



DIVISION OF
TRADING AND MARKETS

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

September 3, 2010

Ms. Lisa J. Fall
General Counsel
Boston Options Exchange
100 Franklin Street
Boston, MA 02110

Dear Ms. Fall:

In your letter dated September 3, 2010, BOX,¹ an options trading facility of BX, requests assurances that the Staff would not recommend enforcement action under Exchange Act Rule 10b-10(a), Regulation T,² or Exchange Act Section 15(b)(8) with respect to certain activities involving BOX's proposed Outbound Routing Arrangement instituted as part of its compliance with the Decentralized Plan. In particular, BOX seeks assurances that the Staff would not recommend enforcement action if the Dual Member does not send a trade confirmation to BOX containing all of the information as provided under Rule 10b-10(a) for Outbound Trades. BOX also seeks assurances that the Staff would not recommend enforcement action if the Dual Member treats BOX's account opened with it in connection with the Outbound Routing Arrangement as a "broker-dealer credit account" for purposes of Regulation T. In addition, BOX seeks assurances that the Staff would not recommend enforcement action to the Commission under Section 15(b)(8) if an Originating Broker-Dealer that is only a member of BOX ("BOX-only Member") treats income derived from transactions through the Outbound Routing Arrangement as "income derived from transactions . . . through the Intermarket Trading System" for purposes of the exemption provided in Exchange Act Rule 15b9-1.

1. Rule 10b-10

Based on the facts and representations set forth in your letter, but without necessarily agreeing with your analysis, the Staff will not recommend enforcement action to the Commission under Rule 10b-10(a) against the Dual Member if the Dual Member does not give or send written

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

² 12 CFR 220.

notification to BOX disclosing all of the information as provided under Rule 10b-10(a) for Outbound Trades.³

2. Regulation T

Based on the facts and representations set forth in your letter, but without necessarily agreeing with your analysis, the Staff will not recommend enforcement action to the Commission under Regulation T if the Dual Member treats BOX's account opened with it in connection with the Outbound Routing Arrangement as a "broker-dealer credit account" for purposes of Regulation T.

3. Section 15(b)(8) and Rule 15b9-1

Based on the facts and representations set forth in your letter, but without necessarily agreeing with your analysis, the Staff will not recommend enforcement action to the Commission under Section 15(b)(8) against a BOX-only Member if the BOX-only Member treats income derived from transactions through the Outbound Routing Arrangement as "income derived from transactions . . . through the Intermarket Trading System" for purposes of the exemption provided in Exchange Act Rule 15b9-1.⁴

* * *

These positions concern enforcement action only, are based solely upon the representations you have made, and are limited strictly to the facts and circumstances described in your letter. Any different facts or circumstances, including any change to the operation of the Outbound Routing Arrangement or to the Decentralized Plan, may require a different response. These 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.

³ In taking this position, the Staff notes in particular that customers of the Originating Broker-Dealer will receive confirmations in compliance with Rule 10b-10 from the Originating Broker-Dealer for Outbound Trades.

⁴ In taking this position, the Staff notes in particular that the Outbound Routing Arrangement has been established by BOX pursuant to a proposed rule change filed with, and approved by, the Commission as part of compliance with the requirements of the Decentralized Plan. See Securities Exchange Act Release No. 60832 (October 16, 2009), 74 FR 54607 (October 22, 2009). The Staff also notes that this relief would extend to BOX members who also are members of another exchange but not FINRA. See Letter re: National Stock Exchange, Inc. (Nov. 28, 2006).

In addition, your attention is directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a) and 10(b), and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with BOX, the Dual Member, and the Originating Broker-Dealers. Finally, the Staff expresses no view with respect to any other questions that the proposed transactions may raise, including, but not limited to, the adequacy of the disclosure concerning, or the applicability of any federal or state laws or self-regulatory organization rules to, the proposed transactions.

Sincerely,



James A. Brigagliano
Deputy Director

cc: Scott Holtz, Board of Governors of the Federal Reserve System



September 3, 2010

Mr. James A. Brigagliano
Deputy Director
Division of Trading and Markets
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0001

Re: Request for No-Action Relief for Outbound Routing Arrangement

Dear Mr. Brigagliano:

This letter, submitted by the Boston Options Exchange ("BOX"), an options trading facility of NASDAQ OMX BX ("BX"), respectfully requests that the staff of the Division of Trading and Markets (the "Staff") of the Securities and Exchange Commission ("SEC" or "Commission") not recommend enforcement action to the Commission under Rule 10b-10(a) under the Securities Exchange Act of 1934 (the "Exchange Act"), Regulation T of the Board of Governors of the Federal Reserve System ("Regulation T") or Section 15(b)(8) of the Exchange Act if an Originating Broker-Dealer (defined below) effects options transactions using an outbound routing arrangement and associated execution and settlement services arrangement, as described herein, (collectively, the "Outbound Routing Arrangement") implemented by BOX as part of its compliance with outbound order routing requirements of the Options Order Protection and Locked/Crossed Market Plan (the "Decentralized Plan").¹

A. Description of the Decentralized Plan and Outbound Routing Arrangement

The Decentralized Plan applies many of the Regulation NMS² price-protection provisions to the listed options markets. Similar to Regulation NMS, the Decentralized Plan requires Plan Participants to, among other things, adopt rules "reasonably designed to prevent Trade-Throughs³ in Eligible Options Classes⁴", while providing exceptions for certain

¹ See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009)(File No. 4-546)(Order Approving the National Market System Plan Relating to Options Order Protection and Locked/Crossed Market Plan)("Decentralized Plan Order"). A description of the Decentralized Plan is located in Appendix A of the Decentralized Plan Order.

² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

³ A "Trade-Through" is defined as a transaction in an options series, either as principal or agent, at a price that is lower than a Protected Bid or higher than a Protected Offer. See Section 2(21) of the Decentralized Plan; see

transactions that track those provided under Regulation NMS, correspond with unique aspects of the options market, or both.⁵ In order to comply with this requirement, BOX proposed an amendment to Chapter XII of the BOX Rules to provide for the use by BOX of certain routing broker/dealers ("Routing Broker/Dealer") to route options orders to one or more Away Exchange(s) when such Away Exchange(s) display the Best Bid or Best Offer in accordance with the Decentralized Plan. The Commission approved the addition to Chapter XII of this new rule that governs the outbound order routing process, as described below.⁶

When a BOX Options Participant (the "Originating Broker-Dealer") sends a buy or sell order to BOX in an Eligible Options Class as to which there is a Protected Offer or Protected Bid available at another options exchange (the "Away Exchange"), BOX will route a new order with terms that are identical to the Originating Broker-Dealer's order, except that (i) the relevant Originating Broker-Dealer will not be identified and (ii) the order type will be an Immediate or Cancel ("IOC") limit order priced at the National Best Bid or Offer, to the Away Exchange through a BOX account at a Routing Broker/Dealer that is a member of both BOX and the Away Exchange (the "Dual Member"). All Dual Members will also be members of FINRA. Currently, BOX proposes to use Goldman Sachs Execution & Clearing, L.P. ("GSEC") as one of its Dual Members. Upon the Dual Member's receipt of an IOC limit order from BOX, the Dual Member will be responsible for using certain aspects of its existing routing logic, as modified to address BOX routing requirements as set forth in BOX Rules ("BOX Routing Logic"), to route BOX IOC limit orders to Away Exchanges for execution pursuant to the Decentralized Plan (any such executed trade, an "Outbound Trade") and for clearing and settling the Outbound Trade with the relevant broker-dealer at the Away Exchange. As soon as a trade has been executed, BOX will

also Chapter XII, Section 1(q) of the BOX Rules. A "Protected Bid" or a "Protected Offer" means a Bid or Offer in an option series, respectively, that is disseminated pursuant to the OPRA Plan and is the Best Bid or Best Offer, respectively, displayed by an Eligible Exchange. *See* Section 2(17) of the Decentralized Plan; *see also* Chapter XII, Section 1(n) of the BOX Rules. A "Best Bid" or "Best Offer" means the highest priced Bid or the lowest priced Offer. *See* Sections 2(1) and 2(2) of the Decentralized Plan; *see also* Chapter XII, Section 1(a) of the BOX Rules. A "Bid" or "Offer" means the bid price or the offer price communicated by a member of an Eligible Exchange to any Broker/Dealer, or to any customer, at which it is willing to buy or sell, as either principal or agent, but would not include indications of interest. *See* Sections 2(1) and 2(2) of the Decentralized Plan; *see also* Chapter XII, Section 1(b) of the BOX Rules.

⁴ An "Eligible Options Class" is defined as all options series overlying a security (as that term is defined in Section 3(a)(10)) or group of securities, including both put options and call options, which class is traded on BOX and at least one other Eligible Exchange. *See* Section 2(7) of the Decentralized Plan; *see also* Chapter XII, Temporary Section 4(g)(2) of the BOX Rules. An "Eligible Exchange" means a national securities exchange registered with the Commission in accordance with Section 6(a) of the Exchange Act that is a Participant Exchange in OCC (as that term is defined in Section VII of the OCC by-laws), is a party to the OPRA Plan (as that term is defined in Section I of the OPRA Plan), and if the national securities exchange is not a party to the Plan, is a participant in another plan approved by the Commission providing for comparable Trade-Through and Locked and Crossed Market protection. *See* Section 2(6) of the Decentralized Plan; *see also* Chapter XII, Section 1(f).

⁵ *See* Section 5(b) of the Decentralized Plan.

⁶ *See* Securities Exchange Act Release No. 60832 (October 16, 2009), 74 FR 54607 (October 22, 2009) (SR-BX-2009-066) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Chapter XII of the BOX Rules).

receive a trade notification containing the price and quantity, and will inform the Originating Broker-Dealer.

The Dual Member will use its existing account at The Options Clearing Corporation ("OCC") for the purposes of facilitating clearance and settlement of Outbound Trades executed by the Dual Member (the "Dual Member OCC Account"). All Outbound Trades executed by the Dual Member will be settled regular way in the Dual Member OCC Account along with the offsetting trades between the Dual Member and the Originating Broker-Dealer.

B. Discussion

Generally, an SEC registered broker-dealer has certain obligations with respect to its customer's trades, including the issuance of confirmations pursuant to Rule 10b-10 under the Exchange Act,⁷ and the collection of margin or full cash payment under Regulation T.⁸ Although many of these obligations do not apply when the party sending a bid or offer that results in a trade to the executing broker-dealer is another SEC registered broker-dealer, these exceptions are not explicitly available when the party transmitting the order is a facility of a national securities exchange such as BOX acting in accordance with its own rules preventing Trade-Throughs adopted as part of its compliance with the by the Decentralized Plan. We note that the proposed Outbound Routing Arrangement is analytically similar to a number of other outbound routing arrangements that have been the subject of previous no-action requests, seeking substantially identical relief from the provisions of the Exchange Act noted above, to which the staff responded favorably.⁹ The primary difference between this request and the previous no-action requests is that the prior no-action requests related to outbound routing arrangements established by equity exchanges and facilities to comply with Rule 611 of Regulation NMS relating to the prevention of trade-throughs, while this request is submitted by an options facility, BOX, that is implementing the Outbound Routing Arrangement to comply with its own rules preventing Trade-Throughs adopted as part of its compliance with the Decentralized Plan.

1. Rule 10b-10(a)

Rule 10b-10(a) under the Exchange Act requires a broker-dealer to send a trade confirmation to its customer at or before completion of each transaction. Although Rule 10b-10(d)(1) explicitly excludes a broker-dealer from the definition of "customer" for purposes of Rule 10b-10, a facility of a national securities exchange, such as BOX, is not excluded from the

⁷ See Rule 10b-10 under the Exchange Act.

⁸ See e.g., Regulation T Sections 220.4 and 220.8.

⁹ See e.g., Chicago Board Options Exchange, Inc., SEC No-Action Letter, 2007 SEC No-Act. LEXIS 263 (Feb. 23, 2007); National Stock Exchange, Inc., SEC No-Action Letter, 2006 SEC No-Act. LEXIS 689 (Nov. 28, 2006); American Stock Exchange LLC, SEC No-Action Letter, 2006 SEC No-Act LEXIS 643 (Oct. 12, 2006)(collectively, the "Prior SEC No-Action Letters"). Although each of the Prior SEC No-Action Letters also requested relief from the locate requirement of Rule 203(b)(1) of Regulation SHO, BOX has not included a request for relief from the locate requirement of Regulation SHO because the locate requirement would not apply to these types of transactions.

definition of "customer."¹⁰ Absent relief, the Dual Member in the Outbound Routing Arrangement must send a trade confirmation to BOX as if it were a customer.

We believe the purpose of Rule 10b-10(a) is to ensure full disclosure to investors of the terms of the transactions that they conduct with their broker-dealers. BOX has no interest in receiving Rule 10b-10(a) confirmations because we believe that it does not need the particular information from such confirmations. Fees charged by Dual Member will be set forth in a written agreement between BOX and Dual Member. Furthermore, the execution price of the trades will be available to BOX through the trade reporting done by Dual Member. The customer submitting the order to the Originating Broker-Dealer, will be receiving trade confirmations in compliance with Rule 10b-10(a) from the Originating Broker-Dealer; this fulfills the policy concerns of Rule 10b-10.

BOX respectfully requests that the Staff not recommend enforcement action to the Commission under Rule 10b-10(a) of the Exchange Act if the Dual Member does not send a trade confirmation to BOX containing all information as provided under 10b-10(a) for Outbound Trades.

2. Regulation T

Generally under Regulation T, a customer that buys securities on a cash basis through one broker-dealer and settles them through another broker-dealer is required to obtain a so-called "letter of free funds" in connection with each transaction.¹¹ This requirement would obviously be impractical under this Outbound Routing Arrangement.

By contrast, a broker-dealer (referred to as a "creditor" in Regulation T) can buy securities in an account with one broker-dealer (*e.g.*, the Dual Member) and settle with another broker-dealer (*e.g.*, the "Originating Broker-Dealer") in a "broker-dealer credit account" without the need for a letter of free funds. Although BOX is not a broker-dealer, we believe that the Dual Member should be able to treat BOX's account with it as a "broker-dealer credit account" given that the only purpose of the account is to achieve compliance with the requirements of the Decentralized Plan relating to the prevention of Trade-Throughs.

Accordingly, BOX respectfully requests the Staff not recommend enforcement action to the Commission under Regulation T if the Dual Member treats BOX's account opened with it in connection with the arrangement discussed above as a "broker-dealer credit account" for purposes of Regulation T.

3. Section 15(b)(8) and Rule 15b9-1

Under Section 15(b)(8) of the Exchange Act, an SEC-registered broker-dealer has to be a member of a securities association registered pursuant to Section 15A of the Exchange Act

¹⁰ See Rule 10b-10(d)(1) under the Exchange Act.

¹¹ See Regulation T Section 220.8(c)(2)(ii).

Mr. James A. Brigagliano

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unless it effects transactions solely on a national securities exchange of which it is a member. Rule 15b9-1 under the Exchange Act provides a conditional exemption from this membership requirement. A broker-dealer relying on this rule may not have annual gross income derived from purchases and sales of securities otherwise than on a national securities exchange of which it is a member in an amount greater than \$ 1,000. The annual gross income limitation does not apply to "income derived from transactions ... through the Intermarket Trading System." Rule 15b9-1 defines the Intermarket Trading System ("ITS") as "the intermarket communications linkage operated jointly by certain self-regulatory organizations pursuant to a plan filed with, and approved by, the Commission." Although this exception is not explicitly available for income derived from transactions through the Outbound Routing Arrangement, we believe that it would be consistent with the intent of the ITS exception in Rule 15b9-1 to exclude income derived from transactions through the Outbound Routing Arrangement.

Accordingly, BOX respectfully requests that the Staff not recommend enforcement action to the Commission under Section 15(b)(8) if an Originating Broker-Dealer that is only a BOX Options Participant treats income derived from transactions through the Outbound Routing Arrangement as "income derived from transactions . . . through the Intermarket Trading System" for purposes of the exemption provided in Exchange Act Rule 15b9-1.

* * * * *

In light of the foregoing, we believe that the SEC-registered broker-dealers should be able to, for purposes of the cited securities rules and regulations implicated by the Outbound Routing Arrangement, look through BOX to the Originating Broker-Dealer or Dual Member, as the case may be. If you have any questions regarding this request, please do not hesitate to contact me at (617) 235-2235.

Sincerely,



Lisa J. Fall
General Counsel

cc: Scott Holtz, Board of Governors of the Federal Reserve System
James L. Eastman, Securities and Exchange Commission
Heather Seidel, Securities and Exchange Commission
Mark Attar, Securities and Exchange Commission
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