

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57383; File No. SR-BSE-2008-05)

February 26, 2008

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 5, to Amend the Rules of the Boston Options Exchange Related to Obvious Error Procedures

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 January 29, 2008, 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 substantially prepared by the Exchange. On February 21, 2008, the Exchange filed Amendment No. 1 to the proposal. On February 22, 2008, the Exchange submitted Amendment Nos. 2, 3, and 4, and withdrew Amendment Nos. 1, 2, and 3 to the proposal. On February 26, 2008, the exchange withdrew Amendment No. 4 and submitted Amendment No. 5 to the proposal.<sup>3</sup> 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

The Exchange proposes amending the Boston Options Exchange (“BOX”) Rules related to Obvious Error procedures. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.bostonstock.com](http://www.bostonstock.com).

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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> Amendment No. 5 replaces and supersedes the original filing and all previous amendments in their entirety.

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 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 BSE seeks to amend the BOX Rules<sup>4</sup> to modify the process for determining whether to “adjust or bust” certain trades on the BOX market. The Exchange believes that modifying this process will help to better ensure a fair and orderly market.

Currently, BOX has an established process whereby, in the event that a suspected Obvious Error has occurred during trading on the BOX market, a request for review may be made by one or both of the parties involved. This request for review notifies the Market Regulation Center (“MRC”) of the existence of a suspected erroneous transaction and initiates a review process. If the MRC determines that the transaction does in fact represent an Obvious Error, the transaction is either adjusted or busted. Depending on the parties involved in the transaction, the adjustments are either set according to pre-determined increments or by mutual agreement between the parties.

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<sup>4</sup> Capitalized terms not otherwise defined herein shall have the meanings prescribed under the BOX Rules.

The Exchange states that, currently, the MRC, as defined in the BOX Rules<sup>5</sup> as the “Exchange’s facilities for surveilling and regulating the conduct of business for options on BOX,” is involved in these Obvious Error requests and determinations. This amendment to the BOX Rules will substitute the BOX Market Operations Center (“MOC”)<sup>6</sup> for the MRC as the entity that first receives these Obvious Error requests. The MOC is already the primary contact for Options Participants when communicating with the BOX market regarding trading matters. Under this proposal, the MOC, as the primary contact, will promptly notify the MRC when an Obvious Error request is received, since the MRC will continue to be the body that makes adjust or bust decisions.

Additionally, the current BOX Obvious Error rules refer to transactions involving Market Makers “on BOX.” The proposed amendment to the BOX Rules will remove the language “on BOX.” This proposed change would provide an additional avenue of relief for non-BOX market makers, resulting in the Obvious Error Rules applying not only to BOX Market Makers, but also to market makers on other exchanges whose orders are designated with a market maker account type in the BOX Trading Host. Currently, according to Section 20(d)(ii)(1) of Chapter V of the BOX Rules, only BOX Market Makers involved in an erroneous transaction with another BOX Market Maker may avail themselves to the pre-determined obvious error Theoretical Price plus or minus adjustment levels. This amendment, if approved, would maintain and expand the

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<sup>5</sup> See Section 1 of Chapter I of the BOX Rules.

<sup>6</sup> This proposal will also add the MOC to the definitions section of the BOX Rules. See, Section 1 of Chapter I of the BOX Rules. The remainder of the changes to the definition section fall into two categories. The first is switching the current Sections 31 and 32 so that they are in alphabetical order. The second is, after inserting the MOC as a definition, renumbering the remaining definitions.

choices available to a non-BOX market maker involved in an erroneous transaction. Just as a BOX Market Maker, a non-BOX market maker would have the choice of agreeing with the counter party to bust the transaction, agreeing to adjust to an agreed upon price for the transaction, or now having the transaction adjusted to the pre-determined levels.

This amendment to the BOX Rules will also establish an additional course of action if it is determined that an Obvious Error has occurred. The current BOX Rules allow for an adjustment in the transaction price where both parties to the transaction are market makers. Alternatively, the BOX Rules call for a bust of the transaction if at least one party to the transaction is a market maker on BOX, unless both parties agree to an adjustment price and notify the MRC. The proposed amendment to the Obvious Error Rule will render this particular scenario applicable only when “neither” party to the transaction is a market maker. Under the scenario where neither of the parties involved in the obviously erroneous transaction is a market maker, a bust of the transaction is believed to be the proper course of action, absent an agreement to an adjusted price for the transaction.

The additional course of action, as proposed, will now be available to the MRC when one party to the transaction is not a market maker and the other party is a market maker. The Exchange believes that affording a non-market maker party the opportunity to choose between busting the transaction or adjusting it according to the pre-determined increments, as set forth in the Obvious Error Rule, will better protect the non-market maker party in the event of obviously erroneous transactions. The establishment of this option is intended to protect against scenarios where a non-market making party, perhaps a Public Customer, enters into a transaction with a market maker. Under the current rules, if this transaction is determined to be an Obvious Error, the trade will be busted unless the parties agree to an adjustment price. If the Public Customer

does not want the trade busted but, nonetheless, cannot agree to an adjusted price with the market maker, then the trade will still be busted. The Exchange believes that this could expose the Public Customer to unintended positions and risk, perhaps in the equities markets, where this particular options transaction was intended to hedge against. The Exchange believes that, by providing access to the pre-established Obvious Error adjustment increments, some of this risk should be alleviated or eliminated for the non-market maker party by allowing the transaction to be adjusted rather than busted.

The Exchange believes that the availability of the pre-determined adjustment increments should provide non-market maker parties with added assurances that, in the case of an obviously erroneous transaction and at their election, the transaction will be adjusted rather than automatically busted, as provided in the current Rule. While this should provide an added protective feature for non-market makers, it should not expose market makers to any additional risk or decrease the protections that they are already afforded in the BOX Rules. A market maker's transaction already has these pre-determined adjustment increments applied to their trades with other market makers. Thus, this proposal would merely extend the application of the pre-determined adjustment increments to another party that a market maker could trade with via the BOX Trading Host.

## 2. Statutory Basis

The Exchange believes that the proposed amendment to the BOX Rules would result in greater flexibility in determining the outcome of erroneous transactions within the BOX Trading Host. Accordingly, the Exchange believes that the proposed rule change is consistent with

Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, 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 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

No written comments were solicited or received by the Exchange with respect to the proposed rule change.

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 the proposed rule change; or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-BSE-2008-05 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BSE-2008-05. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such 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-2008-05 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).