is consistent with the requirements of Section 6(b) of the Act,⁶ in general, and Section 6(b)(5)⁷ 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 is not designed to permit unfair discrimination between customers, brokers, or dealers, or to regulate by virtue of any authority matters not related to the administration of the Exchange.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The BSE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The BSE neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The BSE filed the proposed rule change pursuant to Section 19(b)(3)(A)⁸ of the Act and Rule 19b-4(f)(6)⁹ thereunder. Because the proposal: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.

Under Rule 19b-4(f)(6)(iii) of the Act,¹⁰ 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 and the BSE is required to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. The BSE has requested that the Commission waive the five-day pre-filing notice requirement and accelerate the 30-day operative delay so that the Pilot Program may continue without interruption after it would have otherwise expired on August 6, 2004. The

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 17 CFR 240.19b-4(f)(6)(iii).

Commission believes that accelerating the 30-day operative period and waiving the five-day pre-filing requirement is consistent with the protection of investors and the public interest because it would allow the BSE to continue to provide standardized market open procedures for BOX that the BSE can surveil, enforce, and continue to evaluate without interruption after it would have otherwise expired on August 6, 2004.¹¹ For this reason, the Commission designates that the proposal become operative immediately.

At any time within 60 days of the filing of the 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.

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-2004-28 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.

¹¹ For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

All submissions should refer to File Number SR- BSE-2004-28. 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, 450 Fifth Street, NW, Washington, DC 20549. 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-2004-28 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.¹²

Margaret H. McFarland
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).