

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50431; File No. SR-BSE-2004-36)

September 23, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Modifying the Allocation of Certain Orders Under the Rules of the Boston Options Exchange Facility

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 August 16, 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, II, and III below, which Items have been prepared by the Exchange. The proposed rule change has been filed by BSE as a "non-controversial" rule change pursuant to 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective on filing with the Commission. On September 10, 2004, BSE filed Amendment No. 1 to the proposed rule change.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

BSE proposes to adopt a rule change to modify the allocation of certain customer orders under the rules of the Boston Options Exchange Facility ("BOX"). Pursuant to the current rule, when a customer order is submitted to BOX's Price Improvement Period (the "PIP"), the PIP

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ See Letter from Annah F. Kim, Chief Regulatory Officer, BSE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 8, 2004 ("Amendment No. 1"). Amendment No. 1 made clarifying revisions to the text of the proposed rule change.

participant who submitted the customer order to the PIP retains priority for 40% of the unexecuted portion of the customer order available at that price level. The Exchange proposes to modify this priority to 40% of the original size of the customer order. The Exchange believes that this modification is consistent with the allocation of comparable orders executed on CBOEdirect, the screen-based trading system of the Chicago Board Options Exchange, Inc. ("CBOE").⁶

The text of the proposed rule change is set forth below. Proposed new language is italicized; deletions are bracketed.

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RULES OF THE BOSTON STOCK EXCHANGE

RULES OF THE BOSTON OPTIONS EXCHANGE FACILITY

Trading of options contracts on BOX

Chapter VI Doing Business on BOX

Sec. 18 The Price Improvement Period ("PIP")

(f) The PIP Participant who submitted the Customer Order to the PIP process for price improvement retains certain priority and trade allocation privileges upon conclusion of the PIP, as follows:

i. In instances in which the Primary Improvement Order as modified (if at all) is matched by or matches any competing Improvement Order(s) and/or non-Public Customers unrelated order(s) at any price level, the PIP Participant retains priority at that price level for only forty percent (40%) of [any unexecuted portion] the original size of the Customer Order [available at that price level], notwithstanding the time priority of the Primary

⁶ See CBOE Rule 43.12A (Crossing Trades).

Improvement Order, competing Improvement Order(s) or non-Public Customer unrelated order(s). The PIP Participant who submitted the Customer Order to the PIP process will receive additional allocation only after all other orders have been filled at that price level.

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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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

When the Exchange drafted the rules that would govern the allocation of customer orders on BOX with respect to the PIP, it took care to comply with the requirements of Section 11(a) of the Act⁷ and provide priority to public customer and non-member orders as well as adhere to a policy of not allowing a trade allocation guarantee of more than 40% of a facilitated order to the facilitator of that customer order. At that time, the Exchange believed it was necessary to allocate any guaranteed portion of the Primary Improvement Order⁸ based on what remained of the customer order at a given price level after all public customer and non-member orders had

⁷ 15 U.S.C. 78k(a).

⁸ See Chapter V, Section 18(e) of the BOX Rules (definition of Primary Improvement Order).

been executed, and drafted the BOX rules accordingly. It has since come to the attention of the Exchange that the rules of at least one other options exchange provide for the allocation of a guaranteed portion of comparable facilitated orders based on the original size of such facilitated orders, and not on the amount that remains at a price level after orders with priority have been executed.⁹ Members of the Exchange who participate on BOX requested that, in this regard, the BOX rules be modified to match those of other options exchanges.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and Section 6(b)(5) of the Act,¹¹ in particular, in that it is designed to promote just and equitable principles of trade, and to protect investors and the public interest.

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

Because, the foregoing proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative until 30 days from the date on

⁹ See CBOE Rule 43.12A (Crossing Trades).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³ At any time within 60 days of the filing of this proposed rule change,¹⁴ 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-2004-36 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.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ For purposes of calculating the sixty-day abrogation period, the Commission considers the abrogation period to have begun on September 10, 2004, the date BSE submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

All submissions should refer to File Number SR-BSE-2004-36. 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of 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-2004-36 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.¹⁵

Margaret H. McFarland
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).