

the issuance of new trading rights.<sup>11</sup> The AMC Board can, if it so chooses, seek the consent of its full membership for any proposal calling for the issuance of new trading rights. Further, any new trading rights would be subject to approval by the Commission pursuant to the rule filing process of section 19 of the Act. The Commission also notes that the AMC membership's consent will be required for any action taken by Amex to increase the number of memberships issued by AMC.<sup>12</sup> In addition, these changes to the AMC Certificate shall provide Amex with more flexibility to take prompt action to implement new forms of trading rights.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-Amex-2005-117), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53516; File No. SR-BSE-2006-14]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments No. 1 and 2 Thereto Relating to Information Contained in a Directed Order on the Boston Options Exchange

March 20, 2006.

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 March 14, 2006, 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

<sup>11</sup> See Amex Constitution Article II, section 8. The AMC Nominating Committee nominates director candidates for the AMC board of directors, and AMC members have the right to put up their own nominees by petition. The AMC board is then elected by the members of AMC. See Amended and Restated By-Laws of The Amex Membership Corporation Sections 1.10, 1.13 and 3.03.

<sup>12</sup> See AMC Certificate section 7(a)(ii); Amex Constitution Article II, section 8; and Amex Constitution Article IV, section 1(a)(1) and section 1(b)(1).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</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.

below, which Items have been prepared by the BSE. On March 16, 2006, the BSE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On March 17, 2006, the BSE filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The BSE filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act<sup>5</sup> and Rule 19b-4(f)(6) thereunder,<sup>6</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, as amended, from interested persons.

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

The Boston Stock Exchange, Inc. ("BSE" or "Exchange") is proposing to amend its rules governing its Directed Order process on the Boston Options Exchange ("BOX"). The Exchange is proposing to clearly state that the BOX Trading Host identifies to an Executing Participant ("EP")<sup>7</sup> the identity of the firm entering a Directed Order. This rule will be effective until June 30, 2006, while the Commission considers a corresponding Exchange proposal<sup>8</sup> to amend its rules to permit EPs to choose the firms from whom they will accept Directed Orders, while providing complete anonymity of the firm entering a Directed Order.<sup>9</sup> In addition, the Exchange commits that it will cease to provide the identity of order entry firms prior to June 30, 2006, if the Commission staff prohibits all options exchanges from disclosing the identity of order entry firms in their Directed Order systems.

#### 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

<sup>3</sup> In Amendment No. 1, which supersedes and replaces the original filing in its entirety, the BSE changed the statutory basis of the filing.

<sup>4</sup> In Amendment No. 2, which supersedes and replaces the original filing and Amendment No. 1 in its entirety, the BSE changed the statutory basis of the filing.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>7</sup> BSE proposes that a Market Maker who desires to accept Directed Orders must systemically indicate that it is an EP whenever the Market Maker wishes to receive Directed Orders.

<sup>8</sup> See Securities Exchange Act Release No. 53357 (February 23, 2006), 71 FR 10730 (March 2, 2006) (SR-BSE-2005-52).

<sup>9</sup> In the event that the issue of anonymity in the Directed Order process is not resolved by June 30, 2006, the Exchange intends to submit another filing under Rule 19b-4(f)(1) under the Act extending this rule and system process.

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 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

BSE seeks to amend its rules to clearly state that the BOX Trading Host identifies to an EP the identity of the firm entering a Directed Order. Market Makers are able to handle orders on an agency basis directed to them by Order Flow Providers ("OFPs"). In Section 1, Chapter I of the BOX Rules, a Directed Order is defined as a Customer Order directed to a Market Maker by an OFP. An OFP sends a Directed Order to BOX with a designation of the Market Maker to whom the order is to be directed. BOX then routes the Directed Order to the appropriate Market Maker. Under Chapter VI, Section 5(c)(ii) of the BOX Rules, a Market Maker only has two choices when he receives a Directed Order: (1) Submit the order to the PIP process; or (2) send the order back to BOX for placement onto the BOX Book.

The BSE proposes to amend Chapter VI, Section 5(c)(i) of the BOX Rules to clarify that unlike all other orders submitted to the BOX Trading Host, Directed Orders are not anonymous. The Options Participant identification number ("Participant ID") of the OFP sending the Directed Order will be revealed to the Market Maker recipient. The Market Maker must submit this Participant ID to BOX whenever the Market Maker chooses to submit the Directed Order and his Primary Improvement Order to the PIP process. However, once the Directed Order is submitted to the PIP process or the BOX Book, the Participant ID is not shown to any market participant and the identity of the OFP will be anonymous pursuant to Chapter V, Section 14(e) of the BOX Rules.

Chapter VI, Section 5(c)(i) of the BOX Rules prohibits a Market Maker from rejecting a Directed Order. The BSE wishes to clarify that upon systematically indicating its desire to accept Directed Orders, a Market Maker that receives a Directed Order is not, under any circumstances, to reject the receipt of the Directed Order from the BOX Trading Host nor reject the Directed Order back to the OFP who

sent it. A Market Maker who desires to accept Directed Orders must systemically indicate that it is an EP whenever the Market Maker wishes to receive Directed Orders from the BOX Trading Host. If a Market Maker does not systemically indicate that it is an EP, then the BOX Trading Host will not forward any Directed Orders to that Market Maker. In such a case, the BOX Trading Host will send the order directly to the BOX Book.

#### Other Clarifying Rule Change Relating to Directed Orders

Currently, Chapter V, Section 14(e) of the BOX Rules states that the identity of Options Participants who submit orders to the Trading Host will remain anonymous to market participants at all times, except during error resolution or through the normal clearing process as set forth in Chapter V, Section 16(a)(vi) of the BOX Rules. Proposed Chapter V, Section 14(e) of the BOX Rules and the Supplementary Material thereto, would clarify that the Participant ID of an OFP who submits orders to the Trading Host for use in the Directed Order process will be revealed to the EP who receives such Directed Orders as set forth in Chapter VI, Section 5(c) of the BOX Rules.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is designed to clarify the information contained in a Directed Order. This clarification will allow Options Participants to make better informed decisions in determining when and how to use the Directed Order process. Accordingly, the Exchange believes that the proposal is consistent with the requirements of section 6(b) of the Act,<sup>10</sup> in general, and section 6(b)(5) of the Act,<sup>11</sup> in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to 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

Because the foregoing proposed rule change, as amended: (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>12</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

The BSE requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),<sup>14</sup> 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 would immediately conform the BOX rules with BOX's current practice and clarify that Directed Orders on BOX are not anonymous.<sup>15</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>16</sup>

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). Rule 19b-4(f)(6)(iii) under the Act requires the self-regulatory organization to provide the Commission written notice of its intent to file the proposed rule change at least five business days (or such shorter time as designated by the Commission) before doing so. The BSE has requested that the Commission waive the five-day pre-filing notice requirement. The Commission granted BSE's request.

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>15</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>16</sup> The effective date of the original proposed rule is March 14, 2006. The effective date of Amendment No. 1 is March 16, 2006. The effective date of Amendment No. 2 is March 17, 2006. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-2006-14 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-2006-14. 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-2006-14 and should be submitted on or before April 17, 2006.

proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers the period to commence on March 17, 2006, the date on which the BSE submitted Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

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

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

Nancy M. Morris,

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53511; File No. SR-CBOE-2006-23]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Its Marketing Fee Program

March 17, 2006.

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 1, 2006, the Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) 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 prepared by the Exchange. On March 16, 2006, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CBOE under Section 19(b)(3)(A)(ii) of the Act<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</sup> which renders the proposal, as amended, effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The CBOE proposes to amend its Fees Schedule and its marketing fee program. Below is the text of the proposed rule change. Proposed new language is *italicized* and proposed deletions are in [brackets].

#### Chicago Board Options Exchange, Inc.—Fees Schedule

March 1, 2006

1. No Change.
2. Marketing Fee (6)(16)—\$.65
- 3.–4. No Change.

Footnotes:

(1)–(5) No Change.

(6) [Commencing on December 12, 2005, t]The Marketing Fee will be assessed only on transactions of Market-Makers, RMMs, e-DPMs, DPMs, and LMMs resulting from orders for less than 1,000 contracts (i) from payment accepting firms, or (ii) that have designated a “Preferred Market-Maker” under CBOE Rule 8.13 at the rate of \$.65 per contract on all classes of equity options, options on HOLDRs, options on SPDRs, and options on DIA. The fee will not apply to: Market-Maker-to-Market-Maker transactions *including transactions resulting from orders from non-member market-makers; [or] transactions resulting from P/A orders; transactions resulting from accommodation liquidations (cabinet trades); and transactions resulting from dividend strategies, merger strategies, and short stock interest strategies as defined in footnote 13 of this Fees Schedule.* This fee shall not apply to index options and options on ETFs (other than options on SPDRs and options on DIA). A Preferred Market-Maker will only be given access to the marketing fee funds generated from a Preferred order if the Preferred Market-Maker has an appointment in the class in which the Preferred order is received and executed. If less than 80% of the marketing fee funds are paid out by the DPM/LMM or Preferred Market-Maker in a given month, then the Exchange would refund such surplus at the end of the month on a pro rata basis based upon contributions made by the Market-Makers, RMMs, e-DPMs, DPMs and LMMs. However, if 80% or more of the accumulated funds in a given month are paid out by the DPM/LMM or Preferred Market-Maker, there will not be a rebate for that month and the funds will carry over and will be included in the pool of funds to be used by the DPM/LMM or Preferred Market-Maker the following month. At the end of each quarter, the Exchange would then refund any surplus, if any, on a pro rata basis based upon contributions made by the Market-Makers, RMMs, DPMs, e-DPMs and LMMs. CBOE’s marketing fee program as described above will be in effect until June 2, 2006.

Remainder of Fees Schedule—No Change.

#### 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, as amended, 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 CBOE 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

Effective December 12, 2005, CBOE amended its marketing fee program in a number of respects.<sup>6</sup> CBOE states that, as amended, the fee is assessed upon DPMs, LMMs, e-DPMs, RMMs, and Market-Makers at the rate of \$.65 per contract on transactions of Market-Makers, RMMs, e-DPMs, DPMs, and LMMs resulting from orders for less than 1,000 contracts (i) from payment accepting firms (“PAFs”), or (ii) that have designated a “Preferred Market-Maker” under CBOE Rule 8.13. CBOE notes that the fee does not apply to Market-Maker-to-Market-Maker transactions (which includes all transactions between any combination of DPMs, e-DPMs, RMMs, LMMs, and Market-Makers), or transactions of Market-Makers, RMMs, e-DPMs, DPMs, and LMMs resulting from inbound P/A orders. CBOE states that the marketing fee is assessed in all equity option classes and options on HOLDRs<sup>®</sup>, options on SPDRs<sup>®</sup> and options on DIA.

CBOE proposes to amend its marketing fee program to provide that CBOE Market-Makers, RMMs, e-DPMs, DPMs, and LMMs would not be assessed the marketing fee on transactions resulting from orders from non-member market-makers, which orders may be submitted to CBOE from PAFs. CBOE believes that this would be consistent with CBOE’s existing marketing fee program which expressly provides that the fee does not apply to CBOE Market-Maker-to-Market-Maker transactions.

Additionally, CBOE proposes to amend its marketing fee program to provide that the fee would not apply to

<sup>6</sup> See Securities Exchange Act Release No. 53016 (December 22, 2005), 70 FR 77209 (December 29, 2005) (SR-CBOE-2005-107).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> Amendment No. 1 (“Amendment No. 1”) makes a minor, technical clarification in the rule text of footnote 6 to CBOE’s Fees Schedule.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).