

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56371; File No. SR-BSE-2007-43)

September 7, 2007

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1, Relating to Exchange Fees and Charges

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 August 31, 2007, 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 substantially prepared by the BSE. On September 6, 2007, the BSE submitted Amendment No. 1 to the proposed rule change. The BSE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the BSE under Section 19(b)(3)(A)(ii) of the Act,³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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 BSE proposes to amend the Boston Options Exchange (“BOX”) Fee Schedule in order to revise certain transaction fees for issues that trade as part of the Penny Pilot Program.⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ See Securities Exchange Act Release No. 55155 (January 23, 2007) 72 FR 4741 (February 1, 2007) (SR-BSE-2006-49) (“Original Penny Pilot Program Approval Order”). See also Securities Exchange Act Release No. 56149 (July 26, 2007), 72 FR 42450 (August 2, 2007) (SR-BSE-2007-38).

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 purpose of the proposed rule change is to revise the existing BOX Fee Schedule in conjunction with the Penny Pilot Program. The Exchange plans to introduce the Make or Take pricing structure for all classes contained in the Penny Pilot Program.⁶ The Exchange is proposing to amend the BOX Fee Schedule in order to make the following changes to certain fees and charges that are assessed to Participants in the issues referenced below, effective as of the first trading day of September 2007.⁷

Transaction Fees for Classes Contained in the Penny Pilot

The Exchange is proposing to implement a Liquidity Make or Take pricing structure for executed transactions in issues participating in the Penny Pilot Program. Under the proposed Fee Schedule change, orders that add or "make" liquidity to the BOX Book will receive a

⁶ The Original Penny Pilot Program Approval Order, *supra* note 5, lists the initial thirteen options classes currently participating in the Penny Pilot Program. If the Penny Pilot Program is expanded to introduce more participating options classes, the Make or Take Pricing model will also apply to those options classes. Furthermore, if the Penny Pilot Program is extended, the Make or Take Pricing model will also be extended accordingly.

⁷ Participating classes are listed in Section 33 to Chapter V of the BOX Rules.

transaction credit upon execution. BOX Market Makers will receive a credit of \$0.30 per contract. All other Participants will receive a credit of \$0.25 per contract. Any order, including an order with a Fill and Kill designation, which executes against an order which is being exposed before being placed on the BOX Book, will be deemed to be making liquidity and will receive a transaction credit upon execution.

The Transaction Fee for all Participants that “take” liquidity from the BOX Book will be \$0.45 per contract. This fee will be applied to all Participants, including Market Makers, Broker-Dealers and Executing Participants executing orders on behalf of Public Customers. Any order, including an order with a Fill and Kill designation, which takes liquidity by trading immediately upon entry to the BOX Book or following its exposure as part of NBBO filtering will be assessed the \$0.45 per contract fee.

Linkage Fees

Linkage Orders executed at BOX are subject to the same billing treatment as other Broker-Dealer orders. Since Linkage Orders that are sent to and executed on BOX will be taking liquidity, these orders will be assessed a \$0.45 per contract fee. Linkage Orders that are not executed upon receipt are rejected back to the sender and are never posted in the BOX Book. Therefore, a Linkage Order would never be eligible to receive a credit of the Transaction Fee.

MAC and Mini MAC Exemption

No MAC or MiniMAC fees will be charged for classes contained in the Liquidity Make or Take pricing structure. In addition, the trades in these classes will not count toward the calculation of Average Daily Volume rebates for BOX Market Makers.

Transactions Exempted from the Liquidity Make or Take Model

The following transactions will be exempt from the Liquidity Make or Take pricing structure as they are deemed to neither take nor make liquidity: transactions which occur on the opening or re-opening of trading and transactions on both sides of a PIP, with the exception of unrelated orders that interact with an Improvement Auction, which will be charged a “take” fee. Transactions which are exempt from the Liquidity Make or Take pricing structure will be subject to a standard transaction fees as stated in the Fee Schedule.

2. Statutory Basis

BSE believes that the proposed rule change is consistent with Section 6(b) of the Act⁸, in general, and furthers the objectives of Section 6(b)(4) of the Act,⁹ in particular, in that it is designed to provide for the equitable allocation of dues, fees and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in 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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

and subparagraph (f)(2) of Rule 19b-4¹¹ thereunder because it establishes or changes a due, fee or other charge imposed by the Exchange. At any time within 60 days of the filing of such 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 the furtherance of the purposes of the Act.¹²

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 Number SR-BSE-2007-43 on the subject line.

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-2007-43. 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

¹¹ 17 CFR 240.19b-4(f)(2).

¹² For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on September 6, 2007, the date on which the BSE filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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 am and 3:00 pm. Copies of such 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-2007-43 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Florence E. Harmon
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).