

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58996; File No. SR-BSE-2008-55]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. To Temporarily Increase the Number of Additional Quarterly Option Series in Exchange-Traded Fund Share Options That May Be Listed on the Boston Options Exchange Facility

November 21, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 19, 2008, the Boston Stock Exchange, Inc. (“BSE” or “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 amend Chapter IV, Section 6 (Series of Options Contracts Open for Trading), Supplemental Material .04, of the Rules of the Boston Options Exchange Group, LLC (“BOX”) to temporarily increase the number of additional Quarterly

Options Series (“QOS”) in exchange-traded fund share (“ETF”) options from sixty (60) to one hundred (100) that may be added by BOX. 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](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

This proposed rule change is based on a similar proposal by the Chicago Board Options Exchange, Incorporated (“CBOE”).<sup>5</sup>

A pilot program (the “Pilot Program”) on BOX currently permits the listing and trading of QOS.<sup>6</sup> The purpose of this proposed rule change is to temporarily increase the number of additional QOS in ETF options from sixty (60) to one hundred (100) that may be added by BOX. To effect this change, the Exchange is proposing to add new

subparagraph (h) to Supplemental Material .04.

Because of the current, unprecedented market conditions, demand from market participants exists to add lower priced strikes for certain of the QOS. However, currently under Supplemental Material .04, BOX cannot honor this demand because the maximum number of additional series, sixty (60), has already been listed. These strikes which are currently in demand are much lower than those currently listed for which there is open interest.

The Exchange is therefore seeking to temporarily increase the number of additional QOS that may be added to one hundred (100). The increase of additional series would be permitted immediately for expiration months currently listed and for expiration months added throughout the last quarter of 2008, including the new expiration month added after December 2008 expiration. The Exchange believes that this proposal is reasonable and will allow for more efficient risk management. The Exchange believes that this proposal will facilitate the functioning of the BOX market and will not harm investors or the public interest.

The Exchange believes that user demand and the recent downward price movements in the underlying ETFs warrants a temporary increase in the number of strikes for all QOS in ETF options. BOX currently lists QOS in five (5) ETFs: (1) Nasdaq-100 Index Tracking Stock (“QQQQ”); (2) iShares Russell 2000 Index Fund (“IWM”); (3) DIAMONDS Trust, Series 1 (“DIA”); (4) Standard and Poor’s Depository Receipts/SPDRs (“SPY”); and (5) Energy Select SPDR (“XLE”). The chart below provides the historical closing prices of these ETFs over the past several months:

ETF	10/27/2008	10/13/2008	10/6/2008	9/30/2008	8/29/2008	7/31/2008
QQQQ .....	28.69	35.13	34.86	38.91	46.12	45.46
IWM .....	44.86	56.98	59.72	68	73.87	71.32
DIA .....	80.26	95.03	99.9	108.36	115.45	113.7
SPY .....	83.95	101.35	104.72	115.99	128.79	126.83
XLE .....	40.86	50.55	54.89	63.3	74.65	74.4

The additional series will enable BOX to list in-demand, lower priced strikes.

BOX represents that it has the necessary systems capacity to support the new options series that will result from this proposal. Further, as

proposed, the Exchange notes that these series would temporarily become part of the Pilot Program and will be considered by the Commission when the Exchange seeks to renew or make permanent the Pilot Program in the

future. In addition, the Exchange states that in the event that current market volatility continues, it may seek to continue (through a rule filing) the time period during which the additional

<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).

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

<sup>5</sup> See Securities Exchange Act Release No. 58887 (October 30, 2008), 73 FR 66083 (November 6, 2008) (SR-CBOE-2008-111).

<sup>6</sup> The term “Quarterly Options Series” is defined in the BOX Rules as a series in an options class that

is approved for listing and trading on the Exchange in which the series is opened for trading on any business day and that expires at the close of business on the last business day of a calendar quarter.

series proposed by this filing may be added.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>7</sup> in general, and Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it 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 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. Specifically, the current proposed rule change is responsive to the current, unprecedented market conditions, is limited in scope as to QOS in ETF options and as to time, and the proposed additional new series can be added without presenting capacity problems.

### *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*

The Exchange has neither solicited nor received comments on the proposed rule change.

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

Because the foregoing rule does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing. The Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest because such waiver will enable the Exchange to better meet customer demand in light of recent increased volatility in the marketplace.<sup>11</sup> Therefore, the Commission designates the proposal operative upon filing.

At any time within 60 days of the filing of such 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](mailto:rule-comments@sec.gov). Please include File No. SR-BSE-2008-55 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-2008-55. 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

of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to be met.

<sup>11</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).

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 No. SR-BSE-2008-55 and should be submitted on or before December 22, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-28421 Filed 11-28-08; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59006; File No. SR-NYSEALTR-2008-08]

### Self-Regulatory Organizations; NYSE Alternext US LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Listing and Trading of Managed Fund Share Options

November 24, 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 November 19, 2008, NYSE Alternext US LLC ("NYSE Alternext" 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 Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

<sup>12</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>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</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