

11. The Commission shall have issued an order approving the Substitution under Section 26(c) of the 1940 Act.

12. A registration statement for the Substitute Fund is effective and the investment objectives and policies and fees and expenses for the Substitute Fund as described herein have been implemented.

13. Each Affected Contract Owner will have been sent a copy of (a) a Contract prospectus supplement informing shareholders of this Application; (b) a prospectus for the Substitute Fund, and (c) a second supplement to the Contract prospectus setting forth the Effective Date and advising Affected Contract Owners of their right to reconsider the Substitution and, if they so choose, any time prior to the Effective Date and for 30 days thereafter, to reallocate or withdraw amounts under their affected Contract or otherwise terminate their interest therein in accordance with the terms and conditions of their Contract.

14. The Companies shall have satisfied themselves, that (a) the Contracts allow the substitution of investment company shares in the manner contemplated by the Substitution and related transactions described herein; (b) the transaction can be consummated as described in this Application under applicable insurance laws; and (c) that any regulatory requirements in each jurisdiction where the Contracts are qualified for sale, have been complied with to the extent necessary to complete the transaction.

Conclusion

For the reasons and upon the facts set forth above, Applicants submit that the requested order meets the standards set forth in Section 26(c) of the 1940 Act. Applicants request an order of the Commission, pursuant to Section 26(c) of the 1940 Act, approving the Substitutions.

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

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8-9632 Filed 5-1-08; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold an Open Meeting on Monday,

May 5, 2008 at 10 a.m., in the Auditorium, Room L-002.

The subject matter of the Open Meeting will be:

1. The Commission will hear oral argument on an appeal by Impax Laboratories, Inc. from an initial decision of an administrative law judge. Impax, a Delaware corporation, develops, manufactures, and distributes pharmaceutical products. Impax's common stock is registered with the Commission pursuant to Section 12(g) of the Securities Exchange Act of 1934.

The law judge found that Impax had violated Exchange Act Section 13(a) and Exchange Act Rules 13a-1 and 13a-13 thereunder by failing to file its required quarterly and annual reports for any period after September 30, 2004. The law judge revoked the registration of Impax's common stock.

Impax does not appeal the law judge's findings of violation. However, Impax does appeal the sanction imposed by the law judge.

Issues likely to be considered include whether the protection of investors requires revoking the Section 12(g) registration of Impax's common stock.

2. The Commission will also hear oral argument on an appeal by Robert Radano from an initial decision of an administrative law judge barring him from associating with any investment adviser. The law judge based his decision to impose a bar on Radano's having been enjoined from future violations of (A) Sections 206(1) and (2)—the antifraud provisions—of the Investment Advisers Act, and (B) Investment Advisers Act Section 203(f), which prohibits investment advisers from associating with a barred individual. Issues likely to be considered include whether it is in the public interest to bar Radano from association with any investment adviser.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

Dated: April 28, 2008.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8-9644 Filed 5-1-08; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57713; File No. SR-BSE-2008-28]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Transfer of BOX Units From the Montréal Exchange Inc. to MX US 2, Inc.

April 25, 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 April 22, 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 substantially prepared by the BSE. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ 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.

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

The Exchange is submitting the proposed rule change to the Commission to amend the Fifth Amended and Restated Operating Agreement, dated January 26, 2005, ("BOX LLC Agreement"), of the Boston Options Exchange Group LLC ("BOX LLC"), in connection with the transfer by the Montréal Exchange Inc.,⁵ a company incorporated in Québec, Canada ("MX"), of its 31.37% ownership interest in BOX LLC to MX U.S. 2, Inc. ("MX US"), a wholly-owned U.S. subsidiary of MX.⁶ The text of the proposed rule change is available at the BSE, the Commission's Public Reference Room, and <http://www.bostonstock.com>.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The Montréal Exchange Inc. is also known in French as the Bourse de Montréal Inc.

⁶ Capitalized terms not otherwise defined herein shall have the meanings set forth in the BOX LLC Agreement.

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 proposal. The text of these statements may be examined at the places specified in Item IV below. The BSE 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 January 13, 2004, the Commission approved four BSE proposals that together established, through an operating agreement among its owners, a Delaware limited liability company, BOX LLC, to operate the BOX market as an options trading facility of the Exchange.⁷ MX has transferred its 31.37% ownership interest in BOX LLC to MX US. The Exchange is submitting the proposed rule change to the Commission to amend the BOX LLC Agreement pursuant to the proposed Instrument of Accession in connection with the transfer of MX's 31.37% ownership interest in BOX LLC to MX US.⁸ As a result, MX will agree to abide by all the provisions of the BOX LLC Agreement, including those provisions requiring submission to the jurisdiction of the Commission.⁹

⁷ See Securities Exchange Act Release Nos. 49066 (January 13, 2004), 69 FR 2773 (January 20, 2004) (SR-BSE-2003-17) (establishing a fee schedule for the proposed BOX facility); 49065 (January 13, 2004), 69 FR 2768 (January 20, 2004) (SR-BSE-2003-04) (creating Boston Options Exchange Regulation LLC to which the BSE would delegate its self-regulatory functions with respect to the BOX facility); 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR-BSE-2002-15) (approving trading rules for the BOX facility); and 49067 (January 13, 2004), 69 FR 2761 (January 20, 2004) (SR-BSE-2003-19) (approving certain regulatory provisions of the BOX LLC Agreement).

⁸ The Exchange represented that the Instrument of Accession was executed on April 22, 2008. See electronic mail from Lisa J. Fall, General Counsel, BOX LLC, to Molly Kim, Special Counsel, Division of Trading and Markets ("Division"), Commission, and Johnna Dumler, Special Counsel, Division, Commission, dated April 22, 2008.

⁹ The BOX LLC states, in part, that "the Members, officers, directors, agents, and employees of Members irrevocably submit to the exclusive jurisdiction of the U.S. federal courts, U.S. Securities and Exchange Commission, and the Boston Stock Exchange, for the purposes of any suit, action or proceeding pursuant to U.S. federal securities laws, the rules or regulations thereunder, arising out of, or relating to, BOX activities or Article 19.6(a), (except that such jurisdictions shall

For the reasons stated above, the BSE is submitting to the Commission the proposed Instrument of Accession to the BOX LLC Agreement as a rule change.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(1),¹¹ in particular, in that it enables the Exchange to be so organized so as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Act¹² in that it is designed to facilitate transactions in securities, 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.

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.

also include Delaware for any such matter relating to the organization or internal affairs of BOX, provided that such matter is not related to trading on, or the regulation, of the BOX Market), and hereby waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that they are not personally subject to the jurisdiction of the U.S. Securities and Exchange Commission, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter hereof may not be enforced in or by such courts or agency." See BOX LLC Agreement, Section 19.6.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(1).

¹² 15 U.S.C. 78f(b)(5).

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30-days after the date of filing.¹⁵ However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.¹⁶ The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the Instrument of Accession was executed on April 22, 2008, and there is no reason to delay implementation of the changes to the BOX LLC Agreement pursuant to the Instrument of Accession. For these reasons, the Commission designates the proposal to be operative upon filing with the Commission.¹⁷

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.¹⁸

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. BSE has satisfied the five-day pre-filing requirement.

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁸ See 15 U.S.C. 78s(b)(3)(C).

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-2008-28 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-2008-28. 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 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-2008-28 and should be submitted on or before May 23, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E8-9695 Filed 5-1-08; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57716; File No. SR-CBOE-2007-39]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2 Thereto, Regarding Penny Price Improvement

April 25, 2008.

I. Introduction

On April 24, 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"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its rules regarding price improvement for options not currently quoted in one-cent increments. The proposed rule change was published for comment in the **Federal Register** on May 14, 2007.³ The Commission received two comment letters in response to the proposed rule change.⁴ On March 25, 2008, the Exchange filed Amendment No. 1 to make certain modifications to the original rule filing. On March 28, 2008, the Exchange withdrew Amendment No. 1 to the proposed rule change and simultaneously filed Amendment No. 2 to the proposal. This order provides notice of the proposed rule change, as modified by Amendment No. 2, and approves the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

II. Description of the Proposal

Proposed CBOE Rule 6.13B will expand the ability of Exchange users to effect transactions in penny increments in classes and/or series trading on CBOE's Hybrid System that are not currently quoting in penny increments.⁵ The Exchange will designate the classes/series eligible for this penny pricing, and the penny pricing will be

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 55724 (May 8, 2007), 72 FR 27156.

⁴ See letter to Nancy Morris, Secretary, Commission, from John C. Nagel, Director & Associate General Counsel, Citadel, dated June 4, 2007 ("Citadel Letter") and letter to Nancy M. Morris, Secretary, Commission, from Michael J. Simon, Secretary, International Securities Exchange, LLC, dated June 1, 2007 ("ISE Letter").

⁵ Amendment No. 2 clarified that the program will not apply to Hybrid 3.0 classes.

available electronically and in open outcry.

As proposed, all limit orders or quotes electronically sent to CBOE (regardless of sender origin type) can be priced in a one-cent increment. Specifically, an Exchange Market-Maker can provide the Exchange with indications to trade in one-cent increments that improve on the Market-Maker's disseminated quotation. Such indications of interest will be firm for all interest received by the Exchange. Further, all other users can electronically submit orders priced in one-cent increments. The Exchange will round the limit price to the nearest permissible quoted increment for display purposes, but will maintain the one-cent increment limit price for trade execution and allocation purposes.⁶ To the extent there is trading interest from multiple sources at the same one-cent increment price, priority will be established in the same manner as priority at a standard quoting increment (*i.e.*, normal allocation procedures will be used). The Exchange has represented that the system will not execute an order at a price that would cause a trade-through of another options exchange.

With respect to open outcry, crowd members will be able to provide price improvement in one-cent increments over the Exchange's Best Bid or Offer ("BBO"). The Exchange has represented that any resulting trade will not cause a trade-through of another options exchange. Further, prior to executing any order in open outcry in a one-cent increment, Exchange members will be required to electronically "sweep" any penny pricing interest on the book that may exist.⁷ The "sweep" is designed to ensure that better-priced orders resting in one-cent increments are executed prior to the open outcry transaction and

⁶ For example, if the CBOE market is 1-1.20 and an order is received to buy 10 contracts at 1.08, CBOE would disseminate a 1.05 bid for 10 contracts, and any subsequent sell market order received by the Exchange would trade at 1.08 for up to 10 contracts (after that, the quote would revert back to 1-1.20).

Amendment No. 2 deletes a provision in the original filing that would have allowed the Exchange to append an indicator to the OPRA quote representing the existence of penny pricing. Additionally, in Amendment No. 2, the Exchange represents that the size and price of any penny pricing will not be displayed or made available to anyone (other than the size that is added to the Exchange's BBO to reflect the size of rounded, penny-priced orders).

⁷ Open outcry penny pricing generally will be available in instances where a Floor Broker is attempting to cross an order pursuant to CBOE Rule 6.74, except it will not be available in those instances where: (i) A Floor Broker is attempting to cross orders during the opening rotation in open outcry (*see* CBOE Rule 6.74(c)); or (ii) a Floor Broker is utilizing the Exchange's SizeQuote Mechanism (*see* CBOE Rule 6.74(f)).

¹⁹ 17 CFR 200.30-3(a)(12).