

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58445; File No. SR-BSE-2008-43)

August 29, 2008

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Transfer of Ownership of MX US 2, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 28, 2008, the Boston Stock Exchange, Inc. (“BSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the BSE.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is submitting the proposed rule change to the Commission to amend the proposed Sixth Amended and Restated Operating Agreement (“BOX LLC Agreement”), of the Boston Options Exchange Group LLC (“BOX LLC”), in connection with the transfer by the Montréal Exchange Inc.,⁴ a company incorporated in Québec, Canada (“MX”), of its ownership interest in MX US 2, Inc., a U.S. subsidiary of MX (“MX US 2”).⁵ The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and

<http://www.bostonstock.com>.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Capitalized terms not otherwise defined herein shall have the meanings set forth in the BOX LLC Agreement.

⁴ The Montréal Exchange Inc. is also known in French as the Bourse de Montréal Inc.

⁵ See Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR-BSE-2008-25).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The BSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 13, 2004, the Commission approved four BSE proposals that together established, through an operating agreement among its owners, a Delaware limited liability company, BOX LLC, to operate BOX as an options trading facility of the Exchange.⁶ MX owns a 100% ownership interest in MX US 2, which holds a 31.37% ownership interest in BOX LLC.⁷ MX has transferred 100% of its common stock ownership interest in MX US 2 to MX US 1, Inc., a wholly owned U.S. subsidiary of MX ("MX US 1") ("Common Stock Transfer"). 3226507 Nova Scotia Company, a Nova Scotia, Canada unlimited liability company, a subsidiary of MX

⁶ See Securities Exchange Act Release No. 49066 (January 13, 2004), 69 FR 2773 (January 20, 2004) (establishing a fee schedule for the proposed BOX facility); Securities Exchange Act Release No. 49065 (January 13, 2004), 69 FR 2768 (January 20, 2004) (creating Boston Options Exchange Regulation LLC to which the BSE would delegate its self-regulatory functions with respect to the BOX facility); Securities Exchange Act Release No. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (approving trading rules for the BOX facility); Securities Exchange Act Release No. 49067 (January 13, 2004), 69 FR 2761 (January 20, 2004) (approving certain regulatory provisions of the operating agreement of BOX LLC).

⁷ Upon the consummation of the Exchange's transfer of its 21.87% ownership interest in BOX to MX US 2, MX US 2 will hold a 53.24% ownership interest in BOX ("BSE Transfer"). See Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR-BSE-2008-25).

(“NSULC 2”), has also acquired 100% of the preferred stock of MX US 2 (“Preferred Stock Transfer”). NSULC 2 is a direct subsidiary of MX and 3226506 Nova Scotia Company, a Nova Scotia, Canada unlimited liability company and a wholly owned subsidiary of MX (“NSULC 1”). Furthermore, NSULC 1 has acquired 0.1% of the common stock of NSULC 2 (“NSULC 2 Transfer” and collectively with the Common Stock Transfer and the Preferred Stock Transfer, the “Transfers”).

The Exchange is submitting the proposed rule change to the Commission to amend the BOX LLC Agreement pursuant to the proposed Instruments of Accession in connection with the Transfers. As a result of the Transfers, MX US 2 is a direct subsidiary of MX US 1 and NSULC 2.

Pursuant to Section 8.4(g) of the BOX LLC Agreement, as previously approved by the Commission, BOX LLC is required to amend the BOX LLC Agreement to make a Controlling Person⁸ a party to the BOX LLC Agreement if such Controlling Person establishes a Controlling Interest⁹ in any BOX Member that, alone or together with any Affiliate of such BOX Member, holds a Percentage Interest in BOX equal to or greater than 20%.¹⁰ Pursuant to the Common Stock Transfer and the Preferred Stock Transfer, MX US 1 and NSULC 2 have acquired a Controlling Interest in MX US 2, which owns a 31.37% ownership interest in BOX LLC and will own a 53.24% ownership interest in BOX LLC upon the consummation of the BSE Transfer.

⁸ A “Controlling Person” is defined as “a Person who, alone or together with any Affiliate of such Person, holds a controlling interest in a [BOX] Member.” See Section 8.4(g)(v)(B), BOX LLC Agreement.

⁹ A “Controlling Interest” is defined as “the direct or indirect ownership of 25% or more of the total voting power of all equity securities of a Member (other than voting rights solely with respect to matters affecting the rights, preferences, or privileges of a particular class of equity securities), by any Person, alone or together with any Affiliate of such Person.” See Section 8.4(g)(v)(A), BOX LLC Agreement.

¹⁰ See Section 8.4(g), BOX LLC Agreement.

MX US 1 and NSULC 2, as Controlling Persons, are required to and will become parties to the BOX LLC Agreement pursuant to the proposed Instruments of Accession. Furthermore, NSULC 1, which acquired 0.1% of the common stock ownership interest in NSULC 2, a direct subsidiary of MX that holds an ownership interest in 100% of the preferred shares of MX US 2 that holds and will hold an interest in BOX that is greater than twenty percent of all outstanding BOX ownership interests, is also required to and will become a party to the BOX LLC Agreement. As a result, MX US 1, NSULC 1 and NSULC 2 will agree to abide by all the provisions of the BOX LLC Agreement, including those provisions requiring submission to the jurisdiction of the Commission.¹¹

For the reasons stated above, the BSE is submitting to the Commission the proposed Instruments of Accession to the BOX LLC Agreement as a rule change.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(1),¹³ in particular, in that

¹¹ The BOX LLC states, in part, that “the Members, officers, directors, agents, and employees of Members irrevocably submit to the exclusive jurisdiction of the U.S. federal courts, U.S. Securities and Exchange Commission, and the Boston Stock Exchange, for the purposes of any suit, action or proceeding pursuant to U.S. federal securities laws, the rules or regulations thereunder, arising out of, or relating to, BOX activities or Article 19.6(a), (except that such jurisdictions shall also include Delaware for any such matter relating to the organization or internal affairs of BOX, provided that such matter is not related to trading on, or the regulation, of the BOX Market), and hereby waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that they are not personally subject to the jurisdiction of the U.S. Securities and Exchange Commission, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter hereof may not be enforced in or by such courts or agency.” See BOX LLC Agreement, Section 19.6.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

it enables the Exchange to be so organized so as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Act¹⁴ in that it is designed to facilitate transactions in securities, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public

¹⁴ 15 U.S.C. 78f(b)(5).

interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.¹⁷ However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.¹⁸ The Exchange has requested that the Commission waive the 5-day pre-filing requirement and the 30-day operative delay.¹⁹ The Commission believes that waiving the 5-day pre-filing requirement and the 30-day operative delay is consistent with the protection of investors and the public interest because BSE has represented that the Instruments of Accession will be executed on August 29, 2008, and there is no reason to delay implementation of the changes to the BOX LLC Agreement pursuant to the Instruments of Accession. For these reasons, the Commission designates the proposal to be operative upon filing with the Commission.²⁰

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

¹⁹ See Email from Lisa J. Fall, General Counsel and Corporate Secretary, BOX, to Molly Kim, Special Counsel, Division of Trading and Markets, Commission, on August 29, 2008.

²⁰ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.²¹

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BSE-2008-43 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BSE-2008-43. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street,

²¹ See 15 U.S.C. 78s(b)(3)(C).

NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BSE-2008-43 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Florence E. Harmon
Acting Secretary

²² 17 CFR 200.30-3(a)(12).