

before the professional engagement period begins.

On April 22, 2008, the Board adopted the amendment to PCAOB Rule 3523 to exclude the portion of the audit period that precedes the beginning of the professional engagement period and a rule amendment to further delay the implementation date for that portion of Rule 3523 until December 31, 2008.

The proposed amendment to PCAOB Rule 3523 provides that the Board will not apply Rule 3523 to tax services when those services are provided during the audit period and are completed before the professional engagement period begins. Rule 3523 continues to apply to tax services provided during the professional engagement period.

Pursuant to the requirements of Section 107(b) of the Act and Section 19(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), the Commission published the PCAOB's proposed Ethics and Independence Rule 3526, *Communication with Audit Committees Concerning Independence*, conforming amendments to its interim standard ISB No. 1 and two related interpretations, and amendment to Rule 3523, *Tax Services for Persons in Financial Reporting Oversight Roles* for public comment in the **Federal Register** on July 14, 2008.¹³

III. Discussion

The Commission received two comment letters relating to proposed Rule 3526, both of which were generally supportive of the proposed rule.¹⁴ One of the firms, however, expressed concerns relating to the timing of the required communication of Rule 3526 and its effect on an auditor's participation in the activities associated with an initial public offering. The firm also expressed concerns about the difference between the "audit and professional engagement period" referenced in the SEC's independence rules and Rule 3526's requirement to communicate matters that may have existed outside of this time period. The firm requested that the Commission include clarifying commentary in its approval order regarding these matters and urged the PCAOB to issue additional interpretive guidance to aid in the consistent application of the rules.

The PCAOB carefully considered the commenter's concerns before it adopted Rule 3526 and addressed those concerns in its adopting release. We do not believe that any clarifying commentary

is necessary at this time. We encourage the PCAOB to carefully monitor the implementation of Rule 3526 and to provide appropriate guidance if it is needed in the future.

The Commission received three comment letters relating to the proposed amendment to Rule 3523. Two of the commenters were supportive of the amendment to Rule 3523.¹⁵ The other commenter¹⁶ expressed concern that Rule 3523 "put[s] a huge burden on smaller companies and larger tax firms" because some companies could have large numbers of employees and chances are that some of those employees could be receiving tax services from potential external auditors. While purportedly outside the scope of the proposed amendment, which in fact limits the scope of the rule to a narrower period of just the professional engagement period, it should also be noted that Rule 3523 applies only to persons in a financial reporting oversight role (FROR). This term is defined in PCAOB Rule 3501 as:

[A] role in which a person is in a position to or does exercise influence over the contents of the financial statements or anyone who prepares them, such as when the person is a member of the board of directors or similar management or governing body, chief executive officer, president, chief financial officer, chief operating officer, general counsel, chief accounting officer, controller, director of internal audit, director of financial reporting, treasurer, or any equivalent position.

Rule 3523 is further limited to exclude persons (i) who are in a FROR only because he or she serves as a member of the board of directors or similar management or governing body of the audit client, (ii) who are in FROR at affiliates if the affiliate's financial statements are immaterial or audited by a different auditor and (iii) who received tax services before being hired or promoted into a FROR if the services are completed on or before 180 days after the hiring or promotion event.

The PCAOB is not proposing to change the persons subject to Rule 3523 in its proposing amendment. The PCAOB gave careful consideration to the issues raised by the commenter prior to Rule 3523's adoption by the Board.

PCAOB Rules 3526 and 3523, including the proposed amendment to Rule 3523 and the conforming amendments to the interim standards, are a reasonable exercise of the Board's rule-making authority under the Act.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the PCAOB's proposed Ethics and Independence Rule 3526, *Communication with Audit Committees Concerning Independence*, conforming amendments to its interim standard ISB No. 1 and two related interpretations, and amendment to Rule 3523, *Tax Services for Persons in Financial Reporting Oversight Roles*, are consistent with the requirements of the Act and the securities laws and are necessary and appropriate in the public interest and for the protection of investors.

It is therefore ordered, pursuant to Section 107 of the Act and Section 19(b)(2) of the Exchange Act, that the proposed rule changes (File No. PCAOB-2008-03) be, and hereby are, approved.

By the Commission.

Florence E. Harmon,
Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58408; File No. SR-BSE-2008-42]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to the Appointment of Market Makers on the Boston Options Exchange Facility

August 22, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 19, 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, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

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

The Exchange proposes to amend section 5 (Obligations of Market Makers) of Chapter VI of the Rules of the Boston Options Exchange Group, LLC ("BOX").

¹³ See SEC Release No. 34-58121 (Jul. 9, 2008); 73 FR 40418 (Jul. 14, 2008).

¹⁴ Ernst & Young LLP and Deloitte & Touche LLP.

¹⁵ Ernst & Young LLP and Deloitte & Touche LLP.

¹⁶ Matthew L. Garzia, Student, Business Management, Tappan, New York.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is available on the Exchange's Internet Web site at <http://www.bostonstock.com>, from the principal office of the Exchange and from the Commission.

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

The purpose of the proposed rule change is to remove certain language from section 5(a)(viii) of Chapter VI of the BOX Rules to eliminate any potential for confusion between this and section 4(f) of Chapter VI of the BOX Rules.

Currently, section 4(f) of Chapter VI states that "Market Makers may withdraw from trading an options class that is within their appointment by providing the BOX with three business days' written notice of such withdrawal." However, Section 5(a)(viii) states that "[o]rdinarily, Market Makers are expected to * * * [m]aintain active markets in all classes in which the Market Maker is appointed for a period of at least six months." To address this potential ambiguity, the Exchange seeks to remove the language "for a period of at least six months" from section 5(a)(viii). As a result, a Market Maker seeking to withdraw from a particular appointment will be required to provide BOX with at least three business days written notice of such withdrawal, as stated in section 4(f), regardless of how long the Market Maker has held such appointment.

In addition, the proposed rule change will result in certain changes to the formatting and text of Supplementary Material to Chapter VI, Section 5(c)(ii) of the BOX Rules. The rule change is non-substantive, and it will result in a closer universal format throughout the BOX Rules.

2. Basis

The Exchange believes that the proposal is consistent with the requirements of section 6(b) of the Act,³ in general, and section 6(b)(5) of the Act,⁴ 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 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. The proposed rule change will create greater clarity within the BOX Rules concerning Market Maker appointments in specific options classes and requests to withdraw from such appointments.

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 the self-regulatory organization consents, the Commission will:

- (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 Number SR-BSE-2008-42 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-2008-42. 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 the filing also will be available for inspection and copying at the principal office of the self-regulatory organization. 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-2008-42 and should be submitted on or before September 18, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵

Florence E. Harmon,

Acting Secretary.

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³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(5).

⁵ 17 CFR 200.30-3(a)(12).