

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59129; File No. SR-BSE-2008-57)

December 22, 2008

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. to List Options on the Mini-Nasdaq-100 Index at \$1 Strike Price Intervals

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 16, 2008, the Boston Stock Exchange, Inc. (“BSE” or “Exchange”) filed with the Securities and Exchange Commission (the “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 proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ 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 Exchange proposes to amend Section 6 (Series of Options Contracts Open for Trading) of Chapter IV and Section 10 (Terms of Index Option Contracts) of Chapter XIV of the Rules of the Boston Options Exchange Group, LLC (“BOX”) to allow BOX to list options on the Mini-Nasdaq-100 Index (“MNX” or “Mini-NDX”), which is based on 1/10th the value of the Nasdaq-100 Index (“NDX”), at \$1 strike price intervals. The text of the proposed rule change is available from the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet website at 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. The self-regulatory organization 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 amend Chapter XIV, Section 10 of the BOX Rules by adding new rule text which would allow BOX to list options on the Mini-Nasdaq-100 Index, which is based on 1/10th the value of the Nasdaq-100 Index, at \$1 or greater strike price intervals.⁵

Specifically, the Exchange proposes that the minimum strike price interval for Mini-NDX options will be 0.01 point (\$1.00). The Exchange believes that \$1 strike price intervals in Mini-NDX option series will provide investors with greater flexibility by allowing them to establish positions that are better tailored to meet their investment objectives.

For initial series, BOX would list at least two strike prices above and two strike prices below the current value of MNX at or about the time a series is opened for trading on BOX. As

⁵ Currently, under Chapter XIV, Sec. 10(c) of the BOX Rules, BOX has authority to list Mini-NDX options at \$2.50 strike price intervals.

part of this initial listing, BOX would list strike prices that are within 5 points from the closing value of MNX on the preceding day.

As for additional series, BOX would be permitted to add additional series when deemed necessary to maintain an orderly market, to meet customer demand or when the underlying MNX moves substantially from the initial exercise price or prices. To the extent that any additional strike prices are listed by BOX, such additional strike prices shall be within thirty percent (30%) above or below the closing value of MNX. BOX would also be permitted to open additional strike prices that are more than 30% above or below the current MNX value provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market Makers trading for their own account would not be considered when determining customer interest. In addition to the initial listed series, BOX may list up to sixty (60) additional series per expiration month for each series in Mini-NDX options. In addition, the Exchange proposes that BOX shall not list Long-Term Equity Anticipation Securities (“LEAPS”) on Mini-NDX options at intervals less than \$5.

The Exchange is also proposing to set forth a delisting policy with respect to Mini-NDX options. Specifically, BOX would, on a monthly basis, review series that are outside a range of five (5) strikes above and five (5) strikes below the current value of MNX and delist series with no open interest in both the put and the call series having a: (i) strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month.

Notwithstanding the proposed delisting policy, customer requests to add strikes and/or maintain strikes in Mini-NDX options in series eligible for delisting shall be granted.

Further, in connection with the proposed delisting policy, if BOX identifies series for delisting, BOX shall notify other options exchanges with similar delisting policies regarding eligible series for listing, and shall work with such other exchanges to develop a uniform list of series to be delisted, so as to ensure uniform series delisting of multiply listed Mini-NDX options.

It is expected that the proposed delisting policy for Mini-NDX options will be adopted by other options exchanges that list and trade Mini-NDX options.

The Exchange also proposes to add new Supplementary Material .05 to Chapter IV, Section 6 of the BOX Rules, which would be an internal cross reference stating that the intervals between strike prices for Mini-NDX option series would be determined in accordance with proposed new Chapter XIV, Section 10(c)(5) of the BOX Rules.

The Exchange has analyzed BOX's capacity and represents that it believes BOX and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of \$1 strikes or greater for Mini-NDX options.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,⁶ in general, and Section 6(b)(5) of the Act,⁷ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to prevent fraudulent and manipulative acts, 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. Specifically, the proposed rule change will allow BOX to list options on MNX at \$1 strike intervals, providing

⁶ 15 U.S.C. 78f(b).

investors with greater flexibility and allowing them to better tailor their investment objectives, while allowing BOX to remain competitive with other options exchanges listing \$1 strike intervals on MNX options.

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

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

Because the foregoing rule does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative for 30 days from the date on which it was filed, 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 Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

The Exchange stated in its filing that the proposed rule change is based in all material respects on a Chicago Board Options Exchange rule change recently approved by the Commission¹⁰ and does not raise any novel issues. Additionally, the Exchange believes the

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to be met.

¹⁰ See Securities Exchange Act Release No. 58924 (November 10, 2008), 73 FR 68464 (November 18, 2008) (SR-CBOE-2008-96).

proposed rule change is necessary to eliminate any confusion among members of multiple exchanges regarding the listing and trading of MNX options and for purposes of maintaining a fair and orderly market.

The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing. The Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest because such waiver will permit the Exchange to respond promptly to demand by market participants to list options on MNX at \$1 strike price intervals, and compete with other exchanges listing options on MNX at \$1 strike price intervals.¹¹ Therefore, the Commission designates the proposal operative upon 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.

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

¹¹ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-BSE-2008-57 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-2008-57. 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 10:00 a.m. and 3:00 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 No. SR-BSE-2008-57 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 Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon
Acting Secretary

¹² 17 CFR 200.30-3(a)(12).