

take advantage of the less burdensome regulatory provisions available to such companies under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) ("1940 Act").

Certain companies may have to make a filing with the Commission before they are ready to elect to be regulated as a business development company.<sup>1</sup> A company that is excluded from the definition of "investment company" by Section 3(c)(1) of the 1940 Act because it has fewer than one hundred shareholders and is not making a public offering of its securities may lose such an exclusion solely because it proposes to make a public offering of securities as a business development company. Such a company, under certain conditions, would not lose its exclusion if it notifies the Commission on Form N-6F of its intent to make an election to be regulated as a business development company. The company only has to file a Form N-6F once.

It is estimated that 6 respondents per year file with the Commission a Form N-6F. Form N-6F requires approximately 0.5 burden hours per response resulting from creating and filing the information required by the Form. The total burden hours for Form N-6F would be 3 hours per year in the aggregate. The estimated annual burden of 3 hours represents an increase from the prior estimate of 1 hour. This increase in burden hours is attributable to an increase in the total number of respondents from 2 to 6.

The estimate of average burden hours for Form N-6F is made solely for the purposes of the Paperwork Reduction Act and is not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms.

Written comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and

suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Lewis W. Walker, Acting Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: November 13, 2008.

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58941; File No. SR-BSE-2008-50]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Enable the Listing and Trading of Options on Index-linked Securities

November 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 November 7, 2008, 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 and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) 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 change from interested persons.

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

The Boston Stock Exchange, Inc. (the "Exchange" or "BSE") proposes to amend Section 3 (Criteria for Underlying Securities) and Section 4 (Withdrawal of Approval of Underlying Securities) of Chapter IV of the Rules of the Boston Options Exchange Group, LLC ("BOX") to enable the listing and trading on BOX of options on index-linked securities. The text of the proposed rule change is available from

the principal office of the Exchange, at the Commission's Public Reference Room, and also on the Exchange's Internet Web site at [http://nasdaqtrader.com/Trader.aspx?id=Boston\\_Stock\\_Exchange](http://nasdaqtrader.com/Trader.aspx?id=Boston_Stock_Exchange).

#### 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 self-regulatory organization 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. 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

This proposed rule change is based on proposals by NYSE Arca, Inc. ("NYSE Arca") and the Chicago Board Options Exchange, Incorporated ("CBOE").<sup>5</sup>

The purpose of the proposed rule change is to revise Sections 3 and 4 of Chapter IV of the BOX Rules to enable the listing and trading of options on: Equity index-linked securities ("Equity Index-Linked Securities"); commodity-linked securities ("Commodity-Linked Securities"); currency-linked securities ("Currency-Linked Securities"); fixed income index-linked securities ("Fixed Income Index-Linked Securities"); futures-linked securities ("Futures-Linked Securities"); and multifactor index-linked securities ("Multifactor Index-Linked Securities"); collectively known as "Index-Linked Securities" that are principally traded on a national securities exchange and are defined as an "NMS stock" (as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934 (the "Act")).

Index-Linked Securities are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable underlying securities, commodities, currencies, derivative instruments or market indexes of the foregoing ("Underlying Index" or "Underlying Indexes"). Index-Linked Securities are the non-convertible debt of an issuer

<sup>1</sup> A company might not be prepared to elect to be subject to Sections 55 through 65 of the 1940 Act because its capital structure or management compensation plan is not yet in compliance with the requirements of those sections.

<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).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See Exchange Act Release Nos. 58203 (July 22, 2008), 73 FR 43812 (July 28, 2008) (SR-NYSEArca-2008-57) and 58204 (July 22, 2008), 73 FR 43807 (July 28, 2008) (SR-CBOE-2008-64).

that have a term of at least one (1) year but not greater than thirty (30) years. Despite the fact that Index-Linked Securities are linked to an underlying index, each trades as a single, exchange-listed security. Accordingly, rules pertaining to the listing and trading of standard equity options will apply to options on Index-Linked Securities. The Exchange does not propose any changes to rules pertaining to Index Options.

### Listing Criteria

The Exchange will consider listing and trading options on Index-Linked Securities provided that the Index-Linked Securities meet the criteria for underlying securities set forth in Section 3 of Chapter IV of the BOX Rules.

The Exchange proposes that Index-Linked Securities deemed appropriate for options trading represent ownership of a security that provides for the payment at maturity, as described below:

- *Equity Index-Linked Securities* are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes of equity securities ("Equity Reference Asset");

- *Commodity-Linked Securities* are securities that provide for the payment at maturity of a cash amount based on the performance of one or more physical commodities or commodity futures, options or other commodity derivatives or Commodity-Based Trust Shares<sup>6</sup> or a basket or index of any of the foregoing ("Commodity Reference Asset");

- *Currency-Linked Securities* are securities that provide for the payment at maturity of a cash amount based on the performance of one or more currencies, or options or currency futures or other currency derivatives or Currency Trust Shares<sup>7</sup> or a basket or index of any of the foregoing ("Currency Reference Asset");

- *Fixed Income Index-Linked Securities* are securities that provide for the payment at maturity of a cash amount based on the performance of one or more notes, bonds, debentures or

evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities ("Treasury Securities"), government-sponsored entity securities ("GSE Securities"), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof or a basket or index of any of the foregoing ("Fixed Income Reference Asset");

- *Futures-Linked Securities* are securities that provide for the payment at maturity of a cash amount based on the performance of an index of (a) futures on Treasury Securities, GSE Securities, supranational debt and debt of a foreign country or a subdivision thereof, or options or other derivatives on any of the foregoing; or (b) interest rate futures or options or derivatives on the foregoing in this subparagraph (b) ("Futures Reference Asset"); and

- *Multifactor Index-Linked Securities* are securities that provide for the payment at maturity of a cash amount based on the performance of any combination of two or more Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets or Futures Reference Assets ("Multifactor Reference Asset").

For the purposes of proposed Section 3(k) of Chapter IV of the BOX Rules, Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets, Futures Reference Assets and Multifactor Reference Assets, will be collectively referred to as "Reference Assets."

Index-Linked Securities must meet the criteria and guidelines for underlying securities set forth in Section 3(b) of Chapter IV of the BOX Rules, or the Index-Linked Securities must be redeemable at the option of the holder at least on a weekly basis through the issuer at a price related to the applicable underlying Reference Asset. In addition, the issuing company is obligated to issue or repurchase the securities in aggregation units for cash or cash equivalents satisfactory to the issuer of Index-Linked Securities which underlie the option as described in the Index-Linked Securities prospectus.

### Continued Listing Requirements

Options on Index-Linked Securities will be subject to all Exchange rules governing the trading of equity options. The current continuing or maintenance listing standards for options traded on BOX will continue to apply.

The Exchange proposes to establish Section 4(k) of Chapter IV of the BOX Rules which will include criteria related

to the continued listing of options on Index-Linked Securities.

Under the applicable continued listing criteria in proposed Section 4(k) of Chapter IV of the BOX Rules, options on Index-Linked Securities initially approved for trading pursuant to proposed Section 3(k) of Chapter IV of the BOX Rules may be subject to the suspension of opening transactions as follows: (1) Non-compliance with the terms of Section 3(k) of Chapter IV of the BOX Rules; (2) non-compliance with the terms of Section 4(b) of Chapter IV of the BOX Rules, except in the case of options covering Index-Linked Securities approved pursuant to Section 3(k)(iii)(2) of Chapter IV of the BOX Rules that are redeemable at the option of the holder at least on a weekly basis, then option contracts of the class covering such securities may only continue to be open for trading as long as the securities are listed on a national securities exchange and are an "NMS stock" as defined in Rule 600 of Regulation NMS; (3) in the case of any Index-Linked Security trading pursuant to Section 3(k) of Chapter IV of the BOX Rules, the value of the Reference Asset is no longer calculated or available; or (4) such other event shall occur or condition exist that in the opinion of the Exchange makes further dealing in such options on BOX inadvisable.

The Exchange represents that the listing and trading of options on Index-Linked Securities under Section 3(k) of Chapter IV of the BOX Rules will not have any effect on the rules pertaining to position and exercise limits<sup>8</sup> or margin.<sup>9</sup>

The Exchange will implement surveillance procedures for options on Index-Linked Securities, including adequate comprehensive surveillance sharing agreements with markets trading in non-U.S. components, as applicable. The Exchange represents that these procedures will be adequate to properly monitor Exchange trading of options on these securities and to deter and detect violations of Exchange rules.

### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>11</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and

<sup>8</sup> See Section 7 of Chapter III of the BOX Rules.

<sup>9</sup> See Section 3 of Chapter XIII of the BOX Rules.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> The Exchange proposes to define the term "Commodity-Based Trust Shares" in Supplementary Material .01 to Section 3 of Chapter IV of the BOX Rules.

<sup>7</sup> See Section 3(i) of Chapter IV of the BOX Rules. The term "Currency Trust Shares" is defined as securities that represent interests in a trust that holds a specified non-U.S. currency or currencies deposited with the trust or similar entity when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency or currencies and pays the beneficial owner interest and other distributions on deposited non-U.S. currency or currencies, if any, declared and paid by the trust.

coordination with persons engaged in facilitating transactions in securities, 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 Exchange believes that the proposed rules applicable to trading pursuant to generic listing and trading criteria together with the Exchange's surveillance procedures applicable to trading in the securities covered by the proposed rules, serve to foster investor protection.

#### *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 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 neither solicited nor received written comments on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>13</sup>

The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change as operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposed rule change is substantially similar to those of other options exchanges that have been previously approved by the Commission<sup>14</sup> and does not appear to

present any novel regulatory issues. Therefore, the Commission designates the proposal operative upon filing to enable the Exchange to list and trade options on index-linked securities without delay.<sup>15</sup>

At any time within 60 days of the filing of the 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 the 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-2008-50 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-BSE-2008-50. 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-BSE-2008-50 and should be submitted on or before December 11, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-58942; File No. SR-BSE-2008-49]

### **Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend a Pilot Program That Allows for No Minimum Size Order Requirement for the Price Improvement Period Process on the Boston Options Exchange Facility**

November 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 November 5, 2008 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 and II below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) 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.

<sup>16</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).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). The Exchange has satisfied the five-day pre-filing requirement of Rule 19b-4(f)(6)(iii).

<sup>14</sup> See Exchange Act Release Nos. 58203 (July 22, 2008), 73 FR 43812 (July 28, 2008) (SR-NYSEArca-2008-57) and 58204 (July 22, 2008), 73 FR 43807 (July 28, 2008) (SR-CBOE-2008-64) (approving the listing and trading of options based on index-linked securities on NYSE Arca and CBOE).

<sup>15</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).