

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53607; File No. SR-BSE-2006-05)

April 6, 2006

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change to Modify the Boston Options Exchange's Fee Schedule to Impose Surcharge Fees for Transactions in Options on ETFs on a Retroactive Basis

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 15, 2006, 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 BSE. 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 is proposing to retroactively establish certain Boston Options Exchange ("BOX") licensing fee surcharges applicable to broker-dealer proprietary accounts and market maker accounts for trades in options on certain exchange traded funds ("ETFs"). The Exchange is proposing to apply these surcharge fees retroactively for each product as of the Effective Dates listed in Table 1, below, through January 3, 2006. On January 4, 2006, the Exchange filed an identical amendment to the BOX Fee Schedule,³ which became immediately effective under Section 19(b)(3)(A) of the Act.⁴ Because the Exchange seeks to apply the surcharge fees listed

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 53454 (March 8, 2006), 71 FR 13439 (March 15, 2006) (SR-BSE-2006-01).

⁴ 15 U.S.C. 78s(b)(3)(A).

in the BOX Fee Schedule on a retroactive basis, the Exchange is submitting this proposal to the Commission pursuant to Section 19b(2) of the Act⁵ to be published for notice and comment. The current BOX Fee Schedule is available on the BOX Web site at www.bostonoptions.com. The text of the proposed rule change is available on the BOX's Web site, at the principal office of BOX, 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 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 Exchange is proposing to amend BOX's Fee Schedule to retroactively establish, from the Effective Dates listed in Table 1 below through January 3, 2006, a surcharge fee for certain transactions in ETF options on BOX that are affected by market makers and broker-dealer proprietary accounts.⁶ The respective surcharge fees became effective on January 4, 2006 pursuant to a previous proposed rule change submitted by the Exchange.⁷

⁵ 15 U.S.C. 78s(b)(2).

⁶ The surcharge fee for trading in the options listed in Section 2(c) of the BOX Fee Schedule is equal to the cost charged to BOX by the licensor in the associated licensing agreement. BSE represents these fees are only charged to BOX Participants.

⁷ See supra note 3.

Table 1.

Name	Symbol	Fee	Effective Date
Standard & Poor's Depository Receipts	SPY	\$0.10	1/10/05
iShares Russell 2000 Index Fund	IWM	\$0.10	5/2/05
S&P Energy Select Sector SPDR Fund	XLE	\$0.09	6/6/05
iShares Russell 2000 Growth Index Fund	IWO	\$0.10	6/27/05
iShares Nasdaq Biotechnology Index Fund	IBB	\$0.10	6/27/05
S&P Financial Select Sector SPDR Fund	XLF	\$0.09	6/27/05

The BOX Fee Schedule that was in effect when these products started trading (i.e., on the Effective Dates specified in Table 1 above), stated in Section 2(c) that applicable surcharges applied for options on ETFs that are passed-through by BOX.⁸ However, in an administrative oversight, the BSE did not update the list of ETF products that BOX added and the amount of the pass-through licensing surcharges BOX was charging for each product in conjunction with the licensing agreements. While the BSE should have specifically listed each individual ETF option product and the associated surcharge fee on the BOX Fee Schedule, the BSE also believes that, nevertheless, its Participants were (1) aware that surcharges were applicable for options on ETFs pursuant to the language in Section 2(c) of the BOX Fee Schedule; and (2) aware of the specific pass-through licensing surcharges for each product via their monthly billing statement. The BSE believes it was open and transparent with its Participants regarding the applicable surcharges in the above-mentioned products, notwithstanding the fact that the specific information was not updated on the BOX Fee Schedule. The Exchange now proposes to extend this surcharge fee

⁸ Section 2(c) of the BOX Fee Schedule then stated, as it currently does: “Plus, where applicable, any surcharge for options on ETFs that are passed through by BOX.”

retroactively to all applicable transactions occurring since, and as of, the Effective Dates listed in Table 1.

In addition, the Exchange proposes to amend the BOX Fee Schedule to clarify the meaning of the current text in Section 4(b) (“InterMarket Linkage”) of the BOX Fee Schedule, which includes an explicit reference to the surcharge with respect to Inbound P and PA orders that are billed per contract.⁹ The BSE also proposes that the title of Section 4(b) of the BOX Fee Schedule be changed from “Per contract, billed to away market” to “Per contract, billed to clearing firm of away market Member” to provide more clarity as to which party is billed. The BSE believes that the new text is not a substantive change to the BOX Fee Schedule, does not impose any new fees on Linkage Orders, and is consistent with the Linkage Fee pilot program. The Exchange notes that Linkage Orders have always been assessed this surcharge and have been invoiced as such. The Exchange is proposing these changes to Section 4 to clarify the BOX Fee Schedule.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,¹⁰ in general, and Section 6(b)(4) of the Act,¹¹ 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.

⁹ Specifically, the Exchange proposes to replace the sentence “Same as if were BOX Participant” with “This charge is the same as that which is applicable to a BOX Participant under Section 2. These orders are also subject to any additional pass-through surcharge fees specified in Section 2(c), as applicable.” Telephone conversation between Bill Meehan, General Counsel, BOX, and Richard Holley, Special Counsel, Division of Market Regulation, Commission, on March 28, 2006.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 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 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

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 BSE consents, the Commission shall:

- (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. 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-2006-05 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BSE-2006-05. 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. Copies of such filing also will be available for inspection and copying at the principal office of the BOX. 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-2006-05 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 Market Regulation, pursuant to delegated authority.¹²

Nancy M. Morris
Secretary

¹² 17 CFR 200.30-3(a)(12).