

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-Amex-2005-080 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 No. SR-Amex-2005-080. 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 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 No. SR-Amex-2005-080 and should be submitted on or before September 14, 2005.

#### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>10</sup> In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>11</sup> which requires that the rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons

<sup>10</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

using the exchange's facilities. Amending the Amex's Options Fee Schedule to include "merger spreads" and "short stock interest spreads" in the definition of "Spread Trades," thereby rendering these types of trades eligible for reduced and capped fees, is a reasonable measure to improve the Exchange's competitiveness. The Commission notes that similar proposals to reduce and cap fees for certain trades, including those occurring as part of merger spreads and short stock interest spreads, have been adopted by other options exchanges.<sup>12</sup>

The Amex has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. Granting accelerated approval of the proposal will allow the Amex to immediately implement a fee change that is similar to arrangements already in place at other option exchanges. Furthermore, the Commission believes that granting accelerated approval of the proposed rule change will allow the Amex to implement reasonable fee reductions to various market participants without undue delay. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> for approving the proposed rule change prior to the thirtieth day after the publication of notice thereof in the **Federal Register**.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-Amex-2005-080), is hereby approved on an accelerated basis.

<sup>12</sup> Most of the proposals by other options exchanges were filed as pilot programs pursuant to Section 19(b)(3)(A) of the Act, rendering the proposals effective upon filing with the Commission. See Securities Exchange Act Release Nos. 51468 (April 1, 2005), 70 FR 17742 (April 7, 2005) (SR-CBOE-2005-18); 51596 (April 21, 2005), 70 FR 22381 (April 29, 2005) (SR-Phlx-2005-19); 51657 (May 5, 2005), 70 FR 24851 (May 11, 2005) (SR-Phlx-2005-22); 51787 (June 6, 2005), 70 FR 34174 (June 13, 2005) (SR-PCX-2005-65); and 51828 (June 13, 2005), 70 FR 35475 (June 20, 2005) (SR-CBOE-2005-42). However, one proposal to make the fee cap applicable to short stock interest spread transactions retroactive to January 1, 2005 was filed with and approved by the Commission pursuant to Section 19(b)(2) of the Act. See Securities Exchange Act Release No. 52083 (July 20, 2005), 70 FR 43733 (July 28, 2005) (SR-PCX-2005-67).

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

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

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

[FR Doc. E5-4626 Filed 8-23-05; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52296; File No. SR-BSE-2005-30]

#### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 2 Thereto Relating to the Removal of Unreliable Quotes From the Exchange's Calculation of the National Best Bid or Offer

August 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 July 27, 2005, the Boston Stock Exchange, Inc. ("BSE") 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. The BSE filed Amendment No. 1 to the proposed rule change on August 5, 2005 and withdrew Amendment No. 1 on August 12, 2005. The BSE filed Amendment No. 2 to the proposed rule change on August 12, 2005.<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 BSE is proposing to add subsection (e) of Section 3 of Chapter XII of the Boston Options Exchange ("BOX") Rules to add provisions for declaring an away market's quote(s) in a particular class of option(s) unreliable, and to thereby exclude quote(s) from BOX's NBBO determination when an away market: (1) Is disconnected from the Intermarket Option Linkage ("Linkage"); (2) disseminates non-firm quotes; or (3) has other quoting problems. The text of the proposed rule change is available on the BSE's Web site (<http://www.bostonstock.com>), at

<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.

<sup>3</sup> See Form 19b-4 dated August 12, 2005 ("Amendment No. 2"). Amendment No. 2 added clarifying language and corrected typographical and technical errors.

the BSE's Office of the Secretary, 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 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

The purpose of the proposed rule change is to allow BOX to exclude an away market's quote(s) from BOX's NBBO determination in a particular option class(es) when that away market's quote(s) are unreliable. The BOX Trading Host, pursuant to obligations to avoid trade-throughs under the Intermarket Option Linkage Plan, in general, filters certain orders to either trade on BOX if the best BOX price is at the NBBO, or if the best BOX price is not at the NBBO, to access the best price for such order through Linkage. In certain circumstances, away markets disseminate unreliable or inaccessible quotes in a particular option class(es) to OPRA. BOX proposes to eliminate such away market unreliable or inaccessible quote(s) in a particular class(es) in BOX's NBBO determination, thereby only including in BOX's NBBO determination market quotes that are reliable and accessible to investors. BOX seeks only to exclude an away market's unreliable quote(s) in a particular class(es) from BOX's NBBO determination for such time that the quote(s) remain unreliable. Utilizing only reliable accessible quotes in the NBBO determination provides for a more appropriate NBBO determination and a significantly more efficient marketplace.

The procedure for declaring an away market's quote(s) unreliable would be for the Market Operations Center ("MOC") to either: (a) Receive a message from the away market, OPRA, or the OLA Administrator; or (b) confirm with the affected market, that the away market's particular quote(s) in a class(es) are unreliable. Then the MOC

would request the Options Official declare the away market's quote(s) in a particular class(es) unreliable. Upon a declaration that the away market's quote(s) is unreliable, the MOC will both remove the quote(s) from BOX's NBBO determination and promptly notify the affected away market. Additionally, the MOC will continue to monitor the reliability of the affected away market's quote(s) and resume inclusion of the affected away market's quote(s) in BOX's NBBO determination at the end of the trading day or once the quote(s) is confirmed to be reliable, whichever occurs first. Quotes of an away market are confirmed to be reliable once: (a) A message stating a quote(s) in a particular option class is reliable has been received from the affected away market, OPRA, or the OLA Administrator; or (b) the MOC has verbally received confirmation of such from the affected away market.

#### 2. Statutory Basis

The basis under the Act for this proposed rule change is that BOX believes that its proposal is consistent with Section 6(b) of the Act,<sup>4</sup> and furthers the objectives of Section 6(b)(5) of the Act<sup>5</sup> in that the proposed rule change is designed to perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and promote just and equitable principles of trade. Excluding unreliable quotes from BOX's determination of the NBBO would help BOX provide better executions to customers. Currently, the execution of customer orders is delayed when another market appears to be at the NBBO but such market's quotes are inaccessible.

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

The BSE does not believe 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 BSE 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, 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-BSE-2005-30 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-BSE-2005-30. 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 the filing also will be available for inspection and copying at the principal office of the BSE. All comments received will be posted

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

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

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-2005-30 and should be submitted on or before September 14, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5-4628 Filed 8-23-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52295; File No. SR-CFE-2005-01]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by CBOE Futures Exchange, LLC Relating to Its Listing Standards for Security Futures Products

August 18, 2005.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934<sup>1</sup> ("Act") and Rule 19b-7 under the Act,<sup>2</sup> notice is hereby given that on July 26, 2005, CBOE Futures Exchange, LLC ("CFE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change described in Items I, II and III below, which Items have been prepared by CFE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. CFE also filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC"), together with a written certification under Section 5c(c) of the Commodity Exchange Act ("CEA")<sup>3</sup> on July 25, 2005.

#### I. Self-Regulatory Organization's Description of the Proposed Rule Change<sup>4</sup>

CFE is proposing to adopt rules regarding listing standards for security

futures contracts ("Eligibility and Maintenance Criteria") to comply with the requirements under Section 6(h)(3)<sup>5</sup> of the Act and the criteria under Section 2(a)(1)(D)(i) of the CEA.<sup>6</sup> The text of the proposed rule change is available on CFE's Web site (<http://cfe.cboe.com>), at CFE's principal office, and at the Commission's Public Reference Room. The CFE Listing Standards<sup>7</sup> are, for the most part, identical to the sample listing standards ("Sample Listing Standards") included in the Commission's Staff Legal Bulletin No. 15 ("SLB 15"),<sup>8</sup> except that the CFE Listing Standards:

- Reflect the modifications to the statutory listing standards requirements jointly adopted by the Commission and the CFTC with respect to shares of exchange-traded funds ("ETFs"), trust-issued receipts ("TIRs"), shares of registered closed-end management investment companies ("Closed-End Fund Shares"), and American Depository Receipts ("ADRs");<sup>9</sup>
  - Establish an approximately equal dollar-weighting methodology for physically-settled futures based on narrow-based security indices (all narrow-based security index futures are referred to hereafter as "NBI futures"),<sup>10</sup> which (i) requires the number of shares or receipts of each component security to be rounded up or down to the nearest multiple of 100 in the course of the determination of the initial index composition and any subsequent rebalancing; (ii) contemplates mandatory annual rebalancing of such indices under specified circumstances, complemented by CFE's ability to rebalance indices on an interim basis if it so elects; and (iii) ensures that outstanding contracts will not be affected by any rebalancing; and
    - Contain certain provisions that reflect rule changes that have been filed by other security futures exchanges

<sup>5</sup> 15 U.S.C. 78f(h)(3).

<sup>6</sup> 7 U.S.C. 2(a)(1)(D)(i).

<sup>7</sup> The CFE Listing Standards are set forth in proposed Policy and Procedure VIII, Eligibility and Maintenance Criteria for Security Futures.

<sup>8</sup> SEC, Division of Market Regulation, Staff Legal Bulletin No. 15: Listing Standards for Trading Security Futures Products (September 5, 2001) (available at <http://www.sec.gov/interps/legal/mrs15.htm>).

<sup>9</sup> See Joint Order Granting the Modification of Listing Standards Requirements Securities Exchange Act Release No. 46090 (June 19, 2002), 67 FR 42760 (June 25, 2002) (ETFs, TIRs and Closed-End Fund Shares); Joint Order Granting the Modification of Listing Standards Requirements, Securities Exchange Act Release No. 44725 (August 20, 2001) (ADRs).

<sup>10</sup> CFE Policy and Procedures VIII(C) and VIII(D) contain listing requirements that relate to the initial eligibility criteria and maintenance standards, respectively, for approximately equal dollar-weighted, physically-settled narrow-based security indices.

since the adoption of SLB 15, which vary from the Sample Listing Standards set forth in SLB 15.

CFE is also filing herewith CFE Rules 215, 403, 412-415, 417, 501, 601-605, 610-615, 1801-1806, and 1901-1906, all of which remain unchanged from the CFE Rulebook filed with the Commission as part of CFE's notice registration on Form 1-N. These rules are being filed herewith because they relate to the listing standard requirements set forth in Section 6(h)(3) of the Act<sup>11</sup> as further described below. CFE Rule 517 and CFE Policy and Procedure VII, while also referenced in Item II below, are not filed in this proposed rule change because they were the subjects of a separate filing by CFE on SEC Form 19b-4.<sup>12</sup>

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

CFE has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from its members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

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

Section 6(h)(3) of the Act<sup>13</sup> sets forth a number of requirements for listing standards applicable to security futures products. Among other things, that Section provides that such listing standards must (i) be no less restrictive than comparable listing standards for options traded on a national securities exchange<sup>14</sup> and (ii) require that trading in security futures products not be readily susceptible to manipulation of the price of such products or of the underlying securities or options on such securities.<sup>15</sup>

##### 1. CFE Listing Standards

Commission staff published SLB 15, including the Sample Listing Standards (which were derived from typical listing standards used by exchanges trading options based on securities or security indices), to provide guidance as to how an exchange can comply with the foregoing requirements. SLB 15 also

<sup>11</sup> 15 U.S.C. 78f(h)(3).

<sup>12</sup> See File No. SR-CFE-2005-02 (filed July 27, 2005).

<sup>13</sup> 15 U.S.C. 78f(h)(3).

<sup>14</sup> 15 U.S.C. 78f(h)(3)(C).

<sup>15</sup> 15 U.S.C. 78f(h)(3)(H).

<sup>6</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(7).

<sup>2</sup> 17 CFR 240.19b-7.

<sup>3</sup> 7 U.S.C. 7a-2(c).

<sup>4</sup> With the consent of the CFE, the Commission has made minor clarifications to the text of the descriptions in this Part I and to the statement of purpose in Part II.A below. Telephone call between David Doherty, Attorney, CFE, and Ira Brandriss, Special Counsel, and Nathan Saunders, Special Counsel, Division of Market Regulation, Commission, August 9, 2005.