

including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-ISE-2013-73 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-ISE-2013-73. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2013-73 and should be submitted on or before January 16, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71148; File No. SR-BOX-2013-43]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, to Permit Complex Orders to Participate in Price Improvement Periods

December 19, 2013.

I. Introduction

On September 5, 2013, BOX Options Exchange LLC ("Exchange" or "BOX") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to add new BOX Rule 7245 to permit Complex Orders to participate in Price Improvement Period auctions (the "COPIP") and make certain other conforming changes to accommodate the new COPIP Rule. The proposed rule change was published for comment in the **Federal Register** on September 23, 2013.³ On November 1, 2013, the Commission extended the time period for Commission action on the proposal to December 20, 2013.⁴ On December 16, 2013, BOX filed Amendment No. 1 to the proposal.⁵ On December 19, 2013,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 70427 (September 17, 2013), 78 FR 58364 ("Notice").

⁴ See Securities Exchange Act Release No. 70799 (November 1, 2013), 78 FR 66980 (November 7, 2013).

⁵ In Amendment No. 1, BOX added further information relating to the ability of BOX members ("Options Participants") to respond adequately within the 100 millisecond COPIP period and the effect of Unrelated Orders received during overlapping PIP and COPIP auctions, including additional rule text in proposed BOX IM-7245-3 to describe such effect. BOX also provided an analysis of whether the proposed COPIP rules are consistent with Section 11(a) of the Act and the rules thereunder and additional rule text in existing BOX IM-7245-2(b) regarding prohibited conduct. In addition, BOX also modified its proposed rule text for BOX Rule 7130(a) to reflect a proposed rule change (see Securities Exchange Act Release No. 70395 (September 15, 2013), 78 FR 57911 (September 20, 2013)) that was approved after the initial filing of this proposed rule change. Amendment No. 1 has been placed in the public comment file for SR-BOX-2013-43 at <http://www.sec.gov/comments/sr-box-2013-43/box201343.shtml> (see letter from Lisa J. Fall, President, BOX, to Elizabeth M. Murphy, Secretary, Commission, dated December 16, 2013) and also is available on the Exchange's Web site at https://lynxstorageaccount.blob.core.windows.net/boxvr/SE_resources/SR-BOX-2013-43_Amendment_1.pdf.

BOX filed Amendment No. 2 to the proposal.⁶ The Commission received no comments regarding the proposal, as amended. The Commission is publishing this notice to solicit comments on Amendment Nos. 1 and 2 from interested persons and is approving the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

II. Description of the Proposal

Under proposed BOX Rule 7245, Options Participants would be permitted to submit Complex Orders⁷ to the COPIP in substantially the same manner as they currently submit orders for single options series instruments to the Price Improvement Period ("PIP"), except as necessary to account for distinctions between non-Complex Orders on the BOX Book⁸ and Complex Orders. COPIP also would preserve the already established execution priority of interest on the BOX Book over Complex Orders⁹ by providing that the bids and offers on the BOX Book for the individual legs of a Strategy ("BOX Book Interest") will execute in priority over Complex Orders at the same price.¹⁰

A. Auction Eligibility and Auction Process

Under proposed BOX Rule 7245, an Options Participant executing agency

⁶ In Amendment No. 2, BOX corrected one sentence to conform it to discussion elsewhere in the Amendment No. 1 analysis of whether the proposed COPIP rules are consistent with Section 11(a) of the Act and the rules thereunder.

Amendment No. 2 has been placed in the public comment file for SR-BOX-2013-43 at <http://www.sec.gov/comments/sr-box-2013-43/box201343.shtml> (see letter from Lisa J. Fall, President, BOX, to Elizabeth M. Murphy, Secretary, Commission, dated December 19, 2013) and also is available on the Exchange's Web site at https://lynxstorageaccount.blob.core.windows.net/boxvr/SE_resources/SR-BOX-2013-43_Amendment_2.pdf.

⁷ As defined in proposed BOX Rule 7240(a)(5), the term "Complex Order" means any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy.

⁸ The "BOX Book" is defined as the "electronic book of orders on each single option series maintained by the BOX Trading Host." BOX Rule 100(a)(10).

⁹ The execution priority of interest on the BOX Book over Complex Orders is consistent with existing BOX Rules 7240(b)(3)(i). See also Notice, 78 FR at 58366-67 for an example illustrating the execution and allocation of a COPIP with BOX Book Interest.

¹⁰ See proposed BOX Rule 7245(f)(3)(i). The term "Strategy" is defined as a particular combination of components of a Complex Order and their ratios to one another. See BOX Rule 7240(a)(7).

¹² 17 CFR 200.30-3(a)(12).

orders for single options series instruments may designate for price improvement and submission to the COPIP a Customer Order that is a BOX-Top Order, Market Order or marketable Limit Order. Specifically, to initiate a COPIP, the Options Participant would submit a Customer Order (the “COPIP Order”) to BOX with a matching contra order on the opposite side of the market from the COPIP Order (“Primary Improvement Order”) equal to the full size of the initiating COPIP Order. The Primary Improvement Order must represent either: (1) A single price (“Single-Priced Primary Improvement Order”) that is equal to or better than cNBBO,¹¹ cBBO¹² and BBO on the Complex Order Book for the strategy at the time of the commencement of the COPIP; or (2) an auto-match submission that will automatically match both the price and size of all competing orders, including Improvement Orders¹³ and Unrelated Orders¹⁴ at any price level achieved during the COPIP or only up to a limit price (“Max Improvement Primary Improvement Order”).¹⁵

In order to initiate a COPIP, the Primary Improvement Order must designate the auction start price for the COPIP (“COPIP Start Price”), which price must be equal to or better than cNBBO, cBBO and BBO on the Complex Order Book for the Strategy at the time of commencement of the COPIP.¹⁶ As with the PIP for single options series, an Initiating Participant in a COPIP is not permitted to cancel or to modify the size of a Single-Priced Primary Improvement Order or the COPIP Order at any time during a COPIP, and may modify only the price of its Single-Priced Primary Improvement Order by improving it.¹⁷ The subsequent price modifications to a Single-Priced Primary Improvement Order are treated as new Improvement Orders for the sake of establishing priority in the COPIP process.¹⁸

¹¹ As defined in Rule 7240(a)(3), the term “cNBBO” means the best net bid and offer price for a Complex Order Strategy based on the NBBO for the individual options components of such Strategy.

¹² As defined in Rule 7240(a)(1), the term “cBBO” means the best net bid and offer price for a Complex Order Strategy based on the BBO on the BOX Book for the individual options components of such Strategy.

¹³ For purposes of the COPIP, the term “Improvement Order” is defined as a competing Complex Order submitted to BOX by an Order Flow Provider or BOX Market Maker during a COPIP. See proposed BOX Rule 7245(a)(1).

¹⁴ The term “Unrelated Order” is defined as a non-Improvement Order entered on BOX during a COPIP or BOX Book Interest during a COPIP. See proposed BOX Rule 7245(a)(2).

¹⁵ See proposed BOX Rule 7245(f).

¹⁶ See *id.*

¹⁷ See proposed BOX Rule 7245(f)(2).

¹⁸ See *id.*

Similarly, the Initiating Participant is not permitted to cancel or modify the Max Improvement Primary Improvement Order, including the COPIP Start Price, the designated limit price or the size.¹⁹

BOX will commence a COPIP by broadcasting a message via the High Speed Vendor Feed (“HSVF”) (“the “COPIP Broadcast”) that: (1) States that a Primary Improvement Order has been processed; (2) contains information concerning the strategy, size, COPIP Start Price, and side of the market; and (3) states when the COPIP will conclude.²⁰ During the COPIP, Improvement Orders are also broadcast via the HSVF data feed.²¹ All market participants are able to receive the COPIP Broadcast and notification of Improvement Orders via the HSVF.²²

As in the PIP, unless the COPIP terminates early, the COPIP duration is one hundred milliseconds,²³ commencing upon the dissemination of the COPIP Broadcast. The Exchange notes its belief that, because the 100 millisecond COPIP duration would be the same as the current duration of the PIP, the COPIP duration is adequate and would not create any additional burden for Options Participants participating in a COPIP.²⁴

During a COPIP, Order Flow Providers (“OFPs”) and Market Makers (except for the Initiating Participant) may submit Improvement Orders for their own account. OFPs may submit Improvement Orders for the account of a Public Customer under any type of instruction they wish to accept.²⁵ An Improvement Order submitted to the COPIP for the account of a Public Customer must be identified as a Public Customer Order.²⁶ Options Participants who submit Improvement Orders for a COPIP will be deemed “COPIP Participants” for that specific COPIP only, and may continually submit competing Improvement Orders during that COPIP.²⁷

¹⁹ See *id.*

²⁰ See proposed BOX Rule 7245(f).

²¹ See proposed BOX Rule 7245(f)(1).

²² See Notice 78 FR at 58366.

²³ See proposed BOX Rule 7245(f)(1).

²⁴ *Id.* See also Amendment No. 1, *supra* note 5. The Exchange also notes that it surveyed all Participants that had responded to at least one PIP during the past six months, inquiring whether the 100 millisecond duration for the COPIP provided adequate time to response. The Exchange received responses from eighty percent of the Options Participants contacted, all of which indicated that they believe they will be able to receive, process, and communicate multiple COPIP Broadcast responses back to BOX within substantially less than 100 milliseconds. See *id.*

²⁵ See proposed BOX Rule 7245(f)(1).

²⁶ *Id.*

²⁷ *Id.*

Just as in a PIP, Options Participants that submit Improvement Orders in a COPIP may: (1) Submit competing Improvement Order(s) for any size up to the size of the COPIP Order; (2) submit competing Improvement Order(s) for any price equal to or better than the COPIP Start Price; (3) improve the price of their Improvement Order(s) at any point during the COPIP; and (4) decrease the size of their Improvement Order(s) only by improving the price of that Complex Order.²⁸ Improvement Orders may be submitted in one-cent increments.²⁹ Unlike a PIP, the COPIP will not include Customer COPIP Orders (“CPOs”) as defined in BOX Rule 7150(h).

B. COPIP Order Execution and Allocation

As with a PIP, a COPIP will conclude at the end of the auction period.³⁰ Order execution and allocation in a COPIP is similar to order execution and allocation in a simple order PIP.³¹ The COPIP Order will execute against the best prevailing order(s) on BOX, except any proprietary order from the Initiating Participant sent prior to the COPIP Broadcast in accordance with price/time priority, subject to the exceptions describe below. The “best prevailing order(s) on BOX includes Improvement Order(s) or Unrelated Order(s) received by BOX during the COPIP, but excludes all Unrelated Orders that were

²⁸ See proposed BOX Rule 7245(f)(2). Generally, Improvement Orders may not be executed unless the price is equal to or better than the cNBBO at the commencement of the COPIP. See proposed BOX Rule 7245(k). However, where an Exchange Official (as defined in BOX Rule 100(a)(24)) determines that quotes from one or more particular markets in one or more classes of options are not reliable, the Exchange Official may direct the senior person in charge of the BOX Market Operations Center (as defined in BOX Rule 100(a)(31)) to exclude the unreliable quotes from the Improvement Period determination of the cNBBO for Complex Order Strategies of which such option class(es) are a component. The Exchange Official may determine quotes in one or more particular options classes in a market are not reliable only in the following circumstances: (1) Quotes Not Firm: A market's quotes in a particular options class are not firm based upon direct communication to the Exchange from the market or the dissemination through OPRA of a message indicating that disseminated quotes are not firm; (2) Confirmed Quote Problems: A market has directly communicated to the Exchange or otherwise confirmed that the market is experiencing systems or other problems affecting the reliability of its disseminated quotes. See proposed BOX Rule 7245(k)(1). Improvement Orders may be executed at a price that is not equal to or better than the cNBBO at the commencement of the COPIP where the away options exchange posting orders on a single option series comprising the cNBBO is conducting a trading rotation in that options class. See proposed BOX Rule 7245(k)(2).

²⁹ See proposed BOX Rule 7245(f)(2).

³⁰ See proposed BOX Rule 7245(f)(3).

³¹ See BOX Rule 7150(f)(3).

immediately executed during the interval of the COPIP. Such Unrelated Orders may include agency orders on behalf of Public Customers, market makers at away exchanges and non-BOX Options Participant broker-dealers, as well as non-COPIP proprietary orders submitted by BOX Options Participants. Any unfilled portion of an Improvement Order will be cancelled.³²

1. Priority and Allocation

The priority and trade allocation privileges retained by Initiating Participants in a COPIP are substantially similar to those currently afforded Initiating Participants in a PIP.³³ Notwithstanding the foregoing execution rules for a COPIP, BOX Book Interest will execute in priority over Complex Orders at the same price,³⁴ so as to preserve the already established execution priority of interest on the BOX Book over Complex Orders.³⁵ Further, no Complex Order for a non-Market Maker broker-dealer account of an Options Participant will be executed before all Public Customer Complex Order(s), whether Improvement Order(s) or non-Improvement Order(s), and all non-BOX Options Participant broker-dealer Complex Order(s) at the same price have been filled; provided however, that all Complex Orders on the Complex Order Book prior to the COPIP Broadcast, excluding any proprietary order(s) from the Initiating Participant, will be filled in time priority before any other Complex Order at the same price.³⁶

Subject to the execution priority of BOX Book Interests described above, the Initiating Participant will retain certain priority and trade allocation privileges upon conclusion of a COPIP.³⁷ In instances in which a Single-Priced Primary Improvement Order, as modified (if at all), is matched by or matches any Complex Order(s) or BOX Book Interest at any price level, the Initiating Participant would retain priority for up to forty percent (40%) of the original size of the COPIP Order, notwithstanding the time priority of the Primary Improvement Order or Complex

Order(s). However, if only one Complex Order or BOX Book Interest matches or is better than the Initiating Participant's Single-Priced Primary Improvement Order, then the Initiating Participant may retain priority for up to fifty percent (50%) of the original size of the COPIP Order. The Initiating Participant will receive additional allocation only after all other Complex Orders have been filled at that price level.³⁸ For purposes of determining whether the Initiating Participant is entitled to receive a forty percent (40%) or a fifty percent (50%) priority allocation, BOX will count BOX Book Interest as a single competing order in a COPIP.

In instances in which a Max Improvement Primary Improvement Order is submitted by the Initiating Participant, the Initiating Participant would be allocated its full size at each price level, except where restricted by the designated limit price and subject to the limitations discussed in the next following paragraph below, until a price level is reached where the balance of the COPIP Order can be fully executed. Only at such price level would the Initiating Participant retain priority for up to forty percent (40%) of the remaining size of the COPIP Order. However, if only one competing Complex Order or BOX Book Interest matches the Initiating Participant at the final price level, then the Initiating Participant may retain priority for up to fifty percent (50%) of the remaining size of the COPIP Order.³⁹ As with Single-Priced Primary Improvement Orders,⁴⁰ for purposes of determining whether the Initiating Participant is entitled to receive a forty percent (40%) or a fifty percent (50%) priority allocation, BOX will count BOX Book Interest as a single competing order in a COPIP.

The Primary Improvement Order will follow, in time priority, all Complex Orders on the Complex Order Book prior to the COPIP Broadcast that are equal to the Single Priced Primary Improvement Order price; or the execution price of a Max Improvement Primary Improvement Order that results in the balance of the COPIP Order being fully executed, except any proprietary order(s) from the Initiating Participant. Such proprietary order(s) would not be

executed against the COPIP Order during or at the conclusion of the COPIP.⁴¹

The Primary Improvement Order will yield priority to certain competing Complex Orders in substantially the same circumstances as occurs in the PIP.⁴² When a Single-Priced or Max Improvement Primary Improvement Order for the proprietary account of an OFP is matched by or matches any competing Public Customer Complex Order(s), whether Improvement Order(s), Unrelated Order(s) or any non-BOX Options Participant broker-dealer Complex Order(s) at any price level, it will yield priority to them.⁴³ When an unmodified Single-Priced Primary Improvement Order for the account of a Market Maker is matched by any competing Public Customer Complex Order(s), whether Improvement Order(s), Unrelated Order(s) or any non-BOX Options Participant broker-dealer Complex Order(s) at the initial COPIP price level, it will yield priority to them.⁴⁴ When a Max Improvement or a modified Single-Priced Primary Improvement Order for the account of a Market Maker matches any competing Public Customer Complex Order(s), whether Improvement Order(s), Unrelated Order(s) or any non-BOX Options Participant broker-dealer Complex Order(s) at subsequent price levels, it will yield priority to them.⁴⁵

Consistent with the PIP, when the Primary Improvement Order receives a trade allocation, it will be entitled to a trade allocation of at least one (1) Strategy.⁴⁶ At its option, the Initiating Participant may designate a lower (but not higher) minimum priority and trade allocation privilege percentage upon the conclusion of the COPIP auction than it is otherwise entitled to receive. When starting a COPIP, the Initiating Participant may submit to BOX the Primary Improvement Order with a designation of the total amount of the COPIP Order it is willing to "surrender" to the other COPIP Participants ("COPIP

³² See proposed BOX Rule 7245(f)(3).

³³ See BOX Rule 7150(g). For example, Quotes are included in the PIP rules but are not part of the COPIP rules because quotes are not provided on Complex Orders. See BOX Rule 7250(g)(3).

³⁴ See proposed BOX Rule 7245(f)(3)(i).

³⁵ The execution priority of interest on the BOX Book over Complex Orders is consistent with existing BOX Rules 7240(b)(3)(i). See also Notice, 78 FR at 58366–67 for an example illustrating the execution and allocation of a COPIP with BOX Book Interest.

³⁶ See proposed BOX Rule 7245(f)(3)(iii).

³⁷ See proposed BOX Rules 7245(f)(3)(iii) and 7245(g).

³⁸ See proposed BOX Rule 7245(g)(1). See also Notice, 78 FR at 58367–68 for examples illustrating the execution and allocation of a COPIP with Primary Improvement Order priority.

³⁹ See proposed BOX Rule 7245(g)(2). See also Notice, 78 FR at 58368 for an example illustrating the execution and allocation of a COPIP with Max Improvement Primary Improvement Order.

⁴⁰ See proposed BOX Rule 7245(g)(1). See also Notice, 78 FR at 58367–68 for examples illustrating the execution and allocation of a COPIP with Primary Improvement Order priority.

⁴¹ See proposed BOX Rule 7245(g)(3).

⁴² See BOX Rule 7150(g)(4).

⁴³ See proposed BOX Rule 7245(g)(4)(i). See also Notice, 78 FR at 58368–69 for an example illustrating the execution and allocation of a COPIP with an Initiating Participant yielding to a Public Customer Order.

⁴⁴ See proposed BOX Rule 7245(g)(4)(ii). See also Notice, 78 FR at 58369 for an example illustrating the execution and allocation of a COPIP with an Initiating Participant yielding to a Public Customer Order at a single price level.

⁴⁵ See proposed BOX Rule 7245(g)(4)(iii). See also Notice, 78 FR at 58369–70 for an example illustrating the execution and allocation of a COPIP with an order from a Market Maker Initiating Participant yielding to a Public Customer Order at any price level.

⁴⁶ See proposed BOX Rule 7245(g)(5).

Surrender Quantity"). Under no circumstances will the Initiating Participant receive an allocation percentage preference of more than fifty percent (50%) with one competing order, including counting BOX Book Interest as a competing order, or forty percent (40%) with multiple competing orders, including counting BOX Book Interest as a competing order.⁴⁷ Upon the conclusion of the COPIP auction, trade allocations will be adjusted to the other COPIP Participants will be allocated up to the COPIP Surrender Quantity. The Primary Improvement Order will be allocated the remaining size of the COPIP Order above the COPIP Surrender Quantity, if any, as described above. If the aggregate size of other COPIP Participants' contra Complex Orders is not equal to or greater than the COPIP Surrender Quantity, then the remaining COPIP Surrender Quantity will be left unfilled and the Primary Improvement Order will be allocated the remaining size of the COPIP Order described above.⁴⁸

2. Early Executions and Early Termination

Executions prior to the regular ending time of a COPIP are handled substantially the same as in a PIP,⁴⁹ with necessary changes to account for differences between Complex Orders and orders on single series options instruments. In cases where an Unrelated Order is submitted to BOX on the same side as the COPIP Order such that it would cause an execution to occur prior to the end of the COPIP, the COPIP will be deemed concluded and the COPIP Order will be executed pursuant to BOX Rule 7245(f). Specifically, the submission to BOX of a BOX-Top Complex Order or Market Complex Order on the same side as a COPIP Order will prematurely terminate the COPIP when, at the time of the submission of such orders, the best Complex Order or BOX Book Interest is equal to or better than the cNBBO on the opposite side of the COPIP Order. The submission to BOX of executable BOX Book Interest or an executable Limit Complex Order on the same side as a COPIP Order will prematurely terminate the COPIP if: (1) At the time of submission of the Limit Complex Order, the Limit Complex Order price is equal to or better than cNBBO, and BBO on the Complex Order Book or cBBO is equal to or better than the cNBBO, on

the opposite side of the market or (2) at the time of submission of the BOX Book Interest, the BOX Book Interest is executable against the Complex Order Book. Following the conclusion of the COPIP, any remaining Improvement Orders are cancelled, any remaining non-Improvement Orders are filtered pursuant to BOX Rule 7240(b)(3)(iii) and any remaining BOX Book Interest is filtered pursuant to BOX Rule 7130(b).⁵⁰

In cases where an Unrelated Order that is a non-Improvement Order is submitted to BOX on the opposite side of the COPIP order, such that it would cause an execution to occur prior to the end of the COPIP, the non-Improvement Order will be immediately executed against the COPIP Order up to the lesser of the size of the COPIP Order or the size of the non-Improvement Order, at a price equal to either: (1) At least one penny better than the cBBO, if the cBBO on the opposite side of the market from the non-Improvement Order is equal to or better than the cNBBO at the time of execution; or (2) the cNBBO. Specifically, a BOX-Top Complex Order or a Market Complex Order on the opposite side of a COPIP Order will immediately execute against the COPIP Order when, at the time of the submission of such Complex Order, the best Improvement Order does not cross the cNBBO on the same side of the market as the COPIP Order. The submission to BOX of an executable Limit Complex Order on the opposite side of a COPIP Order will immediately execute against a COPIP Order when the Limit Complex Order price is equal to or crosses any of the cNBBO, cBBO or BBO on the Complex Order Book for the Strategy.⁵¹ In cases where an Unrelated Order that is a BOX Book Interest exists on the opposite side of the COPIP order, such that it would cause an execution to occur prior to the end of the COPIP, the BOX Book Interest will immediately be executed against the COPIP Order up to the lesser of the size of the COPIP Order or the size of the BOX Book Interest, at a price equal to the BOX Book Interest price.⁵² The remainder of the Unrelated Order, if any, will be filtered according to the existing Complex Order filter rules.⁵³ The remainder of the COPIP Order, if any, will be executed at the conclusion of the COPIP pursuant to BOX Rule 7245(f).

⁵⁰ See proposed BOX Rule 7245(h). See also Notice, 78 FR at 58371–72 for examples illustrating the execution and allocation for the early termination of COPIP due to Unrelated Orders on the same side as a COPIP Order.

⁵¹ See proposed BOX Rule 7245(i)(1).

⁵² See proposed BOX Rule 7245(i)(2).

⁵³ See BOX Rule 7240(b)(3)(iii) for existing Complex Order filter rules.

Following the conclusion of the COPIP, any remaining Improvement Orders are cancelled.⁵⁴

C. Overlapping Auctions

A COPIP will not run simultaneously with another COPIP in the same Complex Order Strategy, nor will COPIPs interact, queue or overlap in any manner.⁵⁵ Any request to initiate a COPIP while another COPIP is already in progress in the same Strategy will be rejected.⁵⁶ The Exchange, however, will operate price improvement auctions in both single option series and Complex Orders at the same time.⁵⁷ Specifically, BOX will accept orders designated for the PIP on a single option series where a COPIP on a Complex Order Strategy that includes such a series may be in progress. BOX also will accept Complex Orders designated for the COPIP where a PIP on either of the component series may be in progress. Order execution at the conclusion of any such PIPs will occur as described in the current PIP rules⁵⁸ and Complex Order execution at the conclusion of any such COPIPs will occur as set forth in proposed BOX Rule 7245.⁵⁹ The Exchange believes this simultaneous price improvement auction functionality will reduce order cancellation and, thereby remove impediments to, and perfect the mechanism of, a free and open market and a national market system.⁶⁰

BOX's current rules provide that, when an Unrelated Order on a single option series is submitted to BOX, the Unrelated Order first interacts with an ongoing PIP, if any, prior to being entered on the BOX Book.⁶¹ Any unexecuted quantity of the order remaining after interacting with the PIP is then filtered as provided in BOX Rule 7130(b) prior to entry on the BOX

⁵⁴ See proposed BOX Rule 7245(i)(3). See also Notice, 78 FR at 58372–73 for examples illustrating the execution and allocation for the early termination of COPIP due to Unrelated Orders on the opposite side as a COPIP Order.

⁵⁵ See BOX IM–7150–3.

⁵⁶ See proposed BOX IM–7245–3.

⁵⁷ BOX notes that processes on the BOX system are sequential and all orders receive a unique time stamp. As a result, no two orders (include PIP and COPIP Orders) or events may be treated as occurring simultaneously on the BOX system. See Amendment No. 1, *supra* note 5.

⁵⁸ PIP execution rules are set forth in BOX Rule 7150.

⁵⁹ See proposed BOX IM–7245–3.

⁶⁰ See Amendment No. 1, *supra* note 5. Amendment No. 1 also contains detailed examples outlining the operation of the PIP and COPIP in several multiple auction situations.

⁶¹ See BOX Rule 7150(i) for Unrelated Orders on the same side as the PIP Order. See BOX Rule 7150(j) for Unrelated Orders on the opposite side of the PIP Order.

⁴⁷ See proposed BOX Rule 7245(g)(6)(i).

⁴⁸ See proposed BOX Rule 7245(g)(6)(ii). See also Notice, 78 FR at 58370–71 for an example illustrating the execution and allocation of a COPIP with a COPIP Surrender Quantity.

⁴⁹ See BOX Rule 7150(i) and (j).

Book.⁶² Once entered on the BOX Book, the order may be combined with other orders on other single options series (thereby becoming BOX Book Interest)⁶³ and, as such, will be available to interact with the Complex Order Book, including any ongoing COPIP, if possible.⁶⁴

The proposed COPIP rules provide that when an Unrelated Order that is a Complex Order is submitted to BOX, the Unrelated Order first interacts with an ongoing COPIP, if any, prior to being entered on the Complex Order Book.⁶⁵ Any unexecuted quantity of the Complex Order remaining after interacting with the COPIP is then filtered as provided in BOX Rule 7240(b)(3) prior to entry on the Complex Order Book.⁶⁶ The Exchange's current Complex Order rules provide that one or more Legging Orders will be generated from Complex Orders on the BOX Book if the other leg for the Complex Order can be executed on BOX at the NBBO for the series.⁶⁷ Once a Legging Order is generated, it will be available to interact with the BOX Book, including any ongoing PIP, if possible.⁶⁸

⁶² BOX Rules 7150(i) and 7150(j) each provide that, after the Unrelated Order interacts with the PIP, any remainder of the Unrelated Order is filtered pursuant to BOX Rule 7130(b). BOX Rule 7130(b) describes the filtering process used by the BOX Trading Host to ensure that the Unrelated Order will not execute outside the NBBO price (*see* BOX Rule 7130(b)(1)). Upon completion of the filtering process, BOX Rule 7130(b)(4)(i) provides that any remainder of the Unrelated Order is entered on the BOX Book.

⁶³ *See* proposed BOX Rule 7245(a)(3).

⁶⁴ *See* Amendment No. 1, Examples 10(a) and (b), illustrating the operation of the proposed rules when a single option instrument order is received during a PIP and a COPIP on the same side as the PIP Order and on the opposite side of the PIP Order, respectively.

⁶⁵ *See* proposed BOX Rule 7245(h) for Unrelated Orders on the same side as the COPIP Order; *see also* proposed BOX Rule 7245(i)(1) for Unrelated Orders on the opposite side of the COPIP Order.

⁶⁶ Proposed BOX Rules 7245(h) and 7245(i)(3) each provide that, after the Unrelated Order interacts with the COPIP, any remainder of the Unrelated Order is filtered pursuant to Rule 7240(b)(3)(iii). BOX Rule 7240(b)(3)(iii) describes the filtering process used by the BOX Trading Host. Upon completion of the filtering process, BOX Rule 7240(b)(3)(iii) provides that any remainder of the Unrelated Order is entered on the Complex Order Book. *See also* Amendment No. 1, Example 10(c) and (d) illustrating the operation of the proposed rules when a Complex Order is received during the PIP and COPIP on the same side of the COPIP Order and on the opposite side of the COPIP Order.

⁶⁷ *See* BOX Rule 7240(c)(1).

⁶⁸ BOX Rule 7240(c)(1) describes how Legging Orders are priced and ranked on the BOX Book and displayed and executed on BOX. BOX Rule 7150(i) describes how Legging Orders on the same side as the PIP Order may immediately execute against a PIP and BOX Rule 7150(j) describes how Legging Orders on the opposite side of the PIP Order may immediately execute against a PIP. BOX Rule 7150(f)(3) describes how Legging Orders are executed at the conclusion of a PIP.

A single option instrument simultaneously may be a component of more than one different Complex Order Strategy. Because a COPIP may be initiated on each different Strategy, multiple COPIPs sharing the same component single option instrument may run simultaneously. In this case, and assuming that the necessary prices and quantities exist on each leg, BOX Book interest will generate an Unrelated Order on each such Strategy to interact with each of the ongoing COPIPs. In the event the same order on the BOX Book could interact with multiple COPIPs simultaneously, the order will interact with the COPIP on the Strategy for which the greatest difference exists between the price of the resulting BOX Book Interest and the corresponding best price Complex Order on the Complex Order Book on the same side as the COPIP Order.⁶⁹ If this calculation produces the same result for each COPIP, then the order will interact with the COPIP on the Strategy that was created first on the BOX System.⁷⁰ The execution price will be at a price equal to the BOX Book Interest price.⁷¹

As in the PIP, COPIP Options Participants must ensure that they comply with all the procedures set forth in the BOX Rules; that they act with due skill, care and diligence; and that the interests of their Customers are not prejudiced.⁷² An Options Participant must not use the COPIP process to create a misleading impression of market activity (*i.e.*, the facilities may be used only where there is a genuine intention to execute a bona fide transaction).⁷³

D. COPIP Pilot Program

The Exchange proposes a COPIP Pilot Program that expires on July 18, 2014, during which there will be no minimum size requirement for Customer Orders to be eligible for the COPIP process.⁷⁴ During the COPIP pilot period, the Exchange will provide certain information, periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size COPIP orders, that there is significant price improvement for all orders

⁶⁹ This calculation is for the purpose of identifying the Strategy with which the BOX Book Interest will interact and not the price at which the actual execution will occur. *See* Amendment No. 1, Example 11, illustrating the operation of the rules when the same order could interact with two COPIPs.

⁷⁰ *See* proposed BOX IM-7245-3(b). *See also* Amendment No. 1, *supra* note 5.

⁷¹ *See* proposed BOX Rule 7245(i)(2).

⁷² *See* proposed BOX Rule 7245(c).

⁷³ *See* proposed BOX Rule 7245(e).

⁷⁴ *See* proposed BOX IM-7245-1.

executed through the COPIP and that an active and liquid market is functioning on BOX outside of the COPIP mechanism.⁷⁵

⁷⁵ *See id.* BOX will provide the following information each month to the Commission: (1) The number of orders of 50 Strategies or greater entered into the COPIP; (2) the percentage of all orders of 50 Strategies or greater submitted to the Exchange that are entered into the COPIP; (3) the spread, at the time a Complex Order of 50 Strategies or greater is submitted to the COPIP; (4) the percentage of COPIP trades executed at cNBBO, plus \$.01, plus \$.02, plus \$.03, etc.; and (5) the number of COPIP Orders submitted by OFPs when the spread was at a particular increment (*e.g.*, \$.05, \$.10, \$.15, etc.). Also, with respect to item (5) above, for each spread increment, the Exchange proposes to provide the percentage of orders of fewer than 50 Strategies submitted to the COPIP that were traded: (a) By the OFP that submitted the order to the COPIP; (b) by an Options Participant other than the OFP that submitted the order to the COPIP; (c) by a Public Customer; and (d) as an Unrelated Order. Additionally, for each spread increment, the Exchange proposes to provide the percentage of orders of 50 Strategies or greater submitted to the COPIP that were traded: (a) by the OFP that submitted the order to the COPIP; (b) by an Options Participant other than the OFP that submitted the order to the COPIP; (c) by a Public Customer; and (d) as an Unrelated Order. *See* Notice, 78 FR at 58373.

BOX will further provide for the first and third Wednesday of each month: (a) The total number of COPIP auctions on that date; (b) the number of COPIP auctions where the order submitted to the COPIP was fewer than 50 Strategies; (c) the number of COPIP auctions where the order submitted to the COPIP was 50 Strategies or greater; (d) the number of COPIP auctions where the number of Options Participants (excluding the Initiating Participant) was each of zero, one, two, three, four, etc. *See id.* at 58374.

Finally, during the COPIP pilot period, BOX will provide information each month with respect to situations in which the COPIP is terminated prematurely or in which a Market Order, Limit Order, BOX-Top Order or BOX Book Interest immediately execute with a COPIP Order before the conclusion of the COPIP. The following information is proposed to be provided: (1) the number of times that a Market Order, Limit Order, BOX-Top Order or BOX Book Interest on the same side of the market as the COPIP Order prematurely terminated the COPIP, and (a) the number of times such orders were entered by the same (or affiliated) firm that initiated the COPIP that was terminated, and (b) the number of times such orders were entered by a firm (or an affiliate of such firm) that participated in the execution of the COPIP Order; (2) For the orders addressed in each of (1)(a) and (1)(b) above, the percentage of COPIP premature terminations due to the receipt, during the COPIP, of a Market Order, Limit Order, BOX-Top Order or BOX Book Interest on the same side of the market as the COPIP Order; and the average amount of price improvement provided to the COPIP Order where the COPIP is prematurely terminated; (3) the number of times that a Market Order, Limit Order, BOX-Top Order or BOX Book Interest on the opposite side of the market as the COPIP Order immediately executed against the COPIP Order, and (a) the number of times such orders were entered by the same (or affiliated) firm that initiated the COPIP, and (b) the number of times such orders were entered by a firm (or an affiliate of such firm) that participated in the execution of the COPIP Order; (4) for the orders addressed in each of (3)(a) and (3)(b) above, the percentage of COPIP early executions due to the receipt, during the COPIP, of a Market Order, Limit Order, BOX-Top Order or BOX Book Interest on the

Continued

E. Additional Changes

The Exchange proposes to make certain miscellaneous conforming and clarifying changes to its rules consistent with the adoption of the COPIP rule as described in more detail in the Notice.⁷⁶ BOX Rule 100(a)(19) will be amended to limit the term Directed Order to contracts on a single options series. BOX Rules 3000(b), 7070(a), 7110(e), 7130(a), 7140, 7150, and 7240(b) will be amended to conform the application of these rules to the operation of the COPIP. BOX Rule 7070(a) will be further amended to reflect that Fill and Kill orders do not participate in the Pre-Opening Phase. BOX Rule 7150 will be further amended to explain that: (i) The PIP Broadcast is disseminated via the HSVF; and (ii) a PIP on a single option series and a COPIP on a Complex Order Strategy that includes such series may operate simultaneously.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b) of the Act.⁷⁷ In particular, the Commission finds that the proposed rule change is consistent with Sections 6(b)(5) of the Act,⁷⁸ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Commission believes that allowing BOX Options Participants to enter complex orders into the COPIP

could provide opportunities for complex orders to receive price improvement. The Commission notes that the COPIP Start Price will be equal to or better than cNBBO, cBBO and BBO on the Complex Order Book for the Strategy at the time of commencement of the COPIP and that a Options Participant that enters a COPIP Order in the COPIP must submit a Primary Improvement Order for the full size of that COPIP Order.⁷⁹ The Commission also notes that once an order has been submitted as a COPIP Order or Primary Improvement Order, it may not be cancelled.⁸⁰ Therefore, a COPIP Order submitted to the COPIP Auction, regardless of its size, will be guaranteed an execution price of at least the cNBBO, cBBO or BBO on the Complex Order Book for the Strategy at the time the COPIP commences and, moreover, will be given an opportunity for execution at a better price. The Commission also notes that established priority of interest on the BOX Book over Complex Orders contained in BOX Rule 7240(b)(3)(i) will apply to the COPIP.⁸¹

IV. Section 11(a) of the Act

Section 11(a)(1) of the Act⁸² 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. For the reasons set forth below, the Commission believes that the proposed COPIP rules will satisfy the requirements of Section 11(a) of the Act. Specifically, other than the portions of the proposal that will satisfy Rule 11a2–2(T) under the Act as discussed below, the Commission believes that the proposed COPIP rules will satisfy the requirements of 11(a)(1)(G) of the Act because the proposed COPIP rules will cause Complex Orders for the account of non-Market Maker BOX Options Participants to yield priority to Complex Orders of non-Options Participants, provided that BOX Options Participants comply with the requirements set forth in Rule 11a1–1(T) thereunder. The Commission further believes that the execution against a COPIP Order of orders on the Complex Order Book prior to the COPIP Broadcast or on the BOX Book (whether prior to or after the COPIP Broadcast)

will satisfy the conditions of Rule 11a2–2(T) under the Act.

A. Section 11(a)(1)(G) of the Act and Rule 11a1–1(T) Thereunder

Section 11(a)(1)(G) of the Act⁸³ provides an exception 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 the business of underwriting and distributing securities issued by other persons, selling securities to customers, and acting as broker, or any one or more of such activities, 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, at 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.⁸⁴ 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 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.⁸⁵

⁸³ 15 U.S.C. 78k(a)(1)(G).

⁸⁴ *Id.*

⁸⁵ 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 such 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).

opposite side of the market as the COPIP Order; and the average amount of price improvement provided to the COPIP Order where the COPIP Order is immediately executed; and (5) the average amount of price improvement provided to the COPIP Order when the COPIP runs for one hundred milliseconds. See *id.*

⁷⁶ See Notice, 78 FR at 58374.

⁷⁷ 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁷⁸ 15 U.S.C. 78f(b)(5).

⁷⁹ Proposed BOX Rule 7245(f).

⁸⁰ Proposed BOX Rule 7245(f).

⁸¹ Proposed BOX Rule 7245(f)(3)(i).

⁸² 15 U.S.C. 78k(a)(1).

Under the proposed COPIP rules, other than for Complex Orders on the Complex Order Book prior to the COPIP Broadcast, Complex Orders for non-Market Maker broker-dealer accounts of Options Participants are required to yield priority to all Public Customer Complex Orders and all non-BOX Options Participant broker-dealer Complex Orders at the same price when executing against a COPIP Order.⁸⁶ In addition, the proposed COPIP rules require the Primary Improvement Order to yield priority to Public Customer Complex Orders and non-BOX Options Participant broker-dealer Complex Orders at the same price.⁸⁷ Because the proposed COPIP rules will require BOX Options Participants that are not market makers⁸⁸ to yield priority in the COPIP to all non-member orders, the Commission believes that the proposal with respect to transactions effected through COPIP, other than the portions of the proposal that will satisfy Rule 11a2-2(T) under the Act as discussed below, is consistent with the requirements in Section 11(a) of the Act and Rule 11a1-1(T) thereunder.⁸⁹ The Commission also reminds exchanges and their members, however, that, in addition to yielding priority to non-member orders (including complex orders) at the same price, members must also meet 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.

⁸⁶ See proposed BOX Rule 7245(f)(3)(ii).

⁸⁷ See proposed BOX Rule 7245(g)(4).

⁸⁸ 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).

⁸⁹ The Commission notes that, other than with respect to quotes and orders on the BOX Book prior to the PIP Broadcast, which the Commission has stated are consistent with Section 11(a) and Rule 11a2-2(T) thereunder, the Commission determined that transactions effected through the PIP are consistent with Section 11(a) and Rule 11a1-1(T) thereunder because Options Participants that are not market makers are required to yield priority in the PIP to non-member orders (*i.e.*, to Public Customer Orders and non-BOX Options Participant broker-dealer orders) at the same price transactions effected through the PIP. See Securities Exchange Act Release No. 66871 (April 27, 2012), 77 FR 26323 (May 3, 2012) (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) ("BOX Approval Order"). See also Securities Exchange Act Release No. 68177 (November 7, 2012), 77 FR 67851 (November 14, 2012) (SR-BOX-2012-003) (Order Approving Proposed Rule Change to Amend the Price Improvement Period) ("November 2012 Order").

B. Rule 11a2-2(T) under the Act ("Effect versus Execute" Rule)

Rule 11a2-2(T) under the Act,⁹⁰ known as the "effect versus execute" rule, provides exchange members with another exception from the Section 11(a)(1) prohibition. Rule 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;⁹¹ 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. For the reasons set forth below, the Commission believes that the execution against a COPIP Order of orders on the Complex Order Book prior to the COPIP Broadcast or on the BOX Book (whether prior to or after the COPIP Broadcast) will satisfy the conditions of Rule 11a2-2(T) under the Act.⁹²

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 BOX, 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 Exchange.⁹³ The Exchange

⁹⁰ 17 CFR 240.11a2-2(T).

⁹¹ 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 Designated Order Turnaround System of the New York Stock Exchange ("1978 Release")).

⁹² The Commission notes that it has previously found that the priority and allocation rules for electronic trading on the Exchange are consistent with Section 11(a) of the Act because such rules satisfy the "effect versus execute" exception provided by Rule 11a2-2(T). The Commission determined that BOX Options Participants entering orders into the BOX Trading Host, excluding those transactions effected through the PIP process, would satisfy the conditions of the effect versus execute rule. See BOX Approval Order.

⁹³ In considering the operation of automated execution systems operated by an exchange, the Commission has noted that, while there is no independent executing exchange member, the execution of an order is automatic once it has been

represents that, with respect to the execution against a COPIP Order of orders on the Complex Order Book prior to the COPIP Broadcast or on the BOX Book (whether prior to or after the COPIP Broadcast), the design of the Complex Order Book and the BOX Book ensures that broker-dealers do not have any special or unique trading advantages in handling their orders after transmission.

According to the Exchange, all orders submitted to BOX, including orders on the Complex Order Book and on the BOX Book, are transmitted from remote terminals directly to the system by electronic means and are centrally processed and executed automatically by BOX. Once an order is submitted to BOX, the order is executed against one or more other orders based on the established matching algorithms of the Exchange.⁹⁴ The execution does not depend on the Options Participant but rather upon what other orders are entered into BOX at or around the same time as the subject order, what orders are on the Complex Order Book and on the BOX Book, whether a PIP or COPIP is initiated, and where the order is ranked based on the priority ranking algorithm. Orders will be ranked and maintained on the Complex Order Book and on the BOX Book according to established automatic priority rules. Under the proposal, the execution against a COPIP Order of orders on the Complex Order Book prior to the COPIP Broadcast or on the BOX Book (whether prior to or after the COPIP Broadcast) will be determined automatically, according to the proposed matching, priority and allocation rules. Based on the proposed COPIP rules and on the Exchange's representations, the Commission believes that the design of the trading platform used by BOX ensures that no Options Participant has any special or unique trading advantage

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's Post Execution Reporting System and 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 Automated Communications and Execution System ("1979 Release")).

⁹⁴ Under the proposed COPIP rules, orders on the Complex Order Book prior to the COPIP Broadcast or on the BOX Book (whether prior to or after the COPIP Broadcast) may also trade with one or more other orders, including COPIP Orders, based on the established matching algorithms of the Exchange.

in the handling of its orders, including for the execution against a COPIP Order of orders on the Complex Order Book prior to the COPIP Broadcast or on the BOX Book (whether prior to or after the COPIP Broadcast), after transmitting such orders to the Exchange. As such, the Commission believes that the proposal satisfies this requirement of Rule 11a2-2(T).

Second, Rule 11a2-2(T) requires orders for covered accounts be transmitted from off the exchange floor. 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.⁹⁵ The Exchange states that, like these other automated systems, orders sent to BOX, regardless of where it executes within the BOX system, including the Complex Order Book, the BOX Book, a PIP or a COPIP, will be transmitted from remote terminals directly to BOX by electronic means. OFPs and BOX Market Makers will only submit orders and quotes to BOX from electronic systems from remote locations, separate from BOX. There are no other Options Participants that are able to submit orders to BOX other than OFPs or Market Makers. Accordingly, the Commission believes that Options Participants' orders electronically received by BOX satisfy the off-floor transmission requirement for the purposes of Rule 11a2-2(T).

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. The Exchange represents that, at no time following the submission of an order to BOX, would an Options Participant be able to acquire control or influence over the result or timing of order execution.⁹⁶

⁹⁵ See, e.g., BOX Approval Order; Securities Exchange Act Release Nos. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR-BATS-2009-031) (approving BATS options trading); 59154 (December 28, 2008), 73 FR 80468 (December 31, 2008) (SR-BSE-2008-48) (approving equity securities listing and trading on BSE); 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131) (granting the registration of The Nasdaq Stock Market LLC); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR-PCX-00-25) (approving Archipelago Exchange); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (SR-NYSE-90-52 and SR-NYSE-90-53) (approving NYSE's Off-Hours Trading Facility). See also 1978 Release and 1979 Release.

⁹⁶ 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

According to the Exchange, upon submission to BOX, an order will be ranked and maintained on the Complex Order Book and on the BOX Book according to established automatic priority rules. In addition, under the proposal, the execution against a COPIP Order of orders on the Complex Order Book prior to the COPIP Broadcast or on the BOX Book (whether prior to or after the COPIP Broadcast) will be determined automatically, according to the proposed matching, priority and allocation rules. The execution does not depend on the Options Participant but rather upon what other orders are entered into BOX at or around the same time as the subject order, what orders are on the Complex Order Book and on the BOX Book, whether a PIP or COPIP is initiated, and where the order is ranked based on the priority ranking algorithm. Accordingly, Options Participants do not control or influence the result or timing of an order submitted to BOX, even if such Options Participant's order is on the Complex Order Book prior to the COPIP Broadcast or on the BOX Book (whether prior to or after the COPIP Broadcast) and, in either case, executes against a COPIP Order.⁹⁷ Based on the Exchange's representations, the Commission believes that the proposal satisfies the non-participation requirement of Rule 11a2-2(T).

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

(stating that the "non-participation requirement does not prevent initiating members from canceling of 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").

⁹⁷ In addition, the Exchange stated in its proposal that, at no time following the submission of a COPIP Order, will a Participant manipulate, control, or influence the result or timing of order execution on the Exchange by entering Orders on the BOX Book for a component leg of the COPIP that could result in the creation of BOX Book Interest that would take priority over Complex Orders interacting with the COPIP, and thus has proposed to add rule text that provides that it would be inconsistent with just and equitable principles of trade for an Options Participant to submit an order on the BOX Book, during a COPIP initiated by the Options Participant, for the purpose of disrupting or manipulating the COPIP. See proposed BOX IM-7245-2(b). See also Amendment No. 1, *supra* note 5.

otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2-2(T).⁹⁸ The Exchange represents that Options Participants trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the exception of Rule 11a2-2(T), and the Exchange states that it will enforce this requirement pursuant to its obligation under Section 6(b)(1) of the Act to enforce compliance with federal securities laws.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment Nos. 1 and 2 are 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. Please include File Number SR-BOX-2013-43 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-BOX-2013-43. 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

⁹⁸ 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 (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").

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 the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-BOX-2013-43 and should be submitted on or before January 16, 2014.

VI. Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2

The Commission finds good cause for approving the proposed rule change, as amended by Amendment Nos. 1 and 2, prior to the 30th day after the date of publication of notice in the **Federal Register**. Amendment No. 1 revises the proposal to provide greater detail with respect to: (1) The ability of Participants to respond adequately within the 100 millisecond COPIP period; (2) the effect of unrelated orders received during overlapping PIP and COPIP auctions; and (3) the Exchange's analysis regarding whether the proposed COPIP rules are consistent with Section 11(a) of the Act and the rules thereunder.⁹⁹ As to the first item, Amendment No. 1 merely provides additional support regarding the adequacy of the 100 millisecond response time interval for Options Participants. As to the second item, the Commission notes that the original filing proposed that PIP and COPIP auctions could run simultaneously and that Unrelated Orders could interact with PIP and COPIP auctions. Amendment No. 1 provides details and examples illustrating how those interactions would occur under the original proposal. Amendment No. 1 also provides details and an example explaining what happens if single option instrument that is a component of more than one different Complex Order Strategy an order on the BOX

Book interacts with COPIPs on the different Complex Order Strategies. As to the third item, Amendment No. 1 adds one specific example of conduct that would be prohibited in the COPIP and otherwise provides an analysis of the original proposal's compliance with the requirements of Section 11(a) of the Act.¹⁰⁰ COPIPs will function in a manner substantially similar to that described in the Notice and Amendment No. 1 provides additional clarity on the proposal. Amendment No. 2 corrects one sentence to conform it to discussion elsewhere in Amendment No. 1 concerning the analysis of the original proposal's compliance with the requirements of Section 11(a) of the Act. Accordingly, the Commission finds good cause for approving the proposed rule change, as amended, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.¹⁰¹

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰² that the proposed rule change (SR-BOX-2013-43), as modified by Amendment Nos. 1 and 2, is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰³

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71138; File No. SR-BYX-2013-041]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Y-Exchange, Inc.

December 19, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 9, 2013, BATS Y-Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been

prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members⁵ and non-members of the Exchange pursuant to BYX Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to modify its fee schedule applicable to the use of the Exchange effective December 9, 2013, in order to temporarily amend the way that the Exchange calculates rebates for accessing liquidity and fees for adding liquidity to the Exchange. Specifically, the Exchange is proposing to exclude odd lot executions from the calculation of average daily TCV, as defined below, until February 1, 2014.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

⁹⁹ In addition, Amendment No. 1 made a non-substantive change in order to update the proposal to also reflect change made to BOX Rule 7130(a) in Securities Exchange Act Release No. 70395 (September 15, 2013), 78 FR 57911 (September 20, 2013).

¹⁰⁰ 15 U.S.C. 78k.

¹⁰¹ 15 U.S.C. 78s(b)(2).

¹⁰² 15 U.S.C. 78s(b)(2).

¹⁰³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.