



DIVISION OF  
MARKET REGULATION

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

July 30, 2007

John Katovich  
Chief Legal Officer  
Boston Stock Exchange, Inc.  
100 Franklin Street  
Boston, MA 02110

Re: Boston Stock Exchange, Inc. – Request for Exemption Under Rule 608(e) of Regulation NMS Under the Securities Exchange Act of 1934 from Certain Provisions of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage Relating to the Execution of Option Transactions During Crossed Markets

Dear Mr. Katovich:

Rule 608(e) of Regulation NMS under the Securities Exchange Act of 1934 (“Exchange Act”) provides that the Securities and Exchange Commission (“Commission”) may exempt from the provisions of Rule 608 of Regulation NMS, either unconditionally or on specified terms and conditions, any self-regulatory organization, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets, and the removal of impediments to, and perfection of the mechanisms of, a national market system.<sup>1</sup> As discussed below, the Commission is exempting the Boston Stock Exchange, Inc. (“BSE” or “Exchange”) from Rule 608(c) of Regulation NMS, which requires BSE to comply with, and enforce compliance by its members with, certain provisions of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (“Plan”).<sup>2</sup>

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<sup>1</sup> 17 CFR 242.608. The Division of Market Regulation has delegated authority to grant an exemption pursuant to 17 CFR 200.30-3(a)(42).

<sup>2</sup> The Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act, 15 U.S.C. 78k-1, and Rule 608 of Regulation NMS. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

**Exemption from Section 8(c) of the Plan**

In the Exchange's letter, dated July 30, 2007, BSE seeks an exemption from Rule 608(c) of Regulation NMS, which requires BSE to comply with, and enforce compliance by its members with, the terms of the Plan regarding Trade-Throughs.<sup>3</sup> Specifically, BSE requests that the Commission, pursuant to Rule 608(e) of Regulation NMS, exempt BSE from the requirement of Rule 608(c) of Regulation NMS that BSE comply, and enforce compliance by its members, with Section 8(c) of the Plan when trade-throughs occur due to executions on the Boston Options Exchange ("BOX") when the National Best Bid or Offer ("NBBO")<sup>4</sup> is crossed by the disseminated market of another options exchange, or the BOX's disseminated market crosses the NBBO, and BOX's price<sup>5</sup> on the opposite side of the market from the incoming order establishes, or is equal to, the NBBO.

Section 8(c) of the Plan provides that, "absent reasonable justification and during normal market conditions, members in [Participants'] markets should not effect Trade-Throughs." Section 8(c) of the Plan also requires the Participants to the Plan to file with the Commission for its consideration uniform rules which, among other things, provide that, "[w]hen purchasing or selling, either as principal or agent, any options series of an Eligible Options Class, or when sending a Linkage Order, members of a Participant should avoid initiating a Trade-Through" unless an exception applies. In accordance with this provision of the Plan, BSE submitted, and the Commission approved, Chapter 12, Section 3 of the BOX Rules, which provide that absent reasonable justification and during normal market conditions, Options Participants should not effect Trade-Throughs, unless an exception applies.<sup>6</sup>

As set forth more fully in the proposed rule change filed today with the Commission for immediate effectiveness,<sup>7</sup> the BSE's rules provide that a sell order is never executed on BOX at a price inferior to the best bid available on any options exchange; similarly, a buy order is never executed on BOX at a price inferior to the best offer available on any options exchange. When the NBBO is crossed, however, such an execution would result in a trade-through.

<sup>3</sup> A "Trade-Through" is defined in Section 2(29) of the Plan as "a transaction in an options series at a price that is inferior to the NBBO."

<sup>4</sup> "NBBO" is defined in Section 2(19) of the Plan as the national best bid and offer in an options series calculated by a Participant.

<sup>5</sup> BOX's price could be either BOX's disseminated price or it could be a Participant response to the exposure of the incoming order pursuant to Chapter V, Section 16(b) of BOX Rules. Therefore, an incoming order during a crossed market must trade at a price equal to the NBBO on the opposite side of the incoming order.

<sup>6</sup> See Chapter 12, Section 3(a) of the BOX Rules.

<sup>7</sup> See File No. SR-BSE-2007-39.

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Accordingly, you request an exemption from the requirement in Rule 608(c) of Regulation NMS that BSE comply, and enforce compliance by its members, with Section 8(c) of the Plan when orders are executed on BOX when the NBBO is crossed, provided that such execution is at a price on the opposite side of the market from the incoming order equal to the NBBO.

**Exemption from Section 4(b) of the Plan**

Section 4(b) of the Plan requires each Participant to enforce compliance with the provisions of the Plan by its members in their use of linkage through its facilities. You have requested that the Commission exempt BSE from the requirement in Rule 608(c) of Regulation NMS that BSE comply with Section 4(b) of the Plan by enforcing members' compliance with Section 8(c) of the Plan when orders are executed on BOX when the NBBO is crossed, provided that such execution is at a price<sup>8</sup> on the opposite side of the market from the incoming order equal to the NBBO.

**Response to Request for Exemption**

On the basis of the representations and facts presented in your letter, the Commission grants an exemption to BSE from the requirement under Rule 608(c) of Regulation NMS that BSE comply with Section 8(c) of the Plan, which provides in part that, "absent reasonable justification and during normal market conditions, members in [Participants'] markets should not effect Trade-Throughs." This exemption is expressly conditioned on BOX executing orders, when the NBBO is crossed, at a price on the opposite side of the market from the incoming order equal to the NBBO.

In addition, the Commission grants an exemption to BSE from the requirement in Rule 608(c) of Regulation NMS that BSE comply with Section 4(b) of the Plan by enforcing its members' compliance with the requirements of Section 8(c) when orders are executed on BOX when the NBBO is crossed by the disseminated market of another options exchange, or BOX's disseminated market crosses the NBBO, and BOX's price on the opposite side of the market from the incoming order establishes, or is equal to, the NBBO.

The Commission finds that it is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system to grant the exemption described above because it will facilitate the resolution of crossed markets.

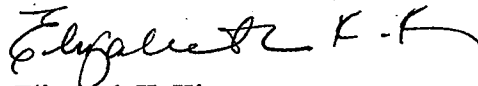
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<sup>8</sup> BOX's price could be either BOX's disseminated price or it could be a Participant response to the exposure of the incoming order pursuant to Chapter V, Section 16(b) of BOX Rules. Therefore, an incoming order during a crossed market must execute at a price equal to the NBBO on the opposite side of the incoming order.

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This exemption is conditioned solely on the facts and representations presented in your letter. In the event that any material change occurs with respect to any of the facts or representations presented, the exemption will expire and BSE must immediately resume operating in accordance with all provisions of the Plan.

For the Commission, by the Division of  
Market Regulation, pursuant to delegated  
authority,<sup>9</sup>



Elizabeth K. King  
Associate Director

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<sup>9</sup> 17 CFR 200.30-3(a)(42).



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July 30, 2007

Ms. Nancy M. Morris  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

**Re: Boston Stock Exchange, Inc. – Request for Exemption Under Rule 608(e) of Regulation NMS Under the Securities Exchange Act of 1934 from Certain Provisions of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage Relating to the Execution of Option Transactions During Crossed Markets**

Dear Ms. Morris,

The Boston Stock Exchange, Inc. (“BSE” or “Exchange”) respectfully requests that the Commission grant a partial exemption from Rule 608(c) of Regulation NMS under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), which requires the Exchange to comply with and enforce compliance by its members with the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the “Plan”). As set forth more fully below, the Exchange seeks an exemption from liability for the satisfaction of Trade-Throughs<sup>1</sup> under the Plan when a trade-through would be the result of an execution<sup>2</sup> when the National Best Bid or Offer (“NBBO”) is crossed by the disseminated market of another options exchange, or the Boston Options Exchange (“BOX”) disseminated market crosses the NBBO, and BOX’s price<sup>3</sup> on the opposite side of the market for the incoming order establishes, or is equal to, the NBBO.

#### **Commission’s Exemptive Authority**

Rule 608(e) of Regulation NMS authorizes the Commission to issue exemptions from the provisions of Rule 608. In particular, Rule 608(e) provides:

<sup>1</sup> A “Trade-Through” is defined in the BOX Rules as a transaction in an options series at a price that is inferior to the NBBO, but shall not include a transaction that occurs at a price one minimum quoting increment inferior to the NBBO provided a Linkage Order is contemporaneously sent to each Participant Exchange disseminating the NBBO for the full size of the Participant Exchange’s bid (offer) that represents the NBBO. See Section 1(q) of Chapter XII of the BOX Rules.

<sup>2</sup> All executions on BOX are automated.

<sup>3</sup> BOX’s price could be either BOX’s disseminated price or it could be a Participant response to the exposure of the incoming order pursuant to Chapter V, Section 16(b) of BOX Rules. Therefore, an incoming order during a crossed market must execute at a price equal to the NBBO on the opposite side of the incoming order.



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The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any self-regulatory organization... if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system.

17 CFR 242.608(e). The Plan is an effective national market system plan pursuant to Rule 608 of Regulation NMS, and the Exchange is a participant in the Plan. Rule 608(e) of Regulation NMS authorizes the Commission to issue an exemption to the Exchange from Rule 608(c), which requires the Exchange to comply with and to enforce compliance by the Exchange's members with the terms of the Plan.<sup>4</sup>

**Background**

The Exchange seeks this exemption in order to facilitate a proposed rule change that would permit executions in option transactions that result in trade-through executions when the NBBO is crossed by the disseminated market of another options exchange, or BOX's disseminated market crosses the NBBO, and BOX's price on the opposite side of the market for the incoming order establishes, or is equal to the NBBO.<sup>5</sup>

The purpose of the proposed rule change is to amend the BOX Rules to describe how the BOX Trading Host systematically filters all orders against the NBBO to ensure that a Trade-Through to the detriment of the inbound order does not occur. The rule filing also describes how customer's interests are protected by making sure that any execution of his order on BOX is at a price at least as good as the best price available on any of the other options exchanges.

BOX's responsibility to the inbound customer or broker dealer order is to ensure that its execution is at the best price available across all markets at that moment. Presently, BOX processes trades irrespective of whether the NBBO is locked, crossed, or 'normal.' As a result of this practice, there is the potential to cause a Trade-Through. The purpose of this proposed rule filing is to amend the BOX rules to recognize that only the price on the NBBO side opposite of the inbound order needs to be taken into account when filtering inbound orders, regardless of

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<sup>4</sup> Rule 608(c) requires each self-regulatory organization to "comply with the terms of any effective national market system plan of which it is a sponsor or a participant [,and] absent reasonable justification or excuse, enforce compliance with any such plan by its members." 17 CFR 242.608(c).

<sup>5</sup> See Securities Exchange Act Release No. XXXXXXXX (XXX, 2007), XX FR XXXX (XXXX, 2007) (SR-BSE-2007-39).



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whether the NBBO is locked, crossed or “normal,” and regardless of whether BOX is presently part of the NBBO on the opposite side of the order.

**Provisions of the Plan Requiring Exemption**

Section 8(c) of the Plan, Order Protection, generally provides that, absent reasonable justification, and during normal market conditions, members should not effect Trade-Throughs in their markets. The Plan also requires each participant to the Plan to file with the Commission uniform rules which, among other things, provide that, “[w]hen purchasing or selling, either as principal or agent, any options series of an Eligible Option Class, or when sending a Linkage Order, members of a Participant should avoid initiating a Trade-Through” unless one or more of the enumerated exceptions to Trade-Through liability contained in the Plan are applicable.

In accordance with this provision, the Exchange submitted, and the Commission approved, Chapter 12, Section 3 of the Rules of the Boston Options Exchange, which provides that, absent reasonable justification and during normal market conditions, Exchange members should not effect Trade-Throughs unless an exception applies.

As stated above, the Exchange has proposed to clarify how it permits executions when the NBBO is crossed by the disseminated market of another options exchange, or BOX’s disseminated market crosses the NBBO, and BOX’s price on the opposite side of the market for the incoming order establishes, or is equal to, the NBBO.<sup>6</sup> However, such a transaction results in a Trade-Through. An exemption from Section 8(c) of the Plan is needed in order to permit BOX’s Trading Host to execute orders received when the NBBO is crossed by the disseminated market of another options exchange, or BOX’s disseminated market crosses the NBBO, and BOX’s price on the opposite side of the market for the incoming order establishes, or is equal to, the NBBO.

In addition, Section 4(b) of the Plan requires the Exchange to enforce compliance by its members in their use of the Linkage through the Exchange’s facilities. Because the Exchange is seeking an exemption from the requirement that it enforce compliance with certain provisions of the Plan, it will necessarily need an exemption from Section 4(b) of the Plan as well.

**Exemption Request**

In connection with the Exchange’s proposal to clarify how the BOX Trading Host systematically filters all orders against the NBBO to ensure that a “Trade-Through” to the detriment of the inbound order does not occur, and that the customer’s interests are protected by

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<sup>6</sup> *Id.*



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making sure that any execution of his order on BOX is at a price at least as good as the best price available on any of the other options exchanges, the Exchange respectfully requests an exemption, pursuant to Rule 608(e) of Regulation NMS, from the requirement of Rule 608(c) of Regulation NMS that the Exchange comply with and enforce compliance by its members with the requirements of Section 8(c) of the Plan in the limited circumstance where a Trade-Through occurs due to an execution when the NBBO is crossed by the disseminated market of another options exchange, or BOX's disseminated market crosses the NBBO, and BOX's price on the opposite side of the market for the incoming order establishes, or is equal to, the NBBO.

To the same extent and subject to the same limitations, the Exchange requests exemptive relief from the requirement in Rule 608(c) of Regulation NMS that the Exchange comply with Section 4(b) of the Plan by enforcing compliance by its members with the provisions of Section 8(c) of the Plan, as discussed above.

The exemption the Exchange requests satisfies the requirement of Rule 608(e) of Regulation NMS, in that the exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of mechanism of, a national market system. Specifically, the Exchange believes that such an exemption would enable the Exchange to facilitate the prompt resolution of crossed markets by clarifying the conditions under which the Exchange will provide automatic executions during times of crossed markets. The Exchange further believes that the proposed rule change would ultimately benefit customers, who would receive automatic executions and instant reports of such transactions when the NBBO is crossed by the disseminated market of another options exchange, or BOX's disseminated market crosses the NBBO, and BOX's price on the opposite side of the market for the incoming order establishes, or is equal to, the NBBO.

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For the foregoing reasons, the Exchange respectfully requests that the Commission grant an exemption to the Exchange from Rule 608(c) of Regulation NMS, which requires the Exchange to comply with, and enforce compliance with, Sections 8(c) and 4(b) of the Plan, under the terms and conditions specified above. Please feel free to contact me at (617) 235-2023 with any questions or comments you may have.

Very truly yours,

John Katovich  
Chief Legal Officer





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cc:

Elizabeth King  
David Liu  
Nathan Saunders  
Kristie Diemer