

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57414; File No. SR-BSE-2008-12)

March 3, 2008

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make Permanent Two Pilot Programs That Increase Position and Exercise Limits on Equity Options

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 29, 2008, the Boston Stock Exchange, Inc. (“Exchange” or “BSE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change 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 the Rules of the Boston Options Exchange (“BOX”). The Exchange is proposing to make permanent the position and exercise limits that the Exchange is currently applying to equity options on a pilot basis. The text of the rule proposal is available on the Exchange’s Web site (<http://www.bostonstock.com>), at the offices of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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 purpose of the proposed rule change is to make permanent two pilot programs that increase position and exercise limits for equity options. To permanently establish the two pilot programs, the Exchange proposes to amend Section 7 (Position Limits) and Section 9 (Exercise Limits) to Chapter III of the BOX Rules. Section 7 subjects equity options to one of five different position limits depending on the trading volume and outstanding shares of the underlying security. Section 9 establishes exercise limits for the corresponding options at the same levels as the corresponding security's position limits.⁵

⁵ Section 9 of Chapter III of the BOX Rules states, "... no Options Participant shall exercise, for any account in which it has an interest or for the account of any Customer, a long position in any options contract where such Options Participant or Customer, acting alone or in concert with others, directly or indirectly, has or will have: (i) exercised within any five (5) consecutive business days aggregate long positions in any class of options traded on BOX in excess of" the established limits set by the Exchange.

The first pilot program, the “Section 7(a) Pilot Program,” commenced on March 3, 2005, and provides for an increase to the standard (or “non-pilot”) position and exercise limits for equity option contracts and for options on the PowerShares QQQ Trust (“QQQQ”).⁶

The second pilot program, the “iShares Russell 2000 Index Fund (‘IWM’) Option Pilot Program,” commenced on January 23, 2007, and increases the position and exercise limits for IWM options from 250,000 contracts to 500,000 contracts.⁷

Violations

Both pilot programs were in effect during the period of January 1, 2007 through January 1, 2008. Any violations of the position limits established during these pilot period which may have occurred during this time were deemed inadvertent—due primarily to miscounting, technical problems, or a misinterpretation of position limit calculation methodologies. None of these violations were deemed to be a result of manipulative activities.

⁶ The Section 7(a) Pilot Program was approved by the Commission on March 3, 2005. See Securities Exchange Act Release No. 51317 (March 3, 2005), 70 FR 12254 (March 11, 2005) (SR-BSE-2005-10). The Section 7(a) Pilot Program has been extended five times for six month periods by the Commission, and expires on March 1, 2008. See Securities Exchange Act Release Nos. 52264 (August 15, 2005), 70 FR 48992 (August 22, 2005) (SR-BSE-2005-37); 53347 (February 22, 2006), 71 FR 10573 (March 1, 2006) (SR-BSE-2006-07); 54388 (August 30, 2006), 71 FR 52833 (September 7, 2006) (SR-BSE-2006-32); 55260 (February 8, 2007), 72 FR 7487 (February 15, 2007) (SR-BSE-2007-04); and 56268 (August 15, 2007), 72 FR 47092 (August 22, 2007) (SR-BSE-2007-41). In connection with the March 21, 2007 transfer of sponsorship of the Nasdaq-100 Trust, the name of the trust was changed to the “PowerShares QQQ Trust.” See QQQQ prospectus available at <http://www.powershares.com/pdf/P-QQQ-PRO-1.pdf>.

⁷ The IWM Position Limit Pilot Program doubles the position and exercise limits for IWM options under the Section 7(a) Pilot Program. See BOX Rules, Chapter III, Section 7, Supplementary Material .02. Absent both of these pilot programs, the standard position and exercise limits for IWM options are 75,000 option contracts. The proposal that established the IWM Option Pilot Program was effective upon filing. See Securities Exchange Act Release No. 55171 (January 25, 2007), 72 FR 4549 (January 31, 2007) (SR-BSE-2007-03). The IWM Option Pilot Program has been extended twice by the Commission and expires on March 1, 2008. See Securities Exchange Act Release Nos.

Growth in Options Market

Since the last position limit increase, there has been an exponential increase in the overall volume of exchange traded options. Part of this volume is attributable to a corresponding increase in the number of overall market participants. This growth in market participants has in turn brought about additional depth and increased liquidity in exchange traded options.

Manipulation

Since the last position limit increase, and throughout the duration of the two pilot programs, the Exchange has not encountered any regulatory issues regarding the applicable position limits, and states that there is a lack of evidence of market manipulation schemes, which justifies making permanent the Section 7(a) and IWM Option Pilot Programs.

The Exchange believes that position and exercise limits, at the non-pilot levels, no longer serve their stated purpose. As the anniversary of listed options trading approaches its 35th year, the Exchange believes that the existing surveillance procedures and reporting requirements at the BSE, and other options exchanges, and at the several clearing firms are capable of properly identifying unusual and/or illegal trading activity. The Exchange's procedures include daily monitoring of market movements via automated surveillance techniques to identify unusual activities in both options and their underlying securities.

Accordingly, the Exchange represents that its surveillance procedures and reporting procedures, in conjunction with the financial requirements and risk management review procedures already in place at the clearing firms and the Options Clearing Corporation, will serve to adequately address any concerns the Commission may have with respect to account(s) engaging in any manipulative schemes or assuming too high a level of risk exposure.

56051 (July 12, 2007), 72 FR 39469 (July 18, 2007) (SR-BSE-2007-30); and 57173 (January 18, 2008), 73 FR 4653 (January 25, 2008) (SR-BSE-2008-03).

Financial Requirements

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns that a member or its customer may try to maintain an inordinately large unhedged position in an equity option.

Inability to Compete; Retreat to OTC Market

The Exchange has no reason to believe that the current trading volume in equity options will not continue. Rather, the Exchange expects continued options volume growth as opportunities for investors to participate in the options markets increase and evolve. The Exchange believes that the non-pilot position and exercise limits are restrictive, and maintaining those limits will hamper the listed options markets from being able to compete fairly and effectively with the over-the-counter markets.

No Adverse Consequences From Past Increases

Equity option position limits have been gradually expanded from 1,000 contracts in 1973 to the current level of 75,000 contracts for the largest and most actively traded equity options. To date, there have been no adverse affects on the markets as a result of these past increases in the limits for equity option contracts.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,⁸ in general, and Section 6(b)(5) of the Act,⁹ in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism of a free and open market and a national

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

market system and, in general, to protect investors and the public interest in that it will, if approved, provide uniform greater position and exercise limits for options traded on the options exchanges.

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

The Exchange has designated the proposed rule change as one that: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹¹

The Exchange notes that the proposed rule change is based on a similar proposal recently

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

approved by the Commission.¹² The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing.

The Section 7(a) Pilot Program and the IWM Option Pilot Program were scheduled to expire on March 1, 2008. The Commission believes that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest because it will allow the position and exercise limits to remain at consistent levels during the transition from the pilot programs to permanent status.¹³ Therefore, the Commission designates the proposal to be operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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.

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. Please include File No. SR-BSE-2008-12 on the subject line.

¹² See Securities Exchange Act Release No. 57352 (February 19, 2008), 73 FR 10076 (February 25, 2008) (order granting accelerated approval to SR-CBOE-2008-07).

¹³ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2008-12. 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 Commissions 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 a.m. and 3:00 p.m. 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-2008-12 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).