

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55000; File No. SR-BSE-2006-47)

December 21, 2006

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto to Eliminate Fees on Certain Exchange Traded Funds and to Establish Fees on Certain Options on Indexes

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 November 14, 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 substantially prepared by the BSE. On December 20, 2006, BSE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The BSE has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member under Section 19(b)(3)(A)(ii) of the Act,<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</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, as amended, from interested persons.

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

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

<sup>3</sup> In Amendment No. 1, the Exchange, among other things: (1) clarified that the proposed rule change establishes fees applicable only to members for transactions in options on indices effected by members; (2) made additional amendments to correct certain errors and omissions; and (3) corrected certain errors in the purpose section of the proposed rule change. Changes made in Amendment No. 1 have been incorporated into this notice.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

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

BSE is proposing to amend the Fee Schedule of the Boston Options Exchange (“BOX”) to remove the surcharge fee for certain Exchange Traded Funds (“ETFs”) and to establish fees applicable only to members for transactions in options on indices effected by members. The BOX Fee Schedule is available at the Exchange, the Commission’s Public Reference Room, and [www.bostonoptions.com](http://www.bostonoptions.com).

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 Fee Schedule to remove the surcharge fee for transactions in options on the ETF Nasdaq 100 (“QQQs”), the Standard & Poor’s (“S&P”) Depository Receipts (“SPY”), the iShares Nasdaq Biotechnology Index Fund (“IBB”), iShares Russell 2000 Index Fund (“IWM”), 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”). The Exchange is proposing to remove the surcharge from its Fee Schedule because it no longer pays a licensing fee on such ETFs.

The Exchange is also proposing to establish a fifteen (15) cent surcharge fee for transactions in options on the Russell 2000® Index (“RUT”),<sup>6</sup> the full value Nasdaq-100® Index (“NDX”),<sup>7</sup> and the reduced value Nasdaq-100® Index (Mini-NDX® Index (“MNX”))<sup>8</sup> effected

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<sup>6</sup> Russell 2000® is a trademark and service mark of the Frank Russell Company, used under license. Neither Frank Russell Company’s Publication of the Russell Indexes nor its licensing of its trademarks for use in connection with securities or other financial products derived from a Russell Index in any way suggests or implies a representation or opinion by Frank Russell Company as to the attractiveness of investment in any securities or other financial products based upon or derived from any Russell Index. Frank Russell Company is not the issuer of any such securities or other financial products and makes no express or implied warranties or merchantability or fitness for any particular purpose with respect to any Russell Index or any data included or reflected therein, nor as to results to be obtained by any person or any entity from the use of the Russell Index or any data included or reflected therein. Options on RUT are currently listed for trading on the American Stock Exchange (“AMEX”), BOX, the Chicago Board Options Exchange, Inc. (“CBOE”), and the International Securities Exchange, LLC (“ISE”). See Securities Exchange Act Release No. 53968 (June 9, 2006), 71 FR 34971 (June 16, 2006) (approving Amex listing); Securities Exchange Act Release No. 54397 (August 31, 2006), 71 FR 53142 (September 8, 2006) (approving BOX listing); Securities Exchange Act Release No. 51749 (May 26, 2005), 70 FR 34510 (June 14, 2005) (approving CBOE listing); Securities Exchange Act Release No. 51858 (June 16, 2005), 70 FR 36218 (June 22, 2005) (approving ISE listing).

<sup>7</sup> Nasdaq®, Nasdaq-100® and Nasdaq-100 Index® are registered trademarks of The Nasdaq Stock Market, Inc. (which with its affiliates are the “Corporations”) and are licensed for use by the Boston Options Exchange Group in connection with the trading of options products based on the Nasdaq-100 Index®. The product(s) have not been passed on by the Corporations as to their legality or suitability. The product(s) are not issued, endorsed, sold, or promoted by the Corporations. The Corporations make no warranties and bear no liability with respect to the product(s). The Corporations do not guarantee the accuracy and/or uninterrupted calculation of the Nasdaq-100 Index® or any data included therein. The Corporations make no warranty, express or implied, as to results to be obtained by licensee, owners of the product(s), or any other person or entity from the use of the Nasdaq-100 Index® or any data included therein. The Corporations make no express or implied warranties, and expressly disclaim all warranties of merchantability or fitness for a particular purpose or use with respect to the Nasdaq-100 Index® or any data included therein. Without limiting any of the foregoing, in no event shall the Corporations have any liability for any lost profits or special, incidental, punitive, indirect or consequential damages, even if notified of the possibility of such damages.

<sup>8</sup> Options on NDX and MNX are currently listed for trading on Amex, BOX, CBOE, and ISE. See Securities Exchange Act Release No. 45163 (December 18, 2001), 66 FR 66958 (December 27, 2001) (imposing licensing fees for transactions in options on the NDX and MNX, among other things); Securities Exchange Act Release No. 51884 (June

by members for broker-dealer proprietary accounts.<sup>9</sup> The Exchange represents that these fees will only be charged to BOX members and shall apply to Linkage Orders<sup>10</sup> under a pilot program that is set to expire on July 31, 2007. The Exchange believes that the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced. BOX began trading options on RUT, NDX, and MNX on November 13, 2006 but did not begin charging fees for transactions in the above-referenced products until November 14, 2006, the date SR-BSE-2006-47 was filed with the Commission.

The Exchange has entered into licensing agreements to use various indexes and trademarks in connection with the listing and trading of index options on the Russell® 2000 Index, Nasdaq-100® Index and the Mini-NDX® Index. As with certain other licensed options, the Exchange is adopting a surcharge fee for trading in these options to defray the licensing costs. The Exchange believes that charging BOX Options Participants<sup>11</sup> that trade these instruments is the most equitable means of recovering the licensing costs.

## 2. Statutory Basis

The Exchanges believes that the proposal is consistent with the requirement of Section

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20, 2005), 70 FR 36973 (June 27, 2005) (correcting Amex's failure to file a proposed rule change with respect to its listing of NDX and MNX); Securities Exchange Act Release No. 54397 (August 31, 2006), 71 FR 53142 (September 8, 2006) (approving BOX NDX and MNX listing); Securities Exchange Act Release No. 51351 (March 9, 2005), 70 FR 12917 (March 16, 2005) (approving CBOE NDX and MNX listing); Securities Exchange Release No. 51397 (March 18, 2005), 70 FR 15372 (March 25, 2005) (approving ISE NDX and MNX listing).

<sup>9</sup> The Exchange notes that the fees that are the subject of this proposed rule change do not apply to public customer orders.

<sup>10</sup> See BOX Rules Chapter XII, Section 1 (defining Linkage Orders).

<sup>11</sup> See BOX Rules, Chapter 1, Section 1(a)(40) (defining Options Participants).

6(b) of the Act,<sup>12</sup> in general, and Section 6(b)(4) of the Act,<sup>13</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

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

The Exchange believes that the proposed rule change, as amended, does not 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 not solicited nor received comments on the proposed rule change.

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

Because the foregoing rule change, as amended, establishes or changes a due, fee, or other charge applicable only to a member, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>14</sup> and Rule 19b-4(f)(2)<sup>15</sup> thereunder. 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>16</sup>

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

<sup>13</sup> 15 U.S.C. 78f(b)(4).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>15</sup> 17 CFR 19b-4(f)(2).

<sup>16</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on December 20, 2006, the date on which the BSE submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

#### 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-2006-47 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-2006-47. 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 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-2006-47 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>17</sup>

Florence E. Harmon  
Deputy Secretary

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