

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53013; File No. SR-BSE-2005-49)

December 22, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Market Opening Procedures of 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 November 4, 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 BSE. The Exchange filed Amendment No. 1 to the proposed rule change on December 13, 2005.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

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

BSE is proposing to amend its rules governing its market opening procedures on the Boston Options Exchange (“BOX”). The Exchange is proposing specifically to revise Chapter V, Section 9, of the BOX Rules to (1) amend the timeframe in which the BOX Trading Host will start opening the market and the intervals in which option classes in a series may be opened to provide a quicker, more efficient, fair, and orderly market opening; and (2) to require BOX Market Makers to provide continuous, two-sided quotes at the opening of the market.

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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> In Amendment No. 1, BSE modified the proposed rule text to clarify the timing of the opening process and also requested accelerated approval of the proposal.

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, 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 III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

The text of the proposed rule change is available on the Exchange's Internet Web site (<http://www.bostonstock.com>), at the Exchange's principal office, and at the Commission's Public Reference Room.

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

1. Purpose

The purpose of this proposed rule is to create a quicker, more efficient, fair, and orderly market opening, and to require BOX Market Makers to provide continuous, two-sided quotes at the opening of the market.

The BOX Trading Host currently opens classes starting at the first round minute of trading of the underlying security in the primary market, and at each round minute thereafter. Due to enhancements to BOX technology, the BOX Trading Host would be capable of opening an individual options class within seconds after the opening of trading of the underlying security and opening additional classes in successive seconds. This ability of the BOX Trading Host to start opening the market sooner would allow BOX to open individual classes quicker than it currently does today and to complete the opening process in a shorter timeframe. The BOX Trading Host could facilitate a quicker opening than it currently provides if it could facilitate the

opening of options classes closer to the opening for the underlying security and spread the opening of classes over seconds rather than minutes.

BOX Market Maker obligations during the Pre-Opening Phase are currently to provide continuous, two-sided quotes according to BOX minimum standards commencing the minute preceding the scheduled opening of the market for the underlying security. The BOX Trading Host only needs Market Maker quotes at the opening of the underlying security to be calculated into the Theoretical Opening Price (“TOP”) and subsequently to be included in the Opening Match price. This proposed rule change does not affect the ability of BOX Market Makers to maintain a fair and orderly market, nor does it relieve them of that obligation. However, the proposed rule requires Market Makers to be quoting at the open and should encourage Market Makers to provide tighter quotes prior to the Opening Match. The BOX Trading Host will still continue to accept continuous, two-sided quotes and broadcast the TOP during the Pre-Opening Phase.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>4</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative 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 for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the Exchange believes that the proposed rule change will provide a quicker, more efficient, fair, and orderly market opening process.

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<sup>4</sup> 15 U.S.C. 78f(b)(5).

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. 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](mailto:rule-comments@sec.gov). Please include File No. SR-BSE-2005-49 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-BSE-2005-49. 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 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-2005-49 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>5</sup> Specifically, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,<sup>6</sup> which requires, among other things, that the rules of national securities exchange be designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that, on account of enhancements to BOX's technology, BSE is proposing to allow BOX to open trading in an options series promptly following the opening of the underlying security and to complete the opening of all the classes in that series without the

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<sup>5</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

existing mandated one-minute opening increments for each class. The Exchange represents that the absence of such specified intervals for opening each class of options in a series would allow the opening to be completed within seconds, rather than minutes. The Commission believes that a faster opening should benefit investors because it would allow them to begin trading closer to the time of the opening of the underlying security, thus allowing investors to manage their risks better as well as enhancing competition among the options markets.

The Commission notes that the proposal would also modify the requirement regarding when BOX Market Makers must begin quoting in accordance with BOX minimum standards. Specifically, the proposal would require BOX Market Makers to start quoting at the actual opening of the market for the underlying security, rather than one minute preceding the scheduled opening of the market for the underlying security. The Exchange represents that BOX Market Maker quotes are not needed until the actual opening of the underlying security, and that requiring Market Makers to quote at the opening, rather than earlier, should encourage BOX Market Makers to provide tighter quotes.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> for approving the proposed rule change, as amended, prior to the 30<sup>th</sup> day of the date of publication of the notice thereof in the Federal Register. The Commission notes that the proposed rule change seeks to provide a faster opening on BOX. The Commission believes that granting accelerated approval to this proposal would allow BOX to more quickly begin to conduct faster openings, thus affording investors the benefits that should flow from the proposal sooner.<sup>8</sup>

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<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> The Commission notes that Chapter V, Section 9 of the BOX Rules, which govern BOX's opening process, was approved as a pilot program scheduled to expire on August 6, 2006. The proposed changes to this rule in the instant filing, while modifying the

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-BSE-2005-49), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Jonathan G. Katz  
Secretary

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opening process, would not extend or otherwise affect the duration of the pilot, which is scheduled to end on August 6, 2006.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

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