

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52149; File No. SR-BSE-2005-22)

July 28, 2005

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend a Pilot Program That Allows for No Minimum Size Order Requirement for the Price Improvement Period Process

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 22, 2005, 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 Exchange. The BSE filed the proposal pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ 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 Exchange is proposing to amend Supplementary Material .01 to Chapter V, Section 18 of the rules of the Boston Options Exchange (“BOX”), an options trading facility of the BSE, to extend its existing Price Improvement Period (“PIP”) pilot program that allows for no minimum size order requirement (“PIP Pilot Program”) from August 7, 2005 until July 18, 2006. Below is

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 The BSE has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. See Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii). See also discussion infra Section III.

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

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Chapter V, Section 18

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Supplementary Material to Section 18

.01 [Initially, and for at least a] During the extended Pilot Period from August 7, 2005 to July 18, 2006 [of eighteen months from the commencement of trading on BOX], there will be no minimum size requirement for Customer Orders to be eligible for the PIP process. During this extended Pilot Period, BOXR will continue to submit certain data, periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size PIP orders, that there is significant price improvement for all orders executed through the PIP, and that there is an active and liquid market functioning on BOX outside of the PIP mechanism. Any data which is submitted to the Commission by BOXR will be provided on a confidential basis.

.02 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. 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 extend the PIP Pilot Program under the rules of the BOX.⁶ The PIP Pilot Program allows BOX to have no minimum size requirement for orders entered into the PIP. The proposed rule change retains the text of the Supplementary Material to Section 18 of Chapter V of the BOX Rules, as currently approved on an eighteen-month pilot basis, and seeks to extend the operation of the PIP Pilot Program until July 18, 2006.

The PIP Pilot Program provides small customer orders with benefits not available under the rules of most other exchanges. One of the important factors of the PIP Pilot Program is that it guarantees members the right to trade with their customer orders that are less than 50 contracts. In particular, any order entered into the PIP is guaranteed an execution at the end of the auction at a price at least a penny better than the National Best Bid and Offer ("NBBO").

In further support of this proposed rule change and as required by the PIP Pilot Program Approval Order, the Exchange has been submitting to the Commission a monthly PIP Pilot Program Report, offering detailed data from and analysis of the PIP Pilot Program.

2. Statutory Basis

The Exchange believes the data demonstrates that there is sufficient investor interest and demand to extend the PIP Pilot Program for another year. The proposed rule change is designed

⁶ See Securities Exchange Act Release No. 49068 (January 13, 2004), 69 FR 2768 (January 20, 2004) (SR-BSE-2003-04) ("PIP Pilot Program Approval Order").

to provide investors with real and significant price improvement regardless of the size of the order, without adversely affecting the regular auction. Accordingly, the Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,⁷ in general, and Section 6(b)(5) of the Act,⁸ in particular, in that it is designed to provide price improvement to any order, which is consistent with the public interest and protection of investors from a best execution standpoint. Additionally, the Exchange believes price improvement to any size order creates competition for the best execution of all orders, without unduly burdening competition.

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 for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

The BSE has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay to allow the PIP Pilot Program to continue to operate without interruption. The Commission waives the five-day pre-filing notice requirement. In addition, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the PIP Pilot Program to continue without interruption through July 18, 2006.⁹ 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.

⁹ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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-2005-22 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File No. SR-BSE-2005-22. 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 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-2005-22 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.¹⁰

Margaret H. McFarland
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).