

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57713; File No. SR-BSE-2008-28)

April 25, 2008

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Transfer of BOX Units from the Montréal Exchange Inc. to MX US 2, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 22, 2008, 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 and II below, which Items have been substantially prepared by the BSE. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> 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 submitting the proposed rule change to the Commission to amend the Fifth Amended and Restated Operating Agreement, dated January 26, 2005, (“BOX LLC Agreement”), of the Boston Options Exchange Group LLC (“BOX LLC”), in connection with the transfer by the Montréal Exchange Inc.,<sup>5</sup> a company incorporated in Québec, Canada (“MX”), of its 31.37% ownership interest in BOX LLC to MX US 2, Inc. (“MX US”), a wholly-

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

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

<sup>5</sup> The Montréal Exchange Inc. is also known in French as the Bourse de Montréal Inc.

owned U.S. subsidiary of MX.<sup>6</sup> The text of the proposed rule change is available at the BSE, the Commission's Public Reference Room, and <http://www.bostonstock.com>.

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 proposal. The text of these statements may be examined at the places specified in Item IV below. The BSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

On January 13, 2004, the Commission approved four BSE proposals that together established, through an operating agreement among its owners, a Delaware limited liability company, BOX LLC, to operate the BOX market as an options trading facility of the Exchange.<sup>7</sup> MX has transferred its 31.37% ownership interest in BOX LLC to MX US. The Exchange is submitting the proposed rule change to the Commission to amend the BOX LLC Agreement pursuant to the proposed Instrument of Accession in connection with the transfer of MX's

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<sup>6</sup> Capitalized terms not otherwise defined herein shall have the meanings set forth in the BOX LLC Agreement.

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

31.37% ownership interest in BOX LLC to MX US.<sup>8</sup> As a result, MX will agree to abide by all the provisions of the BOX LLC Agreement, including those provisions requiring submission to the jurisdiction of the Commission.<sup>9</sup>

For the reasons stated above, the BSE is submitting to the Commission the proposed Instrument of Accession to the BOX LLC Agreement as a rule change.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(1),<sup>11</sup> in particular, in that it enables the Exchange to be so organized so as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

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<sup>8</sup> The Exchange represented that the Instrument of Accession was executed on April 22, 2008. See electronic mail from Lisa J. Fall, General Counsel, BOX LLC, to Molly Kim, Special Counsel, Division of Trading and Markets (“Division”), Commission, and Johnna Dumler, Special Counsel, Division, Commission, dated April 22, 2008.

<sup>9</sup> The BOX LLC states, in part, that “the Members, officers, directors, agents, and employees of Members irrevocably submit to the exclusive jurisdiction of the U.S. federal courts, U.S. Securities and Exchange Commission, and the Boston Stock Exchange, for the purposes of any suit, action or proceeding pursuant to U.S. federal securities laws, the rules or regulations thereunder, arising out of, or relating to, BOX activities or Article 19.6(a), (except that such jurisdictions shall also include Delaware for any such matter relating to the organization or internal affairs of BOX, provided that such matter is not related to trading on, or the regulation, of the BOX Market), and hereby waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that they are not personally subject to the jurisdiction of the U.S. Securities and Exchange Commission, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter hereof may not be enforced in or by such courts or agency.” See BOX LLC Agreement, Section 19.6.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(1).

The Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Act<sup>12</sup> 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.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

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<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30-days after the date of filing.<sup>15</sup> However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.<sup>16</sup> The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the Instrument of Accession was executed on April 22, 2008, and there is no reason to delay implementation of the changes to the BOX LLC Agreement pursuant to the Instrument of Accession. For these reasons, the Commission designates the proposal to be operative upon filing with the Commission.<sup>17</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>18</sup>

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<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. BSE has satisfied the five-day pre-filing requirement.

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>17</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>18</sup> See 15 U.S.C. 78s(b)(3)(C).

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BSE-2008-28 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-BSE-2008-28. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office

of the BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BSE-2008-28 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).