

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-50302; File No. SR-BSE-2004-38)

September 1, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Fees for Market Makers on the Boston Options Exchange Facility

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 25, 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 Exchange. The proposed rule change has been filed by the Exchange as establishing or changing a due, fee, or other charge 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 from interested persons.

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

The Exchange proposes to amend its Fee Schedule for the Boston Options Exchange<sup>5</sup> to allow the Exchange to charge a minimum activity charge (“MAC”) to Market Maker firms for options classes that have been trading for less than six months. Currently, the monthly MAC is based on the average daily trading volume for the preceding six month period. The proposed rule change would provide that for classes that have been trading for less than six months, the

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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)(ii).

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

class would be placed in a MAC category based on the average daily trading volume for the preceding calendar months in which the class was trading for the entire calendar month. The text of the proposed rule change appears below. New text is in *italics*.

## BOSTON OPTIONS EXCHANGE FACILITY

### FEE SCHEDULE

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#### Sec. 3 Market Maker Trading Fees

a. No change.

#### b. Minimum Activity Charge (“MAC”)

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##### 1. MAC “Levels”

##### **a. For Classes that have been trading for at least six calendar months**

The table below provides the MAC for each of the six “categories” of options classes listed by BOX. The category for each class is determined by its total trading volume across all U.S. options exchanges as determined by OCC data. The classifications will be adjusted at least twice annually (in January and July, based on the average daily volume for the preceding six month period).

Class Category	OCC average daily volume (# of contracts)	MAC per Market Maker per appointment per month
A	>100,000	\$15,000
B	50,000 to 99,999	\$3,000
C	25,000 to 49,999	\$2,000
D	10,000 to 24,999	\$750
E	5,000 to 9,999	\$250
F	Less than 5,000	\$100

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<sup>5</sup> <<http://www.bostonoptions.com/pdf/FeeFilingSECOfficial.pdf>> (accessed Sept. 1, 2004).

**b. For Classes that have been trading for less than six calendar months**

A MAC will not be applied until a class has been trading for a full calendar month. After a class has been trading for a full calendar month, the MAC category for such class will be determined, applying the criteria set forth in the table above, based on the average daily volume for such full calendar month across all U.S. options exchanges as determined by OCC data. The classification will be adjusted at the beginning of each new calendar month thereafter based on the average daily trading volume for the previous calendar months in which the options class was traded for the entire month, until the class has been trading for six full calendar months. Thereafter, the classification will be adjusted at least twice annually (in January and July, based on the average daily volume for the preceding six month period) as set forth in subsection 1.a. above. Until an options class is placed in a MAC category, only per contract trade execution fees will apply to trades in that class.

**2. MAC “Adjustments”**

No change.

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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

The purpose of the proposed rule change is to allow the Exchange to charge a MAC to Market Maker firms for options classes that have been trading for less than six months. Currently, the monthly MAC is based on the average daily trading volume for the preceding six month period. The proposed rule change would provide that for classes that have been trading for less than six months, the class would be placed in a MAC category based on the average daily trading volume (as determined by data from the Options Clearing Corporation) for the preceding calendar months in which the class was trading for the entire calendar month. The classification would be adjusted at the beginning of each new calendar month thereafter based on the average daily trading volume for the previous calendar months in which the class was trading for the entire calendar month, until the class has been trading for six full calendar months. Thereafter, the classification would be adjusted at least twice annually (in January and July, based on the average daily volume for the preceding six month period), as the rule currently provides. Until an options class was placed in a MAC category, only per contract trade execution fees would apply to trades in that class.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>7</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange members.

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

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 proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>9</sup> because it changes a due, fee, or other charge 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 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 Number SR-BSE-2004-38 on the subject line.

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

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-2004-38. 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 Exchange. 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-2004-38 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>10</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).