

discriminatory because they are consistent with price differentiation and fee structures that exists today at other option exchanges. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee and rebate levels at a particular exchange to be too low or too high, as the case may be. With this proposed rule change, the Exchange believes it remains an attractive venue for market participants to trade regular and complex orders in the Select Symbols and the Additional Select Symbols.

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

The proposed rule change does not 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 not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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)(ii) of the Act²⁶ and subparagraph (f)(2) of Rule 19b-4 thereunder,²⁷ because it establishes a due, fee, or other charge imposed by ISE.

At any time within 60 days of the filing of such 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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 email to rule-comments@sec.gov. Please include File Number SR-ISE-2012-91 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-2012-91. 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 20549-1090, 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 ISE's principal office. 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-2012-91, and should be submitted on or before January 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68412; File No. SR-BOX-2012-022]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Eliminate Market Maker Pre-Opening Obligations on BOX

December 12, 2012.

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 4, 2012, BOX Options Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,³ which renders the proposal 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 Substance of the Proposed Rule Change

BOX Options Exchange LLC (the "Exchange") proposes to amend Rule 8050 (Market Maker Quotations) to eliminate market maker pre-opening obligations on its options trading facility BOX Market LLC ("BOX"). The Exchange also proposes to amend Rule 7070 (Opening the Market) and Rule 8040 (Obligations of Market Makers) to conform them to the change proposed to Rule 8050. The text of the proposed rule change is available from the principal office of the Exchange, on the Exchange's Internet Web site at <http://boxexchange.com>, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

²⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁷ 17 CFR 240.19b-4(f)(2).

²⁸ 17 CFR 200.30-3(a)(12).

places specified in Item IV below. The Exchange 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 purpose of the proposed rule change is to amend Exchange Rule 8050 (Market Maker Quotations) to eliminate pre-opening obligations imposed on market makers ("Market Makers") on BOX Market LLC ("BOX"),⁴ that they participate in the pre-opening phase in terms of continuous quotes. The Exchange also proposes to amend Rule 7070 (Opening the Market) and Rule 8040 (Obligations of Market Makers) to conform them to the change proposed to Rule 8050.⁵ This is done to put BOX Market Makers on par with the market makers on other options Exchanges that do not have pre-market continuous quoting obligations.⁶

Currently, Exchange Rule 8050 requires that a Market Maker must enter continuous bids and offers in options classes in which the Market Maker is appointed on BOX, an all-electronic market. Specifically, Rule 8050(e) requires that on a daily basis, a Market Maker must: (1) Participate in the pre-opening phase; and (2) thereafter make markets consistent with the applicable quoting requirements specified in the Exchange rules, such that a Market Maker must post valid quotes at least sixty percent (60%) of the time that the classes to which the Market Maker is appointed are open for trading. The Exchange does not propose to change any of the continuous quoting requirements applicable to a Market Maker (e.g. continuous quoting 60% of the time in the Market Maker's

appointed classes)⁷ other than to eliminate the requirement to participate in the pre-opening phase in Rule 8050(e) noted above.

Subsequent to this proposal, a Market Maker will continue to have all of the other quoting obligations that the Market Maker now has pursuant to Rule 8050, and pursuant to Rule 8050(e), during regular market hours will be responsible to post valid quotes on a continuous basis at least sixty percent (60%) of the time that the classes in which the Market Maker is appointed are open for trading. The change that the Exchange is proposing to Rule 8050(e) is removal of the Market Maker pre-opening quoting obligation and the insertion of text clarifying that the quoting obligation applies during regular market hours. As a result of the Exchange's proposed rule filing, the continuous quoting requirement for BOX Market Makers will not have a pre-opening quoting obligation, just as other options exchanges (e.g., NOM, Phlx and ISE) do not impose a pre-opening obligation on their electronic market makers.

NOM, Phlx and ISE have a continuous quoting obligation during their regular market hours, which are similar to the BOX market hours.⁸ However, NOM, Phlx and ISE do not have an obligation for their market makers to participate in a pre-opening phase. On Phlx, for example, a Remote Streaming Quote Trader ("RSQT"),⁹ which is similar in nature to a BOX Market Maker, has an obligation during trading hours to quote markets in not less than 60% of the series in which such RSQT is assigned (this is akin to BOX Market Maker appointment in a series). Unlike a BOX Market Maker, which currently has a pre-opening obligation, a Phlx RSQT does not have a pre-opening market maker obligation.¹⁰ As a second example, there is a quoting requirement for an ISE market maker. However, just like Phlx, and unlike BOX, ISE does not

have a pre-opening market maker obligation.¹¹ This proposed rule change establishes that BOX Market Makers, like Phlx and ISE market makers, will not have a pre-opening quoting obligation prior to market open.¹²

BOX Market Makers have noted that unlike BOX, other options exchanges do not have a pre-opening quoting obligation for their market makers, and have requested BOX to eliminate the pre-opening obligation so that the Exchange rules for trading on BOX are similar to those of other options exchanges such as, for example, Phlx. The Exchange believes this proposed rule change levels the playing field in respect of pre-opening obligations while leaving all other BOX quoting requirements intact.¹³

Moreover, the Exchange believes that its proposal to put BOX Market Makers in the same position as market makers on other exchanges will not have a negative effect on BOX market participants and investors. In particular, the Exchange believes the removal of pre-opening market maker obligations on BOX will have no impact on the functioning of the BOX opening process and in turn will not negatively impact BOX market participants.¹⁴

The Exchange believes further that the proposed rule change eliminating pre-opening obligations should be pro-competitive in that it will attract more Market Makers, and additional liquidity, onto BOX. This should be advantageous

¹¹ ISE rule 804(e)(2)(iii) states, in relevant part, that a Competitive Market Maker must maintain continuous quotations in an options class to which it is appointed and at least 60% of the series of the options class listed on the Exchange until the close of trading that day.

¹² The two-sided quote obligation is noted also in Exchange Rule 8040(a)(1), which states that during trading hours a Market Maker must maintain a two-sided market, pursuant to Rule 8050(c)(1), in those options in which the Market Maker is appointed, in a manner that enhances the depth, liquidity and competitiveness of the market.

Recognizing the requirement to maintain a two-sided market during trading hours per Rule 8040(a)(1), the Exchange is removing reference in Rule 8040(a)(2) to a Market Maker having to enter two-sided quotes before market open by participating in opening the market. This is done for purposes of conforming Rule 8040(a)(2) with proposed Rule 8050(e), which eliminates quoting obligations in the pre-opening phase before the market opens.

¹³ Exchange Rule 8050(e).

¹⁴ The BOX process for Opening the Market is described within Rule 7070. Note that Rule 7070(d) currently specifies that during the pre-opening phase, BOX Market Makers holding an assignment on a given options class are obliged, as part of their obligations to ensure a fair and orderly market, to provide continuous two-sided quotes according to the BOX minimum standards at the opening of the market for the underlying security. In conformance with the proposed change to Rule 8050(e), the Exchange is removing this reference to BOX Market Makers pre-opening quoting obligation.

⁴ BOX operates as an options trading facility of the Exchange.

⁵ Exchange Rule 100(a)(30) defines "Market Maker" to mean an Options Participant registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in the Rule 8000 Series regarding Market Makers. All Market Makers are designated as specialists on the Exchange for all purposes under the Exchange Act or Rules thereunder.

⁶ NASDAQ Options Market ("NOM"), NASDAQ OMX Phlx ("Phlx"), and International Securities Exchange, LLC ("ISE") have market pre-opening phases. However, NOM, Phlx and ISE do not, as discussed in the proposal, impose pre-opening obligations on their respective options market makers; none of the exchanges require continuous quoting prior to the regular options trading market. The regular trading market opens on these exchanges at 9:30 Eastern Time.

⁷ The BOX trading day, which represents the regular market hours, is 9:30 a.m. to 4:00 p.m. Eastern Time, except for option contracts on Exchange-Traded Fund Shares or broad-based indexes which will close as of 4:15 p.m. Eastern Time. See Exchange Rule 7020.

⁸ *Id.*

⁹ A Phlx RSQT is a Registered Options Trader that is a member or member organization with no physical trading floor presence that may generate and submit option quotations electronically in assigned options. See Phlx Rule 1014(b)(ii)(B). While the designation of RSQT does not exist on BOX, a BOX Market Maker enters quotes electronically on BOX just as an RSQT does on Phlx pursuant to specific quoting obligations. See Exchange Rule 8050(e), and Phlx Rule 1014(b)(ii)(D).

¹⁰ For the Phlx continuous quoting rule, see Phlx Rule 1014(b)(ii)(D)(1).

to traders and investors executing trading and hedging strategies on BOX. In addition, orders and quotes executed during the opening process on BOX will continue to be protected by the National Best Bid or Offer ("NBBO"). As such, the Exchange believes that BOX participants will continue to have a similar experience and quality of execution on the opening on BOX as they do today.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,¹⁵ in general, and Section 6(b)(5) of the Act,¹⁶ in particular, in that it is designed to promote just and equitable principles of trade, 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. The Exchange believes the proposal to conform Market Maker obligations to the requirements of competing markets will promote the application of consistent trading practices. Therefore, the Exchange believes the proposal promotes just and equitable principles of trade and serves to protect investors and the public interest.

Additionally, the Exchange believes the proposal removes a market maker quoting requirement that is unnecessary, as evidenced by the fact that it does not exist on other competitive markets. The Exchange operates in a highly competitive market comprised of ten U.S. options exchanges in which sophisticated and knowledgeable market participants can, and do, send order flow to competing exchanges if they deem trading practices at a particular exchange to be onerous or cumbersome. With this proposal, the Market Maker will be relieved of a market maker requirement that does not materially improve the quality of the markets. On the contrary, the pre-open phase obligation creates an additional obligation and burden on BOX Market Makers that does not exist on numerous other competitive markets. The Exchange believes that in this competitive marketplace, the impact of the pre-open trading practice that exists on BOX today compels this proposal. It will allow Market Makers on BOX to follow rules that are similar to the rules of other options exchanges that do not impose pre-opening obligations on their market makers, and will allow Market Makers to focus on aspects of their

operations that contribute to the market in a more efficient and meaningful way.

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 not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange proposal to eliminate the pre-opening obligation on BOX Market Makers is consistent with the market maker obligations on other options exchanges, which do not impose pre-opening obligations on market makers. The Exchange believes that its proposal is pro-competitive and should serve to attract market making activity and increase liquidity on BOX which will benefit all BOX market participants.

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

No written comments were either solicited or received.

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

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and Rule 19b-4(f)(6)(iii) thereunder.¹⁸ At any time within 60 days of the filing of such 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-BOX-2012-022 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-2012-022. 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-BOX-2012-022 and should be submitted on or before January 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Kevin M. O'Neill,
Deputy Secretary.

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¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6)(iii). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

¹⁹ 17 CFR 200.30-3(a)(12).