

## 2. Statutory Basis

The proposed fee change is consistent with section 6(b)(4) of the Act<sup>6</sup> regarding the equitable allocation of reasonable dues, fees, and other charges among exchange members and other persons using exchange facilities.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not 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*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change is establishing or changing a due, fee, or other charge applicable only to a member, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act<sup>7</sup> and Rule 19b-4(f)(2) thereunder.<sup>8</sup> 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 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](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2007-140 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary,

other charges among its members and issuers and other persons using its facilities. 15 U.S.C. 78f(b)(4).

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2007-140. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 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-Amex-2007-140 and should be submitted on or before January 24, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Nancy M. Morris,**  
Secretary.

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57037; File No. SR-BSE-2007-53]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Opening of the Market of the Boston Options Exchange

December 21, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

<sup>9</sup> 17 CFR 200.30-3(a)(12).

("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 20, 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 Exchange. The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A)(iii)<sup>3</sup> of the Act and Rule 19b-4(f)(5) 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 delay the opening of trading in the event of unusual trading activity in a particular series or instrument. The text of the proposed rule change is available on the Exchange's Web site at <http://www.bostonstock.com>, at the Exchange's principal office, 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 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 substantially 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

BSE proposes to amend the BOX Rules<sup>5</sup> to delay the opening of trading in the event of unusual trading activity in a particular series or instrument on the Boston Options Exchange, ("BOX"). BOX believes that delaying the opening of trading in the event of unusual

<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)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(5).

<sup>5</sup> Capitalized terms not otherwise defined herein shall have the meanings prescribed under the BOX Rules.

trading activity will help to ensure a fair and orderly market opening.

#### Delayed Series Opening

The Exchange will delay the opening of an options series if a Market Maker's quote crosses the Theoretical Opening Price ("TOP")<sup>6</sup> by more than a certain percentage and certain amount of the TOP, as determined on a periodic, series-by-series basis by the Market Regulation Center ("MRC"). Such a delayed series opening will be announced to all BOX Participants via the Trading Host and the Market Operations Center ("MOC") will contact the Market Maker whose quotes caused the delayed opening to verify the accuracy of his or her quotes. Once the Market Maker confirms or amends his or her quotes, the MRC will open the series for trading.

#### Delayed Class Opening

The Exchange will delay the opening of an options class if the sum of the volume for all of the series within a class exceeds a certain amount of series or a certain amount of contracts, as determined on a periodic, class-by-class basis by the MRC. Such a delayed class opening will be announced to all BOX Participants via the Trading Host. MRC will investigate the cause of the high volume or amount in the class and once resolved, will open the class for trading.

#### Discussion

By implementing a mechanism whereby the opening of a particular series or instrument may be delayed under certain enumerated circumstances, all BOX Market Makers will be protected equally from the unreasonable risk of multiple, nearly simultaneous executions caused by communication failures or systemic errors. Like auto-quote systems used on other options exchanges, the primary method for Market Makers to update their quotes on BOX is to post and update quotes on multiple series of options at the same time through the use of "bulk quotes."<sup>7</sup> Generally, these quotes are based on the Market Maker's proprietary pricing models that rely on various factors, including the price of the underlying security and that security's market volatility. As these variables change, a Market Maker's

pricing model and automated quote system will continuously enter bulk quotes for most or all of the series in the class.

In most instances, a Market Maker sends a message to BOX to update or refresh his or her quote on at least one of the series in his or her assigned class after each execution by the Market Maker in that options series or any movement in the underlying security's price. If, however, a Market Maker's pricing model and automated quote update system malfunction, the Market Maker's bulk quote update could inadvertently execute across all of the series in the assigned class.

This can be especially problematic if a Market Maker experiences a technical breakdown in either the Market Maker's communication link with BOX or the Market Maker's automated trading and quotation system during the Opening Match. Trading on BOX opens by "processing the series of a class in a random order, starting promptly after the opening for trading of the underlying security in the primary market."<sup>8</sup> If a Market Maker is experiencing technical difficulties it can be executed against numerous times nearly simultaneously as BOX's Opening Match opens each options series within a class. This occurrence can create huge unintended principal positions for the Market Maker and expose the Market Maker to unnecessary market risk.

Firm risk management procedures dictate that Market Makers must take into account the possibility of such errors and the corresponding risk to the Market Maker and the firm. As a result, the BSE believes that Market Makers widen their quotes, quote less aggressively, and limit their quote size in order to avoid such unintended executions and the attendant risks and costs, all to the detriment of customers and other market participants. The mechanism outlined in this proposal is designed to promote Market Maker confidence that these risks have been alleviated or eliminated and in turn bolster their ability to quote more effectively on the BOX Market. Thus, Market Maker quote widths should narrow, quotes should be entered more aggressively, and quote size should increase, all resulting in increased liquidity on the opening of the BOX Market.

The proposed rule change is intended to detect situations where price and volume seem to suggest that unusual market conditions exist. By implementing a mechanism whereby

the opening of a series or instrument may be delayed in the event of unusual trading activity, unintentional and erroneous trades may be prevented from occurring. Unintentional and erroneous trades do not properly reflect the true nature of the market and subject Market Makers to unreasonable market risk, multiple executions and clearing fees, with no real economic justification behind the trades. The Exchange believes the proposed rule change will assist in reducing these inefficiencies and risks by preventing a BOX Market Maker from erroneously and automatically trading multiple times during the Opening Match.

The MOC is best suited to contact a Market Maker in the event that the proposed mechanism is triggered at the individual series level. If and when needed, the MOC would expeditiously contact the Market Maker responsible for the unusual quotes to determine if they were accurate and intentional or were in fact erroneous. This quick response by the MOC serves two purposes. First, if the Market Maker involved informs the MOC that the quotes in question were intentionally and accurately entered, then the MOC will quickly relay this information to the MRC and remove this particular barrier preventing the series from opening. Second, if the MOC's contact with the Market Maker confirms that the quotes or orders were indeed erroneously sent to BOX and thus unreliable, the Market Maker will be able to promptly amend its quotes, whereby the MOC will notify the MRC that the issue has been resolved and the series will again be ready to open.

The proposed mechanism also accounts for unusual activity on the opening of the BOX Market in an entire instrument as a whole. Certain conditions on the opening of the BOX Market may not trigger the parameters set at the individual series level. However, where a Market Maker has nonetheless entered unintended erroneous quotes on BOX, particularly excessive trading over normal levels could still cause significant inefficiencies and expose the Market Maker to unintended risk. This excessive volume could occur either in the number of series or the number of contracts that would trade in that instrument on the open. Again, providing a system whereby the MRC will have the ability to suspend the opening of an instrument at the class level will protect Market Makers from exposure to the risk and negative results that would otherwise accompany trading on these erroneous quotes.

<sup>6</sup> The Theoretical Opening Price "is that price at which the Opening Match would occur at the current time, if that time were the opening, according to the Opening Match procedures [described in Chapter V, Section 9(e) of the BOX Rules]." See BOX Rules, Chapter V, Section 9(b).

<sup>7</sup> A "bulk quote" message is a single message from a Market Maker that simultaneously updates all of the Market Maker's quotes in multiple series in a class at the same time.

<sup>8</sup> See BOX Rules, Chapter V, Section 9(e)(i).

The MRC is able to evaluate historical data from the opening of the BOX Market. Statistical analysis of this data shows the number of contracts and number of series that typically trade in each instrument on the opening of the BOX Market. Using this data, the MRC will set finite upper volume levels, "y" and "z", for both the number of series and number of contracts that will be able to trade on the open. These levels will be assigned on an individual basis for each instrument that is listed and traded on the BOX Market.

The MRC will periodically evaluate the parameters to be used in determining the applicable percentages, amounts and volumes as discussed above. These parameters will be coded into the Trading Host and will be applied to all Market Maker quotes on an equal basis. Periodic review will enable the proposed mechanism to function as intended by allowing for adjustment of these parameters, when appropriate. The MRC will also review these parameters if and when the series and class opening delays are triggered. This will allow the MRC to determine whether the quotes in question, in the interests of both the Market Maker and BOX, should be flagged and prevent the series or instrument from opening for trading. Thus, the combination of periodic and event specific review of the parameters will allow for optimal threshold settings and the function of the mechanism as designed.

The Exchange also is proposing to delete current subparagraph g(i), which provides that the BOX Trading Host will not open a series if the opening price is not within an acceptable range as determined by the MRC and will be announced to all BOX Participants via the Trading Host.<sup>9</sup> The Exchange believes that proposed subparagraph g(ii) is an improvement to the current subparagraph g(i). The proposed (g)ii contains parameters which will be hard coded into the system. The Exchange believes these new parameters more effectively and efficiently addresses situations where the opening should be delayed than the current g(i) which relies on a variety of factors. These new parameters were determined after reviewing trading activity over time. As such, the new g(ii) will better assist in opening the market in a fair and orderly manner.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>11</sup> 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 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 would 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*

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change effects a change in an existing order-entry or trading system that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>12</sup> and subparagraph (f)(5) of Rule 19b-4 thereunder.<sup>13</sup>

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 the 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:

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- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BSE-2007-53 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-2007-53. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE. 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-2007-53 and should be submitted on or before January 24, 2008.

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

**Nancy M. Morris,**  
Secretary.

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**BILLING CODE 8011-01-P**

<sup>9</sup> In making this determination the MRC will consider, among other factors, all prices that exceed a variance greater than either \$.50 or 20% to the previous day's closing price.

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

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(5).

<sup>14</sup> 17 CFR 200.30-3(a)(12).