

applicable to the Shares. The Information Circular also will highlight the special risks and characteristics of the Fund and Shares, as well as applicable Exchange rules. In addition, the Information Circular will also reference the fact that there is no regulated source of last sale information regarding physical commodities and discuss the relevant regulatory jurisdiction over the trading of physical commodities or the futures contracts on which the value of the Shares is based. This approval order is based on the Exchange's representations.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> for approving the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, prior to the 30th day after the date of publication of notice in the **Federal Register**. Amendment No. 3 made only minor changes to the overall proposal, which was subject to a 15-day comment period.<sup>13</sup> The Commission notes that the present proposal, as amended, is similar to prior proposals that the Commission has approved,<sup>14</sup> and is consistent with current Amex listing requirements. The Commission does not believe that the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, raises any novel regulatory issues. Consequently, the Commission believes that it is appropriate to permit investors to benefit from these additional investment choices without delay. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,<sup>15</sup> to approve the proposal, as modified by Amendment Nos. 1, 2, and 3, on an accelerated basis.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether it is consistent with the Act. Comments may be submitted by any of the following methods:

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> As mentioned above, the Commission did not receive any comments regarding the proposed rule change and Amendment Nos. 1 and 2 following publication in the **Federal Register**.

<sup>14</sup> See, e.g., Securities Exchange Act Release No. 55632 (April 13, 2007), 72 FR 19987 (April 20, 2007) (SR-Amex-2006-112) (approving the listing and trading of the United States Natural Gas Fund, LP); Securities Exchange Act Release No. 53582 (March 31, 2006), 71 FR 17510 (April 6, 2006) (SR-Amex 2005-127) (approving the listing and trading of the United States Oil Fund, LP); and Securities Exchange Act Release No. 53105 (January 11, 2006), 71 FR 3129 (January 19, 2006) (SR-Amex 2005-059) (approving the listing and trading of the DB Commodity Index Tracking Fund).

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

### 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-2007-53 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-Amex-2007-53. 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 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 Number SR-Amex-2007-53 and should be submitted on or before January 4, 2008.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-Amex-2007-53), as modified by Amendment Nos. 1, 2, and 3 thereto, be, and it hereby is, approved on an accelerated basis.

<sup>16</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-24729 Filed 12-19-07; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56948; File No. SR-BSE-2007-52]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Exchange Fees and Charges

December 12, 2007.

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 November 30, 2007, 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 Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange 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 from interested persons.

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

The BSE is proposing to amend the Fee Schedule of the Boston Options Exchange ("BOX"). The proposed amendment will remove the Minimum Activity Charge ("MAC") from the Fee Schedule of the BOX. The proposed amendment also will increase the number of options classes that will participate in the Liquidity Make or Take Pricing Structure ("Make or Take"). The text of the proposed rule change is available at BSE's principal office, the Commission's Public Reference Room, and <http://www.bostonstock.com>.

<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. 78s(b)(3)(A)(ii).

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

## 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 IV below. The Exchange 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

BOX currently charges its Market Making Participants a monthly fixed fee for each option class in which the Participant is assigned, known as the MAC. MAC fee levels are determined according to certain "categories" of options classes listed on BOX. The category for each class is determined by its total trading volume across all U.S. options exchanges as determined by Options Clearing Corporation ("OCC") data. BOX is proposing to eliminate the MAC so Market Makers will only be charged fees for contracts which are traded. Such fees will be determined on a "Per Contract Execution" basis rather than by setting minimum fee levels that Market Making Participants must incur each month, regardless of the level of their trading activity.

Additionally, BOX currently applies an alternative pricing structure for certain options classes, referred to as Make or Take. Make or Take is currently applicable only to options classes participating in the Penny Pilot,<sup>5</sup> as referenced in Chapter V, section 33 of the BOX Trading Rules. Make or Take pricing is driven by liquidity, whereby

orders that add liquidity to the BOX Book receive a transaction credit and orders which take liquidity from the BOX Book are charged a transaction fee. The proposed amendment will increase the number of classes for which the Make or Take pricing structure will be applicable. The proposed classes being added to Make or Take are the twenty-five (25) most actively-traded, multiply-listed options classes on BOX which are presently not included in the Penny Pilot.

#### 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of section 6(b) of the Act,<sup>6</sup> in general, and section 6(b)(4) of the Act,<sup>7</sup> in particular, which requires that an exchange provide for 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 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

The foregoing proposed rule change is filed pursuant to section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>9</sup> because it establishes or changes a fee applicable only to a member imposed by the Exchange. Accordingly, the proposal is effective upon Commission receipt of the filing. 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.

## 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-BSE-2007-52 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-2007-52. 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 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, on official business days between the hours of 10 a.m. and 3 p.m., located at 100 F Street, NE., Washington, DC 20549. 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-2007-52 and should be submitted on or before January 10, 2008.

<sup>5</sup> The "Original Penny Pilot Program Approval Order" listed the initial thirteen options classes participating in the Penny Pilot Program. See Securities Exchange Act Release No. 54789 (November 20, 2006), 71 FR 68654 (November 27, 2006) (SR-BSE-2006-49). On September 27, 2007, the Commission approved an extension and expansion of the Penny Pilot Program to include fifty additional classes, in two phases. See Securities Exchange Act Release No. 56566 (September 27, 2007), 72 FR 56400 (October 3, 2007) (SR-BSE-2007-40). Phase One began on September 28, 2007 and will continue for six months, until March 27, 2008. Phase One added twenty-two options classes to the Penny Pilot. Phase Two is scheduled to begin on March 28, 2008, and will continue for one year until March 27, 2009. During the second phase, the number of options classes trading in pennies will again increase.

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-24724 Filed 12-19-07; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56970; File No. SR-CBOE-2007-99]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, Relating to a Delta Hedging Exemption From Equity Options Position Limits

December 14, 2007.

On August 21, 2007, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with 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 create a delta hedging exemption from equity options position limits. On October 4, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission published the proposed rule change, as amended by Amendment No. 1, for comment in the **Federal Register** on October 15, 2007.<sup>3</sup> On October 24, 2007, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule change as modified by Amendment Nos. 1 and 2.

Under the proposal, the Exchange would provide an exemption from equity options<sup>5</sup> position and exercise limits<sup>6</sup> for positions held by CBOE

members and certain non-member affiliates<sup>7</sup> that are "delta neutral"<sup>8</sup> under a "permitted pricing model."<sup>9</sup> The options contract equivalent of the net delta<sup>10</sup> of a hedged options position still would be subject to the position limits in Rule 4.11 (subject to the availability of any other position limit exemptions).<sup>11</sup> A member that intends to employ, or whose non-member affiliate intends to employ, this exemption would be required to provide a written certification to CBOE stating that the member and/or its affiliate will use a permitted pricing model.<sup>12</sup> In addition, members that carry an account that includes an equity option position for a non-member affiliate would be required to obtain a written statement from the non-member affiliate confirming that the affiliate: (1) Is relying on this exemption; (2) will use only a permitted pricing model for purposes of calculating the net delta of its option positions for purposes of this exemption; (3) will promptly notify the member if it ceases to rely on this

<sup>7</sup> The Commission notes that only those non-member affiliates identified in the definition of "permitted pricing model" would be eligible to rely on the delta hedging exemption. See *infra* note 9.

<sup>8</sup> The term "delta neutral" would be defined in proposed Rule 4.11.04(c)(A) as referring to an equity option position that is hedged, in accordance with a permitted pricing model, by a position in the underlying security or one or more instruments relating to the underlying security, for the purpose of offsetting the risk that the value of the option position will change with incremental changes in the price of the security underlying the option position.

<sup>9</sup> "Permitted pricing model" for purposes of this exemption would be a pricing model used by: (1) A member or its non-member affiliate, using a pricing model maintained and operated by the Options Clearing Corporation; (2) a member or its non-member affiliate subject to consolidated supervision by the Commission pursuant to Appendix E of Rule 15c3-1 under the Act (*i.e.*, a consolidated supervised entity or "CSE"); (3) a financial holding company ("FHC") or a company treated as an FHC under the Bank Holding Company Act of 1956, or its affiliate subject to consolidated holding company group supervision; (4) a Commission registered OTC derivatives dealer; and (5) a national bank under the National Bank Act. See proposed Rule 4.11.04(c)(C).

<sup>10</sup> "Net delta" would be defined to mean, at any time, the number of shares (either long or short) required to offset the risk that the value of an equity option position will change with incremental changes in the price of the security underlying the option position. See proposed Rule 4.11.04(c)(B).

"Options contract equivalent of the net delta" would be defined to mean the net delta divided by the number of shares underlying the options contract. See proposed Rule 4.11.04(c)(B).

<sup>11</sup> See proposed Rule 4.11.04(c)(B). The Commission notes that Rule 4.11.04 provides for multiple, independent hedge exemptions. Of course, to the extent that a position is used to hedge for the purpose of one exemption from position limit requirements, such as the delta hedge exemption, such position cannot be used to take advantage of another exemption from position limit requirements.

<sup>12</sup> See proposed Rule 4.11.04(c)(E)(1) and (E)(3)(i)

exemption; (4) authorizes the member, upon request, to provide to the Exchange or the Options Clearing Corporation such information regarding positions of the non-member affiliate as part of the Exchange's confirmation or verification of the accuracy of the net delta calculation under this exemption; and (5) if the non-member affiliate is using the Options Clearing Corporation model, has duly executed and delivered to the Exchange such documents as the Exchange may require as a condition to reliance on this exemption.<sup>13</sup>

Furthermore, any member would be required to report, in accordance with Rule 4.13, all equity options positions (including those that are delta neutral) that are reportable under that rule, and also would be required to report on its own behalf or on behalf of a designated aggregation unit<sup>14</sup> the net delta and options contract equivalent of the net delta of such positions for each account that holds an equity option position subject to the delta hedging exemption in excess of the levels specified in Rule 4.11.<sup>15</sup> Each member relying on the exemption would be required to retain, and undertake reasonable efforts to ensure that its non-member affiliates relying on the exemption retain, a list of the options, securities, and other instruments underlying each option position net delta calculation reported to the Exchange; and to produce such information to the Exchange upon request.<sup>16</sup> In addition, the options positions of a non-member relying on the exemption would be required to be carried by a member with which it is affiliated.<sup>17</sup>

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.<sup>18</sup> In particular, the Commission believes that the proposed rule change is consistent with section

<sup>13</sup> See proposed Rule 4.11.04(c)(E)(3)(ii).

<sup>14</sup> See proposed Rule 4.11.04(c)(D), which provides, under certain conditions, that the net delta of an options position held by an entity entitled to rely on the exemption could be calculated without regard to positions in or relating to the security underlying the option position held by an affiliated entity or another trading unit within the same entity, provided that, among other things, no control relationship exists between such affiliates or trading units and the entity has designated in writing in advance the affiliates or trading units that are to be considered separate and distinct from each other.

<sup>15</sup> See proposed Rule 4.11.04(c)(F).

<sup>16</sup> See proposed Rule 4.11.04(c)(G).

<sup>17</sup> See proposed Rule 4.11.04(c)(E)(2).

<sup>18</sup> In approving this rule, 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>10</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 Securities Exchange Act Release No. 56631 (October 9, 2007), 72 FR 58341.

<sup>4</sup> In Amendment No. 2, CBOE made a technical revision to the proposal. This is a technical amendment and is not subject to notice and comment. In Amendment No. 2, CBOE noted that the effective date of the proposal will be February 1, 2008, or such later date as may be necessary to ensure completion of the required technology changes by the Options Clearing Corporation and the Securities Industry Automation Corporation.

<sup>5</sup> Equity options for purposes of this proposed rule change includes stock options and options on exchange-traded funds.

<sup>6</sup> CBOE Rule 4.12 establishes exercise limits for an option at the same level as the option's position limit under Rule 4.11. Therefore, no changes are proposed to Rule 4.12.