

### 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

("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 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 the rules of the Boston Options Exchange ("BOX") to increase the position and exercise limits applicable to options on the DIAMONDS Trust, Series 1 ("DIA"). The text of the rule proposal is available on the Exchange's Web site (<http://www.bostonstock.com>), at the offices 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 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 is proposing to amend the BOX rules pertaining to position and exercise limits for options on DIA. The Exchange proposes to increase position and exercise limits for options on DIA to 300,000 contracts on the same side of the market. The Commission previously approved a similar proposal of the Chicago Board Options Exchange ("CBOE").<sup>5</sup>

The Exchange also recently made permanent its increased position and exercise limits for certain equity options on BOX, which were in effect on a pilot basis.<sup>6</sup> The Exchange stipulated, as part of its proposal for such permanent approval, that "its surveillance procedures and reporting procedures, in conjunction with the financial requirements and risk management review procedures already in place at the clearing firms and the Options Clearing Corporation, [would] serve to adequately address any concerns the Commission may have with respect to account(s) engaging in any manipulative schemes or assuming too high a level of risk exposure."<sup>7</sup> These representations also apply to the current proposal to increase the position and exercise limits for options on DIA. The Exchange now seeks to increase the position and exercise limits for options on DIA on BOX to the level that such limits are in effect on CBOE (300,000 contracts on the same side of the market).

The Exchange asserts that the justifications behind the Commission's approval of CBOE's proposal should support the same increased position and exercise limits on options on DIA on BOX. Specifically, the Exchange believes that the "structure of the DIA options and the considerable liquidity of both the underlying cash and options market for DIA options lessen the opportunity for manipulation of this product and disruption in the underlying market that a lower position limit may protect against."<sup>8</sup> The Exchange believes that the reporting requirements imposed under the BOX rules will help protect against potential manipulation.<sup>9</sup> Additionally, the Exchange believes that such an increase in position and exercise limits on options on DIA on BOX is also required for competitive purposes as well as for purposes of consistency and uniformity among the competing options exchanges. This, taken in conjunction

depth and liquidity in both the DIA options and the underlying cash market in DIAs, the Commission believes it is permissible to significantly raise position and exercise limits for DIA options without risk of disruption to the options or underlying cash markets." The Commission also stated that "financial and reporting requirements \* \* \* should allow [CBOE] to detect and deter trading abuses arising from the increased position and exercise limits, and will also allow [CBOE] to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if deemed necessary."

<sup>6</sup> See Securities Exchange Act Release No. 57414 (March 3, 2008) 73 FR 12481 (March 7, 2008) (SR-BSE-2008-12).

<sup>7</sup> *Id.*

<sup>8</sup> See Securities Exchange Act Release No. 47346, *supra* note 5.

<sup>9</sup> See BOX Rules, Ch. III, Sec. 10.

with the permanent establishment of other increased position and exercise limits for certain equity options on BOX,<sup>10</sup> supports the Exchange's proposal related to such increased position and exercise limits applicable to DIA.

##### **2. Statutory Basis**

The Exchange believes that the proposal is consistent with the requirements of section 6(b) of the Act<sup>11</sup> in general, and section 6(b)(5) of the Act<sup>12</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. Specifically, the Exchange believes that the structure of the DIA options and the considerable liquidity of the market for DIA options diminishes the opportunity for manipulation of this product and disruption in the underlying market that a lower position limit may protect against.

#### **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.

### **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>13</sup> and

<sup>10</sup> See, e.g., Securities Exchange Act Release No. 57414, *supra* note 6.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

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

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

<sup>5</sup> See Securities Exchange Act Release No. 47346 (February 11, 2003) 68 FR 8316 (February 20, 2003) (SR-CBOE-2002-26) (approving an increase in the position limits and exercise limits to 300,000 for DIA options). The Commission stated that "given the surveillance capabilities of the [CBOE] and the

subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>14</sup> The Exchange notes that the proposed rule change is based on a similar proposal previously approved by the Commission,<sup>15</sup> and does not raise any novel issues. Additionally, the Exchange asserts that the proposed rule change is necessary to eliminate any confusion among members of multiple exchanges regarding position and exercise limits applicable to options on DIA and for purposes of maintaining a fair and orderly market.

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 Exchange states that waiving the operative delay will allow the proposed increase in the position and exercise limits applicable to options on DIA on BOX to be put into effect immediately, which will align BOX's DIA limits with the DIA limits applicable to members of other options exchange(s), thereby promoting conformity and uniformity in the rules of the several options exchanges.

The Commission believes that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest.<sup>16</sup> Therefore, the Commission designates the proposal to be operative upon filing.

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-2008-19 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-2008-19. 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-2008-19 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>17</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57593; File No. SR-CBOE-2008-38]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fees for the CBOE Stock Exchange

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 31, 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, II, and III below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as one establishing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders it 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 modify its fees applicable to the CBOE Stock Exchange ("CBSX"). The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/legal>), 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.

<sup>14</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>15</sup> See Securities Exchange Act Release No. 47346, *supra* note 5.

<sup>16</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>17</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).

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