

Exchange believes it is assuring that Options Participants are represented fairly in the selection of the BSE and BOXR Boards, and thereby in the administration of Exchange affairs and in the affairs of the Exchange subsidiary, BOXR, which would most directly affect them.

## (2) Hearing Committee

The BOXR disciplinary process would be similar to the existing BSE disciplinary process, and would be governed by a BOXR Hearing Committee. The BOXR Hearing Committee would be appointed by the Chairman of the Board of BOXR. Membership of the committee shall be comprised of at least one Options Participant member and such number of non-Participant members as the Chairman may deem necessary.

The BOXR Chief Regulatory Officer, or his staff, would authorize the initiation of disciplinary hearings and proceedings. The BOXR Hearing Committee would conduct hearings, render decisions and impose sanctions. Decisions of the BOXR Hearing Committee may be appealed for review to the BOXR Board. Any decision of the BOXR Board may subsequently be appealed to the BSE Board of Governors, which shall have the discretion whether to hear such appeal. If the BSE Board of Governors does not order review of a decision of the BOXR Board, or, in its discretion, elects not to hear an appeal of a decision of the BOXR Board, then the decision of the BOXR Board shall be deemed to be the final action of the Exchange. Any decision of the BSE Board of Governors, or the BOXR Board (in cases where the BSE Board in its discretion has elected not to hear the appeal) may be ultimately appealed to the Commission. As with all BSE decisions, the Commission has the authority to review final disciplinary sanctions imposed by BOXR or the BSE on Options Participants, including sanctions imposed for violations of BOX rules.

The Exchange believes that its Hearing Committee, BOXR Board and BSE Board of Governors Appeals process is consistent with the Act, and in particular section 6(b)(7) thereunder, in that the Exchange has established fair procedures for disciplining Options Participants. The BSE Board of Governors has appellate jurisdiction of sanctions and findings of the BOXR Hearing Committee and the BOXR Board for violations of the rules and regulations of the Act, the Constitution and Rules of the BSE, the BOX Rules, the BOXR By-Laws, and the interpretations and stated policies of

either the BSE Board of Governors or the Board of Directors of BOXR. Moreover, aggrieved Options Participants may appeal the decision of the BSE Board of Governors to the Commission.

## (III) Changes to the Boston Stock Exchange Constitution

The proposed changes to the BSE Constitution have two primary purposes. First, the proposed amendment to Article II, Section 1, reserves a seat on the BSE Board for a representative of BOX Options Participants. Although the proposal would permit a representative of Options Participants to serve on the BSE Board, the proposal would not alter the overall BSE Board composition. The BSE Board would continue to be comprised of fifty percent Public Directors (at least five of which shall be from financial institutions not directly associated with a member organization or broker-dealer). Also, the BSE Board would continue to consist of twenty directors, in addition to the Chairman and Vice-Chairman of the Exchange.

Second, in section 4 of the same Article IV, the BSE has proposed to ensure that the candidates elected by Options Participants are seated by the BSE Board. Specifically, this applies to both the Options Participant Governor elected to serve on the BSE Board, as well as the two Options Participant representatives elected to serve on the BOXR Board. Such a process is consistent with the established process in which BSE Board members are elected by BSE Members, and subsequently selected and appointed both by and to the BSE Board.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b)<sup>26</sup> of the Act, in general, and furthers the objectives of section 6(b)(5),<sup>27</sup> in particular, in that it is designed to facilitate transactions in securities; 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 transactions in securities; 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.

<sup>26</sup> 15 U.S.C. 78f(b).

<sup>27</sup> 15 U.S.C. 78f(b)(5).

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

The Exchange does not believe that the proposed rule change, as amended, 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

Written comments on the proposed rule change were neither solicited nor received.

## 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 self-regulatory organization consents, the Commission will:

A. By order approve the 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, as amended, 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 filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-BSE-2003-04 and should be submitted by August 22, 2003.