

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58822; File No. SR-BSE-2008-47)

October 21, 2008

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Change in the Percentage Ownership Interest in the Boston Options Exchange Group, LLC

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 October 14, 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 and II below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) 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 Schedule A of the Sixth Amended and Restated Operating Agreement (“BOX LLC Agreement”), of the Boston Options Exchange Group, LLC (“BOX”), in connection with the change in the percentage ownership interest of IB Exchange Corporation (“IB”). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission’s Public Reference Room and also on the Exchange’s Internet website at [http://nasdaqtrader.com/Trader.aspx?id=Boston\\_Stock\\_Exchange](http://nasdaqtrader.com/Trader.aspx?id=Boston_Stock_Exchange).

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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).

<sup>4</sup> 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 self-regulatory organization 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 self-regulatory organization 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

On January 13, 2004, the Commission approved four BSE proposals that together established, through an operating agreement among its owners, a Delaware limited liability company, BOX LLC, to operate BOX as an options trading facility of the Exchange.<sup>5</sup> On August 7, 2008, the Commission approved three BSE proposals that included a transfer of BSE's Ownership Interest in BOX to MX US 2, Inc. (“MX US 2”), a wholly owned U.S. subsidiary of the Montreal Exchange Inc. (“MX”), and an amendment to the BOX LLC Agreement among the BOX owners.<sup>6</sup>

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<sup>5</sup> See Securities Exchange Act Release No. 49066 (January 13, 2004), 69 FR 2773 (January 20, 2004)(SR-BSE-2003-17) (establishing a fee schedule for the proposed BOX facility); Securities Exchange Act Release No. 49065 (January 13, 2004), 69 FR 2768 (January 20, 2004) (SR-BSE-2003-04) (creating Boston Options Exchange Regulation, LLC to which the BSE would delegate its self-regulatory functions with respect to the BOX facility); Securities Exchange Act Release No. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR-BSE-2002-15) (approving trading rules for the BOX facility); Securities Exchange Act Release No. 49067 (January 13, 2004), 69 FR 2761 (January 20, 2004) (SR-BSE-2003-19) (approving certain regulatory provisions of the operating agreement of BOX LLC).

<sup>6</sup> See Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR-BSE-2008-02, SR-BSE-2008-23, and SR-BSE-2008-25).

BOX intends to purchase the BOX units ("Units") held by a BOX LLC member ("Seller's Units") representing an ownership interest of 1.09% and subsequently cancel the Seller's Units pursuant to Section 2.8(d) of the BOX LLC Agreement. As a result of this transaction, the percentage ownership interests of the other members of the BOX LLC Agreement will increase. In particular, IB's 19.87% ownership interest in BOX LLC will thereafter be 20.09%, and MX US 2, Inc.'s 53.24% ownership interest will increase to 53.83%.

Pursuant to Section 8.4(f) of the BOX LLC Agreement, any transfer of BOX Units that results in the acquisition and holding by any person, alone or together with any affiliate of such person, of an aggregate percentage interest level which meets or crosses the threshold level of 20% is subject to the rule filing process pursuant to Section 19 of the Act. In addition, Section 8.7 of the BOX LLC Agreement, as previously approved by the Commission, states that upon the valid transfer of all or any portion of a BOX Member's Units, the BOX Board shall amend Schedule A as may be necessary to reflect changes in the rights of Unit holders.<sup>7</sup>

As a result of IB crossing the 20% threshold level, the Exchange is submitting the proposed rule change and amended Schedule A of the BOX LLC Agreement to the Commission. This proposal, in compliance with Sections 8.4(f) and 8.7 of the BOX LLC Agreement, will allow BOX to amend Schedule A to reflect the changes in the percentage ownership interests of the other Unit holders that are the result of the transfer.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(1),<sup>9</sup> in particular, in that it

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<sup>7</sup> See Section 8.7, BOX LLC Agreement.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(1).

enables the Exchange to be so organized so as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Act<sup>10</sup> in that it is designed to facilitate transactions in securities, 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 transactions in securities, 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.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public

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<sup>10</sup> 15 U.S.C. 78f(b)(5).

interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30-days after the date of filing.<sup>13</sup> However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.<sup>14</sup> The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the transfer of ownership interests occurred on October 15, 2008, and there is no reason to delay implementation of the changes to Schedule A of the BOX LLC Agreement. Accordingly, the Commission designates the proposal to be operative upon filing with the Commission.<sup>15</sup>

Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to give the Commission 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. BSE has requested that the Commission designate a shorter notification time. The Commission hereby waives the five-day notice period. As explained above, it was necessary for BSE to file its proposed rule change

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

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

expeditiously so that the changes in the percentage ownership interest of the Unit holders can be immediately incorporated in the BOX LLC Agreement.

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>16</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-2008-47 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-BSE-2008-47. 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

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<sup>16</sup> See 15 U.S.C. 78s(b)(3)(C).

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 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-2008-47 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>17</sup>

Florence E. Harmon  
Acting Secretary

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