person whose relationship to the Unaffiliated Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate). An offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is an ''Affiliated Underwriting.''

6. The board of an Unaffiliated Underlying Fund, including a majority of the disinterested board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated Underlying Fund in an Affiliated Underwriting once an investment by a Series in the securities of the Unaffiliated Underlying Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The board of the Unaffiliated Underlying Fund will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Series in the Unaffiliated Underlying Fund. The board of the Unaffiliated Underlying Fund will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Underlying Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Underlying Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The board of the Unaffiliated Underlying Fund will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

7. An Unaffiliated Underlying Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Series in the securities of the Unaffiliated Underlying Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the determinations of the board of the Unaffiliated Underlying Fund were made.

8. Before investing in an Unaffiliated Underlying Fund in excess of the limit in section 12(d)(1)(A)(i), each Series and the Unaffiliated Underlying Fund will execute a Participation Agreement stating, without limitation, that the Depositor and Trustee and the board of directors or trustees of the Unaffiliated Underlying Fund and the investment adviser(s) to the Unaffiliated Underlying Fund, understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Unaffiliated Underlying Fund in excess of the limit in section 12(d)(1)(A)(i), a Series will notify the Unaffiliated Underlying Fund of the investment. At such time, the Series also will transmit to the Unaffiliated Underlying Fund a list of the names of each Series Affiliate and Underwriting Affiliate. The Series will notify the Unaffiliated Underlying Fund of any changes to the list of names as soon as reasonably practicable after a change occurs. The Unaffiliated Underlying Fund and the Series will maintain and preserve a copy of the order, the Participation Agreement, and the list with any updated information for the duration of the investment, and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Any sales charges and/or service fees charged with respect to Units of a Series will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the Conduct Rules of the NASD.

10. No Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 06–7998 Filed 9–21–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54467; File No. SR–BSE–2006–37]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendments No. 1 and No. 2 Thereto, To Re-Establish the Market Opening Pilot Program

September 18, 2006.

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 September 1, 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 September 8, 2006, the BSE filed Amendment No. 1 to the proposed rule change. On September 12, 2006, the BSE withdrew Amendment No. 1. On September 12, 2006, the BSE filed Amendment No. 2 to the proposed rule change.[3] Pursuant to Section 19(b)(3)(A) of the Act [4] and Rule 19b–4(f)(6) thereunder,[5] the BSE has designated this proposal as ''non-controversial,'' which renders the proposed rule change effective immediately upon filing with the Commission. 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 the Substance of the Proposed Rule Change

The BSE is proposing to amend its rules to extend from September 1, 2006 to August 6, 2007 the pilot program related to market opening procedures on the Boston Options Exchange facility (''BOX''). That pilot program expired on August 6, 2006.[6] The only change to the pilot program is an extension of the effective date from September 1, 2006 to August 6, 2007. The BSE does not

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 2 the BSE requested the Commission waive the 5-day pre-filing notice requirement and 30-day operative date delay contained in Rule 19b–4(f)(6)(iii), and made additional clarifications to the proposal.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] The BSE filed another proposed rule, SR–BSE–2006–36, to retroactively re-establish the market opening procedures pilot program for the time period August 6, 2006 through September 1, 2006.

propose making any substantive changes to the pilot program.

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, as amended, 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 original rule filing and Amendment No. 2 to the proposed rule is to re-establish BOX's market opening procedures pilot program which lapsed on August 6, 2006, for the time period September 1, 2006 through August 6, 2007.[7] Since approval of the initial pilot program, BOX has followed the pilot program market opening procedures. Amendment No. 2 requests the Commission waive the standard five-day pre-filing and 30-day operative delay requirements as specified in Rule 19b–4(f)(6)(iii) of the Act,[8] in order to re-establish the pilot program immediately. Amendment No. 2 also provides additional clarification to the original filing.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)[9] of the Act in general, and Section 6(b)(5)[10] of the Act in particular, that an exchange have rules that are designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposed rule change, as amended, will re-establish the market opening procedures pilot program, which provides a quick, efficient, fair and orderly market opening process.

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

The BSE does not believe that the proposed rule change, as amended, will result in 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

Written comments were neither solicited nor received.

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

This proposed rule change is filed pursuant to paragraph (A) of Section 19(b)(3) of the Act[11] and Rule 19b–4(f)(6)[12] thereunder. The proposed rule change, as amended, does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change, as amended, 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.[13]

The BSE requests the Commission waive the standard five-day pre-filing and thirty-day operative delay requirements as specified in Rule 19b–4(f)(6)(iii)[14] so that BOX has a market opening procedure which commences immediately. The Commission waives the 5-day pre-filing requirement. In addition, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow BOX to reinstate the opening procedures rules on a pilot basis immediately.[15] For these reasons, the Commission designates the proposal, as amended, to be effective and operative upon filing with the Commission.

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.* Please include File Number SR–BSE–2006–37 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–2006–37. 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, as amended, 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–2006–37 and should be submitted on or before October 13, 2006.

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[7] *See supra* footnote 6.

[8] 17 CFR 240.19b–4(f)(6)(iii).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] *See* 15 U.S.C. 78(b)(3)(C). For the purpose of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on September 12, 2006, the date the BSE filed Amendment No. 2.

[14] 17 CFR 240.19b–4(f)(6)(iii).

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

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 06–8038 Filed 9–21–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54465; File No. SR–CBOE–2006–76]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Its Marketing Fee Program

September 18, 2006.

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 September 1, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' 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. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by CBOE under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) 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

CBOE proposes to amend its marketing fee program. Below is the text of the proposed rule change. Proposed new language is in *italics;* deleted language is in [brackets].

Chicago Board Options Exchange, Inc.

Fees Schedule

[August 29]*September 1,* 2006

1. No Change.
2. Marketing Fee (6)(16): $.65
3.–4. No Change.

FOOTNOTES:

(1)–(5) No Change.

(6) The Marketing Fee will be assessed only on transactions of Market-Makers, RMMs, e-DPMs, DPMs, and LMMs resulting from [orders for less than 1,000 contracts] (i) *orders for less than 1,000 contracts* from payment accepting firms, or (ii) *customer orders for less than 1,000 contracts* that have designated a ''Preferred Market-Maker'' under CBOE Rule 8.13 at the rate of $.65 per contract on all classes of equity options, options on HOLDRs, options on SPDRs, options on DIA, options on NDX, and options on RUT. The fee will not apply to: Market-Maker-to-Market-Maker transactions including transactions resulting from orders from non-member market-makers; transactions resulting from inbound P/A orders or a transaction resulting from the execution of an order against the DPM's account if an order directly related to that order is represented and executed through the Linkage Plan using the DPM's account; transactions resulting from accommodation liquidations (cabinet trades); and transactions resulting from dividend strategies, merger strategies, and short stock interest strategies as defined in footnote 13 of this Fees Schedule. This fee shall not apply to index options and options on ETFs (other than options on SPDRs, options on DIA, options on NDX, and options on RUT). A Preferred Market-Maker will only be given access to the marketing fee funds generated from a Preferred order if the Preferred Market-Maker has an appointment in the class in which the Preferred order is received and executed.

Rebate/Carryover Process. If less than 80% of the marketing fee funds collected in a given month is paid out by the DPM/LMM or Preferred Market-Maker in a given month, then the Exchange would refund such surplus at the end of the month on a pro rata basis based upon contributions made by the Market-Makers, RMMs, e-DPMs, DPMs and LMMs in that month. However, if 80% or more of the funds collected in a given month is paid out by the DPM/LMM or Preferred Market-Maker, there will not be a rebate for that month and the excess funds will be included in an Excess Pool of funds to be used by the DPM/LMM or Preferred Market-Maker in subsequent months. The total balance of the Excess Pool of funds for a DPM/LMM cannot exceed $25,000, and the total balance of the Excess Pool of funds for a Preferred Market-Maker cannot exceed $80,000. If in any month the DPM/LMM Excess Pool balance were to exceed $25,000, or the Preferred Market-Maker Excess Pool balance were to exceed $80,000, the funds in excess of $25,000 or $80,000, respectively, would be refunded on a pro rata basis based upon contributions made by the Market-Makers, RMMs, DPMs, e-DPMs and LMMs in that month.

CBOE's marketing fee program as described above will be in effect until June 2, 2007.

Remainder of Fees Schedule—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 Exchange 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 amend its marketing fee program as it relates to orders designating a ''Preferred Market-Maker'' under CBOE Rule 8.13. Going forward, CBOE proposes to assess the fee only on transactions of Market-Makers, RMMs, e-DPMs, DPMs, and LMMs (collectively ''Market-Makers'') resulting from customer orders[5] for less than 1,000 contracts that have designated a ''Preferred Market-Maker'' under CBOE Rule 8.13. The Exchange states that previously, transactions of Market-Makers resulting from all orders of 1,000 contracts or less that have designated a ''Preferred Market-Maker'' under CBOE Rule 8.13 were assessed the marketing fee. CBOE would continue to assess the fee on transactions of Market-Makers resulting from orders for less than 1,000 contracts from payment accepting firms.

CBOE states that it is not amending its marketing fee program in any other respects.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] CBOE represents that, as used in its Fees Schedule, the term ''customer'' refers to a public customer. Telephone conference between David Liu, Special Counsel, Division of Market Regulation, Commission, and Patrick Sexton, Associate General Counsel, Exchange, on September 12, 2006.