

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56594; File No. SR-BSE-2007-25]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change, as Modified by Amendments No. 1, 2, and 3 Thereto, Relating to Registration Filing Requirements and Reporting Requirements

October 1, 2007.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”) and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 19, 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 and II below, which Items have been substantially prepared by the Exchange. On August 7, 2007, BSE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On September 7, 2007, BSE filed Amendment No. 2 to the proposed rule change.<sup>4</sup> On September 26, 2007, BSE filed Amendment No. 3 to the proposed rule change.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendments No. 1, 2, and 3 thereto, from interested persons and approve the proposed rule change on an accelerated basis.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to: (1) Amend BSE Rules Chapter I-B Sections 4, 5, and 6 and Chapter XVIII Section 4 and Boston Options Exchange (“BOX”) Rules Chapter II Sections 1(b)(i) and Section 4(b), Chapter XI Sections 2(b), 3(a), and 4(c) and Chapter X Section 2(e), to require all members, and member and participant organizations, that do not already participate in Web Central Registration Depository (“Web CRD”) as a member of a participating exchange or the Financial Industry Regulatory Authority, Inc. (“FINRA”) to submit Forms U4, U5, BD and amendments thereto as well as fingerprints, to the

Web CRD;<sup>6</sup> (2) amend Exchange Rules Chapter I-B Sections 4, 5, and 6 and Chapter XVIII Section 4 to add language specifying a timeframe in which to amend Form U4, Form U5, and Form BD; and (3) amend its Minor Rule Violation Plan (“MRVP”) by adopting new provisions for failures to submit amendments to Form U4, Form U5, and Form BD.<sup>7</sup>

The text of the proposed rule change is available at the principal office of the BSE, the Commission’s Public Reference Room, and <http://www.bostonstock.com>.

#### 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 III 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 create a more efficient, centralized registration process by migrating from a manual paper-based Exchange procedure to Web CRD for registration and fingerprinting, with more defined deadlines and a more streamlined disciplinary process.

##### Web CRD

The Web CRD process would assist in maintaining all historical information related to associated persons of member, and participant organizations in one central repository, as well as creating efficient disclosure utilizing an online

<sup>6</sup> Web CRD is a Web-based system that provides broker-dealers and their associated persons “one-stop filing” with the Commission, FINRA, and other self-regulatory organizations and regulators. Web CRD is operated by FINRA and is utilized by participating securities regulators in connection with registering and licensing broker-dealers and their associated persons.

<sup>7</sup> Rule 19d-1(c)(1) under the Act, 17 CFR 240.19d-1(c)(1), requires any self-regulatory organization, for which the Commission is the appropriate regulatory agency, that takes any final disciplinary action with respect to any person to promptly file a notice thereof with the Commission. However, rule violations resulting in a fine not exceeding \$2,500 are not deemed final and therefore not subject to the same reporting requirements.

database, which can be accessed by other exchanges and regulators. Additionally, the Web CRD process would track and capture information related to registration and continuing education. Finally, the Web CRD system would capture information related to fingerprinting and statutory disqualification.

Members, and member and/or participant organizations, would be required to submit Forms U4 and U5 (and amendments thereto) through the Web CRD system rather than in paper form to the Exchange. Currently, members, and member and/or participant organizations, submit Forms U4 and U5 in paper form to the Exchange. Although Form BD is required to be submitted to Web CRD, the proposed rule change codifies this requirement into BSE Rules Chapter I-B Sections 4, 5, and 6 and Chapter XVIII Section 4 and BOX Rules Chapter II Sections 1(b)(i) and Section 4(b), Chapter XI Sections 2(b), 3(a), and 4(c) and Chapter X Section 2(e), and applies to amendments as well.<sup>8</sup>

Members, and member and/or participant organizations, also currently file manual rolled fingerprint cards<sup>9</sup> with the Exchange, which the Exchange then forwards to the FBI, the fingerprint processing arm of the Office of the Attorney General of the United States. The FBI identifies submitted fingerprints, retrieves relevant criminal history information, and returns fingerprint reports (including the original fingerprint cards) to the Exchange. Upon receipt of the approved fingerprint cards, the Exchange sends this information to the member organization and keeps a copy for its records. This proposed rule change would require the members, and member and/or participant organizations, to send the fingerprint cards to FINRA for processing. All trading personnel and other associated persons of members, and member or participant organizations, who are not registered and only submit fingerprint cards to FINRA, will be classified as Non-Registered Fingerprint (“NRF”) filers.

The Exchange anticipates that the proposed migration to Web CRD will take place on October 1, 2007. The Exchange will provide notification in writing to the membership of the effective date of the rule change.

Additionally, the Exchange is amending the language in BOX Chapter

<sup>8</sup> 17 CFR 240.15b-1.

<sup>9</sup> FINRA will accept Federal Bureau of Investigation (“FBI”) fingerprint results in lieu of fingerprint cards.

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 superseded and replaced the original rule filing in its entirety.

<sup>4</sup> Amendment No. 2 superseded and replaced Amendment No. 1 in its entirety.

<sup>5</sup> Amendment No. 3 superseded and replaced Amendment No. 2 in its entirety.

XI Doing Business With The Public, Section 2(b) to clarify the registration obligations of Options Principals.

#### Minor Rule Violation Plan

The Exchange is adding language to BSE's and BOX's MRVPs to clarify the timeframe within which members, and member and/or participant organizations, must amend Forms U4, U5, and BD to allow for prompt disclosure. The Exchange proposes a timeframe of thirty days from the time the filer knew of or should have known of the facts which gave rise to the need for an amendment, to submit amended Forms U4, U5, and BD. By including this language in the Exchange Rules, Boston Stock Exchange Regulation ("BSER") would retain the discretion to initiate formal disciplinary proceedings.<sup>10</sup> The Exchange believes that the proposed change should encourage member organizations and participant organizations to timely file Forms U4, U5, and BD and thereby timely disclose the information contained in those forms. The disclosure of this information should enable the Exchange and the public to receive current information on registered persons and entities.

Specifically, the proposed changes to the MRVP would authorize the Exchange to impose a fine on any member or participant organization without formal disciplinary action. As proposed, BSER would review the number and seriousness of the violation(s), as well as the previous disciplinary history of the violator, to determine if a matter is appropriate for disposition under the MRVP. Once a member or participant organization is fined under the MRVP, BSER may issue progressively higher fines for all subsequent violations within a rolling twelve-month period, or it may choose to initiate formal disciplinary proceedings. The addition of these changes to the Exchange's MRVP should allow BSER to impose more meaningful sanctions for violations that would otherwise receive a cautionary letter, for example, but do not necessarily rise to the level of a formal disciplinary proceeding.

Additionally, the proposed changes would allow for disposition of minor or

<sup>10</sup> Section 6(b)(6) requires an exchange to have rules that provide for members and associated persons to be appropriately disciplined for violations of the Act, the rules thereunder, and the Exchange's rules. 15 U.S.C. 78f(b)(6). Inclusion of a rule in an MRVP permits an exchange to impose a fine, under appropriate circumstances under the MRVP. However, including a rule in an MRVP does not limit an exchange's ability to bring a formal disciplinary action against a member or an associated person.

technical violations of Exchange rules by means of a less costly and less time consuming process as compared to a formal disciplinary process. Expediting resolutions for technical violations, while retaining the discretion to bring formal disciplinary action, should allow for efficient dispositions of rule violations.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>12</sup> in particular, in that it is designed 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, by providing information to a central repository.

Importantly, the Exchange believes, moving to Web CRD provides a central location where information is available. This enables easier access to all members and member and/or participant organizations. Further, most other exchanges participate in Web CRD registration.

#### 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. 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:

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

<sup>12</sup> 15 U.S.C. 78f(b)(5).

#### 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-2007-25 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-2007-25. 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 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-2007-25 and should be submitted on or before October 31, 2007.

#### IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>13</sup> In particular, the Commission finds that the proposed

<sup>13</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

rule change is consistent with Section 6(b)(5) of the Act,<sup>14</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.

The Commission believes that the changes proposed by BSE should result in a more efficient process for members to register and to keep information current and should make regulatory information with respect to members and their associated persons more readily available to regulators as well as the public. Furthermore, it will align the rules of the Exchange regarding electronic registration more closely with those at other exchanges.

In addition, the Commission believes the proposed rule change is consistent with the Act because it is designed to allow BSE to discipline or sanction members under its MRVP for violation of the provisions of the rules of the Exchange for these rules. In approving the proposed rule change, the Commission in no way minimizes the importance of compliance with Exchange rules and all other rules subject to the imposition of fines under the MRVP. The Commission believes that the violation of a self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Exchange with greater flexibility in addressing certain violations of its rules, the MRVP provides a reasonable means to address violations that do not rise to the level of requiring formal BSE disciplinary proceedings. The Commission expects that BSE will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of Exchange rules under the MRVP, on a case by case basis, or if a violation requires formal disciplinary action.

BSE has requested that the Commission find good cause for approving the proposed rule change before the thirtieth day after publication of the notice in the **Federal Register**. The Commission believes that granting accelerated approval of the proposal will allow the Exchange to migrate to Web CRD on its intended date, October 1, 2007. The Commission notes that it has approved similar proposals to

implement electronic registration for Chicago Board Options Exchange, Incorporated<sup>15</sup> and the Philadelphia Stock Exchange.<sup>16</sup> The Commission believes that BSE's proposal raises no new regulatory issues, and it should make regulatory information with respect to its members and their associated persons more readily available without further delay.

Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>17</sup> to grant accelerated approval to the proposed rule change before the thirtieth day after the publication of notice thereof in the **Federal Register**.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>18</sup> that the proposed rule change (SR-BSE-2007-25), as modified by Amendments No. 1, 2, and 3, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

**Nancy M. Morris**,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56600; File No. SR-CBOE-2007-88]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change To Amend the Hybrid Opening System Opening Rotations Rules

October 2, 2007.

On July 25, 2007, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend its opening rotations rules conducted via the Hybrid Opening System ("HOSS"). The proposed rule

<sup>15</sup> See Securities Exchange Act Release No. 46308 (August 2, 2002), 67 FR 51905 (August 9, 2002) (SR-CBOE-2001-66).

<sup>16</sup> See Securities Exchange Act Release No. 54960 (December 12, 2006), 71 FR 77851 (December 27, 2006) (SR-Phlx-2006-83).

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> *Id.*

<sup>19</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

change was published in the **Federal Register** on August 29, 2007.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

HOSS is the Exchange's automated system for initiating trading at the beginning of each trading day. The Exchange proposes to amend HOSS procedures contained in CBOE Rule 6.2B. HOSS procedures currently provide that HOSS initiates an opening rotation for an options class at a randomly selected time within a number of seconds after the primary market<sup>4</sup> for the underlying security opens (or after 8:30 a.m. (Central Time) for index options).<sup>5</sup>

The Exchange proposes to permit HOSS to initiate the opening rotation for an options class after the opening of the underlying security on: (1) The primary listing market; (2) the primary volume market,<sup>6</sup> or (3) the first market to open the underlying security. Determinations on the particular configuration for the market for the underlying security would be made on a class-by-class basis by the appropriate Exchange Procedure Committee and announced to the membership via a Regulatory Circular.

After a careful review of the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the regulations thereunder applicable to a national securities exchange.<sup>7</sup> In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires that the rules of an exchange be designed to promote just and equitable principles of trade, 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. The Commission believes that the proposal will provide

<sup>3</sup> See Securities Exchange Act Release No. 56302 (August 22, 2007), 72 FR 49752.

<sup>4</sup> According to the Exchange, for purposes of CBOE Rule 6.2B, the Exchange has interpreted the "primary market" to be the primary listing market.

<sup>5</sup> According to the Exchange, for purposes of CBOE Rule 6.2B, the Exchange determines when the underlying market "opens", on a class-by-class basis, to be either the opening trade and/or opening quote (or whichever occurs first). Once the underlying market opens, HOSS initiates the overlying option class opening and sends a Rotation Notice to market participants. Thereafter, HOSS would open the series of a class in a random order.

<sup>6</sup> Proposed CBOE Rule 6.2B(b) would define the primary volume market as the market with the most liquidity in that underlying security for the previous two calendar months.

<sup>7</sup> In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 15 U.S.C. 78f(b)(5).