

should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2005-034 and should be submitted on or before May 24, 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.⁹ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁰ which requires that an exchange have rules designed, among other things, 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 believes that this proposal will benefit investors by increasing competition among markets that trade FEU and FEZ.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,¹¹ which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.¹² The Commission notes that it previously approved the listing and trading of FEU and FEZ on the NYSE.¹³ The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,¹⁴ which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. Amex has represented that it meets this requirement because it deems the shares of FEU and FEZ to be an equity securities, thus rendering trading in such shares subject to the Exchange's

existing rules governing the trading of equity securities.¹⁵

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,¹⁶ which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last sale information regarding FEU and FEZ are disseminated through the Consolidated Quotation System. Furthermore, the NYSE disseminates through the facilities of CTA an updated IOPV every 15 seconds from 9:30 a.m. to 4:15 p.m. e.t. The Exchange has represented that, if the IOPV is not calculated on a periodic basis or ceases to be widely disseminated, it would cease trading shares of these ETFs.

The Commission notes that, if FEU or FEZ should be delisted by the NYSE, Amex would no longer have authority to trade the shares of the respective fund pursuant to this order.

In support of this proposal, the Exchange has made the following representations:

1. Amex surveillance procedures are adequate to properly monitor the trading of FEU and FEZ shares on the Exchange.

2. Amex will distribute an information circular to its members prior to the commencement of trading of FEU and FEZ shares on the Exchange that explains the terms, characteristics, and risks of trading such shares.

3. Amex will require a member with a customer that purchases FEU or FEZ shares on the Exchange to provide that customer with a product prospectus and will note this prospectus delivery requirement in the information circular.

This approval order is conditioned on Amex's adherence to these representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of these ETFs on the NYSE is consistent with the Act.¹⁷ The

Commission presently is not aware of any issue that would cause it to revisit that earlier finding or preclude the trading of these funds on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for these ETFs.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-Amex-2005-034) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51612; File No. SR-BSE-2004-24]

Self-Regulatory Organizations; Order Approving Proposed Rule Change By the Boston Stock Exchange, Inc. Relating to Remote Floor Brokers

April 26, 2005.

Introduction

On June 28, 2004, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to permit Remote Floor Brokers to conduct their business from remote locations off of the Exchange floor. The proposed rule change was published in the **FEDERAL REGISTER** on November 30, 2004.³ No comments were received on the proposed rule change. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange,⁴ particularly

⁹ 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).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78l(f).

¹² Section 12(a) of the Act, 15 U.S.C. 78l(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange "extends UTP." When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

¹³ See *supra* note 3.

¹⁴ 17 CFR 240.12f-5.

¹⁵ The Commission notes that Commentary .04 to existing Amex Rule 190 will permit a specialist in FEU or FEZ to create or redeem creation units of these funds to facilitate the maintenance of a fair and orderly market. The Commission previously has found Commentary .04 to Amex Rule 190 to be consistent with the Act. See Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10106, 10612 (March 14, 1996).

¹⁶ 15 U.S.C. 78k-1(a)(1)(C)(iii).

¹⁷ See *supra* note 3.

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 50715 (November 22, 2004), 69 FR 69650.

⁴ 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).

Section 6(b)(5) of the Act which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, to remove impediments to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.⁵ The Commission believes that the proposed rule change could promote efficiency at the BSE by reducing the costs associated with transactions on the Exchange by allowing brokers to choose the most efficient and cost-effective way of conducting their business.

Under the proposed rule change, Remote Floor Brokers will be governed by the same general rules that govern Remote Specialists.⁶ Specifically, Remote Floor Brokers will be required to meet certain minimum requirements including, but not limited to, their background, experience, staffing, training procedures, adequacy of the floor broker's confidentiality policies, its contingency plans for communication or technology failures, the adequacy of the floor broker's off-site facility, performance standards and minimum capital requirements. Further, Remote Floor Brokers must comply with the trading rules that apply to trading on the BSE floor, including but not limited to: Chapter II, Section 2, Recording of Sales; Chapter III, Section 6, Floor Broker's Responsibility; Chapter XIV, Independent Floor Brokers; Chapter XVII, Members Dealing for Own Account; and, Chapter XXXIII, Section 2, Order Entry.⁷ All BSE brokered orders, including those which would be handled by a BSE Remote Broker, must be entered into the BEACON trading system before being executed by a BSE specialist.⁸ Further, the BSE will maintain communication with its proposed Remote Brokers via Stentofon, and dedicated telephone lines so as to ensure the fulfillment of its regulatory oversight of remote brokerage units.⁹ Moreover, as it does with its current Remote Specialist firms, the Exchange will conduct both scheduled and unscheduled compliance inspections of

remote brokerage firms. Any regulatory requirements including trading halts, trading practices, policies, procedures or rules requiring floor official involvement will be coordinated by Exchange personnel with the remote brokers through the dedicated telephone line.¹⁰

The proposed rule change should not alter the duties and obligations of a BSE Floor Broker in any way, other than the ability of the Floor Brokers to conduct their business from locations other than the BSE floor. In fact, the Commission notes that the Exchange has represented that the instant proposed rule change should have little, if any, impact on the way that Exchange Floor Brokers operate since the trading activity on the BSE floor is conducted exclusively in an electronic manner.

In the order approving Remote Specialists, the Commission noted the ability of the BSE to conduct its regulatory responsibilities over remote members, such as conducting market surveillance, enforcing members' compliance with BSE rules and the Act, and coordinating regulatory actions both on and off the floor. The ability of BSE to conduct these regulatory activities over remote floor brokers is critical. While the Commission is satisfied that the proposed rule provides an adequate framework to address these issues,¹¹ BSE must establish and implement a rigorous surveillance program to ensure BSE remote members comply with the federal securities laws and BSE rules and to ensure BSE's ability to enforce such compliance.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-BSE-2004-24) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51614; File No. SR-CBOE-2002-03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Chicago Board Options Exchange, Incorporated Relating to Customer Portfolio and Cross-Margining Requirements

April 26, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 15, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") Amendment No. 2³ to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Exchange submitted this partial amendment, constituting Amendment No. 2, pursuant to the request of Commission staff. Specifically, the Exchange proposes to amend the proposed rule (Rule 12.4) to remove current paragraph (b)(2) under which any affiliate of a self-clearing member organization can participate in portfolio margining, without being subject to the \$5 million equity requirement.⁴

The CBOE submitted the original proposed rule change to the Commission on January 15, 2002 ("Original Proposal"). The proposed rule change was published in the **Federal Register** on March 29, 2002.⁵ The Commission received one comment letter in response to the March 29, 2002 **Federal Register** notice.⁶ On April 2, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.⁷ The

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Partial Amendment No. 2 ("Amendment No. 2").

⁴ This partial amendment would not exclude these affiliates from participating in portfolio margining; rather, it would subject them to the \$5 million equity requirement in paragraph (b)(3) of proposed Rule 12.4 in Amendment No. 2.

⁵ See Securities Exchange Act Release No. 45630 (March 22, 2002), 67 FR 15263 (March 29, 2002).

⁶ See E-mail from Mike Ianni, Private Investor to rule-comments@sec.gov, dated November 7, 2002 ("Ianni E-mail").

⁷ See letter from Richard Lewandowski, Vice President, Division of Regulatory Services, CBOE, to Michael A. Macchiaroli, Associate Director, Division of Market Regulation ("Division"), Commission, dated April 1, 2004 ("Amendment No. 1"). The CBOE proposed Amendment No. 1 to make corrections or clarifications to the proposed rule, or to reconcile differences between the proposed rule

Continued

⁵ See 15 U.S.C. 78f(b)(5).

⁶ See BSE Rules, Chapter XXXIII, BEACON Remote; see also Securities Exchange Act Release No. 43127 (August 8, 2000), 65 FR 49617 (August 14, 2000) (Commission Order approving Remote Specialists at BSE) ("Remote Specialist Order").

⁷ Letter from John Boese, Vice President, Chief Regulatory Officer, Exchange, to Kelly M. Riley, Assistant Director, Division of Market Regulation, Commission, dated April 11, 2005.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ See generally Remote Specialist Order, *supra* note 6, for a complete discussion of this framework.

¹² See 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).