

transaction fees for equity and QQQ options contracts executed as part of Cabinet Trades or Spread Trades that are transacted by non-member broker-dealers. Amex states that this change will effectively increase transaction fees for non-member broker-dealers' executions of equity option and QQQ option contracts that are either Cabinet Trades or Spread Trades.

Amex represents that the current fee reductions⁵ applicable to non-member broker-dealers for equity options and QQQ options transactions executed as either Cabinet Trades or Spread Trades will be reduced from \$0.12 to \$0.06 per contract side and from \$0.18 to \$0.12 per contract side, respectively.⁶ The \$2,000 per trade fee cap currently in place in connection with Cabinet Trades and Spread Trades will continue to apply. This fee cap was recently adopted by the Exchange and implemented in February 2004.⁷

Amex believes that this proposal to lower the amount of the reductions of options transaction fees for non-member broker-dealers in connection with Cabinet and Spread Trades will better reflect the actual cost of transactions on the Amex. In addition, Amex represents that the proposed fee change for non-member broker-dealers will provide the same options fee reductions for Cabinet Trades and Spread Trades that exist for specialists, ROTs and member broker-dealers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act⁸ in general and furthers the objectives of 6(b)(4) of the Act⁹ in particular regarding the equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using Exchange facilities.

⁵ See Securities Exchange Act Release Nos. 46026 (June 4, 2002), 67 FR 40034 (June 11, 2002) and 48219 (July 23, 2003), 68 FR 44823 (July 30, 2003).

⁶ The lowering of the fee reductions for equity options transactions in connection with Cabinet Trades and Spread Trades will now result in reductions of the options transaction fee, options comparison fee and options floor brokerage fee of \$0.03, \$0.01 and \$0.02 per contract side, respectively. With respect to QQQ option transactions only, the lowering of the fee reductions in connection with Cabinet Trades and Spread Trades will result in reductions of the options transaction fee, options comparison fee and options floor brokerage fee of \$0.09, \$0.01 and \$0.02 per contract side, respectively.

⁷ See Securities Exchange Act Release No. 49358 (March 3, 2004), 69 FR 11469 (March 10, 2004).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

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

No written comments were 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 the Exchange consents, the Commission will:

- (A) By order approve such proposed rule change, as amended, 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. Please include File Number SR-Amex-2004-37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. All submissions should refer to File Number SR-Amex-2004-37. 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. 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-2004-37 and should be submitted on or before July 1, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49806; File No. SR-BSE-2004-22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. To Extend a Pilot Program Under Which it Lists Options on Selected Stocks Trading Below \$20 at One-Point Intervals Until June 5, 2005

June 4, 2004.

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 June 3, 2004, 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 BSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The BSE proposes to extend its pilot program under which it lists options on selected stocks trading below \$20 at \$1 strike price intervals ("Pilot Program") until June 5, 2005. The text of the proposed rule change is available at the Office of the Secretary, the BSE, and the Commission.

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

The purpose of the proposed rule change is to extend the Pilot Program under the Rules of the Boston Options Exchange (the "BOX Rules") relating to the interval between strike prices of series of options on individual stocks. Chapter IV, Section 6 of the Box Rules establishes guidelines regarding the addition of series for trading on BOX. The BOX Rules include a Pilot Program that expires on June 5, 2004, which allows Boston Options Exchange Regulation, LLC ("BOXR"), the wholly owned subsidiary of the BSE that has been delegated regulatory authority over BOX,³ list options on up to five underlying equities trading below \$20 at one-point intervals and to list \$1 strike prices on any equity option included in the \$1 strike price pilot program of any other options exchange.⁴ This proposal seeks to extend the operation of the Pilot Program until June 5, 2005.

In sum, for options selected for the Pilot Program, BOXR may list strike prices at \$1 intervals from \$3 to \$20, but no \$1 strike price may be listed that is greater than \$5 from the underlying stock's closing price in its primary

market on the previous day. BOXR also may list \$1 strikes on any other option class designated by another securities exchange that employs a similar Pilot Program under their respective rules. BOXR cannot list long-term option series ("LEAPS"®) at \$1 strike price intervals for any class selected for the Pilot Program. BOXR also is restricted from listing any series that would result in strike prices being \$0.50 apart.

2. Statutory Basis

The BSE believes that its proposal is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁶ specifically, in that it is designed 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 is not designed to permit unfair discrimination between customers, brokers, or dealers, or to regulate by virtue of any authority matters not related to the administration of the BSE.

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

The BSE 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 BSE 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 rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and subparagraph (f)(6) of Rule 19b-4⁸ thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and BSE has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to 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.

Under Rule 19b-4(f)(6)(iii) of the Act,⁹ the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest and BSE is required to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. BSE has requested that the Commission waive the five-day pre-filing notice requirement and 30-day operative delay so that the Pilot Program may continue without interruption after it would have otherwise expired on June 5, 2004. For this reason, the Commission, consistent with the protection of investors and the public interest, has determined to waive the five-day pre-filing notice requirement and 30-day operative delay,¹⁰ and, therefore, the proposal is effective and operative upon filing with the Commission.¹¹

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

⁹ 17 CFR 240.19b-4(f)(6)(iii).

¹⁰ For purposes only of waiving the five-day pre-filing notice requirement and 30-day operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹¹ In the event that the BSE proposes to extend the Pilot Program beyond June 5, 2005, expand the number of options eligible for inclusion in the Pilot Program, or seek permanent approval of the Pilot Program, it should submit a Pilot Program report to the Commission along with the filing of such proposal. The report must cover the entire time the Pilot Program was in effect, and must include: (1) Data and written analysis on the open interest and trading volume for options (at all strike price intervals) selected for the Pilot Program; (2) delisted options series (for all strike price intervals) for all options selected for the Pilot Program; (3) an assessment of the appropriateness of \$1 strike price intervals for the options the BSE selected for the Pilot Program; (4) an assessment of the impact of the Pilot Program on the capacity of the BSE's, OPRA's, and vendors' automated systems; (5) any capacity problems or other problems that arose during the operation of the Pilot Program and how the BSE addressed them; (6) any complaints that the BSE received during the operation of the Pilot Program and how the BSE addressed them; and (7) any additional information that would help to assess the operation of the Pilot Program. The Commission expects the BSE to submit a proposed rule change at least 60 days before the expiration of the Pilot Program in the event the BSE wishes to extend, expand, or seek permanent approval of the Pilot Program.

³ See Securities Exchange Act Release No. 49065 (January 13, 2004) 69 FR 2768 (January 20, 2004).

⁴ See Securities Exchange Act Release No. 49292 (February 20, 2004), 69 FR 8993 (February 26, 2004) (Notice of Filing and Immediate Effectiveness of File No. SR-BSE-2004-01).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

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. Please include File Number SR-BSE-2004-22 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. All submissions should refer to File Number SR-BSE-2004-22. 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, 450 Fifth Street, NW., 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-2004-22 and should be submitted on or before July 1, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49799; File No. SR-CBOE-2004-34]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. to Extend a Pilot Program Under Which it Lists Options on Selected Stocks Trading Below \$20 at One-Point Intervals Until June 5, 2005

June 3, 2004.

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 May 24, 2004, the Chicago Board Options Exchange, Inc. ("CBOE" 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 CBOE. CBOE filed Amendment No. 1 the proposal on May 28, 2004.³ 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

CBOE proposes to extend its pilot program under which it lists options on selected stocks trading below \$20 at \$1 strike price intervals ("Pilot Program") until June 5, 2005. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and the Commission.

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

CBOE proposes to extend the Pilot Program for an additional year until June 5, 2005.⁴ The current Pilot Program allows CBOE to select a total of 5 individual stocks on which option series may be listed at \$1 strike price intervals. To be eligible for selection into the Pilot Program, the underlying stock must close below \$20 in its primary market on the previous trading day. If selected for the Pilot Program, CBOE may list strike prices at \$1 intervals from \$3 to \$20, but no \$1 strike price may be listed that is greater than \$5 from the underlying stock's closing price in its primary market on the previous day. CBOE also may list \$1 strikes on any other option class designated by another securities exchange that employs a similar Pilot Program under their respective rules. CBOE cannot list long-term option series ("LEAPS"®) at \$1 strike price intervals for any class selected for the Pilot Program. CBOE also is restricted from listing any series that would result in strike prices being \$0.50 apart.

CBOE believes that listing of one point strike price intervals in selected equity options provides investors with more flexibility in the trading of equity options overlying stocks trading at less than \$20 by allowing investors to establish equity options positions that are better tailored to meet their investment objectives. CBOE has conducted a study into the impact that \$1 strikes has made on the participating Pilot Program classes ("Pilot Program Report").⁵ Specifically, in the Pilot Program Report, CBOE compared the average daily trading volume ("ADV") for the three month period immediately preceding the listing of \$1 strikes to the most recent three month period (ending March 31, 2004) for each of the classes selected to the Pilot Program to date. According to CBOE's Pilot Program Report, the trading volume in a wide majority of the classes selected to the Pilot Program has increased. In ten of the twenty-two classes selected since the inception of the program, the ADV has increased over 100%, while in some

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from James M. Flynn, Attorney II, Legal Division, CBOE, to Christopher Solgan, Attorney, Division, Commission, dated May 26, 2004 ("Amendment No. 1"). In Amendment No. 1, CBOE changed the file number of the proposed rule change from SR-CBOE-2004-32 to SR-CBOE-2004-34.

⁴ The Commission approved the Pilot Program on June 5, 2003. See Securities Exchange Act Release No. 47991 (June 5, 2003); 68 FR 35243 (June 12, 2003). Under Interpretation and Policy .01(a) to CBOE Rule 5.5, the Pilot Program is scheduled to expire on June 5, 2004.

⁵ CBOE attached the Pilot Program Report as an exhibit to this proposed rule change. Copies of the Pilot Program Report are available at CBOE and the Commission's Public Reference Room.

¹² 17 CFR 200.30-3(a)(12).