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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66871; File No.10-206)

In the Matter of the Application of BOX Options Exchange LLC for Registration as a National Securities Exchange

Findings, Opinion, and Order of the Commission

April 27, 2012

I. Introduction

On December 19, 2011, BOX Options Exchange LLC (“BOX Exchange” or “Exchange”) submitted to the Securities and Exchange Commission (“Commission”) an Application for Registration as a National Securities Exchange (“Form 1 Application”)¹ under Section 6 of the Securities Exchange Act of 1934 (“Act”).² On December 28, 2011, BOX Exchange submitted Amendment No. 1 to its Form 1 Application.³ Notice of the Form 1 Application, as modified by Amendment No. 1, was published for comment in the Federal Register on January 31, 2012.⁴

¹ On January 26, 2012, the Commission issued an order granting BOX Exchange exemptive relief, subject to certain conditions, in connection with the filing of its Form 1 Application. See Securities Exchange Act Release No. 66241, 77 FR 4845 (January 31, 2012). Because BOX Exchange’s Form 1 Application was incomplete without the exemptive relief, the date of filing of such application is January 26, 2012.

² 15 U.S.C. 78f.

³ Amendment No. 1, among other things, provides the unconsolidated financial statements for certain affiliates of BOX Exchange that are required in Exhibit D to Form 1 but were not included in BOX Exchange’s initial Form 1 Application. In its initial Form 1 Application, BOX Exchange only submitted consolidated financials for certain of these affiliates.

⁴ See Securities Exchange Act Release No. 66242 (January 26, 2012), 77 FR 4841 (“Notice”).

The Commission has not received any comment letters regarding the Form 1 Application. On April 2, 2012, BOX Exchange submitted Amendment No. 2 to the Form 1 Application.⁵

BOX Options Exchange Group, LLC (“BOX Group LLC”) currently operates the Boston Options Exchange options trading platform (“BOX”) as a facility of Nasdaq OMX BX, Inc. (“BX”). In January 2004, the Boston Stock Exchange, Inc. (“BSE”) (n/k/a BX) established BOX as its options trading facility.⁶ BOX Group LLC was formed to operate BOX. Bourse de Montréal Inc. (“Bourse”), BSE, and Interactive Brokers Group LLC (“IB”) each held more than a 20% interest in BOX Group LLC, and none of the remaining owners of BOX Group LLC held

⁵ In Amendment No. 2, BOX Exchange, among other things: (1) amends the BOX Exchange Bylaws to provide: (a) that at least one public, non-industry director of BOX Exchange will not be associated with a broker or dealer, as required by Section 6(b)(3) of the Act; (b) that BOX Exchange will have a chief regulatory officer (“CRO”) with general day-to-day supervision over BOX Exchange’s regulatory operations; (c) that a majority of the members of the BOX Exchange nominating committee will be non-industry representatives; (d) that the CRO will report to the regulatory oversight committee and to the President of BOX Exchange; (e) that the compensation committee of BOX Exchange will set, among other things, the CRO’s compensation, taking into consideration any recommendations made by the President of BOX Exchange; and (f) that the regulatory oversight committee will make hiring and termination decisions with respect to the CRO, taking into consideration any recommendations made by the President of BOX Exchange; (2) represents that the regulatory oversight committee will meet regularly with the CRO to review regulatory matters; (3) represents that the only individual entitled to observation rights on the BOX Exchange Board to attend board or committee meetings if the BOX Holdings Director is unable to attend is the person appointed by the BOX Holdings Director (as defined below); (4) provides further information regarding BOX Exchange’s regulatory services agreement (“RSA”) with the Financial Industry Regulatory Authority (“FINRA”); (5) states the names of the initial BOX Exchange Board and describes the process for selecting such initial board; (6) updates Exhibit I to the Form 1 Application; and (7) updates the ownership schedule of BOX Exchange in Schedule 1 to the BOX Exchange LLC Agreement.

⁶ See Securities Exchange Act Release No. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (establishing, among other things, BOX as an options trading facility of BSE).

more than a 5% interest.⁷ Subsequently, the Bourse transferred its 31.37% ownership interest in BOX Group LLC to Bourse’s wholly-owned subsidiary, MX US 2, Inc. (“MX US 2”).⁸ As a result of a merger in 2008 involving Bourse and a subsidiary of TSX Group, Inc., a company incorporated in Ontario, Canada (n/k/a TMX Group, Inc.), MX US 2 became an indirect wholly-owned subsidiary of TMX Group, Inc. (“TMX”).

In August 2008, The Nasdaq OMX Group, Inc. (“Nasdaq”) acquired BSE but did not acquire any interest in BOX Group LLC. As part of that acquisition, BSE transferred its ownership interest in BOX Group LLC to MX US 2.⁹ MX US 2 thereafter held over 50% ownership interest in BOX Group LLC.¹⁰ Although BX (f/k/a BSE) no longer holds an ownership interest in BOX Group LLC, BOX continues to be a facility of BX, and, as such, BX is responsible for regulating this facility and ensuring that it operates in compliance with the federal securities laws.¹¹

BOX Exchange has filed to register as a national securities exchange pursuant to the Form 1 Application that is the subject of this Order. As a registered national securities exchange, BOX Exchange will be a self-regulatory organization (“SRO”) under the Act.¹² BOX Exchange

⁷ See Securities Exchange Act Release No. 49067 (January 13, 2004), 69 FR 2761 (January 20, 2004) (approving the operating agreement of BOX Group LLC).

⁸ See Securities Exchange Act Release No. 57713 (April 25, 2008), 73 FR 24327 (May 2, 2008).

⁹ See Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (approving, among other things, the acquisition of BSE by Nasdaq and the transfer of BSE’s ownership interest in Boston Group LLC to MX US 2).

¹⁰ See id.

¹¹ BX regulates BOX through its wholly-owned regulatory subsidiary, the Boston Options Exchange Regulation, LLC (“BOXR”).

¹² See 15 U.S.C. 78c(a)(26) (defining a “self-regulatory organization” to include a national securities exchange).

will be responsible for the operation and oversight of BOX as its facility¹³ following commencement of operations of BOX Exchange as a national securities exchange. In contemplation of this registration, the owners of BOX Group LLC formed the following three entities: BOX Exchange; BOX Market LLC (“BOX Market”); and BOX Holdings Group LLC (“BOX Holdings”). As noted above, BOX Exchange will be the registered national securities exchange and SRO. BOX Market will be the successor-in-interest to the current BOX Group LLC and will own and operate BOX as a facility of BOX Exchange. BOX Holdings will be the sole owner of BOX Market.

II. Discussion

Under Sections 6(b) and 19(a) of the Act,¹⁴ the Commission shall by order grant an application for registration as a national securities exchange if the Commission finds, among other things, that the proposed exchange is so organized and has the capacity to carry out the purposes of the Act and can comply, and can enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange.

As discussed in greater detail below, the Commission finds that BOX Exchange’s application for exchange registration meets the requirements of the Act and the rules and regulations thereunder. Further, the Commission finds that the proposed rules of BOX Exchange are consistent with Section 6 of the Act in that, among other things, they are designed to: (1) assure fair representation of the exchange’s members in the selection of its directors and administration of its affairs and provide that, among other things, one or more directors shall be

¹³ See 15 U.S.C. 78c(a)(2) (defining “facility”).

¹⁴ 15 U.S.C. 78f(b) and 15 U.S.C. 78s(a), respectively.

representative of investors and not be associated with the exchange, or with a broker or dealer;¹⁵ (2) prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and remove impediments to and perfect the mechanisms of a free and open market and a national market system;¹⁶ (3) not permit unfair discrimination between customers, issuers, or dealers;¹⁷ and (4) protect investors and the public interest.¹⁸ Finally, the Commission finds that the proposed rules of BOX Exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.¹⁹

A. Governance of BOX Exchange

1. BOX Exchange Board of Directors

The BOX Exchange Board will be the governing body of the Exchange and will possess all of the powers necessary for the management of the property, business and affairs of BOX Exchange and the governing of BOX Exchange as a SRO. The BOX Exchange Board will initially be comprised of five directors, and must have at least five, but no more than eleven, directors.²⁰ Under the BOX Exchange Bylaws, the BOX Exchange Board will be required to include:

¹⁵ See 15 U.S.C. 78f(b)(3).

¹⁶ See 15 U.S.C. 78f(b)(5).

¹⁷ See id.

¹⁸ See id.

¹⁹ See 15 U.S.C. 78f(b)(8).

²⁰ See BOX Exchange Bylaws Section 4.02.

- A majority non-industry directors;²¹
- At least one public director;²² and
- One director appointed by BOX Holdings (“BOX Holdings Director”), who will be an officer or director of BOX Holdings, MX US 2, or an affiliate of MX US 2.²³

In addition, at least 20% of the BOX Exchange Board must be officers, directors, or employees of a firm that is a BOX Options Participant (each a “Participant Director”).²⁴

Prior to the commencement of operations as an exchange, BOX Exchange will submit the name of its nominee for the Participant Director²⁵ to all current BOX Options Participants. BOX

²¹ See BOX Exchange Bylaws Section 1.01(q). A non-industry director is defined as a person who is a public director or is not an industry representative. An industry representative is an individual who is an officer, director or employee of a broker or dealer or who has been employed in any such capacity at any time within the prior three years, as well as an individual who has, or has had, a consulting or employment relationship with BOX Exchange or any affiliate of BOX Exchange, within the prior three years. See BOX Exchange Bylaws Section 1.01(m). Because BOX Market is an affiliate of BOX Exchange, anyone affiliated with BOX Market will not be considered a non-industry director. This definition generally is consistent with that approved with regard to other exchanges. See e.g., Securities Exchange Act Release Nos. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (“DirectEdge Exchanges Order”) and 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (“BATS Order”).

²² See BOX Exchange Bylaws Section 1.01(v). Public Director means a person who has no material business relationship with BOX Exchange or any affiliate of BOX Exchange, or any BOX Options Participant or any affiliate of any BOX Options Participant; provided, however, that an individual who otherwise qualifies as a Public Director shall not be disqualified from serving in such capacity solely because such individual is a director of BOX Exchange and/or the Chairman or Vice Chairman of the Board.

²³ The BOX Holdings Director will be on each committee of the BOX Exchange Board except the compensation committee and the regulatory oversight committee, unless he or she declines. See BOX Exchange Bylaws Section 6.01.

²⁴ A BOX Options Participant cannot have more than one officer, director or partner serving as a member of the BOX Exchange Board at any time. See BOX Exchange Bylaws Section 4.02.

Options Participants will thereafter be allowed the same periods for submitting the names of alternative candidates and to vote (14 days and 5 days, respectively) that are provided in the BOX Exchange Bylaws.²⁶ All other interim directors except for the Participant Director will be appointed and elected by the owners of BOX Group LLC, which persons will be the owners of BOX Exchange, and must meet the BOX Exchange board composition requirements as set forth in the BOX Exchange Bylaws.²⁷ This interim board will serve until BOX Exchange elects a new Board pursuant to the full nomination, petition, and voting process set forth in the BOX Exchange Bylaws.²⁸ BOX Exchange will complete such election within 90 days after BOX Exchange's application for registration as a national securities exchange is granted.²⁹

BOX Exchange owners will elect those candidates nominated by the nominating committee as BOX Exchange Board directors subsequent to the initial Board election process set forth above.³⁰ The owners of BOX Exchange that together hold a majority of voting percentage interest in BOX Exchange will have the right to object to any director nominee, but only if the

²⁵ For the initial interim BOX Exchange Board, the BOX Exchange owners will propose James Boyle of UBS Americas Inc. as the initial Participant Director nominee.

²⁶ Current BOX Options Participants will be permitted to nominate alternative Participant Directors candidates by submitting a petition naming an alternative candidate signed by not less than 10% of all current BOX Options Participants. Each BOX Options Participant will then have one vote to elect the Participant Director and the Participant Director with the majority of votes will be included as a member of the initial BOX Exchange Board elected by the owners of BOX Exchange. See Amendment No. 2.

²⁷ See Amendment No. 2.

²⁸ See Amendment No. 2. See also BOX Exchange Bylaws Section 4.02.

²⁹ See BOX Exchange Bylaws Sections 4.02 and 4.06. See also Securities Exchange Act Release No. 61152 (December 10, 2009), 74 FR 66699 (December 16, 2009) ("C2 Order") (allowing CBOE to appoint the initial board members and to issue a circular to trading permit holders identifying a slate of representative directors within 45 days from the date on which trading commenced on C2).

³⁰ See BOX Exchange Bylaws Section 4.06(d)(iv). See infra Section II.A.2. for discussion of the nominating committee.

nominee had been disciplined by a securities regulatory authority or the nominee would be subject to statutory disqualification under the Act.³¹ If there is no objection to the proposed director nominees, then they would take office at the annual meeting.³²

The Commission believes that the requirement in the BOX Exchange Bylaws that 20% of the directors be Participant Directors and the means by which they will be chosen by BOX Options Participants provide for the fair representation of members in the selection of directors and the administration of BOX Exchange and is consistent with the requirement in Section 6(b)(3) of the Act.³³ As the Commission has previously noted, this requirement helps to ensure that members have a voice in the use of self-regulatory authority, and that an exchange is administered in a way that is equitable to all those who trade on its market or through its facilities.³⁴

The Commission has previously stated that the inclusion of public, non-industry representatives on exchange oversight bodies is critical to an exchange's ability to protect the public interest.³⁵ Further, public, non-industry representatives can help to ensure that no single group of market participants has the ability to systematically disadvantage other market participants through the exchange governance process. The Commission believes that public

³¹ See BOX Exchange Bylaws Section 4.06(e)(iv).

³² Id.

³³ 15 U.S.C. 78f(b)(3).

³⁴ See, e.g., Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (granting the exchange registration of Nasdaq Stock Market, Inc.) ("Nasdaq Order"), and BATS Order, *supra* note 21. See also Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) ("NYSE/Archipelago Merger Approval Order").

³⁵ See, e.g., Regulation of Exchanges and Alternative Trading Systems, Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) ("Regulation ATS Release").

directors can provide unique, unbiased perspectives, which are designed to enhance the ability of the BOX Exchange Board to address issues in a non-discriminatory fashion and foster the integrity of BOX Exchange.³⁶ The Commission believes that the composition of the BOX Exchange Board satisfies the requirements in Section 6(b)(3) of the Act,³⁷ which requires in part that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, or with a broker or dealer.³⁸

The Commission believes that the process for electing the initial interim board, as proposed, is consistent with the requirements of the Act, including that the rules of the exchange assure fair representation of the exchange's members in the selection of its directors and administration of its affairs.³⁹ The initial members of BOX Exchange will likely consist substantially of the current BOX Options Participants.⁴⁰ As noted, prior to the commencement of operations as an exchange, BOX Exchange will provide all current BOX Options Participants the opportunity to participate in the selection of a Participant Director consistent with the BOX Exchange Bylaws. Further, BOX Exchange represents that it will complete the full nomination, petition, and voting process as set forth in the BOX Exchange Bylaws, which will provide persons that are approved as BOX Options Participants after the effective date of this Order with the opportunity to participate in the selection of a Participant Director(s), within 90 days of when

³⁶ See Nasdaq Order and NYSE/Archipelago Merger Approval Order, *supra* note 34, and BATS Order, *supra* note 21.

³⁷ 15 U.S.C. 78f(b)(3).

³⁸ See BOX Exchange Bylaws Section 4.02 and Amendment No. 2 (representing that at least one director will not be associated with a member of BOX Exchange or with a broker or dealer, as required by Section 6(b)(3) of the Act).

³⁹ 15 U.S.C. 78f(b)(3).

⁴⁰ See Amendment No. 2.

BOX Exchange's application for registration as a national securities exchange is granted. The Commission therefore believes BOX Exchange's initial interim board will provide member representation sufficient to allow the Exchange to commence operations for an interim period prior to going through the process to elect a new Board pursuant to the full nomination, petition, and voting process set forth in the BOX Exchange Bylaws.⁴¹

2. Exchange Committees

In the BOX Exchange Bylaws, BOX Exchange has proposed to establish several standing committees of the BOX Exchange Board. The standing committees of the BOX Exchange Board will be the audit, compensation, and regulatory oversight committees, and if applicable, the executive committee. The audit committee will consist of three to five directors, a majority of which will be required to be non-industry directors.⁴² Each of the compensation and regulatory oversight committees will consist of three to five directors, all of which will be required to be non-industry directors.⁴³ The BOX Exchange Board will have the authority to appoint an executive committee, which will be required to have a majority of non-industry directors and at least 20% Participant Directors.⁴⁴ The BOX Holdings Director will sit on each committee of the BOX Exchange Board except the compensation and regulatory oversight committees, unless he or she declines.⁴⁵

⁴¹ See BOX Exchange Bylaws Sections 4.02 and 4.06. See C2 Order, supra note 29 at 66701 (December 16, 2009) (noting that because C2's initial permit holders will likely consist substantially of current CBOE members, "the Commission believes C2's initial Board will provide member representation sufficient to allow the Exchange to commence operations.").

⁴² See BOX Exchange Bylaws Section 6.05.

⁴³ See BOX Exchange Bylaws Section 6.06 and 6.07.

⁴⁴ See BOX Exchange Bylaws Section 6.04.

⁴⁵ See BOX Exchange Bylaws Section 6.01.

In addition, the BOX Exchange Bylaws provide that a nominating committee will be established to select nominees for the BOX Exchange Board.⁴⁶ The nominating committee will be a committee of BOX Exchange but will not be a committee of the BOX Exchange Board. The nominating committee will have at least five members.⁴⁷ The nominating committee will nominate candidates for each director position on the BOX Exchange Board.⁴⁸ BOX Options Participants also will be able to nominate alternate candidates for the Participant Directors through a petition process and vote by BOX Options Participants.⁴⁹ If no candidates are nominated pursuant to the petition process, then the nominating committee will nominate its nominees for the Participant Director positions.⁵⁰ If a petition process produces additional candidates, then the candidates nominated pursuant to the petition process, together with those

⁴⁶ The BOX Exchange owners will appoint the initial nominating committee, which will serve until the first annual meeting. Thereafter, prior to each annual meeting, the sitting nominating committee will select individuals for the next nominating committee. BOX Exchange owners will then vote on the full slate of the nominating committee at the annual meeting. If the full slate fails to obtain the required vote of BOX Exchange owners, then the nominating committee will select a new slate and the process will be repeated. See BOX Exchange Bylaws Section 4.06.

⁴⁷ BOX Holdings will have the right to appoint one representative to sit on the nominating committee, at least 20% of the nominating committee will be composed of representatives of BOX Options Participants, and a majority of the members of the BOX Exchange nominating committee will be non-industry representative. See BOX Exchange Bylaws Section 4.06(a) and Amendment No. 2.

⁴⁸ See id.

⁴⁹ See BOX Exchange Bylaws Section 4.06(e). Specifically, the Secretary of BOX Exchange must provide to each BOX Options Participant the name of the nominating committee's nominees for the Participant Director positions. BOX Options Participants may nominate alternative candidates for election to the Participant Director positions by submitting a petition signed by not less than 10% of all then-current BOX Options Participants. Id.

⁵⁰ Id.

nominated by the nominating committee, will be presented to BOX Options Participants for a vote to determine the final list of nominees for the Participant Director positions.⁵¹

The Commission believes that BOX Exchange’s proposed committees, which are similar to the committees maintained by other exchanges,⁵² are designed to help enable BOX Exchange to carry out its responsibilities under the Act and are consistent with the Act.

B. Regulation of BOX Exchange and BOX

Following BOX Exchange’s commencement of operations as a national securities exchange, BOX Exchange will have all the attendant regulatory obligations under the Act. In particular, BOX Exchange will be responsible for the operation and regulation of BOX, its options trading facility. Certain provisions in the BOX Exchange, BOX Market, and BOX Holdings governance documents are designed to facilitate the ability of BOX Exchange and the Commission to fulfill their regulatory obligations. The discussion below summarizes some of these key provisions.

1. Changes in Control

a. Ownership Structure of BOX Exchange, BOX Holdings, and BOX Market

BOX Exchange will issue Economic Units, as well as Voting Units, to each of its owners, or Members.⁵³ Economic Units, comprising all interests in the profits and losses of BOX Exchange and all rights to receive distributions from BOX Exchange, will not have any voting

⁵¹ Id.

⁵² See, e.g., BATS Order, *supra* note 21, and Nasdaq Order, *supra* note 34.

⁵³ BOX Exchange’s limited liability company agreement (“BOX Exchange LLC Agreement”) refers to the owners of BOX Exchange as “Members.”

rights.⁵⁴ Voting Units will have voting rights and not include any right to, or interest in, any profits and losses of BOX Exchange, distributions from BOX Exchange, assets of BOX Exchange or other economic value in BOX Exchange.⁵⁵ The total number of Voting Units will be equal to the total number of Economic Units. Voting Units cannot be transferred separately from their related Economic Units.

The Members of BOX Exchange and their respective interests are: MX US 2 (40.000% of Economic Units and 20.000% of Voting Units); IB (20.000% of Economic Units and 20.000% of Voting Units); Citadel Securities LLC (6.445% of Economic Units and 12.179% of Voting Units); Citigroup Financial Products (6.445% of Economic Units and 12.179% of Voting Units); Strategic Investments II Inc. (6.445% of Economic Units and 4.990% of Voting Units); UBS Americas Inc. (6.253% of Economic Units and 4.990% of Voting Units); CSFB Next Fund Inc. (6.123% of Economic Units and 10.00% of Voting Units); LabMorgan Corp. (6.123% of Economic Units and 11.570% of Voting Units); and Aragon Solutions Ltd. (2.166% of Economic Units and 4.092% of Voting Units).

As noted above, BOX Holdings will own 100% of BOX Market. Unlike BOX Exchange, BOX Holdings will issue one class of units. The Members of BOX Holdings⁵⁶ and their respective interests are: MX US 2 (53.83%); IB (20.09%); Citadel Securities LLC (4.20%); Citigroup Financial Products (4.20%); Strategic Investments II Inc. (4.20%); UBS Americas Inc. (4.08%); CSFB Next Fund Inc. (3.99%); LabMorgan Corp. (3.99%); and Aragon Solutions Ltd. (1.41%).

⁵⁴ See Article 2.5(a) of the BOX Exchange LLC Agreement.

⁵⁵ See Article 2.5(b) of the BOX Exchange LLC Agreement.

⁵⁶ BOX Holdings' limited liability company agreement ("BOX Holdings LLC Agreement") refers to the owners of BOX Holdings as "Members."

As stated above, MX US 2 is a Member in both BOX Exchange (40% of Economic Units and 20% of Voting Units) and BOX Holdings (53.83%). Further, MX US 2 is a wholly-owned indirect subsidiary of the Bourse.⁵⁷ The Bourse, a company incorporated in Quebec, Canada, is a wholly-owned direct subsidiary of TMX, a company incorporated in Ontario, Canada. Therefore, MX US 1, the Bourse, and TMX (collectively, the “Controlling Upstream Owners”) will be indirect owners of BOX Exchange, BOX Holdings, and BOX Market.

b. BOX Exchange Ownership and Voting Limits

The BOX Exchange LLC Agreement contains limits on the ownership of Economic Units and Voting Units, and on the voting of Voting Units.⁵⁸ Specifically, with respect to the limits on the Economic Units, no person, either alone or together with any related persons (including affiliates) may own, directly or indirectly, of record or beneficially, Economic Units representing a percentage interest of more than 40%.⁵⁹ In addition, BOX Options Participants, alone or together with any related persons (including affiliates) may not own, directly or indirectly, of record or beneficially, Economic Units representing a percentage interest of more than 20%.⁶⁰ With respect to limits on the Voting Units, no person, either alone or together with any related person (including affiliates), may own, directly or indirectly, of record or beneficially, Voting Units representing a percentage interest of more than 20%, have the power to vote, direct the vote or give any consent or proxy in excess of the 20% voting limit, or enter into any agreement,

⁵⁷ Specifically MX US 2 is a wholly-owned direct subsidiary of MX US 1, Inc. (“MX US 1”), a company incorporated in Delaware and a wholly-owned direct subsidiary of the Bourse.

⁵⁸ These provisions are consistent with ownership and voting limits approved by the Commission for other exchanges. See, e.g., DirectEdge Exchanges Order and BATS Order, supra note 21. See also C2 Order, supra note 29 and Nasdaq Order, supra note 34.

⁵⁹ See Article 7.3(f) of the BOX Exchange LLC Agreement.

⁶⁰ Id.

plan or other arrangement that would result in the Voting Units that are subject to such agreement, plan or other arrangement not being voted on any matter or matters or any proxy relating thereto being withheld, where the effect would be to enable any person, either alone or together with any related persons (including affiliates), to vote, possess the right to vote or cause the voting of, Voting Units in excess of the 20% voting limit.⁶¹

Notwithstanding the limits described above, the BOX Exchange Board may waive the 40% ownership limit for Economic Units if it makes certain determinations.⁶² The BOX Exchange Board also may waive the 20% ownership limit for Voting Units if it makes certain determinations.⁶³ However, BOX Options Participants will be subject to the 20% ownership limit for Economic Units and the 20% ownership limit for Voting Units and will not be eligible for a waiver to exceed such thresholds.⁶⁴

⁶¹ See Article 7.3(g)(i) of the BOX Exchange LLC Agreement. An owner of BOX Exchange may also voluntarily impose a lower voting restriction on itself. Id. Strategic Investments II Inc. and UBS Americas Inc. each have voluntary imposed a lower voting limit of 4.99%. See Amendment No. 2.

⁶² See Article 7.3(f) of the BOX Exchange LLC Agreement. The required determinations are that (A) such waiver will not impair the ability of BOX Exchange to carry out its functions and responsibilities under the Act and the rules and regulations promulgated thereunder, (B) such waiver is otherwise in the best interests of BOX Exchange and its owners, (C) such waiver will not impair the ability of the Commission to enforce the Act and (D) if applicable, the transferee in such transfer and its related persons are not subject to any applicable “statutory disqualification” (within the meaning of Section 3(a)(39) of the Act). Id. The Commission has previously approved the rules of other exchanges that provide for the ability of the exchange to waive the ownership and voting limitations discussed above for non-members of the exchange. See, e.g., DirectEdge Exchanges Order, supra note 21.

⁶³ See Article 7.3(g)(i) of the BOX Exchange LLC Agreement. The required determinations for waiving the voting limitation are the same as the required determinations for waiving the ownership limitation.

⁶⁴ See Articles 7.3(f) and 7.3(g)(i) of the BOX Exchange LLC Agreement.

The BOX Exchange LLC Agreement also contains a provision designed to ensure that no owner of BOX Exchange will exceed the applicable ownership limit on Voting Units. Specifically, if an owner of BOX Exchange owns Voting Units in excess of the applicable voting limit, then the excess Voting Units will be distributed, pro rata according to Economic Units percentage, to the other owners so that the owner does not exceed the applicable voting limit.⁶⁵ In addition, the BOX Exchange LLC Agreement provides that, if an owner of BOX Exchange subsequently becomes a BOX Options Participant, and that owner's Economic Units or Voting Units percentage exceeds 20%, then such owner will have no voting rights on the Voting Units that exceeds the voting limit.⁶⁶

The BOX Exchange LLC Agreement contains other provisions that are designed to safeguard the Economic Units and Voting Units limits. For example, any transfer that would violate the BOX Exchange LLC Agreement, such as exceeding the limits, will be void.⁶⁷ Moreover, any owner involved in a transaction in which a person, either alone or together with any related person (including affiliates), would exceed 5% ownership in Economic Units or Voting Units will be required to provide written notice to BOX Exchange fourteen days before the transaction that would exceed the 5% limit.⁶⁸ BOX Exchange will then be required to

⁶⁵ See Article 7.3(g)(ii) of the BOX Exchange LLC Agreement. Pursuant to this provision, upon any transfer of Economic Units, each owner's Voting Units percentage will be reset to equal its percentage of Economic Units. Should any owner, after the Voting Units reset, exceed the voting limit, then the excess Voting Units will be distributed pro rata according to Economic Units percentage, to the other owners so that the owner does not exceed the applicable voting limit. Id.

⁶⁶ See Article 7.3(i) of the BOX Exchange LLC Agreement. Any Voting Units that exceed the voting limit will be voted in the same proportion as the Voting Units held by the other owners of BOX Exchange are voted. Id.

⁶⁷ See Article 7.3(d) of the BOX Exchange LLC Agreement.

⁶⁸ See Article 7.3(e) of the BOX Exchange LLC Agreement.

provide written notice to the Commission ten days before the transaction.⁶⁹ In addition, each person or entity that acquires 5% or more in Economic Units or Voting Units will be required to immediately notify BOX Exchange in writing and will need to update BOX Exchange if the ownership limits applicable to the person or entity are exceeded. Further, in addition to these notices, owners of BOX Exchange have agreed that any transfer of units that results in the acquisition and holding by any person, alone or with its related persons, of a percentage interest that meets or crosses the threshold level of 20% or any successive 5% percentage interest will be subject to the rule filing process of Section 19 of the Act.⁷⁰

The Commission believes that these provisions are consistent with the requirements of the Act. These limitations are designed to help prevent any owner of BOX Exchange from

⁶⁹ Id. This provision is consistent with the current operating agreement of BOX Group LLC. See Section 8.4(e) of the Sixth Amended and Restated Operating Agreement of BOX Group LLC.

⁷⁰ Id. The BOX Exchange LLC Agreement also requires a “controlling person” of a BOX Exchange owner to execute an amendment to the BOX Exchange LLC Agreement agreeing to be bound by that agreement upon establishing a controlling interest in any BOX Exchange owner that, alone or together with its related persons, holds BOX Exchange Economic Units or Voting Units representing a percentage interest equal to or greater than 20%. See Article 7.3(h) of the BOX Exchange LLC Agreement. As noted above, MX US 2 is an owner of BOX Exchange (40% of Economic Units and 20% of Voting Units). In addition, as noted above, MX US 2 (through MX US 1) is a wholly-owned indirect subsidiary of the Bourse and the Bourse is a wholly-owned direct subsidiary of TMX. Under the BOX Exchange LLC Agreement, each of MX US 1, Bourse, and TMX will be required to become parties to the BOX Exchange LLC Agreement through such an amendment and will have all the rights and responsibilities of the owners of BOX Exchange. This will be effectuated pursuant to Instruments of Accession. If in the future there is another such “controlling person,” it also will be required to execute an Instrument of Accession, which will be an amendment to the BOX Exchange LLC Agreement that is required to be filed with the Commission. See Article 7.3(h)(iv) of the BOX Exchange LLC Agreement. The BOX Exchange LLC Agreement further provides that “[t]he rights and privileges, including all voting rights, of the Member in whom a controlling interest is held … shall be suspended until such time as the amendment … [to the Agreement] has become effective pursuant to Section 19 of the Exchange Act or the Controlling Person no longer holds a controlling interest in the Member.” See Section 7.4(h)(iv) of the BOX Exchange LLC Agreement.

exercising undue control over the operation of BOX Exchange and to help assure that BOX Exchange is able to effectively carry out its regulatory obligations under the Act. In addition, these limitations are designed to address the conflicts of interests that might result from a member of a national securities exchange owning interests in the exchange. As the Commission has noted in the past, a member's interest in an exchange could become so large as to cast doubts on whether the exchange may fairly and objectively exercise its self-regulatory responsibilities with respect to such member.⁷¹ A member that is a controlling shareholder of an exchange could seek to exercise that controlling influence by directing the exchange to refrain from, or the exchange may hesitate to, diligently monitor and conduct surveillance of the member's conduct or diligently enforce the exchange's rules and the federal securities laws with respect to conduct by the member that violates such provisions. As such, these requirements are expected to minimize the potential that a person or entity can improperly interfere with or restrict the ability of BOX Exchange to effectively carry out its regulatory oversight responsibilities under the Act.

c. BOX Holdings and BOX Market

The BOX Holdings limited liability company agreement (“BOX Holdings LLC Agreement”) and the BOX Market limited liability company agreement (“BOX Market LLC Agreement”) also contain provisions related to direct and indirect changes in control.

Specifically, any owner involved in a transaction in which the owner's percentage interest in BOX Holdings, either alone or together with any related person (including affiliates), will meet or cross the threshold level of 5% or the successive 5% percentage levels of 10% and 15% will be required to provide written notice to BOX Holdings fourteen days before the

⁷¹ See, e.g., DirectEdge Exchanges Order and BATS Order, supra note 21.

transaction.⁷² BOX Holdings will then be required to provide written notice to BOX Exchange and the Commission ten days before the transaction.⁷³ In addition any person that, either alone or together with any related person⁷⁴ (including affiliates) owns, directly or indirectly, of record or beneficially, 5% or more of BOX Holdings will be required to immediately notify in writing BOX Holdings upon acquiring knowledge of such ownership.⁷⁵ In addition to these notices, owners of BOX Holdings have agreed that any transfer of units that results in the acquisition and holding by any person, alone or with its related persons, of a percentage interest that meets or crosses the threshold level of 20% or any successive 5% percentage interest will be subject to the rule filing process of Section 19 of the Act.⁷⁶ Further, any transfer that would be in contravention of these notification and filing provisions will be void.⁷⁷

In addition, if an owner of BOX Holdings or any of its related persons is approved as a BOX Options Participant, and if such owner, alone or together with the related persons, own more than 20% of BOX Holdings, then such owner and any director of BOX Holdings designated by such owner will not have any voting rights with respect to any units owned in excess of 20%.⁷⁸ Further, the owner will not be entitled to give any proxy with respect to any

⁷² See Article 7.4(e) of the BOX Holdings LLC Agreement.

⁷³ Id. This provision is consistent with the current operating agreement of BOX Group LLC. See Section 8.4(e) of the Sixth Amended and Restated Operating Agreement of BOX Group LLC.

⁷⁴ See Article 1.1 of the BOX Holdings LLC Agreement for a definition of “related person.”

⁷⁵ See id. The notice will require the person’s full legal name; the number of units owned, directly or indirectly, of record or beneficially, by the person together with any related person; and whether the person has power, directly or indirectly, to direct the management or policies of BOX Holdings.

⁷⁶ See Article 7.4(f) of the BOX Holdings LLC Agreement.

⁷⁷ See Article 7.4(d) of the BOX Holdings LLC Agreement.

⁷⁸ See Article 7.4(h) of the BOX Holdings LLC Agreement.

units owned in excess of 20%.⁷⁹ IB, however, will have an exemption until January 1, 2014, from the voting limitation described in this paragraph, but only with respect to any votes regarding a merger, consolidation or dissolution of BOX Holdings or a sale of all or substantially all of the assets of BOX Holdings.⁸⁰

The BOX Holdings LLC Agreement also provides that a “controlling person”⁸¹ of a BOX Holdings owner is required to execute an amendment to the BOX Holdings LLC Agreement agreeing to be bound by the BOX Holdings LLC Agreement upon establishing a controlling interest in any BOX Holdings owner⁸² that, alone or together with its related persons, holds BOX Holdings units representing a percentage interest equal to or greater than 20%.⁸³ As noted above, MX US 2 is an owner of BOX Holdings (53.83%). In addition, as noted above, MX US 2 (through MX US 1) is a wholly-owned indirect subsidiary of the Bourse and the Bourse is a wholly-owned direct subsidiary of TMX. Under the BOX Holdings LLC Agreement, each of MX US 1, Bourse, and TMX will be required to become a party to the BOX Holdings LLC Agreement through such an amendment and will have all the rights and responsibilities of

⁷⁹ Id.

⁸⁰ Id.

⁸¹ A “controlling person” is defined as a Person who, alone or together with any related persons of such person, holds a controlling interest in an owner of BOX Holdings. See Article 7.4(g)(v) of the BOX Holdings LLC Agreement.

⁸² A “controlling interest” is defined as the direct or indirect ownership of 25% or more of the total voting power of all equity securities of an owner of BOX Holdings (other than voting rights solely with respect to matters affecting the rights, preferences, or privileges of a particular class of equity securities), by any person, alone or together with any related persons of such person. See Article 7.4(g)(v) of the BOX Holdings LLC Agreement.

⁸³ See Article 7.4(g) of the BOX Holdings LLC Agreement.

the owners of BOX Holdings.⁸⁴ The BOX Holdings LLC Agreement further provides that “[t]he rights and privileges, including all voting rights, of the Member in whom a controlling interest is held … shall be suspended until such time as the amendment … [to the Agreement] has become effective pursuant to Section 19 of the Exchange Act or the Controlling Person no longer holds a controlling interest in the Member.”⁸⁵

The BOX Market LLC Agreement does not explicitly include change of control provisions that are similar to those in the BOX Holdings LLC Agreement. However, the BOX Market LLC Agreement explicitly provides that BOX Holdings is the sole Member of BOX Market.⁸⁶ Thus, if BOX Holdings were no longer the sole Member of BOX Market, BOX Market will be required to amend the BOX Market LLC Agreement, which will be required to be filed with and approved by the Commission before such amendment may be effective.⁸⁷

Although BOX Holdings and BOX Market are not independently responsible for regulation, their activities with respect to the operation of BOX must be consistent with, and not interfere with, the self-regulatory obligations of BOX Exchange. The Commission believes that the requirements in the BOX Holdings LLC Agreement and the BOX Market LLC Agreement applicable to direct and indirect changes in control of BOX Holdings and BOX Market described above, as well as the voting limitation imposed on owners of BOX Holdings who also are BOX

⁸⁴ This will be effectuated pursuant to Instruments of Accession included in the Form 1. If in the future there is another such “controlling person,” it too will be required to execute an Instruments of Accession, which will be an amendment to the BOX Holdings LLC Agreement that is required to be filed with the Commission. See Article 7.4(g)(iv) of the BOX Holdings LLC Agreement.

⁸⁵ See Section 7.4(g)(iv) of the BOX Holdings LLC Agreement.

⁸⁶ See Article 1.1 of the BOX Market LLC Agreement.

⁸⁷ See Article 14.1 of the BOX Market LLC Agreement. A proposed rule change can also become effective by operation of law. See 15 U.S.C. 78s(b)(2).

Options Participants described above, are appropriate to help ensure that BOX Exchange is able to effectively carry out its self-regulatory responsibilities, including over BOX, and are consistent with the requirements of the Act. In addition, the Commission believes that the exemption from the BOX Options Participant voting limitation granted to IB is appropriate and is not expected to limit BOX Exchange's ability to effectively carry out its self-regulatory responsibilities. The Commission also notes that IB was provided with a similar exemption with respect to its current ownership of BOX Group LLC.⁸⁸

2. Regulatory Independence

BOX Exchange, BOX Market, and BOX Holdings propose to adopt certain provisions in their respective governing documents designed to help maintain the independence of the regulatory functions of BOX Exchange. These proposed provisions are substantially similar to those included in the governing documents of exchanges that recently have been granted registration.⁸⁹ Specifically:

- The owners, directors, officers, employees, and agents of BOX Exchange, BOX Market, and BOX Holdings must give due regard to the preservation of the

⁸⁸ See Securities Exchange Act Release No. 49607 (January 13, 2004), 69 FR 2761, 2767 (January 20, 2004) (approving a limited temporary exemption for IB from the voting limitation provisions in the limited liability company agreement of BOX Group LLC and noting that the exemption is designed to afford IB some ability to protect its investment but also to limit the possibility that BSE's ability to carry out its self-regulatory responsibilities would be impaired). This exemption is substantially similar to an exemption granted to founder members of the International Securities Exchange ("ISE"). See Securities Exchange Act Release Nos. 45803 (April 23, 2002), 67 FR 21306, 21307 (April 30, 2002) (approval of SR-ISE-2002-01) (conversion of ISE from an LLC to a corporation); and 42455 (February 24, 2000), 65 FR 11388, 11391-92 (March 2, 2000) (File No. 10-127) (approval of registration of ISE as a national securities exchange) ("ISE Order").

⁸⁹ See e.g., DirectEdge Exchanges Order and BATS Order, *supra* note 21, and C2 Order, *supra* note 29.

independence of the self-regulatory function of BOX Exchange and must not take actions that would interfere with the effectuation of decisions by the BOX Exchange Board relating to its regulatory functions or that would interfere with BOX Exchange's ability to carry out its responsibilities under the Act.⁹⁰

- Each of BOX Exchange, BOX Market, and BOX Holdings and their respective owners must comply with federal securities laws and the rules and regulations promulgated thereunder and agree to cooperate with the Commission and BOX Exchange pursuant to and to the extent of their respective regulatory authority.⁹¹
- BOX Exchange, BOX Market, and BOX Holdings, and the owners, officers, directors, employees and agents of each, must submit to the jurisdiction of the U.S. federal courts and the Commission for any action, suit or proceeding arising out of or related to BOX Exchange activities.⁹²
- All books and records of BOX Exchange reflecting confidential information pertaining to the self-regulatory function of BOX Exchange (including but not limited to disciplinary matters, trading data, trading practices, and audit information) shall be retained in confidence by BOX Exchange and its personnel, including any individuals entitled to information pursuant to Board observation rights, and will not be used by BOX Exchange for any non-regulatory purpose and shall not be made available to persons (including, without limitation, any owners of BOX Exchange) other than to

⁹⁰ See Article 4.6(a) of the BOX Exchange LLC Agreement, Article 4.12(a) of the BOX Market LLC Agreement, and Article 4.12(a) of the BOX Holdings LLC Agreement.

⁹¹ See Article 4.6(b) of the BOX Exchange LLC Agreement, Article 4.12(b) of the BOX Market LLC Agreement, and Article 4.12(b) of the BOX Holdings LLC Agreement.

⁹² See Article 18.6(b) of the BOX Exchange LLC Agreement, Article 14.6(b) of the BOX Market LLC Agreement, and Article 18.6(a) of the BOX Holdings LLC Agreement.

those personnel of BOX Exchange, to members of the BOX Exchange Board and any observer, to the extent necessary or appropriate to properly discharge the self-regulatory function of BOX Exchange, or unless required by court order or applicable law.⁹³

- The books and records of BOX Exchange and BOX Market and, to the extent related to the operation or administration of BOX Exchange and BOX Market, the books and records of BOX Holdings, must be maintained in the United States and will be subject at all times to inspection and copying by the Commission.⁹⁴
- Furthermore, for so long BOX Holdings directly or indirectly controls BOX Market, and to the extent related to the operation or administration of BOX Exchange or the BOX Market, the books, records, premises, officers, directors, employees and agents of BOX Holdings and its owners will be deemed to be the books, records, premises, officers, directors, employees and agents of BOX Exchange.⁹⁵
- BOX Exchange, BOX Market, and BOX Holdings will take such action as is necessary to ensure that their officers, directors and employees, and each owner's officers, directors, and employees, consent to the applicability of provisions regarding

⁹³ See BOX Exchange Bylaws Section 5.02. The Commission notes that the BOX Exchange LLC Agreement, the BOX Market LLC Agreement and the BOX Holdings LLC Agreement also provide that confidential information pertaining to regulatory matters related to BOX Exchange, BOX Market and BOX Holdings will be subject to confidentiality restrictions. See Article 15.5 of the BOX Exchange LLC Agreement, Article 12.6 of the BOX Market LLC Agreement, and Article 15.6 of the BOX Holdings LLC Agreement.

⁹⁴ See Article 11.1 and 18.6(a) of the BOX Exchange LLC Agreement, Article 9.1 of the BOX Market LLC Agreement, and Article 11.1 of the BOX Holdings LLC Agreement.

⁹⁵ See Article 11.1 of the BOX Holdings LLC Agreement.

books and records, confidentiality, jurisdiction, and regulatory obligations, to the extent related to the operation or administration of BOX Exchange.⁹⁶

As noted above, each of the Controlling Upstream Owners will be required to become a party to the BOX Exchange LLC Agreement and the BOX Holdings LLC Agreement and will have all the rights and obligations of the owners of BOX Exchange and BOX Holdings. Thus, for example, as a party to the BOX Exchange LLC Agreement and the BOX Holdings LLC Agreement, each Controlling Upstream Owner will be required to comply with the U.S. federal securities laws and the rules and regulations thereunder and cooperate with the Commission and BOX Exchange⁹⁷ and will be required to take such action as is necessary to ensure that its directors, officers and employees consent to complying with the U.S. federal securities laws and the rules and regulations thereunder and cooperating with the Commission and BOX Exchange to the extent related to the operation or administration of the BOX Exchange or BOX Market.⁹⁸ Moreover, each Controlling Upstream Owner, its officers, directors, employees and agents will irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for purposes of any action arising out of, or relating to, activities of BOX Exchange and/or BOX Market.⁹⁹ Further, TMX, Bourse, and MX US 1 (and any future controlling upstream owner of BOX Market), by becoming parties to the BOX Holdings LLC Agreement and having the responsibilities of BOX Holdings' owners, will agree (to the extent related to the operation or

⁹⁶ See Article 18.6(c) of the BOX Exchange LLC Agreement, Article 14.6(c) of the BOX Market LLC Agreement, and Article 18.6(b) of the BOX Holdings LLC Agreement.

⁹⁷ See Article 4.6(b) of the BOX Exchange LLC Agreement and Article 4.12(b) of the BOX Holdings LLC Agreement.

⁹⁸ See Articles 4.6(b) and 18.6(c) of the BOX Exchange LLC Agreement and Articles 4.12(b) and 18.6(b) of the BOX Holdings LLC Agreement.

⁹⁹ See Article 18.6(b) of the BOX Exchange LLC Agreement and Article 18.6(a) of the BOX Holdings LLC Agreement.

administration of BOX Exchange or the BOX Market) that their books and records must be maintained within the United States and shall be subject at all times to inspection and copying by the Commission and BOX Exchange; and that their books, records, premises, directors, officers, employees and agents shall be deemed to be those of the Exchange for the purposes of , and subject to oversight pursuant to, the Act.

In addition, each Controlling Upstream Owner must give due regard to the preservation of the independence of the self-regulatory function of BOX Exchange and must not take any action that would interfere with the effectuation of decisions by the BOX Exchange Board or interfere with BOX Exchange's ability to carry out its responsibilities under the Act.¹⁰⁰ Each Controlling Upstream Owner also is required to take such action as is necessary to ensure that its directors, officers and employees consent to giving due regard to the preservation of the independence of the self-regulatory function of BOX Exchange and to not taking any action that would interfere with the effectuation of decisions by the BOX Exchange Board or interfere with BOX Exchange's ability to carry out its responsibilities under the Act to the extent related to the operation or administration of the BOX Exchange or BOX Market.¹⁰¹

The Commission believes that the provisions discussed in this section, which are designed to help maintain the independence of BOX Exchange's regulatory function, are appropriate and consistent with the requirements of the Act, particularly with Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the

¹⁰⁰ See Article 4.6(a) of the BOX Exchange LLC Agreement and Article 4.12(a) of the BOX Holdings LLC Agreement.

¹⁰¹ See Articles 4.6(a) and 18.6(c) of the BOX Exchange LLC Agreement and Articles 4.12(a) and 18.6(b) of the BOX Holdings LLC Agreement.

purposes of the Act.¹⁰² The Commission notes that, even in the absence of these provisions, Section 20(a) of the Act (as applied to the BOX entities) provides that any person with a controlling interest in BOX Exchange or BOX Market would be jointly and severally liable with and to the same extent that BOX Exchange or BOX Market, as the case may be, is liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action. In addition, Section 20(e) of the Act creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Act or rule thereunder. Further, Section 21C of the Act authorizes the Commission to enter a cease-and-desist order against any person who has been “a cause of” a violation of any provision of the Act through an act or omission that the person knew or should have known would contribute to the violation. These provisions are applicable to all entities’ dealings with BOX Exchange and BOX Market, including the Controlling Upstream Owners.

3. Regulation of BOX

As a prerequisite for the Commission’s granting of an exchange’s application for registration, an exchange must be organized and have the capacity to carry out the purposes of the Act.¹⁰³ Specifically, an exchange must be able to enforce compliance by its members, and persons associated with its members, with the federal securities laws and the rules of the exchange.¹⁰⁴ The discussion below summarizes how BOX Exchange proposes to conduct and structure its regulatory operations.

¹⁰² 15 U.S.C. 78f(b)(1).

¹⁰³ See Section 6(b)(1) of the Act, 15 U.S.C. 78f(b)(1).

¹⁰⁴ Id. See also Section 19(g) of the Act, 15 U.S.C. 78s(g).

a. Regulatory Oversight Committee

The regulatory operations of BOX Exchange will be monitored by the regulatory oversight committee of the BOX Exchange Board. The regulatory oversight committee will consist of at least three directors, all of whom will be non-industry directors. The regulatory oversight committee generally will be responsible for overseeing the adequacy and effectiveness of BOX Exchange's regulatory and SRO responsibilities, assessing BOX Exchange's regulatory performance, and assisting the BOX Exchange Board (and committees of the BOX Exchange Board) in reviewing BOX Exchange's regulatory plan and the overall effectiveness of BOX Exchange's regulatory functions.¹⁰⁵ Further, a CRO of BOX Exchange will have general day-to-day supervision over BOX Exchange's regulatory operations.¹⁰⁶ The regulatory oversight committee will be charged with all hiring and termination decisions over the CRO, taking into account the recommendation of the President of BOX Exchange.¹⁰⁷ The CRO will report to both the regulatory oversight committee and the President of BOX Exchange.¹⁰⁸

To help assure the Commission that it has and will continue to have adequate funding to be able to meet its responsibilities under the Act, BOX Exchange represented that, upon the granting of its application as a national securities exchange and prior to commencing operations as such, BOX Group LLC will contribute sufficient operational assets to the Exchange, including furnishings, equipment and servers previously used in connection with the regulation of BOX, and industry and regulatory memberships. In addition, BOX Exchange stated that it has received

¹⁰⁵ See BOX Exchange Bylaws Section 6.07.

¹⁰⁶ See BOX Exchange Bylaws Section 7.01. See also Amendment No. 2.

¹⁰⁷ See BOX Exchange Bylaws Section 6.07. See also Amendment No. 2.

¹⁰⁸ See BOX Exchange Bylaws Section 7.01. See also Amendment No. 2.

from BOX Group LLC a loan of \$1,000,000.¹⁰⁹ In addition, because BOX Exchange would be the registered national securities exchange, BOX Exchange would be entitled to receive all fees, including regulatory fees and trading fees, payable by BOX Option Participants, as well as any funds received from any applicable market data fees and Options Price Reporting Authority tape revenue.¹¹⁰ Any excess funds, as determined solely by BOX Exchange, will be remitted to BOX Market.¹¹¹ To the extent BOX Exchange's assets were not sufficient, BOX Market (and BOX Holdings, to the extent it holds BOX Market funds) will reimburse BOX Exchange.¹¹² Further, any revenues received by BOX Exchange from fees derived from its regulatory function or regulatory penalties will not be used for non-regulatory purposes.¹¹³

b. Rule 17d-2 Agreements and Regulatory Contract

¹⁰⁹ See Amendment No. 2. In addition, BOX Exchange represents that the \$1,000,000 loan it received from BOX Group LLC will be sufficient to cover the expenses of BOX Exchange until BOX Exchange begins receiving revenues from transaction fees, market data fees and regulatory fees. See letter from Lisa Fall, President, BOX Exchange, to Heather Seidel, Associate Director, Division, Commission, dated April 2, 2012 ("April 2 Letter").

¹¹⁰ BOX Exchange acknowledged this fact in Amendment No. 2.

¹¹¹ See Form 1 Application, Exhibit I. BOX Exchange represents that, in determining the excess funds to remit to BOX Market, it will exercise prudent financial management (including cash flow management) and may retain funds for anticipated and unanticipated expenses. See April 2 Letter, supra note 109.

¹¹² See Form 1 Application, Exhibit I.

¹¹³ Article 8.1 of the BOX Exchange LLC Agreement.

Rule 17d-2 of the Act¹¹⁴ permits SROs to propose joint plans allocating regulatory responsibilities concerning members, as such term is defined in Section 3(a)(3) of the Act, of more than one SRO (“Common Members”).¹¹⁵ These agreements, which must be filed with and approved by the Commission, generally cover such regulatory functions as personnel registration and sales practices. Commission approval of a Rule 17d-2 plan relieves the specified SRO of those regulatory responsibilities allocated by the plan to another SRO.¹¹⁶ Many SROs have entered into Rule 17d-2 agreements.¹¹⁷ BOX Exchange has represented to the Commission that it intends to become a party to the existing multiparty options Rule 17d-2 plans concerns sales

¹¹⁴ See Section 17(d)(1) of the Act and Rule 17d-2 thereunder, 15 U.S.C. 78q(d)(1) and 17 CFR 240.17d-2. Section 17(d)(1) of the Act allows the Commission to relieve an SRO of certain responsibilities with respect to members of the SRO who are also members of another SRO. Specifically, Section 17(d)(1) allows the Commission to relieve an SRO of its responsibilities to: (i) receive regulatory reports from such members; (ii) examine such members for compliance with the Act and the rules and regulations thereunder, and the rules of the SRO; or (iii) carry out other specified regulatory responsibilities with respect to such members.

¹¹⁵ 17 CFR 240.17d-2. Section 19(g)(1) of the Act requires every SRO to examine its members and persons associated with its members and to enforce compliance with the federal securities laws and the SRO’s own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) of the Act. Section 17(d) was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication with respect to Common Members. See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976) (“Rule 17d-2 Adopting Release”).

¹¹⁶ See id.

¹¹⁷ See, e.g., Securities Exchange Act Release Nos. 59218 (January 8, 2009), 74 FR 2143 (January 14, 2009) (File No. 4-575) (FINRA/Boston Stock Exchange, Inc.); 58818 (October 20, 2008), 73 FR 63752 (October 27, 2008) (File No. 4-569) (FINRA/BATS Exchange, Inc.); 55755 (May 14, 2007), 72 FR 28057 (May 18, 2007) (File No. 4-536) (National Association of Securities Dealers, Inc. (“NASD”) n/k/a FINRA and CBOE concerning the CBOE Stock Exchange); 55367 (February 27, 2007), 72 FR 9983 (March 6, 2007) (File No. 4-529) (NASD/ISE); and 54136 (July 12, 2006), 71 FR 40759 (July 18, 2006) (File No. 4-517) (NASD/Nasdaq).

practice regulation and market surveillance.¹¹⁸ Under these agreements, the examining SROs examine firms that are common members of BOX Exchange and the particular examining SRO for compliance with certain provisions of the Act, certain rules and regulations adopted thereunder, and certain BOX Exchange Rules.

In addition, BOX Exchange has entered into an RSA with FINRA, under which FINRA will perform certain regulatory functions on behalf of BOX Exchange.¹¹⁹ Specifically, BOX Exchange states that FINRA will: assist BOX Exchange in conducting investigations of potential violations of BOX Exchange rules and/or federal securities laws related to activity on the Exchange; conduct examinations related to BOX Option Participants' conduct on BOX Exchange; assist BOX Exchange with disciplinary proceedings pursuant to BOX Exchange rules, including issuing charges and conducting hearings; and provide dispute resolution services to BOX Option Participants on behalf of BOX Exchange, including operation of the BOX Exchange's arbitration program.¹²⁰ Notwithstanding the RSA, BOX Exchange acknowledges it will retain ultimate legal responsibility for the regulation of its members and its market.¹²¹

The Commission believes that it is consistent with the Act for BOX Exchange to contract with FINRA to perform certain examination, enforcement, and disciplinary functions.¹²² These

¹¹⁸ See Securities Exchange Act Release Nos. 61589 (February 25, 2010), 75 FR 9976 (March 4, 2010) (File No. S7-966) (notice of filing and order approving and declaring effective an amendment to the multiparty 17d-2 plan concerning options-related sales practice matters); 61588 (February 25, 2010), 75 FR 9970 (March 4, 2010) (File No. 4-551) (notice of filing and order approving and declaring effective an amendment to the multiparty 17d-2 plan concerning options-related market surveillance).

¹¹⁹ See Form 1 Application, Exhibit L.

¹²⁰ See BOX Exchange IM-12150-1 and Amendment No. 2, *supra* note 5.

¹²¹ See Amendment No. 2, *supra* note 5.

¹²² See, e.g., Regulation ATS Release, *supra* note 35. See also Securities Exchange Act Release Nos. 50122 (July 29, 2004), 69 FR 47962 (August 6, 2004) (SR-Amex-2004-32)

functions are fundamental elements of a regulatory program, and constitute core self-regulatory functions. The Commission believes that FINRA has the expertise and experience to perform these functions on behalf of BOX Exchange.¹²³

BOX Exchange, unless relieved by the Commission of its responsibility,¹²⁴ bears the ultimate responsibility for self-regulatory responsibilities and primary liability for self-regulatory failures, not the SRO retained to perform regulatory functions on the Exchange's behalf. In performing these regulatory functions, however, the SRO retained to perform regulatory functions may nonetheless bear liability for causing or aiding and abetting the failure of BOX Exchange to perform its regulatory functions.¹²⁵ Accordingly, although FINRA will not act on its own behalf under its SRO responsibilities in carrying out these regulatory services for BOX Exchange, as the SRO retained to perform regulatory functions, FINRA may have secondary liability if, for example, the Commission finds that the contracted functions are being performed so inadequately as to cause a violation of the federal securities laws by BOX Exchange.¹²⁶

4. Regulatory Oversight Over BOX Market

(order approving rule that allowed Amex to contract with another SRO for regulatory services) (“Amex Regulatory Services Approval Order”); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR-NASDAQ-2007-004) (“NOM Approval Order”); Nasdaq Order, *supra* note 34; and BATS Order, *supra* note 21.

¹²³ See, e.g., Amex Regulatory Services Approval Order, *supra* note 122; NOM Approval Order, *supra* note 122; and Nasdaq Order, *supra* note 34. The Commission notes that the RSA is not before the Commission and, therefore, the Commission is not acting on it.

¹²⁴ See *supra* note 114.

¹²⁵ For example, if failings by the SRO retained to perform regulatory functions have the effect of leaving an Exchange in violation of any aspect of the exchange’s self-regulatory obligations, the exchange will bear direct liability for the violation, while the SRO retained to perform regulatory functions may bear liability for causing or aiding and abetting the violation. See, e.g., Nasdaq Order, *supra* note 34; BATS Order, *supra* note 21; and ISE Order, *supra* note 88.

¹²⁶ *Id.*

There is an inherent tension between a national securities exchange's role as a regulator and as the operator of a market, and between its role as a regulator and as a membership organization.¹²⁷ The existence of a shareholder class separate from membership adds yet another constituency with interests potentially in conflict with the regulatory responsibilities of the SRO.¹²⁸ An exchange should have in place a structure and be operated in a manner designed to mitigate any potential conflicts between its commercial interests and its regulatory responsibilities so as to assure that it is able to carry out its responsibilities in compliance with the Act.¹²⁹

As noted above, BOX Exchange and BOX Market will be separate corporate entities, and BOX Market will not be a wholly-owned subsidiary of BOX Exchange.¹³⁰ The structural separation of the entity responsible for regulation from the entity that operates the trading platform may serve to mitigate to some degree the influence of commercial interests on

¹²⁷ See Securities Exchange Act Release No. 50699, 69 FR 71126, 71141 (December 8, 2004) (File No. S7-39-04).

¹²⁸ Id.

¹²⁹ See id at 71141-2 (stating that national securities exchanges and associations should have policies and procedures that provide for the independence of their regulatory programs from the operation or administration of their trading facilities and other businesses; that the proposals should require that the exchange's or association's regulatory program be either structurally separated from the exchange's or association's market operations and other commercial interests, by means of separate legal entities or functionally separated within the same legal entity from the exchange's or association's market operations and other commercial interests; and that, in Commission's view, such separation must be designed to permit the regulatory program to function independently from the market operations and other commercial interests of the exchange or association).

¹³⁰ There is precedent for this type of structure in the current structure of BOX, with BOX being a facility of BX, as well as a prior structure when Archipelago Exchange was operated as the equity trading facility of the Pacific Exchange ("PCX"). See Securities Exchange Act Release Nos. 49068, supra note 6 (establishing, among other things, BOX as an options trading facility of BSE), and 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (approving PCX's use of the Archipelago Exchange as its equity trading facility).

regulation. However, although BOX Exchange will be structurally separate from BOX Market as the entity that operates the trading platform, the ultimate owners of such entities are the same, albeit in different percentages.¹³¹ In particular, as outlined above, in addition to being owners of BOX Exchange, MX US 2 directly owns (and TMX, Bourse and MX US 1 indirectly own) 53.83% of BOX Holdings. BOX Holdings has certain rights with respect to BOX Exchange that, in conjunction with this overlapping ownership structure, raise questions regarding the ability of BOX Holdings and its controlling owner to exert undue influence over BOX Exchange's regulatory functions. Specifically, the BOX Exchange Bylaws provides that BOX Holdings may appoint one director on the BOX Exchange Board and each board committee (including the nominating committee but excluding the regulatory oversight committee and the compensation committee).¹³²

The Commission believes that this right potentially increases the likelihood that the owners of BOX Holdings, particularly MX US 2 (and its controlling owners, TMX, Bourse and MX US 1), can exercise undue influence over BOX Exchange's regulatory functions through the BOX Holdings Director. However, the following provisions in the BOX Exchange governing documents are designed to mitigate such concern: (1) BOX Holdings is permitted to appoint only one director to the BOX Exchange Board;¹³³ (2) because a majority of the BOX Exchange Board will be non-industry directors and 20% will be representative of BOX Options Participants,¹³⁴ there will at most be one other director that can potentially be selected by MX US

¹³¹ The owners of BOX Holdings are indirect owners of BOX Market because BOX Market is a wholly-owned subsidiary of BOX Holdings.

¹³² See BOX Exchange Bylaws Section 4.02.

¹³³ Id.

¹³⁴ Id.

2;¹³⁵ (3) the BOX Holdings Director can not constitute more than 20% of the nominating committee¹³⁶; and (4) the compensation committee and the regulatory oversight committee will not include the BOX Holdings Director.¹³⁷

The separation of BOX Exchange and BOX Market also raises questions as to how effectively BOX Exchange will be kept informed about BOX Market's commercial operations that might be of regulatory concern, and whether BOX Exchange will be sufficiently empowered, and have the ability, to assure that the trading platform and related services are operated in accordance with the Act. To help address these concerns, the BOX Market LLC Agreement includes several provisions that are specifically designed to help facilitate the ability of BOX Exchange to oversee the BOX options trading facility and BOX Market as the operator of the BOX facility. Specifically:

- BOX Exchange must receive notice of, and will be required to affirmatively approve, any planned or proposed changes of BOX Market including, but not limited to, any planned or proposed changes to BOX, the sale by BOX Market of any material portion of its assets, and any action to effect a voluntary, or which would precipitate an involuntary, dissolution or winding up of BOX Market;¹³⁸

¹³⁵ Id.

¹³⁶ See BOX Exchange Bylaws Section 4.06.

¹³⁷ See BOX Exchange Bylaws Sections 6.06 and 6.07.

¹³⁸ Changes relating solely to one or more of the following will not be subject to this notice requirement: marketing; administrative matters; personnel matters; social or team-building events; meetings of the owner of BOX Market; communication with the owner of BOX Market; finance; location and timing of board meetings; market research; real property; equipment; furnishings; personal property; intellectual property; insurance; contracts unrelated to the operation of the BOX Market; and de minimis items. See Article 3.2(a)(ii) of the BOX Market LLC Agreement.

- BOX Market is prohibited from implementing any such changes until they are approved by the BOX Exchange Board;¹³⁹
- BOX Exchange has the right to direct BOX Market to make any modifications to prevent or eliminate a regulatory deficiency;¹⁴⁰ and
- BOX Exchange will have the right to designate a non-voting director to serve on the BOX Market board of directors, as long as BOX remains a facility of BOX Exchange (“regulatory director”).¹⁴¹

The Commission believes that the provisions discussed above, which are designed to facilitate the ability of BOX Exchange to oversee BOX Market and BOX, are appropriate and consistent with the requirements of the Act, particularly with Section 6(b)(1), which requires in part an exchange to be so organized and have the capacity to carry out the purposes of the Act.¹⁴² As noted, the BOX Market LLC Agreement will require BOX Market to notify and receive prior approval from BOX Exchange of planned or proposed changes related to BOX Market or the BOX options trading facility.¹⁴³ In addition, BOX Exchange has full discretion to direct BOX

¹³⁹ See id.

¹⁴⁰ See Articles 3.2(a)(iii) and (iv) of the BOX Market LLC Agreement. A “regulatory deficiency” means the operation of BOX or the BOX Market in a manner that is not consistent with the rules of BOX Exchange and/or the rules of the Commission governing the BOX Market or BOX Options Participants, or that otherwise impedes the ability of BOX Exchange to regulate the BOX Market or BOX Options Participants or to fulfill its obligations under the Act as an SRO. See Article 1.1 of the BOX Market LLC Agreement.

¹⁴¹ This regulatory director will have not the right to vote or to serve on a committee, but will have the right to attend all meetings of the BOX Market board of directors, receive equivalent notice of such meetings, and receive a copy of all meeting materials provided to the other directors. See Article 4.1(a) of the BOX Market LLC Agreement.

¹⁴² 15 U.S.C. 78f(b)(1).

¹⁴³ See Article 3.2(a)(ii) of the BOX Market LLC Agreement.

Market to modify any proposed or planned changes to BOX to prevent or eliminate a regulatory deficiency.¹⁴⁴ Further, the inclusion of the regulatory director on the BOX Market board of directors is designed to help facilitate the ability of BOX Exchange to become informed about the operations of the BOX trading platform and any proposed changes thereto.

Section 6(b)(1) of the Act¹⁴⁵ requires an exchange – including BOX Exchange - to be so organized and have the capacity to be able to carry out the purposes of the Act. In addition, Section 19(g)(1) of the Act¹⁴⁶ requires an exchange – including BOX Exchange – to comply with the provisions of the Act, the rules and regulations thereunder, and its own rules, and, absent reasonable justification or excuse, to enforce compliance by its members with such provisions. At this time, the Division believes that the overall corporate and governance structure proposed by BOX Exchange is designed to help facilitate the ability of BOX Exchange to carry out its responsibility and operate in a manner consistent with the Exchange Act.¹⁴⁷ Whether BOX Exchange operates in compliance with the Act, however, depends on how BOX Exchange and BOX Market in practice implement the governance and other provisions that are the subject of this Order.¹⁴⁸

¹⁴⁴ See Article 3.2(a)(iii) and (iv) of the BOX Market LLC Agreement.

¹⁴⁵ 15 U.S.C. 78f(b)(1).

¹⁴⁶ 15 U.S.C. 78s(g)(1).

¹⁴⁷ The Commission notes that it is reviewing the various standards and processes it uses to facilitate the registration of national securities exchanges and other entities required to register with the Commission and plans to issue a concept release designed to collect information and evaluate different aspects of these registration standards and processes, including the policy objectives of registration, how best to achieve those policy objectives through registration and other means, and the relative benefits and costs of the various means available. See Securities Exchange Act Release No. 65543 (October 12, 2011), 76 FR 65784, 65786 fn. 13 (October 24, 2011).

¹⁴⁸ According to Amendment No. 2, the person that will initially be the Chief Executive Officer of BOX Exchange also will be the Chief Executive Officer of BOX Market, and

Section 19(h)(1) of the Act¹⁴⁹ provides the Commission with the authority “to suspend for a period not exceeding twelve months or revoke the registration of [an SRO], or to censure or impose limitations upon the activities, functions, and operations of [an SRO], if [the Commission] finds, on the record after notice and opportunity for hearing, that [the SRO] has violated or is unable to comply with any provision of the Act, the rules or regulations thereunder, or its own rules or without reasonable justification or excuse has failed to enforce compliance” with any such provision by its members (including associated persons thereof).¹⁵⁰ If Commission staff were to find, or become aware of, through staff review and inspection or otherwise, facts indicating any violations of the Act, including without limitation Sections 6(b)(1) and 19(g)(1), these matters could provide the basis for a disciplinary proceeding under Section 19(h)(1) of the Act.

the person that will initially be the President of BOX Exchange also will be the Executive Vice President, Chief Legal Officer and Company Secretary of BOX Market. See Amendment No. 2. Thus, senior executives of BOX Exchange also will hold senior executive positions at BOX Market. Further, BOX Exchange’s CRO will, in addition to reporting to BOX Exchange’s regulatory oversight committee, report to the President of BOX Exchange. See BOX Exchange Bylaws Section 7.01. The CRO will have general day-to-day supervision over BOX Exchange’s regulatory operations. See id. The compensation committee of BOX Exchange will set the CRO’s compensation and the regulatory oversight committee, in its sole discretion, will make hiring and termination decisions with respect to the CRO, in each case taking into consideration any recommendations made by the President of BOX Exchange. See BOX Exchange Bylaws Sections 6.06 and 6.07.

¹⁴⁹ See 15 U.S.C. 78s(h)(1).

¹⁵⁰ Id.

C. Trading Host

1. Order Display, Execution, and Priority

As noted above, BOX Market will operate the automated trading system used for the trading of options contracts (the “Trading Host”).¹⁵¹ The Trading Host includes a fully automated electronic order book (“BOX Book”) for orders to buy or sell securities. BOX Options Participants are entitled to enter orders into and receive executions through the electronic order book. Liquidity is derived from orders to buy and sell submitted electronically by BOX Options Participants in remote locations. There will be no physical trading floor.

BOX Options Participants’ Limit Orders submitted to the Trading Host will be ranked and maintained in the BOX Book according to price/time priority, such that within each price level, all orders will be organized by the time of entry.¹⁵² No distinction is made to this priority with regard to account designation (Public Customer, Broker-Dealer or Market Maker). The number of orders and the total quantity at each of the five best price levels in the BOX Book will be displayed to all BOX Options Participants on an anonymous basis.¹⁵³

BOX Options Participants may submit the following types of orders: Limit; BOX-Top;¹⁵⁴ Market-on-Opening; Market; and Intermarket Sweep Order (“ISO”).¹⁵⁵ Options

¹⁵¹ BOX Exchange’s proposed trading rules are substantially similar to the current rules of BOX, which rules have been subject to the rule filing process under Section 19(b) of the Act.

¹⁵² See BOX Exchange Rule 7130(a).

¹⁵³ See BOX Exchange Rule 7130(a)(2).

¹⁵⁴ BOX-Top orders that are entered into the BOX Book are executed at the best price available in the market for the total quantity available from any contra bid (offer). Any residual volume left after part of a BOX-Top Order has been executed is automatically converted to a limit order at the price at which the original BOX-Top Order was executed. See BOX Exchange Rule 7110(c)(2).

¹⁵⁵ See BOX Exchange Rule 7110(c).

Participants can add the designation of Good ‘Til Cancelled, Fill and Kill, or Session Order¹⁵⁶ to each of the above mentioned order types.¹⁵⁷ These order types and designations are substantially similar to the order types currently offered by BOX.¹⁵⁸

BOX Exchange also permits Order Flow Providers (“OFPs”)¹⁵⁹ to utilize Directed Orders.¹⁶⁰ A “Directed Order” refers to a Customer Order that an OFP directs to a particular BOX market maker. Unlike all other orders submitted to the Trading Host, Directed Orders are not anonymous. A market maker who wishes to accept Directed Orders must systemically indicate that it wishes to receive Directed Orders, must be willing to accept Directed Orders from all OFPs, may receive Directed Orders only through the Trading Host, and may not reject Directed Orders.¹⁶¹

Trades will execute when orders or quotations on the BOX Book match one another. The priority of orders at the same price will be determined by time of order entry. An order entered into the Trading Host that matches an order in the Trading Host will trade at the price of the order in the Trading Host up to the available size.¹⁶²

¹⁵⁶ An order with a Session Order designation will remain active in the BOX trading system until certain triggering events occur (e.g., disconnection of the connection between the BOX Options Participant and BOX). See BOX Exchange Rule 7110(e)(iii).

¹⁵⁷ See BOX Exchange Rule 7110(e).

¹⁵⁸ See Chapter V, Section 14 of the current BOX Rules.

¹⁵⁹ An OFP means those BOX Options Participants representing as agent customer orders on the Trading Host and those non-market-maker BOX Options Participants conducting proprietary trading. See BOX Exchange Rule 100(a)(45).

¹⁶⁰ See BOX Exchange Rule 8040. This rule is substantially similar to Chapter VI, Section 5(c) of the current BOX Rules.

¹⁶¹ See BOX Exchange Rule 8040(d).

¹⁶² See BOX Exchange Rule 7130(a)(4).

With the exception of Improvement Orders and Primary Improvement Orders submitted during a Price Improvement Period (“PIP”) auction,¹⁶³ Directed Orders,¹⁶⁴ and ISOs,¹⁶⁵ all orders submitted to the Trading Host will be filtered by the Trading Host prior to entry on the BOX Book, which is designed to ensure that such orders will not execute at a price outside of the current NBBO.¹⁶⁶

BOX Exchange will limit an OFP’s ability to trade as principal with an order it represents as agent, unless the agency order is first given the opportunity to interact with other trading interest on the Exchange. Specifically, an OFP may not execute as principal an order it represents as agent unless: (i) the agency order is first exposed to the BOX Book for at least one second; (ii) the OFP has been bidding or offering on the BOX Book for a least one second prior to receiving an agency order that is executable against such bid or offer; (iii) the OFP sends the agency order to the PIP; or (iv) the OFP sends the agency order to the Facilitation Auction.¹⁶⁷

BOX Exchange Rules also will prohibit the disclosure of information about agency orders to third parties. Specifically, prior to submitting an order to the PIP, the Facilitation Auction, or the Solicitation Auction, a BOX Options Participant cannot inform another BOX

¹⁶³ These orders will be processed in accordance with BOX Exchange Rule 7150.

¹⁶⁴ Directed Orders will be processed in accordance with BOX Exchange Rule 8040.

¹⁶⁵ See BOX Exchange Rule 7110(c)(5).

¹⁶⁶ See BOX Exchange Rule 7130(b) (noting that BOX will “filter” or check to ensure that the order will not: (i) in the case of a sell order, execute at a price below the NBBO bid price or (ii) in the case of a buy order, the execute at a price above the NBBO offer execute at a price above the NBBO offer price). This rule is substantially similar to Chapter V, Section 16(b) of the current BOX Rules.

¹⁶⁷ See BOX Exchange IM-7140-3.

Options Participant or any other third party of any of the terms of the order, except as provided for in the rules regarding Directed Orders.¹⁶⁸

The PIP process may be used by BOX Options Participants seeking to execute their agency orders as principal. BOX Exchange's PIP rule is the same as BOX Group LLC's current PIP rule.¹⁶⁹ Under the PIP rule, Customer Orders designated for the PIP ("PIP Orders") will be submitted to BOX with a matching contra order ("Primary Improvement Order") equal to the full size of the PIP Order. The Primary Improvement Order must be on the opposite side of the market than that of the PIP Order and represent either: (1) a single price that is equal to or better than that of the NBBO at the time of the commencement of the PIP; or (2) an auto-match submission that will automatically match both the price and size of all competing quotes and orders at any price level achieved during the PIP or only up to a limit price. The Primary Improvement Order will designate the PIP auction start price, which must be equal to or better than the NBBO at the time of commencement of the PIP. BOX Exchange will commence a PIP by broadcasting a message to Options Participants, and the exposure period will last for one hundred milliseconds. At the conclusion of the auction, the PIP Order will be matched on price/time priority with orders on the opposite side (with the Initiating Participant retaining priority for 40% of the order),¹⁷⁰ subject to certain conditions.¹⁷¹

¹⁶⁸ See BOX Exchange IM-7140-4.

¹⁶⁹ See Chapter V, Section 18 of the current BOX Rules.

¹⁷⁰ See BOX Exchange Rule 7150(g). At its option, the Initiating Participant may designate a lower amount for which it retains certain priority and trade allocation privileges upon the conclusion of the PIP than the forty percent (40%) of the PIP Order to which it is entitled. See Rule 7150(g)(5).

¹⁷¹ See BOX Exchange Rule 7150.

BOX Exchange will have no minimum size requirement for orders entered into the PIP, for a pilot period to expire July 18, 2012.¹⁷² During the pilot period, BOX Exchange will submit certain data, periodically as required by the Commission, to help evaluate whether, among other things: (1) there is meaningful competition for all size PIP orders; and (2) there is significant price improvement for all orders executed through the PIP.¹⁷³ This data is expected to aid the Commission in evaluating the PIP during the pilot period to determine whether it would be beneficial to customers and to the options market as a whole to approve any proposal requesting permanent approval to permit orders of fewer than 50 contracts to be submitted to the PIP.

BOX Exchange's proposed Facilitation Auction is the same as BOX Group LLC's current Facilitation Auction.¹⁷⁴ The Facilitation Auction is a process by which an OFP seeks either to facilitate a block-size order it represents as agent, or to execute an order it solicited to execute against the agency order. OFPs must be willing to execute the entire size of agency orders entered into the Facilitation Auction through the submission of a contra "Facilitation Order."¹⁷⁵ BOX Exchange also is proposing to have a Solicitation Auction, which is the same as

¹⁷² See BOX Exchange IM-7150-1.

¹⁷³ See Form 1 Application, Exhibit B. This data is substantially the same data currently provided to the Commission by BOX Group LLC. See Securities and Exchange Commission Release Nos. 61805 (March 31, 2010), 75 FR 17454 (April 6, 2010); 60337 (July 17, 2009), 74 FR 36805 (July 24, 2009); 51821 (June 10, 2005), 70 FR 35143 (June 16, 2005); and 49068, supra note 6.

¹⁷⁴ See Chapter V, Section 31(a) of the current BOX Rules.

¹⁷⁵ Upon the entry of an agency order and Facilitation Order into the Facilitation Auction, a broadcast message will be sent and Options Participants will be given an opportunity to enter responses with the prices and sizes at which they will be willing to participate in the facilitation of the agency order. At the end of the one second period for the entry of responses, the agency order will be automatically executed. Unless there is sufficient size to execute the entire Agency Order at a price better than the facilitation price, Public Customer bids (offers) and Public Customer responses on BOX at the time the agency order is executed that are price higher (lower) than the facilitation price will be executed

BOX Group LLC's current Solicitation Auction.¹⁷⁶ The Solicitation Auction allows an OFP to seek to execute orders of 500 or more contracts it represents as agent against contra orders that it has solicited ("Solicited Order").¹⁷⁷

at the facilitation price. Non-Public Customer and Market Maker bids (offers) and Non-Public Customer and Market Maker Response on BOX at the time the Agency Order is executed that are priced higher (lower) than the facilitation price will be executed against the agency order at their stated price. The facilitating OFP will execute at least forty percent (40%) of the original size of the Facilitation Order, but only after better-priced bids (offers) and auction responses on BOX, as well as Public Customer bids (offers) and responses at the facilitation price, are executed in full, based upon price/time priority. Thereafter, Non-Public Customer and Market Maker bids (Offers) and Non-Public Customer and Market Maker responses on BOX at the facilitation price will participate in the execution of the agency order based upon price/time priority. See BOX Exchange Rule 7270(a).

¹⁷⁶ See Chapter V, Section 31(b) of the current BOX Rules.

¹⁷⁷ Each agency order entered into the Solicitation Auction must be all-or-none. When a proposed solicited cross is entered into the Solicitation Auction, a broadcast message will be sent and Options Participants will be given an opportunity to enter responses with the prices and sizes at which they will be willing to participate in the execution of the agency order. At the end of the one second period for the entry of responses, the agency order will be automatically executed in full or cancelled. The agency order will be executed against the solicited order at the proposed execution price unless (1) there is sufficient size to execute the entire agency order at a better price or prices, or (2) there is a Public Customer order resting on the BOX Book at a price equal to or better than the proposed execution price within the depth of the BOX Book that would have traded with the agency order if the agency order had been submitted to the BOX Book instead of to the Solicitation Mechanism ("Book Priority Public Customer Order"). If there is sufficient size to execute the entire agency order at a better price or prices, the agency order will be executed at the improved price(s) and the Solicited Order will be cancelled. If there is not sufficient size to execute the entire agency order at a better price or prices, whether the agency order will be executed against the Solicited Order at the proposed execution price depends on whether there is one or more Book Priority Public Customer Order(s) on the BOX Book at the time of execution. If no such Book Priority public customer Orders are on the BOX Book at the time of execution, the agency order will be executed against the Solicited Order at the proposed execution price. However, if there is one or more Book Priority Public Customer Orders on the Book, then BOX will calculate whether sufficient size exists to execute the agency order at its proposed price. If there is sufficient size available on the BOX Book to execute the entire agency order at the proposed price, the agency order will be executed against the BOX Book. If there is not sufficient size available on the BOX Book to execute the entire agency order at the

It will be a violation of an Option Participant's duty of best execution to its customer if it were to cancel a Facilitation Order to avoid execution of the customer order at a better price that may be available on BOX.¹⁷⁸ Additionally, Options Participants may not use the Solicitation Auction to circumvent the limitations in Rule 7140 regarding Participants trading as principal with their customer orders.¹⁷⁹

The Commission believes that BOX Exchange's proposed display, execution, and priority rules are consistent with the Act. In particular, the Commission finds that the proposed rules are consistent with Section 6(b)(5) of the Act,¹⁸⁰ which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating 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, and to not permit unfair discrimination between customers, issuers, or dealers. The Commission also finds that the proposed rules are consistent with Section 6(b)(8) of the Act,¹⁸¹ which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate

proposed price, the agency order and the solicited order will be cancelled and no executions will occur. See BOX Exchange Rule 7270(b)(2).

¹⁷⁸ See BOX Exchange IM-7270-1

¹⁷⁹ See BOX Exchange IM-7270-5. This may include, but is not limited to, Options Participants entering Solicitation Orders that are solicited from: (1) affiliated broker-dealers; or (2) broker-dealers with which the BOX Options Participant has an arrangement that allows the Options Participant to realize similar economic benefits from the solicited transaction as it would achieve by executing the customer order in whole or in part as principal. Further, any Solicited Orders entered by Options Participants to trade against Agency Orders may not be for the account of a BOX Market Maker that is assigned to the options class.

¹⁸⁰ 15 U.S.C. 78f(b)(5).

¹⁸¹ 15 U.S.C. 78f(b)(8).

in furtherance of the purposes of the Act. The Commission notes that the trading rules of BOX Exchange are substantially similar to the current BOX trading rules, which were filed with and approved by the Commission (or otherwise became effective) pursuant to Section 19(b) of the Act. Thus, the Commission is making its findings regarding BOX Exchange's trading rules for the reasons set forth in the Commission approval orders relating to the current BOX trading rules.

2. Section 11 of the Act

Section 11(a)(1) of the Act¹⁸² prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion (collectively, "covered accounts"), unless an exception applies. The Exchange has represented that it has analyzed its rules proposed hereunder, and believes that they are consistent with Section 11(a) of the Act and rules thereunder. For the reasons set forth below, the Commission believes that BOX Option Participants entering orders into the Trading Host, excluding those transactions effected through the PIP process, will satisfy the conditions of Rule 11a2-2(T). The Commission further believes that BOX Option Participants effecting transactions through the PIP process will satisfy the requirements of Section 11(a)(1)(G) of the Act, provided that BOX Option Participants comply with the requirements set forth in Rule 11a1-1(T) thereunder.

a. Rule 11a2-2(T)

Rule 11a2-2(T) under the Act,¹⁸³ known as the "effect versus execute" rule, provides exchange members with an exemption from the Section 11(a)(1) prohibition. Rule 11a2-2(T)

¹⁸² 15 U.S.C. 78k(a)(1).

¹⁸³ 17 CFR 240.11a2-2(T).

permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute the transactions on the exchange. To comply with Rule 11a2-2(T)'s conditions, a member: (1) may not be affiliated with the executing member; (2) must transmit the order from off the exchange floor; (3) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;¹⁸⁴ and (4) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule.

In a letter to the Commission,¹⁸⁵ BOX Exchange requested that the Commission concur with its conclusion that BOX Options Participants that enter orders into the Trading Host, excluding those transactions effected through the PIP process, satisfy the requirements of Rule 11a2-2(T). For the reasons set forth below, the Commission believes that BOX Option Participants entering orders into the Trading Host, excluding those transactions effected through the PIP process, will satisfy the conditions of Rule 11a2-2(T).

Rule 11a2-2(T)'s first condition is that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that the requirement is satisfied when automated exchange facilities, such as the Trading Host, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages over non-members in handling their orders after transmitting them to the

¹⁸⁴ The member may, however, participate in clearing and settling the transaction. See Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (regarding the NYSE's Designated Order Turnaround System ("1978 Release")).

¹⁸⁵ See letter from Lisa Fall, President, BOX Exchange, to Elizabeth Murphy, Secretary, Commission, dated March 30, 2012 ("Exchange 11(a) Request Letter").

Exchange.¹⁸⁶ BOX Exchange has represented that the design of the trading platform ensures that no member has any special or unique trading advantage in the handling of its orders after transmitting its orders to BOX Exchange.¹⁸⁷ Based on the Exchange's representation, the Commission believes that the Trading Host satisfies this requirement.

Second, Rule 11a2-2(T) requires orders for covered accounts be transmitted from off the exchange floor. The Trading Host receives orders electronically through remote terminals or computer-to-computer interfaces. In the context of other automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.¹⁸⁸ Since the Trading Host receives all orders electronically through remote terminals or computer-to-computer interfaces, the Commission believes that the trading platform satisfies the off-floor

¹⁸⁶ In considering the operation of automated execution systems operated by an exchange, the Commission noted that while there is no independent executing exchange member, the execution of an order is automatic once it has been transmitted into each system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2-2(T). See Securities Exchange Act Release No. 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (regarding the American Stock Exchange ("Amex") Post Execution Reporting System, the Amex Switching System, the Intermarket Trading System, the Multiple Dealer Trading Facility of the Cincinnati Stock Exchange, the PCX Communications and Execution System, and the Philadelphia Stock Exchange ("Phlx") Automated Communications and Execution System ("1979 Release")).

¹⁸⁷ See Exchange 11(a) Request Letter, supra note 185.

¹⁸⁸ See, e.g., Securities Exchange Act Release Nos. 59154 (December 23, 2008) 73 FR 80468 (December 31, 2008) (SR-BSE-2008-48) (order approving proposed rules of BX); 49068, supra note 6 (establishing, among other things, BOX as an options trading facility of BSE); 44983, supra note 130 (approving the PCX's use of the Archipelago Exchange as its equity trading facility); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (regarding NYSE's Off-Hours Trading Facility). See 1978 Release, supra note 184. See 1979 Release, supra note 186.

transmission requirement.

Third, Rule 11a2-2(T) requires that the member not participate in the execution of its order once it has been transmitted to the member performing the execution. BOX Exchange represented that at no time following the submission of an order is a member able to acquire control or influence over the result or timing of an order's execution.¹⁸⁹ According to BOX Exchange, the execution of a member's order is determined solely by what orders, bids, or offers are present in the Trading Host and where the order is ranked based on an established price-time priority matching algorithm at the time the BOX Options Participant submits the order and on the priority of those orders, bids and offers.¹⁹⁰ Accordingly, the Commission believes that a BOX Options Participant does not participate in the execution of an order submitted into the trading platform.

Fourth, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and

¹⁸⁹ See Exchange 11(a) Request Letter, supra note 185. The member may only cancel or modify the order, or modify the instructions for executing the order, but only from off the Exchange floor. The Commission has stated that the non-participation requirement is satisfied under such circumstances so long as such modifications or cancellations are also transmitted from off the floor. See 1978 Release, supra note 184 (stating that the “non-participation requirement does not prevent initiating members from canceling or modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor”).

¹⁹⁰ See Exchange 11(a) Request Letter, supra note 185.

Rule 11a2-2(T).¹⁹¹ BOX Options Participants trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule's exemption.¹⁹²

b. Section 11(a)(1)(G) and Rule 11a1-1(T)

Section 11(a)(1)(G) of the Act provides an additional exemption from the general prohibition set forth in Section 11(a)(1) for any transaction for a member's own account, provided that: (i) such member is primarily engaged in certain underwriting, distribution, and other activities generally associated with broker-dealers and whose gross income is derived principally from such business and related activities; and (ii) the transaction is effected in compliance with the rules of the Commission, which, as a minimum, assure that the transaction is not inconsistent with the maintenance of fair and orderly markets and yields priority, parity, and precedence in execution to orders for the account of persons who are not members or associated with members of the exchange.¹⁹³ In addition, Rule 11a1-1(T) under the Act specifies that a transaction effected on a national securities exchange for the account of a member which meets the requirements of Section 11(a)(1)(G)(i) of the Act is deemed, in accordance with the requirements of Section 11(a)(1)(G)(ii), to be not inconsistent with the maintenance of fair and

¹⁹¹ 17 CFR 240.11a2-2(T)(a)(2)(iv). In addition, Rule 11a2-2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated person thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement. See 17 CFR 240.11a2-2(T)(d). See also 1978 Release, supra note 184 (stating “[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests”).

¹⁹² See Exchange 11(a) Request Letter, supra note 185.

¹⁹³ See 15 U.S.C. 78k(a)(1)(G).

orderly markets and to yield priority, parity, and precedence in execution to orders for the account of non-members or persons associated with non-members of the exchange, if such transaction is effected in compliance with certain requirements.¹⁹⁴

The rules relating to the PIP process of the Trading Host prohibit any orders for the accounts of non-Marker Maker BOX Options Participants to be executed prior to the execution of Public Customer Orders, both CPO and unrelated Customer Orders, and non-BOX Options Participant broker-dealer orders at the same price.¹⁹⁵ Because the rules will require BOX Options Participants that are not market makers¹⁹⁶ to yield priority in the PIP to all non-member orders, the Commission believes that the proposal with respect to transactions effected through the PIP process is consistent with the requirements in Section 11(a) of the Act and Rule 11a1-1(T) thereunder.¹⁹⁷ The Commission also reminds exchanges and their members, however, that, in addition to yielding priority to non-member orders at the same price, members must also meet

¹⁹⁴ Rule 11a1-1(T)(a)(1)-(3) provides that each of the following requirements must be met: (1) A member must disclose that a bid or offer for its account is for its account to any member with whom such bid or offer is placed or to whom it is communicated, and any member through whom that bid or offer is communicated must disclose to others participating in effecting the order that it is for the account of a member; (2) immediately before executing the order, a member (other than the specialist in such security) presenting any order for the account of a member on the exchange must clearly announce or otherwise indicate to the specialist and to other members then present for the trading in such security on the exchange that he is presenting an order for the account of a member; and (3) notwithstanding rules of priority, parity, and precedence otherwise applicable, any member presenting for execution a bid or offer for its own account or for the account of another member must grant priority to any bid or offer at the same price for the account of a person who is not, or is not associated with, a member, irrespective of the size of any such bid or offer or the time when entered. See 17 CFR 240.11a1-1(T)(a)(1)-(3).

¹⁹⁵ See BOX Rules, 7150(f)(4) and (g)(3)(i).

¹⁹⁶ Section 11(a)(1)(A) of the Act provides an exception to the general prohibition in Section 11(a) on an exchange member effecting transactions for its own account if such member is a dealer acting in the capacity of a market maker. See 15 U.S.C. 78k(a)(1)(A).

¹⁹⁷ See also Securities Exchange Act Release No. 49068, supra note 6.

the other requirements under Section 11(a)(1)(G) of the Act and Rule 11a1-1(T) thereunder (or satisfy the requirements of another exception) to effect transactions for their own accounts.

D. Other BOX Exchange Rules

1. BOX Options Participant Access

Membership on BOX Exchange will be available to any broker or dealer registered under Section 15 of the Act that meets the standards for membership set forth in the Rule 2000 Series of BOX Exchange's rules.¹⁹⁸ Access to the Trading Host will be available to persons that have applied and been approved by BOX Exchange as BOX Options Participants.¹⁹⁹ BOX Exchange will have two classes of BOX Options Participants: (1) OFPs, who can represent customer orders as agents and/or conduct proprietary trading; and (2) market makers. OFPs can transact business with public customers only if the OFPs are members of another registered national securities exchange or association.²⁰⁰

For a temporary 90-day period after the Commission's approval of BOX Exchange's Form 1 Application, an applicant that is an active member of FINRA or a registered national securities exchange and is a current or former BOX Options Participant of BOX trading facility will not be required to submit a full application for membership on the Exchange, but rather will

¹⁹⁸ See BOX Exchange Rule 2020(a); Form 1 Application, Exhibit L. To become or continue as a BOX Options Participant, a firm must: (1) have as the principal purpose of being a Participant the conduct of a securities business; (2) be a Clearing Participant or establish a clearing arrangement with a Clearing Participant; (3) meet the capital requirements of BOX Exchange or Rule 15c3-1 of the Act, whichever is greater; (4) demonstrate an ability to adhere to all applicable Exchange, Commission, Options Clearing Corporation and Federal Reserve Board policies, rules and regulations, including those concerning record-keeping, reporting, finance and trading procedures; and (5) be able to satisfactorily demonstrate reasonably adequate systems capability and capacity. See also BOX Exchange Rules 2000, 2010, 2020 and 10000 Series.

¹⁹⁹ See BOX Exchange Rule 2010. See also Form 1 Application, Exhibit L.

²⁰⁰ See BOX Exchange Rule 4000.

only need to complete a short-form waive-in membership application form.²⁰¹ This waive-in process is similar to arrangements that were in place temporarily at other SROs.²⁰² All other applicants (and after the 90-day period has ended, those that could have waived in through the expedited process) may apply for membership on the Exchange by submitting a full membership application to the Exchange.²⁰³ Applications for association with a BOX Options Participant shall be submitted to the Exchange on Form U-4 and such other forms as BOX Exchange may prescribe.²⁰⁴

A prospective BOX Options Participant must enter into a Participant Agreement, whereby it will, among other things, agree to abide by the Agreement, the Exchange Rules, and by all circulars, notices, directives or decisions adopted pursuant to or made in accordance with the Rules. Pursuant to BOX Exchange's rules, every applicant must have and maintain membership in another options exchange that is registered under the Act and that is not registered solely under Section 6(g) of the Act.²⁰⁵

The Exchange will receive and review all membership applications, and will provide to the applicant written notice of the Exchange's determination within 30 days after completion of its consideration of an application, specifying in the case of disapproval of an application the grounds thereof.²⁰⁶ The Exchange also will qualify associated persons of BOX Options

²⁰¹ See BOX Exchange Rules 2030. See also Form 1 Application, Exhibit L.

²⁰² See, e.g., Nasdaq Rule 1013(a)(5)(C) (containing a similar expedited waive-in membership process for members of FINRA).

²⁰³ See BOX Exchange Rule 2030.

²⁰⁴ See BOX Exchange IM-2040-6.

²⁰⁵ See BOX Exchange Rule 2010.

²⁰⁶ See BOX Exchange Rule 2000(b).

Participants.²⁰⁷ Once an applicant becomes a BOX Options Participant or a person associated with a BOX Options Participant, it must continue to satisfy all of the qualifications to be an options participant set forth in the BOX Exchange rules.²⁰⁸ When BOX Exchange has reason to believe that a BOX Options Participant or associated person fails to meet such qualifications, the Exchange may suspend or terminate such person's membership or association.²⁰⁹

The Commission finds that BOX Exchange's membership rules are consistent with Section 6 of the Act,²¹⁰ including Section 6(b)(2) of the Act²¹¹ in particular, which requires that a national securities exchange have rules that provide that any registered broker or dealer or natural person associated with such broker or dealer may become a member and any person may become associated with an exchange member. The Commission notes that pursuant to Section 6(c) of the Act,²¹² an exchange must deny membership to any person, other than a natural person, that is not a registered broker or dealer, any natural person that is not, or is not associated with, a registered broker or dealer, and registered broker-dealers that do not satisfy certain standards, such as financial responsibility or operational capacity. As a registered exchange, BOX Exchange must independently determine if an applicant satisfies the standards set forth in the Act, regardless of whether an applicant is a member of another SRO.²¹³

2. Linkage

²⁰⁷ Id. See also BOX Exchange Rule 2030.

²⁰⁸ See BOX Exchange Rule 2040.

²⁰⁹ See BOX Exchange Rule 2040.

²¹⁰ 15 U.S.C. 78f.

²¹¹ 15 U.S.C. 78f(b)(2).

²¹² 15 U.S.C. 78f(c).

²¹³ See, e.g., BATS Order, supra note 21, at 73 FR 49502; and Nasdaq Order, supra note 34, at 71 FR 3555.

The Exchange plans to become a participant in the Plan Relating to Options Order Protection and Locked/Crossed Markets or any successor plan (“Linkage Plan”).²¹⁴ If admitted as a participant to the Plan, other plan participants would be able to send orders to the Trading Host in accordance with the terms of the plan as applied to the Exchange.

BOX Exchange rules include relevant definitions, establish the conditions pursuant to which members may enter orders in accordance with the Linkage Plan, impose obligations on the Exchange regarding how it must process incoming orders, establish a general standard that members and the Exchange should avoid trade-throughs, establish potential regulatory liability for members that engage in a pattern or practice of trading through other exchanges, and establish obligations with respect to locked and crossed markets.

The Commission believes that BOX Exchange has proposed rules that are designed to comply with the requirements of the Linkage Plan.²¹⁵ Further, before BOX Exchange can commence operations as an exchange, BOX Exchange must become a participant in the Linkage Plan.

3. Market Makers

a. Registration of Market Makers

A BOX Options Participant may register with BOX Exchange as a market maker by filing a written application with the Exchange, which will consider an applicant’s market making ability and other factors it deems appropriate in determining whether to approve an applicant’s

²¹⁴ See Form 1 Application, Exhibit E, Response 6. See also Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (File No. 4-546) (order approving the national market system Plan Relating to Options Order Protection and Locked/Crossed Markets Submitted by the Chicago Board Options Exchange, Incorporated (“CBOE”), ISE, The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc., NYSE Amex LLC, and NYSE Arca, Inc.).

²¹⁵ See BOX Exchange Rule 15000 Series.

registration.²¹⁶ To qualify for registration as a market maker, a BOX Options Participant must meet the requirements established in Rule 15c3-1(a)(6)(i) under the Act and the general requirements set forth in BOX Exchange Rule 8000.²¹⁷ All market makers will be designated as specialists on the Exchange for all purposes under the Act and rules thereunder.²¹⁸ BOX Exchange will not limit the number of qualifying entities that may become market makers.²¹⁹ The registration of a market maker may be suspended or terminated by the Exchange upon a determination that such market maker failed to properly perform as a market maker, comply with BOX Exchange rules, or acted in a manner inconsistent with the best interest of fair and orderly markets.²²⁰

The Commission finds that BOX Exchange's proposed market maker qualifications requirements are consistent with the Act. In particular, BOX Exchange's rules provide an objective process by which a BOX Options Participant can become a market maker on the BOX and provide for appropriate oversight by the Exchange to monitor for continued compliance by market makers with the terms of their application for such status and the BOX Exchange Rules.

²¹⁶ See BOX Exchange Rule 8000(b) and (c).

²¹⁷ See BOX Exchange Rule 8010.

²¹⁸ See BOX Exchange Rule 8000(a).

²¹⁹ See BOX Exchange Rule 8000(e). However, BOX Exchange may limit access to the System based on System constraints, capacity restrictions, or other factors relevant to protecting the integrity of the System, pending action required to address the issue of concern. To the extent that BOX Exchange places limitations on any Participant's access to the System, such limits shall be objectively determined and submitted to the Commission for approval pursuant to a rule change filed under Section 19(b) of the Act.

²²⁰ See BOX Exchange Rule 8000(d).

The Commission notes that BOX Exchange's proposed market maker registration requirements are similar to those of other options exchanges.²²¹

b. Market Maker Obligations

Pursuant to BOX Exchange rules, the transactions of a market maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market.²²² Among other things, a market maker must: (1) maintain a two-sided market on a continuous basis for options classes to which it is appointed at least 60% of the time that the classes are open for trading;²²³ (2) engage in dealings for its own account when there is a lack of price continuity, a temporary disparity between the supply of and demand for a particular option contract, or a temporary distortion of the price relationships between options contracts of the same class; (3) compete with other market makers; (4) update quotations in response to changed market conditions; (5) maintain active markets; and (6) make markets that will be honored for the number of contacts entered.²²⁴ In addition, market makers must maintain minimum net capital in accordance with Commission and BOX Exchange rules.²²⁵ Market makers also must maintain information barriers that are reasonably designed to prevent the misuse of material, non-public information.²²⁶

²²¹ See, e.g., Nasdaq Rules, Chapter VII, Sections 2 and 4; Chapter VI, Section 2 of the current BOX Rules; and ISE Rule 804.

²²² See BOX Exchange Rule 8040.

²²³ See BOX Exchange Rule 8050(e). These obligations will apply to all of the Market Maker's appointed classes collectively, rather than on a class-by-class basis.

²²⁴ See BOX Exchange Rule 8040.

²²⁵ See BOX Exchange Rule 8080.

²²⁶ See BOX Exchange Rule 8090.

If BOX Exchange finds any substantial or continued failure by a market maker to engage in a course of dealings as specified in Exchange Rule 8040, then such market maker will be subject to disciplinary action, suspension, or revocation of registration in one or more of the securities in which the market maker is registered.²²⁷

Market makers receive certain benefits for carrying out their responsibilities.²²⁸ For example, a broker-dealer or other lender may extend “good faith” credit to a member of a national securities exchange or registered broker-dealer to finance its activities as a market maker or specialist.²²⁹ In addition, market makers are excepted from the prohibition in Section 11(a) of the Act.²³⁰ The Commission believes that a market maker must have sufficient affirmative obligations, including the obligation to hold itself out as willing to buy and sell options for its own account on a regular or continuous basis, to justify this favorable treatment.²³¹

The Commission further believes that the rules of all U.S. options markets need not provide the same standards for market maker participation, so long as they impose affirmative obligations that are consistent with the Act.²³² The Commission believes that BOX Exchange’s market maker participation requirements impose sufficient affirmative obligations on the Exchange’s market makers and, accordingly, that BOX Exchange’s requirements are consistent with the Act. In particular, the Act does not mandate a particular market model for exchanges,

²²⁷ See BOX Exchange Rule 8040(f).

²²⁸ See, e.g., NOM Approval Order, supra note 122 (discussing the benefits and obligations of market makers).

²²⁹ See 12 CFR 221.5 and 12 CFR 220.7; see also 17 CFR 240.15c3-1(a)(6) (capital requirements for market makers).

²³⁰ 15 U.S.C. 78k(a).

²³¹ See NOM Approval Order, supra note 122, at 73 FR 14526.

²³² See e.g., C2 Order, supra note 29 and NOM Approval Order, supra note 122.

and while market makers may become an important source of liquidity on BOX Exchange, they will likely not be the only source as BOX is designed to match buying and selling interest of all BOX Options Participants.

4. Discipline and Oversight of Members

As noted above, one prerequisite for Commission granting an exchange's application for registration is that a proposed exchange must be so organized and have the capacity to carry out the purposes of the Act. Specifically, an exchange must be able to enforce compliance by its members and persons associated with its members with federal securities laws and the rules of the exchange.²³³

BOX Exchange rules codify BOX Exchange's disciplinary jurisdiction over its members, thereby facilitating its ability to enforce its members' compliance with its rules and the federal securities laws.²³⁴ BOX Exchange's rules permit it to sanction members for violations of its rules and violations of the federal securities laws by, among other things, expelling or suspending members; limiting members' activities, functions, or operations; fining or censuring members; suspending or barring a person from being associated with a member; or any other appropriate sanction.²³⁵

BOX Exchange's disciplinary and oversight functions will be administered in accordance with Rule 12000 Series, which governs disciplinary actions. BOX Exchange regulatory staff

²³³ See 15 U.S.C. 78f(b)(1).

²³⁴ See BOX Exchange Rule 12000 Series.

²³⁵ Id.

will, among other things, investigate potential securities laws violations and initiate charges pursuant to BOX Exchange rules.²³⁶

Upon a finding by BOX Exchange's regulatory staff (and approved by the CRO) of probable cause of a violation within the disciplinary jurisdiction of the Exchange and that further proceedings are warranted,²³⁷ BOX Exchange will conduct a hearing on disciplinary matters before a professional hearing officer²³⁸ and two members of the Hearing Committee²³⁹ (the

²³⁶ See BOX Exchange Rule 12000 Series. As noted above, BOX Exchange has entered into a RSA with FINRA under which FINRA will perform certain regulatory functions on behalf of BOX Exchange. FINRA may perform some or all of the functions specified in the Rule 12000 Series. See also BOX Exchange Rule 12150 and IM-12150-1. FINRA will: assist BOX Exchange in conducting investigations of potential violations of BOX Exchange rules and/or federal securities laws related to activity on the Exchange; conduct examinations related to BOX Option Participants' conduct on BOX Exchange; assist BOX Exchange with disciplinary proceedings pursuant to BOX Exchange rules, including issuing charges and conducting hearings; and provide dispute resolution services to BOX Option Participants on behalf of BOX Exchange, including operation of the BOX Exchange's arbitration program. See *supra* notes 236 to 243 and accompanying text.

²³⁷ See BOX Exchange Rule 12040. If there is probable cause for finding a violation, the Exchange regulatory staff will prepare a statement of charges including the allegations and specifying the provisions of the Act and/or Exchange rules, regulations or policies thereunder alleged to have been violated by the BOX Options Participant or associated person. The CRO must approve the statement of charges.

²³⁸ See BOX Exchange Rule IM-12150-1. As noted above, BOX Exchange has entered into a RSA with FINRA to provide certain regulatory functions, including providing professional hearing officers. Under BOX Exchange Rule 12060(a), the professional hearing officer is designated as the Chairman of the Panel. Under BOX Exchange Rule 12060(e), the Panel Chairman has the sole responsibility to determine the time and place of all meetings of the Panel, and make all determinations with regard to procedural or evidentiary matters, as well as prescribe the time within which all documents, exhibits, briefs, stipulations, notices or other written materials must be filed where such is not specified in Exchange rules.

²³⁹ See BOX Exchange Bylaws Section 6.08. The Hearing Committee is not a BOX Exchange Board committee but is a separate committee of BOX Exchange. Promptly after the annual meeting of the BOX Exchange owners, the Chairman of the BOX Exchange Board will appoint a Hearing Committee composed of such number of BOX Options Participants and individuals who are not BOX Options Participants, as

“Panel”).²⁴⁰ The BOX Options Participant (or associated person) or the Exchange regulatory staff may petition for review of the decision of the Panel by the BOX Exchange Board.²⁴¹ The review will be conducted by the BOX Exchange Board or a committee thereof composed of at least three Directors of the BOX Exchange Board (whose decision must be ratified by a majority of the BOX Exchange Board) and such decision will be final.²⁴² In addition, the BOX Exchange Board on its own motion may order review of a disciplinary decision.²⁴³

Appeals from any termination or suspension with regard to access to the Exchange will be instituted under, and governed by, the provisions in the Rule 13000 Series of the Exchange Rules. BOX Exchange Rule Series 13000 applies to persons economically aggrieved by any of the following Exchange actions including, but not limited to: (a) denial of an application to become a BOX Options Participant; (b) prohibiting a person from becoming associated with an

determined by the Chairman, none of whom shall be Directors. The Hearing Committee or any panel thereof shall include at least one officer, director or employee of a BOX Options Participant. The Hearing Committee shall have exclusive jurisdiction to conduct hearings on disciplinary proceedings brought by the Exchange against any BOX Options Participant, or any person employed by or associated with any BOX Options Participant for any alleged violation of the Act, the rules and regulations thereunder, the BOX Exchange Bylaws or the rules, or the interpretations and stated policies of the BOX Exchange Board.

²⁴⁰ See BOX Exchange Rule 12060. A Panel may make a determination without a hearing and may impose a penalty as to violations that the BOX Options Participant or associated person has admitted or has failed to answer or that otherwise do not appear to be in dispute. See BOX Exchange Rule 12080. A BOX Options Participant or associated person alleged to have committed a disciplinary violation may submit a written offer of settlement to the Panel, or CRO if a Panel is not yet been appointed, which the Panel or CRO may accept or reject. If the second offer of settlement is rejected (such decision is not subject to review), a hearing will proceed in accordance with BOX Exchange Rule 12060. See BOX Exchange Rule 12090.

²⁴¹ See BOX Exchange Rule 12100.

²⁴² See BOX Exchange Rule 12100.

²⁴³ Id.

BOX Options Participant; (c) limiting, suspending, or prohibiting a BOX Options Participant's activities, functions or operations on BOX Exchange; or (d) limiting or denial of access to services provided to a BOX Options Participant pursuant to BOX Exchange rules.²⁴⁴

Any person aggrieved by an action of the Exchange within the scope of the 13000 Rule Series may file a written application to be heard within thirty days²⁴⁵ after such action has been taken.²⁴⁶ Applications for hearing and review will be referred to the Hearing Committee, which will appoint a hearing panel of no less than three members of such committee.²⁴⁷ The decision of the hearing panel shall be made in writing and sent to the parties to the proceedings.²⁴⁸ The decision of the hearing panel made pursuant to the 13000 Rule Series becomes final thirty calendar days after issuance unless the applicant, the Chief Executive Officer of BOX Exchange or his designee, or the BOX Exchange Board on its own motion, petitions for review of the decision.²⁴⁹ The BOX Exchange Board, or a committee of the BOX Exchange Board, will have

²⁴⁴ See BOX Exchange Rule 13000. As noted above, BOX Exchange has entered into a RSA with FINRA under which FINRA will perform certain regulatory functions on behalf of BOX Exchange. FINRA may perform some or all of the functions specified in the Rule 13000 Series. See supra note 236. See also BOX Exchange Rule 13060.

²⁴⁵ An applicant may file for an extension of time as allowed by the Chairman of the Hearing Committee within thirty days of the Exchange action. An application for an extension will be ruled upon by the Chairman of the Hearing Committee, and his ruling will be given in writing. Rulings on applications for extensions of time are not subject to appeal. See BOX Exchange Rule 13000.

²⁴⁶ The application must include: (1) the action for which review is sought; (2) the specific reasons for the applicant's exception to such action; (3) the relief sought; and (4) whether the applicant intends to submit any documents, statements, arguments or other material in support of the application, with a description of any such materials. See BOX Exchange Rule 13010.

²⁴⁷ See BOX Exchange Rule 13020.

²⁴⁸ See BOX Exchange Rule 13030.

²⁴⁹ See BOX Exchange Rule 13040(a).

sole discretion to grant or deny either request.²⁵⁰ The review shall be conducted by the BOX Exchange Board or a committee of the BOX Exchange board composed of at least three directors.²⁵¹ The BOX Exchange Board or its designated committee may affirm, reverse or modify in whole or in part, the decision of the hearing panel.²⁵²

The Commission finds that BOX Exchange's proposed disciplinary and oversight rules and structure, as well as its proposed process for persons economically aggrieved by certain BOX Exchange actions, are consistent with the requirements of Sections 6(b)(6) and 6(b)(7) of the Act²⁵³ in that they provide fair procedures for the disciplining of members and persons associated with members. The Commission further finds that the proposed BOX Exchange rules are designed to provide the Exchange with the ability to comply, and with the authority to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of BOX Exchange.²⁵⁴

5. Listing Requirements

BOX Exchange does not intend to offer original listings. Instead, BOX Exchange will list and trade only equity and index options that are listed on other national securities exchanges and cleared by the Options Clearing Corporation.²⁵⁵ The Commission finds that BOX

²⁵⁰ Id.

²⁵¹ See BOX Exchange Rule 13040(b).

²⁵² The decision of the BOX Exchange Board or its designated committee shall be in writing, shall be sent to the parties to the proceeding, and shall be final. See BOX Exchange Rule 13040(c).

²⁵³ 15 U.S.C. 78f(b)(6) and (b)(7), respectively.

²⁵⁴ See Section 6(b)(1) of the Act, 15 U.S.C. 78f(b)(1).

²⁵⁵ BOX Exchange's listing rules for the underlying securities and indices of the options to be traded are substantially similar to the rules of another exchange. See BOX Exchange Rule 5020 and ISE Rule 502.

Exchange's proposed initial and continued listing rules are consistent with the Act, including Section 6(b)(5), in that they are designed to protect investors and the public interest and to promote just and equitable principles of trade. The Commission notes that, before beginning operation, BOX Exchange will need to become a participant in the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options Submitted Pursuant to Section 11A(a)(3)(B) of the Act ("OLPP"). In addition, before beginning operation, BOX Exchange will need to become a participant in the Options Clearing Corporation.

III. Exemption from Section 19(b) of the Act With Regard to FINRA Rules Incorporated by Reference

BOX Exchange proposes to incorporate by reference certain FINRA rules.²⁵⁶ Thus, for certain BOX Exchange rules, BOX Options Participants will comply with a BOX Exchange rule by complying with the referenced FINRA rule.

In connection with the proposal to incorporate the FINRA rules by reference, BOX Exchange requested, pursuant to Rule 240.0-12 under the Act,²⁵⁷ an exemption under Section 36 of the Act from the rule filing requirements of Section 19(b) of the Act for changes to the BOX Exchange rules that are effected solely by virtue of a change to a cross-referenced FINRA rule.²⁵⁸ BOX Exchange proposes to incorporate by reference categories of rules, rather than individual rules within a category, that are not trading rules. BOX Exchange agrees to provide

²⁵⁶ Specifically, BOX Exchange proposes to incorporate by reference the following FINRA rules: Series 12000 (Code of Arbitration for Customer Disputes) and 13000 (Code of Arbitration Procedure for Industry Disputes), referenced in Exchange Rule 14000.

²⁵⁷ 17 CFR 240.0-12.

²⁵⁸ See letter from Lisa J. Fall, President, BOX Exchange, to Elizabeth M. Murphy, Secretary, Commission, dated March 30, 2012 ("Section 19(b) Exemption Request").

written notice to BOX Options Participants whenever FINRA proposes a change to a cross-referenced rule²⁵⁹ and whenever any such proposed changes are approved by the Commission or otherwise become effective.²⁶⁰

Using the authority under Section 36 of the Act, the Commission previously exempted certain SROs from the requirement to file proposed rule changes under Section 19(b) of the Act.²⁶¹ Each exempt SRO agreed to be governed by the incorporated rules, as amended from time to time, but is not required to file a separate proposed rule change with the Commission each time the SRO whose rules are incorporated by reference seeks to modify such rules. In addition, each exempt SRO incorporated by reference only regulatory rules, for example, margin, suitability, and arbitration rules, and not trading rules, and incorporated by reference whole categories of rules. Each exempt SRO had reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO in order to provide such members with notice of a proposed rule change that affects the members' interests, so that the members will have an opportunity to comment.

The Commission is granting BOX Exchange's request for exemption, pursuant to Section 36 of the Act, from the rule filing requirements of Section 19(b) of the Act with respect to the rules that BOX Exchange proposes to incorporate by reference. The exemption is conditioned upon BOX Exchange providing written notice to BOX Options Participants whenever FINRA

²⁵⁹ See id.

²⁶⁰ BOX Exchange will provide such notice through a posting on the same website location where BOX Exchange posts its own rule filings pursuant to Rule 19b-4 under the Act, within the required time frame. The website posting will include a link to the location on the FINRA website where FINRA's proposed rule change is posted. See id.

²⁶¹ See e.g., DirectEdge Exchanges Order and BATS Order, supra note 21, C2 Order, supra note 29, Nasdaq Order, supra note 34 and NOM Approval Order, supra note 122.

proposes to change an incorporated by reference rule. The Commission believes that the exemption is appropriate in the public interest and consistent, with the protection of investors because it will promote more efficient use of Commission and SROs resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought by more than one SRO.

IV. Conclusion

IT IS ORDERED that the application of BOX Exchange for registration as a national securities exchange be, and it hereby is, granted.

IT IS FURTHERED ORDERED that operation of BOX Exchange is conditioned on the satisfaction of the requirements below:

A. Participation in National Market System Plans Relating to Options Trading. BOX Exchange must join: (1) The Plan for the Reporting of Consolidated Options Last Sale Reports and Quotation Information (Options Price Reporting Authority); (2) the OLPP; (3) the Linkage Plan; and (4) the Plan of the Options Regulatory Surveillance Authority.

B. Participation in Multiparty Rule 17d-2 Plans. BOX Exchange must become a party to the multiparty Rule 17d-2 agreements concerning options sales practice regulation and market surveillance.

C. Participation in the Options Clearing Corporation. BOX Exchange must become an Options Clearing Corporation participant exchange.

D. Participation in the Intermarket Surveillance Group. BOX Exchange must join the Intermarket Surveillance Group.

E. Effective Regulation. BOX Exchange must have, and represent in a letter to the staff in the Commission's Office of Compliance Inspections and Examinations that it has,

adequate procedures and programs in place to effectively regulate the BOX options trading facility.

F. Trade Processing and Exchange Systems. BOX Exchange must have, and represent in a letter to the staff in the Commission's Division of Trading and Markets that it has, adequate procedures and programs in place, as detailed in Commission Automation Policy Review guidelines, to effectively process trades and maintain the confidentiality, integrity, and availability of BOX Exchange's systems.²⁶²

IT IS FURTHER ORDERED, pursuant to Section 36 of the Act,²⁶³ that BOX Exchange shall be exempted from the rule filing requirements of Section 19(b) of the Act with respect to the FINRA rules that BOX Exchange proposes to incorporate by reference, subject to the conditions specified in this Order.

By the Commission.

Elizabeth M. Murphy
Secretary

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²⁶² On November 16, 1989, the Commission published its first Automation Review Policy (“ARP I”), in which the Commission created a voluntary framework for SROs to establish comprehensive planning and assessment programs to determine systems capacity and vulnerability. On May 9, 1991, the Commission published its second Automation Review Policy (“ARP II”) to clarify the types of review and reports expected from SROs. See Securities Exchange Act Release Nos. 27445 (November 16, 1989), 54 FR 48703 (November 24, 1989) and 29185 (May 9, 1991), 56 FR 22490 (May 15, 1991).

²⁶³ 15 U.S.C. 78mm.