

the meaning of section 2(a)(9) of the Act. The members of a Subadviser Group will not control (individually or in the aggregate) an Unaffiliated Underlying Fund within the meaning of section 2(a)(9) of the Act. With respect to a Fund of Funds' investment in an Unaffiliated Underlying Fund that is a Closed-End Fund (i) each member of the Group or the Subadviser Group that is an investment company or an issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act will vote its shares of the Closed-End Fund in the manner prescribed by section 12(d)(1)(E) of the Act and (ii) each other member of the Group or the Subadviser Group will vote its shares of the Closed-End Fund in the same proportion as the vote of all other holders of the same type of such Closed-End Fund's shares (except that any member of the Group or Subadviser Group that is a Separate Account will instead be subject to the voting procedures described below). If, as a result of a decrease in the outstanding voting securities of any other Unaffiliated Underlying Fund, the Group or a Subadviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of such Unaffiliated Underlying Fund, then the Group or the Subadviser Group (except for any member of the Group or Subadviser Group that is a Separate Account) will vote its shares of the Unaffiliated Underlying Fund in the same proportion as the vote of all other holders of the Unaffiliated Underlying Fund's shares. This condition will not apply to a Subadviser Group with respect to an Unaffiliated Underlying Fund for which the Fund of Funds Subadviser or a person controlling, controlled by or under common control with the Fund of Funds Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act (in the case of an Unaffiliated Fund) or the sponsor (in the case of an Unaffiliated Trust).

A Registered Separate Account will seek voting instructions from its contract holders and will vote its shares of an Unaffiliated Underlying Fund in accordance with the instructions received and will vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received. An Unregistered Separate Account will either (a) vote its shares of the Unaffiliated Underlying Fund in the same proportion as the vote of all other holders of the Unaffiliated Underlying Fund's shares or (b) seek voting

instructions from its contract holders and vote its shares in accordance with the instructions received and vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66969; File No. 4-546]

### Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the Options Order Protection and Locked/Crossed Market Plan To Add the BOX Options Exchange LLC as a Participant

May 11, 2012.

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 608 thereunder,<sup>2</sup> notice is hereby given that on May 4, 2012, BOX Options Exchange LLC ("BOX Options" or "Exchange") filed with the Securities and Exchange Commission ("Commission") an amendment to the Options Order Protection and Locked/Crossed Market Plan ("Plan").<sup>3</sup> The amendment proposes to add BOX Options as a Participant<sup>4</sup> to the Plan. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>1</sup> 15 U.S.C. 78k-1(a)(3).

<sup>2</sup> 17 CFR 242.608.

<sup>3</sup> On July 30, 2009, the Commission approved a national market system plan relating to Options Order Protection and Locked/Crossed Markets proposed by Chicago Board Options Exchange, Incorporated ("CBOE"), International Securities Exchange, LLC ("ISE"), The NASDAQ Stock Market LLC ("Nasdaq"), NASDAQ OMX BX, Inc. ("BOX"), NASDAQ OMX PHLX, Inc. ("Phlx"), NYSE Amex, LLC ("NYSE Amex"), and NYSE Arca, Inc. ("NYSE Arca"). See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009). See also Securities Exchange Act Release Nos. 61546 (February 19, 2010), 75 FR 8762 (February 25, 2010) (adding BATS Exchange, Inc. ("BATS") as a Participant); 63119 (October 15, 2010), 75 FR 65536 (October 25, 2010) (adding C2 Options Exchange, Incorporated ("C2") as a Participant).

<sup>4</sup> The term "Participant" is defined as an Eligible Exchange whose participation in the Plan has become effective pursuant to Section 3(c) of the Plan.

## I. Description and Purpose of the Amendment

The current Participants in the Linkage Plan are C2, CBOE, BATS, ISE, Nasdaq, BOX, Phlx, NYSE Amex, and NYSE Arca. The proposed amendment to the Plan would add BOX Options as a Participant in the Plan. BOX Options has submitted a signed copy of the Plan to the Commission in accordance with the procedures set forth in the Plan regarding new Participants. Section 3(c) of the Plan provides for the entry of new Participants to the Plan. Specifically an Eligible Exchange<sup>5</sup> may become a Participant in the Plan by: (i) Executing a copy of the Plan, as then in effect; (ii) providing each current Participant with a copy of such executed Plan; (iii) effecting an amendment to the Plan, as specified in Sections 3(c) and 4(b) of the Plan.

Section 4(b) of the Plan puts forth the process by which an Eligible Exchange may effect an amendment to the Plan. Specifically, an Eligible Exchange must: (a) Execute a copy of the Plan with the only change being the addition of the new participant's name in Section 3(a) of the Plan; and (b) submit the executed Plan to the Commission. The Plan then provides that such an amendment will be effective when the amendment is approved by the Commission or otherwise becomes effective pursuant to Section 11A of the Act and Rule 608 thereunder.

## II. Effectiveness of the Proposed Linkage Plan Amendment

The foregoing proposed Plan amendment has become effective pursuant to Rule 608(b)(3)(iii) of the Act<sup>6</sup> because it involves solely technical or ministerial matters. At any time within sixty days of the filing of this amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraph (b)(1) of Rule 608,<sup>7</sup> if it appears to the Commission that such

<sup>5</sup> Section 2(6) of the Plan defines an "Eligible Exchange" as a national securities exchange registered with the Commission pursuant to Section 6(a) of the Act, 15 U.S.C. 78f(a), that: (a) Is a "Participant Exchange" in the Options Clearing Corporation ("OCC") (as defined in OCC By-laws, Section VII); (b) is a party to the Options Price Reporting Authority ("OPRA") Plan (as defined in the OPRA Plan, Section 1); and (c) if the national securities exchange chooses not to become part to this Plan, is a participant in another plan approved by the Commission providing for comparable Trade-Through and Locked and Crossed Market protection. BOX Options has represented that it has met the requirements for being considered an Eligible Exchange. See letter from Lisa J. Fall, President, BOX Options, to Elizabeth Murphy, Secretary, Commission, dated May 3, 2012.

<sup>6</sup> 17 CFR 242.608(b)(3)(iii).

<sup>7</sup> 17 CFR 242.608(b)(1).

action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

### III. Solicitation of Comments

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

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number 4-546 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number 4-546. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of BOX Options. 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 4-546 and should be submitted on or before June 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66976]

### Order Granting Application of BOX Options Exchange, LLC for a Limited Exemption From Exchange Act Rule 10b-10(a)(2)(i)(A) Pursuant to Rule 10b-10(f)

May 11, 2012.

#### I. Introduction

By letter dated May 11, 2012 ("the Application"), BOX Options Exchange LLC (the "Exchange") requests a limited exemption from the requirements of Rule 10b-10(a)(2)(i)(A) under the Securities Exchange Act of 1934 ("Exchange Act") on behalf of its Options Participants that execute trades as agent for their customers ("Participants")<sup>1</sup> on BOX Market LLC, an options trading facility of the Exchange under Section 3(a)(2) of the Exchange Act ("BOX"). As discussed in the Application, BOX will operate a fully automated electronic book ("BOX Book") for orders to buy or sell securities ("orders") with a continuous, automated matching function which will provide for strict price-time priority execution ("Trading System").<sup>2</sup> The BOX Book and the Exchange Rules provide for post trade anonymity through settlement for trades executed on BOX.<sup>3</sup>

<sup>8</sup> 17 CFR 200.30-3(a)(29).

<sup>1</sup> Unless otherwise defined in this order, defined terms used have the same meaning as described in the Exchange Rules.

<sup>2</sup> See Exchange Rule 7130. The Exchange notes that executions through the Price Improvement Period ("PIP") as set forth in Exchange Rule 7150 are an exception to the strict price-time priority execution that occurs on the BOX Book.

<sup>3</sup> As explained in the Application, the Exchange does not request an exemption from Rule 10b-10(a)(2)(i)(A) for when it reveals the identity of a Participant or a Participant's clearing firm: (i) For regulatory purposes or to comply with an order of a court or arbitrator; or (ii) when a Clearing Corporation or Clearing Participant (such as the Options Clearing Corporation) ceases to act for a Participant or the Participant's clearing firm, and determines not to guarantee the settlement of the Participant's trades.

## II. Background<sup>4</sup>

### a. The Exchange

The Exchange is registered as a national securities exchange under Section 6 of the Exchange Act.<sup>5</sup> The Participants of the Exchange consist of broker-dealers registered with the Exchange, as Participants, for the purposes of participating in options trading. Participants are entitled to enter orders in, and receive executions through, the BOX Book or otherwise.

BOX, an options trading facility of the Exchange under Section 3(a)(2) of the Exchange Act, will operate the BOX Book for orders with a continuous, automated matching function, in compliance with the Exchange's rules and Regulation NMS under the Exchange Act ("Regulation NMS").<sup>6</sup> Liquidity will be derived from orders to buy and orders to sell submitted to BOX electronically by Participants from remote locations.

The BOX Book and the Exchange rules provide for strict price-time priority execution.<sup>7</sup> Under Exchange Rule 7130, orders will be prioritized on a strict price-time basis, first by price and then by time. Incoming orders will be first matched for execution against orders in the BOX Book. Orders that cannot be executed are eligible for routing to away trading centers.<sup>8</sup> All trades will be executed through the Trading System on an anonymous basis, except for Directed Orders.<sup>9</sup> The transaction reports produced by the Trading System will indicate the details of transactions executed in the Trading System, but shall not reveal contra party identities. Transactions executed in the Trading System will also be cleared and settled anonymously.<sup>10</sup>

<sup>4</sup> Background information is derived from the Application.

<sup>5</sup> The Exchange received approval of its application for registration as a national securities exchange on April 27, 2012. See Securities Exchange Act Release No. 66871 (April 27, 2012). Exchange rules cited herein were approved as part of that application.

<sup>6</sup> See 17 CFR 242.600 *et seq.*

<sup>7</sup> See *supra* note 2. According to the Exchange, executions through the PIP, as set forth in Exchange Rules 7130 and 7150, are an exception to the price-time priority execution that occurs on the BOX Book.

<sup>8</sup> See Exchange Rule 15030. The Exchange understands that the exemptive relief would not apply to any situation in which the Trading System routes an order to all away trading centers for execution, as such executions would be governed by the rules of the away trading center.

<sup>9</sup> See Exchange Rule 8040(d)(1). Directed Orders on BOX are not anonymous. The identity of the Participant sending the Directed Order is provided to the Market Maker recipient. As explained in the Application, Directed Orders would not be subject to the requested relief.

<sup>10</sup> See Exchange Rule 7130(a)(6).