

any other business subject to an investment limitation under the Act.

X. Internal Reorganization of Existing Investments

SCANA currently engages directly or through Subsidiaries in certain nonutility businesses. SCANA seeks authority to engage in internal corporate reorganizations to better organize such Subsidiaries and investments. No authority is sought to make new investments or to change the organization of the Utility Subsidiaries.

SCANA and Subsidiaries request authority, to the extent needed, to sell or to cause any Subsidiary to sell or otherwise transfer (i) such businesses, (ii) the securities of current Subsidiaries engaged in some or all of these businesses or (iii) investments which do not involve a Subsidiary (*i.e.* less than 10% voting interest) to a different Subsidiary, and, to the extent approval is required, the Subsidiaries request authority to acquire the assets of such businesses, Subsidiaries or other then existing investment interests. Alternatively, transfers of such securities or assets may be effected by share exchanges, share distributions or dividends followed by contribution of such securities or assets to the receiving entity. In the future, following its direct or indirect acquisition of the securities of new Nonutility Subsidiaries, SCANA may determine to transfer such securities or the assets of such Nonutility Subsidiaries to other Subsidiaries as described in the preceding sentence. SCANA may also liquidate or merge Nonutility Subsidiaries.

Applicants state that such internal transactions would be undertaken in order to eliminate corporate complexities, to combine related business segments for staffing and management purposes, to eliminate administrative costs, to achieve tax savings, or for other ordinary and necessary business purposes.

Applicants state that the transactions proposed will not involve the sale or other disposition of any utility assets of the Utility Subsidiaries and will not involve any change in the corporate ownership of the Utility Subsidiaries. In so far the approval sought does not extend to the acquisitions of any new businesses or activities.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-1344 Filed 1-21-03; 8:45 am]

BILLING CODE 8010-01-U

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [To be published].

STATUS: Open Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

ANNOUNCEMENT OF OPEN MEETING: Additional Meeting.

An additional Open Meeting will be held on Thursday, January 23, 2003 at 10 a.m., in Room 1C30, the William O. Douglas Room. The Closed Meeting previously announced to be held on Thursday, January 23, 2003 at 10 a.m. has been scheduled to immediately follow the Open Meeting on Thursday, January 23, 2003.

Commissioner Goldschmid, as duty officer, determined that not earlier notice thereof was possible.

The following items previously announced for the January 22, 2003 Open Meeting will be considered during the January 23, 2003 Open Meeting.

1. The Commission will consider adopting rules to establish standards of professional conduct for attorneys who appear and practice before the Commission in any way in the representation of issuers. As proposed, the rules would require an attorney to report evidence of a material violation of securities laws, a material breach of fiduciary duty, or similar material violation by the issuer or by any officer, director, employee, or agent of the issuer to the issuer's chief legal officer or the chief executive officer of the company (or the equivalents); if they do not respond appropriately to the evidence, the rule would require the attorney to report the evidence to the issuer's audit committee, another committee of independent directors, or the full board of directors; if the directors do not respond appropriately, the rule would require or permit the attorney to withdraw and notify the Commission of the withdrawal.

2. The Commission will consider whether to adopt amendments to its registration and reporting forms for registered management investment companies, as well as new rule 30b1-4 and new form N-PX under the Investment Company Act of 1940. These rules would require mutual funds and other registered management investment companies to disclose the policies and procedures that they use to determine how to vote proxies relating to portfolio securities. They would also require registered management investment companies to file with the Commission

on an annual basis, and make available to shareholders, their proxy voting records.

3. The Commission will consider whether to adopt a new rule and amendments to its recordkeeping rules for registered investment advisers under the Investment Advisers Act. The new rule would require investment advisers to adopt proxy voting policies and procedures, describe the policies and procedures to clients and provide clients with copies on request, and disclose how clients can obtain information about how the adviser voted their proxies. The recordkeeping amendments would require advisers to keep certain records regarding client proxies.

At times, changes in Commission priorities alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: January 16, 2003.

Jonathan G. Katz,
Secretary.

[FR Doc. 03-1492 Filed 1-17-03; 2:21 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47186; File No. SR-BSE-2002-15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc., Establishing Trading Rules for the Boston Options Exchange Facility

January 14, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 31, 2002, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On December 18, 2002, the BSE filed Amendment No. 1 that entirely replaced the original rule filing.³ On January 9, 2003, the BSE filed Amendment No. 2

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from George W. Mann, Jr., Executive Vice President and General Counsel, BSE, to Annette Nazareth, Director, Division of Market Regulation ("Division"), Commission, dated December 18, 2002.

that entirely replaced the original rule filing and Amendment No. 1.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to create a new electronic options trading facility of the Exchange, called the Boston Options Exchange ("BOX"). The text of the proposed rule change is available for inspection at the Office of the Secretary, the BSE, the Commission's Public Reference Room, and on the Commission's Internet Web site (<http://www.sec.gov/rules/sro/shtml>).

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 Exchange 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 Exchange 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

The BSE proposes to establish rules for BOX,⁵ a new exchange facility, as that term is defined in Section 3(a)(2) of the Act.⁶ BOX would be operated by Boston Options Exchange Group, LLC ("BOX LLC").⁷ BOX would administer a fully automated trading system for standardized equity options intended for the use of Options Participants.⁸ 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.

The BSE intends to establish BOX as an options market where orders from all types of market participants may interact directly with each other on a price/time priority basis. Through a specific process called the Price Improvement Period ("PIP"),⁹ BOX would attract orders and subject them to price improvement and real price competition without which they would otherwise simply be executed at the NBBO. BOX would offer a price/time priority based limit order book where any Public Customer¹⁰ or broker-dealer market participant could submit orders (post prices) or take liquidity. It would also provide a limited facility for Order Flow Providers¹¹ to interact with their own order flow but only at prices better than the best bid or offer on the market; and a true opportunity for Market Makers¹² to step in and compete for those orders quickly and anonymously.

a. Summary of BOX Trading Rules. (i) Low Barriers to Trading Access. BOX would have multiple and competing market makers rather than a specialist driven system. There would be no designated specialists, primary market makers, or lead market makers with authority to control trading in a particular options class. Market making in an options class on BOX would be open to all qualified Options Participants who are approved by the

Chapter I, *General Provisions*, Sec. 1(a)(39) (definition of "Options Participant").

⁹ See proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18, *Price Improvement Period*.

¹⁰ The term "Customer" means either a Public Customer or a broker-dealer. The term "Public Customer" means a person that is not a broker or dealer in securities. All Customer orders must be submitted through an approved BOX Options Participant. See proposed BOX Rules, Chapter I, *General Provisions*, Sec. 1(a)(19) (definition of "Customer") and Sec. 1(a)(49) (definition of "Public Customer").

¹¹ The terms "Order Flow Provider" or "OFP" mean those Options Participants representing as agent Customer Orders on BOX. See proposed BOX Rules, Chapter I, *General Provisions*, Sec. 1(a)(45) (definition of "Order Flow Provider").

¹² The term "Market Maker" means an Options Participant registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of these proposed BOX Rules. All Market Makers are designated as specialists on the Exchange for all purposes under the Act. See proposed BOX Rules, Chapter I, *General Provisions*, Sec. 1(a)(31) (definition of "Market Maker").

Exchange as Market Makers.¹³ All appointed competing Market Makers would be responsible for ensuring basic liquidity. BOX has invested heavily to acquire the necessary processing capacity to rapidly and efficiently process the messaging traffic that multiple market making would generate as BOX believes this would significantly intensify competition. This competition would encourage tighter spreads and better pricing to the ultimate advantage of the investor. Further, in the spirit of maintaining a flat and open marketplace, BOX would limit Market Makers' privileges within their appointed classes to the ability to maintain orders on all series and to the opportunity to participate in PIP auctions. BOX Options Participants, whether Market Makers or Order Flow Providers, or both, would not be required to obtain membership in the BSE, nor to lease trading rights from any member ("seat holder") of the BSE. Market Maker Participants would be required to register as an Options Participant, obtain approval from the BSE and pay a modest annual access fee for trading rights and a low execution fee per contract.¹⁴

In addition, as BOX would be fully automated and without a central trading floor, Participants would have to access BOX from "remote" locations. The reduction in fixed costs and the barriers to entry would give rise to a wider variety of market participants than heretofore seen, resulting in fiercer competition to the ultimate advantage of the Customers who use BOX.

(ii) Anonymous Central Order Book with Price/Time Priority. All orders on BOX would be entered on the BOX Central Order Book ("BOX Book").¹⁵ Only prices and quantities would be displayed to all trading Participants, maintaining full anonymity with regard to the ownership of each order. With only minor exceptions, all orders would be matched on a strict price and time priority algorithm. This will result in better pricing since the price and time priority algorithm gives a strong incentive to trading Participants to post their very best prices rapidly. There would be no opportunity to "step up

¹³ See proposed BOX Rules, Chapter VI, *Market Makers*, Sec. 4, *Appointment of Market Makers*.

¹⁴ The BSE intends to file under separate cover a proposed rule change regarding BOX related fees, pursuant to Section 19(b) of the Act, 15 U.S.C. 78s(b).

¹⁵ The term "Central Order Book" or "BOX Book" means the electronic book of orders maintained by the BOX Trading Host. See proposed BOX Rules, Chapter I, *General Provisions*, Sec. 1(a)(12) (definition of "Central Order Book").

⁴ See Letter from George W. Mann, Jr., Executive Vice President and General Counsel, BSE, to Annette Nazareth, Director, Division, Commission, dated January 8, 2003.

⁵ 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. See proposed BOX Rules, Chapter I, *General Provisions*, Sec. 1(a)(6) (definition of "BOX").

⁶ 15 U.S.C. 78c(a)(2).

⁷ The founding members of BOX LLC are the BSE, the Bourse de Montreal, Inc., and Interactive Brokers Group, LLC.

⁸ The term "Options Participant" or "Participant" means a firm or organization that is registered with the Exchange pursuant to Chapter II of the proposed BOX Rules for purposes of participating in options trading on BOX as an "Order Flow Provider" and/or "Market Maker." See proposed BOX Rules,

and match" in order to participate in a trade on BOX.

(iii) All Orders Firm for All Traders. All orders on the BOX Book would be firm at all times for all trading Participants. An order on the BOX Book is available in its entirety to all parties on a "first come, first serve" basis whether from a Market Maker, Public Customer or broker/dealer account.

(iv) Price Improvement Period. To address the issues of internalization of Customer Orders by Order Flow Providers and Market Makers, BOX has developed PIP. The BOX PIP would be a very rapid auction starting at a price better than the current NBBO where BOX Participants could compete to improve the Customer side of the trade.

b. BOX Regulated as a Facility of the Exchange. The BSE has entered into various agreements with BOX LLC under which BOX LLC would operate BOX as a facility of the BSE. Pursuant to these agreements, the BSE would maintain responsibility for all regulatory functions related to the facility, and BOX LLC would be responsible for the business of the facility to the extent those activities are not inconsistent with the regulatory and oversight functions of the BSE. The BSE intends to file with the Commission under separate cover a proposed rule change regarding the delegation of authority from the BSE to Boston Options Exchange Regulation, LLC ("BOXR"), a wholly-owned subsidiary of the BSE, for regulatory functions related to the facility such as surveillance and compliance ("Delegation Plan"). In addition, the BSE intends to file under the Delegation Plan a proposed rule change regarding the relationship between the BSE, BOXR, and the BOX entities. In addition, the BSE intends to file the necessary rule changes to allow the BSE to join the Options Intermarket Linkage Plan, the Options Price Reporting Authority ("OPRA") and the Options Self-Regulatory Council ("OSRC"), which have been authorized under the applicable National Market System ("NMS") plans.¹⁶

c. The BSE Would Conduct All Necessary Surveillance of BOX. As part of its obligations under the Act and pursuant to its own rules, the BSE would conduct all necessary surveillance of the operation of and trading on BOX.¹⁷ The BSE intends to

implement a state-of-the-art electronic system for producing detailed audit trails of all orders submitted to BOX. The BSE emphasizes that it has not only the technological capability to establish and maintain an audit trail, but also, the staff expertise and capital resources to satisfactorily oversee a new electronic options market.

The BSE, as a well-established exchange, has the requisite staff experience to support and to supplement the technological surveillance necessary for the all-electronic BOX. As one of the nation's oldest securities exchanges, the BSE has repeatedly demonstrated its success in attracting qualified management and regulatory staff, who have proven their knowledge of the federal securities laws and the self-regulatory role of a registered exchange. Furthermore, consistent with the requirements of the Act, the BSE will demonstrate to the Commission, as necessary, that it has adequate financial resources to fund a surveillance program for a fully electronic options trading facility. In accordance with its regulatory responsibilities, the BSE will also demonstrate to the Commission that the technological capabilities of BOXR and BOX would be more than adequate for the surveillance of trading on BOX.¹⁸

d. The Boston Options Exchange. BOX, the proposed electronic options trading facility of the BSE, would offer liquidity, price quality and low cost of execution for market participants. BOX would function as a limit order book under the principle of price/time priority for all market participants' orders and would provide execution enhancements. Market Makers would participate electronically in BOX to enhance liquidity in the book and would be able to interact with order flow subject to automatic price improvement requirements. In addition, orders would be permitted facilitation on BOX subject to price improvement where the price and time priority of the limit order book is protected.

BOX is described in more detail in the following subsections. Specifically, subsection (i) describes the BOX membership structure and the

proposed Delegation Plan to be filed by the BSE under separate cover.

¹⁶ The BSE will comply with the Commission's Automation Review Policy with regard to BOX. See Securities Exchange Act Release No. 27445 (Nov. 16, 1989), 54 FR 48703 (Nov. 24, 1989) ("ARP I Release") and Securities Exchange Act Release No. 29185 (May 9, 1991), 56 FR 22490 (May 15, 1991) ("ARP II Release"). The BSE will ensure that BOX has "the capacity to accommodate current and reasonably anticipated future trading volume levels adequately and to respond to localized emergency conditions."

registration requirements as well as the trading obligations of Market Makers and Order Flow Providers. Subsection (ii) describes trading on the BOX Trading Host in detail, including a description of how orders are executed during BOX's trading session.

(i) BOX Membership Structure: Options Participants. With the introduction of BOX, the BSE intends to change its membership rules to reflect the new all-electronic options trading environment. BOX would have only one category of members, as that term is defined in the Section 3(a)(3)(A) of the Act: ¹⁹ Options Participants. Any registered broker-dealer who wishes to be a member once BOX begins operation would have to become a BSE-approved Options Participant.²⁰ By becoming an Options Participant, the registered broker-dealer would be permitted to effect options transactions on BOX. An Options Participant: (1) Must agree to be bound by the Constitution, By-Laws and Rules of the BSE and the BOX Rules, and by federal securities laws, and by all applicable rules and regulations of the Commission; (2) would not acquire ownership or distribution rights in the BSE or BOX; and (3) would have representation as will be proposed in the Delegation Plan to be filed with the Commission by the BSE under separate cover.

BOXR would authorize any Options Participant who met certain enumerated requirements to obtain access to BOX. The requirements for access are as follows: First, all Options Participants must make application to, and be approved by, the BSE as Options Participants. Second, all approved Participants must enter into an Options Participation Agreement with the Exchange. Options Participants would be approved to participate on BOX as Market Makers, Order Flow Providers, or both.

(A) Market Makers

Registered BOX Market Makers would be designated as dealer-specialists on the BSE for all purposes under the Act.²¹

(1) Registration. To become a market maker on BOX, an Options Participant would have to register as a BOX Market Maker by filing a written application with the BSE.²² In determining whether to approve a Market Maker application, the BSE would consider, among other

¹⁹ See 15 U.S.C. 78c(a)(3)(A).

²⁰ See proposed BOX Rules, Chapter II, *Participation*, Sec. 1, *Options Participation*.

²¹ See proposed BOX Rules, Chapter VI, *Market Makers*, Sec. 1, *Market Maker Registration*.

²² See proposed BOX Rules, Chapter VI, *Market Makers*, Sec. 1(a), *Market Maker Registration*.

¹⁶ The OSRC is currently operating under a draft agreement, as opposed to a formal plan declared effective by the Commission pursuant to Section 11A of the Act, 15 U.S.C. 78k-1.

¹⁷ The BSE will delegate to BOXR the authority to provide the necessary surveillance of the operation of and trading on BOX pursuant to the

things, the Options Participant's capital, operations, personnel, technical resources, and disciplinary history. Upon receipt by the Options Participant of notice of the BSE's approval, the Options Participant's Market Maker registration would become effective.²³ If the application is disapproved, the applicant Options Participant would have the opportunity to appeal the specific grounds of the denial under the provisions of Chapter II, *Participation*, Section 3, *Denial of and Conditions to Participation*. A Market Maker's registration could be suspended or terminated by the BOXR upon a determination that the Market Maker has failed to properly comply with the Market Maker's obligations under proposed Chapter VI Section 5 of the BOX Rules, as discussed below.

(2) Appointments. In addition to registering as a Market Maker generally, a Market Maker must obtain an appointment in each options class in which it wishes to make a market on BOX by filing an application with BOXR. In determining whether to approve or disapprove the Market Maker's appointment in a class, BOXR could consider, among other things: (1) The financial and technical resources available to the Market Maker; (2) the Market Maker's experience, expertise and past performances in making markets or options trading; and (3) the maintenance and enhancement of competition among Market Makers in each class of options to which it is appointed.²⁴

Each Market Maker may be appointed to any options class listed on BOX for trading. Such an appointment would consist of at least one class and may include all classes traded on the Exchange. BOXR would not list an options class for trading unless at least two Market Makers are appointed to the options class.²⁵ In addition, before BOXR opens trading for any additional series of an options class, it would require at least two Market Makers to be appointed for trading that particular class. Upon appointment, BOXR would require Market Makers to maintain active markets in that class for a period

of at least six months.²⁶ However, BOXR would not require a Market Maker in a class to continue trading in that class if BOXR makes an affirmative determination that continued trading in that class by a single Market Maker is to the detriment of that Market Maker, of no adverse consequence to an existing Customer of BOX or an Options Participant, and serves no greater purpose in the fair and orderly functioning of the marketplace.²⁷ Once a class is opened for trading and subsequently only one Market Maker remains appointed to that class, BOXR may continue trading in that class if BOXR makes an affirmative determination that halting of trading in such class would be detrimental to the remaining Market Maker, and that continued trading in such class by one Market Maker would be in the interest of maintaining a fair and orderly marketplace and would not create adverse consequence to an existing Customer of BOX or an Options Participant.²⁸

Under the proposal, BOXR may suspend or terminate any appointment of a Market Maker and may make additional appointments or change the options classes included in a Market Maker's appointment whenever, in BOXR's judgment, the interests of a fair and orderly market are best served by such action.²⁹

(3) Obligations. Market Makers on BOX would electronically engage in a course of dealing for their own account to enhance liquidity available on BOX and to assist in the maintenance of fair and orderly markets. In addition, Market Makers may interact with directed order flow, subject to price improvement requirements and certain obligations and duties. Specifically, Market Makers would have to satisfy the following responsibilities and duties during trading: (1) Maintain continuous firm, two-sided quotes, which are limit orders submitted to BOX by a Market Maker, in those options classes in which the Market Maker is appointed to trade; (2) maintain adequate minimum capital in accordance with Chapter VI Section 9;

(3) remain in good standing with BOXR; (4) inform BOXR of any material change in financial or operational condition or in personnel; and (5) clear and settle transactions through the facilities of a registered clearing member.³⁰ If BOXR found any substantial or continued failure by a Market Maker to meet the above obligations and duties, BOXR would subject the Market Maker to disciplinary action, suspension or revocation of the Market Maker's appointment in one or more options classes.³¹ Subject to certain limitations, a Market Maker may enter all order types permitted to be entered by Customer participants under the Rules to buy or sell options in classes of options listed on BOX to which the Market Maker is not appointed.³²

(B) Order Flow Providers

Order Flow Providers ("OFPs") would be those Options Participants representing orders of Public Customers and other Broker Dealers on the BOX market. OFPs may also register as Market Makers. OFPs may trade as principal, both as contra party to Customer Orders submitted to BOX by such OFP and as contra party to unrelated orders submitted to BOX by other Options Participants. OFPs may only act as contra party to their own Customer Orders pursuant to the rules of the Price Improvement Period (see discussion below).³³

(ii) The BOX Trading Host. BOX would operate an automated trading system for standardized equity options. This section describes the most significant rules and procedures governing trading on BOX.

(A) Generally

Each Market Maker on BOX would enter its own independent quotations into the BOX Trading Host ("Trading Host"). Market Makers would enter a quantity with their quotations, which must meet the minimum size requirements established by the Exchange.³⁴ OFPs would enter agency and principal orders into the Trading Host. Market Makers and OFPs may enter into BOX the following standard types of orders: market orders, limit orders, Day Orders, Good-Til-Canceled (GTC) Orders, Fill-or-Kill Orders, Fill-

²³ See proposed BOX Rules, Chapter II, *Participation*, Sec. 2, *Qualification Requirements for Options Participants* and proposed BOX Rules, Chapter VI, *Market Makers*, Sec. 1, *Market Maker Registration*.

²⁴ See proposed BOX Rules, Chapter VI, *Market Makers*, Sec. 4(b), *Appointment of Market Makers*.

²⁵ See proposed BOX Rules, Chapter IV, *Securities Traded on the Boston Options Exchange Facility*, Sec. 5(a), *Minimum Participation Requirement for Opening Trading of Option Classes*.

²⁶ See proposed BOX Rules, Chapter VI, *Market Makers*, Sec. 5(a)(viii), *Obligations of Market Makers*.

²⁷ See proposed BOX Rules, Chapter IV, *Securities Traded on the Boston Options Exchange Facility*, Sec. 5(b), *Minimum Participation Requirement for Opening Trading of Option Classes*.

²⁸ See proposed BOX Rules, Chapter IV, *Securities Traded on the Boston Options Exchange Facility*, Sec. 5(c), *Minimum Participation Requirement for Opening Trading of Option Classes*.

²⁹ See proposed BOX Rules, Chapter VI, *Market Makers*, Sec. 4(c), *Appointment of Market Makers*.

³⁰ See, generally, proposed BOX Rules, Chapter VI, *Market Makers*.

³¹ See proposed BOX Rules, Chapter VI, *Market Makers*, Sec. 5(e), *Obligations of Market Makers*.

³² See proposed BOX Rules, Chapter VI, *Market Makers*, Sec. 6(e), *Market Maker Quotations*.

³³ See proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18, *The Price Improvement Period*.

³⁴ See proposed BOX Rules, Chapter VI, *Market Makers*, Sec. 6(a), *Market Maker Quotations*.

and-Kill Orders, Market-on-Open Orders, and Minimum Volume Orders.³⁵ Market Makers and OFPs would receive from BOX information on all of the orders and quotations pending in the Trading Host, including a display of up to the five best bids and offers currently quoted on BOX in each options series, as well as the aggregate size at each of the five best prices.³⁶

(B) Order Ranking and Display

The BOX Book contains all the Options Participants' orders. Limit orders of Options Participants submitted to BOX would be ranked and maintained in the BOX Book according to price/time priority, such that within each price level, all orders would be organized by the time of entry.³⁷ No distinction is made to this priority with regard to account designation (Public Customer, Broker/Dealer or Market Maker). The orders are ranked based on the specified limit price and the time of original order entry in the Trading Host. If an order is executed in its entirety, its price/time priority is also exhausted and so, the next order in price/time priority would move to the top of the BOX Book. An Options Participant must submit a new order if it wishes to refresh its order. This new order would be ranked at the specified limit price according to the time that the new order was entered.

(C) Order Execution and Priority Rules

Trades would occur when orders or quotations match in the Trading Host. If more than one order has been entered into the Trading Host at the same price, priority would be based on the time of order entry.³⁸ If an Options Participant enters a limit order into the Trading Host that matches an order already in the Trading Host, a trade would occur at the price of the order already in the Trading Host up to the available size. After executing against that order, the limit order would trade against other orders in the Trading Host until the limit order is filled in its entirety or the limit order depletes the available size at that price. If any amount of the limit order remains unexecuted, the balance

of the order would become either the best bid or offer.³⁹

(D) Price Improvement Period

The BOX PIP system would enhance the traditional firm facilitation mechanism and provide guaranteed price improvement opportunities for Customers. Chapter V Section 18 of the BOX Rules provides an OFP with the ability to use the PIP to enter a Customer Order and execute that order as principal.⁴⁰ An OFP is not otherwise permitted to execute an agency order as principal unless the order is first permitted to interact with other interest on BOX through the PIP system.⁴¹

In order to preclude unfair internalization, BOX Rules prevent an OFP from entering simultaneous Customer and proprietary orders before there is an opportunity for the Customer Order to interact with other trading interest on BOX.⁴² BSE has proposed supplementary material in the BOX Rules to provide that it is a violation of Chapter V, Section 17 for an OFP to circumvent the Rules by providing an opportunity for a Customer to execute against agency orders handled by the OFP immediately upon their entry into the Trading Host. In addition, it would be a violation for an OFP to cause the execution of an order it represents as agent on BOX by orders it solicited from Options Participants and non-Option Participant broker-dealers to transact with such orders, whether such solicited orders are entered into the Trading Host directly by the OFP or by the solicited party (either directly or through another Participant), if the OFP fails to expose those orders on BOX as required by Chapter V, Section 17. The BSE believes that these interpretations would prevent an OFP from thwarting the restrictions on trading as principal.

(1) Key Features of the Price Improvement Period

(a) An OFP may submit any Customer Order for price improvement into the PIP at a price of at least one cent better than the prevailing NBBO.

(b) Market Makers and the introducing OFP may compete for the

Customer execution in one-cent increments; however, all BOX Participants are informed of each PIP and may submit competing orders at standard price increments.

(c) A Market Maker would need to match or improve the price proposed by the Primary Improvement Order⁴³ for the opportunity to participate in the execution.

(d) The PIP would run for three seconds and cannot be cancelled by the OFP.

(e) Execution is in price and time priority at the end of the PIP with two exceptions: (1) The OFP is guaranteed no more than a minimum quantity,⁴⁴ provided he has matched the PIP execution price and (2) a Market Maker Prime⁴⁵ may in some cases have partial time priority over other Market Makers at the end of the PIP.

(f) As the execution of the Customer Order is guaranteed at the start of the PIP, the Customer Order has priority over all other orders on his side of the market during the PIP.

(2) OFP Submission of Order to PIP

OFPs executing agency orders may designate market and marketable limit Customer Orders for price improvement and submission to the PIP. Customer Orders designated for the PIP would be submitted to BOX with a matching contra order, the "Primary Improvement Order,"⁴⁶ equal to the full size of the Customer Order. The Primary Improvement Order would be on the opposite side of the market than that of the original Customer Order and represent a bid (offer) that is at least \$.01 greater than the bid (less than the

⁴³ See proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18(e), *The Price Improvement Period*. See also, the discussion of OFP Submission of Order to PIP and PIP Participants and Improvement Orders in Sections (d)(ii)(D)(2) and (4) below.

⁴⁴ See the discussion of PIP Trade Allocation in Section (d)(ii)(D)(7).

⁴⁵ The Market Maker Prime is a BOX Market Maker who has partial time priority over all other Market Makers in the matching mechanism of the PIP. The Market Maker Prime is the first Market Maker who has a quote that is equal to the NBBO on the contra side of the market as the Customer Order at the instant the PIP is initiated. See the discussion of Market Maker Prime in Section (d)(ii)(E) below.

⁴⁶ An Improvement Order is any order entered into the PIP by the OFP at a price better than the specified NBBO or any order enter by a Market Maker at or better than the OFP's Primary Improvement Order. The subsequent price modifications to an OFP's Primary Improvement Order are treated as new Improvement Orders for the sake of establishing priority in the PIP process. See proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18(e)(i)-(ii), *The Price Improvement Period*. See also, the discussion of PIP Participants and Improvement Orders in Section (d)(ii)(D)(4) below.

³⁵ See proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 14, *Order Entry*.

³⁶ See proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 16(a)(ii), *Execution and Price/Time Priority*.

³⁷ See proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 16(a)(i), *Execution and Price/Time Priority*.

³⁸ See proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 16(a)(iv)(2), *Execution and Price/Time Priority*.

³⁹ See proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 16(a)(iv)(3), *Execution and Price/Time Priority*.

⁴⁰ BOX Order Flow Providers and Market Makers may attempt to interact with their own orders by initiating a PIP. However, for purposes of simplicity in this discussion, initiators of PIPs generally are referred to as "Order Flow Providers."

⁴¹ See proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 17(b), *Customer Orders and Order Flow Providers*.

⁴² See proposed BOX Rules, Chapter V, *Doing Business on BOX*, Section 17, *Supplementary Material .01 and .02, Customer Orders and Order Flow Providers*.

offer) of the National Best Bid Offer (NBBO) at the time of the commencement of the PIP.⁴⁷

(3) Pilot Program—No Minimum Size Requirement for Price Improvement

BSE believes the customer protection benefits of the PIP process should be open to orders of all sizes since:

(a) The price to the Customer for PIP orders must better the prevailing NBBO;

(b) The price to the Customer is firm;

(c) The OFP and not the Customer bears the risk of market movements during the PIP; and

(d) The Customer is given an opportunity for further price improvement during the three second exposure period.

From the Customer's perspective, the only result of having the Customer's small order being ineligible for the PIP would be that the Customer's order would likely be filled at a price at least a penny worse than if it had been filled through the PIP.⁴⁸ Indeed, because of the relatively lower risk to the OFP and the Market Makers by virtue of the small size, there is a greater likelihood of price improvement to be provided by BOX Market Makers stepping in and participating in the PIP. On the other hand, creating a minimum size requirement would mandate that all small orders are automatically executed at the prevailing quotes with no opportunity for any price improvement. Consequently, BOX would have no minimum size requirement for orders entered into the PIP, for at least a Pilot Period to extend eighteen months from the day trading commences on BOX. During this Pilot Period, BOX would supply the Commission with data to support at least the following tenets:

(a) That there is meaningful competition for all size PIP orders;

(b) That there is significant price improvement for all orders executed through the PIP, and;

(c) That there is an active and liquid market functioning on BOX outside of the PIP mechanism.

Any data that is submitted to the Commission by the BSE during this Pilot Period and related directly to it, would be submitted on a confidential basis.⁴⁹

(4) PIP Participants and Improvement Orders

Improvement Orders are specialized orders submitted in increments of \$.01 that are valid only in the PIP process. Improvement Orders may not be submitted in increments smaller than \$.01.⁵⁰ An Improvement Order is any order entered into the PIP by the OFP at a price better than the specified NBBO or any order entered by a Market Maker at or better than the OFP's Primary Improvement Order. PIP Participants would enter Improvement Orders seeking to gain priority to give the contra Customer Order an improved execution price over the NBBO. Only BOX Market Makers may submit competing Improvement Orders and only for those classes within their appointment. OFPs may submit Improvement Orders only in the PIP auction for which they have submitted the Primary Improvement Order.⁵¹ The subsequent price modifications by the OFP to an OFP's Primary Improvement Order are treated as new Improvement Orders for the sake of establishing priority in the PIP process.⁵² Market Makers and OFPs meeting the foregoing criteria would be deemed PIP Participants for that specific PIP only, and may continually submit competing Improvement Orders during that PIP.⁵³ Options Participants not deemed PIP Participants may nonetheless submit orders to the Trading Host during the PIP in order to compete; however, the normal price increments would apply to these orders.⁵⁴

BOX Improvement Orders are firm and cannot be cancelled during the PIP. Thus, from the outset of the PIP, a Customer is guaranteed a locked-in trade at a price at least a penny better than the NBBO, and the OFP (and not the Customer) bears full market risk during the PIP. An OFP is not permitted to cancel its Primary Improvement Order or the Customer Order nor modify the size of its Primary Improvement Order at any time during the PIP, and may only modify the price of its Primary Improvement Order by improving it. A Market Maker, except for a Market

Maker that has submitted a Primary Improvement Order, may: (1) Submit a competing Improvement Order for any size up to the size of the Customer Order, (2) submit competing Improvement Order(s) for any price equal to or better than the Primary Improvement Order, (3) improve the price of his Improvement Order at any point during the PIP, and (4) decrease the size of his Improvement Order, but only if he improves the price of that order.⁵⁵

(5) Competition During the PIP

At the conclusion of the PIP, the Customer Order would be matched in accordance with price/time priority against the best prevailing orders on BOX, whether Improvement Orders or subsequent "unrelated orders"⁵⁶ to the PIP that were received by BOX during the PIP process from non-PIP Participants.⁵⁷ Any portion of an Improvement Order left unfilled would be cancelled. The only exceptions to time priority in the PIP matching process concern limited priority accorded the OFP and Market Maker Prime at the PIP conclusion; these are described below in detail.⁵⁸

In cases where an unrelated order on the same side as the Customer Order is submitted to BOX during a PIP, which is immediately executable (all or partially) against either an Improvement Order or an order on the BOX Book, the PIP would be concluded and the Customer Order would be matched with the Improvement Order(s) to the fullest extent possible. Improvement Orders would not be matched with unrelated orders; however, the Customer Order may be executed against unrelated orders where the latter have a better price than the Improvement Order.⁵⁹

The BOX Rules provide strong incentives for both OFPs and Market Makers to compete aggressively for Customer Orders entered into the PIP process. First, in contrast to some other systems, under the proposed BOX Rules no one would get a "last look" to step

⁵⁵ See proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18(e)(ii), *The Price Improvement Period*.

⁵⁶ An "unrelated order" would be defined as a non-Improvement Order entered into the BOX market during a PIP. See proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18(a), *The Price Improvement Period*.

⁵⁷ See proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18(e)(iii), *The Price Improvement Period*.

⁵⁸ See proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18(f), *The Price Improvement Period* and Sec. 19, *Market Maker Prime*.

⁵⁹ See proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18(g), *The Price Improvement Period*.

⁴⁷ See proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18(e), *The Price Improvement Period*.

⁴⁸ See proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18, *Supplementary Material, The Price Improvement Period*.

⁴⁹ See proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18, *Supplementary Material, The Price Improvement Period*.

⁵⁰ See proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18(h), *The Price Improvement Period*.

⁵¹ See proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18(e)(i), *The Price Improvement Period*.

⁵² See proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18(e)(ii), *The Price Improvement Period*.

⁵³ See proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18(e)(i), *The Price Improvement Period*.

⁵⁴ See proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18(e)(f)(g), *The Price Improvement Period*.

up and match the prices bid or offered during the PIP. Therefore, the OFP attempting to trade against its own order through the PIP process, as well as the Market Makers who are competing to participate on that order, all have a strong incentive to put their best prices forward first before the PIP ends. In the PIP, the Market Maker would need to match or improve the price proposed by the OFP's Primary Improvement Order (or its modification) if the Market Maker is to participate in the execution. The PIP process is not a face-to-face or screen-based negotiation, but a true auction—where market participants are anonymous, where all the prices are firm from the beginning, where the auction cannot be cancelled by the facilitation firm, and where no one gets a last look to change one's price before the auction ends. Since the PIP is an anonymous trading environment where there is no specialist or market maker who controls the process and there is no physical, technological or procedural impediment to posting a better price and breaking into a trade, BOX Market Makers would have the opportunity and incentive not to let trades happen at uncompetitive prices.

(6) PIP Duration Is Three Seconds

The PIP auction process would be 3 seconds in duration because the BSE believes it is enough time for a vigorous, multi-round, electronic price improvement auction among the BOX Market Makers and the OFP who initiates the PIP, and yet is not so long that it is economically infeasible for OFPs to be firm for the Customer Order for at least a penny better than the prevailing NBBO at the inception of the PIP. This gives the Customer price protection against market movements but also exposes the OFP to full market risk during the entire course of the PIP. This exposure cannot be hedged because the OFP has no way of knowing with certainty how much—if any—of the trade the OFP would receive because the OFP's price may be matched or bettered by any Market Maker during the PIP.⁶⁰

Balanced against the fact that the OFP is held firm and bears full market risk during the PIP, the PIP must nonetheless be long enough to assure that the OFP's price to the Customer is a fair one—meaning among other things that a competitive, multi-round auction is possible between and among the OFP and the Market Makers in the relevant class. As a practical matter, the PIP

process for all Options Participants would necessarily be governed by computerized systems, not by human traders. Market Makers and OFPs can easily either develop their own software to manage trading on BOX, or utilize one of the many front-end solutions that have been written to connect with electronic-based exchanges.

In addition to the fact that BOX OFP and Market Maker prices must be firm during the PIP, the three second duration of the PIP reflects the processing speed of the trading system upon which BOX would be operated and the speed of network transmissions.⁶¹ The BOX system would implement full multi-round and multi-participant auctions during a PIP of three seconds. Therefore, the Exchange believes that a three second PIP is the best way to minimize the market risk borne by OFPs so that they can provide firm, aggressive pricing to Improvement Orders, and yet assure that those prices are tested by a reasonable electronic auction process.

(7) PIP Trade Allocation

As mentioned earlier, at the conclusion of the PIP, the Customer Order is executed against all orders on the opposite side of the BOX Book (both Improvement Orders, Market Maker quotes, unrelated orders and the Primary Improvement Order submitted by the OFP) following price priority. When two or more orders on the opposite side of the BOX Book are at an identical price limit, time priority is used with two exceptions.

As discussed below, if the OFP Primary Improvement Order as modified (if at all) is equal to the best limit price, the Primary Improvement Order has priority over all orders for 40 percent of the Customer Order. If there is a Market Maker Prime for this PIP, and the Market Maker Prime's Improvement Order is also at the best limit, the Market Maker Prime has priority over all other Market Maker Improvement Orders and unrelated orders up to one third of the unexecuted portion of the Customer Order remaining at that price level.⁶²

(8) OFP Priority Over Other Orders at Identical Price

Upon conclusion of the PIP, the OFP who submitted the Primary Improvement Order retains certain priority privileges. If the OFP's Primary

Improvement Order as modified (if at all) during the PIP is matched by or matches a competing Improvement Order or unrelated order at any price level, the OFP retains priority for only forty percent (40%) of any unexecuted portion of the Customer Order available at that price level, notwithstanding the time priority of the Primary Improvement Order, competing Improvement Order or unrelated order. The OFP will receive additional allocation only after all other orders have been filled at that price level.⁶³

(E). Market Maker Prime

The Market Maker Prime is a BOX Market Maker who has partial time priority over all other Market Makers in the matching mechanism of the PIP. The Market Maker Prime is a Market Maker who has a quote⁶⁴ that is equal to or better than the NBBO on the same side of the market as the Primary Improvement Order at the instant the PIP is initiated. If more than one Market Maker meets the criteria, the Market Maker whose quote has time priority would be the Market Maker Prime for that PIP.⁶⁵

At the conclusion of the PIP, the Market Maker Prime (if he has entered an Improvement Order during the PIP at a limit price which is executable against the Customer Order at the end of the PIP) would have a trade allocation priority of up to one third of the unexecuted portion of the Customer Order remaining at that price level after any priorities accorded the OFP have been met. The Market Maker Prime would have priority over all other Market Maker Improvement Orders and unrelated orders up to one third of the unexecuted portion of the Customer Order remaining at that price level.

If the Market Maker Prime modifies his quote on BOX during the PIP to meet the best limit price instead of entering an Improvement Order into the PIP process, the Market Maker Prime rules do not apply to the modified quote. The trade matching follows the normal PIP priority rules where the Market Maker Prime's modified quote would be treated as an unrelated order. If the Market Maker Prime cancels his quote during the PIP, the Market Maker keeps his status of Market Maker Prime for any Improvement Order previously entered

⁶³ See proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18(f), *The Price Improvement Period*.

⁶⁴ In this context a Market Maker's "quote" is derived from his order on the BOX Book and does not include any Improvement Orders in the PIP process.

⁶⁵ See proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 19, *Market Maker Prime*.

⁶⁰ See proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 18, *The Price Improvement Period*.

⁶¹ The communication of PIP orders from the BOX hub to BOX market participants is not reliant on OPRA and does not impact OPRA system capacity.

⁶² See proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 19, *Market Maker Prime*.

in that PIP.⁶⁶ The Market Maker Prime rules apply only if the Market Maker Prime enters an Improvement Order during the PIP, these rules do not apply to the quote of the Market Maker Prime

on BOX outside of the PIP process. At the conclusion of the individual PIP, the Market Maker loses his status as Market Maker Prime. A Market Maker Prime would be determined each time a new

PIP is triggered. There is not necessarily a Market Maker Prime for each PIP.⁶⁷

(F) PIP Examples

BOX—PIP TRADE ALLOCATION EXAMPLES

Below are examples of trade allocation for orders executed through the BOX PIP. The examples cover only orders executed via the PIP—all other orders executed on BOX are allocated in strict price/time priority.

Principles regarding the PIP:

—PIP duration is 3 seconds and must begin with an OFP Primary Improvement Order at a price at least one penny better than NBBO.

—If the OFP Primary Improvement Order is at the same price level at the end of the PIP as one or more Market Makers, then the OFP's allocation is 40%.

—Allocation among Market Makers who are all at the same price level at the end of the PIP is based on time priority of their Improvement Orders during the PIP, except that a Market Maker Prime would be entitled to a minimum of one third of the total available Market Maker allocation compared to other Market Makers at the same price level.

FOR EACH EXAMPLE NBBO is 2.00 bid 2.15 offer. BOX is 2.00 bid 2.15 offer at start of PIP.	Trade Allocation (# of contracts) If OFP and Market Maker Prime & 2 Other MMs Are on Parity at End of PIP (Market Maker A is Market Maker Prime).	Trade Allocation If Market Maker Prime & 2 Other MMs Are on Parity at End of PIP and There is No OFP on Parity (Market Maker A is Market Maker Prime)	Trade Allocation If 3 MMs Are on Parity and There Is No Market Maker Prime on Parity.
(NOTE: For simplicity, these examples all involve Customer sell orders, but the PIP process works the same for buys)			
1. OFP receives an order to sell 100 contracts and starts PIP with Primary Improvement Order bid of 2.01 or better. In time priority in the PIP, MMB bids 2.04 for 50 contracts, MMC bids 2.04 for 50 contracts, and MMA bids 2.04 for 50 contracts.	OFP 40 MMA 20 MMB 40 MMC 0	MMA 33 MMB 50 MMC 17	MMB 50. MMC 50. MMA 0.
2. OFP receives an order to sell 100 contracts and starts PIP with bid of 2.01 or better. In time priority in the PIP, MMB bids 2.04 for 20 contracts, MMC bids 2.04 for 30 contracts, and MMA bids 2.04 for 50 contracts.	OFP 40 MMA 20 MMB 20 MMC 20	MMA 33 MMB 20 MMC 30 MMA 17 (MMA total = 50; 33 "Prime" allocation + 17 time priority)	MMB 20. MMC 30. MMA 50.
3. OFP receives an order to sell 100 contracts and starts PIP with bid of 2.01 or better. In time priority in the PIP MMB bids 2.04 for 50 contracts, MMC bids 2.04 for 30 contracts, MMA bids 2.04 for 50 contracts.	OFP 40 MMA 20 MMB 40 MMC 0	MMA 33 MMB 50 MMC 17	MMB 50. MMC 30. MMA 20.
4. OFP receives an order to sell 100 contracts and starts PIP with bid of 2.01 or better. In time priority in the PIP MMA bids 2.04 for 50 contracts, MMB bids 2.04 for 30 contracts, MMC bids 2.04 for 50 contracts.	OFP 40 MMA 20 MMA 30 MMB 10 (MMA total = 50; 20 "Prime" allocation + 30 time priority)	MMA 33 MMA 17 MMB 30 MMC 20 (MMA total = 50; 33 "Prime" allocation + 17 time priority)	MMA 50. MMB 30. MMC 20.
5. OFP receives an order to sell 10 contracts and starts PIP with bid of 2.01 or better. In time priority in the PIP MMB bids 2.04 for 10 contracts, MMC bids 2.04 for 10 contracts, MMA bids 2.04 for 10 contracts.	OFP 4 MMA 2 MMB 4 MMC 0	MMA 3 MMB 7 MMC 0	MMB 10. MMC 0. MMA 0.
6. OFP receives an order to sell 10 contracts and starts PIP with bid of 2.01 or better. In time priority in the PIP MMA bids 2.04 for 10 contracts, MMB bids 2.04 for 10 contracts, MMC bids 2.04 for 10 contracts.	OFP 4 MMA 2 MMA 4 (MMA total = 6; 2 "Prime" allocation + 4 time priority)	MMA 3 MMA 7 (MMA total = 10; 3 "Prime" allocation + 7 time priority)	MMA 10. MMB 0. MMC 0.

⁶⁶ See proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 19, *Market Maker Prime*.

⁶⁷ See proposed BOX Rules, Chapter V, *Doing Business on BOX*, Sec. 19, *Market Maker Prime*.

BOX—PIP TRADE ALLOCATION EXAMPLES—Continued

7. OFP receives an order to sell 100 contracts and starts PIP with bid of 2.01 or better. In time priority in the PIP MMB bids 2.04 for 10 contracts, MMC bids 2.04 for 50 contracts, MMA bids 2.04 for 50 contracts.	OFP 40 MMA 20 MMB 10 MMC 30	MMA 33 MMB 10 MMC 30 MMA 17 (10 to bidder(s) at next highest PIP bid) (MMA total = 50; 33 "Prime" allocation + 17 time priority)	MMB 10. MMC 30. MMA 50. (10 to bidder(s) at next highest PIP bid)
8. OFP receives an order to sell 100 contracts and starts PIP with bid of 2.01 or better. In time priority in the PIP. MMB bids 2.05 for 10 contracts, MMC bids 2.04 for 30 contracts, and MMA bids 2.04 for 50 contracts.	MMB 10 at 2.05 OFP 36 at 2.04 MMA 18 at 2.04 MMC 30 at 2.04 MMA 6 at 2.04 (MMA total = 24; 18 "Prime" allocation + 6 time priority)	MMB 10 at 2.05 MMA 30 at 2.04 (1/3 of 90) MMC 30 at 2.04 MMA 20 at 2.04 (10 to bidder(s) at next highest PIP bid) (MMA total = 50; 30 "Prime" allocation + 20 time priority)	MMB 10 at 2.05. MMC 30. MMA 50. (10 to bidder(s) at next highest PIP bid).

e. Conclusion. In all, BOX has a market structure that would be "flat and open," built on the price/time priority representation of all market participants' orders. These key ingredients, coupled with the low cost of entry, would offer liquidity, price quality and low cost for all market participants. Additionally, the Exchange is confident that there would be active Market Maker participation in BOX for several reasons:

(a) In order to ensure vigorous price competition in all cases, BOX would not begin trading any class of options unless there is a minimum of two Market Makers appointed to the class. As a result, Customer Orders would be subject to auctions potentially including at least three participants—the two Market Makers and the OFP submitting the Primary Improvement Order—assuring the possibility of a real, competitive auction process.⁶⁸

(b) A Market Maker would be given dual incentives to quote the best price first on BOX: (1) To gain price/time priority for the entire size of his quote, and (2) to gain the Market Maker Prime trade allocation privileges in a PIP.

(c) The ability of Market Makers trading in the PIP to competitively price orders in finer increments than those generally employed in BOX would provide incentives for them to participate as Market Makers in the auction process.

(d) A Market Maker would have a high incentive for aggressively pricing an option for which a PIP is underway since there is an indisputable and immediate Customer interest in the option that is certain to result in a trade execution.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements under Section 6(b) of the Act,⁶⁹ in general, and furthers the objective of Section 6(b)(5) of the Act,⁷⁰ in particular, in that it is designed 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 transaction in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change 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

The Exchange did not solicit or receive written comments on the proposed rule change.

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 Exchange consents, the Commission will:

(A) By order approve such 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 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 filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-BSE-2002-15 and should be submitted by February 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷¹

Margaret H. McFarland,

Deputy Secretary.

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⁶⁸ Telephone conversation between Wayne Pestone, Bingham McCutchen LLP (outside counsel for the Exchange), and Deborah L. Flynn, Assistant Director, Division, Commission, on January 9, 2003.

⁶⁹ 15 U.S.C. 78f(b).

⁷⁰ 15 U.S.C. 78f(b)(5).

⁷¹ 17 CFR 200.30-3(a)(12).