

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>5</sup> in general, and Section 6(b)(5) of the Act,<sup>6</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and protect 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 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the BSE consents, the Commission will:

- (a) By order approve such proposed rule change, or
- (b) Institute proceedings to determine whether the proposed rule change should be disapproved.

## 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-2007-09 on the subject line.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

### 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 No. SR-BSE-2007-09. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. 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 the file number in the caption above and should be submitted on or before June 13, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**J. Lynn Taylor,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55773; File No. SR-BSE-2007-16]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Allow Odd-lot and Mixed-lot Orders To Be Sent To the Boston Equities Exchange

May 16, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

<sup>7</sup> 17 CFR 200.30-3(a)(12).

“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 17, 2007, 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 substantially prepared by the BSE. 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 it effective upon filing with the Commission.<sup>5</sup> 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 BSE proposes amending Section 2 and 3 of Chapter XXXVII of the Rules of BSE (“BSE Rules”) to allow odd-lot and mixed-lot market or limit orders to be sent to the Boston Equities Exchange (“BeX”). The text of the proposed rule change is available at BSE, the Commission's Public Reference Room, and (<http://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 BSE 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 those 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 parts of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

On June 13, 2006 the BSE filed Amendment No. 3 to File Number SR-BSE-2006-22 (the “BeX Facility Filing”), a rule filing submitted in connection with the implementation of the first of two phases of BeX, a fully automated electronic book for the

<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).

<sup>5</sup> The Exchange has asked the Commission to waive the 30-day operative delay required by Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii). See discussion *infra* Section III.

display and execution of orders in securities. On August 25, 2006, File Number SR-BSE-2006-22 was approved by the Commission.<sup>6</sup> On August 3, 2006, the BSE filed, in connection with the implementation of the second phase of BeX and in connection with satisfying the requirements of Regulation NMS, File Number SR-BSE-2006-30. On September 29, 2006 the Commission approved File Number SR-BSE-2006-30.<sup>7</sup>

At the present time, all orders sent to BeX must be round-lot market or limit orders with the exception of orders for Nasdaq Global Market securities and Nasdaq Capital Market securities, which orders may be odd-lot or mixed-lot orders. The purpose of this proposed rule change is to amend BSE Rules to allow all orders sent to BeX to be odd-lot or mixed-lot market or limit orders, thereby removing the limitation that all orders sent to BeX must be round lot orders unless such orders are for Nasdaq Global Market securities or Nasdaq Capital Market securities. In other words, the proposed rule change would allow all orders sent to BeX to be round-lot, odd-lot or mixed-lot market or limit orders. For stocks, 100 shares shall constitute a "round lot," any amount less than 100 shares shall constitute an "odd lot," and any amount greater than 100 shares that is not a multiple of a round lot shall constitute a "mixed lot."

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>9</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

<sup>6</sup> Securities Exchange Act Release No. 54365 (August 25, 2006) 71 FR 52192 (September 1, 2006).

<sup>7</sup> Securities Exchange Act Release No. 54546 (September 29, 2006) 71 FR 59161 (October 6, 2006).

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

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

### *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**

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for thirty 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6)<sup>11</sup> thereunder.<sup>12</sup>

A proposed rule change filed under Commission Rule 19b-4(f)(6)<sup>13</sup> normally does not become operative prior to thirty days after the date of filing. The BSE requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii), and designate the proposed rule change to become operative immediately. 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 BSE to implement rules similar to those already in place at other exchanges and establish uniformity with respect to odd-lot and mixed-lot orders for all securities traded on BeX without needless delay. For these reasons, the Commission designates the proposed rule change as operative upon filing.<sup>14</sup>

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

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> Pursuant to Rule 19b-4(f)(6)(iii), the Exchange has given the Commission 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 on which the Exchange filed the proposed rule change. See 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> For the purposes only of waiving the operative date 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).

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 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](mailto:rule-comments@sec.gov). Please include File Number SR-BSE-2007-16 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BSE-2007-16. 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. Copies of such filing also will be available for inspection and copying at the principal office of the BSE. 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-2007-16 and should be submitted on or before June 13, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

J. Lynn Taylor,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55780; File No. SR-NYSE-2007-37]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Generic Listing Standards for Series of Investment Company Units Based on Fixed Income Indexes and Order Granting Accelerated Approval of Proposed Rule Change as Amended

May 17, 2007.

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 29, 2007, the New York Stock Exchange LLC (“NYSE” 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 substantially by the Exchange. On May 9, 2007, the Exchange filed Amendment No. 1.<sup>3</sup> This order provides notice of the proposed rule change as modified by Amendment No. 1 and approves the proposed rule change as amended on an accelerated basis.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise Section 703.16 of the NYSE Listed Company Manual to include generic listing standards for series of Investment Company Units (“ICUs”) that are based on indexes or portfolios consisting of fixed income securities (“Fixed Income Indexes”) or on composite indexes consisting of equity and fixed income indexes or indexes or portfolios consisting of both equity and fixed income securities (collectively, “Combination Indexes”).

The text of the proposed rule change is available at the NYSE, at the Commission’s Public Reference Room,

and on the Exchange’s Web site at [www.nyse.com](http://www.nyse.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, NYSE 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 III 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to revise Section 703.16 of the NYSE Listed Company Manual (“Manual”) to include generic listing standards for series of ICUs (also referred to herein as “exchange-traded funds” or “ETFs”) that are based on Fixed Income Indexes or on Combination Indexes. This proposal will enable the Exchange to list and trade ETFs pursuant to Rule 19b-4(e) under the Act<sup>4</sup> if each of the conditions set forth in Section 703.16 of the Manual is satisfied. Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4,<sup>5</sup> if the Commission has approved, pursuant to Section 19(b) of the Act,<sup>6</sup> the self-regulatory organization’s trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the self-regulatory organization has a surveillance program for the product class.<sup>7</sup>

##### Exchange-Traded Funds

NYSE Rule 1100 and Section 703.16 of the Manual provide standards for listing ICUs, which are securities issued by a unit investment trust, an open-end management investment company (open-end mutual fund), or similar entity based on a portfolio of stocks or

fixed income securities that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index or fixed income securities index. Pursuant to Section 703.16 of the Manual, ICUs must be issued in a specified aggregate number in return for a deposit of specified securities and/or a cash amount, with a value equal to the next determined net asset value (“NAV”). When aggregated in the same specified minimum number, ICUs must be redeemable by the issuer for the securities and/or cash, with a value equal to the next determined NAV. The NAV is calculated once a day after the close of the regular trading day.

To meet the investment objective of providing investment returns that correspond to the price, dividend, and yield performance of the underlying index, an ETF may use a “replication” strategy or a “representative sampling” strategy with respect to the ETF portfolio. An ETF using a replication strategy will invest in each security found in the underlying index in about the same proportion as that security is represented in the index itself. An ETF using a representative sampling strategy will generally invest in a significant number, but perhaps not all, of the component securities of the underlying index, and will hold securities that, in the aggregate, are intended to approximate the full index in terms of certain key characteristics. In the context of a Fixed Income Index, such characteristics may include liquidity, duration, maturity, and yield.

In addition, an ETF portfolio may be adjusted in accordance with changes in the composition of the underlying index or to maintain compliance with requirements applicable to a regulated investment company under the Internal Revenue Code (“IRC”).<sup>8</sup>

<sup>8</sup> For an ETF to qualify for tax treatment as a regulated investment company, it must meet several requirements under the IRC. Among these is the requirement that, at the close of each quarter of the ETF’s taxable year, (i) at least 50% of the market value of the ETF’s total assets must be represented by cash items, U.S. government securities, securities of other regulated investment companies, and other securities, with such other securities limited for purposes of this calculation in respect of any one issuer to an amount not greater than 5% of the value if the ETF’s assets and not greater than 10% of the outstanding voting securities of such issuer; and (ii) not more than 25% of the value of its total assets may be invested in the securities of any one issuer, or two or more issuers that are controlled by the ETF (within the meaning of Section 851(b)(4)(B) of the IRC) and that are engaged in the same or similar trades or businesses or related trades or business (other than U.S. government securities or the securities of other regulated investment companies).

<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>3</sup> Amendment No. 1 replaced and superseded the original filing in its entirety.

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

<sup>5</sup> 17 CFR 240.19b-4(c)(1).

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

<sup>7</sup> When relying on Rule 19b-4(e), the SRO must submit Form 19b-4(e) to the Commission within five business days after the exchange begins trading the new derivative securities product. See 17 CFR 240.19b-4(e)(2)(ii).