

find that it is in the public interest to approve the rules as soon as possible to expedite the implementation of the proposed rules.

Accordingly, we believe good cause exists, consistent with sections 107 and 109 of the Act, and Section 19(b) of the Exchange Act, to approve Amendment No. 1 to the proposed rules on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether the amendments are consistent with the Act and the securities laws or are necessary or appropriate in the public interest or for the protection of investors. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed amendments that are filed with the Commission, and all written communications relating to the amendments 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 at the Commission's Public Reference Room.

All submissions should refer to File No. PCAOB-2003-02 and should be submitted by September 8, 2003.

**V. Conclusion**

Title I of the Act assigns to the PCAOB the task of designing and implementing registration, standard-setting, inspection, and disciplinary systems that promote the preparation of accurate, informative and independent audit reports. To fulfill these functions, the PCAOB must have a reliable source of funds and rules that provide for the allocation, assessment, and collection of fees in an equitable manner in accordance with section 109(d) of the Act.

Congress, in enacting section 109, required that the recoverable budget expenses of the PCAOB and the

accounting standard setting body be payable through accounting support fees assessed on issuers. Congress also set forth the basic formula for calculating the support fees based on issuers' relative market capitalizations.

The PCAOB is charged under section 109 to adopt rules, subject to the Commission's approval, that establish a reasonable annual accounting support fee (or a formula for the computation thereof) as may be necessary or appropriate to establish and maintain the Board, and provide for the equitable allocation and assessment of the support fees among, and collection of the support fees from, issuers. Section 109 directs the PCAOB to allow for differentiation of the fees among classes of issuers, as appropriate.

On the basis of the foregoing, the Commission finds that the proposed rules, as amended, are consistent with the requirements of the Act and the securities laws and are necessary and appropriate in the public interest and for the protection of investors.

*It is therefore ordered*, pursuant to sections 107 and 109 of the Act, and section 19(b)(2) of the Exchange Act, that the proposed rules (File No. PCAOB-2003-02), as amended, be and hereby are approved.

By the Commission,  
**Margaret H. McFarland**,  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-48271; File No. SR-BSE-2003-13]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to the Initial Allocation Plan for the Proposed Boston Options Exchange Facility**

August 1, 2003.

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 July 30, 2003, 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 by the Exchange. 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 BSE proposes to add new Chapter XXXVII for the purpose of setting forth an Initial Allocation Plan for the proposed Boston Options Exchange facility (“BOX”).<sup>3</sup> Proposed new language is *italicized*.

\* \* \* \* \*

**Chapter XXXVII**

*Boston Options Exchange, Inc.*

Initial Class Allocation—Parameters and Criteria

*Sec. 1. In order to manage the initial allocation of classes for the proposed Boston Options Exchange (“BOX”), the BSE intends to launch trading on the proposed BOX market for the top 250 classes (as determined by OCC volume statistics). 1886 assignments will be allocated first, to be phased in for trading during the first three months following the launch date. The remaining assignments within the initial 250 classes will be allocated on a class by class basis during the following three months.*

*(a) Parameters. The following categories and criteria are the basis for the initial allocation process.*

Category	Ranking of classes	Number of market makers per class	OCC average daily volume (No. of contracts)
A .....	1	12	>100,000.
B .....	2-6	12	50,000 to 99,999.
C .....	7-11	12	25,000 to 49,999.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 47186 (January 14, 2003), 68 FR 3062 (January 22, 2003) (SR-BSE-2002-15).

Category	Ranking of classes	Number of market makers per class	OCC average daily volume (No. of contracts)
D .....	12-53	12	10,000 to 24,999.
E .....	54-106	10	5,000 to 9,999.
F .....	107-250	5	Less than 5,000.

The names and ranking of the 250 classes to be listed at launch are based on OCC volume.

(b) Criteria to determine firm experience. In order to ensure market quality, some appointments in each class will be allocated to "experienced" firms. The following criteria will be used as consideration to determine which market making firms qualify as experienced:

(1) The applicant has been a market maker or specialist on an organized fully automated market on a minimum of 50 classes for at least 6 months;

(2) The applicant has sufficient capital committed to its options activities to effectively support an automated market in BOX, as determined by the Exchange.

(c) Any applicant denied any privilege under the provisions of this Chapter XXXVII, including denial of acceptance as an "experienced" market maker, may appeal such decision according to the procedures set forth in Chapter XXX, Disciplining of Members, Denial of Membership.

**Allocation process**

Sec. 2. Subject to an applicant's approval as an Options Participant and a Market Maker on the BOX Market, the BSE will allocate classes based on the procedures set forth in this Section 2.

The model is based on the allocation of assignments sequentially by way of two rounds. This process will ensure that all firms will get a fair share of assignments while ensuring market quality by giving some priority to experienced firms. The allocation will be controlled by the Exchange using a random lottery program (the "program").

(a) Round 1—allocate assignments to experienced firms. In the first round, 50% of all assignments will be available for allocation to experienced firms from categories A, B, C, D and E, and 40% of assignments will be available from category F. Accordingly, a total of 871 assignments will be allocated to experienced firms. If for a given class, the number of assignments available for the first allocation is smaller than the number of assignments requested by the firms who qualify as experienced, a

lottery program will be used whereby the names of all experienced firms requesting the class will be put in a pool, and the names will be drawn one by one until the assignments available on the class for this round are exhausted.

(b) Round 2—allocate remaining assignments. All applicants will participate in this round during which a total of 1,015 assignments will be allocated. On classes where the demand is smaller than or equal to the number of assignments available for the first allocation, all firms requesting an assignment will be allocated. On classes where the demand is greater than the number of assignments available for the first allocation, the lottery program will be used whereby the names of all firms requesting the class (including experienced firms which did not receive the allocation as a result of Round 1) will be put in a pool, and the names will be drawn one by one until the assignments available on the class for this round are exhausted

(c) Priority for subsequent assignments. In order to establish priority between applicants not having received appointments for the first allocation period, the process will continue until all the candidates have been drawn, and a waiting list has been established. This order of priority on the waiting list will be used in order to allocate new assignments as they become available within 6 months following the launch date, or if a selected market maker decides to withdraw.

**Initial Class Allocation Process Deposit**

Sec. 3. In order to ensure that applicants are not overbidding to maximize the number of posts they will be allocated in the initial allocation and to ensure their commitment to make market on their requested assignments, a deposit will be required from each market-making firm immediately prior to the allocation lottery. The funds received from each market making firm will be deposited into a separate account maintained by the Exchange specifically for this purpose. Commencing on the launch date of the proposed BOX, deposits for those

assignments that become live (i.e. available for a market maker to trade on BOX) will be released to BOX and be: (a) nonrefundable, (b) considered as pre-paid fees, and (c) credited against applicant's BOX account to offset trading, technology and other related fees and charges. Before any class becomes live for a particular market maker, if the applicant notifies the Exchange that the applicant wishes to drop any allocated classes, the BSE will refund 50% of the related deposit. If an applicant does not receive an allocation in any requested class as a result of the initial allocation process, the deposit for those classes not allocated will be refunded to the applicant within fifteen (15) days of the date of the allocation process.

The deposit required for each class will be determined based on the ranking of the class, as categorized in Section 1 of this Chapter XXXVII, as follows:

- Category A—\$45,000 per class
- Category B—\$9,000 per class
- Category C—\$6,000 per class
- Category D—\$2,250 per class
- Category E—\$750 per class
- Category F—\$300 per class.

**Expiration**

Sec. 4. The Allocation Process set forth in Sections 1-3 of this Chapter XXXVII, will expire no later than six months beyond the initial launch date of the proposed BOX market.

\* \* \* \* \*

**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 Exchange proposes to add new Chapter XXXVII to its Rules of the Board of Governors of the Boston Stock Exchange, Inc. The purpose of the new chapter will be to set forth the Allocation Process for BOX Market Maker<sup>4</sup> appointments and accompanying deposit requirements related to the launch of the proposed Boston Options Exchange ("BOX"), an options trading facility of the Exchange currently being proposed.

The proposed BOX market model provides for an "open" policy where the goal is to have no restrictions on the number of market makers assigned per class. To properly manage the launch of the initial 250 classes, BOX will request that prospective market maker firms declare their interest for market making assignments. BOX will fully allocate all the assignments requested by the market maker firms within 6 months of the start date of the proposed BOX market ("initial allocation").

Nevertheless, as with any exchange venture the size and complexity of the proposed BOX, prudence requires that the rollout of trading occur in a planned and controlled manner that will ensure

the maintenance of a fair and orderly market. In this regard, BOX intends to phase in trading, during the first three months following the launch date, the 250 classes with 1,886 assignments allocated first. Then, any remaining assignments will be assigned on a class-by-class basis during the following three months.

Accordingly, a market maker class allocation plan is necessary to manage the rollout, and to select on a fair and transparent basis the assignments that will be initially allocated. The process will be managed by the BSE.

The following categories and criteria are proposed for the initial allocation process:

Category	Ranking of classes	Number of market makers per class	OCC average daily volume (# of contracts)
A .....	1	12	>100,000.
B .....	2-6	12	50,000 to 99,999.
C .....	7-11	12	25,000 to 49,999.
D .....	12-53	12	10,000 to 24,999.
E .....	54-106	10	5,000 to 9,999.
F .....	107-250	5	Less than 5,000.

The names and ranking of the 250 classes to be listed at launch are based on OCC volume.

Furthermore, in order to ensure market quality, the model proposes to allocate in priority some appointments in each class to experienced firms. The following criteria will be used as consideration to determine which market making firms qualify as experienced:

1. Have been a market maker or specialist on an organized fully automated market on a minimum of 50 classes for at least 6 months; and,

2. Have sufficient capital committed to its options activities to effectively support an automated market in BOX, as determined by the BSE.

Subject to an applicant's approval as an Options Participant<sup>5</sup> and a Market Maker on the BOX Market, the BSE will allocate classes based on the procedures set forth in the proposed allocation plan model. The model is based on the allocation of assignments sequentially by way of two rounds. This process will ensure that all firms will get a fair share of assignments while ensuring market quality by giving some priority to experienced firms. The allocation will be run by the BSE using a random lottery program (the "program")

developed by BOX, and externally audited to verify its integrity, neutrality and fairness.

*Round 1—allocate assignments to experienced firms.* The first round provides for the allocation to experienced firms of 50% of all assignments available for the first allocation in categories A, B, C, D and E, and 40% of assignments available for the first allocation in category F. Accordingly, a total of 871 assignments will be allocated. If for a given class, the number of assignments available for the first allocation is smaller than the number of assignments requested by the firms who qualify as experienced, the lottery program will be used. The program will work based upon the following principles: the names of all experienced firms requesting the class will be put in a pool; and the names will be drawn one by one until the experienced assignments available on the class for this round are exhausted.

*Round 2—allocate remaining assignments.* All applicants will participate in this round during which a total of 1,015 assignments will be allocated. On classes where the demand is smaller than or equal to the number of assignments available for the first allocation, all firms requesting an

assignment will be allocated. On classes where the demand is greater than the number of assignments available for the first allocation, the lottery program will be used. The program will work based upon the following principles: the names of all the firms requesting the class, including experienced candidates not selected in Round 1, will be put in a pool; and the names will be drawn one by one until the assignments available for the first allocation on the class are exhausted.

To establish priority between applicants not having received appointments in this first allocation, the process will continue until all the applicants have been drawn and a waiting list is established. This order of priority on the waiting list will be used in order to allocate new assignments as they become available within 6 months following the launch date, or if a selected market maker decides to withdraw.

To ensure that firms are not overbidding to maximize the number of posts they will be allocated in the first allocation and to ensure their commitment to make markets on their requested assignments, a deposit will be required from each market-making firm immediately prior to the allocation

<sup>4</sup> See proposed BOX Rules, Chapter I, *General Provisions*, Sec. 1(a)(31) (definition of "Market Maker").

<sup>5</sup> See proposed BOX Rules, Chapter I, *General Provisions*, Sec. 1(a)(39) (definition of "Options Participant").

lottery. The funds received from each market making firm will be deposited into a separate account maintained by the BSE specifically for this purpose. Commencing on the launch date of the proposed BOX, deposits for those assignments that become "live" (*i.e.* available for a particular market maker to trade on BOX) will be released to BOX and be: (a) nonrefundable, (b) considered as pre-paid fees, and (c) credited against applicant's BOX account to offset trading, technology and other related fees and charges. Before any class becomes live for a particular market maker, if the applicant notifies BOX that he wishes to drop certain allocated classes, BOX will refund 50% of the related deposit. If an applicant does not receive an allocation in any requested class as a result of the initial allocation process, the deposit for those classes not allocated will be refunded to the applicant within fifteen (15) days of the date of the allocation process. The deposit amounts will vary for each class in the following manner: Category A \$45,000 per class, Category B \$9,000 per class, Category C \$6,000 per class, Category D \$2,250 per class, Category E \$750 per class, Category F \$300 per class. For example, if a firm applies to be market maker on all of the 250 classes to be listed at launch, the required deposit will be \$297,450.

Due to the fact that this proposed allocation plan is deemed to be a temporary process specifically designed to control the launch of the proposed BOX market, the Exchange is seeking approval of this proposal for a limited time, and will not, in any case, utilize this process, as currently set forth, any later than six months beyond the initial launch date of the BOX market.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements under Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objective of Section 6(b)(5) of the Act,<sup>7</sup> in particular, in that it is designed 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 transaction 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.

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

<sup>7</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 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 did not solicit or receive written comments on 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 such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-BSE-2003-13 and should be submitted by August 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-20129 Filed 8-6-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48267; File No. SR-CBOE-2003-18]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Amend CBOE Rule 6.24 Relating to Systematizing Orders

July 31, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 5, 2003, the Chicago Board Options Exchange, Incorporated ("CBOE" 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 by the CBOE. On July 29, 2003, the Exchange submitted Amendment No. 1 to the proposed rule change.<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 submitted this proposed rule change in order to comply with the requirement to implement a consolidated options audit trail system ("COATS"). The Exchange is submitting the proposed rule change to CBOE Rule 6.24 in connection with subparagraph IV.B.e(v) of the Commission's September 11, 2000 Order ("Order").<sup>4</sup>

The text of the proposed rule change is set forth below. New text is in italics; deletions are in brackets.

\* \* \* \* \*

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 replaces and supercedes the original filing in its entirety.

<sup>4</sup> Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000).