

The last sale price for Gold Shares will also be disseminated on a real-time basis over the Consolidated Tape.

The Commission also notes that the Trust's Web site at <http://www.ishares.com> is and will be publicly accessible at no charge and will contain the NAV of the Gold Shares and the Basket Gold Amount as of the prior business day, the Bid-Ask Price, and a calculation of the premium or discount of the Bid-Ask Price in relation to the closing NAV. Additionally, the Trust's Web site, to which the Amex will link, will also provide data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four previous calendar quarters, the Prospectus, and other applicable quantitative information. The Commission believes that dissemination of this information will facilitate transparency with respect to the Gold Shares and diminish the risk of manipulation or unfair informational advantage.

#### C. Listing and Trading

Further, the Commission finds that the Exchange's proposed rules and procedures for the listing and trading of the proposed Gold Shares are consistent with the Act. For example, Gold Shares will be subject to Amex rules governing trading halts, responsibilities of the specialist, and customer suitability requirements. In addition, the Gold Shares will be subject to Amex Rules 1201A and 1202A for initial and continued listing of Gold Shares.

The Commission believes that listing and delisting criteria for the Gold Shares should help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Gold Shares. Finally, the Commission believes that the Exchange's Information Circular adequately will inform members and member organizations about the terms, characteristics, and risks in trading the Gold Shares.

#### IV. Amendment No. 5

The Amex has requested that the Commission grant accelerated approval to Amendment No. 5 to the proposed rule change.<sup>41</sup> The Commission believes that the amendments proposed in Amendment No. 5 regarding the requirement for separate rule filings under Section 19(b)(2) of the Act for Commodity-Based Trust Shares, certain fees and expenses, and other minor

changes to the proposal, provide clarity and additional detail, but do not change the substance of the proposal. Because the amendment clarifies and makes other minor changes to the proposal, the Commission therefore finds good cause, consistent with Section 19(b)(2) of the Act,<sup>42</sup> to approve Amendment No. 5 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 5 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-2004-38 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2004-38. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available on Amex's Web site (<http://www.amex.com>) and for inspection and copying at the Amex's Office of the Secretary. 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-2004-38 and should be submitted on or before February 16, 2005.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>43</sup> that the proposed rule change (SR-Amex-2004-38), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>44</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51049; File No. SR-BSE-2004-52]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to Market Maker Quote Obligations Under the Rules of the Boston Options Exchange Facility

January 18, 2005.

On November 24, 2004, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), 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>, a proposed rule change to adopt a rule under the rules of the Boston Options Exchange Facility ("BOX") to provide BOX Market Makers protection from the unreasonable risk associated with communication failures and systemic errors. On December 3, 2004, the BSE submitted Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on December 14, 2004.<sup>3</sup> The Commission received no comments on the proposed rule change.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules

<sup>43</sup> 15 U.S.C. 78s(b)(2).

<sup>44</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> Securities Exchange Act Release No. 50814 (December 7, 2004), 69 FR 74547 (December 14, 2004).

<sup>41</sup> See Amendments Nos. 1 and 2, *supra* notes 4 and 5.

<sup>42</sup> 15 U.S.C. 78s(b)(2).

and regulations thereunder that are applicable to a national securities exchange.<sup>4</sup> In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>5</sup> which requires among other things, that the rules of the Exchange are designed to promote just and equitable principles of trade, 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. The Commission notes that the proposal does not alter the obligations of BOX Market Makers. The proposed rule change codifies BOX system functionality which should provide BOX Market Makers assistance in effectively managing their quotations.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> that the proposed rule change (SR-BSE-2004-52) be, and it hereby is, approved.

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

Margaret H. McFarland,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51052; File No. SR-CBOE-2005-05]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Amending Its Marketing Fee

January 18, 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 January 10, 2005, the Chicago Board Options Exchange, Inc., ("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 CBOE. The CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CBOE under section

<sup>4</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<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.

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 marketing fee to assess a fee on options on Standard & Poor's Depository Receipts ("SPDRs®") involving transactions of Market-Makers (including Designated Primary Market-Makers, or DPMs, and electronic Designated Primary Market-Makers, or e-DPMs) other than Market-Maker-to-Market-Maker transactions. The fee will be imposed at the rate of \$.22 per contract. Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in [brackets].

### Chicago Board Options Exchange, Inc.

#### Fee Schedule

1.-4. No change.

#### Notes:

(1)-(5) No change.

(6) The Marketing Fee will be assessed only on transactions of Market-Makers, e-DPMs and DPMs at the rate of \$.22 per contract on all classes of equity options, *options on HOLDRs, and options on SPDRs.* [other than] *The fee will not apply to Market-Maker-to-Market-Maker transactions.* This fee shall not apply to index options and options on ETFs (*other than options on SPDRs*). [The fee shall apply to options on HOLDRs.] Should any surplus of the marketing fees at the end of each month occur, those funds would be carried forward to the following month. The Exchange would then refund such surplus at the end of the quarter, if any, on a pro rata basis based upon contributions made by the Market-Makers, e-DPMs and DPMs.

(7)-(14) No change.

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### 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 its proposal and discussed any comments it had received regarding the proposal. 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.

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

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

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

#### 1. Purpose

On October 29, 2004, the CBOE amended its marketing fee program.<sup>5</sup> The current marketing fee is assessed upon DPMs, e-DPMs, and Market-Makers at a rate of \$.22 for every contract they enter into on the Exchange, other than Market-Maker-to-Market-Maker transactions, including all transaction between any combination of DPMs, e-DPMs, and Market-Makers.<sup>6</sup> Currently, the marketing fee is assessed in all equity option classes and options on HOLDRs.<sup>7</sup> The Exchange proposes to amend its marketing fee to also apply to options on SPDRs (ticker symbol "SPY"), an Exchange Traded Fund ("ETF").<sup>8</sup> This fee shall not apply to index options and options on ETFs (other than options on SPDRs). The Exchange states that it is not making any other changes to its marketing fee.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of section 6(b)(4) of the Act<sup>10</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among the CBOE's members.

### 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 CBOE neither solicited nor received written comments with respect to the proposed rule change.

<sup>5</sup> See Securities Exchange Act Release No. 50736 (November 24, 2004), 69 FR 69966 (December 1, 2004) (SR-CBOE-2004-68) ("Release No. 34-50736").

<sup>6</sup> See Release No. 34-50736 for a more detailed description of the CBOE's marketing fee program.

<sup>7</sup> HOLDRs are trust-issued receipts that represent an investor's beneficial ownership of a specified group of stocks. See Interpretation .07 to CBOE Rule 5.3.

<sup>8</sup> ETFs are shares of trusts that hold portfolios of stocks designed to closely track the price performance and yield of specific indices.

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

<sup>10</sup> 15 U.S.C. 78f(b)(4).