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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80240; File No. 4-709]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing of Proposed Amended Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc. and BOX Options Exchange LLC

March 14, 2017

Pursuant to Section 17(d) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 17d-2 thereunder,² notice is hereby given that on January 12, 2017, BOX Options Exchange LLC (“BOX”) and the Financial Industry Regulatory Authority, Inc. (“FINRA”) (together, the “Parties”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) a plan for the allocation of regulatory responsibilities, dated March 2, 2017 (“17d-2 Plan” or the “Plan”). The Commission is publishing this notice to solicit comments on the 17d-2 Plan from interested persons.

I. Introduction

Section 19(g)(1) of the Act,³ among other things, requires every self-regulatory organization (“SRO”) registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO’s own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the

¹ 15 U.S.C. 78q(d).

² 17 CFR 240.17d-2.

³ 15 U.S.C. 78s(g)(1).

Act.⁴ Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (“common members”). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act⁵ was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.⁶ With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d-1 and Rule 17d-2 under the Act.⁷ Rule 17d-1 authorizes the Commission to name a single SRO as the designated examining authority (“DEA”) to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.⁸ When an SRO has been named as a common member’s DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d-1 deals only with an SRO’s obligations to enforce member compliance with financial responsibility requirements. Rule 17d-1 does not relieve an SRO from its obligation to examine a common member for

⁴ 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

⁵ 15 U.S.C. 78q(d)(1).

⁶ See Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Session 32 (1975).

⁷ 17 CFR 240.17d-1 and 17 CFR 240.17d-2, respectively.

⁸ See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d-2 under the Act.⁹ Rule 17d-2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d-2, the Commission may declare such a plan effective if, after providing for appropriate notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors; to foster cooperation and coordination among the SROs; to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system; and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d-2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. The Plan

The proposed 17d-2 Plan is intended to reduce regulatory duplication for firms that are common members of both BOX and FINRA.¹⁰ Pursuant to the proposed 17d-2 Plan, FINRA would assume certain examination and enforcement responsibilities for common members with respect to certain applicable laws, rules, and regulations.

The text of the Plan delineates the proposed regulatory responsibilities with respect to the Parties. Included in the proposed Plan is an exhibit (the “BOX Options Exchange LLC Rules Certification for 17d-2 Agreement with FINRA,” referred to herein as the “Certification”) that lists every BOX rule for which FINRA would bear responsibility under the Plan for overseeing

⁹ See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

¹⁰ The proposed 17d-2 Plan refers to these common members as “Dual Members.” See Paragraph 1(c) of the proposed 17d-2 Plan.

and enforcing with respect to BOX members that are also members of FINRA and the associated persons therewith (“Dual Members”).

Specifically, under the 17d-2 Plan, FINRA would assume examination and enforcement responsibility relating to compliance by Dual Members with the rules of BOX that are substantially similar to the applicable rules of FINRA¹¹ delineated in the Certification (“Common Rules”). In the event that a Dual Member is the subject of an investigation relating to a transaction on BOX, the plan acknowledges that BOX may, in its discretion, exercise concurrent jurisdiction and responsibility for such matter.¹²

Under the Plan, BOX would retain full responsibility for surveillance, examination, investigation, and enforcement with respect to trading activities or practices involving BOX’s own marketplace, including, without limitation, registration pursuant to its applicable rules of associated persons (i.e., registration rules that are not Common Rules); its duties as a DEA pursuant to Rule 17d-1 under the Act; and any BOX rules that are not Common Rules.¹³

The text of the proposed 17d-2 Plan is as follows:

¹¹ See paragraph 1(b) of the proposed 17d-2 Plan (defining Common Rules). See also paragraph 1(f) of the proposed 17d-2 Plan (defining Regulatory Responsibilities). Paragraph 2 of the Plan provides that annually, or more frequently as required by changes in either BOX rules or FINRA rules, the parties shall review and update, if necessary, the list of Common Rules. Further, paragraph 3 of the Plan provides that BOX shall furnish FINRA with a list of Dual Members, and shall update the list no less frequently than once each calendar quarter.

¹² See paragraph 6 of the proposed 17d-2 Plan.

¹³ See paragraph 2 of the proposed 17d-2 Plan.

**AGREEMENT BETWEEN FINANCIAL INDUSTRY
REGULATORY AUTHORITY, INC. AND
BOX OPTIONS EXCHANGE LLC PURSUANT TO
RULE 17d-2 UNDER THE SECURITIES EXCHANGE ACT OF 1934**

This Agreement, by and between the Financial Industry Regulatory Authority, Inc. (“FINRA”) and BOX Options Exchange LLC (“BOX”), is made this 2nd day of March, 2017 (the “Agreement”), pursuant to Section 17(d) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 17d-2 thereunder, which permits agreements between self-regulatory organizations to allocate regulatory responsibility to eliminate regulatory duplication. FINRA and BOX may be referred to individually as a “party” and together as the “parties.”

WHEREAS, FINRA and BOX desire to reduce duplication in the examination of their Dual Members (as defined herein) and in the filing and processing of certain registration and membership records; and

WHEREAS, FINRA and BOX desire to execute an agreement covering such subjects pursuant to the provisions of Rule 17d-2 under the Exchange Act and to file such agreement with the Securities and Exchange Commission (the “SEC” or “Commission”) for its approval.

NOW, THEREFORE, in consideration of the mutual covenants contained hereinafter, FINRA and BOX hereby agree as follows:

1. **Definitions.** Unless otherwise defined in this Agreement or the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Exchange Act and the rules and regulations thereunder. As used in this Agreement, the following terms shall have the following meanings:

- (a) “BOX Rules” or “FINRA Rules” shall mean: (i) the rules of BOX, or (ii) the rules of FINRA, respectively, as the rules of an exchange or association are defined in Exchange Act Section 3(a)(27).
- (b) “Common Rules” shall mean BOX Rules that are substantially similar to the applicable FINRA Rules and certain provisions of the Exchange Act and SEC rules set forth on Exhibit 1 in that examination for compliance with such provisions and rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the provision or rule, or a Dual Member’s activity, conduct, or output in relation to such provision or rule. Common Rules shall not include any provisions regarding (i) notice, reporting or any other filings made directly to or from BOX, (ii) compliance with other referenced BOX Rules that are not Common Rules, (iii) exercise of discretion including, but not limited to exercise of exemptive authority, by BOX, (iv) prior written approval of BOX and (v) payment of fees or fines to BOX.
- (c) “Dual Members” shall mean those BOX members that are also members of FINRA and the associated persons therewith.
- (d) “Effective Date” shall be the date this Agreement is approved by the Commission.
- (e) “Enforcement Responsibilities” shall mean the conduct of appropriate proceedings, in accordance with FINRA’s Code of Procedure (the Rule 9000 Series) and other applicable FINRA procedural rules, to determine whether violations of Common Rules have occurred, and if such violations are deemed to

have occurred, the imposition of appropriate sanctions as specified under FINRA's Code of Procedure and sanctions guidelines.

- (f) "Regulatory Responsibilities" shall mean the examination responsibilities and Enforcement Responsibilities relating to compliance by the Dual Members with the Common Rules and the provisions of the Exchange Act and the rules and regulations thereunder, and other applicable laws, rules and regulations, each as set forth on Exhibit 1 attached hereto.

2. **Regulatory and Enforcement Responsibilities.** FINRA shall assume Regulatory Responsibilities and Enforcement Responsibilities for Dual Members. Attached as Exhibit 1 to this Agreement and made part hereof, BOX furnished FINRA with a current list of Common Rules and certified to FINRA that such rules that are BOX Rules are substantially similar to the corresponding FINRA Rules (the "Certification"). FINRA hereby agrees that the rules listed in the Certification are Common Rules as defined in this Agreement. Each year following the Effective Date of this Agreement, or more frequently if required by changes in either the rules of BOX or FINRA, BOX shall submit an updated list of Common Rules to FINRA for review which shall add BOX Rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete BOX Rules included in the current list of Common Rules that no longer qualify as Common Rules as defined in this Agreement; and confirm that the remaining rules on the current list of Common Rules continue to be BOX Rules that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, FINRA shall confirm in writing whether the rules listed in any updated list are Common Rules as defined in this Agreement. Notwithstanding anything herein to the contrary, it is explicitly understood that the term

“Regulatory Responsibilities” does not include, and BOX shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) (collectively, the “Retained Responsibilities”) the following:

- (a) surveillance, examination, investigation and enforcement with respect to trading activities or practices involving BOX’s own marketplace;
- (b) registration pursuant to its applicable rules of associated persons (i.e., registration rules that are not Common Rules);
- (c) discharge of its duties and obligations as a Designated Examining Authority pursuant to Rule 17d-1 under the Exchange Act; and
- (d) any BOX Rules that are not Common Rules as provided in paragraph 6.

3. **Dual Members.** Prior to the Effective Date, BOX shall furnish FINRA with a current list of Dual Members, which shall be updated no less frequently than once each quarter.
4. **No Charge.** There shall be no charge to BOX by FINRA for performing the Regulatory Responsibilities and Enforcement Responsibilities under this Agreement except as hereinafter provided. FINRA shall provide BOX with ninety (90) days advance written notice in the event FINRA decides to impose any charges to BOX for performing the Regulatory Responsibilities under this Agreement. If FINRA determines to impose a charge, BOX shall have the right at the time of the imposition of such charge to terminate this Agreement; provided, however, that FINRA’s Regulatory Responsibilities under this Agreement shall continue until the Commission approves the termination of this Agreement.
5. **Applicability of Certain Laws, Rules, Regulations or Orders.** Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the SEC. To the extent such statute, rule or order is inconsistent with one or more provisions of

this Agreement, the statute, rule or order shall supersede the provision(s) hereof to the extent necessary to be properly effectuated and the provision(s) hereof in that respect shall be null and void.

6. **Notification of Violations.** In the event that FINRA becomes aware of apparent violations of any BOX Rules, which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, FINRA shall notify BOX of those apparent violations for such response as BOX deems appropriate. In the event that BOX becomes aware of apparent violations of any Common Rules, discovered pursuant to the performance of the Retained Responsibilities, BOX shall notify FINRA of those apparent violations and such matters shall be handled by FINRA as provided in this Agreement. Apparent violations of Common Rules shall be processed by, and enforcement proceedings in respect thereto shall be conducted by FINRA as provided hereinbefore; provided, however, that in the event a Dual Member is the subject of an investigation relating to a transaction on BOX, BOX may in its discretion assume concurrent jurisdiction and responsibility. Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings.

7. **Continued Assistance.**

- (a) FINRA shall make available to BOX all information obtained by FINRA in the performance by it of the Regulatory Responsibilities hereunder with respect to the Dual Members subject to this Agreement. In particular, and not in limitation of the foregoing, FINRA shall furnish BOX any information it obtains about Dual Members which reflects adversely on their financial condition. BOX shall make available to FINRA any information coming to its attention that reflects adversely

on the financial condition of Dual Members or indicates possible violations of applicable laws, rules or regulations by such firms.

(b) The parties agree that documents or information shared shall be held in confidence, and used only for the purposes of carrying out their respective regulatory obligations. Neither party shall assert regulatory or other privileges as against the other with respect to documents or information that is required to be shared pursuant to this Agreement.

(c) The sharing of documents or information between the parties pursuant to this Agreement shall not be deemed a waiver as against third parties of regulatory or other privileges relating to the discovery of documents or information.

8. **Statutory Disqualifications.** When FINRA becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a Dual Member, FINRA shall determine pursuant to Sections 15A(g) and/or Section 6(c) of the Exchange Act the acceptability or continued applicability of the person to whom such disqualification applies and keep BOX advised of its actions in this regard for such subsequent proceedings as BOX may initiate.
9. **Customer Complaints.** BOX shall forward to FINRA copies of all customer complaints involving Dual Members received by BOX relating to FINRA's Regulatory Responsibilities under this Agreement. It shall be FINRA's responsibility to review and take appropriate action in respect to such complaints.
10. **Advertising.** FINRA shall assume Regulatory Responsibility, to the extent applicable, to review the advertising of Dual Members subject to the Agreement, provided that such material is filed with FINRA in accordance with FINRA's filing procedures and is accompanied with any applicable filing fees set forth in FINRA Rules.

11. **No Restrictions on Regulatory Action.** Nothing contained in this Agreement shall restrict or in any way encumber the right of either party to conduct its own independent or concurrent investigation, examination or enforcement proceeding of or against Dual Members, as either party, in its sole discretion, shall deem appropriate or necessary.
12. **Termination.** This Agreement may be terminated by BOX or FINRA at any time upon the approval of the Commission after one (1) year's written notice to the other party (or such shorter time as agreed by the parties), except as provided in paragraph 4.
13. **Arbitration.** In the event of a dispute between the parties as to the operation of this Agreement, BOX and FINRA hereby agree that any such dispute shall be settled by arbitration in Washington, D.C. in accordance with the rules of the American Arbitration Association then in effect, or such other procedures as the parties may mutually agree upon. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Each party acknowledges that the timely and complete performance of its obligations pursuant to this Agreement is critical to the business and operations of the other party. In the event of a dispute between the parties, the parties shall continue to perform their respective obligations under this Agreement in good faith during the resolution of such dispute unless and until this Agreement is terminated in accordance with its provisions. Nothing in this Section 13 shall interfere with a party's right to terminate this Agreement as set forth herein.
14. **Separate Agreement.** This Agreement is wholly separate from the following agreement: (1) the multiparty Agreement made pursuant to Rule 17d-2 of the Exchange Act among BATS Exchange, Inc., BOX Options Exchange, LLC, Chicago Board Options Exchange,

Incorporated, C2 Options Exchange, Incorporated, the International Securities Exchange, LLC, FINRA, Miami International Securities Exchange, LLC, NYSE MKT LLC, the NYSE Arca, Inc., The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, ISE Gemini, LLC, EDGX Exchange, Inc., ISE Mercury, LLC and MIAX PEARL, LLC involving the allocation of regulatory responsibilities with respect to common members for compliance with common rules relating to the conduct by broker-dealers of accounts for listed options or index warrants entered as approved by the SEC on February 2, 2017, and as may be amended from time to time; and (2) the multiparty Agreement made pursuant to Rule 17d-2 of the Exchange Act among NYSE MKT LLC, BATS Exchange, Inc., EDGX Exchange, Inc., BOX Options Exchange LLC, NASDAQ OMX BX, Inc., C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, International Securities Exchange LLC, ISE Gemini, LLC, ISE Mercury, LLC, FINRA, NYSE Arca, Inc., The NASDAQ Stock Market LLC, NASDAQ OMX PHLX, Inc., Miami International Securities Exchange, LLC and MIAX PEARL, LLC involving the allocation of regulatory responsibilities with respect to SRO market surveillance of common members activities with regard to certain common rules relating to listed options approved by the SEC on February 2, 2017, and as may be amended from time to time.

15. **Notification of Members.** BOX and FINRA shall notify Dual Members of this Agreement after the Effective Date by means of a uniform joint notice.
16. **Amendment.** This Agreement may be amended in writing provided that the changes are approved by both parties. All such amendments must be filed with and approved by the Commission before they become effective.

- 17. Limitation of Liability.** Neither FINRA nor BOX nor any of their respective directors, governors, officers or employees shall be liable to the other party to this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibilities as provided hereby or for the failure to provide any such responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or the other of FINRA or BOX and caused by the willful misconduct of the other party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by FINRA or BOX with respect to any of the responsibilities to be performed by each of them hereunder.
- 18. Relief from Responsibility.** Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d-2 thereunder, FINRA and BOX join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve BOX of any and all responsibilities with respect to matters allocated to FINRA pursuant to this Agreement; provided, however, that this Agreement shall not be effective until the Effective Date.
- 19. Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.
- 20. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, each party has executed or caused this Agreement to be executed on its behalf by a duly authorized officer as of the date first written above.

BOX OPTIONS EXCHANGE LLC.

By: _____
Name:
Title:

FINANCIAL INDUSTRY REGULATORY
AUTHORITY, INC.

By: _____
Name:
Title:

EXHIBIT 1**BOX Options Exchange LLC Rules Certification for 17d-2 Agreement with FINRA**

BOX Options Exchange LLC (“BOX”) hereby certifies that the requirements contained in the rules listed below are identical to, or substantially similar to, the comparable FINRA (NASD) Rule, Exchange Act provision or SEC rule identified (“Common Rules”).

BOX RULES	FINRA (NASD) RULES, EXCHANGE ACT PROVISION OR SEC RULE
BOX Rule 3210 (a) and (b)	FINRA Rule 2251 Processing and Forwarding of Proxy and Other Issuer-Related Materials
BOX Rule 10070 Anti-Money Laundering Compliance Program [#]	FINRA Rule 3310 Anti-Money Laundering Compliance Program

* FINRA shall not have Regulatory Responsibilities for these rules as they pertain to violations of insider trading activities, which is covered by a separate 17d-2 Agreement by and among BATS BZX Exchange, Inc., BATS BYX Y-Exchange, Inc., Chicago Stock Exchange, Inc., BATS EDGA Exchange, Inc., BATS EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ BX, Inc., NASDAQ PHLX LLC, the NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca Inc., effective August 3, 2016, as may be amended from time to time.

FINRA shall not have any Regulatory Responsibilities regarding (i) notice, reporting or any other filings made directly to or from BOX, (ii) compliance with other referenced BOX Rules that are not Common Rules, (iii) exercise of discretion including, but not limited to exercise of exemptive authority, by BOX, (iv) prior written approval of BOX and (v) payment of fees or fines to BOX.

IV. Solicitation of Comments

In order to assist the Commission in determining whether to approve the proposed 17d-2 Plan and to relieve BOX of the responsibilities which would be assigned to FINRA, interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/other.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number 4-709 on the subject line.

Paper comments:

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

All submissions should refer to File Number 4-709. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/other.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the plan also will be available for inspection and copying at the principal offices of BOX and FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information

that you wish to make available publicly. All submissions should refer to File Number 4-709 and should be submitted on or before [INSERT DATE 15 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Eduardo A. Aleman,
Assistant Secretary.

¹⁴ 17 CFR 200.30-3(a)(34).

