

C. Listing and Trading

The Commission finds that the Exchange's proposed rules and procedures for the listing and trading of the proposed Shares are consistent with the Act. Shares will trade as equity securities subject to Amex rules including, among others, rules governing priority, parity and precedence of orders, specialist responsibilities, account opening and customer suitability requirements. The Commission believes that the listing and delisting criteria for the Shares should help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Shares. Finally, the Commission notes that the Information Circular the Exchange will distribute will inform members and member organizations about the terms, characteristics and risks in trading the Shares, including their prospectus delivery obligations.

D. Accelerated Approval of the Proposed Rule Change, as Amended by Amendment Nos. 1 and 2 Thereto, and Accelerated Approval of Amendment Nos. 3 and 4 Thereto

The Commission finds good cause for approving the proposed rule change, as amended by Amendment Nos. 1 and 2, prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The Exchange has requested the Commission to approve the proposal, as amended by Amendment Nos. 1 and 2, on an accelerated basis, after a 15-day comment period, to enable investors to begin trading the Shares promptly. The Commission notes that the proposed rule change, as amended by Amendment Nos. 1 and 2, was noticed for a 15-day comment period and no comments were received. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,³⁵ to approve the proposal, as amended by Amendment Nos. 1 and 2, on an accelerated basis.

The Commission finds good cause for approving Amendment Nos. 3 and 4 to the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The Exchange has requested the Commission to approve Amendment Nos. 3 and 4³⁶ on an accelerated basis so that approval of the proposal is not unnecessarily delayed.

In Amendment No. 3, the Exchange made clarifying changes to the purpose section regarding adjustments to the Index, specifically indicating the Index Sponsor will use the prior day's futures price or, in exceptional cases, the "fair value" price if futures prices are not available. In addition, the Exchange stated that it would submit a rule filing pursuant to Section 19(b) of the Exchange Act if the use of a prior day's price or "fair value" pricing for an Index commodity or commodities is more than of a temporary nature or if a successor or substitute Index is used by the Managing Owner. Amendment No. 4 clarifies that the Index value will be disseminated through one or more major market data vendors at least every 15 seconds during the time the Shares trade on Amex. The Commission notes that the changes contained in Amendment Nos. 3 and 4 are necessary to clarify the proposal. Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,³⁷ to approve Amendment Nos. 3 and 4 on an accelerated basis.

XIV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment Nos. 3 and 4 are 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-Amex-2005-059 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 20549-9303.

All submissions should refer to File Number SR-Amex-2005-059. 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. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. 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-Amex-2005-059 and should be submitted on or before February 9, 2006.

XV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act that the proposed rule change (SR-Amex-2005-059), as amended by Amendment Nos. 1 and 2, is approved on an accelerated basis and that Amendment Nos. 3 and 4 thereto are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁸

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53102; File No. SR-BSE-2005-48]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Granting Approval of a Proposed Rule Change and Amendment No. 1 Thereto Requiring Exchange Members To Provide Electronic Mail Addresses to the Exchange

January 11, 2006.

On October 28, 2005, the Boston Stock Exchange, Inc. ("BSE" 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 require its members to provide

³⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³⁵ 15 U.S.C. 78s(b)(2).

³⁶ Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 11, 2006 (requested accelerated approval of Amendment No. 4).

³⁷ *Id.*

electronic mail addresses to the Exchange. On November 23, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.³ The proposed rule change, as amended, was published for comment in the **Federal Register** on December 12, 2005.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

Proposed Section 1(o) of Chapter XXV of BSE's rules provides that every member and member organization shall designate one or more electronic mail addresses for the purpose of receiving Exchange notices and communications and shall promptly update those electronic mail addresses when those addresses change or are no longer valid. In addition, proposed Section 1(o) of Chapter XXV provides that an authorized representative of the Exchange may elect to transmit notices or other communications to members and member organizations electronically, but that nothing in Section 1(o) of Chapter XXV shall be construed to supersede or modify either the method for service of process or other materials in any disciplinary proceeding or any other provisions of the Exchange rules setting out a specific method for the receipt of information from the Exchange.

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.⁵ The Commission believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁷ in particular, in that it promotes just and equitable principles of trade, serves to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protects investors and the public interest by allowing the Exchange to take advantage of available technology to communicate with its members in an efficient and cost-effective manner.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the

proposed rule change (SR-BSE-2005-48), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53101; File No. SR-CBOE-2006-03]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand the Matching Algorithm Possibilities for Equity Options To Match Those Available for Index Options

January 11, 2006.

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 January 9, 2006, the Chicago Board Options Exchange, Incorporated ("CBOE" 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 CBOE. The Exchange has filed the proposal 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 proposes to expand the matching algorithm possibilities for equity options to match those available for index options. The Exchange has designated this proposal as non-controversial and has requested that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.⁵

The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com>), at the principal

office of the Exchange, and at the Commission's Public Reference Room. The text of the proposed rule change is also set forth below. Proposed new language is *italicized*; deletions are in [brackets].

Rule 6.45A. Priority and Allocation of Equity Option Trades on the CBOE Hybrid System

* * * * *

(a) Allocation of Incoming Electronic Orders: [The Exchange shall apply, for each class of options, the following rules of trading priority.] *The appropriate Exchange procedures committee will determine to apply, for each class of options, one of the following rules of trading priority described in paragraphs (i) or (ii). The Exchange will issue a Regulatory Circular periodically specifying which priority rules will govern which classes of options any time the appropriate Exchange committee changes the priority.*

(i) Ultimate Matching Algorithm ("UMA"): No change.

(A) Priority of Orders in the Electronic Book—No Change.

(ii) Price-Time or Pro-Rata Priority Price-Time Priority: *Under this method, resting quotes and orders in the book are prioritized according to price and time. If there are two or more quotes or orders at the best price then priority is afforded among these quotes or orders in the order in which they were received by the Hybrid System; or*

Pro-Rata Priority: Under this method, resting quotes and orders in the book are prioritized according to price. If there are two or more quotes or orders at the best price then trades are allocated proportionally according to size (in a pro-rata fashion). The executable quantity is allocated to the nearest whole number, with fractions 1/2 or greater rounded up and fractions less than 1/2 rounded down. If there are two market participants that both are entitled to an additional 1/2 contract and there is only one contract remaining to be distributed, the additional contract will be distributed to the market participant whose quote or order has time priority.

Additional Priority Overlays Applicable to Price-Time or Pro-Rata Priority Methods

In addition to the base allocation methodologies set forth above, the appropriate Exchange procedures committee may determine to apply, on a class-by-class basis, one or more of the following designated market participant overlay priorities in a sequence determined by the appropriate Exchange procedures committee. The

³ In Amendment No. 1, BSE made clarifying changes to its statement of purpose for the proposed rule change.

⁴ Securities Exchange Act Release No. 52895 (December 5, 2005), 70 FR 73490 (December 12, 2005) (SR-BSE-2005-48).

⁵ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(2).

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).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ 17 CFR 240.19b-4(f)(6)(iii).