

SCHEDULED—MEMBERS NUMBER OF UNITS AND PERCENTAGE INTERESTS

[As of August 6, 2003]

Name and address	Number of units	Percentage interest
Interactive Brokers Group LLC, One Pickwick Plaza, Greenwich, CT 06830	2,375	22.41
Bourse de Montréal Inc., Tour de la Bourse, P.O. Box 61, 800 Victoria Square, Montréal, Quebec H4Z 1A9	3,325	31.37
Boston Stock Exchange, Inc., 100 Franklin Street, Boston, Massachusetts 02110	2,850	26.89

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the BSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The BSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As discussed in detail in the BOX Proposing Release, the BSE proposes to establish rules for BOX, a new Exchange facility, as that term is defined in Section 3(a)(2) of the Act. BOX would be operated by BOX LLC. BOX would administer a fully automated trading system for standardized equity options intended for the use of Options Participants.⁶

The BSE is a founding and controlling member of BOX LLC. In addition to its ownership stake in BOX LLC, the BSE has entered into various agreements with BOX LLC under which BOX LLC would operate BOX as a facility of the BSE. As discussed in detail in the BOX Delegation Plan Proposal,⁷ pursuant to these agreements, the BSE, through Boston Options Exchange Regulation, LLC ("BOXR"), would maintain responsibility for all regulatory functions related to the facility, and BOX LLC would be responsible for the business operations of the facility to the

extent those activities are not inconsistent with the regulatory and oversight functions of the BSE and BOXR. This means that BOX LLC would not interfere with the BSE's self-regulatory responsibilities or those delegated to BOXR.

In this filing, the BSE is submitting those provisions of the Operating Agreement specifically relating to the control and governance of BOX LLC that would ensure that the BSE has the authority within BOX LLC to maintain its responsibility for all regulatory functions related to the BOX facility. These sections of the BOX Operating Agreement would ensure that the Commission and the BSE would have regulatory authority over the owners and Directors of BOX LLC. The sections of the BOX Operating Agreement the Exchange deems relevant to its authority for all regulatory functions of its proposed BOX facility are set forth below, as well as a majority of the other provisions of the Agreement. Moreover, due to the fact that the purpose of this filing is to focus on only those provisions of the Operating Agreement which are directly related to the BSE's authority for all regulatory functions of its proposed BOX facility, the Exchange will herein likewise focus its discussion on only those provisions.

Operating Agreement, Article 4

Under Section 4.1(b), as long as BOX remains a facility of the BSE pursuant to Section 3(a)(2) of the Act, the BSE would have the right to designate at least one (1) Director on the BOX Board, whether or not the BSE maintains any ownership interest in BOX LLC. The BSE currently owns an interest in BOX LLC of over 26%. Nevertheless, the BSE believes that this provision, in conjunction with other provisions discussed herein (e.g., Section 4.4(b), which guarantees the right of the BSE to have veto power over all Major Actions of the BOX Board) would ensure that the Exchange exercises control on the BOX Board in matters related to the BSE's regulatory responsibilities, regardless of its level of ownership interest in BOX LLC.

Under Section 4.1(d)(i) and (ii), a BOX LLC Director would be removed from

the BOX Board in the event such Director (i) has violated any provision of the Operating Agreement, or (ii) if the BOX Board determines that such action is necessary or appropriate in the public interest or for the protection of investors. In addition, under Section 4.2(a), each Director must comply with the federal securities laws and the rules and regulations thereunder and cooperate with the Commission and the BSE pursuant to their regulatory authority, and shall take into consideration whether his or her actions as a Director would cause BOX to engage in conduct that fosters and does not interfere with BOX's ability to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

The BSE believes that these rules would require all BOX LLC Directors, regardless of the nature of their association with the BSE, to adhere to regulatory responsibilities in that they must comply with federal securities laws and the rules and regulations thereunder, and cooperate with the Commission and the BSE pursuant to their regulatory authority. In addition, all Directors would be required to take into consideration and facilitate the BSE's and BOX's responsibility to comply with the requirements under Section 6(b)(5) of the Act. Directors that do not adhere to these requirements face termination from the BOX Board and possible sanctions by regulatory authorities.

Moreover, under Section 4.3(b), the owners of BOX LLC ("Members") are prohibited from entering into voting trust agreements with respect to their ownership interest. The BSE believes that this rule protects the ability of the BSE, as well as other Members, to exercise its full ownership rights. In addition, as set forth in Section 4.4(a), no action with respect to any Major

⁶ 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*, § 1(a)(39) (definition of "Options Participant").

⁷ See Securities Exchange Act Release No. 48229 (July 25, 2003), 68 FR 45284 (August 1, 2003) (SR-BSE-2003-04) ("BOX Delegation Plan Proposal").