



Elizabeth King  
General Counsel and  
Corporate Secretary

New York Stock Exchange  
11 Wall Street  
New York, NY 10005

T+ [REDACTED]  
F+ [REDACTED]

March 28, 2017

Brent J. Fields  
Secretary  
U.S. Securities and Exchange Commission  
100 F. Street N.E.  
Washington, D.C. 20549-0609

**RE: Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, to Adopt Rules for an Open-Outcry Trading Floor (File No. SR-BOX-2016-48)<sup>1</sup>**

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Dear Mr. Fields:

NYSE MKT LLC (“NYSE MKT”) and NYSE Arca, Inc. (“NYSE Arca”, together with NYSE MKT, the “Exchanges”), appreciate the opportunity to comment on the proceedings to determine whether to approve or disapprove the Proposal by BOX Options Exchange LLC (“BOX”) that would, among other things, adopt rules for open-outcry trading.

The Exchanges operate two of the four existing options floors. The Exchanges believe that the floor model has proven to be a transparent and efficient forum for large and complicated orders to be represented, seek price discovery, and source liquidity. The Exchanges are supportive of other markets that wish to open trading floors so long as these markets likewise provide an opportunity for transparent price discovery. However, the Exchanges believe that the Proposal (even as amended) lacks clarity and, absent additional specificity regarding the operation of the proposed floor, the Commission cannot determine that it is consistent with the Securities Exchange Act of 1934 (the “Act”).

The Exchanges’ comments are organized as responses to specific concerns raised by the Commission for which additional discussion was sought.<sup>2</sup>

- **Commenters’ views on the aspect of the proposal that would allow a BOX Floor Broker to execute a crossing transaction without first exposing the order to any other Floor Participant.**

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<sup>1</sup> See Securities and Exchange Release Nos. 80134 (March 1, 2017), 82 FR 12864 (March 7, 2017) (“Order Instituting Proceedings”); 79421 (November 29, 2016), 81 FR 87607 (December 5, 2016) (SR-BOX-2016-48) (“Proposal”). See also Letter to Brent J. Fields, Secretary, SEC, from Lisa J. Fall, President, BOX, dated February 21, 2017 (attaching partial amendment No. 1 to the Proposal) (“Amendment”).

<sup>2</sup> See Order Instituting Proceedings, supra note 1, at 12869.

The Exchanges do not believe that a Floor Broker should be allowed to execute a crossing transaction without first exposing the order to other Floor Participants. Further, the Exchanges believe that any such exposure should be to other Floor Participants eligible to interact with the orders that are part of the crossing transaction. This requirement would be consistent with prior Commission finding that “order exposure is generally beneficial to options markets in that it provides an incentive to options market makers to provide liquidity and therefore plays an important role in ensuring competition and price discovery in the options markets.”<sup>3</sup> In this regard, the Exchanges believe there are a number of aspects of the BOX proposal that seem designed to limit Floor Participants’ interactions with a crossing transaction.

BOX asserts that it is simply copying existing rules of other floor-based exchanges. However, the Proposal departs from all other exchanges in subtle but important ways that will discourage, and perhaps even disallow, participation from on-floor market makers. For example, while all other options floors have a concept similar to BOX’s “Crowd Area,” proposed BOX IM-8510-2(b) states that a “Floor Market Maker shall be deemed to be participating in a single Crowd Area.” The Exchanges are unaware of any other exchange that quarantines its participants into designated areas from which they are unable to stray.

Further, proposed BOX Rule 100(b)(5) (Public Outcry) contains conflicting language regarding crowd participation. For example, the proposed rule states that “[a] Floor Market Maker shall be considered ‘out’ on a bid or offer if he does not respond to the Floor Broker who is announcing the order.”<sup>4</sup> In other words, if a Floor Market Maker (“FMM”) does not respond with a bid or offer, the FMM does not have a participation right on the trade. The very next sentence of the proposed rule, however, states that a FMM “bidding and offering in **immediate and rapid succession** shall be deemed ‘in’ until he shall say ‘out’ on either bid or offer.”<sup>5</sup> The Exchanges believe this proposed rule text is ambiguous and confusing as it appears that a FMM’s failure to bid or offer in “immediate and rapid succession” will be treated the same as if the FMM “does not respond” at all – i.e., the FMM will be considered “out” on a trade. The proposed text also provides that “[o]nce the trading crowd has provided a quote, it will remain in effect until: (i) a reasonable amount of time has passed, or (ii) there is a significant change in the price of the underlying security, or (iii) the market given in response to the request has been improved.”<sup>6</sup> This text likewise appears to contradict the rule text that provides that a FMM must bid or offer in “immediate and rapid succession” to be considered “in” on a trade. The Exchanges believe that if BOX intends that FMMs would only be only considered “in” on a trade by virtue of bidding and offering immediately and in rapid succession (i.e., continuously) the rule would make it impractical (and likely impossible) for such FMMs to respond to concurrent or overlapping

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<sup>3</sup> See Securities and Exchange Release No. 63955 (February 24, 2011), 76 FR 11533, 11540 (March 2, 2011) (order approving exception to order exposure rules for Qualified Trades) (SR-ISE-2010-73) (“Proposal”).

<sup>4</sup> See proposed BOX Rule 100(b)(5).

<sup>5</sup> *Id.* (emphasis added).

<sup>6</sup> The Exchanges note that BOX does not attempt to define or quantify what would constitute either a “reasonable amount of time” or “a significant change” in the price. Nor does BOX make clear whether a FMM would have the opportunity to improve its quote if the market improved.

Market Probes.<sup>7</sup> The Exchanges believe that the rule text, as proposed, would place FMMs in a position where the FMMs cannot possibly fulfill their obligations under proposed BOX Rule 8510(c)(2), which provides that, “[i]n response to a request for a quote by a Floor Broker, or Options Exchange Official, [FMMs] **must** provide a two-sided market...”<sup>8</sup> Finally, in addition to being ambiguous, proposed BOX Rule 100(b)(5) imposes obligations that run contrary to other floor-based exchanges. For example, the rules of the Exchanges require a market maker “to update market quotations in response to changed market conditions in all series of options classes within the Market Maker’s appointment,” but otherwise the Market Maker is considered in on the trade and is not required to continuously assert that intention.<sup>9</sup>

The Exchanges also note that proposed BOX Rule 8500(a) requires that an on-floor market maker have an electronic quote in the issue before being permitted to participate in open outcry, which BOX acknowledges is not a requirement on other exchanges, including PHLX.<sup>10</sup> To justify this additional requirement, BOX’s proposal states that “this proposed difference will lead to more robust quoting that will benefit all market participants.”<sup>11</sup> The Exchanges believe that BOX should be required to explain how this limitation on participation in open outcry provides robust quoting on BOX’s floor and the opportunity for crossing transactions to be executed at the best price. In addition, the Exchange believes that BOX should explain why the requirement that on-floor market makers have an electronic quote before participating in open outcry does not unfairly discriminate against BOX FMMs as BOX does not impose a reciprocal obligation on its electronic Market Makers. Specifically, BOX does not require its electronic Market Makers, if called upon by Options Exchange Official, to provide a two-sided market that complies with the Quote Spread Parameters defined in Proposed Rule 8510(d)(1).

Each of BOX’s proposed prerequisites limit the potential participation of on-floor market makers in a crossing transaction. For a crossing order to be properly exposed and have an opportunity for price improvement, the Exchange believes that the exposure must be to those able to participate in its execution.<sup>12</sup> The Exchanges believe that the proposed restrictions on BOX’s on-floor market makers are designed to needlessly limit such exposure.

- **Whether BOX adequately describes the mechanics of how orders will be received and executed on the proposed BOX trading floor.**

The Exchanges believe that, because the Proposal lacks clarity and specificity, the Proposal may be applied in ways to limit competition. A number of commentators have already

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<sup>7</sup> See proposed BOX Rule 7600(b) (defining Market Probe as requiring, in part, that “[a]ll QOO Order being submitted to the BOG for execution”).

<sup>8</sup> See proposed BOX Rule 8510(c)(2) (emphasis added).

<sup>9</sup> See, e.g., NYSE MKT Rule 925NY(b)(3).

<sup>10</sup> See Proposal, *supra* note 1, at footnote 101. See also PHLX Rule 1014(b)(ii)(E)(1) (“*No Continuous Electronic Quoting Obligation: A non-SQT ROT will not be obligated to quote electronically in any designated percentage of series*”).

<sup>11</sup> See Proposal, *supra* note 1.87620 at footnote 101.

<sup>12</sup> See Amendment, *supra* note 1. See also Letter to Brent J. Fields, Secretary, SEC, from Lisa J. Fall, President, BOX, dated February 21, 2017 (the “Response”).

addressed the need for more specificity.<sup>13</sup> BOX attempted to address these comments, first by letter and later by Amendment.<sup>14</sup> The Exchanges believe that neither the Response nor the Amendment adequately address the concerns raised.

Even as amended, the rules relating to Floor Crossing introduce the possibility that a Floor Broker could withhold crucial order information from floor participants. In particular, while proposed BOX Rule 7600(a)(1) sets forth requirements as it relates to the “initiating side” and “contra-side” of an order<sup>15</sup> and proposed BOX Rule 7600(b) explains that “[a]n Options Exchange Official will certify that the Floor Broker adequately represented the [Qualified Open Outcry Order (“QOO”)] to the trading crowd,” proposed BOX IM-7600-1(a) and (e) establish disclosures only for Public Customer orders. Further, proposed BOX IM-7600-1(a) makes reference to the disclosure being required for Public Customer orders that are “subject to crossing,” yet fails to explain what this phrase means in the context of the “initiating side” vs. the “contra-side” of a QOO.<sup>16</sup> In other words, it is not clear whether it matters that the Public Customer order is on a particular side of the trade – the initiating or contra – or that a Public Customer order is part of the QOO order at all. The Exchanges believes that BOX should clarify the circumstances under which disclosure is required as it relates to Public Customer orders.

As proposed, the narrow focus of BOX IM-7600-1 on Public Customers would mean that a Floor Broker would be permitted to request bids and offers for a stock/option order without disclosing the stock component of the trade anytime they hold a Non-Public Customer to Non-Public Customer QOO (and potentially whenever a Public Customer is the “contra-side” of a QOO). The ability to expose only the option component of a stock/option order being traded on a net debit or net credit basis would effectively create a dark pool for crossing stock/option orders. These proposed rules would significantly expand the number of orders that can be crossed without exposure and without any of the requirements on other exchanges for a QCC,

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<sup>13</sup> See Letter from Joan C. Conley dated December 22, 2016; Letter from Steve Crutchfield dated December 31, 2016 (“CTC Comment Letter”); and Letter from Angelo Evangelou dated January 10, 2017 (collectively “Comment Letters”).

<sup>14</sup> Because the Proposal lacks clarity, the Exchange believes it would permit crossing orders to execute absent a sufficiently verbalized announcement of the terms of a crossing order by a Floor Broker in a Crowd Area. For example, it appears acceptable to announce the terms of a crossing order at a time when (i) the only on-floor market makers present do not have an electronic quote in the class (and thus are prohibited from participating) or (iii) the only on-floor market makers are engaged in another auction (thus hindering their ability to immediately and continuously affirmatively respond to both auctions).

<sup>15</sup> See proposed BOX Rule 7600(a)(1) (“The initiating side is the side of the QOO Order that must be filled in its entirety. The contra-side must guarantee the full size of the initiating side of the QOO Order and may provide a book sweep size as provided in Rule 7600(h)”).

<sup>16</sup> See proposed BOX IM-7600-1(a) (“The Floor Broker must disclose all securities that are components of the Public Customer order which is subject to crossing before requesting bids and offers for the execution of all components of the order”). See also proposed BOX IM-7600-1(e) (“A Floor Broker crossing a Public Customer Order with an order that is not a Public Customer Order, when providing for a reasonable opportunity for the trading crowd to participate in the transaction, shall disclose the Public Customer Order that is subject to crossing”).

such as that the order is for a single initiating party for at least 1,000 contracts, the execution of the component orders is “at or near the same time,” and that the option portion of the stock/option order is “fully hedged” by the stock component.

Additionally, BOX has not addressed concerns raised in the CTC Comment Letter about the operation of the “book sweep size” mechanism. Specifically, it appears that book sweep size functionality would “reject if [a Public Customer’s] bid were better than the limit price of the initiating side of the QOO Order, thereby depriving the QOO Order not only of an execution but also of price improvement.” The Exchanges believe BOX should be required to explain how a mechanism that hampers a Floor Broker’s ability to comply with its due diligence obligations is consistent with just and equitable principles of trade.

In the Response, BOX states that “[c]ommenters incorrectly assert that BOX’s Trading Floor will not be a venue for seeking liquidity of unmatched orders. A Floor Broker is welcome to bring any unmatched order to the Trading Floor in order to seek liquidity.” The Exchanges, however, do not believe that the Proposal (even as amended) provides rules for which to announce and trade unmatched orders. Specifically, proposed BOX Rule 7580(e)(2) states that “[o]rders on the Trading Floor must be two-sided orders.” While proposed BOX Rule 7600 (and related IMs) establish guidelines for open outcry, it only applies to “Floor Crossing” and thus would not apply to liquidity seeking orders.

Finally, the Exchanges do not believe that BOX has adequately explained how BOX Options Participants would comply with Section 11(a)(1) of the Act when effecting transactions through the Box Order Gateway (“BOG”). Section 11(a)(1) of the Act prohibits an exchange member from effecting a transaction on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion (collectively “covered accounts”), unless an exception applies.<sup>17</sup> The Commission found that BOX Options Participants entering orders into the Trading Host, other than those transactions effected through the Price Improvement Period (“PIP”), satisfy the conditions of Rule 11a2-2(T)<sup>18</sup> and that transactions effected through the PIP satisfy the requirements of Section 11(a)(1)(G) of the Act, provided that BOX Options Participants comply with the requirements in Rule 11a1-1(T).<sup>19</sup> However, BOX has not explained how a BOX member that is the counterparty to a QOO would

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<sup>17</sup> 15 USC 78k(a)(1).

<sup>18</sup> Rule 11a2-2(T) – the “effect versus execute” rule – provides exchange members with an exemption from the Section 11(a)(1) prohibition. 17 CFR 240.11a2-2(T). Specifically, Rule 11a2-2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute the transactions on the exchange. To comply with Rule 11a2-2(T)’s conditions, a member: (1) may not be associated with the executing member; (2) must transmit the order from off the exchange floor; (3) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution; and (4) with respect to an account over which the member or an associated person has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule. 17 CFR 240.11a1-1(T).

<sup>19</sup> See Securities Exchange Act Release No. 66871 (Apr. 27, 2012), 77 FR 26323, at 26355 (May 3, 2012).

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comply with Section 11(a). For example, BOX describes, in Proposed BOX Rule 7600- Qualified Open Outcry Orders – Floor Crossing, how the counterparty to a QOO order would yield priority to “...any non-Public Customer bids or offers on the BOX Book that are ranked ahead of such equal or better priced Public Customer bids or offers.” Yet, BOX does not explain how yielding on to non-Public Customer bids and offers is consistent with the requirements of Section 11(a)(1)(G), which requires yielding to all non-members, or of another exception to the prohibition in Section 11(a)(1).

For the foregoing reasons, the Exchanges believe that the Proposal (even as amended) lacks clarity, specificity and transparency and therefore the Commission cannot determine that it is consistent with the Act.

We thank the Commission again for the opportunity to comment on the Proposal.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Brent J. Fields". The signature is fluid and cursive, with a long horizontal stroke at the end.