

establish rules for BOX,<sup>8</sup> a new exchange facility, as that term is defined in Section 3(a)(2) of the Act.<sup>9</sup> BOX would be operated by Boston Options Exchange Group, LLC ("BOX LLC"). BOX would administer a fully automated trading system for standardized equity options intended for the use of Options Participants.<sup>10</sup> It would conduct an auction market similar to the ones conducted by the options exchange markets currently in operation, although the BOX auction would occur electronically and not on a floor. BOX would provide automatic order execution capabilities in the options securities listed or traded on the BSE.

In Amendment No. 3, the BSE has made certain minor changes, like renumbering and fixing typographical errors. In addition, the BSE also proposes the following, more substantive changes to the proposed rules set forth in the BOX Proposing Release. For ease of reference, the BSE has referenced each section or paragraph, which has been added to, or changed, in any substantial way.

*Proposed Chapter I, Section 1* The BSE proposes to add or amend the following definitions:

*Proposed definition (21)* has been amended to state "The term 'Directed Order' means any Customer Order to buy or sell which has been directed to a particular Market Maker by an OFP." This definition was added in order to clarify that an OFP may send an order to BOX and have it routed to a particular Market Maker for an opportunity for price improvement pursuant to proposed Chapter VI, Section 5.

*Proposed definition (46)* has been amended to state that "The terms 'Order Flow Provider' or 'OFP' mean those Options Participants representing as agent Customer Orders on BOX and those non-Market Maker Participants conducting proprietary trading." This definition was amended in order to clarify that OFPs may conduct business with the public on an agency basis and may also conduct a proprietary trading

business or may conduct only either business.

*Proposed definition (54)* has been amended to state that "The term 'Request for Quote' or 'RFQ' shall mean a message that may be issued by an Options Participant in order to signal an interest in an options series and request a response from other Participants. The RFQ contains only the series symbol and quantity and is broadcast to all Participants." This definition was added in order to delineate the meaning of the RFQ function pursuant to its use under Chapter VI, Section 6(b)(ii).

*Proposed Chapter II, Section 2(b)*—In order to eliminate any confusion that may have arisen from the interpretation of this rule regarding customer-carrying firms, the BSE has amended this paragraph so that Options Participants must be registered as broker-dealers. Additionally, as also discussed below under proposed Chapter XI, the BSE has clarified that its sales practice rules ("Doing Business with the Public") apply only to those Options Participants who are permitted under the BOX Rules to deal directly with the public, that is, OFPs. It was never the intention that participation in BOX be limited to customer-carrying firms.

*Proposed Chapter II, Section 2(e), (g), and (h)*—In several places, the BSE has added requirements regarding Options Participants. Primarily for the purpose of examinations, the BSE has set forth requirements for Options Participants who, though they must be U.S. registered broker-dealers, do not maintain an office within the United States and are responsible for preparing and maintaining financial and other reports required to be filed with the Commission, BOXR, and the Exchange. In such cases, the Options Participant must maintain all such documents in English and U.S. dollars, provide an individual fluent in English and knowledgeable in securities and financial matters, and reimburse the Exchange for any expense incurred in connection with examinations of the Participant to the extent that such expenses exceed the cost of examining a Participant located within the continental United States.

Also, the BSE has set forth that Options Participants must have as the principal purpose of being an Options Participant the conduct of a public securities business. These requirements are consistent with those in place on other options exchanges and which have been previously approved by the Commission.<sup>11</sup> In light of the current

focus in the market place on corporate governance, and non-U.S. based market participants, the BSE has determined that these provisions would serve to add important investor protections to the BOX Market, while not limiting or inhibiting the low barriers to access unique to BOX vis a vis the other options markets.

*Proposed Chapter V, Section 9*—The BSE realizes that in this section it had made a typographical error and used the term "Market-On-Open" Order, while in Chapter V, Section 14, the same order is called a "Market-On-Opening" Order. The BSE has corrected this error so that the name of the order in Section 9 is also "Market-On-Opening." In addition, the BSE notes that it has not changed any other parts of this section, including paragraph (b), which states "BOX will determine a single price at which a particular series will be opened."

*Proposed Chapter V, Section 14*—In this section, the BSE has changed the name of the Market Order. Formerly, the BSE proposed to define a Market Order as an order, which is "entered into the BOX Book and executed at the best price available in the market for the total quantity available from any contra bid (offer). Any residual volume is automatically converted to a limit order at the price at which the original market order was exhausted." Since this definition differs from the commonly used concept of "market order" in the U.S.-based options market, the BSE has changed the name of this order type to "BOX-Top" Order, to eliminate the possibility of confusion on the part of investors and other options market participants. The BOX Market will not have a "market order," as that term is typically used, that can be executed at successive price levels. A BOX-Top Order will not receive a price inferior to that which a typical market order would have received in the BOX Market. Moreover, as a result of BOX's trade-through filter process (see discussion below of Chapter V, Section 16(b)) and the Intermarket Linkage, no BOX-Top Order will receive a price inferior to the national best bid or offer ("NBBO"). Indeed, due to BOX's Price Improvement Period mechanism, orders submitted to BOX have the potential to be executed at a price superior to the NBBO.

In addition, the BSE has clarified the definition of Market-on-Opening Order by adding "any residual volume left after part of a Market-on-Opening Order has been executed is automatically converted to a limit order at the price at which the original Market-on-Opening Order was executed."

<sup>8</sup> The term "BOX" means the Boston Options Exchange or Boston Stock Exchange Options Exchange, an options trading facility of the Exchange under Section 3(a)(2) of the Act. Proposed BOX Rules, Chapter I, General Provisions, Section 1(a)(6) (definition of "BOX").

<sup>9</sup> 15 U.S.C. 78c(a)(2).

<sup>10</sup> The term "Options Participant" or "Participant" means a firm, or organization that is registered with the Exchange pursuant to Chapter II of the BOX Rules for purposes of participating in options trading on BOX as an "Order Flow Provider" or "Market Maker". See Proposed BOX Rules, Chapter I, General Provisions, Section 1(a)(39) (definition of "Options Participant").

<sup>11</sup> See e.g., ISE Rule 301.