

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52404; File No. SR-BSE-2005-21)

September 9, 2005

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to a Proposal to Transfer a Portion of Its Ownership Interest in Boston Options Exchange Facility

On July 27, 2005, the Boston Stock Exchange ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change announcing BSE's intention to transfer a portion of its ownership interest in BOX LLC, the operator of its Boston Options Exchange facility ("BOX"), such that its aggregate percentage interest will fall below 20%.³ The purpose of the transfer would be to assist BSE in funding its equities-related business interests and initiatives related thereto.

The proposed rule change was published for comment in the Federal Register on August 5, 2005.⁴ The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

The Commission has reviewed carefully BSE's proposed rule change and finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In the proposed rule change, BSE acknowledged the pursuant to Section 8.4(f) of the operating agreement of BOX LLC (the "LLC Agreement"), any transfer that would result in a reduction of BSE's aggregate Percentage Interest in BOX LLC to below 20% is subject to the rule filing process pursuant to Section 19(b)(1) of the Act (15 U.S.C. 78s(b)(1)) and Rule 19b-4 thereunder (17 C.F.R. 240-19b-4).

⁴ See Securities Exchange Act Release No. 52169 (July 29, 2005), 70 FR 45451.

applicable to a national securities exchange,⁵ and with the requirements of Section 6(b).⁶ In particular, the Commission finds that the proposal furthers the objectives of Section 6(b)(1),⁷ in that it will help ensure that the Exchange is so organized and has the capacity to carry out the purposes of the Act and to comply and to enforce compliance by the Exchange's members with the Act, the rules and regulations of the Act, and the rules of the Exchange; and Section 6(b)(5),⁸ in that it is designed to facilitate transactions in securities; to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and in general, to protect investors and the public interest.

Although BSE does not presently have a transferee designated, BSE represented in its proposed rule change that: (1) any transferee will need to sign and be bound by the provisions of the LLC Agreement; and (2) any Transfer,⁹ including a Transfer that will result in BSE's Percentage Interest falling below the 20% threshold, will be subject to the various limitations set

⁵ In approving this proposed rule change, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(1)

⁸ 15 U.S.C. 78f(b)(5).

⁹ Under the terms of the LLC Agreement, a "Transfer" occurs when any LLC Member would "dispose of, sell, alienate, assign, exchange, participate, subparticipate, encumber, or otherwise transfer in any manner. . . all or any part portion of its Units" (ownership interest).

forth in the LLC Agreement, throughout Article 8 and elsewhere, regarding suitability and other regulatory and business requirements.¹⁰

Further, the BSE represented that its proposed transfer of Units will not affect additional provisions of the LLC Agreement that make special accommodations for BSE as the SRO of the BOX facility. For example, Section 4.1(b) of the LLC Agreement provides that, with its present ownership interest, BSE is entitled to maintain two seats on the BOX LLC Board. Because BSE is not proposing to make any transfers that would result in BSE's percentage interest in BOX LLC going below 8.00%, which is the threshold amount established in Section 4.1(b) for BSE to maintain two directors on the Board, this entitlement will remain. In addition, pursuant to Section 4.1 of the LLC Agreement, BSE has an absolute right to designate at least one director on the BOX LLC Board regardless of whether it maintains any ownership interest in BOX LLC.

BSE also noted that, as a facility of an exchange, BOX is an integral part of a self-regulatory organization registered pursuant to the Act and is subject to the requirements of the Act. Although BOX LLC itself will not carry out any regulatory functions, all of its activities must be consistent with the Act. These obligations continue as long as BOX is a facility of BSE,

¹⁰ For example, BSE would be prohibited, under Section 8.1(d), from Transferring any of its Units to anyone other than a Member, an affiliate of a Member, or Interactive Brokers Group LLC ("IB") (according to the terms set forth in Section 8.6(d)), until the earlier of the second anniversary of the Launch Date of BOX or the date on which IB's percentage interest has been reduced to no more than 8.00%. Further, pursuant to Section 8.1(a) of the LLC Agreement, except for: (i) transfers among Members; (ii) certain transfers by IB; and (iii) transfers to Affiliates of a Member, prior to any transfer, the proposed transferee must be approved by the BOX LLC Board. To be eligible for approval, the proposed transferee must: (i) be of high professional and financial standing; (ii) be able to carry out their duties as a Member; and (iii) be under no regulatory or governmental bar or disqualification. In addition, pursuant to Section 8.4(e) of the LLC Agreement, BOX would be required to provide the Commission with notice ten days prior to the closing date of any acquisition that results in a BOX Member's ownership percentage interest meeting or crossing the threshold level of 5%, or the successive 5% percentage interest levels of 10% and 15%.

regardless of the size of BSE's ownership interest in BOX LLC. BSE also represented that because the Exchange is the SRO for the BOX facility, it will, independent of its ownership interest, ensure that BOX LLC conducts the facility's business in a manner consistent with the regulatory and oversight responsibilities of the BSE and with the Act.

Finally, BSE represented that neither its proposal nor the actual transfer of any BSE units will alter or modify the terms or the enforcement of the LLC Agreement.

The Commission believes that because the proposed transfer of Units by the BSE pursuant to the proposed rule change and the terms of the LLC Agreement will not affect BOX's responsibilities as a facility of BSE, or the Exchange's rights and obligations as the SRO for the BOX facility, including the Exchange's right to designate at least one director on the Board of BOX LLC, the proposed transfer of Units is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.

The Commission expects, and BSE has represented, that should there be any changes in the terms of the LLC Agreement between the date of the publication of this proposal and the proposed transfer of BSE's Units that would result in the BSE's Percentage Interest falling below the 20% threshold, the Exchange will submit a new proposed rule change in order for the Commission to consider the transfer of Units in light of any changes made to the LLC Agreement.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-BSE-2005-21) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Jonathan G. Katz
Secretary

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).