



DIVISION OF
TRADING AND MARKETS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

May 11, 2012

Ms. Lisa J. Fall
President
BOX Options Exchange
101 Arch Street, Suite 610
Boston, MA, 02110

Dear Ms. Fall:

In your letter dated May 11, 2012,¹ you request assurance that the Staff will not recommend enforcement action to the Commission under paragraph (a) of Rule 10b-10 under the Exchange Act if a Participant confirms its capacity as “agent” when the Participant submits a customer’s order to BOX, in its role as the customer’s agent, and the order is executed on BOX in a trade with an anonymous contra-party that turns out to be the Participant trading in a principal (including proprietary) capacity. Your request is limited to those situations in which both: (1) the No Knowledge Requirement; and (2) the Parity Requirement are satisfied. In addition, you ask that the Staff not recommend enforcement action to the Commission under Rules 17a-3(a)(1) and 17a-4(a) under the Exchange Act if, in lieu of making and preserving a separate record, a broker-dealer relies on the Exchange’s retention of the identities of Participants that execute anonymous trades on BOX to satisfy the requirements under those rules.

Based on the facts and representations set forth in your letter, the Staff will not recommend enforcement action to the Commission under paragraph (a) of Rule 10b-10 if a Participant indicates on confirmations to its customers that the Participant acted as agent on a customer’s behalf when a representative of the Participant submits a customer order to BOX on an agency basis and that order is executed on BOX in a trade with an anonymous contra-party that turns out to be the Participant trading in a principal (including proprietary) capacity, provided that the Participant complies with all other requirements of Rule 10b-10 in confirming the customer’s order, including paragraph (a)(2)(i) thereof, and provided that the handling and execution of the customer order complies with the No Knowledge and Parity Requirements.²

In taking this position, we note in particular your representation regarding your expectation that same firm volume, as a percentage of total volume, will not be material for

¹ Unless otherwise noted, each defined term in this letter has the same meaning as defined, directly or by reference, in your letter.

² This Staff position applies only to trades that Participants execute on the Trading System. This Staff position does not apply to orders routed to an away trading center for execution.

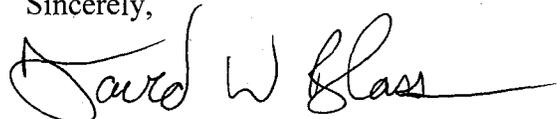
Ms. Lisa J. Fall
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either high or low trading volume securities.³ We also note that Participants continue to have a duty of best execution.⁴

The Office of Financial Responsibility has requested that we inform you that the Staff will not recommend enforcement action to the Commission if, in lieu of making and preserving a separate record, Participants rely on the Exchange's retention of the identities of the Participants that execute anonymous trades on the Exchange, for the period specified Rule 17a-4(a), to satisfy the requirements of Rules 17a-3(a)(1) and 17a-4(a) under the Exchange Act. The Staff notes, however, that a Participant has the responsibility to make, keep current, and preserve records of all purchases and sales of securities in accordance with Rules 17a-3 and 17a-4 of the Exchange Act for trades on BOX in all instances if the Participant knows the identity of the contra-party.

These no-action positions are subject to modification or revocation if at any time the Staff determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, these positions are based solely upon the representations you have made and are limited strictly to the facts and conditions described in your incoming letter. Any different facts or circumstances, including any change to the operation of the Exchange (including BOX), may require a different response.⁵ Finally, we express no view with respect to other questions the proposed activities of the Exchange (including BOX) or any Participants relying on this relief may raise, including the applicability of any other federal or state laws or the applicability of self-regulatory organization rules concerning customer account statements or confirmations.

Sincerely,



David W. Blass
Chief Counsel

³ In this regard, we note your representation that you will review trade data to determine the actual percentage of same firm volume versus total volume in high and low volume securities to confirm that this number is not material, and that you will create and maintain a record of your determination.

⁴ See, e.g., Regulation NMS, Exchange Act Rel. No. 49325 (February 26, 2004), 69 Fed. Reg. 11126, 11137 (March 9, 2004) ("A broker-dealer still must seek the most advantageous terms reasonably available under the circumstances for all customer orders. A broker-dealer must carry out a regular and rigorous review of the quality of market centers to evaluate its best execution policies, including the determination as to which markets it routes customer order flow.").

⁵ For example, the continued availability of these positions is dependent on same firm volume as a percentage of total volume in fact not being material for either high or low trading volume securities.



BOXSM
OPTIONS EXCHANGE

May 11, 2012

Mr. David W. Blass
Chief Counsel
Division of Trading and Markets
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-0001

Re: Request for a Limited Exemption from Paragraph (a)(2)(i)(A) of Rule 10b-10 Under the Securities Exchange Act of 1934 (the "Act") and Request for No-Action Relief from Rules 10b-10(a)(2), 17a-3(a)(1) and 17a-4(a) Under the Act

Dear Mr. Blass:

BOX Options Exchange LLC (the "Exchange") respectfully requests a limited exemption from paragraph (a)(2)(i)(A) of Rule 10b-10¹ under the Securities Exchange Act of 1934 ("Act") on behalf of its Options Participants that execute trades as agent for their customers ("Participants")² on BOX Market LLC, an options trading facility of the Exchange under Section 3(a)(2) of the Act ("BOX"). BOX will operate a fully automated electronic book ("BOX Book") for orders to buy or sell securities ("orders") with a continuous, automated matching function which will provide for strict price-time priority execution ("Trading System").³ The BOX Book and the Exchange rules also provide for post trade anonymity through settlement for trades executed on BOX.⁴

The Exchange also requests, on behalf of its Participants, your assurance that the staff of the Division of Trading and Markets ("Staff") will not recommend that the Commission take any enforcement action under paragraph (a) of Rule 10b-10 under the Act in connection with the activities of Participants executing orders for their customers in the circumstances described below. Specifically, the Exchange requests this relief to permit a Participant to indicate on a customer confirmation that the Participant acted as agent (where the Participant submits a customer's order on BOX in the Participant's role

¹ Paragraph (f) of Rule 10b-10 under the Act provides the Securities and Exchange Commission (the "Commission") authority to issue exemptions from the requirements contained in paragraphs (a) and (b) of the rules promulgated under the Act.

² Unless otherwise defined in this letter, defined terms used shall have the same meaning as described in the Exchange Rules.

³ See Exchange Rule 7130. Note that executions through the Price Improvement Period ("PIP") as set forth in Exchange Rule 7150 are an exception to the strict price-time priority execution that occurs on the BOX Book.

⁴ As explained herein the Exchange does not request an exemption for when it reveals the identity of a Participant or a Participant's clearing firm: (i) for regulatory purposes or to comply with an order of a court or arbitrator; or (ii) when a Clearing Corporation or Clearing Participant (such as the Options Clearing Corporation ("OCC")) ceases to act for a Participant or the Participant's clearing firm, and determines not to guarantee the settlement of the Participant's trades.

as the customer's agent (hereinafter "Customer Order")) and the order is executed in a trade with an anonymous contra-party that turns out to be the Participant or one of its affiliates trading in a principal (including proprietary) capacity (hereinafter 'Principal Order'), so long as the conditions set out below are met and the Participant otherwise complies with all other requirements of Rule 10b-10 in continuing the customer's order, including paragraph (a)(2)(i) thereof.

This request for no-action relief is limited, however, to those situations in which the following requirements are met: (1) the representatives of the Participant or its affiliates submitting Principal Orders do not have knowledge about Customer Orders submitted by the Participant and the Participant representatives submitting Customer Orders do not have knowledge about Principal Orders submitted by the Participant or its affiliates (the "No Knowledge Requirement"); and (2) the Participant does not determine or influence the selection of the contra-party(ies) against which such Customer Orders will be executed (the "Parity Requirement").

Finally, the Exchange requests certain no-action relief from the requirements of Rules 17a-3(a)(1) and 17a-4(a) under the Act, as described below.

A. Background – BOX Options Exchange LLC

The Exchange is a registered national securities exchange under Section 6 of the Exchange Act.⁵ The Participants of the Exchange consist of those broker-dealers registered with the Exchange as Participants for the purposes of participating in options trading, and entitled to enter orders in, and receive executions through, the BOX Book or otherwise.

BOX, an options trading facility of the Exchange under Section 3(a)(2) of the Act, will operate the BOX Book for orders with a continuous, automated matching function, in compliance with the Exchange's Rules and Regulation NMS under the Act ("Reg NMS"). Liquidity will be derived from orders to buy and orders to sell submitted to BOX electronically by Participants from remote locations.

The BOX Book and the Exchange rules will provide for strict price-time priority execution.⁶ Under Exchange Rule 7130, orders will be prioritized on a strict price-time basis, first by price and then by time. Incoming orders are first matched for execution against orders in the BOX Book. Orders that cannot be executed are eligible for routing

⁵ The Exchange received approval of its application for registration as a national securities exchange on April 27, 2012. See Exchange Act Release No. 66871 (April 27, 2012), 77 FR 26323 (May 3, 2012), In the Matter of the Application of BOX Options Exchange LLC for Registration as a National Securities Exchange Findings, Opinion, and Order of the Commission. Exchange rules cited herein were approved as part of the application.

⁶ See *supra*, note 2. Executions through the PIP, as set forth in Exchange Rules 7130 and 7150, are an exception to the price-time priority execution that occurs on the BOX Book.

to away trading centers.⁷ All trades will be executed through the Trading System on an anonymous basis, except Directed Orders.⁸ The transaction reports produced by the Trading System will indicate the details of transactions executed in the Trading System, but shall not reveal contra party identities. Transactions executed in the Trading System will also be cleared and settled anonymously.⁹

The BOX Book's matching system algorithm permits orders originated by a Participant to execute against other orders from the same Participant on the same basis as orders from other Participants. In the BOX Book's handling of displayed orders, which is based on strict price-time priority, a Participant could receive an execution against itself, and under the Exchange's Rules, the Participant would not know that it was the contra-side of the trade at the time of execution. BOX does permit a Participant to prevent its incoming orders from being executed against its own trading interest. Specifically, Participants have the ability to use Participant match trade prevention. A Participant may direct that its Market Maker or proprietary broker-dealer orders entered on BOX not execute against Market Maker quotes or orders, or proprietary broker-dealer orders that originated from such Options Participant and were resting on the BOX Book. In such a case, the quantity of the incoming order that would otherwise trade against the quote/order from the same Participant will be cancelled back to the entering party.¹⁰

B. Rule 10b-10

1. *Contra-Party Identity Requirement*

Rule 10b-10, among other things, requires a broker-dealer to disclose to its customers the identity of the party the broker-dealer sold to or bought from to fill the customer's order. Specifically, under paragraph (i)(A) of Rule 10b-10(a)(2), when a broker-dealer is acting as agent for a customer, some other person, or for both the customer and some other person, the broker-dealer must disclose "[t]he name of the person from whom the security was purchased, or to whom it was sold, for such customer or the fact that the information will be furnished upon written request of such customer" (the "Contra-Party Identity Requirement"). A broker-dealer can provide this information on the confirmation, or it has the option to provide the information to a customer at a later time after receiving a written request from the customer. A broker-dealer has this option as long as it discloses on the confirmation that the contra-party information is available upon written request.

⁷ See Exchange Rule 15030. The Exchange understands that the exemptive and no-action relief would not apply to any situation in which the Trading System routes an order to all away trading centers for execution, as such executions would be governed by the rules of the away trading center.

⁸ See Exchange Rule 8040(d)(1). Directed Orders on BOX are not anonymous. The identity of the Participant sending the Directed Order is provided to the Market Maker recipient.

⁹ See Exchange Rule 7130(a)(6).

¹⁰ See Exchange Rule 7130(a)(4)(v).

Trades are executed with total anonymity on BOX, where the identity of the actual contra-party is not revealed when the trade is executed, except with respect to Directed Orders.¹¹ Therefore, Participants will not know the identity of the party to whom they sold securities or from whom they purchased securities. Without this information, Participants cannot comply with the Contra-Party Identity Requirement. To permit Participants to utilize BOX without violating Rule 10b-10, the Exchange is seeking an exemption, on behalf of such Participants, from the Contra-Party Identity Requirement when Participants execute transactions on BOX.

The Contra-Party Identity Requirement, in conjunction with the other requirements of paragraph (a)(2) of Rule 10b-10, is designed to provide customers with information that could alert them to potential conflicts of interest their broker-dealer may have had when handling their orders.¹² The Exchange believes an exemption from the Contra-Party Identity Requirement when a Participant trades on BOX would not diminish the public policy and investor protection objectives of the Contra-Party Identity Requirement of Rule 10b-10. The Exchange believes the potential for a conflict of interest is less likely in those circumstances when a Participant trades on BOX because the trades are executed at the best price available on BOX and the contra-party is determined based upon multiple factors not controlled by the Participant. In such situations, Participants are not permitted the discretion in executing the order that would normally give rise to the opportunity for a conflict of interest.

2. *Identification as Agent on Confirmation*

The Exchange requests no-action relief, on behalf of its Participants, to permit those Participants to indicate on a customer confirmation that the Participant has acted as agent where the Participant submits a customer's order through the BOX electronic trading facilities, in the Participant's role as the customer's agent, and the order is executed in a trade with an anonymous contra-party that turns out to be the Participant or one of its affiliates trading in a principal (including proprietary) capacity.

a. *No Knowledge Requirement*

This request is limited to those circumstances in which the representatives of a Participant and its affiliates submitting Principal Orders do not have knowledge about Customer Orders submitted by the Participant, and the Participant representatives submitting Customer Orders have no knowledge about Principal Orders submitted by the

¹¹ See supra note 8.

¹² Paragraph (a)(2) of Rule 10b-10 requires a broker-dealer to disclose on a confirmation to a customer the capacity in which the broker-dealer handled the customer's order (i.e., as agent or principal), and whether the broker-dealer acted as agent for some other person, or as agent for both the customer and some other person. Paragraph (i)(D) of Rule 10b-10(a)(2) requires a broker-dealer to disclose to its customer the source and amount of remuneration received, or to be received, by the broker-dealer in connection with the trade.

Participant or its affiliates.¹³ A Participant will be able to satisfy the No Knowledge Requirement if it implements and utilizes an effective system of internal controls such as appropriate information barriers, that operate to prevent the representatives of the Participant or its affiliates submitting Principal Orders from obtaining knowledge about the Customer Orders submitted by the Participant, and the representative of the Participants submitting Customer Orders from obtaining knowledge about the Principal Orders submitted by the Participant or its affiliates. To be effective, such a system of internal controls must include specific policies and procedures that prevent each Principal Order submitter separated by the information barriers from obtaining knowledge regarding Customer Orders submitted by the Participant, and each Customer Order submitter separated by the information barriers from obtaining knowledge regarding Principal Orders submitted by the Participant or its affiliates.

b. Parity Requirement

In addition to this No Knowledge Requirement, this request is limited to those situations in which the Participant does not in any way determine or influence the selection of the trading interest against which a customer order will be executed.¹⁴ As previously stated, BOX Directed Orders allow a broker-dealer to select or influence against whom its orders will be executed. The Exchange understands that the relief requested in this letter would not apply to these orders.

Where the Customer Order and the Principal Order are executed against each other by the BOX Book, a Participant indicating in the confirmation that the firm has acted as agent does not increase the risk of fraud against the customer, where the No Knowledge Requirement and the Parity Requirement are met. To the contrary, the matching of the agency and the proprietary trading interests occurs at the best price available and the contra-side is determined based upon priority factors established by the rules of the Exchange.¹⁵ Moreover, the proposed action does not diminish investor protection because it does not relieve a Participant's duty of best execution.¹⁶

¹³ The Exchange understands the relief requested in this letter would not apply to Directed Orders or to a Participant that executes a trade as a result of submitting a Primary Improvement Order (Principal Order) together with a Customer Order to the PIP.

¹⁴ The SEC has issued no-action relief for Rule 10b-10 under these circumstances. See Letters from Paula Jenson, Deputy Chief Counsel, Division of Trading and Markets, to Eric W. Hess, General Counsel and Secretary, EDGA Exchange, Inc. and EDGX Exchange, Inc. (May 26, 2010); Letter from James L. Eastman, Associate Director and Chief Counsel, Division of Trading and Markets, to Eric Swanson, SVP, General Counsel, BOX Exchange, Inc. (February 25, 2010); Letter from Brian A. Bussey, Assistant Chief Counsel, Division of Trading and Markets, to J. Craig Long, Foley & Lardner LLP (October 23, 2008); Letter from Brian A. Bussey, Assistant Chief Counsel, Division of Market Regulation, to James C. Yang, Chief Regulatory Officer, National Stock Exchange (October 13, 2006); Letter from Brian A. Bussey, Assistant Chief Counsel, Division of Market Regulation, to Edward S. Knight, Executive Vice President and General Counsel, Nasdaq (January 26, 2005); and Letter from Brian A. Bussey, Assistant Chief Counsel, Division of Market Regulation, to Aleksandra Radakovic, Vice President, JP Morgan Securities Inc. (August 4, 2005).

¹⁵ The Exchange expects that same firm volume, i.e., an execution in which a firm's agency order is matched against the same firm's principal (including proprietary) trading interest, as a percentage of total volume in a security through the Trading System will not be material for either high or low trading volume

C. Books and Record Retention

Rule 17a-3(a)(1) under the Act requires that broker-dealers make and keep current records of all purchases and sales of securities, including "the name or other designation of the person from whom purchased or received or to whom sold or delivered." Rule 17a-4(a) under the Act requires that the records be preserved for six (6) years, the first two (2) years "in an easily accessible place."

The Exchange asks that the Commission Staff not recommend enforcement action to the Commission if: in lieu of making and preserving a separate record, a broker-dealer relies on the Exchange's retention of the identities of Participants that execute anonymous trades on BOX to satisfy requirements of Rules 17a-3(a)(1) and 17a-4(a) under the Act. A broker-dealer would retain the responsibility to make, keep current and preserve records of all purchase and sales of securities in accordance with Exchange Act Rules 17a-3 and 17a-4 for trades on BOX if the broker-dealer knows of the contra-party, including those instances where BOX discloses the contra-party to a trade.

* * * *

In view of the foregoing, the Exchange respectfully requests that the Commission issue an exemption and such other relief as reflected in this letter. If you have any questions, please contact me at (617) 235-2235.

Sincerely,



Lisa J. Fall

cc: Heather Seidel, Associate Director
David Hsu, Assistant Director
Joseph Furey
Ignacio Sandoval
Timothy White
Raymond Lombardo

securities. The Exchange represents that as part of its regulatory program, the Exchange will review trade data to determine the percentage of some firm volume versus total volume in high and low volume securities to confirm that this number is not material. The Exchange will create and maintain a record of such determinations.

¹⁶ See Regulation NMS, Exchange Act Release No. 49325 (Feb. 26, 2004), 69 Fed. Reg. II 126, 11137 (March 9, 2004) ("A broker-dealer still must seek the most advantageous terms reasonably available under the circumstances for all customer orders. A broker-dealer must carry out a regular and rigorous review of the quality of tile market centers to evaluate its best execution policies, including the determination as to which markets it routes customer order flow.")