Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549–1520 (telephone (202) 551–8090).

Applicants' Representations

1. The Trusts are organized as Massachusetts business trusts and are registered under the Act as open-end management investment companies. Applicants request an exemption to the extent necessary to permit any existing or future series of the Trusts and any other registered open-end investment company advised by the Advisers or any person controlling, controlled by or under common control with the Advisers, that may rely on rule 12d1–2 under the Act (each a '' Fund'') to also invest to the extent consistent with its investment objective, policies, strategies and limitations, in futures contracts, options on futures contracts, swap agreements, other derivatives, and other financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act (''Other Investments'') in addition to registered investment companies (''Underlying Funds'') and other securities.

2. The Advisers, both Massachusetts business trusts registered under the Investment Advisers Act of 1940, serve as investment advisers to the Funds. EVM is a wholly-owned subsidiary of Eaton Vance Corporation, a publicly held Maryland corporation, and BMR is a subsidiary of EVM. The Distributor, an indirect wholly-owned subsidiary of Eaton Vance Corporation, is registered as a broker-dealer under the Securities Exchange Act of 1934 Act (''Exchange Act''), and serves as the principal underwriter for the Funds.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company (''acquiring company'') may acquire securities of another investment company (''acquired company'') if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

3. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1–2 under the Act, but for the fact that the Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Funds to invest in Other Investments. Applicants assert that permitting the Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Prior to approving any investment advisory agreement under section 15 of the Act, the board of trustees of the appropriate Fund, including a majority of the trustees who are not ''interested persons'' as defined in section 2(a)(19) of the Act, will find that the advisory fees, if any, charged under the agreement are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory agreement. Such finding, and the basis upon which the finding is made, will be recorded fully in the minute books of the appropriate Fund.

2. Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2), to the extent that it restricts any Fund from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–3960 Filed 2–29–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57383; File No. SR-BSE–2008–05]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 5, To Amend the Rules of the Boston Options Exchange Related to Obvious Error Procedures

February 26, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on January 29, 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 substantially prepared by the Exchange. On February 21, 2008, the Exchange filed Amendment No. 1 to the proposal. On February 22, 2008, the Exchange submitted Amendment Nos. 2, 3, and 4, and withdrew Amendment Nos. 1, 2, and 3 to the proposal. On February 26, 2008, the exchange withdrew Amendment No. 4 and submitted Amendment No. 5 to the proposal.[3] 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 Exchange proposes amending the Boston Options Exchange (''BOX'') Rules related to Obvious Error procedures. The text of the proposed rule change is available at the Exchange, 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 IV 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 BSE seeks to amend the BOX Rules[4] to modify the process for determining whether to ''adjust or bust'' certain trades on the BOX market. The Exchange believes that modifying this process will help to better ensure a fair and orderly market.

Currently, BOX has an established process whereby, in the event that a suspected Obvious Error has occurred during trading on the BOX market, a request for review may be made by one or both of the parties involved. This request for review notifies the Market Regulation Center (''MRC'') of the existence of a suspected erroneous transaction and initiates a review process. If the MRC determines that the transaction does in fact represent an Obvious Error, the transaction is either adjusted or busted. Depending on the parties involved in the transaction, the adjustments are either set according to pre-determined increments or by mutual agreement between the parties.

The Exchange states that, currently, the MRC, as defined in the BOX Rules[5] as the ''Exchange's facilities for surveilling and regulating the conduct of business for options on BOX,'' is involved in these Obvious Error requests and determinations. This amendment to the BOX Rules will substitute the BOX Market Operations Center (''MOC'')[6] for the MRC as the entity that first receives these Obvious Error requests. The MOC is already the primary contact for Options Participants when communicating with the BOX market regarding trading matters. Under this proposal, the MOC, as the primary contact, will promptly notify the MRC when an Obvious Error request is received, since the MRC will continue to be the body that makes adjust or bust decisions.

Additionally, the current BOX Obvious Error rules refer to transactions involving Market Makers ''on BOX.'' The proposed amendment to the BOX Rules will remove the language ''on BOX.'' This proposed change would provide an additional avenue of relief for non-BOX market makers, resulting in the Obvious Error Rules applying not only to BOX Market Makers, but also to market makers on other exchanges whose orders are designated with a market maker account type in the BOX Trading Host. Currently, according to Section 20(d)(ii)(1) of Chapter V of the BOX Rules, only BOX Market Makers involved in an erroneous transaction with another BOX Market Maker may avail themselves to the pre-determined obvious error Theoretical Price plus or minus adjustment levels. This amendment, if approved, would maintain and expand the choices available to a non-BOX market maker involved in an erroneous transaction. Just as a BOX Market Maker, a non-BOX market maker would have the choice of agreeing with the counter party to bust the transaction, agreeing to adjust to an agreed upon price for the transaction, or now having the transaction adjusted to the pre-determined levels.

This amendment to the BOX Rules will also establish an additional course of action if it is determined that an Obvious Error has occurred. The current BOX Rules allow for an adjustment in the transaction price where both parties to the transaction are market makers. Alternatively, the BOX Rules call for a bust of the transaction if *at least* one party to the transaction is a market maker on BOX, unless both parties agree to an adjustment price and notify the MRC. The proposed amendment to the Obvious Error Rule will render this particular scenario applicable only when ''*neither*'' party to the transaction is a market maker. Under the scenario where neither of the parties involved in the obviously erroneous transaction is a market maker, a bust of the transaction is believed to be the proper course of action, absent an agreement to an adjusted price for the transaction.

The additional course of action, as proposed, will now be available to the MRC when one party to the transaction is *not* a market maker and the other party *is* a market maker. The Exchange believes that affording a non-market maker party the opportunity to choose between busting the transaction or adjusting it according to the pre-determined increments, as set forth in the Obvious Error Rule, will better protect the non-market maker party in the event of obviously erroneous transactions. The establishment of this option is intended to protect against scenarios where a non-market making party, perhaps a Public Customer, enters into a transaction with a market maker. Under the current rules, if this transaction is determined to be an Obvious Error, the trade will be busted unless the parties agree to an adjustment price. If the Public Customer does not want the trade busted but, nonetheless, cannot agree to an adjusted price with the market maker, then the trade will still be busted. The Exchange believes that this could expose the Public Customer to unintended positions and risk, perhaps in the equities markets, where this particular options transaction was intended to hedge against. The Exchange believes that, by providing access to the pre-established Obvious Error adjustment increments,

[3] Amendment No. 5 replaces and supersedes the original filing and all previous amendments in their entirety.

[4] Capitalized terms not otherwise defined herein shall have the meanings prescribed under the BOX Rules.

[5] *See* Section 1 of Chapter I of the BOX Rules.

[6] This proposal will also add the MOC to the definitions section of the BOX Rules. *See,* Section 1 of Chapter I of the BOX Rules. The remainder of the changes to the definition section fall into two categories. The first is switching the current Sections 31 and 32 so that they are in alphabetical order. The second is, after inserting the MOC as a definition, renumbering the remaining definitions.

some of this risk should be alleviated or eliminated for the non-market maker party by allowing the transaction to be adjusted rather than busted.

The Exchange believes that the availability of the pre-determined adjustment increments should provide non-market maker parties with added assurances that, in the case of an obviously erroneous transaction and at their election, the transaction will be adjusted rather than automatical busted, as provided in the current Rule. While this should provide an added protective feature for non-market makers, it should not expose market makers to any additional risk or decrease the protections that they are already afforded in the BOX Rules. A market maker's transaction already has these pre-determined adjustment increments applied to their trades with other market makers. Thus, this proposal would merely extend the application of the pre-determined adjustment increments to another party that a market maker could trade with via the BOX Trading Host.

2. *Statutory Basis*

The Exchange believes that the proposed amendment to the BOX Rules would result in greater flexibility in determining the outcome of erroneous transactions within the BOX Trading Host. Accordingly, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, 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 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

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

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

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 Exchange consents, the Commission will:

A. By order approve the 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–2008–05 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–2008–05. 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–BSE–2008–05 and should be submitted on or before March 24, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–3959 Filed 2–29–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57382; File No. SR–BSE–2008–11]

Self-Regulatory Organizations; Boston Stock Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Substitution of a Term in the Rules of the Boston Options Exchange

February 26, 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 February 21, 2008, the Boston Stock Exchange, Incorporated (''Exchange'' or ''BSE'') 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. The BSE has designated this proposal as one that neither significantly affects the protection of investors or the public interest nor imposes any significant burden on competition, under Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(6) 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 from interested persons.

[9] 17 CFR 200.30–3(a)(12).

[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)(6).