

proposal to attract additional order flow largely due to the simplification and reduction of per share fee rates, especially in connection with customer and broker-dealer orders. Therefore, the Exchange maintains that the proposed Exchange Traded Funds transaction fee changes, in the aggregate, are an equitable allocation of reasonable fees among Exchange members.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of section 6(b)(4) of the Act,<sup>13</sup> in particular, in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

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

The Exchange does not believe that the proposed rule change, as amended, will impose any inappropriate burden on competition 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*

No written comments were either solicited or received.

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

The foregoing proposed rule change, as amended, has been designated as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act<sup>14</sup> and Rule 19b-4(f)(2)<sup>15</sup> thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal, as amended, will take effect upon filing with the Commission. 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. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(4).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

<sup>16</sup> The effective date of the original proposed rule change is November 29, 2005, the effective date of Amendment No. 1 is December 14, 2005, and the effective date of Amendment No. 2 is December 21, 2005. For purposes of calculating the 60-day period

## 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 Number SR-Amex-2005-122 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-Amex-2005-122. 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, as amended, 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 Amex. 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-Amex-2005-122 and should be submitted on or before January 19, 2006.

within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on December 21, 2005, the date on which the Exchange submitted Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

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

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

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. E5-8059 Filed 12-28-05; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53015; File No. SR-BSE-2005-52]

### **Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Directed Orders Process on the Boston Options Exchange**

December 22, 2005.

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 November 25, 2005, 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, II, and III below, which Items have been prepared by the BSE. On December 20, 2005, BSE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> 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 Exchange proposes to amend the rules of the Boston Options Exchange ("BOX") to clarify the information contained in a "Directed Order" on BOX. The text of the proposed rule change is available on the BOX's Web site (<http://www.bostonoptions.com>), at the principal office of BOX, 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 BSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed

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

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

<sup>3</sup> Amendment No. 1 amends the rule text to include additional language in Chapter V, Section 14(e) of the BOX Rules clarifying that the identities of Options Participants that send Directed Orders to the Trading Host are not anonymous.

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 clarify the information contained in a "Directed Order" on BOX. Market Makers are able to handle orders on an agency basis directed to them by Order Flow Providers ("OFPs"). In Chapter I, Section 1 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 V, Section 14(e) and 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.<sup>4</sup> 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 permitted, 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 systematically indicate that it is an Executing Participant ("EP") whenever the Market Maker wishes to receive Directed Orders from the BOX Trading Host. If a Market Maker does not systematically 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. The BSE proposes to amend Chapter V, Section 14(e) of the BOX Rules and add new Supplementary Material .01 to Chapter V, Section 14(e) to 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 Market Maker 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, as amended, 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>5</sup> in general, and Section 6(b)(5) of the Act,<sup>6</sup> in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction 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.

*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.

*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 BSE consents, the Commission shall: (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, 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-2005-52 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-BSE-2005-52. 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

<sup>4</sup> Telephone conversation between Jan Woo, Attorney, Division of Market Regulation, Commission, and William C. Meehan, Head of Regulation & Compliance, BOX, on December 22, 2005.

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

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

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 BOX. 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-2005-52 and should be submitted on or before January 19, 2006.

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

Jonathan G. Katz,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53016; File No. SR-CBOE-2005-107]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to its Marketing Fee Program

December 22, 2005.

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 December 9, 2005, 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. 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>3</sup> and Rule 19b-4(f)(2) 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 change 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. The Exchange states that these changes to the marketing fee program would be effective December 12, 2005, and would continue until June 2, 2006.

Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

Chicago Board Options Exchange, Inc.—  
Fees Schedule

[December 1] *December 9, 2005*

1. No Change.
2. MARKETING FEE (6)(16): [\$.22].65
- 3.-4. No Change.

#### FOOTNOTES:

(1)-(5) No Change.

(6) *Commencing on December 12, 2005, [T]he 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 [\$.22] \$.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 or transactions resulting from P/A orders. This fee shall not apply to index options and options on ETFs (other than options on SPDRs and options on DIA). If less than 80% of the marketing fee funds are paid out by the DPM/LMM or [LMM] 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 [LMM] 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 [LMM] 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 CBOE 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 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

On November 2, 2005, the CBOE amended its marketing fee program in a number of respects in light of the recent adoption of its Preferred Market-Maker program.<sup>5</sup> In particular, the CBOE amended its marketing fee program to provide that a Market-Maker will have access to the marketing fee funds generated by orders sent to the Exchange designating that Market-Maker as a "Preferred Market-Maker." The CBOE now proposes to amend its marketing fee program, which changes would be effective December 12, 2005, and would continue until June 2, 2006 (which is the same date that the CBOE's Preferred Market-Maker program is scheduled to expire, unless extended).<sup>6</sup>

#### Current Marketing Fee Program

The current marketing fee is assessed upon Designated Primary Market-Makers ("DPMs"), Electronic DPMs ("e-DPMs"), Remote Market-Makers ("RMMs"), Lead Market-Makers ("LMMs"), and Market-Makers at a rate

<sup>5</sup> The Exchange states that, under its Preferred Market-Maker program, order providers can send an order to the Exchange designating any CBOE Market-Maker (including any DPM, e-DPM, LMM, RMM, and Market-Maker) as a Preferred Market-Maker. If the Preferred Market-Maker is quoting at the NBBO at the time the order is received on CBOE, the Preferred Market-Maker is entitled to a participation entitlement of 50% when there is one Market-Maker also quoting at the best bid/offer on the Exchange and 40% when there are two or more Market-Makers quoting at the best bid/offer on the Exchange. See Securities Exchange Act Release No. 52506 (September 23, 2005), 70 FR 57340 (September 30, 2005) (SR-CBOE-2005-58).

<sup>6</sup> See CBOE Rule 8.13.

<sup>7</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)(ii).

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