

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-49850; File No. SR-BSE-2004-16)**

**June 10, 2004**

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to the Initial Allocation Plan of the Boston Options Exchange Facility**

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 May 26, 2004, the Boston Stock Exchange ("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 Exchange. The proposed rule change has been filed by the BSE as a "non-controversial" rule change pursuant to Rule 19b-4(f)(6) under the Act.<sup>3</sup> 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 BSE proposes to amend the list of options classes approved for initial allocation on its Boston Options Exchange facility ("BOX"). The text of the proposed rule change is available at the BSE and at 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received

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

on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts 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 the list of securities approved for initial allocation, as set forth in Chapter XXXVII of the BSE Rules, for market makers in BOX. The list of options classes approved for initial allocation was set forth in a rule proposal detailing the initial allocation process for BOX, which was

ultimately approved by the Commission on October 16, 2003.<sup>4</sup>

The initial allocation of approved classes, as set forth in aforementioned filing, was conducted on October 17, 2003. BOX commenced operations on February 6, 2004, after receiving approval from the Commission in January 2004. For a variety of reasons, including mergers, acquisitions, and failure to meet BOX listing standards, eighteen of the classes initially allocated to BOX participants were not listed. Those eighteen classes are as follows:

<u>Symbol</u>	<u>Security</u>
OVER	Overture Services, Inc.
BGEN	Biogen, Inc.
GMH	General Motors Class H
CLS	Celestica, Inc.
PDG	Placer Dome, Inc.
PCS	Sprint PCS Group
ONE	Bank One Corp.
INVN	Invision Technologies, Inc.
DYN	Dynegy, Inc.
BVF	BiovailCorp.
GG	Goldcorp, Inc.
AES	AES Corp.
PPD	Pre-Paid Legal Services, Inc.
ADCT	ADC Telecommunications, Inc.

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<sup>4</sup> See Securities Exchange Act Release No. 48644 (October 16, 2003), 68 FR 60423 (October 22, 2003) (approving File No. SR-BSE-2003-13).

TBS	Telebras Holders
IDPH	IDEC Pharmaceuticals Corp.
FBF	Fleet Boston Financial Corp.
AWE	AT&T Wireless Services

The Exchange is now seeking to replace those eighteen classes which were not originally listed with the following eighteen classes:

<u>Symbol</u>	<u>Security</u>
NT	Nortel Network Corp. Hldg. Co.
RIMM	Research in Motion Ltd.
JDSU	JDS Uniphase Corp.
NFLX	Netflix, Inc.
RJR	RJ Reynolds Tobacco Hldg, Inc.
SIRI	Sirius Satellite Radio, Inc.
X	United States Steel Corp.
CFC	Countrywide Financial Corp.
OVTI	Omnivision Technologies, Inc.
CMCSA	Comcast Corp. New
UTSI	UT Starcom, Inc.
STX	Seagate Technology
ET	E*Trade Financial Corp.
CREE	Cree, Inc.
CHINA	Chinadotcom Corporation
IGT	International Game Tech

APPX                    American Pharmaceutical, Inc.

TASR                    Taser International, Inc.<sup>5</sup>

The Exchange notes that, according to the rules approved by the Commission for the initial allocation, certain deposits were required for all firms requesting allocations in order to ensure that participants were making legitimate allocation requests. According to the approved deposit schedule, the deposit required for 16 of the original 18 securities, which were not originally listed (as set forth above), was \$300 per class. The other two classes fell into a different category, and the deposit required for them was \$750 per class. Of the firms contacted to ascertain whether they sought to have their deposits returned for those securities that BOX was not able to list, each chose to have their deposits remain with BOX to offset future transaction fees.<sup>6</sup> Nevertheless, the Exchange is not seeking any additional deposits for the options classes it is proposing to have replace those not originally listed by BOX, as set forth above.

Moreover, the Exchange represents that BOX is well ahead of its six-month schedule of having all classes allocated to all participants that requested allocations.

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<sup>5</sup> The original eighteen classes, which BSE proposes to replace, were part of the initial 250 classes approved for trading on BOX based on Options Clearing Corporation ("OCC") volume statistics from January 2003 through June 2003. See Securities Exchange Act Release No. 48644 (October 16, 2003), 68 FR 60423 (October 22, 2003) (approving File No. SR-BSE-2003-13). BSE represents that the proposed replacement classes were selected based on updated OCC volume statistics. Telephone conversation between John Boese, Chief Regulatory Officer, BSE, and Frank N. Genco, Attorney, Division of Market Regulation, Commission, on June 10, 2004.

<sup>6</sup> BSE represents that only 15 firms had represented the 18 classes at issue. BSE further represents that all 15 firms were informed that BOX planned to replace the original 18 classes and chose to have their deposits remain with BOX to offset further transaction fees. Telephone conversation between John Boese, Chief Regulatory Officer, BSE, and Frank N. Genco, Attorney, Division of Market Regulation, Commission, on June 10, 2004.

BOX anticipates filling all initial allocation requests by the end of June 2004. According to the Exchange, the classes proposed to replace those not originally listed will have no adverse effect on BOX's system capacity and will not affect the overall allocation schedule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, according to the Exchange, 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 Exchange.

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

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

Written comments were neither solicited nor received with respect to the proposed rule change.

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

Because, the foregoing proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative until 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, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change,<sup>9</sup> or such shorter time as designated by the Commission, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

Although Rule 19b-4(f)(6) under the Act<sup>12</sup> requires that an Exchange submit a notice of its intent to file at least five business days prior to the filing date, the Commission waived this requirement at the BSE's request. The BSE has also requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the Exchange to substitute

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<sup>9</sup> See letter from John Boese, Vice President and Chief Regulatory Officer, BSE, to Nancy Sanow, Assistant Director, Division, Commission, dated May 25, 2004.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> Id.

the proposed classes for those that it was unable to list according to the BOX original allocation plan as set forth in Chapter XXXVII of the BSE Rules. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>13</sup> At any time within 60 days of the filing of this 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
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BSE-2004-16 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-2004-16. This file number should be included on the subject line if e-mail is used. To help the Commission process and

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<sup>13</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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 Section, 450 Fifth Street, NW, Washington, DC 20549. 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-2004-16 and should be submitted on or before [insert date 21 days from publication in the Federal Register]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).