

market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the Exchange is proposing, among other things, to amend Commentary .03 to Amex Rule 27 to eliminate the requirement that specialists and other members notify the Exchange in writing before any planned contact with a potential sponsor or issuer for the purpose of listing the ETFs or structured products of such sponsor or issuer on the Exchange, or within five business days of unanticipated contact where discussions regarding the listing occur. As noted above, under current Commentary .03, the Exchange will grant such approval where it appears that the contact will assist rather than impede the Exchange's effort to list the new ETF or structured product. The Exchange has stated that it no longer believes this restriction is necessary because it is unlikely that such contact would impede the Exchange's effort to list an issuer. The Commission believes this is a reasonable modification of the Exchange's allocation procedures. As discussed below, representations or commitments that relate to the prospective listing still must be disclosed on the listing application.

The Exchange also proposes to shorten the disclosure timeframe in Commentary .03 to require specialists to only disclose in their applications to be allocated an ETF or structured product representations or commitments that relate to the prospective listing of the ETF or structured product and that are made within the six months preceding the date allocation applications are solicited with respect to that ETF or structured product. The Commission believes that this shorter timeframe should be sufficient to enable the Exchange to continue to monitor the appropriateness of such representations and/or commitments, without impairing the allocation process by requiring specialists to disclose every representation or commitment that they have ever made to the issuer or sponsor. The Commission also notes that ETFs and structured products are generally allocated to the specialist very quickly after approval of the listing application. However, in the event an ETF or structured product is not allocated within five days of the allocation application, specialists and other members would be required to update their applications to report all representations or commitments since last reported to the Exchange, which should help to ensure the integrity of the allocation process.

In addition, the Exchange proposes a change to Commentary .03 to clarify that

the Exchange may arrange telephone or in-person interviews on the Exchange's premises, if an issuer or sponsor wishes to interview one or more specialists once the Allocation Committee has prepared the list of qualified specialists. Because ETFs and structured products are typically allocated to a specialist within a few days after (and often the same day as) approval of the issuer's application for listing on the Exchange, the Commission would expect such interviews to occur infrequently. Should an interview occur, the Commission notes that Commentary .03 permits the Performance Committee to disqualify any specialist that has made inappropriate representations.

Finally, in addition to other minor changes to Rule 27 and Commentaries .02 and .03 thereto, the proposal amends Commentary .02 to clarify that the Exchange's Performance Committee may disqualify for allocation any specialist that is deemed to have made an inappropriate communication to an issuer of an equity security that has been approved for listing on the Exchange. The Commission notes that this proposed change would make Commentary .02 more consistent with Commentary .03. The Exchange also proposes adding a provision to Commentary .02 that would prohibit post-interview contacts between specialists and issuers and provide a means for issuers to obtain further information from the specialists through the Exchange's Equity Sales Group. The Commission believes that these proposed changes to Commentary .02 are reasonable modifications of, and should further the public interest by helping to promote the integrity of, the allocation process.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-Amex-2008-44) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58195; File No. SR-BSE-2008-39]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend a Pilot Program That Allows No Minimum Size Order Requirement and Certain Premature Terminations Under the Price Improvement Period Process on the Boston Options Exchange Facility Until November 18, 2008

July 18, 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 July 18, 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 prepared by the self-regulatory organization. The Exchange filed the 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 the Supplementary Material to section 18 (The Price Improvement Period "PIP") of Chapter V of the Rules of the Boston Options Exchange Group, LLC ("BOX") to extend a pilot program that permits BOX to have no minimum size requirement for orders entered into the PIP and under certain circumstances permits the premature termination of the PIP process ("PIP Pilot Program"). The text of the proposed rule change is available on the BSE's Web site: <http://www.bostonstock.com>, the principal office of the Exchange, 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 self-regulatory organization included

<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>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

The purpose of the proposed rule change is to extend the PIP Pilot Program under the BOX Rules for four (4) additional months. The PIP Pilot Program allows BOX to have no minimum size requirement for orders entered into the PIP process and under certain circumstances permits the premature termination of the PIP process.<sup>5</sup> The proposed rule change retains the text of Supplementary Material .01 to section 18 of Chapter V of the BOX Rules and seeks to extend the operation of the PIP Pilot Program until November 18, 2008.

The Exchange notes that the PIP Pilot Program provides small customer orders with benefits not available under the rules of some other exchanges. One of the important factors of the PIP Pilot Program is that it guarantees Participants the right to trade with their customer orders that are less than 50 contracts. In particular, any order entered into the PIP is guaranteed an execution at the end of the auction at a price at least one penny better than the national best bid or offer.

In further support of this proposed rule change, and as required by the Original PIP Pilot Program Approval Order, the Exchange represents that it has been submitting to the Commission a monthly PIP Pilot Program Report, offering detailed data from, and analysis of, the PIP Pilot Program.

To aid the Commission in its evaluation of the PIP Pilot Program, BSE

represents that BOX will provide the following additional information each month:

(1) The number of orders of 50 contracts or greater entered into the PIP auction;

(2) The percentage of all orders of 50 contracts or greater sent to BOX that are entered into BOX's PIP auction;

(3) The spread in the option, at the time an order of 50 contracts or greater is submitted to the PIP auction;

(4) For PIP trades for orders of fewer than 50 contracts, the percentage executed at the National Best Bid or Offer ("NBBO") plus \$.01, plus \$.02, plus \$.03, etc.;

(5) For PIP trades for orders of 50 contracts or greater, the percentage executed at the NBBO plus \$.01, plus \$.02, plus \$.03, etc.;

(6) The number of orders submitted by Order Flow Providers ("OFPs") when the spread was \$.05, \$.10, \$.15, etc. For each spread, BOX will specify the percentage of contracts in orders of fewer than 50 contracts submitted to BOX's PIP that were traded by: (a) The OFP that submitted the order to the PIP; (b) BOX Market Makers assigned to the class; (c) other BOX Participants; (d) Public Customer Orders (including Customer PIP Orders ("CPOs")); and (e) unrelated orders (orders in standard increments entered during PIP). For each spread BOX will also specify the percentage of contracts in orders of 50 contracts or greater submitted to BOX's PIP that were traded by: (a) the OFP that submitted the order to the PIP; (b) BOX Market Makers assigned to the class; (c) other BOX Participants; (d) Public Customer Orders (including CPOs); and (e) unrelated orders (orders in standard increments entered during PIP);

(7) For the first Wednesday of each month: (a) The total number of PIP auctions on that date; (b) the number of PIP auctions where the order submitted to the PIP was fewer than 50 contracts; (c) the number of PIP auctions where the order submitted to the PIP was 50 contracts or greater; (d) the number of PIP auctions (for orders of fewer than 50 contracts) with 0 participants (excluding the initiating participant), 1 participant (excluding the initiating participant), 2 participants (excluding the initiating participant), 3 participants (excluding the initiating participant), 4 participants (excluding the initiating participant), etc., and (e) the number of PIP auctions (for orders of 50 contracts or greater) with 0 participants (excluding the initiating participant), 1 participant (excluding the initiating participant), 2 participants (excluding the initiating participant), 3 participants (excluding the initiating participant), 4 participants

(excluding the initiating participant), etc.; and

(8) For the third Wednesday of each month: (a) The total number of PIP auctions on that date; (b) the number of PIP auctions where the order submitted to the PIP was fewer than 50 contracts; (c) the number of PIP auctions where the order submitted to the PIP was 50 contracts or greater; (d) the number of PIP auctions (for orders of fewer than 50 contracts) with 0 participants (excluding the initiating participant), 1 participant (excluding the initiating participant), 2 participants (excluding the initiating participant), 3 participants (excluding the initiating participant), 4 participants (excluding the initiating participant), etc., and (e) the number of PIP auctions (for orders of 50 contracts or greater) with 0 participants (excluding the initiating participant), 1 participant (excluding the initiating participant), 2 participants (excluding the initiating participant), 3 participants (excluding the initiating participant), 4 participants (excluding the initiating participant), etc.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of section 6(b) of the Act,<sup>6</sup> in general, and section 6(b)(5) of the Act,<sup>7</sup> in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, 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. The Exchange believes that the data demonstrates that there is sufficient investor interest and demand to extend the PIP Pilot Program for an additional four (4) months. The Exchange represents that the Pilot Program is designed to provide investors with real and significant price improvement regardless of the size of the order.

*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.

<sup>5</sup> The Pilot Program is currently set to expire on July 18, 2008. See Securities Exchange Act Release No. 55999 (July 2, 2007), 72 FR 37549 (July 10, 2007) (SR-BSE-2007-27); see also Securities Exchange Act Release No. 54066 (June 29, 2006), 71 FR 38434 (July 6, 2006) (SR-BSE-2006-24); see also Securities Exchange Act Release No. 52149 (July 28, 2005), 70 FR 44704 (August 3, 2005) (SR-BSE-2005-22); see also Securities Exchange Act Release No. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR-BSE-2002-15) ("Original PIP Pilot Program Approval Order"). See also Securities Exchange Act Release No. 51821 (June 10, 2005), 70 FR 35143 (June 16, 2005) (SR-BSE-2004-51) (Order approving, among other things, under certain circumstances the premature termination of a PIP process).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

*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 proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, 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) <sup>8</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

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. 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. The Exchange requests that the Commission waive the 30-day operative delay, which would make the rule change operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the PIP pilot program to continue without interruption.<sup>10</sup> Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.<sup>11</sup>

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.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>11</sup> As required under Rule 19b-4(f)(6)(iii), the Exchange provided 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 the filing of the proposed rule change.

**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 Number SR-BSE-2008-39 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-2008-39. 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-2008-39 and should be submitted on or before August 18, 2008.

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

**Florence E. Harmon,**

*Acting Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-58196; File No. SR-CBOE-2008-76]

**Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend Two Pilot Programs Related to the Exchange's Automated Improvement Mechanism Until July 18, 2009**

July 18, 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 July 17, 2008, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") 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 Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and 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**

CBOE proposes to extend two pilot programs related to the Exchange's Automated Improvement Mechanism ("AIM") for one year, until July 18, 2009. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

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