

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-75916; File No. SR-BOX-2015-31)

September 14, 2015

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a Principles-based Approach to Prohibit the Misuse of Material Nonpublic Information by Market Makers

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 September 3, 2015, BOX Options Exchange LLC (the “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 prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

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

The Exchange proposes to adopt a principles-based approach to prohibit the misuse of material nonpublic information by Market Makers by deleting BOX Rule 8090 (Limitation on Dealings). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission’s Public Reference Room and also on the Exchange’s Internet website at <http://boxexchange.com>.

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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

specified in Item IV below. The self-regulatory organization 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

The Exchange proposes to adopt a principles-based approach to prohibit the misuse of material non-public information by Market Makers by deleting BOX Rule 8090 (Limitation on Dealing). In doing so, the Exchange would harmonize its rules governing BOX Participants and BOX Market Makers relating to protecting against the misuse of material, non-public information. The Exchange believes that BOX Rule 8090 is no longer necessary because all Market Makers are subject to the Exchange’s general principles-based requirements governing the protection against the misuse of material, non-public information, pursuant to BOX Rule 3090 (Prevention of the Misuse of Material Nonpublic Information), which obviates the need for separately-prescribed requirements for a subset of market participants on the Exchange. Additionally, there is no separate regulatory purpose served by having separate rules for Market Makers. The Exchange notes that this proposed rule change will not decrease the protections against the misuse of material, non-public information; instead, it is designed to provide more flexibility to Option Participants. This is a competitive filing that is based on a proposal recently submitted by NYSE MKT LLC (“NYSE MKT”) and approved by the Commission.³

Background

The Exchange has two classes of registered Options Participants. Pursuant to BOX Rule 100(a)(4), the term “Options Participant” or “Participant” means a firm, or organization that is

³ See Securities Exchange Act Release No. 75432 (July 13, 2015), 80 FR 42597 (July 17, 2015) (Order Approving SR-NYSEMKT-2015-23).

registered with the Exchange pursuant to the Rule 2000 Series (Participation) for purposes of participating in options trading on BOX as an “Order Flow Provider” or “Market Maker”.

Pursuant to Rule 100(a)(30) Market Maker means an Options Participant registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in the Rule 8000 Series. All Market Makers are designated as specialists on the Exchange for all purposes under the Exchange Act or Rules thereunder.

BOX Rule 8040 (Market Maker Obligations) specifies the obligations of Market Makers. The heightened quoting obligations of Market Makers are set forth in BOX Rule 8050 (Market Maker Quotations).⁴ BOX Rule 8090 requires Market Makers to maintain information barriers that are reasonably designed to prevent the misuse of material, non-public corporate or markets information in the possession of persons on one side of the barrier to persons on the other side of the barrier.

Proposed Rule Change

The Exchange believes that the particularized guidelines in BOX Rule 8090 for Market Makers are no longer necessary and proposes to delete it. Rather, the Exchange believes that BOX Rule 3090 (Prevention of the Misuse of Material Nonpublic Information) governing the misuse of material, non-public information provides for an appropriate, principles-based approach to prevent the market abuses BOX Rule 8090 is designed to address. Specifically, BOX Rule 3090 requires every Options Participant to establish, maintain, and enforce written

⁴ BOX Rule 8050(e), *Continuous Quotes*, On a daily basis, a Market Maker must during regular market hours make markets and enter into any resulting transactions consistent with the applicable quoting requirements specified in these rules, such that on a daily basis a Market Maker must post valid quotes at least sixty percent (60%) of the time that the classes are open for trading. These obligations will apply to all of the Market Maker’s appointed classes collectively, rather than on a class-by-class basis.

policies and procedures reasonably designed to prevent the misuse of material, non-public information by such Participant or persons associated with such Participant. For purposes of this requirement, the misuse of material, non-public information includes, but is not limited to, the following:

- (1) trading in any securities issued by a corporation, partnership, or a trust or similar entities, or in any related securities or related options or other derivative securities, or in any related non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency, or in any related commodity, related commodity futures or options on commodity futures or any other related commodity derivatives, while in possession of material nonpublic information concerning that issuer;
- (2) trading in an underlying security or related options or other derivative securities, or in any related non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or in any related commodity, related commodity futures or options on commodity futures or any other related commodity derivatives, or any other derivatives based on such currency, while in possession of material nonpublic information concerning imminent transactions in the above; and
- (3) disclosing to another person any material nonpublic information involving a corporation, partnership, or Funds or a trust or similar entities whose shares are publicly traded or disclosing an imminent transaction in an underlying security or related securities or in the underlying non-U.S. currency or any related non-U.S. currency options, futures or options on futures on such currency, or in any related

commodity, related commodity futures or options on commodity futures or any other related commodity derivatives, or any other derivatives based on such currency for the purpose of facilitating the possible misuse of such material nonpublic information.

Because Options Participants are already subject to the requirements of BOX Rule 3090, the Exchange does not believe that it is necessary to separately require specific limitations on Market Makers. Deleting BOX Rule 8090 and requirements for specific procedures would provide Market Makers with the flexibility to adapt their policies and procedures as appropriate to reflect changes to their business model, business activities, or the securities market in a manner similar to how Options Participants on the Exchange currently operate and consistent with BOX Rule 3090.

As noted above, Market Makers are distinguished under Exchange rules from other Options Participants only to the extent that Market Makers have heightened quoting [sic] obligations. However, none of these heightened obligations provides different or greater access to nonpublic information than any other Options Participant on the Exchange.⁵

Accordingly, because Market Makers do not have any trading advantages at the Exchange due to their market role, the Exchange believes that they should be subject to the same rules regarding the protection against the misuse of material non-public information, which in this case, is existing BOX Rule 3090.⁶

⁵ See BOX Rules 8040 and 8050.

⁶ The Exchange notes that by deleting BOX Rule 8090, the Exchange would no longer require specific information barriers for Market Makers or require pre-approval of any information barriers that a Market Maker would erect for purposes of protecting against the misuse of material non-public information. However, as is the case today with Options Participants, information barriers of new entrants, would be subject to review as part of a new firm application. Moreover, the policies and procedures of Market Makers,

The Exchange notes that its proposed approach to use a principles-based approach to protecting against the misuse of material non-public information for all of its registered Options Participants is consistent with recently filed rule changes for NYSE MKT and approved rule changes for, NYSE Arca Equities, Inc. (“NYSE Arca”), BATS Exchange, Inc.’s (“BATS”), and New York Stock Exchange LLC (“NYSE”) rules governing cash equity market makers on those respective exchanges.⁷ Except for prescribed rules relating to floor-based designated market makers on the NYSE, who have access to specified non-public trading information, each of these exchanges have moved to a principles-based approach to protecting against the misuse of material non- public information. In connection with approving those rule changes, the Commission found that, with adequate oversight by the exchanges of their members, eliminating prescriptive information barrier requirements should not reduce the effectiveness of exchange rules requiring its members to establish and maintain systems to supervise the activities of its

including those relating to information barriers, would be subject to review by FINRA, on behalf of the Exchange, pursuant to a Regulatory Services Agreement.

⁷ See Securities Exchange Act Release No. 75432 (July 13, 2015), 80 FR 42597 (July 17, 2015) (Order Approving Adopting a Principles-Based Approach to Prohibit the Misuse of Material Nonpublic Information by Specialists and e-Specialists by Deleting Rule 927.3NY and Section (f) of Rule 927.5NY). See also Securities Exchange Act Release Nos. 60604 (Sept. 2, 2009), 76 FR 46272 (Sept. 8, 2009) (SR-NYSEArca-2009-78) (Order approving elimination of NYSE Arca rule that required market makers to establish and maintain specifically prescribed information barriers, including discussion of NYSE Arca and Nasdaq rules) (“Arca Approval Order”); 61574 (Feb. 23, 2010), 75 FR 9455 (Mar. 2, 2010) (SR-BATS-2010-003) (Order approving amendments to BATS Rule 5.5 to move to a principles-based approach to protecting against the misuse of material, non-public information, and noting that the proposed change is consistent with the approaches of NYSE Arca and Nasdaq) (“BATS Approval Order”); and 72534 (July 3, 2014), 79 FR 39440 (July 10, 2014), SR-NYSE-2014-12) (Order approving amendments to NYSE Rule 98 governing designated market makers to move to a principles-based approach to prohibit the misuse of material non-public information) (“NYSE Approval Order”).

members, including written procedures reasonably designed to ensure compliance with applicable federal securities law and regulations, and with the rules of the applicable exchange.⁸

Comparable to members of cash equity markets, the Exchange believes that a principles-based rule applicable to members of options markets would be equally effective in protecting against the misuse of material non-public information. Indeed, BOX Rule 3090 is currently applicable to Options Participants which already requires policies and procedures reasonably designed to protect against the misuse of material nonpublic information, which is similar to the respective NYSE MKT, NYSE Arca Equities, BATS and NYSE rules governing cash equity market makers. The Exchange believes BOX Rule 3090 provides appropriate protection against the misuse of material nonpublic information by Options Participants and there is no longer a need for prescriptive information barrier requirements in BOX Rule 8090.

The Exchange notes that even with this proposed rule change, pursuant to BOX Rule 3090, an Options Participant would still be obligated to ensure that its policies and procedures reflect the current state of its business and continue to be reasonably designed to achieve compliance with applicable federal securities law and regulations, including Section 15(g) of the Act,⁹ and with applicable Exchange rules, including being reasonably designed to protect against the misuse of material, non-public information. While information barriers would not specifically be required under the proposal, BOX Rule 3090 already requires that an Options Participant consider its business model or business activities in structuring its policies and procedures, which may dictate that an information barrier or a functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities law and regulations, and with applicable Exchange rules.

⁸ See, e.g., BATS Approval Order, supra note 7 at 9458.

⁹ 15 U.S.C. 78o(g).

The Exchange believes that the proposed reliance on the principles-based BOX Rule 3090 would ensure that an Options Participant would be required to protect against the misuse of any material non-public information. As noted above, BOX Rule 3090 already requires that firms refrain from trading while in possession of material non-public information concerning imminent transactions in the security or related product. The Exchange believes that moving to a principles-based approach rather than prescribing how and when to wall off a Market Maker from the rest of the firm would provide Market Makers with flexibility when managing risk across a firm, including integrating options positions with other positions of the firm or, as applicable, by the respective independent trading unit.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),¹⁰ in general, and Section 6(b)(5) of the Act,¹¹ in particular, in that it is designed 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 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.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market by adopting a principles- based approach to permit an Options Participant to maintain and enforce policies and procedures to, among other things, prohibit the misuse of material non-public information and provide flexibility on how a Market Maker structures its operations. The Exchange notes that the proposed rule change is

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

based on an approved rule of the Exchange to which Options Participants – BOX Rule 3090 – and harmonizes the rules governing Options Participants. Moreover, Market Makers would continue to be subject to federal and Exchange requirements for protecting material non-public order information.¹² The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market because it would harmonize the Exchange’s approach to protecting against the misuse of material nonpublic information and no longer subject Market Makers to prescriptive requirements. The Exchange does not believe that the existing prescriptive requirements applicable to Options Participants are narrowly tailored to their respective roles because neither market participant has access to Exchange trading information in a manner different from any other market participant on the Exchange.

The Exchange further believes the proposal is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade because existing rules make clear to Options Participants the type of conduct that is prohibited by the Exchange. While the proposal eliminates prescriptive requirements relating to the misuse of material non-public information, Market Makers would remain subject to existing Exchange rules requiring them to establish and maintain systems to supervise their activities, and to create, implement, and maintain written procedures that are reasonably designed to comply with applicable securities laws and Exchange rules, including the prohibition on the misuse of material, nonpublic information. Additionally, the policies and procedures of Market Makers, including those relating to information barriers, would be subject to review by FINRA, on behalf

¹² See 15 U.S.C. 78o(g) and BOX Rule 3090.

of the Exchange.¹³

The Exchange notes that the proposed rule change would still require that Market Makers maintain and enforce policies and procedures reasonably designed to ensure compliance with applicable federal securities laws and regulations and with Exchange rules. Even though there would no longer be pre-approval of Market Maker information barriers, any Market Maker written policies and procedures would continue to be subject to oversight by the Exchange and therefore the elimination of prescribed restrictions should not reduce the effectiveness of the Exchange rules to protect against the misuse of material non-public information. Rather, Options Participants will be able to utilize a flexible, principles-based approach to modify their policies and procedures as appropriate to reflect changes to their business model, business activities, or to the securities market itself. Moreover, while specified information barriers may no longer be required, an Options Participant's business model or business activities may dictate that an information barrier or functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules. The Exchange therefore believes that the proposed rule change will maintain the existing protection of investors and the public interest that is currently applicable to Market Makers, while at the same time removing impediments to and perfecting a free and open market by moving to a principles-based approach to protect against the misuse of material non-public information.

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. In this regard

¹³ See supra, note 6.

and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to a filing submitted by NYSE MKT that was recently approved by the Commission.¹⁴

To the contrary, the Exchange believes that the proposal will enhance competition by allowing Market Makers to comply with applicable Exchange rules in a manner best suited to their business models, business activities, and the securities markets, thus reducing regulatory burdens while still ensuring compliance with applicable securities laws and regulations and Exchange rules. The Exchange believes that the proposal will foster a fair and orderly marketplace without being overly burdensome upon Market Makers.

Moreover, the Exchange believes that the proposed rule change would eliminate a burden on competition for Options Participants which currently exists as a result of disparate rule treatment between the options and equities markets regarding how to protect against the misuse of material non-public information. For those Options Participants that are also members of equity exchanges, their respective equity market maker operations are now subject to a principles-based approach to protecting against the misuse of material non-public information. The Exchange believes it would remove a burden on competition to enable Options Participants to similarly apply a principles-based approach to protecting against the misuse of material nonpublic information in the options space. To this end, the Exchange notes that BOX Rule 3090 still requires Market Makers to evaluate its business to assure that its policies and procedures are reasonably designed to protect against the misuse of material nonpublic information. However, with this proposed rule change, an Options Participant that trades equities and options could look at its firm more holistically to structure its operations in a manner

¹⁴ See supra, note 3.

that provides it with better tools to manage its risks across multiple security classes, while at the same time protecting against the misuse of material non-public information.

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

The Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder 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 after its filing date, or such shorter time as the Commission may designate.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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-BOX-2015-31 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-BOX-2015-31. 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 website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, 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 will also be available for inspection and copying at the principal office of the Exchange. 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-BOX-2015-31 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.¹⁵

Brent J. Fields
Secretary

¹⁵ 17 CFR 200.30-3(a)(12).