(2) the mark-to-market of futures contracts and stock loan positions, and (3) exercises and assignments of cash-settled option contracts.

OCC's settlement banks routinely approve and are required to honor the associated settlements made by OCC and OCC's clearing members within these time frames. On most business days, the entire bank approval process, which irrevocably obligates each settlement bank to make settlement, is completed by 8:30 a.m.

Under OCC's rules, a failure by OCC to pay its daily settlement obligations to clearing members by 10 a.m. constitutes a default. During discussions among OCC's senior management of various potential extreme default and liquidity squeeze scenarios, including the possible default of one of OCC's largest clearing members, OCC analyzed the risk associated with not being able to immediately access liquidity resources in time to meet the 10 a.m. deadline for OCC to pay settlement amounts to clearing members. The deadline may be difficult to meet if, for example, OCC learned of a default near the 9 a.m. deadline. In such a circumstance, OCC would have only one hour or less when the time needed to process and communicate information is considered to access the funds necessary to meet the 10 a.m. deadline.

OCC's immediate liquidity resources rely heavily upon its $2.0 billion revolving credit facility, which is backed by Treasuries held in the clearing fund. A one-hour advance notice is required prior to OCC drawing funds from the credit facility. Beyond the credit facility, it would probably take more than one hour to raise cash by borrowing against the Treasuries held in the clearing fund that are not securing the credit facility either through tri-party repurchase agreements or a traditional bank loan.

The main benefit of moving the deadline to 1 p.m. for OCC to pay clearing members settlement amounts is that it allows up to four hours as opposed to the current one hour, within which OCC can meet its daily settlement requirement without being required to declare an emergency in order to do so. In addition, based on discussions with its settlement banks, OCC believes that notwithstanding a change from the current 10 a.m. deadline to a 1 p.m. deadline, the settlement banks will continue the current practice of approving settlements as soon as they can make a credit determination (*i.e.,* confirm present funds or extend credit to the customer) and process OCC's payment requests, which are tasks that are typically completed by 8:30 a.m.

OCC also has incorporated in its rules the authority to extend the deadline for it to pay settlement amounts to clearing members to the close of the Federal Reserve Banks' Fedwire Funds Service on a settlement day, if necessary, during an emergency situation.[3] Such an extension is consistent with the emergency authority other clearinghouses have to deal with late settlement scenarios. The rule amendments would authorize the Board, Chairman of the Board, Management Vice Chairman, or President of OCC to delay settlement beyond 1 p.m. in emergency situations. The rule amendments would authorize the named officers to take such action because the decision may need to be made under time constraints where the Board (or even the Membership/Risk Committee) could not be convened in time to take the necessary action.[4] OCC anticipates that the emergency authority would be used infrequently, if ever. Under proposed Rule 505, such authority could only be used upon a determination by the Board or an authorized officer that extension of the settlement time is necessary or advisable for the protection of OCC or otherwise in the public interest. In the event that the emergency authority is exercised, a number of protections are built into the process. For example, the determination and the reasons for the extension will be promptly reported to the Commission, the Commodities Futures Trading Commission, and any other regulatory or supervisory authorities having jurisdiction over OCC. In addition, the clearing members will be notified of the extension, and a report outlining the emergency actions will be maintained in OCC's records.

For drafting clarity and economy, the specific settlement times have been removed from the applicable rules, a new definition of ''settlement day'' has been created, and a revised definition of ''settlement time'' has been inserted in Article I of the By-Laws.

### III. Discussion

Section 17A(b)(3)(F) of the Act[5] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of security transactions and to generally protect investors and the public interest. Because the proposed rule change modifies OCC's Rules and By-Laws to give OCC flexibility to make settlement payments to its clearing members in a timely manner during normal and abnormal market conditions, the proposed rule change promotes the prompt and accurate clearance and settlement of security transactions and generally protects investors and the public interest and therefore is consistent with the requirements of Section 17A(b)(3)(F) of the Act.

### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[6] and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–OCC–2011–05) be, and hereby is, approved.[8]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Cathy H. Ahn,**

*Deputy Secretary.*

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**BILLING CODE 8011–01–P**

[3] In the event that OCC is unable to pay settlement amounts to clearing members by the close of the Fedwire Funds Service on a settlement day due to an emergency or force majeure condition, OCC will seek appropriate relief from the regulatory or supervisory authorities having jurisdiction over OCC.

[4] Similar authority is provided to the OCC Chairman (or the Board) to summarily suspend a clearing member. *See* OCC Rule 1102.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78s(b)(2).

[8] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–64734; File No. SR–BX–2011–034]**

## Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change Relating to Amending the BOX Trading Rules To Establish Facilitation and Solicitation Auction Mechanisms

June 23, 2011.

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 June 17, 2011, NASDAQ OMX BX, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

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

The Exchange proposes to amend Chapter V, (Doing Business on BOX), Section 31 (Block Trading) of the Rules of the Boston Options Exchange Group, LLC (''BOX'') to establish Facilitation and Solicitation auction mechanisms. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/*.

## 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 self-regulatory organization 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 self-regulatory organization 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

Currently, BOX offers only one execution mechanism for the execution of two-sided crossing transactions—the Price Improvement Period auction.[3] Competitor options exchanges offer multiple mechanisms to execute two-sided orders, including facilitation and solicitation mechanisms for large block orders.[4] To remain competitive with other options exchanges for block-size facilitation and solicitation transactions, BOX has developed additional auction mechanisms. This rule change proposes implementation on BOX of a Facilitation Auction mechanism and a Solicitation Auction mechanism.

Facilitation Auction

The Facilitation Auction will allow Order Flow Providers (''OFPs'') to enter crossing transactions where the OFP represents a block-size order as agent (''Agency Order'') and (1) Is trading against the Agency Order as principal (*i.e.,* facilitating the Agency Order) and/or (2) has solicited an order to take the opposite side of the Agency Order. Thus, the Facilitation Auction will allow block-size order executions against facilitated or solicited orders, or against a combination of facilitated and solicited orders. This auction will give OFPs the added flexibility to execute a transaction where the OFP facilitates only a portion of the order opposite its Agency Order, and has solicited interest from other parties for the remaining size of the order opposite its Agency Order. The Facilitation Auction will be limited to orders of fifty (50) contracts or more.

OFPs must be willing to execute the entire size of Agency Orders entered into the Facilitation Auction through the submission of a contra ''Facilitation Order.'' Upon the entry of an Agency Order and Facilitation Order into the Facilitation Auction, a broadcast message will be sent to Options Participants, giving them one second to enter responses with the prices and sizes at which they would be willing to participate in the facilitation opposite the Agency Order (''Responses''). Responses may be priced at the price of the Agency Order or at a better price and must not exceed the size of the Agency Order to be facilitated. At the end of the one second period for the entry of Responses, the Facilitation Order will be automatically executed with the Agency Order.

Unless there is sufficient size to execute the entire Agency Order at a better price, Public Customer bids (offers) and Public Customer Responses on BOX at the time the Agency Order is executed that are priced higher (lower) than the facilitation price will be executed at the facilitation price. Non-Public Customer and Market Maker bids (offers) and Non-Public Customer and Market Maker Responses on BOX at the time the Agency Order is executed that are priced higher (lower) than the facilitation price will be executed against the Agency Order at their stated price, providing the Agency Order execution at a better price for the number of contracts associated with such higher bids (lower offers) and Responses.

The facilitating OFP will execute at least forty percent (40%) of the original size of the Facilitation Order, but only after better-priced bids (offers) and Responses on BOX, as well as Public Customer bids (offers) and Responses at the facilitation price, are executed in full. After the facilitating OFP has executed his forty percent (40%), Non-Public Customer and Market Maker bids (offers) and Responses on BOX at the facilitation price will participate in the execution of the Agency Order based upon price and time priority.

The following example illustrates the execution priority within the Facilitation Auction. An OFP submits a Facilitation Order to buy and Agency Order to sell 100 contracts at a proposed execution price of $2.00. At the end of the auction, the NBBO is bid $2.00—offer $2.10. During the one second auction, BOX receives the following bids (offers) in time priority:

(1) Market Maker offer on the Book to buy 100 contracts at $2.00.

(2) Public Customer Response to buy 50 contracts at $2.00.

Since there are no bids (offers) or Responses at an improved price, the Public Customer would execute 50 contracts against the Agency Order; the Facilitation Order will execute 40 contracts (40% of 100) against the Agency Order; and the Market Maker on the Book would execute the remaining 10 contracts against the Agency Order; all at $2.00.

Solicitation Auction

To better compete for block-size solicited transactions, BOX has developed a Solicitation Auction. The Solicitation Auction is a process by which an OFP can attempt to execute orders of 500 or more contracts it represents as agent (the ''Agency Order'') against contra orders that the OFP has solicited (''Solicited Order'').[5] The proposed rule change will allow OFPs to enter both sides of a proposed solicited cross (the Agency and Solicited Orders). These solicitation transactions will be required to be for at least 500 contracts and will be executed only if the price is at or between the national best bid or offer (''NBBO''). Each Agency Order entered into the Solicitation Auction shall be all-or-none.

When a proposed solicited cross is entered into the Solicitation Auction, BOX will broadcast a message to Options Participants and they will have

[3] Capitalized terms not otherwise defined herein shall have the meanings prescribed within the BOX Rules.

[4] *See, e.g.,* International Securities Exchange Rule 716 and Chicago Board Options Exchange Rule 6.74B.

[5] Although orders solicited from Public Customers are not subject to the exposure requirement of Supplementary Material .02 to Section 17 of Chapter V of the BOX Rules, they would be permitted to be entered into the Solicitation Auction should OFPs choose this alternative.

one second to respond with the prices and sizes at which they would be willing to participate in the execution of the Agency Order (''Responses''). At the end of the period for Responses, the Agency Order will be automatically executed in full or cancelled. The Agency Order will be executed against the Solicited Order at the proposed execution price unless there is sufficient size to execute the entire Agency Order at a better price or prices, or there is a Public Customer Order (A) at a price equal to or better than the proposed execution price; and (B) on the BOX Book within a depth of the BOX Book so that it would otherwise trade with the Agency Order if the Agency Order had been submitted to the BOX Book, (a ''Book Priority Public Customer Order'').[6]

If at the time of execution there is sufficient size to execute the entire Agency Order at an improved price (or prices), the Agency Order will be executed at the improved price(s) and the Solicited Order will be cancelled.[7] For example, an OFP starts a Solicitation Auction by submitting to BOX an Agency Order to buy and a Solicited Order to sell 1,000 contracts with a proposed execution price of $2.10. At the end of the one second auction, the NBBO is bid $2.00—offer $2.10. During the auction, BOX received the following bids (offers) in time priority:

(1) Market Maker Response to sell 400 contracts at $2.08;

(2) Market Maker offer on the Book to sell 300 contracts at $2.08;

(3) Public Customer Response to sell 200 contracts at $2.08;

(4) Public Customer Order on the Book to sell 300 contracts at $2.08.

Since there is sufficient size to execute the entire Agency Order at an improved price, the Agency Order will execute in time priority against each of the bids (offers) and Responses at $2.08, and the Solicited Order would be cancelled. The Agency Order would execute 400 contracts against the Market Maker Response; 300 contracts against the Market Maker offer on the Book; 200 contracts against the Public Customer Response; and 100 contracts against the Public Customer Order on the Book. The remaining 200 contracts of the Public Customer Order on the Book would remain unexecuted.

If at the time of execution, there are one or more Book Priority Public Customer Orders on the BOX Book, the Agency Order will be executed against the BOX Book if there is sufficient size available to execute the entire Agency Order, and the Solicited Order will be cancelled. In this instance, the aggregate size of all bids (offers) on the BOX Book at or better than the proposed execution price will be used to determine whether there is sufficient size available to execute the entire Agency Order. Responses are excluded when determining whether sufficient size exists to execute the Agency Order at its proposed price.[8] For example, an OFP starts a Solicitation Auction by submitting to BOX an Agency Order to buy and a Solicited Order to sell 1,000 contracts with a proposed execution price of $2.10. At the end of the one second auction, the NBBO is bid $2.00—offer $2.10. During the auction, BOX received the following bids (offers) in time priority:

(1) Market Maker offer on the Book to sell 700 contracts at $2.09;

(2) Public Customer Order on the Book to sell 400 contracts at $2.10.

There is a Book Priority Public Customer Order on the Book and there is sufficient size on the Book to execute the entire Agency Order. As such, the Agency Order will be executed against the orders on the BOX Book based upon price/time priority, and the Solicited Order will be cancelled. In this example, the Agency Order will execute 700 contracts against the Market Maker on the Book at $2.09, and 300 contracts against the Book Priority Public Customer Order. The remaining 100 contracts of the Public Customer Order on the Book would remain unexecuted.

Similar to the example above, assume during the auction BOX received the following bids (offers) in time priority:

(1) Public Customer Order on the Book to sell 400 contracts at $2.09;

(2) Market Maker offer on the Book to sell 600 contracts at $2.10.

Then, the Agency Order will also be executed against the orders on the Book based upon price/time priority and the Solicited Order will be cancelled. In this example, the Agency Order will execute 400 contracts against the Public Customer Order at $2.09, and 600 contracts against the Market Maker at $2.10.

BOX determines whether sufficient size exists on the BOX Book to execute the Agency Order so as to prevent (i) Any trade-through of the BOX Book and (ii) any Book Priority Public Customer Order from being bypassed by a Solicitation Auction execution. If the Agency Orders in these two examples above had been sent directly to the BOX Book rather than the Solicitation Auction, the resulting execution against the Agency Order would have been the same.

If there is a Book Priority Public Customer Order on the BOX Book, but there is insufficient size to execute the entire Agency Order at the proposed execution price, however; both the Agency and Solicited Orders will be cancelled. For example, an OFP starts a Solicitation Auction by submitting to BOX an Agency Order to buy and a Solicited Order to sell 1,000 contracts with a proposed execution price of $2.10. At the end of the one second auction, the NBBO is bid $2.00—offer $2.10. During the auction, BOX received the following bids (offers) in time priority:

(1) Public Customer Order on the Book to sell 400 contracts at $2.10;

(2) Market Maker offer on the Book to sell 300 contracts at $2.10.

In this example, there is a Book Priority Public Customer Order on the BOX Book, but there is insufficient size on the Book to execute the entire Agency Order at the proposed execution price. As such, both the Solicited Order and Agency Order will be cancelled, except under the Surrender Quantity conditions described below.

Surrender Quantity

To increase the successful execution of block Solicitation Auction trades and Public Customer Orders on BOX while protecting the BOX Book, BOX has developed the ''Surrender Quantity'' function for Solicitation Auctions. When starting a Solicitation Auction, the OFP may designate, for the Solicited Order, the quantity of contracts of the

[6] In contrast to the Facilitation Mechanism, only Public Customer Orders that are within a depth of the BOX Book so that they would otherwise trade with the Agency Order if it were submitted to the BOX Book are eligible to trade with the Agency Order in the Solicitation Mechanism. Options Participants' orders submitted to BOX are ranked and maintained in the BOX Book according to price/time priority, such that within each price level, all orders are organized by time of order entry. No distinction is made to this priority with regard to account designation (Public Customer, Broker/Dealer, or Market Maker). BOX believes that price/time priority provides an incentive for all market participants to post their best prices quickly. As such, BOX will consider only these Priority Public Customer Orders based on price/time priority. Stated otherwise, if an Agency Order of the same block size was executed on the BOX Book rather than through the Solicitation Auction, only those orders with price/time priority would execute against the Agency Order. Those Public Customer Orders on the BOX Book beyond the depth equal to the Agency Order size would not be executed against the Agency Order.

[7] The aggregate size of all bids (offers) and Responses at each price will be used to determine whether the entire Agency Order can be executed at an improved price (or prices).

[8] As set forth in proposed Supplementary Material .03 to Chapter V, Section 31, Responses are sent by Options Participants in response to a Facilitation or Solicitation Auction broadcast message. Responses represent non-firm interest that can be canceled or decremented as to price or size at any time prior to execution and are not displayed to any market participants.

Agency Order for which the OFP is willing to 'surrender' interest to the BOX Book (''Surrender Quantity''). The Surrender Quantity will apply at the time of execution only if there are (1) Book Priority Public Customer Orders on the BOX Book, or (2) any bids (offers) on the BOX Book at any price better than the proposed execution price. Only these orders on the BOX Book will be eligible for execution utilizing the Surrender Quantity.

With the Surrender Quantity function, BOX seeks to protect Public Customer Orders that would have traded with the Agency Order if the Agency Order had been submitted to the BOX Book. When the aggregate size of (1) Book Priority Public Customer Orders and (2) all bids (offers) on the BOX Book at prices better than the proposed execution price, is equal to or less than the Surrender Quantity, the Agency Order will first execute against all such Book Priority Public Customer Orders and all such bids (offers), and then against the Solicited Order. If the aggregate size of all such Book Priority Public Customer Orders and all such bids (offers) exceeds the Surrender Quantity, but there is insufficient size to execute the entire Agency Order, then both the Solicited Order and the Agency Order will be cancelled.

*Example:* The OFP starts a Solicitation Auction by submitting to BOX an Agency Order to buy and a Solicited Order to sell 1,000 contracts with a proposed execution price of $2.10. The OFP also designates 200 contracts as the Surrender Quantity. At the end of the one second auction the NBBO is bid $2.00—offer $2.10. During the auction, BOX received the following bids (offers) in time priority:

(1) Public Customer Order on the Book to sell 200 contracts at $2.10;

(2) Market Maker offer on the Book to sell 800 contracts at $2.10.

Without the Surrender Quantity, the Agency Order would execute against the Public Customer Order on the Book for 200 contracts at $2.10 and against the Market Maker on the Book for 800 contracts at $2.10. Using the Surrender Quantity, however, the Agency Order would still execute against the Public Customer Order on the Book, but would then execute against the Solicited Order for 800 contracts at $2.10.

Additionally, use of the Surrender Quantity function will allow block-size Solicitation Auction trades in certain instances in which there would otherwise be no execution. In these instances, use of the Surrender Quantity will also prevent (i) a trade-through of the BOX Book and any Book Priority Public Customer Order from being bypassed upon a Solicitation Auction execution. Under the proposed rule change there are other situations when, absent use of the Surrender Quantity, the Solicitation Auction would result in no trade. The first is when a Book Priority Public Customer Order is on the BOX Book and there is insufficient quantity on BOX, other than the Solicited Order, to execute the entire Agency Order. Without the Surrender Quantity function, both the Solicited Order and Agency Order would be cancelled and the Public Customer Order would remain unexecuted, keeping the Public Customer Order on the Book from being bypassed upon a Solicitation Auction execution. The second instance is when the proposed execution price is inferior to the best bid or offer on BOX (meaning there is a better priced bid (offer) on BOX) or inferior to the NBBO. Again, without the Surrender Quantity function, no execution would occur, keeping the better priced bids (offers) on the BOX Book from being bypassed upon a Solicitation Auction execution. In both instances, Public Customer Orders, the better priced bids (offers), the Solicited Order and the Agency Order remain unexecuted. Under this proposed rule change, however, if the Surrender Quantity is utilized and is of sufficient size, then the orders are executed against the Agency Order as follows: Public Customer Orders, better priced bids (offers), and the Solicited Order. If the Surrender Quantity is of insufficient size, then no execution occurs and again any trade-through of the BOX Book or execution ahead of a Book Priority Public Customer Order is prevented. The Surrender Quantity provides the potential for various market participants to benefit from the execution they desire. The following examples illustrate the proposed Surrender Quantity concept:

*Example:* The OFP starts a Solicitation Auction by submitting to BOX an Agency Order to buy and a Solicited Order to sell 1,000 contracts with a proposed execution price of $2.10. The OFP also designates 200 contracts as the Surrender Quantity. At the end of the one second auction the NBBO is bid $2.00—offer $2.10. During the auction, BOX received the following bids (offers) in time priority:

(1) Response of 150 contracts to sell at $2.08;

(2) Market Maker offer on the Book of 200 contracts at $2.10;

(3) Response of 100 contracts to sell at $2.10;

(4) Public Customer Order offer on the Book of 100 contracts at $2.10;

(5) Response of 50 contracts to sell at $2.10.

Since there is insufficient size to execute the entire Agency Order and the Surrender Quantity of 200 is greater than the total size of Book Priority Public Customer Orders (100), the Agency Order will execute 100 contracts against the Book Priority Public Customer Order at $2.10 and the remaining 900 contracts against the Solicited Order at $2.10.[9] In this example, without the use of the Surrender Quantity, the Priority Public Customer Order would force the Agency Order and Solicited Order to be cancelled while the Public Customer Order remained unexecuted.

*Example:* The OFP starts a Solicitation Auction by submitting to BOX an Agency Order to buy and a Solicited Order to sell 1,000 contracts with a proposed execution price of $2.10. The OFP also designates 200 contracts as the Surrender Quantity. At the end of the one second auction the NBBO is bid $2.00—offer $2.10. During the auction, BOX received the following bids (offers) in time priority:

(1) Response of 150 contracts to sell at $2.08;

(2) Market Maker offer on the Book of 100 contracts at $2.08;

(3) Response of 100 contracts to sell at $2.10;

(4) Public Customer Order on the Book of 50 contracts to sell at $2.08;

(5) Public Customer Order on the Book of 50 contracts to sell at $2.10

(6) Response of 50 contracts to sell at $2.10.

Since there is insufficient size to execute the entire Agency Order, and the Surrender Quantity of 200 is equal to the total size of Public Customer Orders (100) and the better priced offers (Market Maker offer of 100 at $2.08), the Agency Order will execute 100 contracts at $2.10 against the Public Customer Orders, 100 contracts against the Market Maker offer at $2.08, and the remaining 800 contracts against the Solicited Order at $2.10. The Public Customer Order of 50 contracts to sell at $2.08 executes at the proposed solicitation execution price of $2.10. The Agency Order executes at $2.08 for the 100 contracts against the Market Maker offer. Without the Surrender Quantity function, the Book Priority Public Customer Order and the market maker offer on BOX at a better price would result in the Agency Order and Solicited Order being cancelled while the Public Customer Orders remained unexecuted.

Public Customer bids (offers) on the BOX Book at the time of an execution that includes a Surrender Quantity, and

[9] As noted at the beginning of this section regarding *Surrender Quantity*, the only orders eligible for execution utilizing the Surrender Quantity are (1) Book Priority Public Customer Orders and (2) any bids (offers) on the BOX Book at any price better than the proposed execution price. Responses are not eligible for execution utilizing the Surrender Quantity.

that are priced higher (lower) than the proposed Solicitation Auction execution price, will be executed against the Agency Order at the proposed execution price. BOX believes this will provide Public Customers the benefit of a better price for the number of contracts associated with such higher bids (lower offers). Non-Public Customer and Market Maker bids (offers) on the BOX Book at the time of a Surrender Quantity execution that are priced higher (lower) than the proposed execution price will be executed at their stated price. BOX believes this will provide the Agency Order a better execution price for those contracts.

Additionally, the proposed rule change would require OFPs to deliver to customers a written notification describing the terms and conditions of the Solicitation Auction prior to executing Agency Orders using the Solicitation Auction. Such written notification would be required to be in a form approved by the Exchange.

Supplementary Material to Section 31

Further, the proposed rule change specifies in Supplementary Material to Chapter V, Section 31 that it will be a violation of an Options Participant's duty of best execution to its customer if it were to cancel a Facilitation Order to avoid execution of the order at a better price. The availability of the Facilitation Auction does not alter an Options Participant's best execution duty to obtain the best price for its customer. Accordingly, while Facilitation Orders may be canceled during the time period given for the entry of Responses, if an Options Participant were to cancel a Facilitation Order when there was a better price available on BOX and subsequently re-enter the Facilitation Order at the same facilitation price after the better price was no longer available without attempting to obtain that better price for its customer, there would be a presumption that the Options Participant did so to avoid execution of its customer order in whole or in part by other brokers at the better price.

In addition, Options Participants will be prohibited from using the Solicitation Auction to circumvent Section 17 of Chapter V which limits principal transactions. Prohibited actions may include, but be not limited to, Options Participants entering Solicitation Orders that are solicited from (1) Affiliated broker-dealers, or (2) broker-dealers with which the Options Participant has an arrangement that allows the Options Participant to realize similar economic benefits from the solicited transaction as it would achieve by executing the customer order in whole or in part as principal. Moreover, any Solicited Orders entered by Options Participants to trade against Agency Orders may not be for the account of a BOX market maker that is assigned to the options class.

Additionally, the proposed rule change would allow Orders and Responses to be entered into the BOX Facilitation and Solicitation Auctions and receive executions at penny increments. Any BOX OFP may enter Orders into the Facilitation and Solicitation Auctions, and any BOX Participant may enter a Response within the proposed auction mechanisms. BOX believes that auction competition and executions at penny increments will provide greater flexibility in pricing for block-size orders and provide enhanced opportunities for block-size orders to benefit from price improvement.

Finally, the proposed rule change also adds references to the Facilitation and Solicitation Auction mechanisms to Chapter V, Section 17 (Customer Orders and Order Flow Providers), and to Chapter III, Section 4(f) (Prevention of the Misuse of Material Nonpublic Information).

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[10] in general, and Section 6(b)(5) of the Act,[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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. In particular, the Exchange believes that the proposed rule change to implement a Facilitation Auction and Solicitation Auction on BOX is designed to help BOX remain competitive among options exchanges and provide market participants additional opportunities to execute block-size crossing transactions.

BOX believes the proposed rule change is consistent with the Act because executions based upon price/time priority provide an incentive for all market participants to post their best prices quickly to the market. BOX does not believe that customers' electronic orders must be accorded priority over market makers who are not acting as agent with respect to those customers. These market makers are not required to yield priority to Public Customer Orders if the market maker has time priority at a particular price level. In this way, BOX places all of its market participants on the same footing, with no participant enjoying any special or unique control over the timing of execution or order handling advantages. All orders are processed for execution by an electronic computer system—the BOX Trading Host. Specifically, orders sent to BOX are transmitted directly from remote electronic terminals to the trading system. Once an order is submitted to BOX, the order is executed against another order based on the established matching algorithm. The execution does not depend on the Options Participant but rather upon what other orders are entered into BOX at or around the same time as the subject order, what orders are on the BOX Book, and where the order is ranked based on the price/time priority ranking algorithm. Accordingly, Options Participants do not control or influence the result or timing of orders submitted to BOX. The Commission has repeatedly found this price/time priority model consistent with the Act[12] regarding exchanges' electronic trading mechanisms. The proposed Solicitation Auction mechanism will not execute any order ahead of any Public Customer order on BOX where that customer order would have otherwise traded with the Agency Order (''Book Priority Public Customer Order''). As such, BOX believes the principles of price/time priority for matching orders within its proposed Solicitation Auction are consistent with the Act.

*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 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 has neither solicited nor received comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal**

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *See* Securities Exchange Act Release Nos. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR–BSE–2002–15) (Order Approving BOX Facility); 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031) (Order Approving BATS Options Rules); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004) (Order Approving NASDAQ Options Market).

**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 or disapprove 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. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2011–034 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2011–034. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of BX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BX–2011–034 and should be submitted on or before July 20, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011–16293 Filed 6–28–11; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–64727; File No. SR–C2–2011–012]**

## Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, To Reduce the Minimum Size of the Nominating and Governance Committee

June 22, 2011.

## I. Introduction

On April 27, 2011, C2 Options Exchange, Incorporated (''C2'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to reduce the minimum size of the Nominating and Governance Committee (''NGC'') from seven to five. On May 18, 2011, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change was published for comment in the **Federal Register** on May 10, 2011.[4] The Commission received no comment letters regarding the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

## II. Description of the Proposal

C2 is proposing to reduce the minimum size of its NGC from seven to five directors. Section 4.4 of the Second Amended and Restated Bylaws of C2 (''Bylaws'') currently provides, in pertinent part, that the NGC shall consist of at least seven directors, including both Industry and Non-Industry Directors; that a majority of the directors on the Committee shall be Non-Industry Directors; and that the exact number of members on the Committee shall be determined from time to time by C2's Board of Directors (the ''Board'' or ''C2 Board''). Pursuant to the proposed rule change, Section 4.4 of the Bylaws would be amended to provide that the NGC shall consist of at least five directors. The other provisions of Section 4.4 of the Bylaws would remain unchanged.[5]

In outlining the purpose behind its proposal, the Exchange noted that the size of its Board declined from its initial size of twenty-three to nineteen directors in 2009 and again to sixteen directors in 2011.[6] As the size of its Board has declined, the Exchange noted that it has become more challenging to populate larger-size Board committees since there are fewer directors to serve on a multitude of committees.[7] The Exchange's proposal to reduce the minimum size of the NGC is intended to help address this issue.

## III. Discussion

After careful review of the proposal, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposal is consistent with Section 6(b)(1) of the Act,[9] which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, as well as Section 6(b)(5) of the

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] At the time C2 submitted the original proposed rule change, it had not yet obtained formal approval from its Board of Directors for the specific Bylaw changes set forth in this proposed rule change. C2 stated that once that approval was obtained, it would file a technical amendment to its proposed rule change to reflect that approval. In Amendment No. 1, the Exchange notes that the C2 Board of Directors approved the specific Bylaw changes set forth in SR–C2–2011–012 on May 17, 2011 and stated that no further action was necessary in connection with its proposal. Because Amendment No. 1 is technical in nature, the Commission is not required to publish it for public comment.

[4] *See* Securities Exchange Act Release No. 64394 (May 4, 2011), 76 FR 27112 (''Notice'').

[5] Additionally, the title of the Bylaws would be changed to the Third Amended and Restated Bylaws of C2.

[6] Section 3.1 of the Bylaws provides that the C2 Board shall consist of not less than eleven and not more than twenty-three directors, with the exact size determined by the Board.

[7] *See* Notice, *supra* note 4, at 27112.

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(1).