



**BOX**<sup>SM</sup>  
E X C H A N G E

101 Arch Street  
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Boston, MA 02110

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Chicago, IL 60604

September 28, 2022

Vanessa Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: SR-BOX-2022-19

Dear Ms. Countryman:

BOX Exchange LLC filed Amendment No. 1 to the above-referenced filing on September 28, 2022.

Sincerely,

Alanna Barton  
General Counsel



Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 32

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No. \* SR 2022 - \* 19

Amendment No. (req. for Amendments \*) 1

Filing by BOX Exchange LLC.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

|                                       |  |  |   |   |   |
|---------------------------------------|--|--|---|---|---|
| Initial *<br><input type="checkbox"/> | Amendment *<br><input checked="" type="checkbox"/> | Withdrawal<br><input type="checkbox"/> | Section 19(b)(2) *<br><input checked="" type="checkbox"/> | Section 19(b)(3)(A) *<br><input type="checkbox"/> | Section 19(b)(3)(B) *<br><input type="checkbox"/> |
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| Pilot<br><input type="checkbox"/> | Extension of Time Period for<br>Commission Action *<br><input type="checkbox"/> | Date Expires *<br><input type="text"/> |
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Rule

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| <input type="checkbox"/> 19b-4(f)(1) | <input type="checkbox"/> 19b-4(f)(4) |
| <input type="checkbox"/> 19b-4(f)(2) | <input type="checkbox"/> 19b-4(f)(5) |
| <input type="checkbox"/> 19b-4(f)(3) | <input type="checkbox"/> 19b-4(f)(6) |

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) \*

☐

Section 806(e)(2) \*

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Security-Based Swap Submission pursuant to the  
Securities Exchange Act of 1934

Section 3C(b)(2) \*

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Exhibit 2 Sent As Paper Document

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Exhibit 3 Sent As Paper Document

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### Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

### Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

|              |                 |             |             |
|--------------|-----------------|-------------|-------------|
| First Name * | Alanna          | Last Name * | Barton      |
| Title *      | General Counsel |             |             |
| E-mail *     | <div></div>     |             |             |
| Telephone *  | <div></div>     | Fax         | <div></div> |

### Signature

Pursuant to the requirements of the Securities Exchange of 1934, BOX Exchange LLC.  
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 09/28/2022

(Title \*)

By Alanna Barton

General Counsel

(Name \*)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Alanna Barton

Digitally signed by Alanna  
Barton  
Date: 2022.09.28 10:42:40  
-04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

**Form 19b-4 Information \***

Add Remove View

SR-BOX-2022-19, Amendment 1 (19b

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

SR-BOX-2022-19, Amendment 1 (Ex

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2- Notices, Written Comments, Transcripts, Other Communications**

Add Remove View

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

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Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

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Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

Add Remove View

SR-BOX-2022-19, Amendment 1 (Exh

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

Add Remove View

SR-BOX-2022-19, Amendment 1 (Ex 5

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

**Partial Amendment**

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

Item 1. Text of the Proposed Rule Change

a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 as amended (“Exchange Act”),<sup>1</sup> BOX Exchange LLC (“BOX” or the “Exchange”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend Article 4 of the Exchange’s Bylaws to establish a staggered board. The text of the proposed changes is attached as Exhibit 5. All capitalized terms not defined herein have the same meaning as set forth in the Exchange’s Bylaws and Rules.<sup>2</sup>

b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.

c) Not applicable.

Item 2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by officers of the Exchange pursuant to authority delegated by the Exchange Board of Directors (“Board”). No further action is necessary for the filing of the proposed rule change.

Questions should be directed to Alanna Barton, General Counsel for the Exchange, at

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Item 3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> The Exchange’s Bylaws and Rules can be found on the Exchange’s public website: [https://boxexchange.com/assets/2021/corporate\\_governance/BOX-Exchange-LLC-Bylaws.pdf](https://boxexchange.com/assets/2021/corporate_governance/BOX-Exchange-LLC-Bylaws.pdf); <https://rules.boxexchange.com/browse>;

The Exchange proposes to amend its Bylaws to establish a staggered Board. Specifically, the Exchange proposes to amend Section 4.03 (Term of Directors) of the Exchange Bylaws to provide that Exchange Directors shall be divided into three classes, designated Class I, Class II and Class III, which shall be as nearly equal in number and classification as the total number of such Directors then serving on the Board permits.<sup>3</sup> Section 4.03 of the Bylaws would further provide that each class of Directors shall serve staggered three-year terms, with the term of office of one class expiring each year.<sup>4</sup>

In order to commence such staggered three-year terms, the Exchange proposes to amend Section 4.03 of the Bylaws to provide that, Class I Directors shall initially serve a one-year term, Class II Directors shall initially serve a two-year term, and Class III Directors shall initially serve a three-year term. Thereafter, all Directors shall serve staggered three-year terms, with the term of office of one class expiring each year. The 2022 annual meeting of the Members of the Exchange has not yet occurred. Accordingly, if this proposed rule change is approved before the 2022 annual meeting of Members, Class I Directors, Class II Directors and Class III Directors will each be nominated and selected in 2022, the initial term of Class I Directors would end at the 2023 annual meeting of Members, and a new slate of Class I Directors would be nominated and selected in 2023 in accordance with the Bylaws.<sup>5</sup>

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<sup>3</sup> The current Exchange Board expects to initially designate: in Class I, one Non-Industry Director and one Participant Director; in Class II, two Non-Industry Directors, one of which is a Public Director; and in Class III, one Non-Industry Director and one Participant Director. These initial class designations are intended to balance, to the extent possible, the various categories of Directors among the three classes. Board actions are taken by majority vote in accordance with Section 4.11(j) of the Exchange Bylaws.

<sup>4</sup> Currently under the Exchange's Bylaws, Directors serve one-year terms and all Directors are nominated and begin serving each year at the annual meeting of Members. This provision in Section 4.03 of the Exchange Bylaws is proposed to be changed to delete "Directors shall serve terms of one year each beginning each year at the annual meeting of the Members."

<sup>5</sup> In this circumstance, the initial term of Class II and Class III directors would end at the Members annual meeting in 2024 and 2025, respectively.

The Exchange also proposes to amend Section 4.03 of the Bylaws to provide that, in the case of any new Director as contemplated by Article IV, Section 4.02, such Director shall be added to a class, as determined by the Board at the time of such Director's initial election or appointment, and shall have an initial term expiring at the same time as the term of the class to which such Director has been added. In making such determinations, the Board shall balance the categories of Directors (e.g. Non-Industry, Public, Participant and Facility Directors) among the classes to the extent possible. Pursuant to Section 4.02 of the Bylaws, the total number of Directors is determined by the Board and must be between five and eleven directors. Accordingly, the Exchange is adding this provision to specify that if a new Director is added to the Board, the term of that Director shall correspond to the class to which that Director is assigned at the time of election or appointment.

In addition, the Exchange proposes to amend Section 4.02 to specify that no decrease in the number of Directors shall have the effect of shortening the term of any incumbent Director.<sup>6</sup> The purpose of this provision is to provide that, in the event that the Board determines to reduce the number of overall Directors, the term of any incumbent Director will not be cut short because of such determination. The Exchange could not, for example, determine to reduce the size of the Board by eliminating the Director seat for a Director who had two years of his or her term remaining.

The Exchange also proposes to make certain other conforming edits to other provisions of the Bylaws to clarify the responsibilities of the Board's Nominating Committee and to address Director vacancies that may arise. Specifically, the Exchange proposes to amend Section 4.06

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<sup>6</sup> This provision is substantially similar to a comparable provision in the bylaws of another national securities exchange that provides for a staggered board. See Amended and Restated By-Laws of Miami International Securities Exchange LLC, Section 2.2(a).



(Nominating Committee) of the Bylaws to specify that the Board’s Nominating Committee will nominate individuals in advance of each annual meeting of the Members to begin service as Directors “for the applicable class term then expiring (i.e., Class I, Class II or Class III)” at such annual meeting of the Members.<sup>7</sup> The Exchange also proposes to amend Section 4.06(d) (Selection of Directors) of the Bylaws to provide that, prior to the first annual meeting of the Members following adoption of Section 4.06(d), each Director position set forth in Section 4.02 shall be designated, as determined by the Board, to one of the three classes for nomination by the Nominating Committee to begin service at such annual meeting. Thereafter, prior to each annual meeting of the Members, the Nominating Committee shall select nominees for each Director position “for the class with its term then expiring” to begin service as Directors.<sup>8</sup> Finally, the Exchange proposes to amend Section 4.10 (Vacancies) by deleting the language “until the next annual meeting or until his or her successor is elected and qualified” and inserting the language “for the remainder of the applicable class term” to provide that a Director who is elected by the Board to fill a vacancy (e.g., as a result of the death, resignation, removal or increase in the authorized number of Directors), shall serve for the remainder of the applicable class term. For example, if a Director in Class II resigns, the Director elected to fill the vacancy would serve for the remainder of the term of Class II Directors.<sup>9</sup>

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<sup>7</sup> Similarly, the Exchange also proposes to amend the final sentence of Section 4.06 to specify that at each annual meeting of the Members, the individuals selected “for the applicable class term” pursuant to Section 4.06 of the Bylaws shall begin serving as Directors.

<sup>8</sup> The Exchange proposes to amend Section 4.06(d)(i) to include the same conforming edits to specify that the Nominating Committee shall meet for the purposes of selecting proposed Director nominees “for the class then expiring” and that the Nominating Committee shall provide the names of all proposed Director nominees “for the class then expiring” to the Exchange’s Secretary not later than sixty days prior to the date of the annual meeting of the Members.

<sup>9</sup> With respect to a vacancy arising from an increase in the number of authorized Directors, pursuant to proposed Section 4.03 of the Bylaws, the Director filling such vacancy would be assigned to a class by the Board and would have an initial term expiring at the same time as the term of the class to which such Director has been added.

The Exchange notes that it is not proposing any change to the composition of the Board, such as the requirement that 20% of Directors must be a Participant Directors or that a majority of Directors must be Non-Industry Directors.<sup>10</sup> All nominations and elections of Directors under the proposed staggered Board structure must be consistent with the existing composition requirements in the Bylaws. In addition, consistent with the existing Bylaws, Directors may serve consecutive terms.<sup>11</sup>

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of the Exchange Act,<sup>12</sup> in general, and furthers the objective of Section 6(b)(5) of the Exchange Act,<sup>13</sup> in particular, because it is designed 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; and it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this Exchange Act matters not related to the purposes of the Exchange Act or the administration of the Exchange.

Specifically, the Exchange believes that the governance and administration of the Exchange would benefit from a Board structure in which Directors each serve staggered three-year terms in at least two ways. First, the Exchange believes that shifting from one-year terms

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<sup>10</sup> See Section 4.02 of the Bylaws.

<sup>11</sup> See Section 4.03 of the Bylaws.

<sup>12</sup> 15 U.S.C. 78a et seq.

<sup>13</sup> 15 U.S.C. 78f(b)(5).



for Exchange Directors to staggered three-year terms will help preserve institutional knowledge among Exchange Directors. Under the Exchange's current Bylaws, an entirely new set of Directors can be selected each year, which can potentially disrupt ongoing initiatives by the Exchange or result in a complete loss of institutional knowledge if all of the new Directors have no prior experience serving on the Exchange's Board. The Exchange believes that it benefits from the previous experience of those who have previously served as Exchange Directors and that ensuring some continuity among Directors promotes fair and orderly transitions to new Board leadership. By increasing the term length of each Director from one to three years, the Exchange can eliminate the possibility that an entirely new slate of Directors with no prior experience as a Director occurs. And, by staggering the election of Directors by dividing Directors into three classes with only one class elected each year, the Exchange can preserve institutional knowledge among a majority of the Directors over time. This change will ensure that at the time of every annual meeting of the Members, there will remain veteran leadership on the Board. In turn, the Exchange believes that these changes will help to improve the administration of the Exchange by fostering cooperation and coordination with persons, such as Directors, engaged in regulating and facilitating transactions in securities and removes impediments to and perfects the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act.<sup>14</sup> The Exchange also believes, consistent with Section 6(b)(5) of the Exchange Act, that these changes will also further the protection of investors and the public interest, which benefit from a governance structure that is designed to preserve institutional knowledge gained by incumbent Directors and through orderly

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<sup>14</sup> 15 U.S.C. 78f(b)(5).

transitions to new leadership among Directors.<sup>15</sup>

Second, the Exchange believes that the proposed staggered Board structure would help prevent any one Member or group of Members acting in coordination from exercising an undue influence over the Board through the election of Board Directors. As noted, currently the entire Board of Directors can be replaced each year. As a result, although no one Member has more than a 20% voting interest in the election of Directors, two or more Members acting in coordination could potentially exercise an outsized influence in the selection of Directors. Establishing a staggered Board would make it more difficult for such Members to take control of the Board, and therefore control of the Exchange, through a single election of the Board. By reducing the risk of coordinated Members taking control of the Board, the Board will be better positioned to address difficult, longer-term considerations related to management of the Exchange, rather than focusing on shorter-term considerations of certain Members. For example, a coordinated group of Members might seek to elect a slate of Directors that are more heavily focused on increasing Exchange profits without appropriate consideration of the longer-term growth of the Exchange. A staggered Board structure would make it more challenging for such Members to effect such a directional change by preventing the replacement of the entire Board of Directors in a given year. In turn, the Exchange believes that this would, consistent with Section 6(b)(5) of the Exchange Act, further the protection of investors and the public interest who are likely to benefit from an Exchange that is able to focus on longer-term goals rather than shorter-term interests of certain Members.<sup>16</sup>

In addition, the Exchange notes that, consistent with Section 6(b)(5), the proposed rule

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<sup>15</sup> Id.

<sup>16</sup> Id.

change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.<sup>17</sup> The existing composition requirements related to Directors would remain the same under the proposed rule change, so there would not be, for example, any reduction in the representation of Exchange Participants on the Board. Moreover, all Directors would be subject to the same requirements under the proposed rule change (i.e., all Directors, regardless of type, would be divided into one of three classes, each serving three-year terms).

The Exchange notes that, in order to commence the operation of the staggered Board, Directors assigned by the Board to Class I would initially serve for only one year following their selection after the adoption of this proposed rule change while Class II and Class III Directors would serve for two and three years respectively. While this could potentially be viewed as unfairly discriminatory against Class I and Class II Directors whose tenure would have a shorter duration than a Class III Director, these differing tenures are unavoidable to establish a staggered Board. Directors may also be re-elected and serve consecutive terms. As a result, although a Director assigned to Class I may have an initially shorter tenure, if re-elected at the time of the second annual meeting of Members following the adoption of this proposed rule change, such Director would then serve a three-year term.

Finally, the Exchange notes that the proposed staggered Board structure is substantially similar to the staggered board structure of at least two exchanges.<sup>18</sup> Other exchanges have historically also operated with a substantially similar staggered board structure, including the BATS Exchange Inc. and EDGX Exchange Inc. and EDGA Exchange Inc. prior to their business

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<sup>17</sup> Id.

<sup>18</sup> See Amended and Restated By-Laws of Miami International Securities Exchange LLC (“MIAX”), Section 2.02(a) and First Amended and Restated Bylaws of Long-Term Stock Exchange, Inc. (“LTSE”), Section 3.3(b). The bylaws of The Options Clearing Corporation (“OCC”), another self-regulatory organization, also provide for a similar staggered board consisting of three classes. See OCC By-Laws, Article III, Section 3.

combination with CBOE Holdings Inc.,<sup>19</sup> as well as International Securities Exchange, LLC prior to 2013.<sup>20</sup> Accordingly, the Exchange's proposed staggered Board structure does not present any novel considerations that the Commission has not previously considered.

Item 4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.<sup>21</sup> The proposed rule change is concerned only with the governance structure and internal administration of the Exchange Board and would establish a staggered Board structure that is substantially similar to the existing board structure of other exchanges and self-regulatory organizations. As a result, the Exchange does not believe that the proposed rule change would result in any burden on competition or other competition-related considerations between or among Exchange Participants or between different exchanges.

Item 5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

Item 6. Extension of Time Period for Commission Action

Not applicable.

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<sup>19</sup> See Exchange Act Release No. 57322 (File No. 10-182), Exhibit A.3 of the BATS Exchange Inc. Form 1 Application, as modified by Amendment No. 1, (Amended and Restated By-Laws of BATS Exchange Inc. at Section 3(b)) (February 13, 2008), available at [https://www.sec.gov/rules/other/2008/34-57322\\_application.htm#exhibit-a](https://www.sec.gov/rules/other/2008/34-57322_application.htm#exhibit-a), and Exchange Act Release No. 60651 (File No. 10-193), Exhibit A.3 of the EDGX Exchange Inc. Form 1 Application, as modified by Amendment No. 1 (Amended and Restated Bylaws of EDGX Exchange Inc. at Section 3(b)) (September 11, 2009), available at <https://www.sec.gov/rules/other/2009/edgx-f1-application.htm#exhibit-a>.

<sup>20</sup> See Exchange Act Release No. 69164, 78 FR 17727 (March 22, 2013) (SR-ISE-2013-07).

<sup>21</sup> 15 U.S.C. 78f(b)(8).

Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

Not applicable.

Item 8. Proposed Rule Change Based on Rule of Another Self-Regulatory Organization or of the Commission

As noted above, the proposed rule change to establish a staggered board is substantially similar to the current staggered board structures of at least two exchanges, MIAX and LTSE.<sup>22</sup> The primary difference between the Exchange's proposed staggered Board and that of MIAX is that MIAX excludes from the three classes composing its staggered board serving three-year terms the Chief Executive Officer ("CEO") and MIAX's equity rights program ("ERP") Directors.<sup>23</sup> The Exchange does not have ERP directors nor do the Exchange's Bylaws provide that the CEO or other officer of the Exchange would serve as a Director. Instead, the Exchange would subject all Directors to the same requirements (e.g., each Director would be assigned to one of three classes and would serve three-year terms in accordance with proposed Section 4.03 of the Bylaws). In this regard, the Exchange's proposed staggered Board structure is substantially similar to the structures of EDGX Exchange Inc. ("EDGX") when it's Form 1 was initially approved by the Commission in September 2009, in that EDGX's proposed structure applied uniformly to all EDGX directors.<sup>24</sup>

LTSE's staggered board structure does contemplate that the CEO would be a Director, but does not exclude the CEO from the class assignments or three-year term. Additionally,

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<sup>22</sup> See supra note 18 and accompanying text.

<sup>23</sup> See MIAX By-Laws, Section 2.3(b) ("Directors other than the Chief Executive Officer or the ERP Directors shall serve staggered three-year terms, with the term of office of one class expiring each year.").

<sup>24</sup> See supra note 19 and accompanying text.

LTSE's staggered board structure, unlike MIAX's structure and the Exchange's proposed structure, also does not specify that any reduction in the size of the overall board shall not have the effect of shortening the term of any incumbent director.<sup>25</sup>

Item 9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

Item 10. Advance Notices Filed Pursuant to Section 806(e) of  
the Payment, Clearing and Settlement Supervision Act

Not applicable.

Item 11. Exhibits

Exhibit 1. Completed Notice of Proposed Rule Change for publication in the Federal Register.

Exhibit 4. Proposed changes to draft BOX Rules by amendment.

Exhibit 5. Text of the Proposed Rule Change.

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<sup>25</sup> See supra note 6 and accompanying text.

**EXHIBIT 1**

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-BOX-2022-19)

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of Proposed Rule Change to amend Article 4 of the Exchange's Bylaws to establish a staggered board.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on [DATE], BOX Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III 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 amend Article 4 of the Exchange's Bylaws to establish a staggered board. 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 <https://rules.boxexchange.com/rulefilings>.

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 specified in Item IV below. The self-regulatory organization has

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.



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 amend its Bylaws to establish a staggered Board. Specifically, the Exchange proposes to amend Section 4.03 (Term of Directors) of the Exchange Bylaws to provide that Exchange Directors shall be divided into three classes, designated Class I, Class II and Class III, which shall be as nearly equal in number and classification as the total number of such Directors then serving on the Board permits.<sup>3</sup> Section 4.03 of the Bylaws would further provide that each class of Directors shall serve staggered three-year terms, with the term of office of one class expiring each year.<sup>4</sup>

In order to commence such staggered three-year terms, the Exchange proposes to amend Section 4.03 of the Bylaws to provide that, Class I Directors shall initially serve a one-year term, Class II Directors shall initially serve a two-year term, and Class III Directors shall initially serve a three-year term. Thereafter, all Directors shall serve staggered three-year terms, with the term of office of one class expiring each year. The 2022 annual meeting of the Members of the Exchange has not yet occurred.

Accordingly, if this proposed rule change is approved before the 2022 annual meeting of

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<sup>3</sup> The current Exchange Board expects to initially designate: in Class I, one Non-Industry Director and one Participant Director; in Class II, two Non-Industry Directors, one of which is a Public Director; and in Class III, one Non-Industry Director and one Participant Director. These initial class designations are intended to balance, to the extent possible, the various categories of Directors among the three classes. Board actions are taken by majority vote in accordance with Section 4.11(j) of the Exchange Bylaws.

<sup>4</sup> Currently under the Exchange's Bylaws, Directors serve one-year terms and all Directors are nominated and begin serving each year at the annual meeting of Members. This provision in Section 4.03 of the Exchange Bylaws is proposed to be changed to delete "Directors shall serve terms of one year each beginning each year at the annual meeting of the Members."

Members, Class I Directors, Class II Directors and Class III Directors will each be nominated and selected in 2022, the initial term of Class I Directors would end at the 2023 annual meeting of Members, and a new slate of Class I Directors would be nominated and selected in 2023 in accordance with the Bylaws.<sup>5</sup>

The Exchange also proposes to amend Section 4.03 of the Bylaws to provide that, in the case of any new Director as contemplated by Article IV, Section 4.02, such Director shall be added to a class, as determined by the Board at the time of such Director's initial election or appointment, and shall have an initial term expiring at the same time as the term of the class to which such Director has been added. In making such determinations, the Board shall balance the categories of Directors (e.g. Non-Industry, Public, Participant and Facility Directors) among the classes to the extent possible. Pursuant to Section 4.02 of the Bylaws, the total number of Directors is determined by the Board and must be between five and eleven directors. Accordingly, the Exchange is adding this provision to specify that if a new Director is added to the Board, the term of that Director shall correspond to the class to which that Director is assigned at the time of election or appointment.

In addition, the Exchange proposes to amend Section 4.02 to specify that no decrease in the number of Directors shall have the effect of shortening the term of any incumbent Director.<sup>6</sup> The purpose of this provision is to provide that, in the event that the Board determines to reduce the number of overall Directors, the term of any incumbent Director will not be cut short because of such determination. The Exchange

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<sup>5</sup> In this circumstance, the initial term of Class II and Class III directors would end at the Members annual meeting in 2024 and 2025, respectively.

<sup>6</sup> This provision is substantially similar to a comparable provision in the bylaws of another national securities exchange that provides for a staggered board. See Amended and Restated By-Laws of Miami International Securities Exchange LLC, Section 2.2(a).

could not, for example, determine to reduce the size of the Board by eliminating the Director seat for a Director who had two years of his or her term remaining.

The Exchange also proposes to make certain other conforming edits to other provisions of the Bylaws to clarify the responsibilities of the Board's Nominating Committee and to address Director vacancies that may arise. Specifically, the Exchange proposes to amend Section 4.06 (Nominating Committee) of the Bylaws to specify that the Board's Nominating Committee will nominate individuals in advance of each annual meeting of the Members to begin service as Directors "for the applicable class term then expiring (i.e., Class I, Class II or Class III)" at such annual meeting of the Members.<sup>7</sup> The Exchange also proposes to amend Section 4.06(d) (Selection of Directors) of the Bylaws to provide that, prior to the first annual meeting of the Members following adoption of Section 4.06(d), each Director position set forth in Section 4.02 shall be designated, as determined by the Board, to one of the three classes for nomination by the Nominating Committee to begin service at such annual meeting. Thereafter, prior to each annual meeting of the Members, the Nominating Committee shall select nominees for each Director position "for the class with its term then expiring" to begin service as Directors.<sup>8</sup> Finally, the Exchange proposes to amend Section 4.10 (Vacancies) by deleting the language "until the next annual meeting or until his or her successor is elected and qualified" and inserting the language "for the remainder of the applicable

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<sup>7</sup> Similarly, the Exchange also proposes to amend the final sentence of Section 4.06 to specify that at each annual meeting of the Members, the individuals selected "for the applicable class term" pursuant to Section 4.06 of the Bylaws shall begin serving as Directors.

<sup>8</sup> The Exchange proposes to amend Section 4.06(d)(i) to include the same conforming edits to specify that the Nominating Committee shall meet for the purposes of selecting proposed Director nominees "for the class then expiring" and that the Nominating Committee shall provide the names of all proposed Director nominees "for the class then expiring" to the Exchange's Secretary not later than sixty days prior to the date of the annual meeting of the Members.

class term” to provide that a Director who is elected by the Board to fill a vacancy (e.g., as a result of the death, resignation, removal or increase in the authorized number of Directors), shall serve for the remainder of the applicable class term. For example, if a Director in Class II resigns, the Director elected to fill the vacancy would serve for the remainder of the term of Class II Directors.<sup>9</sup>

The Exchange notes that it is not proposing any change to the composition of the Board, such as the requirement that 20% of Directors must be a Participant Directors or that a majority of Directors must be Non-Industry Directors.<sup>10</sup> All nominations and elections of Directors under the proposed staggered Board structure must be consistent with the existing composition requirements in the Bylaws. In addition, consistent with the existing Bylaws, Directors may serve consecutive terms.<sup>11</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of the Exchange Act,<sup>12</sup> in general, and furthers the objective of Section 6(b)(5) of the Exchange Act,<sup>13</sup> in particular, because it is designed 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

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<sup>9</sup> With respect to a vacancy arising from an increase in the number of authorized Directors, pursuant to proposed Section 4.03 of the Bylaws, the Director filling such vacancy would be assigned to a class by the Board and would have an initial term expiring at the same time as the term of the class to which such Director has been added.

<sup>10</sup> See Section 4.02 of the Bylaws.

<sup>11</sup> See Section 4.03 of the Bylaws.

<sup>12</sup> 15 U.S.C. 78a et seq.

<sup>13</sup> 15 U.S.C. 78f(b)(5).

the public interest; and it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this Exchange Act matters not related to the purposes of the Exchange Act or the administration of the Exchange.

Specifically, the Exchange believes that the governance and administration of the Exchange would benefit from a Board structure in which Directors each serve staggered three-year terms in at least two ways. First, the Exchange believes that shifting from one-year terms for Exchange Directors to staggered three-year terms will help preserve institutional knowledge among Exchange Directors. Under the Exchange's current Bylaws, an entirely new set of Directors can be selected each year, which can potentially disrupt ongoing initiatives by the Exchange or result in a complete loss of institutional knowledge if all of the new Directors have no prior experience serving on the Exchange's Board. The Exchange believes that it benefits from the previous experience of those who have previously served as Exchange Directors and that ensuring some continuity among Directors promotes fair and orderly transitions to new Board leadership. By increasing the term length of each Director from one to three years, the Exchange can eliminate the possibility that an entirely new slate of Directors with no prior experience as a Director occurs. And, by staggering the election of Directors by dividing Directors into three classes with only one class elected each year, the Exchange can preserve institutional knowledge among a majority of the Directors over time. This change will ensure that at the time of every annual meeting of the Members, there will remain veteran leadership on the Board. In turn, the Exchange believes that these changes will help to improve the administration of the Exchange by fostering cooperation and coordination with persons, such as Directors, engaged in regulating and facilitating transactions in securities and

removes impediments to and perfects the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act.<sup>14</sup> The Exchange also believes, consistent with Section 6(b)(5) of the Exchange Act, that these changes will also further the protection of investors and the public interest, which benefit from a governance structure that is designed to preserve institutional knowledge gained by incumbent Directors and through orderly transitions to new leadership among Directors.<sup>15</sup>

Second, the Exchange believes that the proposed staggered Board structure would help prevent any one Member or group of Members acting in coordination from exercising an undue influence over the Board through the election of Board Directors. As noted, currently the entire Board of Directors can be replaced each year. As a result, although no one Member has more than a 20% voting interest in the election of Directors, two or more Members acting in coordination could potentially exercise an outsized influence in the selection of Directors. Establishing a staggered Board would make it more difficult for such Members to take control of the Board, and therefore control of the Exchange, through a single election of the Board. By reducing the risk of coordinated Members taking control of the Board, the Board will be better positioned to address difficult, longer-term considerations related to management of the Exchange, rather than focusing on shorter-term considerations of certain Members. For example, a coordinated group of Members might seek to elect a slate of Directors that are more heavily focused on increasing Exchange profits without appropriate consideration of the longer-term growth of the Exchange. A staggered Board structure would make it more challenging

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<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> Id.

for such Members to effect such a directional change by preventing the replacement of the entire Board of Directors in a given year. In turn, the Exchange believes that this would, consistent with Section 6(b)(5) of the Exchange Act, further the protection of investors and the public interest who are likely to benefit from an Exchange that is able to focus on longer-term goals rather than shorter-term interests of certain Members.<sup>16</sup>

In addition, the Exchange notes that, consistent with Section 6(b)(5), the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.<sup>17</sup> The existing composition requirements related to Directors would remain the same under the proposed rule change, so there would not be, for example, any reduction in the representation of Exchange Participants on the Board. Moreover, all Directors would be subject to the same requirements under the proposed rule change (i.e., all Directors, regardless of type, would be divided into one of three classes, each serving three-year terms).

The Exchange notes that, in order to commence the operation of the staggered Board, Directors assigned by the Board to Class I would initially serve for only one year following their selection after the adoption of this proposed rule change while Class II and Class III Directors would serve for two and three years respectively. While this could potentially be viewed as unfairly discriminatory against Class I and Class II Directors whose tenure would have a shorter duration than a Class III Director, these differing tenures are unavoidable to establish a staggered Board. Directors may also be re-elected and serve consecutive terms. As a result, although a Director assigned to Class I may have an initially shorter tenure, if re-elected at the time of the second annual

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<sup>16</sup> Id.

<sup>17</sup> Id.



meeting of Members following the adoption of this proposed rule change, such Director would then serve a three-year term.

Finally, the Exchange notes that the proposed staggered Board structure is substantially similar to the staggered board structure of at least two exchanges.<sup>18</sup> Other exchanges have historically also operated with a substantially similar staggered board structure, including the BATS Exchange Inc. and EDGX Exchange Inc. and EDGA Exchange Inc. prior to their business combination with CBOE Holdings Inc.,<sup>19</sup> as well as International Securities Exchange, LLC prior to 2013.<sup>20</sup> Accordingly, the Exchange's proposed staggered Board structure does not present any novel considerations that the Commission has not previously considered.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.<sup>21</sup> The proposed rule change is concerned only with the governance structure and internal administration of the Exchange Board and would establish a staggered Board structure that is substantially similar to the existing board structure of

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<sup>18</sup> See Amended and Restated By-Laws of Miami International Securities Exchange LLC ("MIAX"), Section 2.02(a) and First Amended and Restated Bylaws of Long-Term Stock Exchange, Inc. ("LTSE"), Section 3.3(b). The bylaws of The Options Clearing Corporation ("OCC"), another self-regulatory organization, also provide for a similar staggered board consisting of three classes. See OCC By-Laws, Article III, Section 3.

<sup>19</sup> See Exchange Act Release No. 57322 (File No. 10-182), Exhibit A.3 of the BATS Exchange Inc. Form 1 Application, as modified by Amendment No. 1, (Amended and Restated By-Laws of BATS Exchange Inc. at Section 3(b)) (February 13, 2008), available at [https://www.sec.gov/rules/other/2008/34-57322\\_application.htm#exhibit-a](https://www.sec.gov/rules/other/2008/34-57322_application.htm#exhibit-a), and Exchange Act Release No. 60651 (File No. 10-193), Exhibit A.3 of the EDGX Exchange Inc. Form 1 Application, as modified by Amendment No. 1 (Amended and Restated Bylaws of EDGX Exchange Inc. at Section 3(b)) (September 11, 2009), available at <https://www.sec.gov/rules/other/2009/edgx-fl-application.htm#exhibit-a>.

<sup>20</sup> See Exchange Act Release No. 69164, 78 FR 17727 (March 22, 2013) (SR-ISE-2013-07).

<sup>21</sup> 15 U.S.C. 78f(b)(8).

other exchanges and self-regulatory organizations. As a result, the Exchange does not believe that the proposed rule change would result in any burden on competition or other competition-related considerations between or among Exchange Participants or between different exchanges.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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](mailto:rule-comments@sec.gov). Please include File Number SR-BOX-2022-19 on the subject line.

#### Paper Comments

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

All submissions should refer to File Number SR-BOX-2022-19. 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 Web site viewing and printing in the Commission's Public Reference Room, on business days between the hours of 10 a.m. and 3 p.m., located at 100 F Street, NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-BOX-2022-19 and should be submitted on or before [date 21 days from publication in the Federal Register].

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

Kevin M. O'Neill  
Deputy Secretary

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<sup>22</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 4**

This Exhibit 4 shows amendments to the proposed rule text as forth in Exhibit 5 of Amendment 1 to SR-BOX-2022-19, published on the Commission's website on June 29, 2022.

New text appears in blue with double-underline. Deleted text appears in red with a strikethrough.

Proposed new language is underlined; proposed deletions are in [brackets]  
Underlining in existing language has been removed for ease of review.

# BYLAWS

## OF

### BOX EXCHANGE LLC

\* \* \* \* \*

#### **ARTICLE 4. BOARD OF DIRECTORS**

##### **Section 4.01 General Powers.** No change

**Section 4.02 Number of Directors.** The authorized number of Directors shall be as determined from time to time by the Board and shall be at least five (5) and not more than eleven (11). No decrease in the number of Directors shall have the effect of shortening the term of any incumbent Director. A majority of the Directors serving on the Board shall be Non-Industry Directors. At least one of the Non-Industry Directors shall also be a Public Director. A number of Directors equal to the number of Exchange Facilities shall be Facility Directors and one (1) such Facility Director shall be selected by each Exchange Facility. At least twenty percent (20%) of the Directors shall be Participant Directors and at least one (1) Participant Director shall be selected from among the Exchange Facility Participants of each then existing Exchange Facility. No Exchange Facility Participant shall have more than one officer, director or partner of such Exchange Facility Participant serving as a Participant Director at any time. As soon as practicable after the commencement of operations of any new Exchange Facility, a new Participant Director, Participant Representative, Facility Director and Facility Representative shall be appointed by the Board from among the eligible individuals with respect to such Exchange Facility and such individuals shall serve in such respective capacities until the first annual meeting of the Members following such appointment, when the regular selection processes shall govern.



**Section 4.03 Term of Directors.** Directors shall be divided into three classes, designated Class I, Class II and Class III, which shall be as nearly equal in number and classification as the total number of such Directors then serving on the Board permits. ~~Each class of newly elected~~ Class I Directors shall initially serve a one-year term; Class II Directors shall initially serve a two-year term; and Class III Directors shall initially serve a three-year term. Thereafter, all Directors shall serve staggered three-year terms, with the term of office of one class expiring each year. ~~In order to commence such staggered three year terms, Class I Directors serving when this Section is adopted shall serve until the first annual meeting of Members following the adoption of this Section; Class II Directors serving when this Section is adopted shall serve until the second annual meeting of Members following the adoption of this Section; and Class III Directors serving when this Section is adopted shall serve until the third annual meeting of Members following the adoption of this Section.~~ In the case of any new Director as contemplated by Article IV, Section 4.02, such Director shall be added to a class, as determined by the Board at the time of such Director's initial election or appointment, and shall have an initial term expiring at the same time as the term of the class to which such Director has been added. In making such determinations, the Board shall balance the categories of Directors (e.g. Non-Industry, Public, Participant and Facility Directors) among the classes to the extent possible. [Directors shall serve terms of one year each beginning each year at the annual meeting of the Members.] Each Director shall serve until his or her successor is appointed and qualified or until such Director's resignation, removal, death or disability. Directors may serve consecutive terms if appointed thereto.

**Section 4.04 Interested Directors.** No change

**Section 4.05 Election of Chairman and Vice Chairman.** No change

**Section 4.06 Nominating Committee.** Except as otherwise provided in the Rules and in accordance with this Section 4.06, the Nominating Committee shall nominate individuals in advance of each annual meeting of the Members to begin service as Directors for the applicable class term then expiring (i.e., Class I, Class II or Class III) at such annual meeting of the Members. At each annual meeting of the Members, the individuals selected for the applicable class term pursuant to this Section 4.06 shall begin serving as Directors.

(a) No change

(b) No change

(c) No change

(d) **Selection of Directors.** Prior to the first annual meeting of the Members following adoption of the amendment to Section 4.03 to create three classes of Directors, each Director position set forth in Section 4.02 shall be designated, as determined by the Board, to one of the three classes and the Nominating Committee shall nominate nominees for each Director position for all three classes to begin service at such annual meeting. Thereafter, prior to each annual meeting of the Members, the Nominating Committee shall select nominees for each Director position for the class with



**EXHIBIT 4**

its term then expiring to begin service as Directors at such annual meeting of the Members in accordance with Section 4.02 and pursuant to the following:

(i) The Nominating Committee shall meet on such dates and at such times as determined by the Nominating Committee for the purpose of selecting the proposed Director nominees for the class then expiring. The Nominating Committee shall provide the names of all proposed Director nominees for the class then expiring to the Secretary not later than sixty (60) days prior to the date of the annual meeting of the Members. Proposed Director nominees shall promptly provide the Secretary such information as is reasonably necessary to serve as the basis for a determination of the nominee's qualification as a Non-Industry Director, a Public Director, a Participant Director or a Facility Director, as applicable, and the Secretary shall make a determination concerning the nominee's qualifications. Not later than forty-five (45) days prior to the date of the annual meeting of the Members, (A) the Secretary shall provide written notice to the Exchange Facility Participants of each Exchange Facility of the name of each proposed Participant Director nominee representing such Exchange Facility so selected, (B) the Secretary shall provide written notice to each Exchange Facility of the name of its proposed Facility Director nominee so selected, and (C) the Secretary shall provide written notice to the Members, as provided in the LLC Agreement, of the name of each proposed Director nominee so selected.

(ii) through (v) No change

(e) No change

(f) No change

**Section 4.07 Resignation.** No change

**Section 4.08 Removal.** No change

**Section 4.09 Disqualification.** No change

**Section 4.10 Vacancies.** Whenever, between meetings of the Exchange, any vacancy exists on the Board by reason of death, resignation, removal or increase in the authorized number of Directors or otherwise, such vacancy may be filled by the affirmative vote of a majority of the Board, provided that the compositional requirements of the Board set forth in Section 4.02 of these Bylaws shall be met upon the filling of any such vacancy. A Director so elected shall serve [until the next annual meeting or until his or her successor is elected and qualified] for the remainder of the applicable class term. In the case of a vacancy in the office of the Chairman, the Board may designate an acting Chairman among the Directors then in office.

**Section 4.11 Meetings of the Board.** No change

**Section 4.12 Compensation.** No change

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**EXHIBIT 5**

Proposed new language is underlined; proposed deletions are in [brackets]  
Underlining in existing language has been removed for ease of review.

# BYLAWS

## OF

### BOX EXCHANGE LLC

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**ARTICLE 4. BOARD OF DIRECTORS****Section 4.01 General Powers.** No change

**Section 4.02 Number of Directors.** The authorized number of Directors shall be as determined from time to time by the Board and shall be at least five (5) and not more than eleven (11). No decrease in the number of Directors shall have the effect of shortening the term of any incumbent Director. A majority of the Directors serving on the Board shall be Non-Industry Directors. At least one of the Non-Industry Directors shall also be a Public Director. A number of Directors equal to the number of Exchange Facilities shall be Facility Directors and one (1) such Facility Director shall be selected by each Exchange Facility. At least twenty percent (20%) of the Directors shall be Participant Directors and at least one (1) Participant Director shall be selected from among the Exchange Facility Participants of each then existing Exchange Facility. No Exchange Facility Participant shall have more than one officer, director or partner of such Exchange Facility Participant serving as a Participant Director at any time. As soon as practicable after the commencement of operations of any new Exchange Facility, a new Participant Director, Participant Representative, Facility Director and Facility Representative shall be appointed by the Board from among the eligible individuals with respect to such Exchange Facility and such individuals shall serve in such respective capacities until the first annual meeting of the Members following such appointment, when the regular selection processes shall govern.

**Section 4.03 Term of Directors.** Directors shall be divided into three classes, designated Class I, Class II and Class III, which shall be as nearly equal in number and classification as the total number of such Directors then serving on the Board permits. Class I Directors shall initially serve a one-year term; Class II Directors shall initially serve a two-year term; and Class III Directors shall initially serve a three-year term. Thereafter, all Directors shall serve staggered three-year terms, with the term of office of one class expiring each year. In the case of any new Director as contemplated by Article IV, Section 4.02, such Director shall be added to a class, as determined by the Board at the time of such Director's initial election or appointment, and shall have an initial term expiring at the same time as the term of the class to which such Director has been added. In making such determinations, the Board shall balance the categories of Directors (e.g. Non-Industry, Public, Participant and Facility Directors) among the classes to the extent possible. [Directors shall serve terms of one year each beginning each year at the annual meeting of the Members.] Each Director shall serve until his or her successor is appointed and qualified or until such Director's resignation, removal, death or disability. Directors may serve consecutive terms if appointed thereto.

**Section 4.04 Interested Directors.** No change

**Section 4.05 Election of Chairman and Vice Chairman.** No change

**Section 4.06 Nominating Committee.** Except as otherwise provided in the Rules and in accordance with this Section 4.06, the Nominating Committee shall nominate individuals in advance of each annual meeting of the Members to begin service as Directors for the applicable class term then expiring (i.e., Class I, Class II or Class III) at such annual meeting of the Members. At each annual meeting of the Members, the individuals selected for the applicable class term pursuant to this Section 4.06 shall begin serving as Directors.

(a) No change

(b) No change

(c) No change

(d) **Selection of Directors.** Prior to the first annual meeting of the Members following adoption of the amendment to Section 4.03 to create three classes of Directors, each Director position set forth in Section 4.02 shall be designated, as determined by the Board, to one of the three classes and the Nominating Committee shall nominate nominees for each Director position for all three classes to begin service at such annual meeting. Thereafter, prior to each annual meeting of the Members, the Nominating Committee shall select nominees for each Director position for the class with its term then expiring to begin service as Directors at such annual meeting of the Members in accordance with Section 4.02 and pursuant to the following:

(i) The Nominating Committee shall meet on such dates and at such times as determined by the Nominating Committee for the purpose of selecting the proposed Director nominees for the class then expiring. The Nominating Committee shall provide the names of all proposed Director nominees for the class then expiring to the Secretary not later than sixty (60) days prior to the date of the annual meeting of the

Members. Proposed Director nominees shall promptly provide the Secretary such information as is reasonably necessary to serve as the basis for a determination of the nominee's qualification as a Non-Industry Director, a Public Director, a Participant Director or a Facility Director, as applicable, and the Secretary shall make a determination concerning the nominee's qualifications. Not later than forty-five (45) days prior to the date of the annual meeting of the Members, (A) the Secretary shall provide written notice to the Exchange Facility Participants of each Exchange Facility of the name of each proposed Participant Director nominee representing such Exchange Facility so selected, (B) the Secretary shall provide written notice to each Exchange Facility of the name of its proposed Facility Director nominee so selected, and (C) the Secretary shall provide written notice to the Members, as provided in the LLC Agreement, of the name of each proposed Director nominee so selected.

(ii) through (v) No change

(e) No change

(f) No change

**Section 4.07 Resignation.** No change

**Section 4.08 Removal.** No change

**Section 4.09 Disqualification.** No change

**Section 4.10 Vacancies.** Whenever, between meetings of the Exchange, any vacancy exists on the Board by reason of death, resignation, removal or increase in the authorized number of Directors or otherwise, such vacancy may be filled by the affirmative vote of a majority of the Board, provided that the compositional requirements of the Board set forth in Section 4.02 of these Bylaws shall be met upon the filling of any such vacancy. A Director so elected shall serve [until the next annual meeting or until his or her successor is elected and qualified] for the remainder of the applicable class term. In the case of a vacancy in the office of the Chairman, the Board may designate an acting Chairman among the Directors then in office.

**Section 4.11 Meetings of the Board.** No change

**Section 4.12 Compensation.** No change

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