November 23, 2009

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: File No. S7-21-09-SEC Proposal to Eliminate Exception for Use of Flash Orders

Dear Ms. Murphy,

The Boston Options Exchange Group, LLC ("BOX") appreciates the opportunity to comment on the above-referenced Securities and Exchange Commission ("SEC" or "Commission") proposal to amend Rule 602 of Regulation NMS[1] under the Exchange Act to eliminate an exception for the use of flash orders by equity and options exchanges ("Proposal").[2] At this time BOX is limiting its comments solely to flash orders as they pertain to the National Best Bid or Offer ("NBBO") filter process on BOX as well as the impact, if any, of the Commission's Proposal on the BOX Price Improvement Period auction ("PIP").

Summary

1. The Proposal would terminate the BOX NBBO filter process as it exists today. BOX's NBBO filter has effectively served its purpose of providing customers with confirmed fast efficient execution of their orders at the best price available, whereby approximately 2/3 of all filtered orders receive an execution within one second on BOX without the need to be routed away.
2. The BOX NBBO filter process is distinguishable from the several "flash order" mechanisms and the negative connotations associated therewith as highlighted in the Proposal and by various commenters and critics. The BOX NBBO filter process is open to all BOX Options Participants who want to respond, without any preferencing to select parties.
3. BOX agrees with the Commission's preliminary belief that the "status of [price improving] mechanisms under Rule 602 would not be altered by the proposed

[1] 17 CFR 242.602. Rule 602 generally requires exchanges to make available the best bids and best offers for listed securities that are communicated on an exchange. Paragraph (a)(1)(i)(A) of Rule 602, however, excepts "any bid or offer executed immediately after communication and any bid or offer communicated by a responsible broker or dealer other than an exchange market maker which is cancelled or withdrawn if not executed immediately after communication." As a result, bids and offers that either are immediately executed or, if not executed, immediately cancelled or withdrawn are not required to be included in the consolidated quotation data.

[2] See Securities Exchange Act Release No. 60684 (September 18, 2009), 74 FR 48632 (September 23, 2009) (File No. S7–21–09).

100 Franklin Street, Boston, MA 02110 www.bostonoptions.com 190 S. LaSalle Street, Suite 2110, Chicago, IL 60603
Tel.: 617-235-2291 ■ Fax: 617-235-2253 Tel.: 312-251-7000 ■ Fax: 312-251-7001

amendment."[3] BOX believes that the BOX PIP should **not** be affected if the Proposal is eventually approved. The PIP is a guaranteed cross and provides a valuable opportunity for price improvement of customer orders. The PIP has saved investors more than $259 million in the form of price improvement since its inception in 2004.

Flash Orders

Under the Proposal, if adopted, any flash orders with non-marketable prices would need to be included in the consolidated quotation data and the more frequently used practice of flashing orders with marketable prices to certain market participants would be prohibited.[4] Additionally, exchanges such as BOX would be required to handle marketable orders that they are unable to execute at the best displayed prices in another manner, such as by routing marketable orders away to execute against the best displayed quotations at another exchange.[5]

The Commission sets forth several general features of a typical flash order used in the equity and options markets,[6] including that flash orders are voluntary, that flash orders are almost always marketable, that if a market does not have available contra trading interest at the NBBO when a marketable flash order arrives that the market will flash the order to its market participants at the NBBO and that market participants that receive the flashed order information have a very brief period in which to respond with their own order to execute against the flashed order at a price that matches the NBBO.

BOX NBBO Filter Process

While BOX's NBBO filter process may fit within the definition of what constitutes a 'flash order' under the Proposal, BOX believes its NBBO filter process is distinguishable from the several "flash order" mechanisms and the negative connotations voiced by various commenters and critics as highlighted in the Proposal. The key points about the BOX NBBO filter process are that it is visible to any BOX Options Participant, is open to all BOX Options Participants who want to respond, without any preferencing to select parties and orders/responses are executed on a first come, first served basis.

The BOX NBBO filter was **not** designed as a way to internalize order flow amongst BOX Options Participants nor retain such flow on BOX, irrespective of whether either actions actually occur. The Proposal specifically cites BOX's NBBO filter as the first example of an "exchange to use the flash order exception for electronically communicated orders" in the options markets,[7] with the Commission noting "that the

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[3] Id.

[4] See Proposal at 4.

[5] Id.

[6] Id. at 6-9.

[7] Id. at note 24. BOX does not necessarily agree that it was the first to use the "flash order exception". BOX notes that various versions of "step-up" and match processes, both manual and automated, have existed on options exchange floors and systems for decades. BOX believes that these processes would also meet the definitions in the Proposal and those that still exist would be banned under the Proposal. The Commission

electronic flash process was designed to protect against trading through better displayed prices at other markets, and that the process would allow exchange participants to provide efficient and competitive executions for flashed orders."[8]

BOX Options Participants are not incented financially through payments or fees to respond to and fill any unfilled quantity of an order that is exposed in the BOX NBBO filter process. Furthermore, orders that are exposed in the BOX NBBO filter process are exposed to all BOX Options Participants that receive the BOX Book data feed free of charge, rather than to a select or limited group of market participants. Since no additional system is required, any BOX Options Participant can respond to the exposure broadcast with a normal order within the one second exposure period. Additionally, executions resulting from the orders exposed in the BOX NBBO filter are filled at a first-come first-served basis.

Because of all these factors BOX does not believe that the NBBO filter process creates a disincentive for market makers to quote at the NBBO on BOX. Any BOX Options Participant that is choosing not to display quotes at the NBBO in favor of loitering in the market ("hiding in the weeds") in hopes of responding to a NBBO filter order exposure is missing out on a significant amount of potential order flow from smart routers and the many firms that route their order flow based on what exchange is quoting at the NBBO. This order flow would not be sent to BOX when BOX is not at NBBO and would not be available to those BOX Options Participants through the NBBO filter process. Further, even when orders are exposed through the NBBO filter process there is no certainty that a BOX Options Participant will execute against any of the exposed orders because of the open competition by so many other BOX Options Participants and the fact that on BOX the first to respond gets time priority and executes immediately with the order. Therefore, the incentive is still there to quote the NBBO to attract order flow and is not being diminished by responding to the "flash order".

The BOX NBBO filter was implemented in 2004 with the interest of investors in mind and remains an efficient and competitive way in which BOX attempts to provide an opportunity for execution at the best price available without the risk attendant with routing such orders to away markets. These risks include the possibility that the quote or order on the away market may fade, as to price or size, during the routing of the order or that the transaction fees on the away exchange actually result in a more costly net expenditure for the customer (transaction fees and premium).

The Commission notes that "the proposed elimination of the exception for flash orders…could preclude potential benefits that flash orders offer to certain market

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requests comment on whether Rule 602 should permit trading floors to continue manual "flashing" of orders if electronic "flashing" is prohibited. As the Commission notes in the Proposal and at the time of the approval of the BOX NBBO filter, "[t]he Commission generally has sought to interpret its rules in such a way that they promote fair competition between manual and automated markets." Id. at 48634. BOX believes that if the Commission ultimately adopts the proposal banning electronic flash orders in the options market, then the Commission must also ban manual "flashing" of orders and other similar manual and semi-automated processes on the options exchange floors in order to promote fair competition between manual and automated markets.

[8] Id. at 12.

participants."[9] BOX believes the NBBO filter process is often very much in the customer's interest. BOX agrees with the Commission's analysis where it reasons that "[t]here is no guarantee…that an order routed to execute against a displayed quotation will, in fact, obtain an execution [as t]he displayed quotation may already be executed against or cancelled before the routed order arrives."[10] In fact, it is a common experience that rapidly moving markets, communication delays, interest with trading priority ahead of the order, etc., causes many routed orders to be returned unfilled. Further, in many instance an away market that has the NBBO is not quoting for the full quantity of the order that is being exposed in the NBBO filter process. For example, BOX has an order for 50 contracts while the away market is quoting the NBBO for 10 contracts. The responses to the exposure of the order in the NBBO filter process provide liquidity to completely fill the order, while routing it away would only fill 10 contracts. The proposed elimination in its entirety of the exception provided to flash orders would terminate the BOX NBBO filter process as it exists today. BOX's NBBO filter has effectively served its purpose of providing customers with confirmed fast efficient execution of their orders at the best price available, whereby approximately 2/3 of all filtered orders receive an execution within one second on BOX without the need to be routed away.

Price Improvement Auctions

BOX supports the Commission's preliminary belief that the "status of [price improving] mechanisms under Rule 602 would not be altered by the proposed amendment."[11] BOX also agrees with the Commission's preliminary belief that "orders exposed as part of a competitive auction that provides an opportunity to obtain better prices than displayed quotations generally would **not** (emphasis added) constitute bids and offers that must be provided to the consolidated quotation stream, nor would the responses to those orders if they were actionable only with respect to the exposed order."[12] BOX believes that this rationale must apply to the BOX PIP auction.

If the Commission's stance on this matter were to change then BOX would respectfully wish to comment on that element of the Proposal. BOX does **not** support a proposal which would result in a restriction on the PIP stemming from a ban on flash orders. Any such restrictions would jeopardize a mechanism which has brought tremendous benefit to investors. The PIP auction on BOX has saved investors $259M since its inception in 2004. In the month of October 2009, price improvement versus the prevailing NBBO for contracts submitted via BOX's PIP averaged $3.10 per contract.

BOX also notes that the transmission feed which announces the details of a PIP Broadcast goes to all BOX Options Participants that receive the BOX Book data feed free of charge, rather than to a select or limited group of market participants. This

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[9] Id. at 41.

[10] Id.

[11] Id.

[12] Id. at 26.

transparency in communication shuns any implication that there is a 'two tiered' market or any other unfair aspects related to the PIP. Furthermore, the PIP can not be 'front run', as a PIP auction is a cross that has already been guaranteed by the BOX Options Participant initiating the PIP. Recipients of the PIP Broadcast are not privy to information that would allow them to manipulate, game or unfairly influence the BOX Market, the PIP or the market for listed options in general.

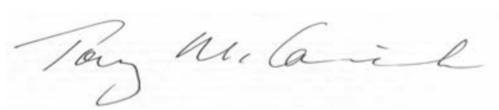
Conclusion

BOX applauds and echoes the Commission's concern with serving the interests of long-term investors and does not support any market concept or mechanism that detracts from the efficiency or fairness of the national market system. BOX believes that the investing public will be well served by further discussion surrounding flash orders, generally, and, more specifically, the Commission's Proposal. BOX urges the Commission to take a surgical approach to its stance on flash orders, whereby the features of flash orders which are beneficial to the investing public are not eliminated in a wholesale manner for the sake of the potentially unfair aspects which the Commission has cited and analyzed in the Proposal.

BOX agrees with the Commission's preliminary belief that the "status of [price improving] mechanisms under Rule 602 would not be altered by the proposed amendment."[13] BOX does **not** support a proposal which would result in a restriction on the PIP stemming from a ban on flash orders.

Please to not hesitate to contact us if you have any questions or comments.

Sincerely yours,



Tony McCormick, CEO

Cc: The Honorable Mary L. Schapiro, Chairman
The Honorable Luis A. Aguilar, Commissioner
The Honorable Kathleen L. Casey, Commissioner
The Honorable Troy A. Paredes, Commissioner
The Honorable Elisse B. Walter, Commissioner
Robert W. Cook, Division of Trading and Markets
James A. Brigagliano, Division of Trading and Markets
Daniel Gallagher, Division of Trading and Markets
Elizabeth K. King, Division of Trading and Markets
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Daniel Gray, Division of Trading and Markets
Steve Williams, Division of Trading and Markets
Theodore S. Venuti, Division of Trading and Markets

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[13] Id.