

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-53454; File No. SR-BSE-2006-01)**

**March 8, 2006**

**Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto to Establish Fees for Options on Certain Exchange Traded Funds**

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 January 4, 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 prepared by the BSE. On February 1, 2006, the BSE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On February 6, 2006, the BSE filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The BSE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the BSE under Section 19(b)(3)(A)(ii) of the Act,<sup>5</sup> and Rule 19b-4(f)(2) thereunder,<sup>6</sup> which renders the proposal effective upon filing with the Commission. The

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> Amendment No. 1 was withdrawn on February 2, 2006.

<sup>4</sup> Amendment No. 2 made changes to the filing to supplement the names of certain of the underlying exchange traded funds (“ETFs”) to reflect their full titles as used by their respective sponsors and clarified that (1) the fees will be charged only to Boston Options Exchange (“BOX”) Participants, (2) the products in this filing constitute “Fund Shares” as defined in the BOX Rules, and (3) the surcharge fee for trading in options on the products in this filing is equal to the cost charged to BOX by the licensor in the associated licensing agreement. The changes in Amendment No. 2 do not affect the fees for transactions in options on the ETFs covered by this filing.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

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**

The Exchange proposes to amend the Fee Schedule of the BOX to establish fees for transactions in options on certain ETFs effected by a broker-dealer through its proprietary accounts. The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

**Boston Options Exchange Facility**

**Fee Schedule**

[(as of October 2005)]

(as of January 2006)

**Sec. 1** No Change.

**Sec. 2 Trading Fees Broker Dealer Proprietary Accounts**

Subsections (a) and (b) No Change.

c. Plus, where applicable, any surcharge for options on ETFs that are passed through by BOX. The applicable surcharges are as follows:

- 1) \$0.10 per contract for options on the ETF Nasdaq 100 (“QQQQs”).
- 2) \$0.10 per contract for options on the Standard & Poor’s Depository Receipts (SPY).
- 3) \$0.10 per contract for options on the iShares Nasdaq Biotechnology Index Fund (IBB).
- 4) \$0.10 per contract for options on the iShares Russell 2000 Index Fund (IWM).

5) \$0.10 per contract for options on the iShares Russell 2000 Growth Index Fund (IWO).

6) \$0.09 per contract for options on the S&P Energy Select Sector SPDR Fund (XLE).

7) \$0.09 per contract for options on the S&P Financial Select Sector SPDR Fund (XLF).

**Sec. 3 - 6** No Change.

\* \* \* \* \*

**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’s Fee Schedule to establish surcharge fees for certain ETF option transactions effected through broker-dealer proprietary accounts. Currently, BOX assesses a surcharge fee for options on the ETF Nasdaq 100 (“QQQQ”) that are effected through broker-dealer proprietary accounts.<sup>7</sup> BOX is proposing to establish similar surcharge

---

<sup>7</sup> BSE represents that fees will be charged only to BOX Participants. The Commission notes that, pursuant to Section 19(b)(1) of the Act and Rule 19b-4 thereunder, the BSE filed with the Commission a proposed rule change to enact various fees for the BOX facility, including a fee for trades executed via the InterMarket Linkage, which fee was

fees for transactions in options on Standard & Poor's Depository Receipts ("SPY"), the iShares Nasdaq Biotechnology Index Fund ("IBB"), the iShares Russell 2000 Index Fund ("IWM"), the 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").<sup>8</sup> The amount of the surcharge fee will vary, as specified in the Fee Schedule, depending on the ETF, and will range from nine (9) cents to ten (10) cents per contract. The Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

The Exchange has entered into a license agreement with each ETF issuer in connection with the listing and trading of options on SPY, IBB, IWM, IWO, XLE, and XLF. As with licensed options on the QQQQ, the Exchange is adopting a surcharge fee for trading in these options to defray the licensing costs.<sup>9</sup> The Exchange believes that charging the Participants that trade these instruments is the most equitable means of recovering the costs of the license.

---

approved on a pilot basis and which is "equivalent to the regular trading fee for Market Maker and broker-dealer accounts on BOX." See Securities Exchange Release Nos. 48787 (November 14, 2003), 68 FR 65477 (November 20, 2003) (SR-BSE-2003-17) (Notice of filing of proposed rule change); 49066 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR-BSE-2003-17) (Order approving the fee schedule and approving the Linkage fees on a pilot basis until January 31, 2004). Specifically, the Commission notes that, under this pilot program, inbound Principal and Principal as Agent orders sent to BOX via InterMarket Linkage are subject to a \$0.20 per contract fee and, where applicable, BOX passes-through a surcharge for options on certain ETFs. These pilot fees are currently set to expire on July 31, 2006. See Securities Exchange Release Nos. 49300 (February 23, 2004), 69 FR 9655 (March 1, 2004) (SR-BSE-2004-07) (extending the pilot until July 31, 2004); 50124 (July 30, 2004), 69 FR 47963 (August 6, 2004) (SR-BSE-2004-32) (extending the pilot until July 31, 2005); and 52147 (July 28, 2005), 70 FR 44706 (August 3, 2005) (SR-BSE-2005-28) (extending the pilot until July 31, 2006).

<sup>8</sup> BSE represents that SPY, IBB, IWM, IWO, XLE, and XLF constitute "Fund Shares" as defined in Chapter IV, Section 3(i) of the BOX Rules.

<sup>9</sup> The surcharge fee for trading in the options listed in Section 2(c) of the BOX Fee Schedule is equal to the cost charged to BOX by the licensor in the associated licensing agreement.

## **2. Statutory Basis**

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>10</sup> in general, and Section 6(b)(4) of the Act,<sup>11</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants 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 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 comments on the proposed rule change.

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

The foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(2)<sup>13</sup> thereunder because it establishes or changes a due, fee, or other charge imposed by the Exchange. 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>14</sup>

---

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

<sup>11</sup> 15 U.S.C. 78f(b)(4).

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

<sup>13</sup> 17 CFR 19b-4(f)(2).

<sup>14</sup> The effective date of the original proposed rule is January 4, 2006. The effective date of Amendment No. 2 is February 6, 2006. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under

#### **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-2006-01 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-2006-01. 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 the filing also will be available for inspection and copying at the principal office of the BSE. All

---

Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on February 6, 2006, the date on which the BSE submitted Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

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-2006-01 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

Nancy M. Morris  
Secretary

---

<sup>15</sup> 17 CFR 200.30-3(a)(12).