

trust or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that JPMC is an affiliated person of each of the Applicants within the meaning of section 2(a)(3) of the Act. Applicants state that, as a result of the Injunction, they would be subject to the prohibitions of section 9(a).

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting them from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standards for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that none of their current or former officers or employees who are engaged in the provision of investment advisory services to the Funds participated in any way in the conduct underlying the Injunction. Certain Funds held securities issued by Enron at the time of the conduct underlying the Injunction. Applicants state that as far as they are aware, none of the officers, portfolio managers or any other investment personnel employed by Applicants had any knowledge of any non-public information relating to, or had any involvement in, the conduct underlying the Injunction. Applicants further state that they had, and continue to have, policies and procedures in place designed to prohibit or restrict communications with other JPMC employees.

5. Applicants state that the inability to continue providing advisory services to the Funds would result in potentially severe hardships for the Funds and their

shareholders. Applicants also state that they have distributed, or will distribute as soon as reasonably practical, written materials, including an offer to meet in person to discuss the materials, to the boards of directors or trustees of the Funds (the "Boards"), including the directors who are "interested persons," as defined in section 2(a)(19) of the Act, of such Funds and their independent legal counsel as defined in rule 0-1(a)(6) under the Act, if any, regarding the Injunction, any impact on the Funds and the application. Applicants will provide the Boards with all information concerning the Injunction and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants also assert that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. Applicants state that they have committed substantial resources to establish an expertise in advising and subadvising Funds. Applicants state that they have not received any orders under section 9(c) of the Act in the past. Applicants recently applied for an exemption pursuant to section 9(c) of the Act for conduct relating to certain research analysts' conflicts of interest.³

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly, *It is hereby ordered*, pursuant to section 9(c) of the Act, that Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the

³ J.P. Morgan Securities Inc. *et al.*, File No. 812-12959.

Injunction, subject to the condition in the application, until the date the Commission takes final action on an application for a permanent order.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03-19617 Filed 7-31-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48229; File No. SR-BSE-2003-04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to the Creation of Boston Option Exchange Regulation, L.L.C.

July 25, 2003.

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 July 17, 2003, 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 Exchange. On July 25, 2003, the Exchange amended the proposed rule change.³ 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 Substance of the Proposed Rule Change

The Exchange proposes to create a new options regulatory subsidiary, Boston Option Exchange Regulation, L.L.C. ("BOXR"). The text of the proposed rule change is set forth below. Proposed new language is in *italics*.

* * * * *

Rules of the Board of Governors

* * * * *

Chapter XXXVI

SEC. 1 Delegation, Authority and Access

(a) *The Boston Stock Exchange, Inc., delegates to its subsidiary (Boston Options Exchange Regulation, L.L.C.,*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See facsimile from John Boese, Vice President, Legal and Compliance, Exchange, to Deborah Flynn, Assistant Director, Division of Market Regulation, Commission, dated July 25, 2003 ("Amendment No. 1"). Amendment No. 1 supersedes and replaces the proposed rule change in its entirety.

hereinafter "BOXR") the authority to act on behalf of the Exchange as set forth in a Plan of Allocation and Delegation adopted by the Board of Governors and approved by the Securities and Exchange Commission pursuant to its authority under the Securities Exchange Act of 1934 ("Act").

(b) Notwithstanding any delegation of authority to BOXR pursuant to this rule, the staff, books, records and premises of BOXR are the staff, books, records and premises of the Exchange subject to oversight pursuant to the Act, and all officers, directors, employees and agents of BOXR are the officers, directors, employees and agents of the Exchange for purposes of the Act.

SEC. 2 Plan of Delegation of Functions and Authority by the Boston Stock Exchange, Inc., to Boston Options Exchange Regulation, LLC

The Boston Stock Exchange, Inc. ("BSE" or "Exchange"), the registered national securities exchange pursuant to Section 6 of the Act, is the parent company of the wholly-owned subsidiary BOXR. The Boston Options Exchange ("BOX") is a facility of the BSE pursuant to Section 3(a) of the Act operated by Boston Options Exchange Group, L.L.C. ("BOX LLC")

A. Functions and Authority of the BSE

The BSE shall have ultimate responsibility for the rules and regulations of the Exchange and its operation and administration. As set forth below, the BSE has delegated certain authority and functions to its subsidiary, BOXR. Actions taken pursuant to delegated authority, however, remain subject to review, ratification or rejection by the BSE Board of Governors in accordance with procedures established by that Board. Any function or responsibility of the BSE as a registered national securities exchange under the Act, or as set forth in the Certificate of Incorporation of the Exchange, the Constitution, the By-laws, the BSE Rules, or the L.L.C. Agreement of Boston Options Exchange Group, is hereby reserved, except as expressly delegated to BOXR. In addition, the BSE expressly retains the following authority and functions:

1. To exercise overall responsibility for ensuring that BSE's statutory and self-regulatory obligations and functions are fulfilled.

2. To delegate authority to BOXR to take actions on behalf of the Exchange.

3. To appoint the BOXR Options Officials (an "Options Official" is "an officer of BOXR vested by the BOXR Board with certain authority to supervise option trading on BOX." See

Rules of the Boston Options Exchange Facility, Chapter I, Section 1).

4. To review the rulemaking and disciplinary decisions of BOXR.

5. To coordinate actions of BOXR and BOX as necessary.

6. To resolve any regulatory disputes among BOXR and BOX LLC.

7. To administer common overhead and technology of BOXR and BSE.

8. To administer internal reviews of BOX LLC and BOXR as deemed necessary.

9. To manage external BSE relations on major regulatory policy and/or surveillance issues regarding the BOX options market.

10. To direct BOXR and BOX LLC to take action necessary to effectuate the purposes and functions of BOX as a facility of the Exchange.

11. In the BSE's role as the sole owner of BOXR, to incorporate in its Board of Governors and Nominating Committee responsibilities, a process to elect the Board of Directors of BOXR ("BOXR Board") pursuant to the BOXR L.L.C. Agreement and BOXR By-Laws.

12. To take action in an area of responsibility delegated to BOXR below.

B. Access to and Status of Books, Records, Premises, Officers, Directors, Agents and Employees of BOX LLC.

1. Notwithstanding the delegation of authority to BOXR, as set forth below, the books, records, premises, officers, directors, agents and employees of BOX LLC shall be the books, records, premises, officers, directors, agents and employees of BSE for purposes of and subject to oversight pursuant to the Securities Exchange Act. The books and records of BOX LLC shall be subject at all times to inspection and copying by the BSE, BOXR and the Securities and Exchange Commission ("Commission").

2. BOX LLC is required to maintain all books and records related to BOX within the United States.

3. Paragraph (1) above shall not create any rights or benefits for any person or entity other than the Commission, the BSE and BOXR.

C. Delegation of Responsibilities and Functions

Subject to Section A(12) above and the review, ratification, or rejection by the BSE Board, the BSE hereby delegates to BOXR and BOXR assumes the following responsibilities and functions with respect to the options business of the Exchange:

1. To interpret rules and regulations including, but not limited to, trading rules, fees, access to and use of system facilities and participation requirements.

2. To determine regulatory and trading policies, including developing and recommending necessary or appropriate rule changes to the BSE Board, relating to the business conduct, trading activities and sales practices of BOX Participants and associated persons with respect to, but not limited to, (i) financial responsibility, (ii) qualifications for BOX participation and association with BOX Participants, (iii) clearance and settlement of securities transactions and other financial responsibility and operational matters affecting BOX Participants in general and the securities listed on BOX, (iv) BOX Participant advertising practices, (v) administration, interpretation and enforcement of the Rules of the Boston Options Exchange Facility ("BOX Rules"), including determination of appropriate exemptions for BOX Participants (vi) administration and enforcement of the Options Clearing Corporation ("OCC") rules, the federal securities laws, and other laws, rules and regulations that the BSE has the authority to administer or enforce and (vii) standards of proof for violations and sanctions imposed on BOX Participants and associated persons in connection with disciplinary actions.

3. To take necessary or appropriate action to assure compliance with BSE and BOX policies and rules, the federal securities laws, and other laws, rules and regulations that the BSE has the authority to administer or enforce, through examination, surveillance, investigation, enforcement, disciplinary, and other programs.

4. To administer programs and systems for the surveillance and enforcement of rules governing BOX Participants' conduct and trading activities in BOX.

5. To examine and investigate BOX Participants and associated persons to determine if they have violated BSE or BOX rules, the federal securities laws, and other laws, rules, and regulations that the BSE has the authority to administer, interpret, or enforce.

6. To administer the BOXR's enforcement and disciplinary programs regarding BOX Participants, including investigations, adjudication of cases, and the imposition of fines and other sanctions.

7. To conduct qualification examinations and continuing education programs.

8. To determine whether applicants for BOX participation have met the requirements for participation established by the BSE.

9. To place restrictions on the business activities of BOX Participants consistent with the public interest, the

protection of investors, and the federal securities laws.

10. To determine whether persons seeking to register as BOX Participants have met such qualifications for participation as may be established by the BSE, including whether statutorily disqualified persons will be permitted to associate with particular BOX Participants and the conditions of such association.

11. To oversee all trading activities on BOX.

12. To propose and assess fees and other charges on BOX Participants, associated persons and others using the products, services or facilities of the Exchange.

13. To develop, administer and enforce policies and rules of BOX governing listing standards applicable to securities traded on BOX.

14. To establish the annual budget and business plan for BOXR.

15. To determine allocation of BOXR resources.

16. To administer the Exchange's involvement in National Market System Plans related to BOX.

17. To manage external relations on enforcement, regulatory, and other policy issues regarding BOX and BOX Participants with Congress, the Commission, state regulators, other self-regulatory organizations, business groups, and the public.

18. To establish internal procedures for considering complaints by Participants, associated persons, and members of the public who request an investigation or disciplinary action by BOXR.

D. Rule Filings

The BSE Board shall review and ratify a rule change recommended by the BOXR Board before the rule change becomes a final action of the Exchange.

E. Supplemental Delegation Regarding Management and Committees

The BOXR Board may designate the Chief Executive Officer, another designated officer or one or more committees and delegate to such person or committee such powers and authority, as necessary and appropriate, to act on behalf of the BOXR Board in carrying out the functions and authority delegated to BOXR by the BSE. Such delegations shall be in conformance with law and the By-laws of BOXR and the BOX Rules. Any action taken by a BOXR officer or committee pursuant to delegated authority shall be subject to review, ratification or rejection by the BOXR Board in accordance with

procedures established by the BOXR Board.

* * * * *

Boston Options Exchange Regulation, L.L.C.

By-Laws

Definitions

When used in these By-Laws, unless the context otherwise requires, the term.

(a) "Act" shall mean the Securities Exchange Act of 1934, as amended;

(b) "Associated person" means a person who is a partner, officer, director, or employee of a Participant, or any person directly or indirectly controlling, controlled by or under common control with a Participant.

(c) "Board" means the Board of Directors of Boston Options Exchange Regulation, L.L.C.;

(d) "BOX" means the Boston Options Exchange Facility;

(e) "BOXR" means the Boston Options Exchange Regulation, L.L.C.;

(f) "BOX Rules" means the Rules of the Boston Options Exchange Facility;

(g) "broker" shall have the same meaning as in Section 3(a)(4) of the Act;

(h) "BSE Rules" means the Constitution and the Rules of the Board of Governors of the Boston Stock Exchange, Inc.;

(i) "Commission" means the Securities and Exchange Commission;

(j) "day" means calendar day;

(k) "dealer" shall have the same meaning as in Section 3(a)(5) of the Act;

(l) "Delegation Plan" means the "Plan of Delegation of Functions and Authority by the Boston Stock Exchange, Inc. to Boston Options Exchange Regulation, L.L.C." as approved by the Commission and amended from time to time;

(m) "Director" means a member of the Board;

(n) "L.L.C. Agreement" means the "Boston Options Exchange Group L.L.C. Operating Agreement";

(o) "Options Participant" or "Participant" means a firm, or organization that is registered with the Exchange pursuant to Chapter II of the BOX Rules for purposes of participating in options trading on BOX as an "Order Flow Provider" and/or "Market Maker".

(p) "Public Director" means a director who has no material business relationship with a broker, dealer, the BSE, BOX or BOXR.

(q) "Regulatory Services Agreement" means the Regulatory Services Agreement entered into between BSE and Boston Options Exchange Group, L.L.C.;

Location

SEC. 1 Boston Options Exchange Regulation, L.L.C., shall maintain a registered office in the State of Delaware as required by law. BOXR may also have offices and/or trading facilities at other places, within or without the State of Delaware, as the Board of Directors may from time to time determine or as the business of BOXR may require.

General Powers

SEC. 2 The property, business and affairs of BOXR shall be managed by or under the direction of the Board. The Board may exercise all such powers of BOXR and have the authority to perform all such lawful acts as are permitted by law, the L.L.C. Agreement, the Regulatory Services Agreement, these By-Laws, or the Delegation Plan to assist the BSE in fulfilling its self regulatory responsibilities as set forth in Section 6(b) of the Act, and to support such other initiatives as the Board may deem appropriate. To the fullest extent permitted by applicable law, the L.L.C. Agreement, the Regulatory Services Agreement, and these By-Laws, the Board may delegate any of its powers to a committee appointed pursuant to Section 14 of the By-Laws, or to the BOXR staff in a manner not inconsistent with the Delegation Plan.

Number of Directors

SEC. 3 The Board shall consist of no fewer than seven nor more than thirteen Directors, the exact number to be determined by resolution adopted by the BSE Board from time to time. The BSE Board shall appoint directors to the BOXR Board, 50% of whom will serve until the first annual meeting of the BOXR Board, and 50% of whom will serve until the second consecutive annual meeting of the BOXR Board, in accordance with Section 5, below. In accordance with Section 4, below, the Chief Executive Officer of the BSE will be considered a member of the Board of Directors for voting purposes, but not for qualification percentage purposes. The General Counsel of the BSE will not be considered a member of the Board of Directors for voting purposes or qualification percentage purposes.

Qualifications

SEC. 4 Directors need not be Participants of BOX, or members of BSE. Industry Directors must be representatives of the securities industry as provided in Article II of the BSE Constitution. At least fifty percent (50%) of the Directors will be Public Directors. The Board shall include the Chief Executive Officer of the BSE, who will not be considered for the purposes of

determining the qualification percentages for the Board set forth herein. The General Counsel of the BSE shall act as an advisor to the Board for all legal and regulatory matters, and shall not be a member or director of the Board. At least twenty percent (20%) of the Directors (but no fewer than two (2) Directors) will be officers or directors of a firm approved as a BOX Option Participant. An officer or director of a facility of the BSE may serve on the Board of Directors. The term of office of a Director shall not be affected by any decrease in the authorized number of Directors.

As soon as practicable, following the annual appointment of Directors, the Board shall elect from its members a Chair and Vice Chair and such other persons having such titles as it shall deem necessary or advisable to serve until the next annual appointment or until their successors are chosen and qualify. The persons so elected shall have such powers and duties as may be determined from time to time by the Board. The Board, by resolution adopted by a majority of Directors then in office, may remove any such person from such position at any time.

Appointment and Term of Directors

SEC. 5 Directors of BOXR shall be appointed, as necessary, each year by the BSE Board, at its next annual meeting after the BOXR Nominating Committee presents its candidates for the two BOX representatives on the BOXR Board each October. Directors shall be appointed for no more than four consecutive two-year terms, with the exception of the initial Board of Directors, 50% of whom will be appointed by the BSE Board to one year terms, and 50% of whom will be appointed by the BSE Board to two year terms, with the percentages of each apportioned as evenly as practicable between Public Directors and non-Public Directors in accordance with Section 4, above.

Resignation

SEC. 6 Any Director may resign at any time either upon written notice of resignation to the Chairman of the Board, the President, or the Secretary. Any such resignation shall take effect at the time specified therein or, if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

Removal

SEC. 7 Unless otherwise restricted by the L.L.C. Agreement, these By-Laws,

the BSE Rules or the BOX Rules, any or all of the Directors may be removed from office at any time, with cause, only if a determination is reasonably and promptly made by the BSE Board by a majority vote, that, based upon the facts known to the BSE Board at the time such determination is made that the Director sought to be removed (i) acted in bad faith; or (ii) did not act in a manner in the best interests of BOXR; or (iii) engaged in conduct which was unlawful; or (iv) deliberately breached his or her duty to BOXR.

Disqualification

SEC. 8 The term of office of a Director shall terminate immediately upon a determination by the Board, by a majority vote of the remaining Directors, that: (a) the Director no longer satisfies classification for which the Director was elected; and (b) the Director's continued service as such would violate the compositional requirements of the Board as set forth in Section 4 of these By-Laws. If the term of office of a Director terminates under this section, and the remaining term of office of such Director at the time of termination is not more than six months, during the term of vacancy the Board shall not be deemed to be in violation of Section 4 by virtue of such vacancy.

Filling of Vacancies

SEC. 9 If a Director position becomes vacant for any reason, the BSE Board or Executive Committee shall appoint a person to satisfy the classification (e.g. Industry or Public) for the directorship, except that if the remaining term of office for the vacant Director position is not more than six months, no replacement shall be required.

Quorum and Voting

SEC. 10 At all meetings of the Board, unless otherwise set forth in these By-Laws or required by law, a quorum for the transaction of business shall consist of the presence of a majority of the number of Directors fixed by Section 3. In the absence of a quorum, a majority of the Directors present may adjourn the meeting until a quorum is present. The vote of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board.

Regulation

SEC. 11 The Board may adopt such rules, regulations, and requirements for the conduct of the business and management of BOXR not inconsistent with the law, BSE and BOX Rules, L.L.C. Agreement, Regulatory Services

Agreement, or these By-Laws, as the Board may deem proper. A Director shall, in the performance of such Director's duties, be fully protected in relying in good faith upon the books of accounts or reports made to BOXR by any of its officers, by an independent professional (e.g. attorney, certified public accountant, business consultant) or in relying in good faith upon other records of BOXR.

Meetings

SEC. 12 (a) An annual meeting of the Board shall be held for the purpose of organization, election of officers, and transaction of any other business. The annual meeting of the Board shall be held immediately following the BSE Board's first regularly scheduled meeting following October 1 of each year or any adjournment thereof, at the place where the BSE Board's regularly scheduled meeting following October 1 of each year was held or at such other time and place as a majority of the Directors determine. If a quorum is then present, no notice of the meeting shall be necessary. If the annual meeting is not so held, it shall be called and held in the manner provided herein for special meetings of the Board.

(b) Regular meetings of the Board, other than the annual meeting, may be held without notice at such time and place, within or without the State of Delaware, as determined from time to time by the Board.

(c) Special meetings of the Board may be called by the Chairman of the Board, by the President, or by at least one-third of the Directors then in office. Adequate notice shall be provided to all Board members of the time and place of any Special Meetings.

(d) A Director or member of any committee appointed by the Board may participate in a meeting of the Board or of such committee through the use of a telephone or similar communications equipment by means of which all persons participating in the meeting may hear one another, and such participation shall constitute presence in person at such meeting for all purposes.

Notice of Meetings; Waiver of Notice

SEC. 13 (a) Notice of any meeting of the Board shall be deemed to be duly given to a Director if (i) mailed to the address last made known in writing to BOXR by such Director as the address to which such notices are to be sent, at least seven days before the day on which such meeting is to be held; (ii) sent to the Director at such address by telegraph, telefax, cable, radio, or wireless, not later than the day before

the day on which such meeting is to be held; or (iii) delivered to the Director personally or orally, by telephone or otherwise, not later than the day before the day on which such meeting is to be held. Each notice shall state the time and place of the meeting and the purpose(s) thereof.

(b) Notice of any meeting of the Board need not be given to any Director if waived by that Director in writing whether before or after the holding of such meeting, or if such Director is present at such meeting.

(c) Any meeting of the Board shall be a legal meeting without any prior notice if all Directors then in office shall be present.

Committees

SEC. 14 (a) The Board may, by resolution or resolutions adopted by a majority of the whole Board, appoint one or more committees. Each committee shall include one or more Public Directors; provided that there are Public Directors who are both willing to accept appointment to such committee and are not otherwise an interested director with respect to the responsibilities of such committee. Except as herein provided, vacancies in membership of any committee shall be filled by the vote of a majority of the whole Board. The Board may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another Director to act at the meeting in the place of any such absent or disqualified member. Members of a committee shall hold office for such period as may be fixed by a resolution adopted by a majority of the whole Board. Any member of a committee may be removed from such committee only after a majority vote of the whole Board, after appropriate notice, for refusal, failure, neglect, or inability to discharge such member's duties.

(b) The Board may, by resolution or resolutions adopted by a majority of the whole Board, delegate to one or more committees the power and authority to act on behalf of the Board in carrying out the functions and authority delegated to BOXR by the BSE under the Delegation Plan. Such delegation shall be in accordance with applicable law, the L.L.C. Agreement, the Regulatory Services Agreement, and the Delegation

Plan. Action taken by a committee pursuant to such delegated authority shall be subject to review, ratification, or rejection by the Board. In all other matters, the Board may, by resolution or resolutions adopted by a majority of the whole Board, delegate to one or more committees that consist solely of one or more Directors the power and authority to act on behalf of the Board in the management of the business and affairs of BOXR to the extent permitted by law and not inconsistent with the Delegation Plan.

(c) Unless otherwise provided by these By-Laws, a majority of a committee shall constitute a quorum for the transaction of business, and the vote of a majority of the members of such committee present at a meeting at which a quorum is present shall be an act of such committee.

(d) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware Law and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of BOXR between meetings of the Board. The Executive Committee shall consist of five Directors, including at least two Public Directors, and at least one Options Participant Director. The Chief Executive Officer of the BSE shall be a member of the Executive Committee, and the General Counsel of the BSE will act in advisory role to the Executive Committee on legal and regulatory matters. Executive Committee members shall hold office for a term of one year. At all meetings of the Executive Committee, a quorum for the transaction of business shall consist of a majority of the Executive Committee, including at least fifty percent of the Public Directors and at least one Options Participant Director.

(e) Nominating Committee. The Nominating Committee shall nominate Participant representatives to the BOXR Board and the BSE Board of Governors and members for each vacant position on the Nominating Committee.

(i) Composition of Nominating Committee. There shall be elected by ballot six persons to serve on the BOXR Nominating Committee which shall consist of a total of seven persons, five of whom shall represent broker-dealer Participant organizations of BOX (at least one of which shall be a BOX Market Maker), and two of whom shall be public representatives (one of whom will be a "Public Director" of the BOXR Board, and appointed to the Nominating Committee by the BOXR Board, as set forth in Paragraph (a) of this Section 14).

(ii) Nomination, Appointment, and Election of Nominating Committee Members. All members of the Committee shall serve a term of two years. The terms of Nominating Committee members shall be staggered, so that each year elections will be held for three open positions on the Nominating Committee, as well as to fill any vacancies on the Committee. No member of the Committee shall be eligible to serve two consecutive terms, and any vacancy on the Committee may be filled until the next annual election by a majority vote of the remaining members. The Committee shall elect its own Chairman, and shall be broadly representative of the Participants of BOX.

(A) Meeting of Nominating Committee. The Nominating Committee shall hold at least one meeting, prior to or in the month of June, at which time the committee shall elect its own Chairman. The Chairman shall designate a date in the month of July, due notice of which shall be posted electronically to Participants, inviting them to attend said meeting for the purpose of suggesting one nominee to fill each open position during the next term of the Nominating Committee. Such Committee shall notify the Secretary of the Exchange (or in his absence an Officer appointed by the Chairman), on or before the last Monday in August, of the nominees for such open positions on the Nominating Committee. The names of nominees shall be posted forthwith electronically to Participants. The Secretary shall prepare ballots reflecting such nominees for use in the annual election.

(B) Independent nominations. On the written and signed petition of five Participants of BOX, additional nominations may be made for the open positions on the Nominating Committee to be elected at the annual election. These nominations shall be filed with the Secretary of the Exchange (or in his absence an Officer appointed by the Chairman) on or before the third Monday in September and forthwith posted to Participants. The ballots as prepared by the Secretary shall include such nominations.

(C) No person shall be a candidate for election to the Nominating Committee at the annual election who is not nominated in accordance with the provisions of this Section.

(D) Notice of annual election. Notice of the annual election of Participants shall be mailed or delivered to each Participant of BOX at his business address registered with the Exchange by the Secretary (or in his absence by an Officer appointed by the Chairman) not

more than twenty-five nor less than twenty days before the date of the election, which shall occur no later than the last day of October. Such notice shall specify the time and date of the election, and the persons nominated (both by the Nominating Committee and by petition of Participants).

(E) Annual Election. Voting by Participants shall be by secret ballot, which may be delivered in person or by electronic or physical mail to the Secretary (or in his absence to an Officer appointed by the Chairman). The Secretary (or in his absence an Officer appointed by the Chairman) shall collect all ballots and tally all votes for the specified nominee. The nominees receiving the highest number of votes for the open positions on the Nominating Committee shall be declared elected thereto. Tie votes shall be decided by the BOXR Board at its first meeting following the election.

(F) The terms of office will begin on January 1 of each year.

(iii) Nomination, Appointment, and Election of Representatives to the BSE Board of Governors and the BOXR Board.

(A) Meeting of Nominating Committee. The Nominating Committee Chairman shall designate a date in the month of July, due notice of which shall be posted electronically to Participants, inviting them to attend said meeting for the purpose of suggesting one nominee for each open position for BOXR participant representatives for the BOXR Board and the one nominee for the BSE Board of Governors that are to be filled at the annual election. The Nominating Committee shall notify the Secretary of the Exchange (or in his absence an Officer appointed by the Chairman), on or before the last Monday in August, of the nominees for such offices. The names of nominees shall be posted forthwith electronically to Participants. The Secretary shall prepare ballots reflecting such nominees for use in the annual election.

(B) Independent nominations. On the written and signed petition of five Participants of BOXR, additional nominations may be made for the two positions on the BOXR Board reserved for representatives of Participants and the Participant representative on the Board of Governors. These nominations shall be filed with the Secretary of the Exchange (or in his absence an Officer appointed by the Chairman) on or before the third Monday in September and forthwith posted to Participants. The ballots as prepared by the Secretary shall include such nominations.

(C) No person shall be a candidate for election to any office at the annual

election who is not nominated in accordance with the provisions of this Section.

(D) Notice of annual election. Notice of the annual election of Participants shall be mailed or delivered to each Participant of BOXR at his business address registered with the Exchange by the Secretary (or in his absence by an Officer appointed by the Chairman) not more than twenty-five nor less than twenty days before the date of the election, which shall occur no later than the last day of October. Such notice shall specify the time and date of the election, and the persons nominated (both by the Nominating Committee and by petition of Participants).

(E) Annual Election. Voting by Participants shall be by secret ballot, which may be delivered in person or by electronic or physical mail to the Secretary (or in his absence to an Officer appointed by the Chairman). The Secretary (or in his absence an Officer appointed by the Chairman) shall collect all ballots and tally all votes for the specified nominee. In each case, the two nominees receiving the highest number of votes for the BOXR Board and the one nominee receiving the highest number of votes for the BSE Board of Governors shall be declared elected thereto. Tie votes shall be decided by the respective Board at its first meeting following the election.

(F) At the conclusion of the election, the successful candidates thereof for the two positions on the BOXR Board reserved for representatives of Participants and the Participant representative on the Board of Governors shall be presented to the BSE Board for appointment, in accordance with Article II, Section 4, of the BSE Constitution. Such presentation to the BSE Board shall be administered by the Chairman of the BOXR Nominating Committee and shall occur prior to or during the next regularly scheduled annual meeting of the BSE Board of Governors.

(G) The terms of office will begin on January 1 of each year.

(f) Hearing Committee. Promptly after the annual meeting of BOXR, the Chairman of the Board of BOXR, shall appoint a Hearing Committee composed of such number of Participants and non-Participants as the Chairman of BOXR shall deem necessary, none of whom shall be members of the BOXR Board of Directors or the BSE Board of Governors. This Committee or any panel thereof shall have at least one Options Participant member and shall have exclusive jurisdiction to conduct hearings on disciplinary proceedings brought by BOXR against any

Participant, or any person employed by or associated with any Participant for any alleged violation of the Securities Exchange Act of 1934, the Rules and Regulations thereunder, the Constitution or Rules of the Board of Governors of the Boston Stock Exchange, Inc., the Rules of Boston Options Exchange, LLC, the By-Laws of Boston Options Exchange Regulation, or the interpretations and stated policies of either the BSE Board of Governors or the Board of Directors of BOXR.

(i) If a Participant, or person employed by or associated with a Participant is adjudged guilty in any disciplinary proceeding, the Committee or any panel thereof shall be empowered to impose one or more of the following disciplinary sanctions: fine, censure, suspension, expulsion, limitation or termination as to activities, functions, operations or association with a BSE member or Participant, or any other appropriate sanction with respect to each charge as to which guilt is determined. Any Participant or person adjudged guilty in any disciplinary proceeding by the Committee or any panel thereof shall have the right to appeal such decision to the BOXR Board. Any decision of the BOXR Board may subsequently be appealed to the BSE Board of Governors, which shall have the discretion whether to hear such appeal. If the BSE Board of Governors does not order review of a decision of the BOXR Board, or, in its discretion, elects not to hear an appeal of a decision of the BOXR Board, then the decision of the BOXR Board shall be deemed to be the final action of the Exchange. Any decision of the BSE Board of Governors, or the BOXR Board (in cases where the BSE Board in its discretion has elected not to hear the appeal) may be ultimately appealed to the Commission.

(ii) The foregoing jurisdiction, function and powers shall be exercised by the Committee in accordance with the provision of the Rules of the Board of Governors of the BSE, as set forth in Chapter XXX therein. With respect to the reference to "members", "member organizations", "membership" or similar terms in the BSE Rules, the applicability of the relevant sections inures to BOXR "Participants".

(iii) Appellate Review of the Committee's Decision by the BOXR Board. The decision of the Committee or any panel thereof shall be subject to appellate review by the BOXR Board, either on the BOXR Board's own motion within thirty days after issuance (or within thirty days of when the BOXR Board receives written notice from the Committee of such decision of the

Committee), or upon written petition of any party to the Proceeding filed within fifteen business days after issuance. The following procedures shall apply to reviews by the BOXR Board:

Procedure Following Petition for Appellate Review by the BOXR Board.

(A) *Additional Submissions and Appointment of the Appellate Review Panel.* Petitions for appellate review of Hearing Committee decisions shall be referred to the BOXR Board which shall be furnished with all material considered by the Committee or panel thereof. Parties may submit a written statement to the BOXR Board and may request an opportunity to make an oral presentation before the BOXR Board; the BOXR Board, in its discretion, may grant or deny the request for oral presentation. In the absence of a request for such a presentation, or at any time, the BOXR Board may require an oral presentation. Whether appellate review is conducted by hearing or by review on the papers alone, the matter shall be referred to an appropriate Appellate Review Panel appointed by the BOXR Board. A transcript shall be made of any oral presentation and shall become part of the record.

(B) *Decision of the BOXR Appellate Review Panel.* Appellate Review by the BOXR Board pursuant to paragraph (f)(iii) shall be made upon the material furnished it by the Committee or panel thereof as well as by the parties, and shall be made after such further proceedings as the BOXR Board shall order. The BOXR Board may confirm, reverse or modify in whole or in part the decision of the Committee or panel thereof and may make any findings or conclusions which in its judgment are proper. The decision of the BOXR Board shall be in writing, shall contain a concise statement of the findings and conclusions of the BOXR Board and the reasons in support thereof, and shall be sent to the parties to the Proceedings.

(iv) *Appellate Review of the BOXR Board's Decision by the BSE Board.* The decision of the BOXR Board or any panel thereof, shall be subject to appellate review by the BSE Board, either on the BSE Board's own motion within thirty days after issuance (or within thirty days of when the BSE Board receives written notice from the BOXR Board of such decision of the BOXR Board), or upon written petition of any party to the Proceeding filed within fifteen business days after issuance. If the BSE Board does not order review of a decision of the BOXR Board, or, in its discretion, elects not to hear an appeal of a decision of the BOXR Board, then the decision of the BOXR Board shall be deemed to be the

final action of the Exchange. The following procedures shall apply to reviews by the BSE Board:

Procedure Following Petition for Appellate Review by the BSE Board.

(A) *Additional Submissions and Appointment of the BSE Board Appellate Review Panel.* Petitions for appellate review of BOXR Board decisions shall be referred to the BSE Board which shall be furnished with all material considered by the BOXR Board or panel thereof. Parties may submit a written statement to the BSE Board and may request an opportunity to make an oral presentation before the BSE Board; the BSE Board, in its discretion, may grant or deny the request for oral presentation. In the absence of a request for such a presentation, or at any time, the BSE Board may require an oral presentation. Whether appellate review is conducted by hearing or by review on the papers alone, the matter shall be referred to an appropriate Appellate Review Panel appointed by the BSE Board. A transcript shall be made of any oral presentation and shall become part of the record.

(B) *Decision of the BSE Board Appellate Review Panel.* Appellate Review by the BSE Board pursuant to paragraph (f)(iv) shall be made upon the material furnished it by the BOXR Board or panel thereof as well as by the parties, and shall be made after such further proceedings as the BSE Board shall order. The BSE Board may confirm, reverse or modify in whole or in part the decision of the BOXR Board or panel thereof and may make any findings or conclusions which in its judgment are proper. The decision of the BSE Board shall be in writing, shall contain a concise statement of the findings and conclusions of the BSE Board and the reasons in support thereof, and shall be sent to the parties to the Proceedings.

Action Without Meeting

SEC. 15 Any action required or permitted to be taken at a meeting of the Board or of a committee may be taken with or without a meeting if all Directors or all members of such committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or the committee.

Expenses

SEC. 16 Funds to meet the regular expense of each committee shall be provided by the Board, and all such expenses shall be subject to the approval of the Board.

Officers

SEC. 17 (a) The Board shall elect the officers of BOXR, which may include a President, a Secretary, and such other executive or administrative officers as it shall deem necessary or advisable, including a Chief Regulatory Officer. All officers shall have such titles, powers, and duties, and shall be entitled to such compensation, as shall be determined from time to time by the Board. The terms of office of such officers shall be at the pleasure of the Board, which by affirmative vote of a majority of the Board, may remove any such officer at any time. One person may hold the offices and perform the duties of any two or more of such offices, except the offices and duties of President and any other office or duties. None of the officers, except the President, need be Directors of BOXR.

(b) The Chairman of the Board of the BSE or the President of BOXR may be the Chief Executive Officer of BOXR, as the Board of Directors may from time to time determine. Subject to the control of the Board, the Chief Executive Officer, or such other officer or officers as may be designated by the Board, shall have general executive charge, management and control of the properties, business and operations of BOXR with all such powers as may be reasonably incident to such responsibilities; may agree upon and execute all leases, contracts, evidences of indebtedness and other obligations in the name of the Company; and shall have such other powers and duties as designated in accordance with these By-Laws and as from time to time be assigned by the Board.

Absence of the President

SEC. 18 In the case of the absence or inability to act of the President of BOXR, or in the case of a vacancy in such office, the Board may appoint its Chairman or such other person as it may designate to act as such officer pro tem, who shall assume all the functions and discharge all the duties of the President.

Agents and Employees

SEC. 19 In addition to the officers, BOXR may employ such agents and employees as the Board may deem necessary or advisable, each of whom shall hold office for such period and exercise such authority and perform such duties as the Board, the President, or any officer designated by the Board from time to time determine. Agents and employees of BOXR shall be under the supervision and control of the officers of BOXR, unless the Board, by resolution, provides that an agent or employee shall

be under the supervision and control of the Board.

Delegation of Duties of Officers

SEC. 20 The Board may delegate the duties and powers of any officer of BOXR to any other officer or to any Director for a specified period of time and for any reason that the Board may deem sufficient.

Resignation and Removal of Officers

SEC. 21 (a) Any officer may resign at any time upon written notice of resignation to the Board or the President. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. The acceptance of a resignation shall not be necessary to make the resignation effective.

(b) Any officer of BOXR may be removed, with or without cause, by resolution adopted by a majority of the Directors then in office at any regular or special meeting of the Board or by a written consent signed by all of the Directors then in office. Such removal shall be without prejudice to the contractual rights of the affected officer, if any, with BOXR.

Bond

SEC. 22 BOXR may secure the fidelity of any or all of its officers, agents, or employees by bond or otherwise.

Compensation of Board and Committee Members

SEC. 23 The Board may provide for reasonable compensation of the Chairman of the Board, the Directors, and the members of any committee of the Board. The Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the business of BOXR.

Indemnification of Directors, Officers, Employees, Agents, and Committee Members

SEC. 24 (a) BOXR shall indemnify, and hold harmless, to the fullest extent permitted by Delaware law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such person) who, by reason of the fact that he or she is or was a Director, officer, or employee of BOXR, or committee member, or is or was a Director, officer, or employee of BOXR who is or was serving at the request of BOXR as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, is or was a

party, or is threatened to be made a party to:

(i) any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, against expenses (including attorneys' fees and disbursements), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with any such action, suit, or proceeding; or

(ii) any threatened, pending, or completed action or suit by or in the right of BOXR to procure a judgment in its favor against expenses (including attorneys' fees and disbursements) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit.

(b) BOXR shall advance expenses (including attorneys' fees and disbursements) to persons described in subsection (a); provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.

(c) BOXR may, in its discretion, indemnify and hold harmless, to the fullest extent permitted by Delaware law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such persons) who, by reason of the fact that he or she is or was an agent of BOXR or is or was an agent of BOXR who is or was serving at the request of BOXR as a director, officer, employee, or agent of another corporation, partnership, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, was or is a party, or is threatened to be made a party to any action or proceeding described in subsection (a).

(d) BOXR may, in its discretion, pay the expenses (including attorneys' fees and disbursements) reasonably and actually incurred by an agent in defending any action, suit, or proceeding in advance of its final disposition; provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.

(e) Notwithstanding the foregoing or any other provision of these By-Laws, no advance shall be made by BOXR to an agent or non-officer employee if a determination is reasonably and promptly made by the Board by a majority vote of those Directors who have not been named parties to the action, even though less than a quorum, or, if there are no such Directors or if such Directors so direct, by independent legal counsel, that, based upon the facts known to the Board or such counsel at the time such determination is made: (1) the person seeking advancement of expenses (i) acted in bad faith, or (ii) did not act in a manner that he or she reasonably believed to be in or not opposed to the best interests of BOXR; (2) with respect to any criminal proceeding, such person believed or had reasonable cause to believe that his or her conduct was unlawful; or (3) such person deliberately breached his or her duty to BOXR.

(f) The indemnification provided by this Section in a specific case shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director, officer, or committee member, employee, or agent and shall inure to the benefit of such person's heirs, executors, and administrators.

(g) Notwithstanding the foregoing, but subject to subsection (j), BOXR shall be required to indemnify any person identified in subsection (a) in connection with a proceeding (or part thereof) initiated by such person only if the initiation of such proceeding (or part thereof) by such person was authorized by the Board.

(h) BOXR's obligation, if any, to indemnify or advance expenses to any person who is or was serving at its request as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity shall be reduced by any amount such person may collect as indemnification or advancement from such other corporation, partnership, joint venture, trust, enterprise, or non-profit entity.

(i) Any repeal or modification of the foregoing provisions of this Section shall not adversely affect any right or protection hereunder of any person respecting any act or omission occurring prior to the time of such repeal or modification.

(j) If a claim for indemnification or advancement of expenses under this Article is not paid in full within 60 days

after a written claim therefor by an indemnified person has been received by BOXR, the indemnified person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action, BOXR shall have the burden of proving that the indemnified person is not entitled to the requested indemnification or advancement of expenses under Delaware law.

Indemnification Insurance

SEC. 25 BOXR shall have the power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, or committee member, employee or agent of BOXR, or who is or was serving as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not BOXR would have the power to indemnify such person against such liability hereunder.

Fiscal Year

SEC. 26 The fiscal year of BOXR shall begin on the first day of October in each year, or such other month as the BSE Board may determine by resolution.

Waiver of Notice

SEC. 27 (a) Whenever notice is required to be given by law, or these By-Laws, a written waiver thereof, signed by the person or persons entitles to such notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Directors, or members of a committee of a Directors need be specified in any written waiver of notice.

(b) Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the purposes of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Execution of Instruments, Contracts, etc.

SEC. 28 (a) All checks, drafts, bills of exchange, notes, or other obligations or orders for the payment of money shall be signed in the name of BOXR by such officer or officers or person or persons as the Board, or a duly authorized committee thereof, may from time to time designate. Except as otherwise provided by law, the Board,

any committee given specific authority in the premises by the Board, or any committee given authority to exercise generally the powers of the Board during intervals between meetings of the Board, may authorize any officer, employee, or agent, in the name of and on behalf of BOXR, to enter into or execute and deliver deeds, bonds, mortgages, contracts, and other obligations or instruments, and such authority may be general or confined to specific instances.

(b) All applications, written instruments, and papers required by any department of the United States Government or by any state, county, municipal, or other governmental authority, may be executed in the name of BOXR by any principal officer or subordinate officer of BOXR, or, to the extent designated for such purpose from time to time by the Board, by an employee or agent of BOXR. Such designation may contain the power to substitute, in the discretion of the person named, one or more other persons.

Form of Records

SEC. 29 Any records maintained by BOXR in the regular course of business, including its books of account and minute books, may be kept on, or be in the form of, magnetic tape, computer disk, or any other information storage device, provided that the records so kept can be converted into clearly legible form within a reasonable time.

Alteration of By-Laws by Directors

SEC. 30 To the extent permitted by law, these By-Laws, BSE Rules, BOX Rules, the L.L.C. Agreement or the Regulatory Services Agreement, these By-Laws may be altered, amended, repealed, or new By-Laws adopted by approval of a majority of the BSE Board at any regular or special meeting of the BSE Board.

Emergency By-Laws

SEC. 31 The Board may adopt emergency By-Laws subject to repeal or change by action of the BSE Board that shall, notwithstanding any different provision of law, the L.L.C. Agreement, the Regulatory Services Agreement, or these By-Laws, be operative during any emergency resulting from any nuclear or atomic disaster, an attack on the United States or on a locality in which BOXR conducts its business or customarily holds meetings of the Board, any catastrophe, or other emergency condition, as a result of which a quorum of the Board or a committee thereof cannot readily be convened for action. Such emergency By-Laws may make any

provision that may be practicable and necessary under the circumstances of the emergency.

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Boston Stock Exchange, Inc. Constitution

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Article II

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Board of Governors

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Composition of the Board

SEC. 1. The government of the Exchange shall be vested in a Board of Governors composed of the Chairman, Vice Chairman and twenty others, ten of whom shall be representatives from the securities industry and ten of whom shall be representatives of the public. Of the ten securities industry representatives, all must represent broker-dealer members of the Exchange, at least one shall represent BOX Participants, and at least five shall represent firms active on the trading floor (each of whom may satisfy more than one of these criteria). Of the floor representation, two must be active as specialists. Of the ten representatives of the public, at least five shall be from financial institutions not directly associated with a member organization or broker-dealer, and at least one shall be an officer or director of a company which has a class of stock listed on the Exchange.

The Chairman shall be appointed by the Board of Governors to serve at its pleasure. The Vice Chairman shall be a representative from a member organization and shall be elected to serve a one-year term. Neither the Chairman nor the listed company representative shall be associated with a member of the Exchange or a broker or dealer. All are to be elected in the manner hereinafter provided, except no governor other than the Chairman and the Vice Chairman may serve more than four consecutive terms.

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Specific Powers

SEC. 4. The Board of Governors, in furtherance of its powers specified in Section 1 of this Article, shall entertain appeals from the decisions of the Market Performance Committee and may hold hearings on any such appeal; shall have the entire control of the property and finances of the Exchange; including the authority to purchase and cancel memberships in the Exchange, shall fix the amount of fees and compensation, if any, to be paid to any member of the

Board or of any other committee; and shall fix dues, fees, assessments and other charges to be paid by members, allied members, member firms and member corporations. It shall regulate the making and performance of Exchange contracts; transactions on the Exchange; access to and conduct upon the floor of the Exchange and the use of Exchange facilities; the formation, continuance and interests of members in member firms and corporations; business conduct; capital requirements and insolvency of members, member firms and member corporations; arbitration procedures; transfers of memberships and disposition of the proceeds of the sale of such memberships; the listing and delisting of and the suspension of trading in securities on the Exchange; activities of specialists and odd lot dealers; matters relating to quotations and price reports; use of ticker services; and means of communication with non-members. It may examine the financial condition and business conduct of members, member firms and member corporations and business conduct of allied members and may require any member, allied member or officer or employee of any member firm or corporation to appear before it to testify as to such financial condition or business conduct; may require that transactions in securities admitted to dealing on the Exchange be executed on the Exchange; may credit a portion of the income of the Exchange for any current year to the members proportionately in settlement of the contribution which members are obligated to make in connection with the Gratuity Fund of the Exchange; and may require that officers, appointees or employees of the Exchange give good and sufficient bonds for the faithful performance of their duties.

At the Board of Governors' next meeting after the BOXR Nominating Committee presents its candidates for the two positions reserved on the BOXR Board for representatives of BOX Participants, and its candidate for the position on the BSE Board of Governors reserved for a representative of BOX Participants, in October of each year, the Board of Governors shall select and appoint the Board of Directors of BOXR for the following year, as set forth in the Plan of Delegation of Functions and Authority by the Boston Stock Exchange, Inc. to Boston Options Exchange Regulation, L.L.C., and in accordance with the qualification provisions set forth in Section 4 of the By-Laws of Boston Options Exchange Regulation, L.L.C., including the appointment of the candidates

presented by the BOXR Nominating Committee for the two BOXR Board positions reserved for representatives of BOX Participants. The Board of Governors shall also select and appoint as Governor the candidate put forth by the BOXR Nominating Committee for the position on the Board of Governors reserved for a representative of BOX Participants. Additionally, the Board of Governors shall appoint the initial Board of Directors of BOXR, in accordance with the term provisions set forth in Section 5 of the By-Laws of Boston Options Exchange Regulation, L.L.C., and the number of Directors provisions set forth in Section 3 of the By-Laws of Boston Options Exchange Regulation, L.L.C.

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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. The Exchange 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

In order to create a new options regulatory subsidiary, the BSE proposes to transfer to BOXR, a Delaware limited liability company and a wholly-owned subsidiary of the BSE, all of the assets and liabilities that solely support the regulation of the standardized equity options trading business of the BSE. Upon this transfer, however, the BSE would continue to be the self-regulatory organization ("SRO") for BOXR and the Boston Options Exchange ("BOX"), the BSE's proposed new exchange facility for the trading of standardized equity options securities.⁴ BOX would provide automatic order execution capabilities to BOX Options Participants ("Options Participants") for standardized equity options securities listed or traded on the BSE. BOX would be operated by Boston Options Exchange Group, L.L.C. ("BOX LLC"). The proposed rule change for

⁴ See Securities Exchange Act Release No. 47186 (Jan. 14, 2003), 68 FR 3062 (Jan. 22, 2003) (SR-BSE-2002-15) ("BOX Proposing Release").

implementing the creation of BOXR includes: (i) Changes to the BSE Rules of the Board of Governors; (ii) the proposed Plan of Delegation of Functions and Authority by the Boston Stock Exchange, Inc., to Boston Options Exchange Regulation, L.L.C. ("Delegation Plan"); (iii) proposed By-Laws for BOXR; and (iv) amendments to the BSE Constitution.

(I) Delegation Plan

(A) Relationship of BSE, BOXR and BOX LLC

The BSE is a founding and controlling member of BOX LLC. Pursuant to contractual agreement, the BSE has the right to appoint two representatives to the board of BOX LLC. In addition to its ownership stake in BOX LLC, the BSE has entered into various agreements with BOX LLC under which BOX LLC would operate BOX as a facility of the BSE.⁵ Pursuant to these agreements, the BSE, through BOXR, would maintain responsibility for all regulatory functions related to the facility, and BOX LLC would be responsible for the business operations of the facility to the extent those activities are not inconsistent with the regulatory and oversight functions of the BSE and BOXR. This means that BOX LLC would not interfere with the BSE's self-regulatory responsibilities or those delegated to BOXR.

The BSE wholly owns BOXR as a subsidiary of the Exchange and proposes to delegate certain regulatory authority to BOXR for oversight of the BOX market. Under the proposal, BOXR would use its own regulatory staff, and not the employees of BOX LLC, to perform its regulatory oversight duties. In addition, BOXR would conduct all necessary surveillance of the trading effected through the BOX facility as well as enforcement of the BOX Rules, applicable BSE Rules and the federal securities laws and the rules thereunder.⁶ Pursuant to the proposed Delegation Plan and contractual agreements, BOXR would have regulatory oversight authority over BOX LLC and its officers, directors, agents and employees, each of whom would be

⁵ Under the Act, "the term 'facility' when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service." See 15 U.S.C. 78c(a)(2).

⁶ See BOX Proposing Release.

required to cooperate with BOXR in the fulfillment of its regulatory obligations.

The relationship between the BSE, BOXR, BOX LLC and BOX is explained further in the Delegation Plan.⁷ The BSE is proposing to adopt the Delegation Plan which sets forth the purpose, function, governance, procedures and responsibilities of the BSE and BOXR following approval of the Delegation Plan. The Delegation Plan describes the options regulatory subsidiary, BOXR; sets forth the delegation of authority to BOXR by the BSE; and describes the purpose, function, authority and responsibilities of BOXR, including the procedures for proposed rule change recommendations in regard to BOX and BOXR.

Through the adoption of new Chapter XXXVI and the Delegation Plan, BOXR and BOX LLC would also be subject to Commission oversight and examination. The Commission would oversee the premises, personnel, and records of BOXR and BOX LLC to the same extent that it currently oversees the premises, personnel, and records of the BSE. Under section 1(b) and section 2(B)(1) of the proposed Delegation Plan, the books, records, premises, officers, directors, agents and employees of BOXR and BOX LLC would be the books, records, premises, officers, directors, agents and employees of the BSE for purposes of, and subject to, oversight pursuant to the Act. The books and records of BOXR and BOX LLC would be subject at all times to inspection and copying by the BSE and the Commission. BOXR and BOX LLC would be required to maintain all books and records related to BOX within the United States. Also, by delegated authority, the books and records of BOX LLC would be subject at all times to inspection and copying by BOXR. However, as set forth in the proposed Section 2(B)(3) of the Delegation Plan, proposed section 2(B)(1) would not create any rights or benefits for any person or entity other than the BSE, BOXR and the Commission. The Commission and the BSE's access to and oversight of BOX LLC as the operating company of BOX is further solidified in the private contracts related to BOX. The text of Section 2(B) of the Delegation Plan is included in various contractual agreements between the BSE and BOX LLC. Therefore, BOX LLC has not only a regulatory obligation to abide by the Delegation Plan, but a private contractual obligation as well.

⁷ The BSE notes that the Delegation Plan is based on PCX Equities Rule 14.3 of the PCX Plan of Delegation and the NASD's Plan of Allocation and Delegation of Functions by NASD to Subsidiaries.

(B) BOXR

(1) *Corporate Status*

BOXR would be operated as a Delaware limited liability company. All of the issued shares of stock of BOXR would be owned by the BSE. Current BSE members would retain their memberships, and thus, their ownership interests in the BSE.

(2) *Governing Documents and Rules*

BOXR's By-Laws, the BOX Rules and the applicable BSE Rules would govern its activities. The BOX Rules and the BOXR By-Laws would reflect the status of BOXR as a wholly-owned subsidiary of BSE, under management of the BOXR Board of Directors ("BOXR Board") and its designated officers, ultimately subject to the self-regulatory authority of the BSE.

(3) *Regulation of BOXR*

BOXR would operate as a subsidiary of BSE, which is a national securities exchange registered under section 6 of the Act.⁸ The BSE, as the SRO, retains ultimate responsibility for compliance by its members with the provisions of the Act and the rules and regulations thereunder. As set forth in the proposed BOX Rules, Options Participants are required to comply with all the BOX Rules as well as those BSE Board of Governors Rules specifically cross-referenced and incorporated by reference in the BOX Rules. For such purposes of cross-referencing, interpreting and applying the Rules of the BSE to Options Participants, any reference to "member" of the BSE in such cross-referenced rules is to be read as a synonym for "Participant" on BOX, whether OFP, Market Maker or both.⁹ For this reason, BOX Options Participants would be statutory "members" of BSE. Pursuant to the proposed BOX Rules, Options Participants are granted trading rights for options listed on the Exchange and traded on BOX.¹⁰ Options Participant status does not confer on the Options Participant any right to participate in trading on the BSE other than options trading on BOX, nor shall Options Participants be entitled to all the rights and responsibilities regarding the governance of the BSE as other BSE Members.¹¹ They do not have ownership interests in the BSE, however, as discussed more fully below,

⁸ 15 U.S.C. 78f.

⁹ See Chapter I, Section 2(c) of the Proposed BOX Rules in the BOX Proposing Release.

¹⁰ See BOX Proposing Release Chapter II, Section 1(a).

¹¹ See BOX Proposing Release Chapter II, Section 1(e).

they would have certain voting and representations rights.¹²

The BSE Board is currently composed of the BSE Chairman, Vice Chairman and 20 governors. The composition of the BSE Board would be modified as part of the restructuring to include one governor representing Options Participants to provide input on the BSE Board. This governor ("Options Participant Governor") would be nominated by the BOXR Nominating Committee and must be either an officer or director of an Options Participant.¹³ Pursuant to the proposed amendments to the BSE Constitution, the BSE Board would be required to appoint the candidate presented by the BOXR Nominating Committee.¹⁴

As a registered national securities exchange and the parent company of BOXR, the BSE would continue to carry out its statutory responsibilities to enforce compliance by Options Participants with the provisions of the federal securities laws and rules thereunder, as well as the BSE and BOX Rules, and to govern the administration of BOXR. In particular, to be effective, any changes to the BOX Rules and governing documents of BOXR must be ultimately approved by the BSE. The Exchange proposes that the Delegation Plan become part of the Rules of the BSE and, thus, may only be amended upon Commission approval. Moreover, changes to the BOXR By-Laws and the BOX Rules must be filed with the Commission pursuant to Section 19(b) of the Act¹⁵ and Rule 19b-4¹⁶ thereunder and must be submitted by the BSE.¹⁷

While ultimately responsible, the BSE proposes to delegate specific self-regulatory responsibilities to BOXR, pursuant to a Delegation Plan. Specifically, BOXR would assume responsibility with respect to the options business of the Exchange for, among other things: (i) Establishing and interpreting rules governing the activities of Options Participants; (ii) determining regulatory and trading policies relating to the business activities of Options Participants; (iii) assuring compliance with BOX Rules

¹² Under section 6(b)(3) of the Act, the rules of an exchange must assure that its members are fairly represented in the selection of its directors and administration of its affairs. 15 U.S.C. 78f(b)(3).

¹³ See discussion of the proposed BOXR Nominating Committee below.

¹⁴ See discussion of the proposed amendments to the BSE Constitution below.

¹⁵ 15 U.S.C. 78s(b).

¹⁶ 17 CFR 240.19b-4.

¹⁷ The BSE Board must review and ratify all BOXR proposed rule changes before they are submitted to the Commission. See Section 2D of the Delegation Plan.

and the federal securities laws; (iv) administering surveillance programs and systems for enforcing rules governing the conduct and trading activities of Options Participants and their associated persons on BOX; (v) examining and investigating Options Participants and their associated persons to determine if they have violated the BOX Rules or the federal securities laws; (vi) administering the BOXR disciplinary programs; (vii) determining whether applicants meet the requirements for an Options Participant; (viii) placing restrictions on the business activities of Options Participants and their associated persons consistent with the public interest, the protection of investors and the federal securities laws; (ix) proposing fees and charges; (x) overseeing the operation of the BOX trading facilities; (xi) collecting and consolidating information for the surveillance audit trail; (xii) developing rule changes for the collection, processing and dissemination of quote and transaction information; (xiii) developing and adopting rules, interpretations and policies to maintain and enhance the integrity, fairness, efficiency and competitiveness of BOX; (xiv) administering the Exchange's involvement in the national market system ("NMS") plans for options; and (xv) developing, administering and enforcing listing standards for securities traded on BOX.

While BOXR would have extensive delegated authority to regulate and oversee the options trading business, the BSE would retain the ultimate responsibility for the Rules and regulations of BOX, as well as for the operation and administration of its subsidiary, BOXR. As part of its self-regulatory responsibilities, the BSE would review rulemaking and disciplinary decisions of BOXR and direct BOXR to take action that may be necessary to effectuate the purposes and functions of the Act. The BSE believes that these types of checks and balances should ensure that the BSE remains aware of the affairs of its options business conducted through BOXR, and that its options business is conducted in a manner consistent with the Act. Thus, while BOXR would be a separate entity, it would still remain under the self-regulatory authority of the BSE.

(4) Agreement Between BSE and BOXR

Under the proposal, the BSE's equities and options regulatory functions would share certain infrastructure and personnel. After the completion of the restructuring, these shared assets would remain the property of BSE and the

shared personnel would continue to be employed by BSE. In each case, however, BOXR would have access to those resources through inter-company contracts with BSE. In particular, BSE would contract to provide BOXR with certain management and support services and staff. The contract would include services for administration, membership, technology, finance and accounting, human resources and legal and regulatory services. The agreement between BSE and BOXR would allocate charges for these services and staff between BSE and BOXR.

(5) National Market System Plans

The BSE currently is a participant in various NMS plans, including the Consolidated Tape Association ("CTA") Plan, the Consolidated Quotation System ("CQS") Plan, the Nasdaq Unlisted Trading Privileges Plan ("UTP") Plan, and the Intermarket Trading System Plan, as well as a conditional participant, subject to Commission approval, in several options NMS plans, including the Options Price Reporting Authority ("OPRA") Plan, the Options Listing Procedures ("OLPP") Plan and the Intermarket Options Linkage Plan.¹⁸ These plans are joint industry plans for SROs that address last sale reporting, quotation reporting, listing procedures, and intermarket trading. Following the creation of BOXR, BSE, in its continuing role as the SRO, would continue to serve as the voting member of these NMS Plans. Nevertheless, BSE expects that, for those plans that relate to options trading, *i.e.*, the OPRA Plan, the OLPP Plan and the Intermarket Options Linkage Plan, a BOXR representative would serve as the BSE's representative in dealing with these plans.

(II) BOXR By-Laws

The BOXR By-Laws would reflect the status of BOXR as a wholly-owned subsidiary of BSE, ultimately subject to the self-regulatory authority of the BSE. As a separate corporate entity, BOXR would have its own board of directors and officers that would administer its day-to-day operations.

(A) BOXR Board of Directors

The BOXR Board would consist of no fewer than 7 or more than 13 directors. Currently, the Exchange contemplates that there would be 7 directors. The

composition of the BOXR Board would be as follows:

- The Chief Executive Officer ("CEO") of BSE (who will be considered a member of the Board for voting purposes, but not for qualification percentage purposes);
- At least 50% Public Directors;¹⁹
- At least 20%, but no fewer than 2, nominees of Options Participants (the "Options Participant Directors").

The BSE, as the founder and sole member, would appoint the initial BOXR Board. Subsequently, the BOXR Board would be nominated by the sitting BOXR Board, subject to the nominating procedures set forth below²⁰ for the selection of at least twenty percent, but no fewer than two Options Participant Directors. The BOXR Board would be elected by the BSE Board, as the BSE is the sole shareholder of BOXR. The BSE would have the right to approve, remove, and replace any member of the BOXR Board by virtue of its status as sole shareholder, subject to the By-Laws. Any vacancy on the BOXR Board would be filled with a person who satisfies the classification associated with the vacant seat, *i.e.*, a member of the public or a representative of an Options Participant.

To the extent that the number of BOXR Board seats is changed from the initially contemplated 7 members, at least 50 percent of the BOXR Board must be Public Directors and at least 20 percent, but no fewer than two, representatives of Options Participants. The BSE believes that this provision would ensure that the public interest is adequately represented in the Exchange's decision-making process pursuant to section 6(b)(3) of the Act.²¹ Further, the Exchange acknowledges that public representatives help to ensure that no single group of market participants has the ability to systemically disadvantage other market participants through the exchange governance process. The BSE believes that Public Directors can provide unique, unbiased perspectives, which should enhance the ability of the BOXR Board to address issues in a non-discriminatory fashion and foster the integrity of BOXR. In this way, the Public Directors may help to prevent unfair discrimination between customers, brokers, or dealers in the administration of BOXR, and protect investors and the public interest,

¹⁸ The BSE is also a conditional participant in the Options Self-Regulatory Council ("OSRC"). The OSRC Plan is not an NMS plan under Section 11A of the Act, but rather a plan to allocate regulatory responsibilities under Rule 17d-2 under the Act. 17 CFR 240.17d-2.

¹⁹ "Public Director" is defined as a Director who has no material business relationship with a broker or dealer, or the BSE, BOX, or BOXR. See BOXR By-Laws, Definition (p).

²⁰ See discussion of the proposed BOXR Nominating Committee below.

²¹ 15 U.S.C. 78f(b)(3).

consistent with the provisions of Section 6(b)(5) of the Act.²²

The proposed BOXR By-Laws provide that at least 20 percent (but no fewer than two directors) must be directors who are officers or directors of an Options Participant and are elected by plurality vote of Options Participants, following a nomination process which involves the BOXR Nominating Committee.²³ The Options Participant Directors would be nominated by the BOXR Nominating Committee or by petition of at least 5 Options Participants. When a vote is held, the candidates selected by Options Participants must be supported by a plurality of the Options Participants who cast votes in order to be selected as a candidate for the BOXR Board. Pursuant to the proposed amendments to the Constitution, the BSE, as the sole member, would be required to appoint the Options Participant Directors so chosen and put forth to the BSE Board by the BOXR Nominating Committee.²⁴

(B) *Management*

BOXR would have a Chairman of the Board and may have a President, either of whom may be the CEO of BOXR. In addition, BOXR would have a Chief Regulatory Officer who would be appointed by, and serve at the pleasure of, the BOXR Board. The officers of BOXR would manage the business and affairs of BOXR, subject to the oversight of the BOXR Board, and, in some cases, subject to the approval of BSE as the sole member and SRO.

(C) *BOXR Committees*

In an effort to streamline its management, the BSE has chosen to commence BOXR operations with only two administrative committees, although there are specific provisions in the proposed By-Laws permitting the appointment of additional committees by the BOXR Board, as necessary. There would be a BOXR Nominating Committee and a BOXR Hearing Committee, both of which would provide Options Participant involvement in the administration of the day-to-day operations of BOX.

(1) *Nominating Committee*

The BOXR Nominating Committee would be responsible for nominating two candidates for the BOXR Board, one candidate for the BSE Board, and

members for any vacant positions on the Nominating Committee. These candidates would represent Options Participants on the respective Boards. The BOXR Nominating Committee would consist of seven members, six of whom would be elected by ballot. The seventh would be appointed by the BOXR Board, and must be one of that Board's existing Public Directors. Of the six elected members, five shall represent broker-dealer Options Participants of BOX (at least one of which shall also represent a Market Maker on BOX), and one shall be a representative of the public. Thus, of the seven total members of the committee, there would be two members who are representatives of the public. The BOXR Nominating Committee would propose a slate of two eligible nominees for the BOXR Board, one eligible nominee for the BSE Board and the nominees for the BOXR Nominating Committee.

The BSE has also set forth a proposed provision which it believes ensures further fair representation of Options Participants in the nominating process. Options Participants would be able to submit additional nominees for each of the available positions by way of petition for independent nominations. In recognition of the fact that BOX would be an electronic marketplace with geographically diverse Options Participants, the Exchange has proposed that independent nominations may take place by petition of only five Options Participants. This is in contrast to the independent nomination process for the BSE, which requires fifteen BSE Member signatures for an independent nomination to be effected. By lowering the number of signatures required for an independent nomination from Options Participants, the Exchange believes it is encouraging independent nominations, thereby enhancing the potential for more effective representation of Options Participants. This process is proposed for not only the position reserved on the BSE Board for the Options Participant Governor, but for the two positions reserved on the BOXR Board for Options Participant representatives and the nominees for the BOXR Nominating Committee as well.

Furthermore, and perhaps most importantly, Options Participants alone would vote, by plurality, to choose the individuals who would represent them. Only after this vigorous and full nomination and electoral process concludes would the chosen candidates be presented, by the BOXR Nominating Committee, to the BSE Board for appointment. In accordance with the proposed Constitutionally established standards and the proposed BOXR By-

Laws, the BSE Board is then charged with appointing the BOXR Board, as well as accepting the Options Participant Governor candidate for the BSE Board of Governors.

The Exchange believes that its proposal is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(3),²⁵ in particular, in that it is consistent with the fair representation principles set forth in the Act. Under section 6(b)(3), the rules of an exchange must assure that its members are fairly represented in the selection of its directors and administration of its affairs. The fair representation requirement of section 6(b)(3) allows statutory members to have a voice in an exchange's use of its self-regulatory authority. This statutory requirement also helps ensure that exchange members are protected from unfair, unfettered actions by an exchange pursuant to its rules, and that, in general, an exchange is administered in a way that is equitable to all those who trade on its market or through its facilities. The BSE believes that the proposals contained in this filing would ensure that Options Participants are treated in a manner consistent with the requirements of section 6(b)(3).

In addition, to make sure that the public interest is adequately represented in an exchange's decision-making process, section 6(b)(3) of the Act states that an exchange's rules must provide that one or more of its directors be representative of issuers and investors, and not associated with a member of the exchange, or with any broker-dealer. The Exchange's proposal would allow a representative of Options Participants to be on the BSE Board, but would not alter the composition of the BSE Board. In particular, the Exchange notes that the 50% public representation on the BSE Board is not affected. The Exchange is in agreement with a long established belief expressed by the Commission on this regard that the inclusion of public representatives on exchange oversight bodies is critical to ensuring that an exchange works to protect the public interest in the exchange governance process. The Exchange values unique, unbiased perspectives on the BSE Board and other governing bodies. In this regard, the proposed nominating process for Options Participant representatives has been made less stringent so as to permit and encourage greater participation by what would be a diverse group of Participants in the BOX marketplace. Therefore, by the combination of Board composition and the nominating/election process, the

²² 15 U.S.C. 78f(b)(5).

²³ See discussion of the proposed BOXR Nominating Committee below.

²⁴ See discussion of the proposed amendments to the BSE Constitution below, which requires the BSE to elect the slate submitted by the BOXR Nominating Committee.

²⁵ 15 U.S.C. 78f(b)(3).

Exchange believes it is assuring that Options Participants are represented fairly in the selection of the BSE and BOXR Boards, and thereby in the administration of Exchange affairs and in the affairs of the Exchange subsidiary, BOXR, which would most directly affect them.

(2) *Hearing Committee*

The BOXR disciplinary process would be similar to the existing BSE disciplinary process, and would be governed by a BOXR Hearing Committee. The BOXR Hearing Committee would be appointed by the Chairman of the Board of BOXR. Membership of the committee shall be comprised of at least one Options Participant member and such number of non-Participant members as the Chairman may deem necessary.

The BOXR Chief Regulatory Officer, or his staff, would authorize the initiation of disciplinary hearings and proceedings. The BOXR Hearing Committee would conduct hearings, render decisions and impose sanctions. Decisions of the BOXR Hearing Committee may be appealed for review to the BOXR Board. Any decision of the BOXR Board may subsequently be appealed to the BSE Board of Governors, which shall have the discretion whether to hear such appeal. If the BSE Board of Governors does not order review of a decision of the BOXR Board, or, in its discretion, elects not to hear an appeal of a decision of the BOXR Board, then the decision of the BOXR Board shall be deemed to be the final action of the Exchange. Any decision of the BSE Board of Governors, or the BOXR Board (in cases where the BSE Board in its discretion has elected not to hear the appeal) may be ultimately appealed to the Commission. As with all BSE decisions, the Commission has the authority to review final disciplinary sanctions imposed by BOXR or the BSE on Options Participants, including sanctions imposed for violations of BOXR rules.

The Exchange believes that its Hearing Committee, BOXR Board and BSE Board of Governors Appeals process is consistent with the Act, and in particular section 6(b)(7) thereunder, in that the Exchange has established fair procedures for disciplining Options Participants. The BSE Board of Governors has appellate jurisdiction of sanctions and findings of the BOXR Hearing Committee and the BOXR Board for violations of the rules and regulations of the Act, the Constitution and Rules of the BSE, the BOXR Rules, the BOXR By-Laws, and the interpretations and stated policies of

either the BSE Board of Governors or the Board of Directors of BOXR. Moreover, aggrieved Options Participants may appeal the decision of the BSE Board of Governors to the Commission.

(III) Changes to the Boston Stock Exchange Constitution

The proposed changes to the BSE Constitution have two primary purposes. First, the proposed amendment to Article II, Section 1, reserves a seat on the BSE Board for a representative of BOXR Options Participants. Although the proposal would permit a representative of Options Participants to serve on the BSE Board, the proposal would not alter the overall BSE Board composition. The BSE Board would continue to be comprised of fifty percent Public Directors (at least five of which shall be from financial institutions not directly associated with a member organization or broker-dealer). Also, the BSE Board would continue to consist of twenty directors, in addition to the Chairman and Vice-Chairman of the Exchange.

Second, in section 4 of the same Article IV, the BSE has proposed to ensure that the candidates elected by Options Participants are seated by the BSE Board. Specifically, this applies to both the Options Participant Governor elected to serve on the BSE Board, as well as the two Options Participant representatives elected to serve on the BOXR Board. Such a process is consistent with the established process in which BSE Board members are elected by BSE Members, and subsequently selected and appointed both by and to the BSE Board.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b)²⁶ of the Act, in general, and furthers the objectives of section 6(b)(5),²⁷ 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 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.

²⁶ 15 U.S.C. 78f(b).

²⁷ 15 U.S.C. 78f(b)(5).

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

The Exchange does not believe that the proposed rule change, as amended, 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

Written comments on the proposed rule change were neither solicited nor received.

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 self-regulatory organization consents, the Commission will:

A. By order approve the 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, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-BSE-2003-04 and should be submitted by August 22, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁸

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03-19615 Filed 7-31-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48226; File No. SR-ISE-2003-19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, Inc., To Provide for the Trading of Options on Fixed-Income Exchange-Traded Funds

July 25, 2003.

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 July 22, 2003, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. ISE filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act³ 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 is proposing to amend Rule 500(h) to allow the listing of options on fixed-income exchange-traded funds. Below is the text of the proposed rule change. New text is in *italics*. Proposed deletions are in [brackets].

* * * * *

Rule 500. Criteria for Underlying Securities

* * * * *

(h) Securities deemed appropriate for options trading shall include shares or other securities ("Fund Shares") that represent interests in registered investment companies (or series thereof) organized as open-end management

investment companies, unit investment trusts or similar entities that are principally traded on a national securities exchange or through the facilities of a national securities association and reported as "national market" securities, and that hold portfolios of securities comprising or otherwise based on or representing investments in broad-based indexes or portfolios of securities (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities) ("Funds"); provided that all of the following conditions are met:

(1) any non-U.S. component securities [stocks] of the index or portfolio on which the Fund Shares are based that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio;

(2) securities [Stocks] for which the primary market is in any one country that is not subject to a comprehensive surveillance agreement do not represent 20% or more of the weight of the index;

(3) securities [stocks] for which the primary market is in any two countries that are not subject to comprehensive surveillance agreements do not represent 33% or more of the weight of the index; and

(4) the Fund Shares either (i) meet the criteria and guidelines set forth in paragraphs (a) and (b) above; or (ii) the Fund Shares are available for creation or redemption each business day from or through the Fund in cash or in kind at a price related to net asset value, and the Fund is obligated to issue Fund Shares in a specified aggregate number even if some or all of the securities required to be deposited have not been received by the Fund, subject to the condition that the person obligated to deposit the securities has undertaken to deliver the securities as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the Fund, all as described in the Fund's prospectus.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ISE 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 ISE 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 Exchange states that it proposes to amend its rules to allow the trading of options on fixed-income exchange-traded funds. This rule change is consistent with a change to the rules of the Chicago Board of Options Exchange ("CBOE") previously approved by the Commission.⁵ Specifically, under ISE Rule 500(e), the Exchange may list options on Fund Shares provided that certain conditions are met with respect to the components of the underlying exchange-traded fund. The Exchange proposes to amend the conditions contained in Rule 500(h) to refer to the component "securities" of a fund, rather than the component "stocks" of the fund, so that fixed-income funds will be covered by the Rule.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5)⁶ 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.

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

The proposed rule change 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, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

The ISE provided the SEC with written notice of its intention to file the proposed rule change at least five business days before its filing. Moreover, the ISE has designated the

⁵ Release No. 34-46435 (August 29, 2002), 67 FR 57046 (September 6, 2002) (File No. SR-CBOE-2002-47).

⁶ 15 U.S.C. 78f(b)(5).

²⁸ 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).

⁴ 17 CFR 240.19b-4(f)(6).