

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57324; File No. SR-BSE-2008-07]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To List and Trade Options Already Listed on Another National Securities Exchange

February 13, 2008.

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 28, 2008, the Boston Stock Exchange ("BSE" 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 by the Exchange. This order provides notice of the proposal and approves the proposal on an accelerated basis.

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

The Exchange proposes to amend BOX Rule Ch. IV, Sec. 3(b)(v) to enable it to list and trade equity options that are otherwise ineligible for listing and trading on the Exchange if such options are listed and traded on another national securities exchange and the security or securities underlying such options meet BSE's continued listing requirements.

The text of the proposed rule change is available on BSE's Web site (<http://www.bse.com>), at BSE's principal office, 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 Exchange 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 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 this proposed rule change is to revise the Exchange's options listing standards so that as long as the options maintenance listing standards as set forth in Ch. IV, Sec. 4 of the BOX Rules are met and the option is listed and traded on another national securities exchange, the Exchange will be able to list and trade the option. Ch. IV, Sec. 3(b) of the BOX Rules sets forth the requirements that an underlying equity security must meet before the Exchange may initially list options on that security. The BSE notes that the requirements that an underlying equity security must meet for initial listing of options on that security are uniform among all the options exchanges.

BOX Rule Ch. IV, Sec. 3(b)(v) applies to the listing of individual equity options on both "covered" and "uncovered" underlying securities, and sets forth the minimum market price at which an underlying security must trade for an option to be listed. In the case of an underlying security that is a "covered security" as defined under section 18(b)(1)(A) of the Securities Act of 1933 ("1933 Act"),<sup>3</sup> the closing market price of the underlying security must be at least \$3 per share for five previous consecutive business days prior to the date on which the Exchange submits an option class certification to The Options Clearing Corporation ("OCC"). In connection with underlying securities deemed to be "uncovered," BOX rules require that such underlying security be at least \$7.50 for the majority of business days during the three calendar months preceding the date of selection for such listing. In addition, an alternative listing procedure for "uncovered" securities also permits the listing of such options so long as: (1) The underlying security meets the guidelines for continued approval contained in Ch. IV, Sec. 4 of the BOX Rules; (2) options on such underlying security are traded on at least one other registered national securities exchange; and (3) the average daily volume ("ADV") for such options over the last three calendar months preceding the date of selection has been at least 5,000

contracts. Subparagraphs (i) through (iv) of Ch. IV, Sec. 3(b) of the BOX Rules further set forth minimum requirements for an underlying security such as shares outstanding, number of holders and trading volume.

Under this proposed rule change, an option may be multiply-listed and traded as long as one other options exchange is trading the particular option and such underlying security of the option meets the Exchange's continued listing requirements. The BSE notes that the requirements for listing additional series of an existing listed option (*i.e.*, continued listing guidelines) are less stringent, largely because, in total, the Exchange's guidelines assure that options will be listed and traded on securities of companies that are financially sound and subject to adequate minimum standards.

The Exchange believes that although the continued listing requirements are uniform among the other options exchanges, the application of both the original and continued listing standard in the current market environment have had an anti-competitive effect. Specifically, the Exchange notes that on several occasions it has been unable to list and trade options classes that trade elsewhere because the underlying security of such option did not at that time meet original listing standards. However, the other options exchange(s) may continue to trade such options (and list additional series) based on the lower maintenance listing standards, while the Exchange is precluded from listing any options on such underlying security. The Exchange believes this is anti-competitive and inconsistent with the aims and goals of a national market system in options.

To address this situation, the Exchange proposes to add a new rule to the BOX Rules and to amend the current listing requirements. Specifically, the proposed addition of Ch. IV, Sec. 3(b)(vi) of the BOX Rules provides that notwithstanding that a particular underlying security may not meet the requirements set forth in Ch. IV, Sec. 3(b)(i), (ii), (iv) and (v), the Exchange nonetheless could list and trade an option on such underlying security if (i) the underlying security meets continued listing requirements under Ch. IV, Sec. 4 of the BOX Rules; and (ii) options on such underlying security are listed and traded on at least one other registered national securities exchange.<sup>4</sup> In

<sup>3</sup> Section 18(b)(1)(A) of the 1933 Act provides that "[a] security is a covered security if such security is \* \* \* listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed or authorized for listing on the National Market System of the Nasdaq Stock Market (or any successor to such entities)\* \* \*" See, 15 U.S.C. 77r(b)(1)(A).

<sup>4</sup> Telephone conversation between John Katovich, Executive Vice President and Chief Legal Officer, BSE and Mitra Mehr, Special Counsel, Division of Trading and Markets, Commission on February 12,

Continued

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

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

connection with the proposed changes, the Exchange represents that the procedures currently employed to determine whether a particular underlying security meets the initial listing criteria will similarly be applied to the continued listing criteria.

The Exchange believes that this proposal is narrowly tailored to address the circumstances where an options class is currently ineligible for listing on the Exchange while at the same time, such option is trading on another options exchange(s). The BSE notes that when an underlying security meets the maintenance listing requirements and at least one other exchange lists and trades options on the underlying security, the option is available to the investing public. Therefore, the Exchange notes that the current proposal will not introduce any inappropriate additional listed options classes. The BSE submits that the adoption of the proposal is essential for competitive purposes and to promote a free and open market for the benefit of investors.

## 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 will serve to remove impediments to and perfect the mechanisms of 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. 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-2008-07 on the subject line.

### *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 Number SR-BSE-2008-07. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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-2008-07 and should be submitted on or before March 13, 2008.

## IV. Commission's Findings and Order Granting Accelerated Approval of 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 regulations thereunder applicable to a national securities exchange.<sup>7</sup> In

particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, 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 proposal is narrowly tailored to address the circumstances where an equity option class is currently ineligible for initial listing on the Exchange even though it meets the Exchange's continued listing standards and is trading on another options exchange. Allowing BSE to list and trade options on such underlying securities should help promote competition among the exchanges that list and trade options. The Commission notes, and the Exchange represents, that the procedures that the Exchange currently employs to determine whether a particular underlying security meets the initial equity option listing criteria for the Exchange will similarly be applied when determining whether an underlying security meets the Exchange's continued listing criteria.

The Commission finds good cause, pursuant to Section 19(b)(2)(B) of the Act,<sup>9</sup> for approving the proposed rule change prior to the 30th day after the publication of the notice of the filing thereof in the **Federal Register**. The Commission notes that the proposed rule change is substantially identical to a proposed rule change submitted by the American Stock Exchange LLC,<sup>10</sup> which was previously approved by the Commission after an opportunity for notice and comment, and therefore does not raise any new regulatory issues.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>10</sup> See, Securities Exchange Act Release No. 56598 (October 2, 2007), 72 FR 57615 (October 10, 2007) (SR-Amex-2007-48) (Order Approving Proposed Rule Change Modifying the Options Listing Criteria for Underlying Securities). See also, Securities Exchange Act Release Nos. 56647 (October 11, 2007), 72 FR 58702 (October 16, 2007) (SR-ISE-2007-80) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change); 56774 (November 8, 2007), 72 FR 64694 (November 16, 2007) (SR-CBOE-2007-114) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change); 56797 (November 15, 2007), 72 FR 65798 (November 23, 2007) (SR-NYSEArca-2007-106) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change); and 56717 (October 29, 2007), 72 FR 62508 (November 5, 2007) (SR-Phlx-2007-73) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change).

2008 to conform this sentence to the text of the proposed rule change.

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

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

<sup>7</sup> In approving this 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).

## V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-BSE-2008-07) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57326; File No. SR-CBOE-2008-03]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change Relating to Complex Orders

February 13, 2008.

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 14, 2008, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by CBOE. 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 Exchange proposes to amend its rules regarding complex orders. The text of the proposed rule change is available at CBOE, the Commission's Public Reference Room, and <http://www.cboe.com/legal>.

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

In its filing with the Commission, 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. 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

The Exchange is proposing to amend its priority provisions contained in CBOE Rules 6.45, 6.45A and 6.45B to provide that a complex order may be executed at a net debit or credit price with another member without giving priority to equivalent bids (offers) in the individual series legs that are represented in the public customer limit order book, provided that one leg of the complex order better the corresponding bid (offer) in the public customer limit order book by at least the amount determined by the Exchange on a class-by-class basis. The amount shall be either (i) one minimum trading increment (*i.e.*, \$0.10, \$0.05 or \$0.01, as applicable) or (ii) a \$0.01 increment.<sup>3</sup>

Currently the rules provide that one leg of a complex order must better the corresponding bid (offer) in the public customer limit order book by at least one minimum trading increment.<sup>4</sup> The Exchange believes that changing the rule to permit the minimum amount to be \$0.01 would provide additional flexibility to better facilitate the orderly execution of complex orders, and would provide additional opportunities and incentives for members to provide price improvement to complex orders.<sup>5</sup>

###### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act,<sup>6</sup> in general, and furthers

<sup>3</sup> Additionally, the Exchange is proposing to make two non-substantive changes to Rule 6.45B(b) in order to conform the text of that rule to Rule 6.45A(b). Specifically, the Exchange is replacing the phrase "the trading crowd" with the phrase "open outcry" in Rule 6.45B(b) and inserting the phrase "at a net debit or credit price" in Rule 6.45B(b)(ii).

<sup>4</sup> The rules also provide that a complex order may be executed at the same derived net price as other individual series legs represented in the trading crowd, which for purposes of the complex order priority provision includes broker-dealer orders resting in the electronic book and electronic quotes of Market-Makers.

<sup>5</sup> Currently, for example, if a complex order spread market is quoted on a net debit/credit basis at \$0.90 to \$1.10 and there are orders represented in the public customer limit order book in the individual series at each of the respective prices, the complex order may only be executed with another member at a net price of \$0.95 to \$1.05. Under the proposed revisions, a complex order may be executed at a net price of \$0.91 to \$1.09, permitting price improvement at net prices ranging from \$0.91-\$0.94 and \$1.06-\$1.09.

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

the objectives of section 6(b)(5) of the Act,<sup>7</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest.

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

CBOE 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

No written comments were either solicited or received with respect to 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 CBOE 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-CBOE-2008-03 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission,

<sup>11</sup> *Id.*

<sup>12</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>7</sup> 15 U.S.C. 78f(b)(5).