

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57566; File No. SR-BSE-2008-20)

March 26, 2008

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Implementation of Phase II of the Penny Pilot Program

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 25, 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 BSE. The Exchange has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act<sup>3</sup> and Rule 19b-4(f)(1) thereunder,<sup>4</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 from interested persons.

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

The Exchange proposes to amend Section 33 (Penny Pilot Program) of Chapter V of the Rules of the Boston Options Exchange (“BOX”). The proposed rule change will allow the Exchange to implement the second phase (“Phase II”) of a Commission-approved expansion of the

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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> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

Penny Pilot Program.<sup>5</sup> The proposed rule change will also allow the Exchange to remove the current listing of the classes (“Penny Classes”) included in the Penny Pilot Program from Section 33, and will permit the Exchange to notify Participants of the classes included in the Penny Pilot Program via Regulatory Circular.

The text of the proposed rule change and the Regulatory Circular are available on the Exchange’s Web site (<http://www.bostonstock.com>), at the BSE’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 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 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 Penny Pilot Program began on January 26, 2007 and allowed for the trading of a limited number of option classes in penny increments.<sup>6</sup> A subsequent rule filing by the

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<sup>5</sup> See Securities Exchange Act Release No. 56566 (September 27, 2007), 72 FR 56400 (October 3, 2007) (SR-BSE-2007-40) (“Approval Order”).

<sup>6</sup> See Securities Exchange Act Release No. 55155 (January 23, 2007) 72 FR 4741 (February 1, 2007) (SR-BSE-2006-49) (“Original Pilot Approval Order”). The thirteen (13) option classes originally included in the Pilot were: iShares Russell 2000 (IWM), NASDAQ-100 Index Tracking Stock (QQQQ), SemiConductor Holders Trust (SMH), General Electric Company (GE), Advanced Micro Devices, Inc. (AMD), Microsoft Corporation (MSFT), Intel Corporation (INTC), Caterpillar, Inc. (CAT), Whole Foods Market, Inc. (WFMI), Texas Instruments, Inc. (TXN), Flextronics International Ltd.

Exchange on September 27, 2007 initiated a two-phased expansion of the Penny Pilot Program.<sup>7</sup> The first phase (“Phase I”) commenced on September 28, 2007, and with it added twenty-two (22) option classes to the Penny Pilot Program.<sup>8</sup>

The Exchange now proposes to implement Phase II of the expansion on March 28, 2008. When Phase II is implemented the Exchange will add twenty-eight (28) of the most actively traded, multiply-listed option classes to the Penny Pilot Program. This will bring the total number of option classes quoted in pennies to sixty-three (63) (the original thirteen (13) classes, plus twenty-two (22) classes from Phase I of the expansion, plus the twenty-eight (28) additional option classes from Phase II of the expansion).

The Exchange will distribute a complete list of the classes included in the Penny Pilot Program to Participants via Regulatory Circular. The Exchange believes that distributing a Regulatory Circular containing the current and additional Penny Classes is the best method of notifying and informing Participants of the additional classes that will be included in Phase II of the impending expansion. Further, circulation of the list of Penny Classes via Regulatory

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(FLEX), Sun Microsystems, Inc. (JAVA), and Agilent Technologies, Inc. (A). The Penny Pilot Program was extended on July 24, 2007. See Securities Exchange Act Release No. 56149 (July 26, 2007), 72 FR 42450 (August 2, 2007) (SR-BSE-2007-38).

<sup>7</sup> See Approval Order, supra note 5.

<sup>8</sup> The following classes were added to the Penny Pilot Program on September 28, 2007: SPY (SPDRs), AAPL (Apple, Inc.), MO (Altria Group Inc.), DNDN (Dendreon Corp.), AMGN (Amgen Inc.), YHOO (Yahoo! Inc.), QCOM (QUALCOMM Inc.), GM (General Motors Corporation), XLE (Energy Select Sector), DIA (DIAMONDS Trust, Series 1), OIH (Oil Service HOLDERS), NYX (NYSE Euronext, Inc.), CSCO (Cisco Systems, Inc.), XLF (Financial Select Sector SPDR), T (AT&T Inc.), C (Citigroup), AMZN (Amazon.com Inc.), MOT (Motorola Inc.), RIMM (Research in Motion Ltd.), FCX (Freeport-McMoRan Copper & Gold Inc.), COP (ConocoPhillips), and BMY (Bristol-Myers Squibb Co.). The most recent expansion of the Penny Pilot Program is set to expire on March 27, 2008, after which point the second phase of the expansion will commence and continue through March 27, 2009.

Circular will conform the Exchange's method of distribution of such information to that of other exchanges.<sup>9</sup>

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>10</sup> in general, and Section 6(b)(5) of the Act,<sup>11</sup> in particular, in that it will implement the second phase of an approved pilot program and permit the Exchange to notify Participants about the program via Regulatory Circular, and is designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade, 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. Specifically, the proposal will result in a more efficient method by which the Exchange informs Participants of the classes included in the Penny Pilot Program.

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

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<sup>9</sup> See Supplemental Material to Rule 710 of the Rules of the International Securities Exchange, LLC ("ISE").

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act<sup>12</sup> and Rule 19b-4(f)(1) thereunder,<sup>13</sup> because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing BOX rule. Specifically, the proposed rule change will allow the Exchange to implement Phase II of a Commission-approved expansion of the Penny Pilot Program. The proposed rule change will also allow the Exchange to modify the manner in which it will notify Participants of the classes contained in the Penny Pilot Program.

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>14</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
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BSE-2008-20 on the subject line.

##### Paper comments:

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>13</sup> 17 CFR 240.19b-4(f)(1).

<sup>14</sup> See 15 U.S.C. 78s(b)(3)(C).

- 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-2008-20. 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 the 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 Number SR-BSE-2008-20 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>15</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).