



March 12, 2019

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

Re: ***SIFMA Comment Letter on the Suspension of BOX Rule Proposal to Establish Connectivity Fees: File No. SR-BOX-2019-04; Release No. 34-85201***

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> writes in support of the U.S. Securities and Exchange Commission’s (“Commission”) decision to suspend and institute proceedings to determine whether to approve or disapprove the recent SRO rule proposals to establish connectivity fees by BOX Options Exchange LLC (“BOX”).<sup>2</sup>

SIFMA supports the Commission’s action in suspending the proposed rule change by BOX to conduct a further review before determining whether to approve or deny the fee increases. Consistent with the Commission’s recent statement,<sup>3</sup> we support the suspension to provide the Commission and market participants sufficient time and information to fully assess the proposed rule change and determine whether the exchange has met its statutory obligation to demonstrate that the fees are consistent with the Exchange Act.<sup>4</sup> Despite BOX’s filing and refile of the proposed change, BOX has not provided necessary information showing how the proposed connectivity fees comply with the Exchange Act.

For more than a decade, SIFMA has opposed the increases in exchange fees for market data products. More specifically, we argued that the exchanges’ market data fees are not constrained by significant competitive forces, and therefore no sufficient basis exists for finding the fees to be fair and reasonable absent evidence regarding the cost of producing the market data.

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<sup>1</sup> SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

<sup>2</sup> Securities Exchange Act Release No. 85201; File No. SR-BOX-2019-04 (February 26, 2019).

<sup>3</sup> Securities and Exchange Act Release No. 85184; File No. SR-BOX-2018-24 (February 25, 2019).

<sup>4</sup> 15 U.S.C. 78s(b)(2)(B).

As highlighted in SIFMA’s previous letter regarding the BOX filings,<sup>5</sup> a similar situation to exchanges’ market data fees (since recognized by the Commission in its October 2018 market-data ruling) is present with the BOX connectivity fees that the Commission suspended. The trade-through requirements under the Options Order Protection Plan<sup>6</sup> effectively require most broker-dealers to have direct connectivity to all exchanges. As a result, there are no competitive constraints on exchange connectivity fees. Broker-dealers cannot simply disconnect from an exchange because of excessive fees without potentially violating order protection requirements or sacrificing execution quality. This issue is particularly notable in the options markets. Over the last 8 years, the number of options exchanges has increased from 7 to 15, with corresponding connectivity costs at each one.

Given the requirement for broker-dealers to connect to all the exchanges, the exchanges should be providing comprehensive information, including cost information, on why its connectivity fees are reasonable. It is not enough for exchanges to justify connectivity fee increases simply by pointing to similar fees at other exchanges. Additionally, the connectivity fees cannot be based on the “market value” of the connection when broker-dealers are effectively required to connect to each exchange. This heavily regulated market is nothing like the simplified examples of free-market competition set forth in the economists’ paper submitted by Nasdaq.<sup>7</sup> Even if BOX could rely on Nasdaq’s argument that the connectivity fees should be considered in aggregate with the competition for order flow,<sup>8</sup> which SIFMA disputes, BOX must then show the fees’ impact on order flow considering “there is little opportunity for market forces to determine the overall level of fees.”<sup>9</sup>

In its consideration of whether to approve or disapprove the proposed rule changes, the Commission should require that BOX’s rule filing for connectivity fees provide for the equitable allocation of reasonable fees, do not permit unfair discrimination, and do not impose any burden on competition according to enhancement costs or significant competitive forces, consistent with the Commission’s October 2018 ruling and the Exchange Act.

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<sup>5</sup> See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, and Ellen Greene, Managing Director, Financial Services Operations, SIFMA, dated October 15, 2018.

<sup>6</sup> Securities Exchange Act Release No. 60405; File No. 4-546 (July 30, 2009).

<sup>7</sup> Letter from Jeffrey S. Davis, Nasdaq Inc., to Brent J. Fields, SEC, dated Feb. 13, 2019.

<sup>8</sup> Letter from Lisa J. Fall, BOX Exchange LLC., to Brent J. Fields, Secretary, Securities and Exchange Commission, dated Feb. 19, 2019.

<sup>9</sup> See In the Matter of the Application of SIFMA, Review of Action Release No. 84432 (Oct. 16, 2018).

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SIFMA greatly appreciates the Commission's consideration of the issues raised above and would be pleased to discuss these comments in greater detail with the Commission and the Staff. If you have any questions or need any additional information, please contact me at [REDACTED] or [REDACTED].

Sincerely,

A handwritten signature in blue ink, appearing to read "Theodore R. Lazo", with a long horizontal flourish extending to the right.

Theodore R. Lazo  
Managing Director and  
Associate General Counsel

cc: The Honorable Jay Clayton, Chairman  
The Honorable Robert J. Jackson, Jr., Commissioner  
The Honorable Hester M. Peirce, Commissioner  
The Honorable Elad L. Roisman, Commissioner

Brett Redfearn, Director, Division of Trading and Markets