

required to cooperate with BOXR in the fulfillment of its regulatory obligations.

The relationship between the BSE, BOXR, BOX LLC and BOX is explained further in the Delegation Plan.⁷ The BSE is proposing to adopt the Delegation Plan which sets forth the purpose, function, governance, procedures and responsibilities of the BSE and BOXR following approval of the Delegation Plan. The Delegation Plan describes the options regulatory subsidiary, BOXR; sets forth the delegation of authority to BOXR by the BSE; and describes the purpose, function, authority and responsibilities of BOXR, including the procedures for proposed rule change recommendations in regard to BOX and BOXR.

Through the adoption of new Chapter XXXVI and the Delegation Plan, BOXR and BOX LLC would also be subject to Commission oversight and examination. The Commission would oversee the premises, personnel, and records of BOXR and BOX LLC to the same extent that it currently oversees the premises, personnel, and records of the BSE. Under section 1(b) and section 2(B)(1) of the proposed Delegation Plan, the books, records, premises, officers, directors, agents and employees of BOXR and BOX LLC would be the books, records, premises, officers, directors, agents and employees of the BSE for purposes of, and subject to, oversight pursuant to the Act. The books and records of BOXR and BOX LLC would be subject at all times to inspection and copying by the BSE and the Commission. BOXR and BOX LLC would be required to maintain all books and records related to BOX within the United States. Also, by delegated authority, the books and records of BOX LLC would be subject at all times to inspection and copying by BOXR. However, as set forth in the proposed Section 2(B)(3) of the Delegation Plan, proposed section 2(B)(1) would not create any rights or benefits for any person or entity other than the BSE, BOXR and the Commission. The Commission and the BSE's access to and oversight of BOX LLC as the operating company of BOX is further solidified in the private contracts related to BOX. The text of Section 2(B) of the Delegation Plan is included in various contractual agreements between the BSE and BOX LLC. Therefore, BOX LLC has not only a regulatory obligation to abide by the Delegation Plan, but a private contractual obligation as well.

⁷ The BSE notes that the Delegation Plan is based on PCX Equities Rule 14.3 of the PCX Plan of Delegation and the NASD's Plan of Allocation and Delegation of Functions by NASD to Subsidiaries.

(B) BOXR

(1) Corporate Status

BOXR would be operated as a Delaware limited liability company. All of the issued shares of stock of BOXR would be owned by the BSE. Current BSE members would retain their memberships, and thus, their ownership interests in the BSE.

(2) Governing Documents and Rules

BOXR's By-Laws, the BOX Rules and the applicable BSE Rules would govern its activities. The BOX Rules and the BOXR By-Laws would reflect the status of BOXR as a wholly-owned subsidiary of BSE, under management of the BOXR Board of Directors ("BOXR Board") and its designated officers, ultimately subject to the self-regulatory authority of the BSE.

(3) Regulation of BOXR

BOXR would operate as a subsidiary of BSE, which is a national securities exchange registered under section 6 of the Act.⁸ The BSE, as the SRO, retains ultimate responsibility for compliance by its members with the provisions of the Act and the rules and regulations thereunder. As set forth in the proposed BOX Rules, Options Participants are required to comply with all the BOX Rules as well as those BSE Board of Governors Rules specifically cross-referenced and incorporated by reference in the BOX Rules. For such purposes of cross-referencing, interpreting and applying the Rules of the BSE to Options Participants, any reference to "member" of the BSE in such cross-referenced rules is to be read as a synonym for "Participant" on BOX, whether OFP, Market Maker or both.⁹ For this reason, BOX Options Participants would be statutory "members" of BSE. Pursuant to the proposed BOX Rules, Options Participants are granted trading rights for options listed on the Exchange and traded on BOX.¹⁰ Options Participant status does not confer on the Options Participant any right to participate in trading on the BSE other than options trading on BOX, nor shall Options Participants be entitled to all the rights and responsibilities regarding the governance of the BSE as other BSE Members.¹¹ They do not have ownership interests in the BSE, however, as discussed more fully below,

⁸ 15 U.S.C. 78f.

⁹ See Chapter I, Section 2(c) of the Proposed BOX Rules in the BOX Proposing Release.

¹⁰ See BOX Proposing Release Chapter II, Section 1(a).

¹¹ See BOX Proposing Release Chapter II, Section 1(e).

they would have certain voting and representations rights.¹²

The BSE Board is currently composed of the BSE Chairman, Vice Chairman and 20 governors. The composition of the BSE Board would be modified as part of the restructuring to include one governor representing Options Participants to provide input on the BSE Board. This governor ("Options Participant Governor") would be nominated by the BOXR Nominating Committee and must be either an officer or director of an Options Participant.¹³ Pursuant to the proposed amendments to the BSE Constitution, the BSE Board would be required to appoint the candidate presented by the BOXR Nominating Committee.¹⁴

As a registered national securities exchange and the parent company of BOXR, the BSE would continue to carry out its statutory responsibilities to enforce compliance by Options Participants with the provisions of the federal securities laws and rules thereunder, as well as the BSE and BOX Rules, and to govern the administration of BOXR. In particular, to be effective, any changes to the BOX Rules and governing documents of BOXR must be ultimately approved by the BSE. The Exchange proposes that the Delegation Plan become part of the Rules of the BSE and, thus, may only be amended upon Commission approval. Moreover, changes to the BOXR By-Laws and the BOX Rules must be filed with the Commission pursuant to Section 19(b) of the Act¹⁵ and Rule 19b-4¹⁶ thereunder and must be submitted by the BSE.¹⁷

While ultimately responsible, the BSE proposes to delegate specific self-regulatory responsibilities to BOXR, pursuant to a Delegation Plan. Specifically, BOXR would assume responsibility with respect to the options business of the Exchange for, among other things: (i) Establishing and interpreting rules governing the activities of Options Participants; (ii) determining regulatory and trading policies relating to the business activities of Options Participants; (iii) assuring compliance with BOX Rules

¹² Under section 6(b)(3) of the Act, the rules of an exchange must assure that its members are fairly represented in the selection of its directors and administration of its affairs. 15 U.S.C. 78f(b)(3).

¹³ See discussion of the proposed BOXR Nominating Committee below.

¹⁴ See discussion of the proposed amendments to the BSE Constitution below.

¹⁵ 15 U.S.C. 78s(b).

¹⁶ 17 CFR 240.19b-4.

¹⁷ The BSE Board must review and ratify all BOXR proposed rule changes before they are submitted to the Commission. See Section 2D of the Delegation Plan.