

accordance with Commentary .01(5) of Amex Rule 916 or trading in the shares are halted or suspended in their primary market. Additionally, as proposed, the Exchange will consider the suspension of opening transactions in any series of options covering Exchange-Traded Fund Shares if the value of the non-U.S. currency on which the Exchange-Traded Fund Shares are based is no longer calculated or available. The Commission believes that the proposed change to Amex Rule 916 with respect to withdrawal of approval is consistent with the protection of investors and the public interest.

The Commission notes that the Exchange has represented that it has an adequate surveillance program in place for options on Exchange-Traded Fund Shares, including those funds that are based on the value of a non-U.S. currency. In addition, the Exchange has represented that it is able to obtain currency-related trading information via the ISG from other exchanges who are members or affiliates of the ISG, as discussed above, in connection with options and futures trading on those exchanges.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The Exchange has requested accelerated approval because this proposed rule change is based on, and is substantially similar to, a proposal by the ISE that the Commission recently approved.<sup>22</sup> Accordingly, this proposal raises no new or novel regulatory issues that have not been previously considered by the Commission. In addition, the Commission notes that it did not receive any comments on the ISE's proposal. The Commission believes that expanding Amex Rule 915 to encompass options on Exchange-Traded Fund Shares that represent interests in a trust that holds non-U.S. currency deposited with the trust will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading these products promptly. Additionally, the proposal contains measures that are designed to minimize the potential for manipulation of the underlying currency held by the Exchange-Traded Fund Shares. Therefore, the Commission finds good cause, consistent with Section 19(b)(2)

of the Act,<sup>23</sup> to approve the amended proposal on an accelerated basis.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>24</sup> that the proposed rule change (SR-Amex-2006-87), as modified by Amendment Nos. 1 and 2, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>25</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55000; File No. SR-BSE-2006-47]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto to Eliminate Fees on Certain Exchange Traded Funds and to Establish Fees on Certain Options on Indexes

December 21, 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 November 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, II, and III below, which Items have been substantially prepared by the BSE. On December 20, 2006, BSE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The BSE has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member 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

<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</sup> 15 U.S.C. 78s(b)(2).

<sup>25</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> In Amendment No. 1, the Exchange, among other things: (1) Clarified that the proposed rule change establishes fees applicable only to members for transactions in options on indices effected by members; (2) made additional amendments to correct certain errors and omissions; and (3) corrected certain errors in the purpose section of the proposed rule change. Changes made in Amendment No. 1 have been incorporated into this notice.

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

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

the proposal 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

BSE is proposing to amend the Fee Schedule of the Boston Options Exchange ("BOX") to remove the surcharge fee for certain Exchange Traded Funds ("ETFs") and to establish fees applicable only to members for transactions in options on indices effected by members. The BOX Fee Schedule is available at the Exchange, the Commission's Public Reference Room, and <http://www.bostonoptions.com>.

### 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

BSE is proposing to amend the BOX Fee Schedule to remove the surcharge fee for transactions in options on the ETF Nasdaq 100 ("QQQs"), the Standard & Poor's ("S&P") Depository Receipts ("SPY"), the iShares Nasdaq Biotechnology Index Fund ("IBB"), iShares Russell 2000 Index Fund ("IWM"), iShares Russell 2000 Growth Index Fund ("IWO"), the S&P Energy Select Sector SPDR Fund ("XLE") and the S&P Financial Select Sector SPDR Fund ("XLF"). The Exchange is proposing to remove the surcharge from its Fee Schedule because it no longer pays a licensing fee on such ETFs.

The Exchange is also proposing to establish a fifteen (15) cent surcharge fee for transactions in options on the Russell 2000® Index ("RUT"),<sup>6</sup> the full

<sup>6</sup> Russell 2000® is a trademark and service mark of the Frank Russell Company, used under license. Neither Frank Russell Company's Publication of the Russell Indexes nor its licensing of its trademarks

<sup>22</sup> See Securities Exchange Act Release No. 54087 (June 30, 2006), 71 FR 38918 (July 10, 2006) (SR-ISE-2005-60).

value Nasdaq-100® Index (“NDX”),<sup>7</sup> and the reduced value Nasdaq-100® Index (Mini-NDX® Index (“MNX”))<sup>8</sup> effected by members for broker-dealer proprietary accounts.<sup>9</sup> The Exchange

for use in connection with securities or other financial products derived from a Russell Index in any way suggests or implies a representation or opinion by Frank Russell Company as to the attractiveness of investment in any securities or other financial products based upon or derived from any Russell Index. Frank Russell Company is not the issuer of any such securities or other financial products and makes no express or implied warranties or merchantability or fitness for any particular purpose with respect to any Russell Index or any data included or reflected therein, nor as to results to be obtained by any person or any entity from the use of the Russell Index or any data included or reflected therein. Options on RUT are currently listed for trading on the American Stock Exchange (“AMEX”), BOX, the Chicago Board Options Exchange, Inc. (“CBOE”), and the International Securities Exchange, LLC (“ISE”). See Securities Exchange Act Release No. 53968 (June 9, 2006), 71 FR 34971 (June 16, 2006) (approving Amex listing); Securities Exchange Act Release No. 54397 (August 31, 2006), 71 FR 53142 (September 8, 2006) (approving BOX listing); Securities Exchange Act Release No. 51749 (May 26, 2005), 70 FR 34510 (June 14, 2005) (approving CBOE listing); Securities Exchange Act Release No. 51858 (June 16, 2005), 70 FR 36218 (June 22, 2005) (approving ISE listing).

<sup>7</sup> Nasdaq®, Nasdaq-100® and Nasdaq-100 Index® are registered trademarks of The Nasdaq Stock Market, Inc. (which with its affiliates are the “Corporations”) and are licensed for use by the Boston Options Exchange Group in connection with the trading of options products based on the Nasdaq-100 Index®. The product(s) have not been passed on by the Corporations as to their legality or suitability. The product(s) are not issued, endorsed, sold, or promoted by the Corporations. The Corporations make no warranties and bear no liability with respect to the product(s). The Corporations do not guarantee the accuracy and/or uninterrupted calculation of the Nasdaq-100 Index® or any data included therein. The Corporations make no warranty, express or implied, as to results to be obtained by licensee, owners of the product(s), or any other person or entity from the use of the Nasdaq-100 Index® or any data included therein. The Corporations make no express or implied warranties, and expressly disclaim all warranties of merchantability or fitness for a particular purpose or use with respect to the Nasdaq-100 Index® or any data included therein. Without limiting any of the foregoing, in no event shall the Corporations have any liability for any lost profits or special, incidental, punitive, indirect or consequential damages, even if notified of the possibility of such damages.

<sup>8</sup> Options on NDX and MNX are currently listed for trading on Amex, BOX, CBOE, and ISE. See Securities Exchange Act Release No. 45163 (December 18, 2001), 66 FR 66958 (December 27, 2001) (imposing licensing fees for transactions in options on the NDX and MNX, among other things); Securities Exchange Act Release No. 51884 (June 20, 2005), 70 FR 36973 (June 27, 2005) (correcting Amex’s failure to file a proposed rule change with respect to its listing of NDX and MNX); Securities Exchange Act Release No. 54397 (August 31, 2006), 71 FR 53142 (September 8, 2006) (approving BOX NDX and MNX listing); Securities Exchange Act Release No. 51351 (March 9, 2005), 70 FR 12917 (March 16, 2005) (approving CBOE NDX and MNX listing); Securities Exchange Release No. 51397 (March 18, 2005), 70 FR 15372 (March 25, 2005) (approving ISE NDX and MNX listing).

<sup>9</sup> The Exchange notes that the fees that are the subject of this proposed rule change do not apply to public customer orders.

represents that these fees will only be charged to BOX members and shall apply to Linkage Orders<sup>10</sup> under a pilot program that is set to expire on July 31, 2007. The Exchange believes that the proposed rule change will further the Exchange’s goal of introducing new products to the marketplace that are competitively priced. BOX began trading options on RUT, NDX, and MNX on November 13, 2006 but did not begin charging fees for transactions in the above-referenced products until November 14, 2006, the date SR-BSE-2006-47 was filed with the Commission.

The Exchange has entered into licensing agreements to use various indexes and trademarks in connection with the listing and trading of index options on the Russell® 2000 Index, Nasdaq-100® Index and the Mini-NDX® Index. As with certain other licensed options, the Exchange is adopting a surcharge fee for trading in these options to defray the licensing costs. The Exchange believes that charging BOX Options Participants<sup>11</sup> that trade these instruments is the most equitable means of recovering the licensing costs.

## 2. Statutory Basis

The Exchanges believes that the proposal is consistent with the requirement of Section 6(b) of the Act,<sup>12</sup> in general, and Section 6(b)(4) of the Act,<sup>13</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

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

The Exchange believes that the proposed rule change, as amended, does not 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 not 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 rule change, as amended, establishes or changes a due,

fee, or other charge applicable only to a member, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>14</sup> and Rule 19b-4(f)(2)<sup>15</sup> thereunder. At any time within 60 days of the filing of such amended 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>

## 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-2006-47 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-2006-47. 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

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

<sup>15</sup> 17 CFR 19b-4(f)(2).

<sup>16</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on December 20, 2006, the date on which the BSE submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

<sup>10</sup> See BOX Rules Chapter XII, Section 1 (defining Linkage Orders).

<sup>11</sup> See BOX Rules, Chapter 1, Section 1(a)(40) (defining Options Participants).

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

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

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-2006-47 and should be submitted on or before January 19, 2007.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54987; File No. SR-CBOE-2006-107]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change Regarding a Permit Program for CBSX

December 20, 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 December 18, 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 substantially prepared by the 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 modify its rules relating to the establishment of a permit program for the Exchange's proposed stock-trading facility CBSX. The text of the proposed rule change is available at CBOE, the Commission's Public Reference Room, and <http://www.cboe.com>.

#### 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

CBSX will be a facility of the Exchange and will serve as the Exchange's vehicle for trading non-option securities. The Exchange (via a separate rule filing) is proposing to modify Chapters 50-55 of the CBOE Rules in connection with the establishment of the CBSX. CBSX is a separate legal entity (a Delaware Limited Liability Company) that is owned by the Exchange and several strategic partners. The Exchange is also submitting a rule filing proposing to establish CBSX as a facility of the Exchange. The purpose of this filing is to modify the Exchange's Constitution and Rules to establish a CBSX Permit Program that will allow non-CBOE seat holders access to CBSX. The Exchange believes that expanding access to CBSX beyond CBOE's options user base will enhance liquidity on CBSX and make it a more attractive stock trading venue. The salient features of the Permit Program are summarized below.

- The permits may only be used for trading stock on CBSX. A Permit does not entitle the holder to trade options on CBOE or to physically enter an option trading post on the trading floor.
- Up to 100 permits may be issued.
- The Permit Program could be terminated by the Exchange via a rule filing approved by the Commission. This provision is incorporated in the Constitution so that the Permit Program could be terminated with a rule change filing but without a corresponding membership vote (*i.e.*, in approving this Constitutional change, the membership is approving the notion that a future termination of the Permit Program could occur without another membership vote).
- Permit holders would be deemed statutory members of CBOE. Accordingly, they would have the same

petition and voting rights as regular members except for matters relating to Exchange ownership (specifically, matters relating to demutualization, mergers, consolidations, dissolution, liquidation, transfer, or conversion of assets of the Exchange), and except matters relating the Chicago Board of Trade exercise right.

- Permit holders would have no interest in the assets or property of CBOE and would have no right to share in any distribution by the Exchange.
- Permit holders (or an executive officer of a Permit holder) would be eligible to run for an at-large director position and a Nominating Committee position.
- Permit holders would have to be registered broker-dealers.
- Permits would not be transferable.
- All Permits would expire every October and would be eligible for renewal.

In connection with the Permit application process, if there are fewer available CBSX Permits than qualified applicants, the Exchange will determine which of the applicants to approve by lot. Applicants that are affiliated shall be deemed one applicant in cases where there are fewer available CBSX Permits than qualified applicants.

A CBSX Permit holder and its associated persons shall comply with and be subject to CBOE Rules to the same extent that Exchange members and their associated persons are obligated to comply with and are subject to Exchange Rules. Further, a CBSX Permit holder and its associated persons shall be subject to the disciplinary, appeals, and arbitration jurisdiction and rules of the Exchange and entitled to the procedural rights under those rules to the same extent that Exchange members and their associated persons are subject to such jurisdiction and rules and entitled to such procedural rights.

The rule filing also eliminates outdated references in the Constitution to the New York Stock Exchange Options Permit Program which no longer exists.

Lastly, the Exchange notes that on December 14, 2006, the Exchange held a special meeting of the membership for purposes of voting on the Permit Program. The membership voted in favor of adopting the Permit Program.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,<sup>3</sup> in general, and with Section

<sup>17</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. 78f(b).