

and the federal securities laws; (iv) administering surveillance programs and systems for enforcing rules governing the conduct and trading activities of Options Participants and their associated persons on BOX; (v) examining and investigating Options Participants and their associated persons to determine if they have violated the BOX Rules or the federal securities laws; (vi) administering the BOXR disciplinary programs; (vii) determining whether applicants meet the requirements for an Options Participant; (viii) placing restrictions on the business activities of Options Participants and their associated persons consistent with the public interest, the protection of investors and the federal securities laws; (ix) proposing fees and charges; (x) overseeing the operation of the BOX trading facilities; (xi) collecting and consolidating information for the surveillance audit trail; (xii) developing rule changes for the collection, processing and dissemination of quote and transaction information; (xiii) developing and adopting rules, interpretations and policies to maintain and enhance the integrity, fairness, efficiency and competitiveness of BOX; (xiv) administering the Exchange's involvement in the national market system ("NMS") plans for options; and (xv) developing, administering and enforcing listing standards for securities traded on BOX.

While BOXR would have extensive delegated authority to regulate and oversee the options trading business, the BSE would retain the ultimate responsibility for the Rules and regulations of BOX, as well as for the operation and administration of its subsidiary, BOXR. As part of its self-regulatory responsibilities, the BSE would review rulemaking and disciplinary decisions of BOXR and direct BOXR to take action that may be necessary to effectuate the purposes and functions of the Act. The BSE believes that these types of checks and balances should ensure that the BSE remains aware of the affairs of its options business conducted through BOXR, and that its options business is conducted in a manner consistent with the Act. Thus, while BOXR would be a separate entity, it would still remain under the self-regulatory authority of the BSE.

(4) Agreement Between BSE and BOXR

Under the proposal, the BSE's equities and options regulatory functions would share certain infrastructure and personnel. After the completion of the restructuring, these shared assets would remain the property of BSE and the

shared personnel would continue to be employed by BSE. In each case, however, BOXR would have access to those resources through inter-company contracts with BSE. In particular, BSE would contract to provide BOXR with certain management and support services and staff. The contract would include services for administration, membership, technology, finance and accounting, human resources and legal and regulatory services. The agreement between BSE and BOXR would allocate charges for these services and staff between BSE and BOXR.

(5) National Market System Plans

The BSE currently is a participant in various NMS plans, including the Consolidated Tape Association ("CTA") Plan, the Consolidated Quotation System ("CQS") Plan, the Nasdaq Unlisted Trading Privileges Plan ("UTP") Plan, and the Intermarket Trading System Plan, as well as a conditional participant, subject to Commission approval, in several options NMS plans, including the Options Price Reporting Authority ("OPRA") Plan, the Options Listing Procedures ("OLPP") Plan and the Intermarket Options Linkage Plan.¹⁸ These plans are joint industry plans for SROs that address last sale reporting, quotation reporting, listing procedures, and intermarket trading. Following the creation of BOXR, BSE, in its continuing role as the SRO, would continue to serve as the voting member of these NMS Plans. Nevertheless, BSE expects that, for those plans that relate to options trading, *i.e.*, the OPRA Plan, the OLPP Plan and the Intermarket Options Linkage Plan, a BOXR representative would serve as the BSE's representative in dealing with these plans.

(II) BOXR By-Laws

The BOXR By-Laws would reflect the status of BOXR as a wholly-owned subsidiary of BSE, ultimately subject to the self-regulatory authority of the BSE. As a separate corporate entity, BOXR would have its own board of directors and officers that would administer its day-to-day operations.

(A) BOXR Board of Directors

The BOXR Board would consist of no fewer than 7 or more than 13 directors. Currently, the Exchange contemplates that there would be 7 directors. The

composition of the BOXR Board would be as follows:

- The Chief Executive Officer ("CEO") of BSE (who will be considered a member of the Board for voting purposes, but not for qualification percentage purposes);

- At least 50% Public Directors;¹⁹
- At least 20%, but no fewer than 2, nominees of Options Participants (the "Options Participant Directors").

The BSE, as the founder and sole member, would appoint the initial BOXR Board. Subsequently, the BOXR Board would be nominated by the sitting BOXR Board, subject to the nominating procedures set forth below²⁰ for the selection of at least twenty percent, but no fewer than two Options Participant Directors. The BOXR Board would be elected by the BSE Board, as the BSE is the sole shareholder of BOXR. The BSE would have the right to approve, remove, and replace any member of the BOXR Board by virtue of its status as sole shareholder, subject to the By-Laws. Any vacancy on the BOXR Board would be filled with a person who satisfies the classification associated with the vacant seat, *i.e.*, a member of the public or a representative of an Options Participant.

To the extent that the number of BOXR Board seats is changed from the initially contemplated 7 members, at least 50 percent of the BOXR Board must be Public Directors and at least 20 percent, but no fewer than two, representatives of Options Participants. The BSE believes that this provision would ensure that the public interest is adequately represented in the Exchange's decision-making process pursuant to section 6(b)(3) of the Act.²¹ Further, the Exchange acknowledges that public representatives help to ensure that no single group of market participants has the ability to systemically disadvantage other market participants through the exchange governance process. The BSE believes that Public Directors can provide unique, unbiased perspectives, which should enhance the ability of the BOXR Board to address issues in a non-discriminatory fashion and foster the integrity of BOXR. In this way, the Public Directors may help to prevent unfair discrimination between customers, brokers, or dealers in the administration of BOXR, and protect investors and the public interest,

¹⁸ The BSE is also a conditional participant in the Options Self-Regulatory Council ("OSRC"). The OSRC Plan is not an NMS plan under Section 11A of the Act, but rather a plan to allocate regulatory responsibilities under Rule 17d-2 under the Act. 17 CFR 240.17d-2.

¹⁹ "Public Director" is defined as a Director who has no material business relationship with a broker or dealer, or the BSE, BOX, or BOXR. See BOXR By-Laws, Definition (p).

²⁰ See discussion of the proposed BOXR Nominating Committee below.

²¹ 15 U.S.C. 78f(b)(3).