

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57735; File No. SR-BSE-2008-16)

April 29, 2008

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to List and Trade Options on Index Multiple ETFs and Index Inverse ETFs

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 April 25, 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 substantially prepared by the Exchange. The Exchange filed the proposed rule change as a “non-controversial” proposed rule change 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 amend the Rules of the Boston Options Exchange (“BOX”) to permit the initial and continued listing and trading on BOX of options on Index Multiple Exchange Traded Fund Shares (“Index Multiple ETFs”) and Index Inverse Exchange Traded Fund Shares (“Index Inverse ETFs”). The text of the proposed rule change is available at the

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).

principal office of the Exchange, the Commission's Public Reference Room, and www.bostonstock.com.

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. BSE 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 amend Sections 3 and 4 of Chapter IV of the BOX Rules to enable the listing and trading on BOX of options on Index Multiple ETFs and Index Inverse ETFs. An Index Multiple ETF seeks to provide investment results, before fees and expenses, that correspond to a specified multiple of the percentage performance on a given day of a particular foreign or domestic stock index. An Index Inverse ETF seeks to provide investment results, before fees and expenses, that correspond to the inverse (opposite) of the percentage performance on a given day of a particular foreign or domestic stock index by a specified multiple. Index Multiple ETFs and Index Inverse ETFs differ from traditional ETFs in that they do not merely correspond to the performance of a given index, but rather attempt to match a multiple or inverse of such underlying index performance. The ProShares Ultra Funds, which currently trade on the American Stock Exchange ("Amex"), are examples of Index

Multiple ETFs. The ProShares Short Funds and Ultra Short Funds, which are also currently listed for trading on Amex, are examples of Index Inverse ETFs.⁵

To achieve investment results that provide either a positive multiple or inverse of the benchmark index, Index Multiple ETFs or Index Inverse ETFs may hold a combination of financial instruments, including, among other things: stock index futures contracts; options on futures; options on securities and indexes; equity caps, collars, and floors; swap agreements; forward contracts; repurchase agreements; and reverse repurchase agreements (collectively, “Financial Instruments”). The underlying portfolio of an Index Multiple ETF generally will hold at least 85% of its assets in the component securities of the underlying relevant benchmark index. The remainder is devoted to Financial Instruments that are intended to create the additional exposure to the underlying index necessary to pursue its investment objective. Typically, 100% of the value of the portfolio underlying the Index Inverse ETF will be devoted to Financial Instruments and money market instruments, including U.S. government securities and repurchase agreements (the “Money Market Instruments”).

⁵ The Ultra Funds are expected to gain, on a percentage basis, approximately twice (200%) as much as the underlying benchmark index and should lose approximately twice (200%) as much as the underlying benchmark index when such prices decline. The Short Funds are expected to achieve investment results, before fees and expenses, that correspond to the inverse or opposite (-100%) of the daily performance of an underlying benchmark index. Lastly, the UltraShort Funds are expected to achieve investment results, before fees and expenses, that correspond to twice the inverse or opposite (-200%) of the daily performance of the underlying benchmark index. See Securities Exchange Act Release No. 52553 (October 3, 2005), 70 FR 59100 (October 11, 2005) (SR-Amex-2004-62). See also Securities Exchange Act Release No. 54040 (June 23, 2006), 71 FR 37629 (June 30, 2006) (SR-Amex-2006-41).

Currently, Section 3(i) of Chapter IV of the BOX Rules provides securities deemed appropriate for options trading shall include shares or other securities (“Fund Shares”)⁶ that represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities. These are principally traded on a national securities exchange or through the facilities of a national securities association and are defined as an “NMS stock” under Rule 600 of Regulation NMS, and that hold portfolios of securities comprising or otherwise based on or representing investments in broad-based indexes or portfolios of securities (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities) (“Funds”).

The Exchange proposes to amend Section 3 of Chapter IV of the BOX Rules to expand the type of options that can be listed and traded to include options based on Index Multiple ETFs and Index Inverse ETFs that may hold or invest in any combination of securities, Financial Instruments, and/or Money Market Instruments. Index Multiple ETFs and Index Inverse ETFs on which Exchange-listed options are based must continue to otherwise satisfy the listing standards of Section 3(i) of Chapter IV of the BOX Rules. The Exchange also proposes to make non-substantive, clarifying changes to Section 3(i) of Chapter IV of the BOX Rules by conforming the construction of this rule to those of Amex and the International Securities Exchange (“ISE”). The Exchange notes that these changes are not significant, and do not substantively alter the listing standards found in Section 3 of Chapter IV of the BOX Rules.

⁶ The Exchange also proposes to make technical conforming changes to its current Sections 3, 4, and 6 of Chapter IV and Section 3 of Chapter V of the BOX Rules to those of ISE and Amex. As a result, and in the context of this filing, the Exchange refers to Fund Shares as Exchange-Traded Fund Shares hereafter.

Accordingly, in addition to certain repositioning of existing rule text, the Exchange also proposes to remove the reference to a “national securities association” in Section 3(i) of Chapter IV.

As set forth in proposed amended Section 3(i) of Chapter IV of the BOX Rules, an Index Multiple ETF or Index Inverse ETF on which an Exchange-listed option is based must be traded on a national securities exchange and must be an “NMS stock” as defined under Rule 600 of Regulation NMS. In addition, such Index Multiple ETF and Index Inverse ETF must meet either: (1) the criteria and guidelines set forth in paragraphs (a) and (b) of Section 3, Chapter IV of the BOX Rules; or (2) be available for creation or redemption each business day from or through the issuing trust, investment company, or other entity in cash or in kind at a price related to net asset value. The investment company shall provide that shares may be created even though some or all of the securities and/or cash (in lieu of Financial Instruments) needed to be deposited have not been received by the investment company, provided that the person obligated to deposit the investment assets has undertaken to deliver the shares and/or cash as soon as possible and such undertaking has been secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer of the fund shares, all as described in the fund shares’ prospectus.

Additionally, the Fund Shares must also meet all of the following conditions: (1) any non-U.S. component securities of the index or portfolio of securities on which the Fund Shares are based that are not subject to comprehensive surveillance agreements do not in aggregate represent more than 50% of the weight of the index or portfolio; (2) component securities of an index or portfolio of securities on which the Fund Shares are based for which the primary market is in any one country that is not subject to a comprehensive surveillance agreement do not represent 20% or more of the weight of the index; and (3) component securities of an index or

portfolio of securities on which the Fund Shares are based for which the primary market is in any two countries that are not subject to comprehensive surveillance agreements do not represent 33% or more of the weight of the index.⁷

The Exchange also proposes to amend Section 4(h) of Chapter IV of the BOX Rules to indicate that the index or portfolio may consist of, among other things, securities, Financial Instruments and/or Money Market Instruments. In proposing to make the Exchange's Rules conform to those of the Amex and ISE, the Exchange also seeks to delete reference to "national securities association" set forth in Section 4(h) of Chapter IV of the BOX Rules.

Under the applicable continued listing criteria for Section 4(h) of Chapter IV of the BOX Rules, options on Fund Shares may be subject to the suspension of opening transactions as follows:

- following the initial 12-month period beginning with the commencement of trading of the Fund Shares, there are fewer than 50 record and/or beneficial holders of the Fund Shares for 30 or more consecutive trading days;
- the value of the index or portfolio of securities and/or Financial Instruments and Money Market Instrument, on which the Fund Shares are based is no longer calculated or available; or
- such other event occurs or condition exists that in the opinion of the Exchange makes further dealing on the Exchange inadvisable.

Additionally, an Index Multiple ETF or Index Inverse ETF shall not be deemed to meet requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such ETF, if: (1) the underlying ETF is halted

⁷ See existing Section 3(i) of Chapter IV of the BOX Rules, items (i) to (iii).

from trading on its primary market; (2) the underlying ETF is delisted in accordance with the terms of Section 4(h) of Chapter IV; or (3) the value of the index or portfolio on which the underlying ETF is based is no longer calculated or available.

The expansion of the types of investments that may be held by Index Multiple ETFs or Index Inverse ETFs under Section 3(i) of Chapter IV of the BOX Rules would not have any effect on the rules pertaining to position and exercise limits⁸ or margin.⁹

The Exchange believes that this proposal is necessary to enable the Exchange to list and trade options on the shares of the Ultra Fund, Short Fund, and UltraShort Fund of the ProShares Trust.¹⁰ The Exchange believes the ability to trade options on Index Multiple ETFs and Index Inverse ETFs will provide investors with greater risk management tools.

The Exchange represents that its existing surveillance procedures applicable to trading in options are adequate to properly monitor the trading in Index Multiple ETF options and Index Inverse ETF options.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, because the ability to trade options on Index Multiple ETFs

⁸ See Sections 7 and 9 of Chapter III of the BOX Rules.

⁹ See Section 3 of Chapter XIII of the BOX Rules.

¹⁰ See supra note 5.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

and Index Inverse ETFs will provide investors with greater risk management tools and, in general, will allow for the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would 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 written comments on the proposed rule change.

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

Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of 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) of the Act¹³ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁴

The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change as operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposed rule change is substantially similar to those of other options exchanges

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6). The Exchange has satisfied the five-day pre-filing requirement of Rule 19b-4(f)(6)(iii).

that have been previously approved by the Commission¹⁵ and does not appear to present any novel regulatory issues. Therefore, the Commission designates the proposal operative upon filing.¹⁶

At any time within 60 days of the filing of the 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 the 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. Please include File Number SR-BSE-2008-16 on the subject line.

¹⁵ See Securities Exchange Act Release Nos. 56871 (November 30, 2007), 72 FR 68924 (December 6, 2007) (SR-ISE-2007-87); 56715 (Oct. 29, 2007), 72 FR 62287 (November 2, 2007) (SR-CBOE-2007-119); and 56650 (October 12, 2007), 72 FR 59123 (October 18, 2007) (SR-Amex-2007-35).

¹⁶ For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2008-16. 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 10:00 a.m. and 3:00 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-2008-16 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Florence E. Harmon
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).