



March 19, 2019

Via Electronic Mail (rule-comments@sec.gov)

Ms. Vanessa Countryman, Acting Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: Release No. 34-83728; File No. SR-BOX-2018-24;
Release No. 34-84168; File No. SR-BOX-2018-24;
Release No. 34-84614;
Release No. 34-84823; File No. SR-BOX-2018-37;
Release No. 34-85201; File No. SR-BOX-2019-04;
Release No. 34-85293; File No. SR-BOX-2019-05.

Dear Ms. Countryman:

The Healthy Markets Association¹ appreciates the opportunity to comment regarding several recent BOX connectivity filings and related suspension orders.² We have

¹ The Healthy Markets Association is an investor-focused not-for-profit coalition working to educate market participants and promote data-driven reforms to market structure challenges. Our members, who range from a few billion to hundreds of billions of dollars in assets under management, have come together behind one basic principle: Informed investors and policymakers are essential for healthy capital markets. To learn more about Healthy Markets, please see our website at <http://www.healthymarkets.org>.

² *Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fee Schedule on the BOX Market LLC ("BOX") Options Facility to Establish BOX Connectivity Fees for Participants and NonParticipants Who Connect to the BOX Network*, SEC, Rel. No. 34-83728, July 27, 2018, available at <https://www.sec.gov/rules/sro/box/2018/34-83728.pdf> (Initial Fee Filing); *Suspension of and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network*, SEC, Exch. Act Rel. No. 84168, Sept. 17, 2018, available at <https://www.sec.gov/rules/sro/box/2018/34-84168.pdf> (September 2018 Order); *In the Matter of the BOX Exchange LLC*, SEC, Exch. Act Rel. No. 84614, Nov. 16, 2018, available at <https://www.sec.gov/rules/other/2018/34-84614.pdf> (November 2018 Order); *Notice of Filing of a Proposed Rule Change to Amend the Fee Schedule on the BOX Market LLC ("BOX") Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network; Suspension of and Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change*, SEC, Rel. No. 34-84823, Dec. 14, 2018, available at <https://www.sec.gov/rules/sro/box/2018/34-84823.pdf> (December 2018 Order); *Notice of Filing of a Proposed Rule Change to Amend the Fee Schedule on the BOX Market LLC ("BOX") Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network; Suspension of and Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change*, SEC, Rel. No. 34-85201, Feb. 26, 2019, available at <https://www.sec.gov/rules/sro/box/2019/34-85201.pdf> (February 2019 Order).

previously objected to the BOX connectivity filings.³ In particular, we believe that the BOX connectivity filings are inadequate to establish their compliance with the Exchange Act. As the Commission has previously articulated, exchange filings “should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with those requirements.”⁴ The BOX connectivity filings do not meet that burden.

However, we write today to express our particular concerns that BOX is exploiting the Commission’s procedures in a manner that is contrary to the Commission’s intent, protecting investors, the public interest, and the law.

BOX initially filed to dramatically increase fees to connect to the exchange on July 19, 2018.⁵ Pursuant to the procedures outlined in the Dodd-Frank Act,⁶ the Initial Fee Filing was made immediately effective. The Commission noticed the filing for public comment. We objected. The Commission staff then suspended the Initial Fee Filing and instituted proceedings to approve or disapprove the filing. Because the suspension came after the filing was made effective, we understand BOX billed its customers the higher charges contained in the Initial Fee Filing for the intervening period.

On September 19, 2018, BOX appealed the Commission staff’s order. According to the Commission’s own procedures, the staff’s suspension order was then automatically stayed pending the appeal to the full Commission. On November 16, 2018, the Commission granted BOX’s Petition for Review, but discontinued the automatic stay of the staff’s suspension order.⁷ In explicitly reinstating the suspension of the higher fees, the Commission expressed that it

believes the continued suspension of the proposed rule change while the Commission conducts proceedings to

³ Letter from Tyler Gellasch, Healthy Markets Association, to Brent J. Fields, SEC, Aug. 23, 2018, available at <https://www.sec.gov/comments/sr-box-2018-24/srbox201824-4258035-173056.pdf>; Letter from Tyler Gellasch, Healthy Markets Association, to Brent J. Fields, SEC, Jan. 2, 2019, available at <https://www.sec.gov/comments/sr-box-2018-24/srbox201824-4842084-177140.pdf>.

⁴ See *Nasdaq BX, Inc.; Nasdaq PHLX LLC; Suspension of and Order Instituting Proceedings to Determine Whether to Approve or Disapprove Proposed Rule Changes to Amend the Exchanges’ Port Fee Schedules*, SEC, Exch. Act Rel. No. 85152, Feb. 15, 2019, available at <https://www.sec.gov/rules/sro/bx/2019/34-85152.pdf>.

⁵ Initial Fee Filing.

⁶ See, Section 916, Dodd-Frank Wall Street Protection and Consumer Protection Act, Pub. L. 111-203 (2010).

⁷ November 2018 Order.

consider the Exchange's proposal will allow the Commission to further consider the proposed fees' consistency with the Exchange Act without the risk of allowing a fee that is potentially inconsistent with the Exchange Act to remain in effect.⁸

Again, we understand that BOX billed its customers the higher charges for the period during which the suspension was stayed.

At this point, we understood that the matter was pending before the Commission, and that the fee increases were stayed until the Commission's ultimate decision was rendered. That is not what happened.

Instead, BOX chose to abuse the Dodd-Frank Act's mechanism for review and approval of exchange fee filings to continue charging its customers the unsupported, and already twice-suspended fees. Two weeks after the Commission reinstated the suspension of the Initial Fee Filing, on November 30, 2018, BOX made a new connectivity filing that was substantively identical to the suspended Initial Fee Filing. Again, pursuant to the procedures outlined in the Dodd-Frank Act, this second filing was made immediately effective. Again, the Commission staff thereafter suspended it. Again, because the suspension came after this second filing was made effective, we understand that BOX billed its customers the higher charges for the intervening period.

Now with three suspension orders against its fee increases, BOX tried again. On February 26, 2019, BOX filed yet another substantively identical fee filing increase. Again, pursuant to the procedures outlined in the Dodd-Frank Act, this third fee filing was made immediately effective. Again, the Commission staff thereafter suspended it. Again, because the suspension came after the third fee filing was made effective, we understand that BOX billed its customers the higher charges for the intervening period.

All told, BOX has filed three versions of a substantively identical fee filing increase. And it has had those fee increases suspended four separate times. It appears as though BOX keeps filing for the fee increases so that it may bill its customers for the higher fees--even though the Commission has directly suspended them.

Not surprisingly, we understand that at least one of BOX's customers has expressed frustration, and has challenged the imposition of the repeatedly suspended fees. BOX

⁸ November 2018 Order.

has responded to these complaints by changing the procedures through which customers may dispute its fees. In particular, BOX has filed to time-limit member grievances to contest billings and forced members to provide a written grievance complete with supporting documentation.⁹ Again, that filing was immediately effective.

Despite the Commission's explicit determination that BOX's fee increases should not be left effective until the Commission has decided upon the final merits, BOX has effectively continued to apply the new, higher fees.

BOX's recent filings are contrary to the Commission's intent, protecting investors, the public interest, and the law. We therefore recommend that the Commission take immediate and decisive action to protect the investing public.

Thank you for the opportunity to highlight our concerns. Should you have any questions or seek further information please contact me at [REDACTED].

Sincerely,



Tyler Gellasch
Executive Director

⁹ See *Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the BOX Fee Schedule*, SEC, Exch. Act Rel. No. 88293, March 12, 2019, available at <https://www.sec.gov/rules/sro/box/2019/34-85293.pdf>.