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November 17, 2011

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

Re: File Nos. SR-BX-2011-046 (Release Nos. 34-64981 and 34-65330)

Dear Ms. Murphy:

The International Securities Exchange, LLC ("ISE") appreciates the opportunity to provide additional comments on the above-referenced rule filing (the "Fee Change") of the Boston Options Exchange ("BOX") regarding discriminatory fees BOX charges with respect to its Price Improvement Period ("PIP"). We applaud the Division's determination to suspend the effectiveness of the Fee Change and to institute proceedings to determine whether to approve or disapprove the proposal. We continue to urge the Commission to disapprove the filing, as the Fee Change imposes a unreasonable burden on competition to the detriment of retail investors.

ISE submitted a comment letter on August 22, 2011 fully explaining how the application of the Fee Change is designed to contravene the competitive design of the PIP.[1] In response to our comments, and the comments of other market participants, BOX asserted that: (i) the retention rate for participants that initiated PIPs before and during the time period that the Fee Change was in effect demonstrates that the fee does not have an anti-competitive effect; and (ii) its fees are comparable to so-called marketing or payment-for-order flow fees that ISE and other exchanges charge. BOX also asserted that our comments should be discounted because we have a competitive incentive to prevent BOX from implementing new fee proposals that will allow BOX to compete for market share. None of these assertions are valid.

- Retention Rates on Box. The data provided by BOX does not indicate the Fee Change's potential impact on competition in the PIP, as it takes time for market participants to assess new fee structures and to change behavior in response thereto. While BOX touts the millions of dollars of price improvement being achieved through the PIP, its own data indicates that only 15% of the transactions in penny classes receive any price improvement at all. This means that 85% of PIP transactions are being executed at a price that matches the NBBO. The data provided by BOX also indicates a 58% retention rate in these penny classes. Accordingly, the overwhelming majority of transactions occurring

[1] Letter to Elizabeth Murphy, Secretary, U.S. Securities and Exchange Commission, from Michael Simon, Secretary, ISE, dated August 22, 2011.

in PIP in penny classes are being internalized at the NBBO at a rate that far exceeds the 40% execution guarantee, even before the full impact of the Fee Change has been realized.

- Payment for Order Flow. BOX asserts that its PIP fees are designed to provide an amount of payment for order flow comparable to the rates paid by other exchanges' specialists. However, the issue is not whether the level of payment is comparable, it is whether the manner in which BOX is assessing the fees and making payments contravenes the competitive design of the PIP. As BOX acknowledges, payment for order flow arrangements on the ISE and other exchanges are negotiated between the specialists (our primary market makers) and order flow providers. Such arrangements do not discourage competition within the ISE's Price Improvement Mechanism, as ISE does not assess the payment for order flow fee for PIM trades in penny classes. Being better able to compete with ISE and other exchanges is not a sufficient justification under the Exchange Act to adopt a fee structure that is anti-competitive and harmful to investors. In fact, BOX could easily craft a competitive payment for order flow program that did not adversely impact PIP auctions if that were the true goal of the Proposed Rule change. Rather, BOX is seeking to better compete for crossing business of retail order flow by increasing retention rates for internalizers through the adoption of an anti-competitive fee structure.

- Competitive Incentive. ISE and several other options exchanges offer price improvement mechanisms that are substantially similar to BOX, and we can easily adjust our fees in relation to the BOX Fee Proposal to remain competitive. However, for the reasons fully explained in our August 22nd comment letter, we believe that using fees to increase interaction rates denies investors the opportunity to receive the best possible prices for their orders. Therefore, we do not believe such competition among exchanges is good for investors or consistent with the requirements of the Exchange Act. The Commission should not permit exchanges to compete on this basis.

Instead of addressing the substantive issues raised by the application of the Fee Change, BOX proclaims that customers have obtained millions of dollars in price improvement though the "superior price improvement opportunities available at BOX."[2] In fact, the Commission should consider carefully the data submitted by BOX that indicates only **23%** of the all PIP transactions were executed at a price that improved the NBBO in September 2011, with an average price improvement of only **$0.0065**.[3] In contrast, **81%** of the contracts executed through the ISE's Price Improvement Mechanism received price improvement over the NBBO during September 2011, with an average price improvement of **$0.0343.** Thus, the Commission should not be impressed by the millions of dollars of price improvement BOX claims to have achieved for investors; rather the Commission should consider whether customers might have received greater price improvement on another exchange that does not discourage competition within its price improvement processes.

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[2] In the Matter of NASDAQ OMX BX, Inc. (File No. SR-BX-2011-046), Petition for Review of Action by Delegated Authority (September 27, 2011), at 7.
[3] *Id.*

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The Commission should not allow BOX to circumvent the exposure of customer orders in the PIP by imposing fees designed to discourage competition. The record does not provide an adequate basis for determining that the Fee Change is consistent with the Exchange Act, as BOX has failed to: (i) address how the pricing differential of up to $0.90 for BOX market participants that seek to compete with internalizers is a fair and equitable allocation of fees; or (ii) justify the burden on competition that results from the application of the pricing differential. Accordingly, we urge the Commission to disapprove the Fee Change.

If you have any questions on our comments, please do not hesitate to contact us.

Sincerely,

Michael J. Simon
Secretary

cc: Robert Cook, Director, Division of Trading and Markets
James Brigagliano, Deputy Director, Division of Trading and Markets
Heather Seidel, Associate Director, Division of Trading and Markets