

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57762; File No. SR-BSE-2008-25)

May 1, 2008

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to Proposal to Transfer Boston Stock Exchange, Inc.'s Ownership Interest in Boston Options Exchange Group, LLC

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 April 23, 2008, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the BSE. 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 transfer its 21.87% ownership interest in the Boston Options Exchange Group, LLC ("BOX"), the operator of its Boston Options Exchange facility ("BOX Market")³ to MX US 2, Inc. ("MX US"), a wholly-owned U.S. subsidiary of the Montréal Exchange Inc. ("MX"), such that, following the transfer, the Exchange's aggregate Percentage Interest will be 0% and MX US's Percentage Interest will increase to 53.24%.⁴ The Exchange

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78c(a)(2).

⁴ MX US currently has a 31.37% ownership interest in BOX. The BSE notes that in SR-BSE-2008-06, MX US's ownership interest in BOX was rounded up to 31.4%. See Securities Exchange Act Release No. 57260 (February 1, 2008), 73 FR 7617 (February 8, 2008) (SR-BSE-2008-06).

will remain the Regulatory Authority⁵ for the BOX Market and is submitting the proposed rule change to the Commission to approve the transfer of interests to MX US and to amend the Fifth Amended and Restated Operating Agreement (the “5th BOX LLC Agreement”) of BOX accordingly (such agreement, as amended, the “6th BOX LLC Agreement”).⁶ The Exchange is requesting confidential treatment of the sections of the 6th BOX LLC Agreement, which contain confidential business information and do not relate to the control and governance of BOX.

The text of the proposed rule change is available at the BSE, the Commission’s Public Reference Room, and <http://www.bostonstock.com>. The text of Exhibits 3A and 3B of the proposed rule change are also available on the Exchange’s Web site and on the Commission’s Web site (<http://www.sec.gov/rules/sro/bse.shtml>).

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 13, 2004, the Commission approved four BSE proposals that together

⁵ The “Regulatory Authority” is defined as the BSE as the non-equity, non-Member authority of BOX and, together with and pursuant to delegated authority from BSE, the Boston Options Exchange Regulation LLC (“BOXR”), as approved by the SEC. See Section 1.1, 6th BOX LLC Agreement.

⁶ Capitalized terms not otherwise defined herein shall have the meanings set forth in the 6th BOX LLC Agreement.

established the BOX Market as a facility of the Exchange.⁷ This proposal relates to Section 8.4(f) of the 5th BOX LLC Agreement, which requires that any Transfer⁸ that results in the acquisition and holding by any Person, alone or together with any Affiliate of such Person, of an aggregate Percentage Interest level which meets or crosses the threshold level of 20% or any successive 5% Percentage Interest level⁹ be subject to the rule filing process pursuant to Section 19(b)(1) of the Act¹⁰ and Rule 19b-4 thereunder.¹¹

BSE Transfer of BOX Units

The NASDAQ OMX Group, Inc. (“Nasdaq”) has entered into an agreement to purchase the BSE but not the BSE’s BOX Units. In conjunction therewith, the BSE proposes to Transfer such BOX Units to MX US. The BSE is proposing to Transfer all of its BOX Units to MX US, which would result in the BSE’s Percentage Interest falling to 0% and MX US’s Percentage Interest increasing from 31.37% to 53.24%. Since MX US already holds an ownership interest in BOX in excess of 20% and the BSE’s proposed Transfer of its BOX Units to MX US would cross the 5% threshold specified in Section 8.4(f) of the 5th BOX LLC Agreement, such Transfer

⁷ See Securities Exchange Act Release Nos. 49066 (January 13, 2004), 69 FR 2773 (January 20, 2004) (SR-BSE-2003-17) (establishing a fee schedule for the proposed BOX Market); 49065 (January 13, 2004), 69 FR 2768 (January 20, 2004) (SR-BSE-2003-04) (creating BOXR to which the BSE would delegate its self-regulatory functions with respect to the BOX Market); 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR-BSE-2002-15) (approving trading rules for the BOX Market); and 49067 (January 13, 2004), 69 FR 2761 (January 20, 2004) (SR-BSE-2003-19) (approving certain regulatory provisions of the operating agreement of BOX).

⁸ A “Transfer” occurs when any member of BOX (“Member”) disposes of, sells, alienates, assigns, exchanges, participates, subparticipates, encumbers, or otherwise transfers in any manner all or any portion of its Units. See Section 8.1(a), 5th BOX LLC Agreement.

⁹ See Section 8.4(f), 5th BOX LLC Agreement.

¹⁰ 15 U.S.C. 78s(b)(1).

¹¹ 17 CFR 240.19b-4.

necessitates SEC approval.¹² MX US, as a current Member of BOX, is already a party to, and is therefore bound by the provisions of, the 5th BOX LLC Agreement.¹³

The BSE states that the Act does not require that a self-regulatory organization (“SRO”) have any ownership interest in the operator of one of its facilities. The Commission has stated in a similar case involving the establishment of Archipelago Exchange (“ArcaEx”) as a facility of the Pacific Exchange, Inc. (“PCX”), that a national securities exchange need not have a significant ownership interest in the operator of one of its facilities.¹⁴ Although the BSE will no longer hold an ownership interest in BOX, the BSE will continue to act as the SRO and regulatory services provider for the BOX Market. The BSE and BOXR, by delegated authority, will act as the Regulatory Authority for the BOX Market. Furthermore, the BOX Market will remain a facility of the BSE pursuant to Section 3(a)(2) of the Act.¹⁵

Amendments to BOX LLC Agreement

In conjunction with the BSE’s Transfer of its BOX Units to MX US, the BSE is proposing to amend the 5th BOX LLC Agreement to reflect modifications to the BSE’s role as Regulatory Authority of the BOX Market. Below is a description of certain proposed amendments to the 5th BOX LLC Agreement.

¹² See Section 8.4(f), 5th BOX LLC Agreement.

¹³ Although MX has transferred its BOX Units to MX US, MX has signed an Instrument of Accession through which MX has agreed to abide by all of the provisions of the 5th BOX LLC Agreement, as amended and in effect from time to time, including those provisions requiring submission to the jurisdiction of the Commission. See SR-BSE-2008-28.

¹⁴ See Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR-PCX-00-25). ArcaEx was operated by Archipelago Exchange LLC (“Arca LLC”). At the time of its approval, PCX’s ownership interest in Arca LLC consisted solely of a 10% interest in Archipelago Holdings, LLC, the parent company of Arca LLC.

¹⁵ 15 U.S.C. 78c(a)(2).

Regulatory Director

Since the BSE's Percentage Interest in BOX will be less than 8%, the BSE will no longer be entitled to maintain two directors on the BOX Board, but the BSE will have the right to designate one non-voting Regulatory Director¹⁶ to the BOX Board, pursuant to Section 4.1(a)(i) of the 6th BOX LLC Agreement.¹⁷

Regulatory Veto

Under the provisions of the 5th BOX LLC Agreement, the BSE holds veto power over certain "Major Actions," which relate to both commercial and regulatory actions.¹⁸ After the sale of the BSE's BOX Units to MX US, the BSE will continue to have a regulatory interest in the BOX Market but will no longer have a commercial interest in BOX. Consequently, the BSE will no longer hold veto power over Major Actions of BOX but will instead hold veto power over all regulatory actions ("Regulatory Veto"). The terms of the Regulatory Veto provide that the Regulatory Authority shall receive notice of planned or proposed changes to BOX (except

¹⁶ The "Regulatory Director" is defined as the individual designated as such by the BSE pursuant to Section 4.1(b) of the 6th BOX LLC Agreement. The Regulatory Director must be a member of the senior management of the regulation staff of the Regulatory Authority, who is separated from the business operations of the BSE via effective information barriers. The Regulatory Director shall not be an employee, officer, or director of Nasdaq or its Affiliates, other than the BSE and the BSE's subsidiaries. See Section 1.1, 6th BOX LLC Agreement.

¹⁷ As long as BOX Market remains a facility of the BSE pursuant to Section 3(a)(2) of the Act, the BSE shall have the right to retain/designate one Regulatory Director, whether or not the BSE is admitted as a Member of BOX. See Section 4.1(a)(i), 6th BOX LLC Agreement.

¹⁸ See Section 4.4(b), 5th BOX LLC Agreement.

certain Non-Market Matters)¹⁹ or the BOX Market (including, but not limited to, the System) pursuant to procedures established by the mutual agreement of BOX and the Regulatory Authority, which will require an affirmative approval of such changes by the Regulatory Authority prior to implementation.²⁰ The planned or proposed changes subject to the Regulatory Veto shall include, without limitation: (A) planned or proposed changes to the System; (B) the sale by BOX of any material portion of its assets; (C) taking any action to effect a voluntary, or which would precipitate an involuntary, dissolution or winding up of BOX; or (D) obtaining regulatory services from a regulatory services provider other than the Regulatory Authority.²¹ The Regulatory Authority, in its sole discretion, may direct BOX, subject to approval of the BOXR Board, to modify a proposal as necessary to ensure that it does not cause a Regulatory Deficiency if the Regulatory Authority, in its sole discretion, determines that the proposed or planned changes to BOX or the BOX Market (including, but not limited to, the System) could cause a Regulatory Deficiency if implemented.²² The Regulatory Authority will also have the authority to direct BOX, subject to the approval of the BOXR Board, to undertake modifications

¹⁹ “Non-Market Matters” include changes relating solely to one or more of the following: marketing, administrative matters, personnel matters, social or team-building events, meetings of Members, communication with Members, finance, location and timing of BOX Board meetings, market research, real property, equipment, furnishings, personal property, intellectual property, insurance, contracts unrelated to the operation of the BOX Market, and de minimis items. See Section 3.2(a)(ii), 6th BOX LLC Agreement.

²⁰ See Section 3.2(a)(ii), 6th BOX LLC Agreement.

²¹ Id.

²² See Section 3.2(a)(iii), 6th BOX LLC Agreement. A “Regulatory Deficiency” is defined as “the operation of the BOX (in connection with matters that are not Non-Market Matters) or the BOX Market (including, but not limited to, the System) in a manner that is not consistent with the Regulatory Authority Rules and/or the SEC Rules governing the BOX Market or BOX Options Participants, or that otherwise impedes the Regulatory Authority’s ability to regulate the BOX Market or BOX Options Participants or to fulfill its obligations under the Exchange Act as an SRO.” See Section 1.1, 6th BOX LLC Agreement.

to BOX (but not to include Non-Market Matters) or the BOX Market as are necessary or appropriate to eliminate or prevent a Regulatory Deficiency in the event that the Regulatory Authority, in its sole discretion, determines that a Regulatory Deficiency exists or is planned.²³

Board Composition

Although BOX itself will not carry out any regulatory functions, all of its activities must be consistent with the Act. For example, provisions set forth in Sections 4.2(a) and 5.3 of the 6th BOX LLC Agreement state that each unit holder and director of BOX agrees to cooperate with the Commission and the BSE in carrying out their regulatory responsibilities. The BOX Market, as a facility of an exchange, is not solely a commercial enterprise; it is an integral part of an SRO registered pursuant to the Act and is subject to the obligations imposed by the Act. These obligations endure so long as the BOX Market is a facility of the Exchange, regardless of whether the BSE has an ownership interest in BOX. In recognition of these obligations, the BSE has agreed that for so long as the BOX Market remains a facility of the BSE pursuant to Section 3(a)(2) of the Act, BOX shall have the right to recommend at least 10% of the BOXR Board (but no fewer than one director) for election to the BOXR Board.²⁴ The BOXR director recommended by BOX shall: (1) have the right to attend all BOXR Board meetings and committees thereof; (2) receive equivalent notice of BOXR Board meetings and committees

²³ See Section 3.2(a)(iv), 6th BOX LLC Agreement.

²⁴ See Section 4.1(f), 6th BOX LLC Agreement. The BOXR Board shall also include at least two BOX Options Participant directors (but not less than 20% of all directors on the BOXR Board) selected in accordance with the BOXR Limited Liability Company Agreement and By-Laws and at least four directors who do not have a material direct or indirect relationship with Nasdaq, its Affiliates, or any Regulatory Outsourcing provider (other than service solely as a director of BOXR and/or BSE). Id.

“Regulatory Outsourcing” is defined as all BOX-related regulatory functions that are outsourced by the BSE to the Financial Industry Regulatory Authority or other service provider that is an SRO. See Section 1.1, 6th BOX LLC Agreement.

thereof as other BOXR directors; and (3) receive a copy of the meeting materials provided to other BOXR directors, including, without limitation, agendas, action items, and minutes.²⁵

The BSE has also agreed to delegate all actions and decisions relating to the Regulatory Authority Rules,²⁶ regulation of the BOX Market (except regulatory actions and decisions delegated to the BSE Regulatory Oversight Committee) and appeals from regulatory decisions of the BOXR Board to a committee of the BSE Board (the “BOX Committee”).²⁷ The resolutions to be adopted by the BSE Board to establish the BOX Committee are being filed herein as proposed rules of the Exchange. The resolutions reflect the compositional requirements for the BOX Committee that are also required by the 6th BOX LLC Agreement.²⁸ In addition, the resolutions provide that the BOX Committee may not be dissolved, and the resolutions and the powers of the BOX Committee established thereby may not be altered, amended, removed, or abridged, without the express written consent of BOX. In addition, any resolution or other action that would have the effect of dissolving the BOX Committee or altering, amending, removing, or abridging the resolutions or the powers of the BOX Committee established thereby must be submitted to the BSE Board, and if the same must be filed with, or filed with and approved by,

²⁵ See Section 4.1(f), 6th BOX LLC Agreement.

²⁶ “Regulatory Authority Rules” are defined as the rules of the Regulatory Authority, including for the avoidance of doubt, the BOX Rules, that constitute “rules of an exchange,” within the meaning of Section 3 of the Act, and that pertain to the BOX Market. See Section 1.1, 6th BOX LLC Agreement.

²⁷ See Section 4.1(f), 6th BOX LLC Agreement.

²⁸ The BOX Committee of the BSE Board shall include a BOX Options Participant representative, in accordance with the BSE’s By-Laws, to serve as a representative of BOX Options Participants and four other directors who do not have a material direct or indirect relationship with Nasdaq, its Affiliates, or any Regulatory Outsourcing provider (other than service as directors of the BSE and/or BOXR). Furthermore, at least 50% of the BOX Committee must be Public Directors, as defined in the BSE’s By-Laws. Id.

the SEC under Section 19 of the Act, then it shall not be effective until filed with, or filed with and approved by, the SEC, as the case may be.

The BSE has also agreed that for so long as the BOX Market remains a facility of the BSE pursuant to Section 3(a)(2) of the Act, BOX shall have the right to designate one non-voting participant (“Non-Voting Participant”) to the BSE Board.²⁹ The Non-Voting Participant shall: (1) have the right to attend all meetings of the BOX Committee and all BOX-related deliberations of the BSE Board and committees thereof (collectively, “BOX-Related Meetings”); (2) receive equivalent notice of BOX-Related Meetings as BSE directors; and (3) receive a copy of the meeting minutes provided to BSE directors, including agendas, action items, and minutes for all BOX-Related Meetings.³⁰

The BSE has agreed that the directors sitting on the BOXR Board or any committees thereof or the BOX Committee or otherwise engaged in BOX-Related Meetings (other than by membership on the BSE Regulatory Oversight Committee) shall not have a material direct or indirect relationship with Nasdaq or its Affiliates or any Regulatory Outsourcing provider (other than service as directors of the BSE and/or BOXR).³¹ Furthermore, all other persons permitted to attend meetings of the BOXR Board or any committees thereof or the BOX Committee or otherwise engaged in BOX-Related Meetings shall not have a material direct or indirect relationship with Nasdaq or its Affiliates or any Regulatory Outsourcing provider unless they

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Id.

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Id.

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See Section 4.1(f), 6th BOX LLC Agreement. Material direct or indirect relationship includes, without limitation, any of the following: being an Affiliate; serving as a board member, employee, officer, consultant, advisor, or any Regulatory Outsourcing provider; being a party to any contractual or other relationship pursuant to which more than \$50,000 is paid; reporting to, controlling, being controlled by, or holding an investment greater than 5% in any such Person; and being a parent, child, sibling, spouse, or in-law of such Person. Id.

are: (i) Permitted Recipients;³² (ii) BOXR directors, officers, or employees; (iii) other parties making presentations to directors of the BSE Board engaged in BOX-Related Meetings, the BOXR Board, BOX Committee, or BSE Regulatory Oversight Committee, if such parties' participation is only to the extent necessary to make such presentations; or (iv) consented to by BOX.³³

Books and Records

In accordance with the BSE's obligations as the SRO for the BOX Market, the books, records, premises, officers, directors, agents, and employees of BOX shall be deemed to be the books, premises, officers, directors, agents, and employees of the Regulatory Authority for the purpose of, and subject to, oversight pursuant to the Act.³⁴ Furthermore, the books and records of BOX shall be subject at all times to inspection and copying by the Regulatory Authority and

³² "Permitted Recipients" are defined as: (A) the BSE's Chief Regulatory Officer and only those members of his regulatory staff responsible for regulatory technology and budget, counsel to the BSE's Chief Regulatory Officer, or staff of the BSE's internal audit department (it being agreed and understood, for purposes of this definition that these roles may be performed for the BSE by Nasdaq employees serving comparable regulatory functions for Nasdaq), (B) any member of the BSE Board serving on the BOX Committee or the BSE Regulatory Oversight Committee, (C) Nasdaq's Chief Regulatory Officer and his staff in the Office of General Counsel, (D) any member of the Nasdaq Board of Directors serving on the Nasdaq Regulatory Oversight Committee, and (E) any Professional Services provider. See Section 1.1, 6th BOX LLC Agreement.

"Professional Services" is defined as services performed by outside counsel, consultants, Regulatory Outsourcing, or subcontractors for the benefit of BOX or the BOX Market. Id.

³³ See Section 4.1(f), 6th BOX LLC Agreement.

³⁴ See Section 12.1, 6th BOX LLC Agreement.

the SEC.³⁵ Inspection, copying, and review of the books and records of BOX by the Regulatory Authority at the premises of BOX, and access to any copied books and records removed from the premises of BOX or produced to the Regulatory Authority at its request, shall in all cases be conducted by, or limited to, BSE employees who are Permitted Recipients and/or directors or employees of BOXR.³⁶

Confidential Information

All Members of BOX and the Regulatory Authority are prohibited from using BOX Confidential Information³⁷ otherwise than in connection with its respective activities contemplated by the 6th BOX LLC Agreement and other related agreements (the “Agreements”) or pursuant to the Act and the rules and regulations thereunder.³⁸ All Members of BOX and the Regulatory Authority are prohibited from disclosing any BOX Confidential Information to any Person except as expressly permitted by the Agreements and pursuant to the Act and the rules

³⁵ Id. BOX shall not be entitled to refuse the inspection, review, or copying of its books and records by the Regulatory Authority as provided in Section 12.1 of the 6th BOX LLC Agreement but shall be entitled to damages in the event any inspection, copying, or review of BOX books and records by the Regulatory Authority is, in whole or in part, used by the Regulatory Authority or any of its Affiliates for any purpose other than to fulfill the Regulatory Authority’s regulatory obligations. Id.

³⁶ Id.

³⁷ “BOX Confidential Information” includes any financial, scientific, technical, trade, or business secrets of BOX and any financial, scientific, technical, trade, or business materials that BOX treats, or is obligated to treat, as confidential or proprietary, including, but not limited to, innovations or inventions belonging to BOX and confidential information obtained by or given to BOX about or belonging to its suppliers, licensors, licensees, partners, affiliates, customers, potential customers, or others. The definition of BOX Confidential Information, with respect to any Person, shall not include information which: (i) is publicly known through publication or otherwise through no wrongful act of such Person; or (ii) is received by such Person from a third Party who rightfully discloses it to such Person without restriction on its subsequent disclosure. See Section 1.1, 6th BOX LLC Agreement.

³⁸ See Section 16.2, 6th BOX LLC Agreement.

and regulations thereunder.³⁹ The Commission and the Regulatory Authority, however, are not limited or impeded in their right to access and examine BOX Confidential Information. In addition, the 6th BOX LLC Agreement does not limit or impede the ability of a Member, officer, director, agent, or employee of a Member to disclose BOX Confidential Information to the SEC or the Regulatory Authority.⁴⁰

Furthermore, all confidential information, including BOX Confidential Information, pertaining to regulatory matters of BOX and the BOX Market (including, but not limited to, disciplinary matters, trading data, trading practices, and audit information) contained in the books and records of BOX shall: (i) not be made available to any persons other than to those officers, directors, employees, and agents of BOX that have a reasonable need to know the contents thereof; (ii) be retained in confidence by BOX and the officers, directors, employees, and agents of BOX; and (iii) not be used for any commercial purposes.⁴¹

Future Amendments to BOX LLC Agreement

When BOX formally presents any amendments, modifications, waivers, or supplements to the 6th BOX LLC Agreement or any future amended BOX LLC Agreement (“BOX LLC Agreement”) to the BOX Board for approval, BOX represents that it will provide prompt notice to the Regulatory Authority and the Regulatory Director and submit any proposed amendments to the BOX Committee for its review and filing with the SEC if deemed necessary under Section 19 of the Act and the rules promulgated thereunder.⁴² BOX, however, shall not be required to

³⁹ Id. No Member or Regulatory Authority shall share BOX Confidential Information with Nasdaq or its Affiliates, other than BSE and BOXR, or as permitted in the Regulatory Services Agreement. Id.

⁴⁰ See Section 16.5, 6th BOX LLC Agreement.

⁴¹ See Section 16.6, 6th BOX LLC Agreement.

⁴² See Section 19.1, 6th BOX LLC Agreement.

obtain the approval of the Regulatory Authority for any amendment to the BOX LLC Agreement pursuant to which the BOX Market would cease to be a facility of the BSE within the meaning of Section 3 of the Act, provided that such amendment shall be filed with, or filed with and approved by, the SEC, as the case may be, before such amendment may be effective.⁴³ In the event the BSE ceases to be the Regulatory Authority, the BSE shall no longer be a party to the BOX LLC Agreement and thereafter the provisions of the BOX LLC Agreement shall not apply to the BSE or BOXR except for certain delineated provisions, which shall survive.⁴⁴

Jurisdiction

Each Member of BOX acknowledges that, to the extent that they are related to BOX activities, the books, records, premises, officers, directors, agents, and employees of the Members shall be deemed to be the books, records, premises, officers, directors, agents, and employees of the Regulatory Authority for the purpose of and subject to oversight pursuant to the Act.⁴⁵ BOX, the Members and the officers, directors, agents, and employees of each, irrevocably submit to the exclusive jurisdiction of the U.S. federal courts, the SEC, and the Regulatory Authority for the purposes of any suit, action, or proceeding pursuant to the U.S. federal securities laws and the rules or regulations thereunder, arising out of, or relating to, BOX activities or Section 19.6(a) of the 6th BOX LLC Agreement.⁴⁶ Furthermore, BOX, the Regulatory Authority, and each Member are required to take necessary action to ensure that the officers, directors, and employees of BOX, the Regulatory Authority, and each Member consent

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Id.

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Id.

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See Section 19.6(a), 6th BOX LLC Agreement.

⁴⁶

See Section 19.6(b), 6th BOX LLC Agreement.

to the applicability of certain of the provisions in the 6th BOX LLC Agreement, including provisions relating to confidentiality, books and records, and jurisdiction.⁴⁷

Conclusion

The BSE will remain the SRO for the BOX Market, and the BSE will continue to provide the regulatory services for the BOX Market in order for BOX to conduct BOX's business in a manner consistent with the regulatory and oversight responsibilities of the BSE, even though the BSE will no longer have an ownership interest in BOX. The BSE proposes to amend the 5th BOX LLC Agreement to make the aforementioned changes and reflect the BSE's status as the Regulatory Authority.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,⁴⁸ in general, and furthers the objectives of Section 6(b)(1) of the Act,⁴⁹ in particular, in that it ensures that the Exchange is so organized and has the capacity to carry out the purposes of the Act and to comply and to enforce compliance by the Exchange's members with the Act, the rules and regulations of the Act, and the rules of the Exchange. The Exchange also believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Act,⁵⁰ in particular, in that it is designed to facilitate transactions in securities, to prevent fraudulent and manipulative acts and 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

⁴⁷ See Section 19.6(c), 6th BOX LLC Agreement.

⁴⁸ 15 U.S.C. 78f(b).

⁴⁹ 15 U.S.C. 78f(b)(1).

⁵⁰ 15 U.S.C. 78f(b)(5).

facilitating transactions in securities, 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.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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. Please include File Number SR-BSE-2008-25 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BSE-2008-25. 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 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-2008-25 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵¹

Florence E. Harmon
Deputy Secretary

⁵¹ 17 CFR 200.30-3(a)(12).