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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66278; File No. SR-BX-2011-046)

January 30, 2012

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1, to Amend the BOX Fee Schedule with Respect to Credits and Fees for Transactions in the BOX PIP

On July 15, 2011, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend the Fee Schedule of the Boston Options Exchange Group, LLC ("BOX") to increase the credits and fees for certain transactions in the BOX Price Improvement Period ("PIP").[3] The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[4] Notice of filing of the proposed rule change was

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

2 17 CFR 240.19b-4.

3 The PIP is a mechanism in which a BOX Options Participant submits an agency order on behalf of a customer for price improvement, paired with a contra-order guaranteeing execution of the agency order at or better than the National Best Bid or Offer ("NBBO"). The contra-order could be for the account of the Options Participant, or an order solicited from someone else. The agency order is exposed for a one-second auction in which other BOX Options Participants ("Initiating Participant") may submit competing interest at the same price or better. The initiating BOX Options Participant is guaranteed 40% of the order (after public customers) at the final price for the PIP order, assuming it is at the best price. See Chapter V, Section 18 of the BOX Rules.

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

published in the Federal Register on August 3, 2011.[5] The Commission received four comment letters on the Notice[6] and a response from BOX.[7]

On September 13, 2011, the Commission temporarily suspended BOX's proposal and simultaneously instituted proceedings to determine whether to approve or disapprove the proposed rule change.[8] On September 20, 2011, the Commission received notice of BOX's intention to petition for review of the Division's action by delegated authority to suspend its PIP fee filing, which triggered a stay of the suspension order. On September 27, 2011, the Commission received BOX's petition to review the Division of Trading and Markets' suspension by delegated authority.[9] On October 19, 2011, the Commission issued an order denying BOX's petition, lifting the automatic stay, and designating a longer comment period for the proceedings.[10]

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5 See Securities Exchange Act Release No. 64981 (July 28, 2011), 76 FR 46858 ("Notice").

6 See Letters to Elizabeth Murphy, Secretary, Commission, from John C. Nagel, Managing Director and General Counsel, Citadel Securities LLC ("Citadel"), dated August 12, 2011 ("Citadel Letter"); Andrew Stevens, Legal Counsel, IMC Financial Markets ("IMC"), dated August 15, 2011 ("IMC Letter"); Michael J. Simon, Secretary, International Securities Exchange ("ISE"), dated August 22, 2011 ("ISE Letter"), and Christopher Nagy, Managing Director Order Strategy, TD Ameritrade, Inc. ("TD Ameritrade"), dated September 12, 2011 ("TD Ameritrade Letter").

7 See Letter to Elizabeth Murphy, Secretary, Commission, from Anthony D. McCormick, Chief Executive Officer, BOX, dated September 9, 2011 ("BOX Letter").

8 See Securities Exchange Act Release No. 65330 (September 13, 2011), 76 FR 58065 (September 19, 2011) ("Suspension Order").

9 Petition for Review of Action by Delegated Authority from BOX, dated September 27, 2011 ("BOX Petition").

10 See Securities Exchange Act Release No. 65592, 76 FR 66103 (October 25, 2011).

The Commission thereafter received an additional four comment letters on the proposal.[11] The Exchange submitted a response letter to the comments on December 9, 2011.[12] The Exchange also submitted data for the Commission's consideration under separate cover.[13]

On January 30, 2012, the Exchange submitted Amendment No. 1 to the proposed rule change. In Amendment No. 1, the Exchange proposed to put its fee change on a formal pilot and undertook to provide the Commission with data during the course of such pilot. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

I. Description of the Proposal

The Exchange proposes to increase the credits and fees for certain transactions in the PIP by modifying Section 7d of the BOX Fee Schedule. Specifically, the Exchange proposes to: (1) increase both the credits and the fees for PIP transactions in classes that are not subject to the Penny Pilot ("Non-Penny classes") from $0.30 to $0.75 per contract; and (2) increase both the credits and the fees for PIP transactions in Penny Pilot classes (other than in QQQQ, SPY, and IWM) where the trade price is equal to or greater than $3.00 per contract from $0.30 to $0.75 per

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11 See Letters to Elizabeth Murphy, Secretary, Commission, from Anthony J. Saliba, Chief Executive Officer, LiquidPoint, LLC ("LiquidPoint"), dated October 10, 2011 ("LiquidPoint Letter"); Christopher Nagy, Managing Director Order Strategy, TD Ameritrade, dated November 14, 2011 ("TD Ameritrade Letter II"); Michael J. Simon, Secretary, ISE, dated November 17, 2011 ("ISE Letter II"); and John C. Nagel, Managing Director and General Counsel, Citadel, dated November 17, 2011 ("Citadel Letter II").

12 See Letter to Elizabeth Murphy, Secretary, Commission, from Anthony D. McCormick, Chief Executive Officer, BOX, dated December 9, 2011 ("BOX Response Letter").

13 See Letter to Heather Seidel, Associate Director, Division of Trading and Markets, Commission, from Michael J. Burbach, Vice President, Legal Affairs, BOX, dated December 9, 2011 ("BOX Data Letter").

contract. The credits and the fees for PIP transactions QQQQ, SPY, and IWM and in all other Penny Pilot classes where the trade price is less than $3.00 per contract will remain at $0.30 per contract. The credits are paid by the Exchange on the agency order that is submitted to the PIP auction on behalf of a customer. The fees are charged by the Exchange to the order that is executed against the agency order, whether such order is the contra order submitted by the Initiating Participant or an order submitted by another BOX Options Participant in response to the PIP auction ("Responding Participant"). The credits and fees are in addition to any applicable trading fees, as described in Sections 1 through 3 of the BOX Fee Schedule.[14]

In addition, on January 30, 2012, BOX submitted Amendment No. 1 to the proposed rule change, which added language to make the proposed rule change, subject to Commission approval, operative on a pilot basis beginning February 1, 2012, and continuing until February 28, 2013. Further, BOX agreed to submit to the Commission on a quarterly basis during the pilot period certain monthly PIP transaction data in series traded in penny increments compared to series traded in nickel increments, subdivided by when BOX is at the NBBO and when BOX is not at the NBBO, including: (1) volume by number of contracts traded; (2) number of contracts executed by the Initiating Participant as compared to others ("retention rate"); (3) percentage of contracts receiving price improvement when the Initiating Participant is the contra party and when others are the contra party; (4) average number of participants responding in the PIP; (5) average price improvement amount when the Initiating Participant is the contra party; (6) average price improvement amount when others are the contra party; and (7) percentage of

14 Sections 1 through 3 of the BOX Fee Schedule include a $0.25 per contract transaction fee for contracts traded in the PIP. Depending on its average daily volume ("ADV"), a Participant who initiates PIP auctions may be charged a lower per contract fee. See Section 7d. of the BOX Fee Schedule.

contracts receiving price improvement greater than $0.01, $0.02 and $0.03 when the Initiating Participant is the contra party and when others are the contra party.[15] BOX also agreed to make such data publicly available.

II. Discussion

After careful review of the proposal and consideration of the comment letters, the Commission finds that the proposed rule change to amend the BOX Fee Schedule to increase the credits and fees for certain transactions in the PIP is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 of the Act.[16] Specifically, the Commission finds that the proposal, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,[17] which, among other things, requires that rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest, and to not permit unfair discrimination between customers, issuers, brokers, or dealers, and Section 6(b)(8) of the Act,[18] which requires that the rules of a national securities exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In addition, the Commission finds that the proposal, as modified by

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15 The data set forth in Amendment No. 1 to be provided during the pilot period includes substantially the same information as the Order Size Cumulative data provided by BOX in pages 26 through 30 of the BOX Data Letter.

16 15 U.S.C. 78f.

17 15 U.S.C. 78f(b)(5).

18 15 U.S.C. 78f(b)(8).

Amendment No. 1, is consistent with Section 6(b)(4) of the Act,[19] which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Further, as discussed below, in approving this proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation.[20]

As noted above, the Exchange's proposal increased: (1) both the credits and the fees for PIP transactions in classes that are not subject to the Penny Pilot from $0.30 to $0.75 per contract; and (2) both the credits and the fees for PIP transactions in Penny Pilot classes where the trade price is equal to or greater than $3.00 per contract (other than transactions in QQQQ, SPY, and IWM) from $0.30 to $0.75 per contract. In other words, the Exchange's proposal applies only to options with a minimum price variation larger than one cent. The Exchange's proposal did not modify its existing PIP-related fees that apply to transactions in series that have a minimum pricing variation of one cent. Accordingly, the issue before the Commission in this filing is whether the PIP fee changes applicable to options quoting in an increment larger than a penny are consistent with the Act.

Prior to the institution of proceedings, the Commission received four comment letters on the Exchange's proposed rule change.[21] Three commenters recommended that the Commission temporarily suspend SR-BX-2011-046 and institute proceedings to disapprove the filing.[22] The

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19 15 U.S.C. 78f(b)(4).

20 See 15 U.S.C. 78c(f).

21 See Citadel Letter, supra note 6, IMC Letter, supra note 6, ISE Letter, supra note 6, and TD Ameritrade Letter, supra note 6.

22 See Citadel Letter, supra note 6, at 4; IMC Letter, supra note 6, at 1 and 4; and ISE Letter, supra note 6, at 5.

fourth commenter supported the Exchange's proposed rule change and urged the Commission not to institute proceedings to disapprove the filing.[23]

Citadel argued that the magnitude of the disparity between the fees an initiator pays and the fees a competitive responder pays, on a net basis,[24] make it "economically prohibitive for anyone other than the initiator to respond" to a PIP auction.[25] Citadel also argued that the fees proposed by SR-BX-2011-046 are "solely structured to benefit one group of BOX participants over another," and thus are discriminatory and an undue burden on competition.[26]

IMC also noted its belief that the BOX PIP fee structure unduly burdened competition and unreasonably discriminated amongst participants.[27] It argued that the increase in fees is borne solely by PIP competitive responders and effectively bars certain participants from competing with initiators.[28]

ISE challenged BOX's assertion that the fees proposed in SR-BX-2011-046 have a uniform application across all members, noting that the differential in net fees between PIP initiator and competitive responders is between \$0.75 and \$0.90 per contract.[29] ISE also argued

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23 See TD Ameritrade Letter, supra note 6, at 2.

24 Under the proposed rule change, the Exchange would charge both the Initiating Participant and the Responding Participant the same fee for executing an order in the PIP. However, if the Initiating Participant also submits the agency order into the PIP, the Initiating Participant receives the rebate paid to the agency order that is auctioned in the PIP. As a result, if the fee the Initiating Participant pays is aggregated with the rebate the Initiating Participant receives for the agency order (i.e., a "net" fee), the Initiating Participant would pay a lower net fee compared to Responding Participants.

25 See Citadel Letter, supra note 6, at 2.

26 Id. at 3.

27 See IMC Letter, supra note 6, at 1-2.

28 See id.

29 See ISE Letter, supra note 6, at 2.

that SR-BX-2011-046 was deficient in that it failed to: provide an adequate basis to determine that the proposed rule change is consistent with the Act because it did not address the pricing differential for participants who seek to compete with a PIP initiator; discuss the burden on competition imposed by the pricing structure; or provide support for its assertion that the fee change will allow it to compete with other exchanges.[30]

TD Ameritrade strongly supported the proposed rule change, noting that it had already seen significant benefits to its retail investors.[31] TD Ameritrade stated that the BOX fee structure provides incentives for market participants to submit customer order flow to BOX and thus, creates a greater opportunity for retail customers to receive additional price improvement.[32]

In its response letter, BOX argued that its market model and fee structure are intended to benefit retail customers.[33] BOX stated that its fee structure in the PIP is more transparent than payment for order flow ("PFOF") arrangements and notes its belief that the credit to remove liquidity on BOX is generally less than what firms receive through PFOF.[34] BOX stated that since the PIP began operating in 2004, customers have received more than $355 million in savings through better executions on BOX, including $7.3 million in August 2011, and stated its belief that the proposal is consistent with the public interest, and with the Exchange Act.[35]

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30 See ISE Letter, supra note 6, at 5.

31 See TD Ameritrade Letter, supra note 6, at 1.

32 See id.

33 See BOX Letter, supra note 7, at 2.

34 See id.

35 See id.

As noted above, the Commission received an additional four comment letters on the proposal during the proceedings,[36] in addition to rebuttal comment from the Exchange[37] and a separate data letter.[38] Of these comment letters, one supported the proposal[39] and three opposed the proposal.[40]

In support of the proposal, both BOX and TD Ameritrade stated that they believed that the proposed fees did not inhibit competition or foster internalization.[41] TD Ameritrade stated that its experience with the BOX PIP has shown "price improvement rates superior to that available through other programs in the market."[42]

The commenters opposed to the proposal all expressed concern about the impact of the net fees on competition in the PIP, and thus on the opportunity for price improvement for the customer order being exposed in the auction.[43] Citadel argues that because of the disparity between the net fee charged to competitive responders and the initiators, BOX effectively is discouraging competition in the PIP and is thereby encouraging internalization at worse prices

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36 See TD Ameritrade Letter II, supra note 11, LiquidPoint Letter, supra note 11, ISE Letter II, supra note 11, and Citadel Letter II, supra note 11.

37 See BOX Response Letter, supra note 12.

38 See BOX Data Letter, supra note 13.

39 See TD Ameritrade Letter II, supra note 11.

40 See LiquidPoint Letter, supra note 11, ISE Letter II, supra note 11, and Citadel Letter II, supra note 11.

41 See BOX Response Letter, supra note 12, at 3-5; TD Ameritrade Letter II, supra note 11, at 2.

42 TD Ameritrade Letter II, supra note 11, at 2.

43 Some of the commenters opposed to the proposal expressed concerns about the competitiveness of the PIP in general and did not limit their comments to the fee change applicable to non-penny series that is before the Commission in this particular proposal. See, e.g., Citadel Letter II, supra note 11, at 3 and ISE Letter II, supra note 11, at 1-2.

for investors.[44] Citadel further argues that BOX's PIP fees are not equitably allocated and unfairly discriminate in violation of the Act.[45] Citadel claims that BOX's PIP fees, which it believes have reduced competition, have resulted in PIP auctions offering price improvement to fewer numbers of contracts and by lower amounts.[46] Likewise, LiquidPoint maintains that the filing imposes a burden on competition because of the higher net costs to a competitive responder in a PIP auction, which it believes prevents responders from competing on equal footing in the auction with the firm that submitted the original PIP order.[47] ISE argues that BOX's PIP fees impose an unreasonable burden on competition and that BOX appears to be using its PIP fees to increase interaction rates, thereby denying investors the opportunity to receive the best possible prices for their orders.[48] ISE notes that BOX data shows that only 15%

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44 See Citadel Letter II, supra note 11, at 2.

45 See Citadel Letter II, supra note 11, at 1.

46 See Citadel Letter II, supra note 11, at 3. Citadel provided statistics on the amount and percent of average price improvement per month for BOX's PIP and compared it to similar price improvement mechanisms on ISE, Phlx, and CBOE, for February to October 2011. Although these statistics provided do show a downward trend for price improvement on BOX's PIP during the period covered by Citadel's statistics, the Commission notes they are not broken out by penny and non-penny series, and thus do not show the statistics only for the specific options subject to the fee change in this proposed rule change.

Citadel also argues that other BOX fees, in particular the fee to add liquidity to the BOX book, have increased quoted spreads on BOX and amplified the negative impact of the PIP fee by facilitating internalization at the NBBO through PIP auctions. See Citadel Letter II, supra note 11, at 6-7. Although the Commission has considered the proposed fee change that is the subject of this proposed rule change in the context of these other fees, the Commission notes that these other BOX fees are not within the scope of this proposed rule change.

47 See LiquidPoint Letter, supra note 11, at 2.

48 See ISE Letter II, supra note 11, at 2.

of orders in penny classes in the PIP receive price improvement over the NBBO and that BOX data shows a 58% retention rate in the penny classes.[49]

To assess the impact of the proposed fee change, the Commission's review of the data focused on issues relating to the competitiveness of the PIP auction and extent of price improvement obtained for customers. In the BOX Data Letter, BOX provided monthly PIP execution quality statistics for the period of June through October 2011, broken down by order size (1-10 contracts, 11-25 contracts, 26-50 contracts, 51-100 contracts, and 101 or more contracts). BOX also provided summary data for the period when the fee was in effect (August 1, 2011 to October 18, 2011, excluding September 13-20, 2011), as well as NBBO data for BOX for the period of June through October 2011. The data provided by BOX covers the few months before and after the fee change, and includes statistics on percent and amount of price improvement, the number of responders to a PIP auction, and the retention rates of Initiating Participants and those market makers who received PIP directed orders. This data included information on both penny and non-penny series, although, as noted, this proposed rule change only applies to PIP transactions in non-penny series.

The data provided by BOX in the BOX Data Letter does not demonstrate a decline in the execution quality of orders executed in the PIP auction, in series trading in an increment larger than a penny, during the period that the proposed rule change was in effect as compared to the

49 See ISE Letter II, supra note 11, at 1. ISE notes that this level of retention exceeds the 40% execution guarantee. In contrast, ISE notes that 81% of the contracts executed through the ISE's Price Improvement Mechanism received price improvement over the NBBO during September 2011, whereas only 23% of PIP transactions were executed at a price that improved the NBBO in September 2011. We note that the BOX PIP retention rate statistics cited by ISE refer to data on penny series, which are not affected by the fee change in this proposed rule change.

months immediately preceding the proposed rule change. The data does show that the nature of the PIP auction and the execution of orders within the auction varies significantly depending on whether the auction relates to a penny series or series with a larger increment, and on whether BOX is quoting at the NBBO or outside the NBBO when the auction is initiated. The following discussion of the data focuses on the non-penny series, which are the series affected by the proposed rule change.

With respect to the non-penny series that were affected by the PIP fee change, the data show that the initiated order and directed order retention rate remained largely the same (both when BOX was outside the NBBO and when BOX was at the NBBO) during the period the fee change was in effect as compared to the two months prior.[50] Specifically, although the retention rate varied significantly between when BOX was outside the NBBO (52%) and when BOX was at the NBBO (22%), it remained relatively stable within those categories during the period covered by the BOX Data Letter, varying no more than 3%.[51]

For non-penny series, the price improvement percentages declined slightly for transactions when BOX was at the NBBO (despite the increase in the number of responders), and

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50 See BOX Data Letter, supra note 13, at 32.

51 See id. The Commission does recognize that, in the non-penny series, the number of responders declined in auctions that were initiated when BOX was quoting outside the NBBO and increased in auctions that were initiated when BOX was quoting at the NBBO during this time period, as compared to the two months prior to the fee change. For example, in July 2011, the average number of responders when BOX was at the NBBO was 1.31. In contrast, during the entire period that the proposed fee change was in effect, the average number of responders when BOX was at the NBBO was 3.11. Further, in July 2011, the average number of responders when BOX was not at the NBBO was 2.12. In contrast, during the entire period that the proposed fee change was in effect, the average number of responders when BOX was not at the NBBO was 1.75. See BOX Data Letter, supra note 13, at 29 and 31. However, as noted, even with these changes, the retention rate during these time periods did not change significantly.

increased slightly when BOX was not at the NBBO (despite the decrease in the number of responders). Overall, the data shows that BOX's PIP provided very significant price improvement for non-penny series both before and after the PIP fee change.[52] As noted below in connection with BOX's agreement to continue to make publicly available PIP execution quality data during the pilot period, such data is relevant for the consideration of broker-dealers when managing their best execution obligations.

Thus, the data provided by BOX for the non-penny series do not suggest any significant adverse impact of the proposed PIP fee change on the competitiveness of the PIP auction or the extent of price improvement for orders executed in the PIP in those series.[53] Both ISE and

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52 See BOX Data Letter, supra note 13, at 32-33. The percentage of contracts receiving price improvement in non-penny series ranged from 55%-57% and the average price improvement amount ranged from \$0.02 to \$0.0269. See id.

53 Although the proposed rule change does not affect the PIP fee for options series in penny classes quoting in a penny increment, data for those series included in the BOX Data Letter does show that the majority of BOX's PIP volume is in the series in penny classes quoting in penny increments when BOX is quoting outside the NBBO. See BOX Data Letter, supra note 13, at 32. Commission staff examined the total number of contracts executed in the PIP compared to the total number of contracts executed in penny series when BOX is not at the NBBO, as provided by BOX. Staff calculated that the following percentages of total monthly volume in the PIP occurred in penny series when BOX is outside the NBBO: June 2011, 66.3%; July 2011, 63.0%; August 2011, 64.5%; September 2011, 67.0%; and October 2011, 70.9%.

In these series, the data show high retention rates by the Initiating Participant along with a low rate of price improvement. See BOX Data Letter, supra note 13, at 32. The retention rates in penny series when BOX is not at the NBBO ranges from 62% to 64% during the time period covered by the data. Further, the overall percentage of contracts receiving price improvement in the penny series ranges from 15% to 21% during the time period covered by the data (with the highest percentage being in August 2011). See id. ISE also notes high retention rates and low price improvement percentages in the BOX PIP in the penny classes. See ISE Letter II, supra note 11, at 1.

This should be considered against the low percentage of time that BOX is at the NBBO, which one commenter argued is a result of BOX's overall fee structure. See Citadel Letter II, supra note 11, at 8. BOX's data show that the percentage of time BOX was at

Citadel emphasized low price improvement and high retention rates, but their statistics focus on either penny classes, only part of which are affected by the proposed rule change, or overall price improvement statistics, which are heavily influenced by the penny series because of the high volumes in the penny series in the BOX PIP.[54]

The Commission acknowledges that data BOX provided is based on a sample period that was both short and included an anomalous month, August 2011, which was characterized by extraordinarily high volatility. This fact was noted by Citadel, which stated that during periods of high volatility, spreads tend to widen, which in turn provides more opportunity for price improvement.[55] Citadel also provided data showing spikes in price improvement in price improvement mechanisms on other exchanges during the month of August 2011.[56] Two

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the NBBO in all options classes ranges from 30.00% to 32.70%. See BOX Data Letter, supra note 13, at 34. Citadel provided statistics for 60 penny pilot symbols in September and October 2011 that calculate BOX's percentage of time at the NBBO at 18% for each month. See Citadel Letter II, supra note 11, at 8.

The data suggests that some market participants may seek to route orders to BOX's PIP when BOX is not at the NBBO. We note that BOX established comparably structured PIP fees in the penny series in August 2010 and subsequently increased the levels of in April 2011. See Securities Exchange Act Release Nos. 62632 (August 3, 2010), 75 FR 47869 (August 9, 2010) (SR-BX-2010-049) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change) and 64198 (April 6, 2011), 76 FR 20426 (April 12, 2011) (SR-BX-2011-020) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change).

54 See BOX Data Letter, supra note 13, at 32. During the period covered by the BOX data provided, the volume in the penny series ranged from 77% to 82% of total volume in the PIP. See id.

55 See Citadel Letter II, supra note 11, at 10.

56 See Citadel Letter II, supra note 11, at 12.

commenters also cautioned that it takes time for the market to react to fee changes.[57] One noted that the full impact of the proposal might not be reflected in recent data.[58]

In the BOX Response Letter, BOX offered to put the fee change on a pilot.[59] As noted above, BOX filed Amendment No. 1 to the proposed rule change on January 30, 2012, which amended the filing so that if the Commission approved the changes to the BOX Fee Schedule, although such changes would become effective upon any such Commission approval, BOX would make the changes operative on a pilot basis beginning February 1, 2012, and continuing until February 28, 2013. BOX also represented that it will provide publicly-available data to the Commission on a quarterly basis for the duration of the pilot, which data would be substantially similar to that provided in the BOX Data Letter. This will allow the Commission to further evaluate the effect of the fee structure on competition and the extent of price improvement for orders executed in the PIP, in the affected series, over a longer period of time with a data set that should be more representative and less subject to the effect of potentially anomalous periods.

In light of the data received, which showed no adverse impact of the proposed rule change on the competitiveness of the PIP auction or the extent of price improvement in series that trade in non-penny increments that are the subject of the current proposal before the Commission, and the Exchange's commitment to provide data during the course of a pilot, which will allow the Commission to further evaluate the impact of the fee during the course of the pilot, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act.

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57 See Citadel Letter II, supra note 11, at note 28 and ISE Letter II, supra note 11, at 1.

58 See Citadel Letter II, supra note 11, at note 28.

59 See BOX Response Letter, supra note 12, at 6.

Further, because BOX provided data to the Commission and agreed to make the data publicly available, broker-dealers now have access to data on execution quality for BOX's PIP that they did not previously have, which is relevant for their consideration when managing their best execution obligations.[60] On numerous occasions, the Commission has articulated that in meeting their best-execution obligations,[61] broker-dealers should regularly and rigorously examine execution quality likely to be obtained from different markets trading a security.[62] The Commission welcomes BOX's willingness to make public data available, and notes that the data assisted the Commission in evaluating the proposal.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

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60 This proposal, the comment letters it has generated, and the proceedings the Commission has conducted, have highlighted the lack of visibility into publicly-available options execution quality statistics across all of the exchanges, including for price improvement mechanisms. See also Citadel Letter II, supra note 11, at note 7 (advocating the adoption of rules mandating publication of listed options execution quality metrics similar to Regulation NMS Rules 605 and 606) and TD Ameritrade Letter II, supra note 11, at 2-3 (recommending expansion of Rule 605 to the options markets). Although certain exchanges provide price improvement statistics to the Commission for their price improvement mechanisms, the statistics are not made publicly available.

61 See, e.g., Rule 2320 of the NASD's Conduct Rules, NASD Notice to Members 06-58, Best Execution, http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p017607.pdf (Oct. 2006) and NASD Notice to Members 01-22, Best Execution, http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p005080.pdf (April 2001).

62 See, e.g., Securities Exchange Release Nos. 37619A (September 6, 1996), 61 FR 48290, (September 12, 1996); 37046 (March 29, 1996), 61 FR 15322, (April 5, 1996) and 34902 (October 27, 1994), 59 FR 55066 (November 22, 1994). See also Securities Exchange Act Release No. 43590 (November 17, 2000), 65 FR 75414 (December 1, 2000).

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2011-046 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-BX-2011-046. 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 website (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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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 publicly available. All submissions should refer to File Number SR-BX-2011-046 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

Amendment No. 1 revised the proposed rule change to, among other things, specify that the proposed rule change will be operative on a pilot basis, beginning February 1, 2012, and continuing until February 28, 2013. Also in Amendment No. 1, BOX committed to provide to the Commission, on a quarterly basis, certain monthly PIP transaction data in series traded in penny increments compared to series traded in nickel increments, subdivided by when BOX is at the NBBO and when BOX is not at the NBBO, including: (1) volume by number of contracts traded; (2) retention rate; (3) percentage of contracts receiving price improvement when the Initiating Participant is the contra party and when others are the contra party; (4) average number of participants responding in the PIP; (5) average price improvement amount when the Initiating Participant is the contra party; (6) average price improvement amount when others are the contra party; and (7) percentage of contracts receiving price improvement greater than $0.01, $0.02 and $0.03 when the Initiating Participant is the contra party and when others are the contra party. The amendment addresses potential concerns that the data is based on a sample period that was both short and included an anomalous month (August 2011), and will provide the Commission with additional data with which to continue to assess the proposed rule change during the pilot period. Accordingly, the Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,[63] for approving the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of notice in the Federal Register.

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[63] 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[64] that the proposed rule change (SR-BX-2011-046), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[65]

Kevin M. O'Neill
Deputy Secretary

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64 15 U.S.C. 78s(b)(2).

65 17 CFR 200.30-3(a)(12).