

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51388; File No. SR-BSE-2004-58)

March 17, 2005

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, and Amendments No. 1, 2, 3 and 4 Thereto, by the Boston Stock Exchange, Inc. Relating to the Composition of the Board of Directors and Executive Committee of Boston Options Exchange Regulation LLC

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 December 9, 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 BSE. On December 13, 2004, the BSE filed Amendment No. 1 to the proposed rule change.³ On December 16, 2004, the BSE filed Amendment No. 2 to the proposed rule change.⁴ On March 8, 2005, the BSE filed Amendment No. 3 to the proposed rule change.⁵ On March 10, 2005, the BSE filed Amendment No. 4 to the proposed rule change.⁶ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange revised the proposed rule text. Amendment No. 1 replaced the BSE’s original filing in its entirety.

⁴ In Amendment No. 2, the Exchange withdrew its request that the proposed rule change become immediately effective and requested that the proposed rule change become effective pursuant to Section 19(b)(2) of the Act.

⁵ In Amendment No. 3, the Exchange revised the purpose section of the proposed rule change as well as the proposed rule text. Amendment No. 3 replaced Amendment No. 1, as amended by Amendment No. 2, in its entirety.

⁶ In Amendment No. 4, the Exchange amended its filing to reflect that Amendment No. 3 was incorrectly filed pursuant to Rule 19(b)(3)(A) of the Act and should have been filed pursuant to Section 19(b)(2) of the Act.

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

The Exchange proposes to amend certain sections of the By-laws of Boston Options Exchange Regulation LLC (“BOXR”) relating to BSE representation on BOXR’s Board of Directors and its Executive Committee.

Below is the amended text of the proposed rule change. Proposed new language is in italics; proposed deletions are in [brackets].

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RULES OF THE BOSTON STOCK EXCHANGE

BOSTON OPTIONS EXCHANGE REGULATION LLC BY-LAWS

Secs. 1 - 2 no change

Sec. 3

Number of Directors

The Board shall consist of no fewer than seven nor more than thirteen Directors, the exact number to be determined by resolution adopted by the BSE Board from time to time. The BSE Board shall appoint directors to the BOXR Board, 50% of whom will serve until the first annual meeting of the BOXR Board, and 50% of whom will serve until the second consecutive annual meeting of the BOXR Board, in accordance with Section 5, below. [In accordance with Section 4, below, the Chairman of the BSE will be considered a member of the Board of Directors for voting purposes, but not for qualification percentage purposes.] The General Counsel of the BSE will not be considered a member of the Board of Directors for voting purposes or qualification percentage purposes.

Sec. 4

Qualifications

Directors need not be Participants of BOX, or members of BSE. Industry Directors must be representatives of the securities industry as provided in Article II of the BSE Constitution. At least fifty percent (50%) of the Directors will be Public Directors. The Board shall include [the Chairman] at least one member of the BSE Board of Governors [, who will not be considered for the purposes of determining the qualification percentages for the Board set forth herein]. The General Counsel of the BSE shall act as an advisor to the Board for all legal and regulatory matters, and shall not be a member or director of the Board. At least twenty percent (20%) of the Directors (but no fewer than two (2) Directors) will be officers or directors of a firm approved as a BOX Option Participant. An officer or director of a facility of the BSE may serve on the Board of Directors. The term of office of a Director shall not be affected by any decrease in the authorized number of Directors.

As soon as practicable, following the annual appointment of Directors, the Board shall elect from its members a Chair and Vice Chair and such other persons having such titles as it shall deem necessary or advisable to serve until the next annual appointment or until their successors are chosen and qualify. The persons so elected shall have such powers and duties as may be determined from time to time by the Board. The Board, by resolution adopted by a majority of Directors then in office, may remove any such person from such position at any time.

Secs. 5 – 13 no change

Sec. 14

Committees

(a) – (c) no change

(d) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware Law and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of BOXR between meetings of the Board. The Executive Committee shall consist of five Directors, including at least two Public Directors, and at least one Options Participant Director. [The Chairman of the BSE] At least one Governor of the BSE Board who is also a Director of the BOXR Board shall be a member of the Executive Committee, and the General Counsel of the BSE will act in advisory role to the Executive Committee on legal and regulatory matters. Executive Committee members shall hold office for a term of one year. At all meetings of the Executive Committee, a quorum for the transaction of business shall consist of a majority of the Executive Committee, including at least fifty percent of the Public Directors and at least one Options Participant Director.

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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 BSE included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposal. 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, as amended, is to amend certain sections of BOXR's By-Laws concerning the requirement that the Exchange's Chairman be a member of the BOXR Board of Directors and Executive Committee.

The BSE's Constitution permits, but does not mandate, that the Exchange's Chairman and chief executive officer ("CEO") roles be separated so as to provide for a separation of the Exchange's regulatory and business functions.⁷ Presently, BOXR's By-Laws require that the Exchange's Chairman be a Director on the BOXR Board. BOXR is, as set forth in Chapter XXXVI of the Exchange's rules, in the Plan of Delegation of Functions and Authority by the BSE to Boston Options Exchange Regulation, LLC, a wholly owned subsidiary of the BSE. The Exchange has delegated certain functions to BOXR, so that BOXR is responsible for the regulatory oversight of the Boston Options Exchange, a facility of the BSE.

If the Exchange's Board of Governors deems it prudent to separate the Exchange's Chairman and CEO positions, so that the Chairman would be responsible for only the regulatory functions of the Exchange, then the mandate that the Exchange's Chairman be a member of the BOXR Board would be in congruence with BOXR's regulatory mandate. If, however, the Exchange's Board of Governors did not separate the Chairman and CEO roles, then the Exchange's Chairman would not be responsible for only the regulatory functions of the BSE, but, as CEO, for the business functions as well.

⁷ See Securities Exchange Act Release No. 49611 (April 23, 2004), 69 FR 23833 (April 30, 2004) (order approving proposed rule change to permit the separation of the roles of Chairman and CEO).

Accordingly, the Exchange seeks to make BOXR’s By-Laws more flexible to reflect the corresponding flexibility in the Exchange’s Constitution regarding the separation of the Chairman and CEO roles. Rather than mandating that the Exchange’s Chairman be a member of the BOXR Board, the BSE would change certain provisions of BOXR’s By-Laws to provide that at least one Governor of the BSE Board of Governors be a member of the BOXR Board. Also, the Exchange is seeking to mandate that at least one Governor of the BSE Board of Governors, who is also a member of the BOXR Board, be a member of the BOXR Executive Committee. In this way, the Exchange is assuring adequate and informed representation on its subsidiary’s Board and Executive Committee, while not being constrained to limit its representation on the BOXR Board and its Executive Committee to strictly the Exchange’s Chairman. The Exchange believes that this approach ensures not only proper representation on the BOXR Board and its Executive Committee, but also serves to provide the Exchange a mechanism by which it can maintain an adequate separation of its business and regulatory functions, regardless of the status of the BSE’s Chairman and CEO positions.

The Exchange is also seeking to eliminate language in both Sections 3 (Number of Directors) and 4 (Qualifications) of BOXR’s By-laws, which explains that the BSE Chairman would not be considered a member of the BOXR Board for “qualification purposes.” The referenced qualification purposes are set forth in Section 4, which establishes the percentage of the BOXR Board that must be constituted by Industry Directors, Public Directors and Directors who represent BOX Options Participants. Pursuant to the existing rule, the BSE Chairman is not considered to be qualified as an Industry, Public or BOX Participant representative, and thus does not serve to fill either percentage requirement as set forth, although the Chairman is a voting member of the BOXR Board. The BSE is seeking to eliminate the language regarding

qualification percentages as they relate to the BSE Chairman because by replacing the BSE's Chairman on the BOXR Board with a member of the BSE Board, the member of the BSE Board who is also a member of the BOXR Board would be considered for the purposes of determining the qualification percentages of the BOXR Board. Thus, for example, if the member of the BSE Board who also served on the BOXR Board was an Industry Director, he or she would be considered as such in determining the percentage of Industry Directors on the BOXR Board.

The BSE understands that the Commission has recently proposed rules relating to the governance of self-regulatory organizations.⁸ If enacted, the Exchange represents that it is cognizant of the fact that certain of these proposed governance rules could mandate further changes to the BSE Constitution, Rules, and BOXR's By-Laws, beyond the scope of the changes proposed herein.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with the requirements of Section 6(b) of the Act,⁹ in general, and, in particular, furthers the objectives of Section 6(b)(1) of the Act,¹⁰ in that the proposal is designed so that the Exchange is organized and has the capacity to carry out the purposes of the Act; Section 6(b)(3) of the Act,¹¹ in that the proposal is designed so the rules of the Exchange assure a fair representation of its members in the selection of its directors and the administration of its affairs; and Section 6(b)(5) of the Act,¹²

⁸ See Securities Exchange Act Release No. 50699 (November 18, 2004), 69 FR 71125 (December 8, 2004).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(1).

¹¹ 15 U.S.C. 78f(b)(3).

¹² 15 U.S.C. 78f(b)(5).

in that the proposal 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, issuer, brokers, or dealers, or to regulate by virtue of any authority conferred by Title I of the Act matters not related to the purposes or Title I of the Act or the administration of the Exchange.

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

The Exchange does not believe that the proposed rule change, as amended, will result in 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 neither solicited nor received written comments with respect to the proposed rule change, as amended.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve such proposed rule change, as amended; or
- (B) institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-2004-58 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-2004-58. 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, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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 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-2004-58 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.¹³

Margaret H. McFarland
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).