



BOSTON
STOCK EXCHANGE

SECURITIES AND EXCHANGE COMMISSION
RECEIVED

MAR 21 2005

DIVISION OF MARKET REGULATION

George W. Mann, Jr.
Executive Vice President
and General Counsel

March 18, 2005

Ms. Annette Nazareth
Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549

Dear Ms. Nazareth,

The Boston Stock Exchange ("BSE") is requesting relief from the Commission, by the Division of Market Regulation, pursuant to its delegated authority¹, to enable it to present further information and facts related to the on going dispute between the BSE and the Options Linkage Authority Operating Committee ("OLAOC") (*See* ISE Letter of March 8, 2005) in determining a fair and reasonable "New Participant Fee" ("Fee"). In concert with the BSE's position stated herein², we believe it would be in the best interests of all participants to grant an additional extension of the exemption from certain provisions of the "Plan for the Purpose of Creating and Operating an Intermarket Option Linkage" (the "Linkage Plan") to the BSE that expires April 1, 2005³.

We would first like to highlight the chronology of events that support our request for relief. Subsequent to the October 1, 2004 letter granting a six-month extension of the Exemption under Exchange Act Rule 11Aa3-2(f) from certain provisions of the "Linkage Plan" and Annette Nazareth's letter (October 1, 2004) addressed to the OLAOC, the BSE and representatives of the OLAOC have held several discussions on the Fee. We have each presented proposed language to the Linkage Plan intended to establish standards that provide a sufficiently objective basis for determining entrance fees for new participants. These discussions have been unsuccessful in reaching agreement on a Fee, and more importantly, agreement on what standards comport with the suggested criteria in Annette Nazareth's letter of October 1, 2004 to the OLAOC.

¹ 17 CFR 200.30-3(a)(42)

² *See* also chronology of correspondence as outlined on the attached

³ Letter of October 1, 2004 from Robert L. D. Colby to the BSE

During the OLAOC meeting of **October 20, 2004** the Fee was discussed in general and BSE reiterated its position that it would agree to pay a reasonable fee but that the OLAOC's interpretation of a fee was too subjective and included costs attributable to participants' staff time and expense for meetings and discussions of the Linkage Plan itself. Both the BSE and SEC staff have stated that new objective standards are needed. The OLAOC continued their discussion in executive session.

The OLAOC met again, **November 23, 2004** to discuss further the October 1, 2004 letter from Annette Nazareth which requested, "that the Linkage Plan should be amended to more clearly set forth the methodology for determining new entrant fees"⁴. It was pointed out in the meeting that if the BSE did not agree with a proposed Linkage Fee provision, then the unanimous vote requirement could not be met. SEC staff, at the meeting, stated that if the OLAOC unanimously agreed to a proposal, in an executive session, then they would review the merits of the proposal with any issues raised by the either the BSE or the Division to resolve the proposed Plan language. The SEC staff also pointed out that the proposed language should be guided by Annette Nazareth's letter⁵. The OLAOC adjourned to an executive session.

The OLAOC's next proposal was sent to everyone on December 13, 2004 for discussion during the OLAOC meeting scheduled for **December 15, 2004**. The proposal⁶ added language to include (*See first bullet*) "the drafting and adoption of this Plan, including but not limited to, meeting and travel costs;" and (*See second bullet*) "costs of developing the functional requirements for the Linkage, and administering the process for soliciting and contracting with a Linkage facilities manager to operate the Linkage pursuant to such requirements;" among other provisions. On December 15, 2004, the BSE submitted its amendments to the OLAOC proposal with a cover letter in support of its proposed changes as well as objections to certain OLAOC proposed provisions⁷.

In its cover letter, the BSE pointed to the original Linkage Plan language, "shall reasonably reflect a new Participants' pro rata share of **costs of initially developing the Linkage**". The OLAOC has been referring to this particular language as entitlement to further interpret and expand these costs to include staff time and travel expenses in drafting the Plan itself. We direct the OLAOC to read their own definition of "Linkage" which states "the systems and data communications network that link electronically the Participants" (NOT the Linkage Plan itself). Further reinforcement of BSE's reading of the original Linkage Plan is contained in Annette Nazareth's letter⁸. We consider goodwill or future benefits to include such things as the Linkage Plan itself, a Plan that a new entrant must ensure its market model would comply with.

⁴ See October 1, 2004 letter to OLAOC from Annette Nazareth at Page 2

⁵ Nazareth letter, at Page 2 – "The Linkage Plan should not include any subjective criteria, or objective factors designed to compensate for costs of operating the systems prior to the time the new participant joins the Linkage Plan, or for "goodwill" or any future benefits to the new entrant."

⁶ See E-Mail agenda proposal, dated December 13, 2004, entitled "Amendment No. X-8..."

⁷ BOXR Memo of December 15, 2004 with proposed changes

⁸ Nazareth's letter, at Page 2 – "or for 'goodwill' or any future benefits to the new entrant."

The OLAOC has not complied with either the spirit or the letter of the expressed concerns raised by the Commission on more than one occasion and the BSE in numerous letters. They have chosen to ignore these objections and simply draft new provisions that create subjective standards that are speculative and for the most part undocumented.

Further, we asked for clarification in our footnote 1 to explain how they could further interpret the (*See* third bullet) facilities manager's costs with respect to production and or operating costs that are not appropriate costs for the new participant fee. The Committee stood by their original proposed Plan language.

At the next OLAOC meeting held on **January 24, 2005** the agenda included the OLAOC proposal, characterized as "the unanimous agreement of the AMEX, CBOE, ISE, PCX, and PHLX as a response to the letter of Annette Nazareth dated October 1, 2004"⁹. This "response" contained the exact same language that the Committee had discussed at the December 15, 2004 meeting without addressing any of the proposed changes submitted by the BSE.

The BSE objected to this strategy of ignoring the BSE's proposed changes¹⁰ and in our opinion, did not respond at all to the primary issues raised in Annette Nazareth's letter. Also at this meeting, Elizabeth King discussed the Division's view that the fee should cover only the actual costs of the technical implementation of the Linkage, and should not cover such areas as the drafting of the Plan. The Committee again adjourned to its executive session.

We now have the letter of March 8, 2005, from the OLAOC again proposing the same language from the earlier meetings of December 15, 2004 and January 24, 2005. Further, the letter purports to present a proposal responsive to your letter of October 1, 2004. We again echo our objections to a proposal that does little more than add the same speculative criteria that had been the basis of the OLAOC's own interpretation of the original Plan. We are at a stand still.

This letter proposes new arguments that elaborate on the prior interpretations of the Committee. The new criteria incorporates expenses for meetings to discuss the "legal and business infrastructure to govern the routing of linkage orders, ..." or to state it differently, things that are typically discussed during a meeting that involves changes to the Linkage Plan.

We do not disagree with the arguments raised, that time and costs were incurred in drafting the Linkage Plan. These are typical of all the National Plans that were developed over the last 20+ years. We all contribute varying degrees of time and expense in developing changes to the National Plans. Each participants' commitment is, for the most part, based on a competitive self interest in order to ensure that any new development or amendment to a Plan will consider their own market model without major consequences. It generally takes the form of a negotiation process to seek the most effective but least disruptive alternative. This process often includes changes that impact the business infrastructure as well as the regulatory and legal areas. In the past, some participants have brought along their own outside counsel

⁹ See E-Mail agenda proposal submitted on January 13, 2005 by M. Simon to the OLAOC

¹⁰ See E-Mail response submitted January 20, 2005 by A. Kim to the OLAOC

where matters could become complex. None of the participants ever look back for reimbursement of these extra costs for their time spent in meetings, plan development, drafting or changes to the Plan.

The proposed Plan amendment submitted by the OLAOC would reincorporate the very same elements that have created the guestimates of cost. Costs that are so speculative and undocumented, that simply adding the words to expand the meaning of "Initial Development Costs" to include "the drafting and adoption of this Plan, including, but not limited to, meeting and travel costs;" does not make it any more transparent or less speculative.

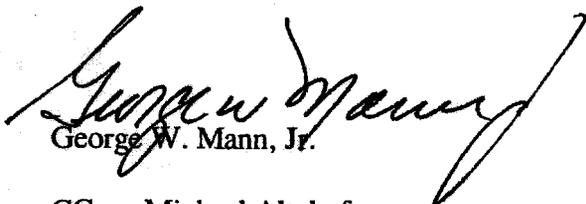
The BSE and the Division agree that the Fee "should be transparent to ensure fairness to potential new participants and to address potential anti-competitive concerns"¹¹. A methodology that is well documented and easily understood should result in a fair and reasonable process to determine a proper fee for new participants.

The BSE respectfully requests an extension of the exemption for an additional six-month period, during which time it agrees to leave the current deposit of \$439,377 with OCC as a further condition of this request. We would also urge the Division to provide further input to the process in order to help the participants work within more clearly defined objective standards that do not include speculative or undocumented costs.

The BSE originally proposed a lower figure of \$63,660 that represents its share of the OCC costs. As a measure of good faith we added \$100,000 to this offer without requiring all the documentation we had previously asked for. The current spread is \$163,660 offered by BSE and \$439,377 proposed by the OLAOC. If the required objective standards as proposed by the BSE were adopted we think the \$163,660 would be lower. It is obvious from our lack of progress that the OLAOC would benefit financially by refusing to negotiate further. We are open to suggestions for resolving this matter.

Please feel free to contact me if you need further details or have questions.

Very truly yours,



George W. Mann, Jr.

CC: Michael Altabef
Peter Armstrong
Michael Bickford
Edward Provost
Michael Simon
Elizabeth King
Deborah Lassman Flynn

¹¹ Nazareth letter, at Page 2

**BSE Options Linkage Plan – “New Participant Fee”
Chronology of Correspondence**

02/07/03	BSE letter to OLOAC	Request for interim access with \$100,000 deposit
07/02/03	OLAOC letter to BSE	Proposed cost estimate of Fee – BSE Share - \$545,860
09/15/03	OLAOC letter to BSE	Adjusted cost estimate of Fee – BSE share - \$439,377
10/24/03	BSE letter to OLAOC	BSE response to 7/2 & 9/15/03 Proposal – Counter offer \$63,660
11/10/03	OLAOC letter to BSE	Response to BSE proposal of 10/24/03 – No change to \$439,377
12/05/03	BSE letter to OLAOC	Response to 11/10/03 letter – Escrow proposal and counter offer \$163,660
12/23/03	OLAOC letter to BSE	Response to 12/5/03 letter – No change to \$439,377
12/31/03	BSE letter to OLAOC	Response to 12/23/03 letter – Offer to escrow \$439,377
02/02/04	BSE letter to SEC	BSE request for exemption from fee with escrow \$439,377
02/04/04	SEC letter to BSE	SEC approval of exemption and escrow until 10/1/04
09/30/04	BSE letter to SEC	BSE request for extension of exemption for 6 months
10/01/04	SEC letter to BSE	SEC approval of extension of exemption until 4/1/05
10/01/04	SEC letter to OLAOC	SEC request to OLAOC to amend Fee provision standards
* 12/13/04	OLAOC agenda proposal	Draft proposal of Fee provision to all
* 12/15/04	BSE agenda proposal	Response to OLAOC Fee proposal and new BSE proposal
* 01/13/05	OLAOC agenda proposal	OLAOC proposal to amend Plan
* 01/20/05	BSE agenda response	BSE objection to proposed Plan Amendment
03/08/05	OLAOC letter to SEC	Response to SEC letter of 10/1/04 and proposed Plan Amendment
03/18/05	BSE letter to SEC	Request for additional extension and objection to OLAOC letter of 3/8/05 and proposed Amendment

* Attached for convenience

From: mann, george [george.mann@bostonstock.com]
Sent: Friday, March 18, 2005 2:09 PM
To: tierney, kristin
Subject: FW: Agenda Item for 12/15 Meeting

-----Original Message-----

From: Simon, Michael J. [mailto:MSimon@iseoptions.com]
Sent: Monday, December 13, 2004 11:30 AM
To: Amy Lawson; Angelo Evangelou (E-mail); Annah Kim; Charles Rogers (E-mail); Dave Sullivan; David Gordon (E-mail); Deborah Lassman Flynn (E-mail); Edward Provost (E-mail); Elizabeth K. King (E-mail); George Mann; Geri Love; Jeffrey Burns (E-mail); Jennifer Colihan (E-mail); John Dayton (E-mail); Kathryn L. Beck (E-mail); Mai Shiver (E-mail); Mark Baumgardner (E-mail); Michael Altabef (E-mail); Michael Bickford (E-mail); Paul Stevens (E-mail); Peter Armstrong (E-mail); Ralph Rafaniello (E-mail); Rhonda Jones; Richard Rudolph (E-mail); Tim Fox (E-mail); Tim Watkins (E-mail); Wendy Hoffman; William Quinn (E-mail)
Subject: Agenda Item for 12/15 Meeting

Attached is a draft Plan amendment that the ISE, Amex, CBOE, PCX and Phlx have been considering in executive session regarding the Participation Fee. This if for discussion on Wednesday with the whole group.

Mike Simon

ISE

<<Amendment Number X-8 (Participant Fee Criteria).doc>>

Draft #2 12/3/04

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Amendment No. X-8 to Plan for the Purpose of Creating and Operating an Intermarket Option Linkage

Underlining indicates additions; [brackets] indicate deletions.

Section 11 - Financial Matters

(a) Development and Operating Costs

The Participants shall share equally in the costs of developing and operating the Linkage. However, each Participant shall assume sole responsibility and costs for any modifications to its Exchange Systems necessary to achieve the efficient operation of the Linkage.

(b) New Participants

Any Eligible Exchange that seeks to become a new Participant shall be required to pay a participation fee. The Operating Committee shall establish the participation fee no less frequently than once a calendar year. The participation fee shall reasonably reflect:

(i) Initial Development Costs. This shall include a new Participant's pro rata share of the following costs of initially developing the Linkage[.]:

- The initial Participants' costs of designing the Linkage and implementing that design through the drafting and adoption of this Plan, including, but not limited to, meeting and travel costs;
- Costs of developing the functional requirements for the Linkage, and administering the process for selecting and contracting with a Linkage facilities manager to operate the Linkage pursuant to such requirements; and
- The facilities manager's costs charged to the Participants with respect to commencing initial operation of the Linkage; and

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(ii) Additional Development Costs. This shall include a new Participant's pro rata share of the following [as well as any] additional development costs the Participants have incurred in maintaining and enhancing the Linkage:

- Costs of developing, expanding and maintaining the Linkage to the extent that such costs, under generally-accepted accounting principles, would be treated as capital expenditures and would be amortized over the five years preceding the admission of the new Participant; and

- Costs of modifying the Linkage to accommodate the new Participant, but only to the extent that such costs are not otherwise required to be paid or reimbursed by such new Participant.

Upon payment, such fee shall be distributed equally to the then-current Participants, unless such Participants determine that another method of distribution would be more equitable.

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From: mann, george [george.mann@bostonstock.com]
Sent: Friday, March 18, 2005 2:10 PM
To: tiemey, kristin
Subject: FW: Agenda Item for 12/15 Meeting
Importance: High

-----Original Message-----

From: Kim, Annah
Sent: Wednesday, December 15, 2004 9:41 AM
To: 'Simon, Michael J.'; Amy Lawson; Angelo Evangelou (E-mail); Kim, Annah; Charles Rogers (E-mail); Dave Sullivan; David Gordon (E-mail); Deborah Lassman Flynn (E-mail); Edward Provost (E-mail); Elizabeth K. King (E-mail); Geri Love; Jeffrey Burns (E-mail); Jennifer Colihan (E-mail); John Dayton (E-mail); Kathryn L. Beck (E-mail); Mai Shiver (E-mail); Mark Baumgardner (E-mail); Michael Altabef (E-mail); Michael Bickford (E-mail); Paul Stevens (E-mail); Peter Armstrong (E-mail); Ralph Rafaniello (E-mail); Rhonda Jones; Richard Rudolph (E-mail); Tim Fox (E-mail); Tim Watkins (E-mail); Wendy Hoffman; William Quinn (E-mail)
Cc: mann, george
Subject: RE: Agenda Item for 12/15 Meeting
Importance: High

BOX respectfully submits for your review and consideration a redline version of the Plan amendment along with its position as it relates to the application of fees to new participants.

We look forward to your comments and this morning's discussion.

Annah Kim

-----Original Message-----

From: Simon, Michael J. [mailto:MSimon@iseoptions.com]
Sent: Monday, December 13, 2004 11:30 AM
To: Amy Lawson; Angelo Evangelou (E-mail); Annah Kim; Charles Rogers (E-mail); Dave Sullivan; David Gordon (E-mail); Deborah Lassman Flynn (E-mail); Edward Provost (E-mail); Elizabeth K. King (E-mail); George Mann; Geri Love; Jeffrey Burns (E-mail); Jennifer Colihan (E-mail); John Dayton (E-mail); Kathryn L. Beck (E-mail); Mai Shiver (E-mail); Mark Baumgardner (E-mail); Michael Altabef (E-mail); Michael Bickford (E-mail); Paul Stevens (E-mail); Peter Armstrong (E-mail); Ralph Rafaniello (E-mail); Rhonda Jones; Richard Rudolph (E-mail); Tim Fox (E-mail); Tim Watkins (E-mail); Wendy Hoffman; William Quinn (E-mail)
Subject: Agenda Item for 12/15 Meeting

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Mike Simon

ISE

<<Amendment Number X-8 (Participant Fee Criteria) doc>>

Draft #212/3/04

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Amendment No. X-8 to Plan for the Purpose of Creating and Operating an Intermarket Option Linkage

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(i) Initial Development Costs. This shall include a new Participant's pro rata share of the following costs of initially developing the Linkage[.]:

- .
- Costs of developing the actual system requirements for the Linkage as documented; and
- The facilities manager's costs charged to the Participants with respect to commencing the initial operation of the Linkage; and

(ii) Additional Development Costs. This shall include a new Participant's pro rata share of the following [as well as any] additional development costs the Participants have incurred in maintaining and enhancing the Linkage:

- o Costs of developing, expanding and maintaining the Linkage to the extent that such costs, under generally-accepted accounting principles, would be treated as capital expenditures and would be amortized over the three years preceding the admission of the new Participant; and Costs of modifying the Linkage to accommodate the new Participant, but only to the extent that such costs are not otherwise required to be paid or reimbursed by such new Participant.

Upon payment, such fee shall be distributed equally to the then-current Participants, unless such Participants determine that another method of distribution would be more equitable,

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¹ Clarify, explain "facilities manager" as it relates to specific roles & responsibilities. Specifically, what is included and excluded from this category (i.e. with respect to production and/or operating costs that are not appropriate costs for the new participant fee.)



BOXR

BOSTON OPTIONS EXCHANGE
REGULATION

December 15, 2004

Current Plan language includes "shall reasonably reflect a new Participant's pro rata share of costs of initially developing the Linkage." The Plan defines linkage as "the systems and data communications network that link electronically the Participants" (Not the Plan itself), and not for "good will" or any future benefits to the new entrant. (See SEC letter from Annette Nazareth dated October 1, 2004 to the OLAOC participants).

As with all national Plan meetings on the Plans themselves, each participants' principal role and benefit in attending meetings and conference calls, at their own expense, is either the result of a directive from the SEC, (such as the Options Linkage Authority participants were asked to draft a Linkage Plan) or, just as important, to have input to ensure each participants market model is protected through input that is principally motivated through strategic and competitive benefits to its own market structure. These could easily be characterized as "goodwill" and a future benefit to a new entrant who would need to develop its market model in compliance with the Plan.

None of the current national Plan participants have ever submitted expenses for their time and travel to discuss the Plan document or amendments thereto. This would be an inappropriate self-serving extension of what development costs have historically covered. Such costs would include software, systems and facilities, tangible property such as tandem processors, and other related hardware.

The proposed language in Section 11(b)(i) first and second bullets include criteria that should not and have not, to our knowledge, been part of any Plans' new participant fee. They simply specify some of the current criteria of the OLAOC's previous proposals that have clearly resulted in the highly speculative costs that have been proposed in prior correspondence. Most of these costs are undocumented and represent estimates of time and participation in meetings to draft the Linkage Plan that would define the regulatory boundaries of the Options Linkage, similar to how the ITS Plan was drafted and is periodically amended. As ITS Chairman, and a participant in most of these meetings dating back to 1986, new ITS participants were not billed any portion of my time or expense nor did any other ITS participant bill for their portion of time and expense. We see no reason to re-interpret the Linkage Plan to cover speculative costs that were never stated when originally filed but only interpreted after BOX submitted its request to become a participant.

We would submit the attached edits to Amendment Number X-8 for further discussion. We also recognize that we cannot participate in any portion of any meeting of the OLAOC at which a vote on objective standards for determining a participant fee for new Participants or on the specific participant fee applicable to the BSE is taken. We would understand this to mean that **any discussion** by the OLAOC of the **objective standards to be voted upon** should be held in executive session without the BSE's participation. We would be happy to discuss further our views on our changes as they relate to the draft that the committee has been considering.

Memorandum

To:	Options Linkage Authority Operating Committee
From:	Michael Simon
Date:	January 13, 2005
Re:	Linkage Participation Fee Criteria

The ISE would like to place on the agenda for the January 24th meeting a proposed amendment to the Linkage Plan to provide more specificity for determining new participant fees. The attached proposal reflects what I believe to be the unanimous agreement of the Amex, CBOE, ISE, PCX and Phlx as a response to the letter of Annette Nazareth dated October 1, 2004. That letter asked the options exchanges to draft a Plan amendment setting forth a clearer discussion of the methodology of determining new entrant fees. Following Commission approval of this Plan amendment, it would be the intent of the five exchanges to apply these criteria in an objective matter to determine an appropriate entry fee for the BSE.

Attachment

**Amendment No. X-8 to Plan for the Purpose of Creating and Operating an
Intermarket Option Linkage**

Underlining indicates additions; [brackets] indicate deletions.

Section 11 - Financial Matters

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Upon payment, such fee shall be distributed equally to the then-current Participants, unless such Participants determine that another method of distribution would be more equitable.

From: mann, george [george.mann@bostonstock.com]
Sent: Friday, March 18, 2005 2:12 PM
To: tierney, kristin
Subject: FW: Linkage Meeting - New Participant Fee
Importance: High

-----Original Message-----

From: Kim, Annah
Sent: Thursday, January 20, 2005 9:45 AM
To: 'Peter G. Armstrong'; Altabef, Michael; Ed Provost (E-mail); Mike Bickford (E-mail); Mike Simon (E-mail)
Cc: Angelo Evangelou (E-mail); mann, george; Rogers, Charles; Debbie Flynn (E-mail); Jeniffer Colihan (E-mail); Tim Fox (E-mail); 'kinge@sec.gov'; Kim, Annah
Subject: Linkage Meeting - New Participant Fee
Importance: High

OLAOC Members,

We have reviewed the Executive Committee's latest response to the new Participant fee proposal of the Operating Committee. Please find attached, BSE's suggested amendments to this latest proposal and the December 15, 2004 memorandum that supports our rationale for these amendments.

You should note that the attached documents are the same documents BSE/BOX submitted to the Committee on December 13, 2004 for discussion & consideration at the December 15, 2004 meeting. Based on the proposal recently circulated by Mike Simon, it appears that the Committee chose not to consider any of the issues raised by the BSE repropoing the exact same Proposal prior to December and in so doing not making a good faith effort to respond to the issues raised to set forth fair, transparent and objective standards. It was expected that the Committee would make specific provisions within the proposed amendments that would add clarity and make the process for determining a proper entrance fee more transparent to ensure fairness. The Committee's recent proposal, however, has failed to achieve this objective.

The "clearer discussion of the methodology of determining new entrant fees," as represented in the agenda cover memo, does not respond at all to the primary issues raised in Annette Nazareth's letter dated October 1, 2004. Our prior memo and preceding letters have clearly demonstrated the problems of including costs (estimates to represent salary levels billed by the hour) of each exchange staff attending meetings and billing for their time and expenses for travel. At the heart of this speculative characterization is the first bullet that incorporates staff time and expense for drafting and adopting the "Plan" itself which no other National Market Plan has ever done. We have objected to this as a valid element of the fee almost from the inception of these discussions prior to BOX's approval. The fact that this item continues to be a factor in determining new Participant fees is an indication that the Committee has yet to act in good faith in recognizing this particular matter.

We chose not to attach the history of our objections since we believe the basis for Annette Nazareth's letter was in part an affirmation of the many issues we raised previously. We hope the Committee will revisit this matter with the goal of establishing objective criteria in determining a fair and reasonable fee for new Participants.

George Mann, General Counsel, BSE
and Annah Kim, BOXR CRO

3/18/2005



BOXR

BOSTON OPTIONS EXCHANGE
REGULATION

December 15, 2004

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None of the current national Plan participants have ever submitted expenses for their time and travel to discuss the Plan document or amendments thereto. This would be an inappropriate self-serving extension of what development costs have historically covered. Such costs would include software, systems and facilities, tangible property such as tandem processors, and other related hardware.

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Draft #2 12/3/04

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The Participants shall share equally in the actual costs of developing and operating the Linkage. However, each Participant shall assume sole responsibility and costs for any modifications to its Exchange Systems necessary to achieve the efficient operation of the Linkage.

(b) New Participants

Any Eligible Exchange that seeks to become a new Participant shall be required to pay a participation fee. The Operating Committee shall establish the participation fee no less frequently than once a calendar year. The participation fee shall reasonably reflect:

(i) Initial Development Costs. This shall include a new Participant's pro rata share of the following costs of initially developing the Linkage[.]:

- Costs of developing the actual system requirements for the Linkage as documented; and
- The facilities manager's costs charged to the Participants with respect to commencing the initial operation of the Linkage; and

(ii) Additional Development Costs. This shall include a new Participant's pro rata share of the following [as well as any] additional development costs the Participants have incurred in maintaining and enhancing the Linkage:

- o Costs of developing, expanding and maintaining the Linkage to the extent that such costs, under generally-accepted accounting principles, would be treated as capital expenditures and would be amortized over the three years preceding the admission of the new Participant; and Costs of modifying the Linkage to accommodate the new Participant, but only to the extent that such costs are not otherwise required to be paid or reimbursed by such new Participant.

Upon payment, such fee shall be distributed equally to the then-current Participants, unless such Participants determine that another method of distribution would be more equitable,

~~Deleted: The initial Participant Costs of designing the Linkage and implementing that design through the drafting and adoption of this Plan, including, but not limited to, meeting and travel costs;~~

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~~Deleted: and administering the process for selecting and contracting with a Linkage facilities manager to operate the Linkage pursuant to such requirements~~

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¹ Clarify/explain "facilities manager" as it relates to specific roles & responsibilities. Specifically, what is included and excluded from this category (i.e. with respect to production and/or operating costs that are not appropriate costs for the new participant fee.)