

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57618; File No. SR-BSE-2008-21)

April 4, 2008

Self-Regulatory Organizations; Boston Stock Exchange, Inc., Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 2 Thereto, Relating to Exchange Fees and Charges

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 March 27, 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 prepared substantially by the Exchange. On April 2, 2008, the BSE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On April 3, 2008, the Exchange withdrew Amendment No. 1 and simultaneously filed Amendment No. 2 to the proposal.<sup>4</sup> BSE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A),<sup>5</sup> and Rule 19b-4(f)(2) thereunder,<sup>6</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 2, from interested persons.

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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. 1 eliminated from the original filing reference to Section 7.c. (“Intermarket Linkage Transactions”) of the BSE Fee Schedule. Any proposed changes to Section 7.c. of the BSE Fee Schedule will be the subject of a separate filing.

<sup>4</sup> Amendment No. 2 corrected two typographical errors in the rule text set forth in Amendment No. 1. Amendment No. 2 superseded and replaced the previously filed Amendment 1 in its entirety.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

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

The Exchange proposes to amend the Fee Schedule of the Boston Options Exchange ("BOX"). The text of the proposed rule change is available on the Exchange's Web site (<http://www.bostonstock.com>), at Exchange's principal office, and at the Commission's Public Reference Room.

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 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 Exchange is proposing to amend Section 7 of the BOX Fee Schedule. The proposed rule change will remove the "M or T Non-Penny Pilot Classes" from the BOX Fee Schedule, resulting in the Liquidity Make or Take Pricing Structure ("Make or Take") applying only to those classes of options included in the Penny Pilot Program on BOX ("Penny Pilot Classes").<sup>7</sup>

On November 30, 2007, the Exchange filed a rule proposal with the Commission which added to Make or Take the twenty five (25) most actively traded options classes on BOX that at

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<sup>7</sup> The rules pertaining to the Penny Pilot Program on BOX can be found in Section 33 of Chapter V of the BOX Rules. The Exchange has notified Participants of the classes included within the Penny Pilot Program via Regulatory Circular. See BOXR Regulatory Circular 2008-06.

that time were not included within the Penny Pilot Program (“M or T Non-Penny Pilot Classes”).<sup>8</sup> Recently, nineteen (19) of these M or T Non-Penny Pilot Classes were included in an expansion of the Penny Pilot Program.<sup>9</sup> The Exchange does not consider it beneficial to investors or the public in general to continue to apply the Make or Take pricing structure to the six (6) M or T Non-Penny Pilot Classes that were not included in the Penny Pilot Program expansion.

The Exchange proposes to apply Make or Take only to those classes of options that are included within the Penny Pilot Program on BOX. The fees and credits associated with the Make or Take pricing structure will no longer apply to transactions in any class of options other than those included in the Penny Pilot Program. The standard trading fees, as delineated in the remainder of the BOX Fee Schedule, shall apply to those options classes that this proposal seeks to remove from Make or Take.<sup>10</sup>

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>12</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

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<sup>8</sup> See Securities Exchange Act Release No. 56948 (December 12, 2007), 72 FR 72426 (December 20, 2007) (SR-BSE-2007-52).

<sup>9</sup> See Securities Exchange Act Release No. 57566 (March 26, 2008), 73 FR 18013 (April 2, 2008) (SR-BSE-2008-20). This filing added twenty eight (28) of the most actively-traded, multiply-listed options classes, according to Options Clearing Corporation volume statistics, to the Penny Pilot Program.

<sup>10</sup> The BOX Fee Schedule can be found on the BOX Website at [www.bostonoptions.com](http://www.bostonoptions.com).

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(4).

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 rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and subparagraph (f)(2) of Rule 19b-4<sup>14</sup> thereunder. 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.<sup>15</sup>

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

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

<sup>15</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on April 3, 2008, the date on which BSE filed Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BSE-2008-21 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-2008-21. 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 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 No. SR-BSE-2008-21 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).