

charges through to the relevant Member. The proposed change reflects the fact that other market centers impose a similar \$500 appellate fee to that charged by the Exchange.

If a Member enters an order into the Exchange that is routed to another market center and executed there, the Member may not have standing to file under that market center's rules to seek a determination that the execution was clearly erroneous if it is not a member of that market center. Accordingly, BATS Trading, Inc., the Exchange's routing broker-dealer, which is a member of various market centers, including the NASDAQ Stock Market LLC ("NASDAQ") and NYSE Arca, Inc. ("NYSE Arca"), may file a petition under that market center's rules upon request of a Member. If an appeal is unsuccessful, the Exchange or its affiliated routing broker-dealer may be charged under the applicable market center's rules.⁵ Accordingly, the Exchange proposes to pass the charge through, on a dollar-for-dollar basis, to the Member that requested the appeal.

2. Statutory Basis

The Exchange believes that the rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6 of the Act.⁶ Specifically, the proposed rule change is consistent with section 6(b)(4) of the Act,⁷ in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange believes that the change will appropriately allocate charges for adjudications under the clearly erroneous rules of other market centers to the Members that initiate such adjudications.

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

The Exchange does not believe that the proposed rule change imposes any burden on competition.

⁵ For instance, both NASDAQ and NYSE Arca currently charge \$500.00 for unsuccessful appeals of clearly erroneous determinations. See NASDAQ Rule 11890(e)(3) and NYSE Arca Rule 7.10(c)(5).

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4).

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.

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

The foregoing proposed rule change has been designated as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act⁸ and Rule 19b-4(f)(2) thereunder,⁹ because it establishes or changes a due, fee or other charge imposed on members by the Exchange. Accordingly, the proposal is effective upon filing with the Commission.

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.

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-BATS-2008-010 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-BATS-2008-010. 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, 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 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-BATS-2008-010 and should be submitted on or before December 19, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon,
Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58990; File No. SR-BSE-2008-36]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Delisting Standards

November 20, 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 November 3, 2008, the Boston Stock Exchange, Inc. (the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule 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 adopt a Rule whereby the Exchange may determine to delist a security due to extraordinary circumstances under

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(6).

which the Exchange has terminated its Listing Program in connection with the discontinuation of trading in all securities listed on its market. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room, and is also available at http://www.nasdaqtrader.com/Trader.aspx?id=Boston_Stock_Exchange.

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 in 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 September 5, 2007, the Exchange announced that it was terminating its programs for listing and trading cash equities. In addition to that announcement, in October 2007, all issuers were given additional notice that the Listings programs had ceased. However, not all issuers have formally delisted. At this point, the Exchange has determined it is appropriate to formally delist the securities of the twenty-nine issuers that currently have listings with the Exchange. Since there may not be a basis for delisting all of these securities under the rules of the Exchange as currently in effect, the Exchange is proposing to adopt a rule to be used in rare and unusual circumstances. Specifically, the new rule will provide that the Exchange may determine to delist a security due to extraordinary circumstances under which the Exchange has terminated its Listing Program in connection with the discontinuation of trading in all securities listed on its market.

This rule will only be utilized after a delisting determination is made by the Board of Directors or its designee, and:

(1) At least 15 days before issuing its delisting determination, notice is provided to companies; and

(2) as soon as practicable after the issuance of the delisting determination

notice is provided to the company and the SEC of such delisting determination.

(3) The notice to the company of the delisting determination shall inform the company of the opportunity to appeal.

This rule will provide the Exchange an additional tool to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

The Exchange would use this authority to delist on the grounds that it is not currently operating a listing program and, therefore, it is in the public interest that the Exchange not maintain any appearance of having any listings on the Exchange as long as programs for listing and trading cash equities and related activity have ceased. In addition, prior to implementing any involuntary delistings, the Exchange will contact each issuer and suggest that it file a Form 25 to effect a voluntary delisting. Issuers may initiate a voluntary delisting before the Exchange issues any determination. Thereafter, the Exchange will move to delist for those issuers that do not act in accordance with that suggestion. Moreover, issuers that are involuntarily delisted under the rule being adopted in this filing will have the appeal right provided for by new Section 2(c)(3) of Chapter XXVII of the Rules of the Exchange.³

The NASDAQ OMX Group, Inc. ("NASDAQ OMX"), has acquired the Exchange. NASDAQ OMX expects that the Exchange will resume a program for listing and trading cash equities. Accordingly, the Exchange believes it is appropriate to leave all of its listing rules, as amended, in place pending rule changes to its listing rules. Upon the resumption of a listing business by the Exchange, delisted issuers may be eligible for relisting if their securities meet the applicable standards of the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁴ in general, and with Section 6(b)(5) of the Act,⁵ in particular, in that the proposal 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. This proposed rule change promotes the protection of investors and the public interest because the Exchange will not maintain any appearance of having any listings on the Exchange as long as all programs for listing and trading cash equities and related activity have ceased.

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, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

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.stml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File

³ The Commission notes that the appeals procedures proposed in new Section 2(c)(3) of Chapter XXVII are identical to the appeals procedures currently set forth in Section 2(b)(2) of Chapter XXVII.

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(5).

Number SR-BSE-2008-36 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-2008-36. The 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 filings 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-2008-36 and should be submitted on or before December 19, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Florence E. Harmon,
Acting Secretary.

[FR Doc. E8-28240 Filed 11-26-08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58999; File No. SR-BSE-2008-54]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. To Amend Certain BOX Rules Related to the PIP To Eliminate the Requirement That There Be at Least Three Market Makers Quoting in a Relevant Options Class in Order for a PIP To Commence

November 21, 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 November 17, 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 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 certain Rules of the Boston Options Exchange Group, LLC ("BOX") related to the Price Improvement Period ("PIP") to eliminate the requirement that there be at least three market makers quoting in a relevant options class in order for a PIP to commence. 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 Web site at http://nasdaqtrader.com/Trader.aspx?id=Boston_Stock_Exchange.

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

In order to provide additional opportunities for price improvement, the Exchange proposes to expand the PIP. The PIP permits Participants to provide penny price improvement for Customer Orders.³ Current BOX rules require, among other things, that there are at least three Market Makers quoting in the relevant series before a PIP may commence. The Exchange is now proposing to eliminate this requirement.

The Exchange does not believe that orders should be denied the benefits of the PIP simply because there may be less than three Market Makers quoting in a relevant series. The BOX Rules provide for broad participation in a PIP auction. Allowing all types of Participants on BOX, including Market Makers, OFFPs and Public Customers to compete within the PIP increases competition to provide price improvement, benefiting the Customer Order. Any concern regarding a PIP starting with a lower number of Market Makers quoting in the relevant series is offset by the broad participation and competition that is present in a PIP auction once commenced. The Exchange believes that this proposed rule change is a reasonable modification designed to provide additional flexibility for Participants to obtain executions on behalf of their customers while continuing to provide a meaningful, competitive auction.

In support of its proposal, the Exchange notes that the Commission recently approved a similar proposal of the International Securities Exchange ("ISE") to remove an identical requirement within its Price Improvement Mechanism ("PIM") rules.⁴ The ISE PIM now permits price improvement in non-standard increments without the condition that there be a minimum number of market makers quoting in the particular series.⁵ The PIP and PIM share the same purpose and goal of providing opportunities for customer price improvement. The Exchange believes that the PIP, and in turn the customers that benefit from the PIP, would be disadvantaged if the three Market Maker

³ See Section 18 of Chapter V of the BOX Rules.

⁴ See Securities Exchange Act Release No. 58710 (October 1, 2008), 73 FR 59008 (October 8, 2008) (SR-ISE-2008-63).

⁵ See ISE Rule 723.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁶ 17 CFR 200.30-3(a)(12).