system, and, in general, to protect investors and the public interest. Adding JBO as a potential origin for orders to the appropriate sections on the Fees Schedule will ensure that market participants entering orders for a JBO account to be cleared into the Firm range at the OCC will easily be able to discern the fees that apply to such orders. This will eliminate any potential confusion, thereby removing a potential impediment to and perfecting the mechanism for a free and open market and a national market system, and, in general, protecting investors and the public interest.

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

C2 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 neither solicited nor received comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) [6] of the Act and paragraph (f)(2) of Rule 19b–4 [7] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 email to *rule-comments@sec.gov. Please include File Number SR–C2–2012–037 on the subject line.*

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

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–C2–2012–037. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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–C2–*2012–037* and should be submitted on or before December 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27599 Filed 11–13–12; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68177; File No. SR–BOX–2012–003]

Self-Regulatory Organizations; BOX Options Exchange LLC; Order Approving Proposed Rule Change To Amend the Price Improvement Period

November 7, 2012.

I. Introduction

On July 25, 2012, BOX Options Exchange LLC (''Exchange'' or ''BOX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend Rule 7150, which relates to the Exchange's Price Improvement Period (''PIP''), by modifying the order of execution of quotes and orders that are on the BOX Book prior to the start of a PIP. The proposed rule change was published for comment in the **Federal Register** on August 9, 2012.[4] The Commission received one comment letter on the proposed rule change [5] and a response to the comment letter from the Exchange.[6] This order approves the proposed rule change.

II. Description of the Proposal

Currently, Rule 7150(f) permits a PIP to begin at or better than the National Best Bid or Offer (''NBBO''). Further, Rule 7150(f)(1) provides that, at the commencement of the PIP, all quotes and orders on the BOX Book prior to the PIP Broadcast that are equal to or better than (i) the Single-Priced Primary Improvement Order price, or (ii) the PIP Start Price of a Max Improvement Primary Improvement Order, except any proprietary quote or order from the Initiating Participant, will be executed immediately against the customer order designated for the PIP (''PIP Order'') in price/time priority.[7] As a result, if an order is submitted to the PIP and there is sufficient quantity on the BOX Book prior to the PIP Broadcast to execute the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 67592 (August 3, 2012), 77 FR 47681 (''Notice'').

[5] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Kurt Eckert, Principal, Wolverine Trading, LLC dated August 30, 2012 (''Wolverine Letter'').

[6] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Anthony D. McCormick, Chief Executive Officer, Exchange, dated October 4, 2012 (''Exchange Response'').

[7] Capitalized terms that are not otherwise defined herein are defined as in the Exchange's Rules.

PIP Order, the PIP does not commence. The Exchange proposes to delete the provision in Rule 7150(f)(1) relating to the execution of quotes and orders on the BOX Book prior to the PIP's commencement and to amend Rules 7150(f)(1)[8] and (f)(4) to specify the priority for executing such quotes and orders at the conclusion of the PIP.

Rule 7150(f)(4) sets forth exceptions to time priority in the execution of the PIP Order. The Rule currently provides that no order for a non-market maker broker-dealer account of an Options Participant may be executed before all Public Customer order(s), whether an Improvement Order, including a Customer PIP Order (''CPO''), or an Unrelated Order,[9] and all non-BOX Options participant broker-dealer order(s) at the same price have been filled. The Exchange proposes to amend Rule 7150(f)(4)(i) to specify further that all quotes and orders on the BOX Book prior to the PIP Broadcast, excluding any proprietary quote or order from the Initiating Participant, will be filled in time priority before any other order at the same price.

The Exchange also proposes to add new Rule 7150(g)(3). New Rule 7150(g)(3) provides that the Primary Improvement Order follows in time priority all quotes and orders on the BOX Book prior to the PIP Broadcast that are equal to the (i) Single-Priced Primary Improvement Order price; or (ii) execution price of a Max Improvement Primary Improvement Order that results in the balance of the PIP Order being fully executed, except any proprietary quote or order from the Initiating Participant. Any such proprietary quote or order from the Initiating Participant will not be executed against the PIP Order during or at the conclusion of the PIP.

The Exchange noted that, among the quotes or orders on the BOX Book prior to the PIP Broadcast at the final execution price level, the PIP Order will be matched against the best prevailing quotes or orders on BOX (except any pre-PIP Broadcast proprietary quote or order from the Initiating Participant) in accordance with price/time priority, as set forth in Rule 7130.[10]

Under the proposal, Unrelated Orders submitted to BOX will continue to execute as they do currently under Rules 7150(i) and 7150(j). Accordingly, Unrelated Orders received after a PIP Broadcast will execute in time priority after quotes and orders at the same price that were on the BOX Book prior to the PIP Broadcast.

The Exchange stated that in connection with this proposed rule change, it will provide to the Commission the following monthly data, and corresponding analysis, related to the PIP:[11] (1) The number of orders of 50 contracts or greater entered into the PIP auction; (2) the percentage of all orders of 50 contracts or greater sent to BOX that are entered into the PIP auction; (3) the spread in the option at the time an order of 50 contracts or greater is submitted to the PIP auction; (4) the percentage of PIP trades executed at the NBBO plus $.01, plus $.02, plus $.03, etc.; and (5) the number of orders submitted by Order Flow Providers (''OFPs'') and Market Makers when the spread was at a particular increment (*e.g.,* $.05, $.10, $.15, etc.). Also, relative to item (5) above, for each spread, the Exchange will provide the percentage of contracts in orders of fewer than 50 contracts and for orders of 50 contracts or greater submitted to the PIP that were traded by: (a) the OFP or Market Maker that submitted the order to the PIP; (b) BOX Market Makers assigned to the class; (c) other BOX Participants; (d) Public Customer Orders (including CPOs); (e) Unrelated Orders (orders in standard increments entered during the PIP), and (f) quotes and orders on the BOX Book prior to the PIP Broadcast.

Further, BOX will provide, for the first and third Wednesday of each month, the: (a) Total number of PIP auctions on that date; (b) number of PIP auctions where the order submitted to the PIP was fewer than 50 contracts; (c) number of PIP auctions where the order submitted to the PIP was 50 contracts or greater; (d) number of PIP auctions where the number of Participants (excluding the Initiating Participant) was zero, one, two, three, four, etc. Finally, the Exchange will provide information each month with respect to situations in which the PIP is terminated prematurely or a Market Order, Limit Order, or BOX-Top Order immediately execute with a PIP Order before the PIP's conclusion. The following information will be provided: (1) The number of times that a Market Order, Limit Order, or BOX-Top Order in the same series on the same side of the market as the PIP Order prematurely terminated the PIP, and (a) the number of times such orders were entered by the same (or affiliated) firm that initiated the PIP 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 PIP Order; (2) for the orders addressed in each of items (1)(a) and (1)(b) above, the percentage of PIP premature terminations due to the receipt, during the PIP, of a Market Order, Limit Order, or BOX-Top Order in the same series on the same side of the market as the PIP Order, and the average amount of price improvement provided to the PIP Order where the PIP is prematurely terminated; (3) the number of times that a Market Order, Limit Order, or BOX-Top Order in the same series on the opposite side of the market as the PIP Order immediately executed against the PIP Order, and (a) the number of times such orders were entered by the same (or affiliated) firm that initiated the PIP, 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 PIP Order; (4) for the orders addressed in each of items (3)(a) and (3)(b) above, the percentage of PIP early executions due to the receipt, during the PIP, of a Market Order, Limit Order, or BOX-Top Order in the same series on the opposite side of the market as the PIP Order; and the average amount of price improvement provided to the PIP Order where the PIP Order is immediately executed; and (5) the average amount of price improvement provided to the PIP Order when the PIP runs for 100 milliseconds.

BOX stated that, upon Commission approval of the proposal and at least one week prior to implementation of the proposed rule change, it will issue an Informational Circular to Options Participants informing them of the proposal's implementation date.

III. Discussion and Commission Findings

After careful review of the proposal, the comment letter, and the Exchange Response, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the

[8] The Exchange proposes to amend Rule 7150(f)(1) to specify that at the conclusion of the PIP, the PIP Order shall be executed as set forth in paragraphs (f)(3), (f)(4), (g), and (j).

[9] The Exchange proposes a technical change to Rule 7150(f)(4)(i) to correct the current reference to ''unrelated'' by replacing it with the term ''Unrelated Order.''

[10] *See* Notice, *supra* note 4, for examples of how quotes and orders on the BOX Book prior to the PIP Broadcast would be executed at the PIP's conclusion.

[11] *See id.* For orders of less than 50 contracts, the PIP is currently operating on a pilot basis. *See* Securities Exchange Act Release Nos. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (Order Approving Proposed Rule Change Establishing Trading Rules for Boston Options Exchange facility) and 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 Exchange Application Order''). The pilot program is currently set to expire on July 18, 2013. *See* Securities Exchange Act Release No. 67255 (June 26, 2012), 77 FR 39315 (July 2, 2012).

rules and regulations thereunder applicable to a national securities exchange and, in particular with Section 6(b)(5) [12] of the Act, which requires the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, the Commission finds the proposed rule change consistent with Section 6(b)(8) [13] of the Act, which requires that the rules of the exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[14]

The Commission believes that the proposal is designed to provide additional opportunities for customers to receive price improvement for their PIP Orders. Under the current rule, if an order is submitted to the PIP and there is sufficient quantity on the BOX Book prior to the PIP Broadcast to execute the PIP Order at the PIP Start Price, the PIP Order will execute against the BOX Book (assuming it is at the NBBO), and the PIP will never commence.[15] The Exchange's proposal to modify the handling of such pre-existing quotes and orders on the BOX Book will provide customers with a greater opportunity to receive price improvement above the NBBO on BOX for their PIP Order because those pre-existing quotes and orders on the BOX Book no longer will execute against the PIP Order before the PIP can begin. Thus, the proposal may benefit customers who submit PIP Orders priced at the NBBO by allowing their orders to be exposed to competition in the PIP. The PIP Order will continue to be guaranteed an execution price of at least the NBBO and, as a result of the Exchange's proposal, will be given an opportunity for execution at a price better than the NBBO. At the same time, all quotes and orders on the BOX Book prior to the PIP Broadcast at the PIP Start Price (excluding any proprietary quote or order from the Initiating Participant) will be filled in time priority before any other order at the same price at the conclusion of the PIP, assuming they have not already been executed.

The Commission received one comment letter from a BOX Options Participant opposing the proposed rule change.[16] According to the commenter, the current requirement that the top of the BOX Book be ''swept'' prior to the PIP's commencement incentivizes market participants to quote aggressively on BOX and allows retail orders to interact with quotes on the Exchange. In addition, the commenter noted that market participants could initiate a PIP without having a quote either at the NBBO on any exchange or at the BBO on BOX.[17] Therefore, according to the commenter, the proposal diminishes the incentive for robust quoting on BOX or the resting of public customer limit orders on the BOX Book.[18] The commenter suggested that the proposal be amended to require that BOX must sweep the top of the BOX Book if the PIP starts at the BOX BBO and that the Initiating Participant must be quoting at the BOX BBO.[19]

The Exchange responded that, in its view, a customer's entire PIP Order should have the opportunity for competing market participants to provide price improvement to that customer order.[20] The Exchange stated that that if ''competing participants step up to provide a better price for the customer order, it is appropriate, and consistent with the federal securities laws, for that customer to receive an execution at the best price available (price improvement through the PIP auction) rather than the market maker quote on the book that is no longer the best bid or offer.'' [21]

The Commission recognizes the concern regarding the impact of the proposed rule change on the overall incentives for market participants to rest liquidity on the BOX Book. However, as discussed above, the Commission also recognizes the potential benefit from the proposed rule change with respect to customer PIP Orders priced at the NBBO by providing customers with a greater opportunity to receive price improvement on BOX for their PIP Orders by allowing those orders to be exposed to competition in the PIP, before interacting with pre-existing quotes and orders on the BOX Book at the PIP Start Price. In the Commission's view, the Exchange's proposal is reasonably designed to balance the potential for customers to receive price improvement in the PIP, rather than to have their orders immediately executed against a pre-existing quote on the BOX Book at the NBBO, with the potential to impact Market Makers' or other market participants' incentives to quote aggressively because they no longer will have the assurance that their quotes at the NBBO will execute against the PIP Order before the PIP begins. Quotes and orders that are on the BOX Book prior to the PIP Broadcast will continue to be able to interact with non-PIP order flow during the auction period. In addition, under the proposal, such quotes and orders will have priority to interact with any PIP order flow at the end of the auction period, unless the entire PIP order is price improved. Moreover, Market Makers or other market participants that wish to interact with the PIP Order can do so by submitting their own Improvement Orders into the PIP auction. For these reasons, the Commission believes that the proposal is consistent with the Act.

The commenter also remarked that the proposal is defective because it would allow a PIP auction to begin at the NBBO rather than requiring at least a penny of price improvement over the BOX BBO.[22] The commenter suggested that the proposal be amended so that the PIP start price would be at least a penny better than the BOX BBO.[23] The Commission notes, however, that instant proposal relates solely to the priority and allocation of quotes and orders that are on the BOX Book prior to a PIP's commencement. The Exchange has not proposed to revise the start price of the PIP and thus this issue is not before the Commission.[24] Further, as discussed above, the Commission believes that the proposed rule change, as submitted, is consistent with the Act.

In addition, the commenter stated its belief that the proposal has the potential to harm retail investors.[25] According to the commenter, the proposal serves ''to remove real orders from interaction with

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(8).

[14] 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).

[15] If the quotes and orders on the BOX Book at the PIP Start Price are smaller in size than the PIP Order, then the portion of the PIP Order that does not execute against such pre-existing quotes and orders on the BOX Book will be submitted to the PIP auction.

[16] *See* Wolverine Letter, *supra* note 5.

[17] With respect to the comment that market participants could initiate a PIP without having a quote either at the NBBO on any exchange or at the BBO on BOX, the Commission notes that this feature is currently part of the PIP. The Exchange has not proposed to revise this aspect of the PIP, and thus this issue is not before the Commission.

[18] *See* Wolverine Letter, *supra* note 5, at 1–2.

[19] *See* Wolverine Letter, *supra* note 5, at 2.

[20] *See* Exchange Response, *supra* note 6, at 1.

[21] *See* Exchange Response, *supra* note 6, at 2.

[22] *See* Wolverine Letter, *supra* note 5, at 2.

[23] *Id.*

[24] Under Rule 7150(f), the PIP start price must be equal to or better than the NBBO at the time of commencement of the PIP. Accordingly, if the BOX BBO does not equal the NBBO, then the PIP must start at a price that is better than the BOX BBO. *See* Securities Exchange Act Release No. 59654 (March 30, 2009), 74 FR 15551 (April 6, 2009).

[25] *See* Wolverine Letter, *supra* note 5, at 2.

lit markets at exchanges'' and reduces the NBBO to ''little more than a reference price that is not the best available for retail investors.'' [26] The commenter further noted that, to the extent price competition decreases on an exchange, the NBBO increasingly loses value as a reference price.[27] The commenter stated its view that the proposal is harmful to market efficiency in that it ''turns the exchange into an internalization facilitator rather than a bona fide market with multiple participants competing to offer the best prices to customers.'' [28]

The Exchange responded that the proposal promotes transparent competition to ensure that customer orders receive the best price possible.[29] The Exchange noted that the PIP Broadcast is sent to any Options Participant that wishes to receive it. According to the Exchange, the PIP permits Market Makers to submit competing orders into the PIP auction for their own account, and all non-market maker Options Participants also may submit competing orders into the PIP auction for their own account or for their customer accounts. The Exchange also responded that Options Participants are actively competing for customer orders in the PIP.[30] Moreover, the Exchange noted that its Market Makers are the Options Participants most likely to compete for execution against customer orders in the PIP, even though their quotes that are on the BOX Book at the NBBO currently execute prior to a PIP's start.[31] Any Options Participant (except for the Initiating Participant), including Options Participants that have placed quotes and orders on the BOX Book, may choose to submit Improvement Orders into the PIP and compete for the PIP Order.[32]

The Commission believes that these features of the PIP are designed to provide the opportunity for a competitive auction, which benefits customers by giving them the chance for price improvement better than the NBBO and thus the Exchange's proposal should not result in a harmful impact on market efficiency. As discussed above, the proposal is intended to provide increased opportunities for price improvement of customer PIP Orders priced at the NBBO by permitting a PIP to go forward without those quotes and orders on the BOX Book at the PIP start price being executed against the PIP Order before the PIP auction commences. Quotes and orders on the BOX Book prior to a PIP Broadcast will retain their priority at the same price at the conclusion of the PIP (assuming they have not already been executed on the BOX Book). However, as noted above, the Exchange has committed to provide the Commission with monthly data and corresponding analysis related to the PIP, including statistics with respect to the execution of quotes and orders on the BOX Book prior to the start of the PIP.[33] This data will assist the Commission and the Exchange in monitoring the impact of the proposed rule change.

IV. Section 11(a) of the Act

Section 11(a)(1) of the Act [34] prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion (collectively, ''covered accounts''), unless an exception applies. The Exchange represents that the proposed rule change is consistent with Section 11(a) of the Act. Specifically, the Exchange believes that the PIP is generally consistent with Section 11(a)(1)(G) of the Act and Rule 11a1–1(T) thereunder because Options Participants that are not Market Makers must yield priority in the PIP to all non-member orders (*i.e.,* to all Public Customer Orders and non-BOX Participant broker-dealer orders) at the same price.[35] In addition, the Exchange believes that the proposed change to execute, against the PIP Order and at the end of a PIP auction, those quotes and orders on the BOX Book prior to the PIP Broadcast (if at the PIP Start Price) satisfies the conditions of Rule 11a2–2(T) under the Act. For the reasons set forth below, the Commission believes that the proposed rule change is consistent with the requirements of Section 11(a) of the Act and the rules thereunder.

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

Section 11(a)(1)(G) of the Act 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 normally 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.[36] 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.[37]

With respect to the PIP, the rules of the Exchange currently prohibit any orders for the accounts of non-Marker Maker Options Participants from being executed prior to the execution of Public Customer Orders, whether an Improvement Order, including a Customer PIP Order, or Unrelated Order, and non-BOX Participant broker-

[26] *Id.*

[27] *Id.*

[28] *See* Wolverine Letter, *supra* note 5, at 2.

[29] *See* Exchange Response, *supra* note 6, at 2.

[30] According to the Exchange, for the eight-plus years that the PIP has been in effect, approximately 70% of PIP auctions have included competition for execution (*i.e.,* at least one other Options Participant has competed with the Initiating Participant for execution of a customer order). The Exchange stated that almost 50% of all PIP auctions included three or more Participants competing for the PIP execution. *Id.*

[31] *Id.*

[32] *Id.*

[33] *See supra* note 11.

[34] 15 U.S.C. 78k(a)(1).

[35] *See* Notice, *supra* note 4 at n.12.

[36] See 15 U.S.C. 78k(a)(1)(G).

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

dealer orders at the same price.[38] The current proposed rule change revises the treatment of quotes and orders on the BOX Book prior to the PIP Broadcast, which orders will now be executed against the PIP Order at the end of the PIP (if at the same price). However, the execution of these quotes and orders against the PIP Order qualifies for a separate exception to the Section 11(a) restrictions.[39] Thus, because current Exchange rules require Options Participants that are not Market Makers[40] to yield priority in the PIP to all non-member orders, the Commission believes that the proposal with respect to transactions effected through the PIP, other than for quotes and orders on the BOX Book prior to the PIP Broadcast, is consistent with the requirements in Section 11(a) of the Act and Rule 11a1–1(T) thereunder.[41] The Commission reminds exchanges and their members, however, that, in addition to yielding priority to non-member 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.

B. ''Effect versus Execute'' and Rule 11a2–2(T) under the Act

Rule 11a2–2(T) under the Act,[42] 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;[43] 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. The Exchange believes that the execution of quotes and orders that are on the BOX Book prior to a PIP Broadcast against a PIP Order will satisfy the requirements of Rule 11a2–2(T).[44] For the reasons set forth below, the Commission believes that, under the proposed rule change, such executions will satisfy the conditions of Rule 11a2–2(T).[45]

Rule 11a2–2(T)'s first condition is that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that the requirement is satisfied when automated exchange facilities, such as the Trading Host, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages over non-members in handling their orders after transmitting them to the Exchange.[46] The Exchange represents that the design of the BOX Book, including the mechanism that executes quotes and orders resting on the Book prior to a PIP against the PIP order at the conclusion of a PIP auction, ensures that broker-dealers do not have any special or unique trading advantages in handling their orders after transmission. Accordingly, the Exchange believes that a member effecting a transaction through the BOX Book, even where the quote or order on the Book prior to a PIP executes against the PIP Order, satisfies the requirement for execution through an unaffiliated member.

According to the Exchange, the design of BOX ensures that no Options Participant would enjoy any special control over the timing of execution or special order handling advantages after order transmission to the BOX Book. All orders on the BOX Book are centrally processed and executed automatically by BOX. Orders sent to BOX would be transmitted from remote terminals directly to the system by electronic means. Once an order is submitted to the BOX Book, the order would be executed against another order based on the established matching algorithms for the BOX Book. In addition, as proposed, those quotes and orders on the BOX Book prior to a PIP may trade with the PIP Order, or would execute when orders or quotations on BOX match one another based on price/time priority. The execution would 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 BOX Book, or if a PIP is initiated and what responses are received in response to the PIP, and where the order is ranked based on the priority ranking algorithm. At no time following the submission of an order to the BOX Book would an Options Participant be able to acquire control or influence over the result or timing of order execution, including whether it is executed against an order in the PIP. Accordingly, Options Participants could not control or influence the result or timing of orders submitted to the BOX Book, even if such an order were to match with the PIP Order. Based on the Exchange's representations, 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.[47] The Exchange

[38] *See* BOX Rules 7150(f)(4) and 7150(g)(3)(i).

[39] *See infra* Section IV. B.

[40] Section 11(a)(1)(A) of the Act provides an additional 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).

[41] The Commission has previously found that transactions effected through the PIP are consistent with the requirements in Section 11(a) of the Act and Rule 11a1–1(T) thereunder because Options Participants that are not Market Makers are required to yield priority in the PIP to all non-member orders, (*i.e.,* to all Public Customer Orders and non-Options Participant broker-dealer orders) at the same price. *See* BOX Exchange Application Order, *supra* note 11. The Commission believes that transactions effected through the PIP, as amended by the proposed rule change, remain consistent with the requirements Section 11(a) of the Act and Rule 11a1–1(T) thereunder.

[42] 17 CFR 240.11a2–2(T).

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

[44] For a more detailed discussion, see the description of the proposed rule change in the Notice, *supra* note 4 and *supra* Section II.

[45] *See* BOX Exchange Application Order, *supra* note 11.

[46] 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 transmitted into each system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T). *See* Securities Exchange Act Release No. 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (regarding the American Stock Exchange (''Amex'') Post Execution Reporting System, the Amex Switching System, the Intermarket Trading System, the Multiple Dealer Trading Facility of the Cincinnati Stock Exchange, the PCX Communications and Execution System, and the Philadelphia Stock Exchange (''Phlx'') Automated Communications and Execution System (''1979 Release'')).

[47] *See, e.g.,* Securities Exchange Act Release Nos. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031) (approving BATS

Continued

states that orders sent to the BOX Book, regardless of where it executes within the BOX system, including the Book or the PIP, would be transmitted from remote terminals directly to BOX by electronic means. OFPs and Market Makers would only submit orders and quotes to BOX from electronic systems from remote locations, separate from BOX. The Exchange further represents that there are no other Options Participants that would be 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 the Rule.

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 the BOX Book, would an Options Participant be able to acquire control or influence over the result or timing of order execution, even if its order on the BOX Book may execute with a PIP Order.[48] According to the Exchange, upon submission to BOX, an order would be executed against another order on the BOX Book or against the PIP Order based on an established matching algorithm. The execution would 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 BOX Book, whether a PIP is initiated and what responses are received in response to the PIP, and where the order is ranked based on the priority ranking algorithm. As such, the Commission believes that the non-participation requirement is met when orders are executed automatically on the BOX Book, including if they execute against a PIP order.

Fourth, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2–2(T).[49] The Exchange has represented that, as a prerequisite for BOX usage, if an Options Participant is to rely on Rule 11a2–2(T) for a covered account transaction, the Options Participant must comply with the limitations on compensation set forth in Rule 11a2–2(T).

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[50] that the proposed rule change (SR–BOX–2012–003) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[51]

Kevin M. O'Neill,

Deputy Secretary.

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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) (approving 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.

[48] 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 (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").

[49] 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").

[50] 15 U.S.C. 78s(b)(2).

[51] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13369 and #13370]

Connecticut Disaster #CT–00028

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Connecticut (FEMA–4087–DR), dated 10/30/2012.

Incident: Hurricane Sandy.

Incident Period: 10/27/2012 and continuing.

DATES: *Effective Date:* 10/30/2012.

Physical Loan Application Deadline Date: 12/31/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 07/31/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 10/30/2012, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Fairfield, Middlesex, New Haven, New London and the Mashantucket Pequot Tribal Nation and Mohegan Tribal Nation located within New London County.

Contiguous Counties (Economic Injury Loans Only):

Connecticut: Hartford, Litchfield, Tolland, Windham.

New York: Dutchess, Putnam, Westchester.

Rhode Island: Kent, Washington.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.375
Homeowners Without Credit Available Elsewhere	1.688
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000