

February 28, 2008.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

## II. Description of the Proposal

The Exchange proposes to clarify the application of options transaction fees for trades executed through the Options Linkage on the Exchange. Currently, the Amex Options Fee Schedule (the "Options Fee Schedule") provides that, under the Linkage Fee Pilot Program that is effective through July 31, 2008, the fees applicable to specialists, registered options traders, and market maker apply to members of other options exchanges ("Non-Member Market Makers") executing Linkage transactions except for Satisfaction Orders. As a result, the fees for Principal Orders ("P Orders") and Principal Acting As Agent Orders ("P/A Orders") (collectively, "Linkage Orders") submitted through the Options Linkage are: (i) \$0.10 per contract side options transaction fee for equity options, exchange traded fund share ("ETF") options, QQQQ options and trust issued receipt options; (ii) \$0.21 per contract side options transaction fee for index options (including MNX and NDX options); (iii) \$0.05 per contract side options comparison fee; (iv) \$0.05 per contract side options floor brokerage fee; and (v) an options licensing fee for certain ETF and index option products ranging from \$0.15 per contract side to \$0.05 per contract side depending on the particular ETF or index option.<sup>4</sup>

The Options Fee Schedule also provides that broker-dealer orders that are automatically executed on the Exchange are subject to Broker-Dealer Auto-Ex Fees ("BD Auto-Ex Fee") that include: (i) \$0.50 per contract side options transaction fee for equity options, ETF options, QQQQ options and trust issued receipt options; (ii) \$0.05 per contract side options comparison fee; and (iii) \$0.05 per contract side options floor brokerage fee.<sup>5</sup> Broker-dealer orders that are subject to the BD Auto-Ex Fee include specialist orders, registered options trader orders, Non-Member Market Maker orders, and orders for the account of registered broker-dealers. The Exchange charges this fee to member

firms through customary monthly billing. The BD Auto-Ex Fee was implemented prior to the introduction and roll-out of the Options Linkage which commenced on January 31, 2003 in two phases. The entire roll-out of the Options Linkage was completed by July 2003.

The Exchange in this proposal seeks to clarify the Options Fee Schedule to make clear that automatically executed Linkage Orders will be charged the BD Auto Ex Fee that includes: (i) \$0.50 per contract side options transaction fee; (ii) \$0.05 per contract side options comparison fee; and (iii) \$0.05 per contract side options floor brokerage fee. Accordingly, the total transaction fee for such orders would be \$0.60 per contract side. In contrast to the initial period of time when the Options Linkage was introduced, most Linkage Orders on the Exchange are automatically executed via the ANTE platform. In the Notice, the Exchange acknowledged that the current Options Fee Schedule does not clearly reflect the fact that for automatically executed Linkage Orders, the BD Auto-Ex Fee would apply.

## III. Discussion and Commission Findings

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.<sup>6</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,<sup>7</sup> which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

Under the current Options Fee Schedule, only non-Linkage Orders on the behalf of broker-dealers automatically executed orders in ANTE are subject to the BD Auto-Ex Fee; Linkage Orders that are automatically executed orders in ANTE are not subject to the BD Auto-Ex Fee. The Exchange proposed to clarify that all automatically executed orders in ANTE, whether Linkage Orders or non-Linkage Orders on the behalf of broker-dealers, are subject to the BD Auto-Ex Fee set forth in the Options Fee Schedule. Accordingly, the Commission believes that the Exchange's proposed Options Fee Schedule clearly sets forth the fees imposed on Linkage Orders.

The Commission notes that the Exchange acknowledges that prior versions of its Options Fee Schedule did not represent that the \$.60 per side BD Auto-Ex Fee was applied to electronically executed Linkage Orders. Because the Exchange may have assessed the BD Auto-Ex Fee on Linkage Orders prior to this approval and, therefore, without authority, any parties assessed the BD Auto-Ex Fee for Linkage Orders prior to the approval of this proposed rule change may seek reimbursement. In addition, the Commission notes that the Options Linkage fees are assessed pursuant to a pilot scheduled to end on July 31, 2008 and that the Commission is continuing to evaluate whether such fees are appropriate.

## IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-Amex-2008-09) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57594; File No. SR-BSE-2008-17]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Quarterly Options Series Pilot Program To Permit the Listing of Additional Series

April 1, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 28, 2008, the Boston Stock Exchange, Inc. ("Exchange" or "BSE") 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 Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and

<sup>3</sup> See Securities Exchange Act Release No. 57373 (February 22, 2008), 73 FR 10835 ("Notice").

<sup>4</sup> See Options Fee Schedule section of the Amex Price List available at <http://www.amex.com>. See also Securities Exchange Act Release No. 56102 (July 19, 2007), 72 FR 40908 (July 25, 2007) (SR-Amex-2007-64).

<sup>5</sup> See Securities Exchange Act Release No. 47216 (January 17, 2003), 68 FR 5059 (January 31, 2003) (SR-Amex-2002-114).

<sup>6</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change 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 amend Supplementary Material .04 to Section 6 of Chapter IV of the Rules of the Boston Options Exchange ("BOX") to permit the Exchange to list strike prices for Quarterly Options Series ("QOS") in exchange traded fund ("Fund Share") options that fall within a percentage range (30%) above and below the price of the underlying Fund Share. Additionally, upon demonstrated customer interest, the Exchange also will be permitted to open additional strike prices of QOS in Fund Share options that are more than 30% above or below the current price of the Fund Share. Market makers trading for their own account will not be considered when determining customer interest under this provision. In addition to the initial listed series, the Exchange may list up to sixty (60) additional series per expiration month for each QOS in Fund Share options. Further, the proposal includes a delisting program to be undertaken by the Exchange in connection with QOS in Fund Share options.

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

### 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 Exchange proposes to amend Supplementary Material .04 to Section 6 of Chapter IV of the BOX Rules to permit the Exchange to open additional series for QOS in Fund Share options that fall within thirty percent (30%) above and below the price of the underlying Fund Share. Additionally, upon demonstrated customer interest, the Exchange also will be permitted to open additional strike prices of QOS in Fund Share options that are more than 30% above or below the current price of the underlying Fund Share. Market makers trading for their own account will not be considered when determining customer interest under this provision. The Exchange will be permitted to list up to sixty (60) additional series per expiration month for each QOS in Fund Share options.

On July 17, 2007, the Exchange filed with the Commission a pilot program proposal to permit the listing and trading of QOS in options on indexes or options on Fund Shares that satisfy the applicable listing criteria under BOX rules.<sup>5</sup> QOS trade based on calendar quarters that end in March, June, September, and December. The Exchange lists QOS that expire at the end of the next consecutive four calendar quarters, as well as the fourth quarter of the next calendar year. For example, if BOX were trading QOS in the iShares Russell 2000 Index Fund ("IWM") in the month of April 2008, the Exchange would list series that expire at the end of the second quarter of 2008 (June), third quarter of 2008 (September), fourth quarter of 2008 (December), first quarter of 2009 (March), and fourth quarter of 2009 (December).

Currently, the Exchange list QOS in five Fund Share options: (1) Nasdaq-100 Index Tracking Stock ("QQQQ"); (2) IWM; (3) DIAMONDS Trust, Series 1 ("DIA"); (4) Standard and Poor's Depository Receipts/SPDRs ("SPY"); and (5) Energy Select SPDR ("XLE"). The average daily trading volume and total volume for QOS in IWM options significantly exceeds the volumes for QOS of some other Fund Share options that are listed and traded on the Exchange. The chart below provides trading volume figures for the fourth quarter in 2007, demonstrating that QOS in IWM options are one of the most popular and heavily traded QOS on the Exchange.

QOS	October 2007		November 2007		December 2007	
	ADV	Total vol	ADV	Total vol	ADV	Total vol
IWM .....	1,690	38,891	1,597	33,540	3,230	64,612
QQQQ .....	1,883	43,329	2,353	49,414	3,432	68,642
SPY .....	699	16,086	1,349	28,335	2,087	41,756
DIA .....	180	4,150	325	6,830	502	10,049
XLE .....	188	4,329	927	19,483	261	5,237

Recently, certain options exchanges ("Options Exchanges") have received requests from their members and participants to add additional strike prices for QOS in IWM options that would be outside of the price range for setting strikes as provided for under

Supplemental Material .04 to Section 6 of Chapter IV of the BOX Rules (hereinafter "+/- \$5 range").<sup>6</sup> These members and participants have advised the Options Exchanges that they are buying and selling QOS in IWM options to trade volatility. In order to adequately

replicate the desired volatility exposure, these members and participants need to trade several IWM option series, many having strike prices that fall outside of the +/- \$5 range currently allowed under the QOS rules.

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See Securities Exchange Act Release No. 56086 (July 17, 2007), 72 FR 40182 (July 23, 2007) (SR-BSE-2007-36) ("Pilot Program Release"). Under the pilot program, the Exchange may list QOS in up to five currently listed option classes that are either options on Fund Shares or indexes. The Exchange

also is permitted to list QOS in any options class that is selected by other securities exchanges that employ a similar pilot program under their respective rules.

<sup>6</sup> See Securities Exchange Act Release No. 57410 (March 3, 2008), 73 FR 12483 (March 7, 2008) (SR-CBOE-2007-96). See also Securities Exchange Act

Release No. 57425 (March 4, 2008) 73 FR 12783 (March 10, 2008) (SR-ISE-2008-19). Supplemental Material .04 to Section 6 of Chapter IV provides that the Exchange shall list strike prices for a QOS that are within \$5 from the closing price of the underlying on the preceding day.

In addition, other members and participants have advised the Options Exchanges that their investment strategies involve trading options tied to a particular option "delta,"<sup>7</sup> rather than a particular level of the underlying security or index. At issue is the fact that delta depends on both the relative difference between the level of the underlying security or index and the option strike price, and time to expiration. For example, with IWM trading at \$85 per share, the strike price corresponding to a "25-delta" IWM call (*i.e.*, a call option with a delta of 25) with one month to expiration would be 89. However, the strike price corresponding to a "25-delta" IWM call with 3 months to expiration would be 93, and the strike price of a "25-delta" call with 1 year to expiration would be 106. In short, the Exchange has been advised that the +/- \$5 range for QOS in IWM options is insufficient to satisfy customer demand.

In order to meet customer demand, the Exchange proposes to amend Supplemental Material .04 to Section 6 of Chapter IV of the BOX Rules, which governs the Quarterly Option Series Pilot Program. Specifically, the Exchange proposes to allow the Exchange to open additional strike prices of QOS in Fund Share options that are within thirty percent (30%) above or below the closing price of the underlying Fund Share on the preceding business day. The Exchange also will be permitted to open additional strike prices of QOS in Fund Share options that are more than 30% above or below the current price of the underlying Fund Share, provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market makers trading for their own account will not be considered when determining customer interest under this proposed provision. The Exchange will be permitted to list up to sixty (60) additional series per expiration month for each QOS in Fund Share options.

The Exchange is also proposing to add new paragraph (g) to Supplemental Material .04 to Section 6 of Chapter IV of the BOX Rules, which sets forth a delisting policy. Specifically, with respect to QOS in Fund Share options, the Exchange will, on a monthly basis, review series that are outside a range of five strikes above and five strikes below the current price of the underlying Fund

Share, and delist series with no open interest in both the put and the call series having a strike price: (i) Higher than the highest strike price with open interest in the put and/or call series for a given expiration month; or (ii) lower than the lowest strike price with open interest in the put and/or call series for a given expiration month.

To illustrate how the proposed delisting program would work, assume IWM closed at \$70 on the day the Exchange conducts the monthly review of QOS in Fund Share options. Series having strike prices above \$75 and below \$65 would be reviewed by the Exchange for possible delisting. Assume that the Exchange lists the following QOS in IWM options that expire in June 2008:

Calls—June 08 Exp		Puts—June 08 Exp	
Strike	Open Interest?	Strike	Open Interest?
62	No	62	No
63	No	63	Yes
64	Yes	64	Yes
*	*	*	*
76	Yes	76	Yes
77	Yes	77	Yes
78	Yes	78	Yes
79	Yes	79	Yes
80	Yes	80	Yes
81	Yes	81	Yes
82	Yes	82	Yes
83	No	83	No
84	No	84	No
85	No	85	Yes
86	Yes	86	No
87	Yes	87	Yes
88	Yes	88	Yes
89	Yes	89	No
90	Yes	90	No
91	No	91	No
92	No	92	No
93	No	93	No

The Exchange would de-list the first series listed above, as well as the last three: \$62, \$91, \$92, and \$93. The Exchange would not delist the \$83 and \$84 series because there are series having open interest with strike prices higher than these two series. In addition, the Exchange would not delist the \$63 call series because there is open interest in the \$63 put series.

Notwithstanding the proposed delisting policy, customer requests to add strikes and/or maintain strikes in QOS in Fund Share options in series eligible for delisting shall be granted. Further, in connection with the proposed delisting policy, if the Exchange identifies series for delisting, the Exchange shall notify other options exchanges with similar delisting policies regarding eligible series for listing, and shall work with such other exchanges to develop a uniform list of

series to be delisted, so as to ensure uniform series delisting of multiple listed QOS in Fund Share options. It is expected that the proposed delisting policy for QOS in Fund Share options would be adopted by other options exchanges that have adopted the QOS Pilot Program.

BOX represents that it has the necessary systems capacity to support new options series that will result from this proposal. Further, as proposed, the Exchange notes that this rule change would become part of the pilot program and, going forward, would be considered by the Commission when the Exchange seeks to renew or make permanent the pilot program in the future.

## 2. Statutory Basis

The Exchange believes the rule proposal is consistent with the Act and the rules and regulations there under applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>8</sup> Specifically, the Exchange believes that the proposed rule change is consistent with the requirements under Section 6(b)(5) of the Act<sup>9</sup> that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. In order to meet customer demand, the Exchange proposes to amend Supplemental Material .04 to Section 6 of Chapter IV of the BOX Rules, which governs the Quarterly Option Series Pilot Program. The additional new series can be added without presenting capacity problems, and the Exchange has proposed a delisting policy with respect to QOS in Fund Share options.

### 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.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> "Delta" is a measure of how an option price will change in response to a \$1 price change in the underlying security or index. For example, an ABC option with a delta of "50" can be expected to change by \$0.50 in response to a \$1 change in the price of ABC.

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

The Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>11</sup> The Exchange has asked the Commission to waive the 30-day operative delay to permit the Exchange to immediately compete with the other options exchanges that have similarly amended their quarterly options series pilot programs.

The Commission notes that this proposal is substantially similar to a proposed rule change submitted by the Chicago Board Options Exchange, which was approved by the Commission following publication for notice and comment, and does not raise any new regulatory issues.<sup>12</sup> Waiving the 30-day operative delay will promote, without undue delay, further competition in the options market.<sup>13</sup> For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.

The Commission notes that this rule change will become part of the pilot program and, going forward, its effects will be considered by the Commission in the event that the Exchange seeks to renew or make permanent the pilot program.<sup>14</sup> Thus, in the Exchange's

future reports on the Pilot Program, the Exchange should include analysis of (1) the impact of the additional series on the Exchange's market and quote capacity, and (2) the implementation and effects of the delisting policy, including the number of series eligible for delisting during the period covered by the report, the number of series actually delisted during that period (pursuant to the delisting policy or otherwise), and documentation of any customer requests to maintain QOS strikes that were otherwise eligible for delisting.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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](mailto:rule-comments@sec.gov). Please include File No. SR-BSE-2008-17 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-2008-17. This file number should be included on the

covering the entire period during which the Pilot Program was in effect. See Pilot Program Release, *supra* note 5. The Pilot Program Release requires the Exchange to include in its report, at a minimum: (1) data and written analysis on the open interest and trading volume in the classes for which QOS were opened; (2) an assessment of the appropriateness of the option classes selected for the Pilot Program; (3) an assessment of the impact of the Pilot Program on the capacity of the Exchange, OPRA, and market data vendors (to the extent data from market data vendors is available); (4) any capacity problems or other problems that arose during the operation of the Pilot Program and how the Exchange addressed such problems; (5) any complaints that the Exchange received during the operation of the Pilot Program and how the Exchange addressed them; and (6) any additional information that would assist in assessing the operation of the Pilot Program.

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-2008-17 and should be submitted on or before April 28, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57598; File No. SR-BSE-2008-19]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Position and Exercise Limits on the Boston Options Exchange Facility

April 1, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 18, 2008, the Boston Stock Exchange, Inc. ("Exchange" or "BSE") filed with the Securities and Exchange Commission

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written 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. The Exchange has fulfilled this requirement.

<sup>12</sup> See Securities Exchange Act Release No. 57410, *supra* note 6. See also Securities Exchange Act Release No. 57425, *supra* note 6.

<sup>13</sup> 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. See 15 U.S.C. 78c(f).

<sup>14</sup> As set forth in the Pilot Program Release, if the Exchange were to propose an extension, expansion, or permanent approval of the Pilot Program, the Exchange must submit, along with any filing proposing such amendments to the program, a report that provides an analysis of the Pilot Program