

BOX—PIP TRADE ALLOCATION EXAMPLES—Continued

7. OFP receives an order to sell 100 contracts and starts PIP with bid of 2.01 or better. In time priority in the PIP MMB bids 2.04 for 10 contracts, MMC bids 2.04 for 50 contracts, MMA bids 2.04 for 50 contracts.	OFP 40 MMA 20 MMB 10 MMC 30	MMA 33 MMB 10 MMC 30 MMA 17 (10 to bidder(s) at next highest PIP bid) (MMA total = 50; 33 "Prime" allocation + 17 time priority)	MMB 10. MMC 30. MMA 50. (10 to bidder(s) at next highest PIP bid)
8. OFP receives an order to sell 100 contracts and starts PIP with bid of 2.01 or better. In time priority in the PIP. MMB bids 2.05 for 10 contracts, MMC bids 2.04 for 30 contracts, and MMA bids 2.04 for 50 contracts.	MMB 10 at 2.05 OFP 36 at 2.04 MMA 18 at 2.04 MMC 30 at 2.04 MMA 6 at 2.04 (MMA total = 24; 18 "Prime" allocation + 6 time priority)	MMB 10 at 2.05 MMA 30 at 2.04 (1/3 of 90) MMC 30 at 2.04 MMA 20 at 2.04 (10 to bidder(s) at next highest PIP bid) (MMA total = 50; 30 "Prime" allocation + 20 time priority)	MMB 10 at 2.05. MMC 30. MMA 50. (10 to bidder(s) at next highest PIP bid).

e. Conclusion. In all, BOX has a market structure that would be "flat and open," built on the price/time priority representation of all market participants' orders. These key ingredients, coupled with the low cost of entry, would offer liquidity, price quality and low cost for all market participants. Additionally, the Exchange is confident that there would be active Market Maker participation in BOX for several reasons:

(a) In order to ensure vigorous price competition in all cases, BOX would not begin trading any class of options unless there is a minimum of two Market Makers appointed to the class. As a result, Customer Orders would be subject to auctions potentially including at least three participants—the two Market Makers and the OFP submitting the Primary Improvement Order—assuring the possibility of a real, competitive auction process.⁶⁸

(b) A Market Maker would be given dual incentives to quote the best price first on BOX: (1) To gain price/time priority for the entire size of his quote, and (2) to gain the Market Maker Prime trade allocation privileges in a PIP.

(c) The ability of Market Makers trading in the PIP to competitively price orders in finer increments than those generally employed in BOX would provide incentives for them to participate as Market Makers in the auction process.

(d) A Market Maker would have a high incentive for aggressively pricing an option for which a PIP is underway since there is an indisputable and immediate Customer interest in the option that is certain to result in a trade execution.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements under Section 6(b) of the Act,⁶⁹ in general, and furthers the objective of Section 6(b)(5) of the Act,⁷⁰ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism for 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 did not solicit or receive written 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-BSE-2002-15 and should be submitted by February 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷¹

Margaret H. McFarland,

Deputy Secretary.

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⁶⁸ Telephone conversation between Wayne Pestone, Bingham McCutchen LLP (outside counsel for the Exchange), and Deborah L. Flynn, Assistant Director, Division, Commission, on January 9, 2003.

⁶⁹ 15 U.S.C. 78f(b).

⁷⁰ 15 U.S.C. 78f(b)(5).

⁷¹ 17 CFR 200.30-3(a)(12).