90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, 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 e-mail to rule-comments@sec.gov. Please include File Number SR–BSE–2008–23 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–BSE–2008–23. 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 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 inspection and copying in the Commission’s Public Reference Room, 100 F Street, NW, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 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–BSE–2008–23 and should be submitted on or before May 29, 2008.

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

Florence E. Harmon, Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to Proposal to Transfer Boston Stock Exchange, Inc.’s Ownership Interest in Boston Options Exchange Group, LLC

May 1, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”), and Rule 19b–4 thereunder, notice is hereby given that on April 23, 2008, the Boston Stock Exchange, Inc. (“BSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the BSE. 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 Substance of the Proposed Rule Change

The Exchange proposes to transfer its 21.87% ownership interest in the Boston Options Exchange Group, LLC (“BOX”), the operator of its Boston Options Exchange facility (“BOX Market”) to MX US 2, Inc. (“MX US”), a wholly-owned U.S. subsidiary of the Montréal Exchange Inc. (“MX”), such that, following the transfer, the Exchange’s aggregate Percentage Interest will be 0% and MX US’s Percentage Interest will increase to 53.24%.

II. Notice of Proposed Rule Change

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

1. Purpose

On January 13, 2004, the Commission approved four BSE proposals that together established the BOX Market as a facility of the Exchange. This
Although the BSE will no longer hold an ownership interest in BOX, the BSE will continue to act as the SRO and regulatory services provider for the BOX Market. The BSE and BOXR, by delegated authority, will act as the Regulatory Authority for the BOX Market. Furthermore, the BOX Market will remain a facility of the BSE pursuant to Section 3(a)(2) of the Act.15

Amendments to BOX LLC Agreement

In conjunction with the BSE’s Transfer of its BOX Units to MX US, the BSE is proposing to amend the 5th BOX LLC Agreement to reflect modifications to the BSE’s role as Regulatory Authority of the BOX Market. Below is a description of certain proposed amendments to the 5th BOX LLC Agreement.

Regulatory Director

Since the BSE’s Percentage Interest in BOX will be less than 8%, the BSE will no longer be entitled to maintain two directors on the BOX Board, but the BSE will have the right to designate one non-voting Regulatory Director16 to the BOX Board, pursuant to Section 4.1(a)(i) of the 6th BOX LLC Agreement.

Regulatory Veto

Under the provisions of the 5th BOX LLC Agreement, the BSE holds veto power over certain “Major Actions,” which relate to both commercial and regulatory actions.18 After the sale of the BSE’s BOX Units to MX US, the BSE will continue to have a regulatory interest in the BOX Market but will no longer have a commercial interest in BOX. Consequently, the BSE will no longer hold veto power over Major Actions of BOX but will instead hold veto power over all regulatory actions (“Regulatory Veto”). The terms of the Regulatory Veto provide that the Regulatory Authority shall receive notice of planned or proposed changes to BOX (except certain Non-Market Matters)19 or the BOX Market (including, but not limited to, the System) pursuant to procedures established by the mutual agreement of BOX and the Regulatory Authority, which will require an affirmative approval of such changes by the Regulatory Authority prior to implementation.20 The planned or proposed changes subject to the Regulatory Veto shall include, without limitation: (A) Planned or proposed changes to the System; (B) the sale by BOX of any material portion of its assets; (C) taking any action to effect a voluntary, or which would precipitate an involuntary, dissolution or winding up of BOX; or (D) obtaining regulatory services from a regulatory services provider other than the Regulatory Authority.21 The Regulatory Authority, in its sole discretion, may direct BOX, subject to approval of the BOXR Board, to modify, or in its discretion, to ensure that it does not cause a Regulatory Deficiency if the Regulatory Authority, in its sole discretion, determines that the proposed or planned changes to BOX or the BOX Market (including, but not limited to, the System) could cause a Regulatory Deficiency if implemented.22 The Regulatory Authority will also have the authority to direct BOX, subject to the approval of the BOXR Board, to undertake modifications to BOX (but not to include Non-Market Matters) or the BOX Market as are necessary or appropriate to eliminate or prevent a Regulatory Deficiency in the event that the Regulatory Authority, in its sole discretion, determines that a Regulatory Deficiency exists or is planned.23

Archipelago Holdings, LLC, the parent company of Arca LLC.

14 A “Transfer” occurs when any member of BOX (“Member”) disposes of, sells, alienates, assigns, exchanges, participates, subparticipates, encumbers, or otherwise transfers in any manner all or any portion of its Units. See Section 8.1(a), 5th BOX LLC Agreement.

15 See Section 8.4(f), 5th BOX LLC Agreement.

16 See Section 4.4(b), 5th BOX LLC Agreement.

17 As long as BOX Market remains a facility of the BSE, the BSE Market, and the Regulatory Authority, in its sole discretion, determines that the proposed or planned changes to the System or BOX Options Participants or to fulfill its obligations under the Exchange Act as an SRG. See Section 1.1, 6th BOX LLC Agreement.

20 See Section 3.2(a)(ii), 6th BOX LLC Agreement.

21 Id.

22 See Section 3.2(a)(iii), 6th BOX LLC Agreement.

23 A “Regulatory Deficiency” is defined as “the operation of the BOX (in connection with matters that are not Non-Market Matters) or the BOX Market (including, but not limited to, the System) in a manner that is not consistent with the Regulatory Authority Rules and/or the SEC Rules governing the BOX Market or BOX Options Participants, or that otherwise impedes the Regulatory Authority’s ability to regulate the BOX Market or BOX Options Participants or to fulfill its obligations under the Exchange Act as an SRG.” See Section 1.1, 6th BOX LLC Agreement.
Board Composition

Although BOX itself will not carry out any regulatory functions, all of its activities must be consistent with the Act. For example, provisions set forth in Section 4.1(f) of the 6th BOX LLC Agreement state that each unit holder and director of BOX agrees to cooperate with the Commission and the BSE in carrying out their regulatory responsibilities. The BOX Market, as a facility of an exchange, is not solely a commercial enterprise; it is an integral part of an SRO registered pursuant to the Act and is subject to the obligations imposed by the Act. These obligations endure so long as the BOX Market is a facility of the Exchange, regardless of whether the BSE has an ownership interest in BOX, or recognition of these obligations, the BSE has agreed that for so long as the BOX Market remains a facility of the BSE pursuant to Section 3(a)(2) of the Act, BOX shall have the right to recommend at least 10% of the BOXR Board (but no fewer than one director) for election to the BOXR Board.24 The BOXR director recommended by BOX shall: (1) Have the right to attend all BOXR Board meetings and committees thereof; (2) receive equivalent notice of BOXR Board meetings and committees thereof as other BOXR directors; and (3) receive a copy of the meeting materials provided to other BOXR directors, including, without limitation, agendas, action items, and minutes.25

The BSE has also agreed to delegate all actions and decisions relating to the Regulatory Authority Rules,26 regulation of the BOX Market (except regulatory actions and decisions delegated to the BSE Regulatory Oversight Committee), and oversight from regulatory decisions of the BOXR Board to committees of the BSE Board (the “BOX Committee”).27

The resolutions to be adopted by the BSE Board to establish the BOX Committee are being filed herein as proposed rules of the Exchange. The resolutions reflect the compositional requirements for the BOX Committee that are also required by the 6th BOX LLC Agreement.28 In addition, the resolutions provide that the BOX Committee may not be dissolved, and the resolutions and the powers of the BOX Committee established thereby may not be altered, amended, removed, or abridged, without the express written consent of BOX. In addition, any resolution or other action that would have the effect of dissolving the BOX Committee or altering, amending, removing, or abridging the resolutions or the powers of the BOX Committee established thereby must be submitted to the BSE Board, and if the same must be filed with, or filed with and approved by, the SEC under Section 19 of the Act, then it shall not be effective until filed with, or filed with and approved by, the SEC, as the case may be.

The BSE has also agreed that for so long as the BOX Market remains a facility of the BSE pursuant to Section 3(a)(2) of the Act, BOX shall have the right to designate one non-voting participant (“Non-Voting Participant”) to the BOXR Board.29 The Non-Voting Participant shall: (1) Have the right to attend all meetings of the BOX Committee and all BOX-related deliberations of the BSE Board and committees thereof (collectively, “BOX-Related Meetings”); (2) receive equivalent notice of BOX-Related Meetings as BSE directors; and (3) receive a copy of the meeting minutes provided to BSE directors, including agendas, action items, and minutes for all BOX-Related Meetings.30

The BSE has agreed that the directors sitting on the BOXR Board or any committees thereof or the BOX Committee or otherwise engaged in BOX-Related Meetings (other than by membership on the BSE Regulatory Oversight Committee) shall not have a material direct or indirect relationship with Nasdaq or its Affiliates or any Regulatory Outsourcing provider (other than service as directors of the BSE and/ or BOXR).31 Furthermore, all other persons permitted to attend meetings of the BOXR Board or any committees thereof or the BOX Committee or otherwise engaged in BOX-Related Meetings shall not have a material direct or indirect relationship with Nasdaq or its Affiliates or any Regulatory Outsourcing provider unless they are: (i) Permitted Recipients; (ii) BOXR directors, officers, or employees; (iii) other parties making presentations to directors of the BSE Board engaged in BOX-Related Meetings, the BOXR Board, BOX Committees, or BSE Regulatory Oversight Committee, if such parties’ participation is only to the extent necessary to make such presentations; or (iv) consented to by BOX.32

Books and Records

In accordance with the BSE’s obligations as the SRO for the BOX Market, the books, records, premises, officers, directors, agents, and employees of BOX shall be deemed to be the books, premises, officers, directors, agents, and employees of the Regulatory Authority for the purpose of, and subject to, oversight pursuant to the Act.34 Furthermore, the books and records of BOX shall be subject at all times to inspection and copying by the Regulatory Authority and the SEC.35

24 See Section 4.1(f), 6th BOX LLC Agreement. The BOXR Board shall also include at least two BOX Options Participant directors (but not less than 20% of all directors on the BOXR Board) selected in accordance with the BOXR Limited Liability Company Agreement and By-Laws and at least four directors who do not have a material direct or indirect relationship with Nasdaq, its Affiliates, or any Regulatory Outsourcing provider (other than service solely as a director of BOXR and/or BSE). Id.

25 “Regulatory Outsourcing” is defined as all BOX-related regulatory functions that are outsourced by the BSE to the Financial Industry Regulatory Authority or other service provider that is an SRO. See Section 1.1, 6th BOX LLC Agreement.

26 See Section 4.1(f), 6th BOX LLC Agreement.

27 “Regulatory Authority Rules” are defined as the rules of the Regulatory Authority, including for the avoidance of doubt, the BOX Rules, that constitute “rules of an exchange,” within the meaning of Section 3 of the Act, and that pertain to the BOX Market. See Section 1.1, 6th BOX LLC Agreement.

28 The BOX Committee of the BSE Board shall include a BOX Options Participant representative, in accordance with the BSE’s By-Laws, to serve as a representative of BOX Options Participants and four other directors who do not have a material direct or indirect relationship with Nasdaq, its Affiliates, or any Regulatory Outsourcing provider (other than service as directors of the BSE and/or BOXR). Furthermore, at least 50% of the BOX Committee must be Public Directors, as defined in the BSE’s By-Laws. Id. 30

29 Id.

30 Id.

31 See Section 4.1(f), 6th BOX LLC Agreement. Material direct or indirect relationship includes, without limitation, any of the following: Being an Affiliate; serving as a board member, employee, officer, consultant, advisor, or any Regulatory Outsourcing provider; being a party to any contractual or other relationship pursuant to which more than $50,000 is paid; reporting to, controlling, being controlled by, or holding investment greater than 5% in any such Person; and being a parent, child, sibling, spouse, or in-law of such Person. Id.

32 “Permitted Recipients” are defined as: (A) The BSE’s Chief Regulatory Officer and only those members of his regulatory staff responsible for regulatory technology and budget, counsel to the BSE’s Chief Regulatory Officer, or staff of the BSE’s internal audit department (it being agreed and understood, for purposes of this definition that these roles may be performed for the BSE by Nasdaq employees serving comparable regulatory functions for Nasdaq), (B) any member of the BSE Board serving on the BOX Committee or the BSE Regulatory Oversight Committee, (C) Nasdaq’s Chief Regulatory Officer and his staff in the Office of General Counsel, (D) any member of the Nasdaq Board of Directors serving on the Nasdaq Regulatory Oversight Committee, and (E) any Professional Services provider. See Section 1.1, 6th BOX LLC Agreement.

33 “Professional Services” is defined as services performed by outside counsel, consultants, Regulatory Outsourcing, or subcontractors for the benefit of BOX or the BOX Market. Id.

34 See Section 12.1, 6th BOX LLC Agreement.

35 Id. BOX shall not be entitled to refuse the inspection, review, or copying of its books and records by the Regulatory Authority as provided in...
Furthermore, all confidential information, including BOX Confidential Information, pertaining to regulatory matters of BOX and the BOX Market (including, but not limited to, disciplinary matters, trading data, trading practices, and audit information) contained in the books and records of BOX shall: (i) Not be made available to any persons other than to those officers, directors, employees, and agents of BOX that have a reasonable need to know the contents thereof; (ii) be retained in confidence by BOX and the officers, directors, employees, and agents of BOX; and (iii) not be used for any commercial purposes.41

Future Amendments to BOX LLC Agreement

When BOX formally presents any amendments, modifications, waivers, or supplements to the 6th BOX LLC Agreement or any future amended BOX LLC Agreement (“BOX LLC Agreement”) to the BOX Board for approval, BOX represents that it will provide prompt notice to the Regulatory Authority and the Regulatory Director and submit any proposed amendments to the BOX Committee for its review and filing with the SEC if deemed necessary under Section 19 of the Act and the rules promulgated thereunder. BOX, however, shall not be required to obtain the approval of the Regulatory Authority for any amendment to the BOX LLC Agreement pursuant to which the BOX Market would cease to be a facility of the BSE within the meaning of Section 3 of the Act, provided that such amendment shall be filed with, or filed with and approved by, the SEC, as the case may be, before such amendment may be effective.43 In the event the BSE ceases to be the Regulatory Authority, the BSE shall no longer be a party to the BOX LLC Agreement and thereafter the provisions of the BOX LLC Agreement shall not apply to the BSE or BOXR except for certain delineated provisions, which shall survive.44

Conclusion

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,46 in general, and furthers the objectives of Section 6(b)(1) of the Act,49 in particular, in that it ensures that the Exchange is so organized and has the capacity to carry out the purposes of the Act and to comply and to enforce compliance by the Exchange’s members with the Act, the rules and regulations thereunder, arising out of, or relating to, BOX activities or Section 19.6(a) of the 6th BOX LLC Agreement.46 Furthermore, BOX, the Regulatory Authority, and each Member are required to take necessary action to ensure that the officers, directors, and employees of BOX, the Regulatory Authority, and each Member consent to the applicability of certain of the provisions in the 6th BOX LLC Agreement, including provisions relating to confidentiality, books and records, and jurisdiction.47

Jurisdiction

Each Member of BOX acknowledges that, to the extent that they are related to BOX activities, the books, records, premises, officers, directors, agents, and employees of the Members shall be deemed to be the books, records, premises, officers, directors, agents, and employees of the Regulatory Authority for the purpose of and subject to oversight pursuant to the Act.45 BOX, the Members and the officers, directors, agents, and employees of each, irrevocably submit to the exclusive jurisdiction of the U.S. federal courts, the SEC, and the Regulatory Authority for the purposes of any suit, action, or proceeding pursuant to the U.S. federal securities laws and the rules or regulations thereunder, arising out of, or relating to, BOX activities or Section 19.6(a) of the 6th BOX LLC Agreement.46

Section 12.1 of the 6th BOX LLC Agreement but shall be entitled to damages in the event any inspection, copying, or review of BOX books and records by the Regulatory Authority is, in whole or in part, used by the Regulatory Authority or any of its Affiliates for any purpose other than to fulfill the Regulatory Authority’s regulatory obligations. Id.40

37 “BOX Confidential Information” includes any financial, scientific, technical, trade, or business secrets of BOX and any financial, scientific, technical, trade, or business materials that BOX treats, or is obligated to treat, as confidential or proprietary, including, but not limited to, innovations or inventions belonging to BOX and confidential information obtained by or given to BOX about or belonging to its suppliers, licensors, licensees, partners, affiliates, customers, potential customers, or others. The definition of BOX Confidential Information, with respect to any Person, shall not include information which: (i) Is publicly known through publication or otherwise through no wrongful act of such Person; or (ii) is received by such Person from a third Party who rightfully discloses it to such Person without restriction on its subsequent disclosure. See Section 1.1, 6th BOX LLC Agreement.

38 See Section 16.2, 6th BOX LLC Agreement.

39 Id. No Member or Regulatory Authority shall share BOX Confidential Information with Nasdaq or its Affiliates, other than BSE and BOXR, or as permitted in the Regulatory Services Agreement. Id.

40 See Section 16.5, 6th BOX LLC Agreement.

41 See Section 16.6, 6th BOX LLC Agreement.

42 See Section 19.1, 6th BOX LLC Agreement.

43 Id.

44 Id.
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.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, 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 e-mail to rule-comments@sec.gov. Please include File Number SR–BSE–2008–25 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BSE–2008–25. 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 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 inspection and copying in the Commission’s Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the BSE. 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–BSE–2008–25 and should be submitted on or before May 29, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.5

Florence E. Harmon, Deputy Secretary.

[FR Doc. E8–10094 Filed 5–7–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Regarding the Definition of Qualified Contingent Trade

May 2, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)1 and Rule 19b–4 thereunder,2 notice is hereby given that on April 29, 2008, the Chicago Stock Exchange, Inc. (“CHX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which items have been substantially prepared by CHX. On May 1, 2008, CHX submitted Amendment No. 1 to the proposed rule change. The Exchange has filed the proposal as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act3 and Rule 19b–4(f)(6) thereunder,4 which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend its rules to delete from the definition of Qualified Contingent Trade the requirement that such transactions be for a minimum size of either 10,000 shares or $200,000 in transaction value. The text of the proposed rule change is available at CHX, the Commission’s Public Reference Room, and http://www.chx.com/rules/proposed_rules.htm.

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

In its filing with the Commission, CHX 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. CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects 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’s rules currently define the term “Qualified Contingent Trade” according to the definition included in an exemptive order issued by the Commission on August 31, 2006.5 Pursuant to the Exemptive Order, Qualified Contingent Trades are exempt from the trade-through restrictions of


