

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67130; File No. SR-BOX-2012-006)

June 5, 2012

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Temporarily Suspend Certain Exchange Rules Concerning Approval of a New Options Participant

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 5, 2012, BOX Options Exchange LLC (the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

BOX Options Exchange LLC (the “Exchange”) is proposing to temporarily suspend the requirements of Exchange Rule 2050 and related Exchange rules concerning the approval of new Options Participants in order to approve Apex Clearing Corporation, f/k/a Ridge Clearing and Outsourcing Solutions, Inc. (“Apex Clearing”) as an Options Participant on BOX Market LLC, an options trading facility of the Exchange (“BOX”), subject to Apex Clearing complying with Exchange rules for a new Options Participant within 30 calendar days of the date that Apex

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

Clearing is provisionally approved as an Options Participant. The Exchange is also proposing to accept Apex Clearing's assumption of all of the existing clearing agreements and arrangements currently in effect between Penson Financial Services Inc. ("PFSI") and various other Options Participants by execution of a global agreement thereto. A copy of this filing is available on the Exchange's Web site at [www.boxexchange.com](http://www.boxexchange.com), at the Exchange's principal office, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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 this rule filing to temporarily suspend the requirements of Exchange Rule 2050 and related rules regarding the approval of BOX Options Participants in order to immediately approve Apex Clearing as a BOX Options Participant. The Exchange proposes this temporary suspension on an emergency basis to ensure that Apex Clearing can continue the clearing operations of PFSI without unnecessary disruption, which could have a significant collateral impact to a number of other Options Participants. The proposed temporary suspension is contingent upon Apex having complied with all Exchange Rules for a new BOX

Options Participant within 30 calendar days of the date Apex Clearing is provisionally approved as a BOX Options Participant pursuant to this filing.

On May 31, 2012, Apex Clearing Holdings, LLC (“Apex Holdings”), Apex Clearing Solutions, LLC, Broadridge Financial Solutions, Inc. (“Broadridge”), PFSI and Penson Worldwide, Inc. (“PWI”) (together, the “Parties”) consummated a transaction resulting in a change in ownership of Apex Clearing.<sup>5</sup> Broadridge, Apex Holdings, PWI and PFSI each made capital investments in Apex Holdings, the holding company parent of Apex Clearing. PFSI also assigned all of its U.S. clearing contracts and all customer and introducing broker proprietary accounts along with key personnel to Apex Clearing (the “Transferring Accounts”).<sup>6</sup>

As a result of the transaction, Apex Clearing, which is not a BOX Options Participant, will provide the clearing and execution services currently provided to the Transferring Accounts by PFSI. On May 31, 2012, Apex Clearing submitted an application for approval as a BOX Options Participant. However, because of the expedited nature of the transaction, Apex Clearing was unable to fully comply with Exchange Rule 2050 and related rules applicable to new BOX Options Participants. Because of the need for seamless continuity with respect to the Transferring Accounts, Apex Clearing has requested that the Exchange temporarily suspend its new Options Participant rules in order to enable Apex Clearing’s approval as a BOX Options Participant on an expedited basis. Pursuant to its request, Apex Clearing will fully comply with

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<sup>5</sup> Prior to the Transaction, Apex Clearing’s name was Ridge Clearing & Outsourcing Solutions, Inc. Prior to the transaction, Ridge Clearing & Outsourcing Solutions, Inc. contributed its outsourcing operations and all associated personnel and systems to its affiliated entity, Broadridge Securities Processing Solutions, LLC (“BSPS”) where it will continue to provide operations support and outsourcing services to a number of broker-dealers, including Apex Clearing.

<sup>6</sup> See Penson Worldwide, Inc. Form 8-K dated May 31, 2012.

the Exchange's new Options Participant requirements within 30 calendar days after the provisional approval.

Exchange Rule 2050 requires any applications for status as an Options Participant to be made to the Exchange and to contain such information as may be required by the Exchange rules. When a corporate acquisition concerns an asset transfer only, and not an acquisition of the corporate entity, BOX Options Participant status cannot be transferred to the acquiring entity. The entity that proposes to continue acquired business operations of a BOX Options Participant must be separately approved as a BOX Options Participant.

Among other things, to be approved as a BOX Options Participant, the applicant must provide:

- An agreement for the applicant to be regulated by the Exchange and recognize that the Exchange is obligated to undertake to enforce compliance with the provisions of the Exchange Rules, its By-Laws, its interpretations and policies and with the provisions of the Act and regulations thereunder (Exchange Rule 2010).
- A written application with the name and address of the applicant as well as an organizational chart and a description of the applicant's proposed activities on BOX.
- A list and descriptive identification of those persons associated with the applicant who are its executive officers, directors, principal shareholders, and general partners (Exchange Rule 2050(g)).

- An agreement to maintain and make available to the Exchange such books and records as may be required to be maintained by the Commission or the Exchange Rules (Exchange Rule 2050(a)).
- Such other reasonable information with respect to the applicant as the Exchange may require.

In addition, the Exchange reviews whether the applicant meets federal and Exchange capital requirements and whether it has adopted controls and procedures to comply with Exchange rules.

Due to the amount of information an applicant is required to provide and have completed prior to being approved as an Options Participant, the approval process generally takes several weeks to complete. The length of time varies based on the timing of the applicant's response to requests for information and documentation.

As proposed, Apex Clearing will continue the clearing and certain other operations of PFSI as of June 6, 2012. In order to avoid interruption of the services PFSI currently provides to other BOX Options Participants, the Exchange believes that Apex Clearing should be approved immediately as a BOX Options Participant. The Exchange notes that Apex Clearing is already a registered broker dealer and FINRA member, which are two characteristics that make Apex Clearing eligible for becoming a BOX Options Participant. See Exchange Rule 2020(a).

The Exchange therefore proposes providing Apex Clearing with a temporary suspension of Exchange Rule 2050 and other rules related to approval of status as a BOX Options Participant and approval of a proposed Options Participant's associated persons, and immediately approving Apex Clearing as a BOX Options Participant. As proposed, this temporary suspension is contingent upon:

- Apex Clearing providing the Exchange with sufficient information to confirm that Apex Clearing will meet its capital requirements as a BOX Options Participant; and
- Within 30 calendar days of Apex Clearing’s approval as a BOX Options Participant under this proposed filing, Apex Clearing and its associated persons will have complied with the Exchange’s new Options Participant requirements as set forth in BOX Rules 2000 Series.

As proposed, if Apex Clearing does not comply with all applicable BOX Options Participant application requirements within 30 calendar days of the effective date of this filing, its status as an approved BOX Options Participant will no longer be effective.

In addition, the Exchange proposes to permit Apex Clearing to assume all existing clearing agreements and arrangements currently in effect with other BOX Options Participants by execution of global agreements thereto. Notice of such assumption will be provided to impacted Options Participants through issuance of a Regulatory Circular prior to the effective date thereof.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)<sup>7</sup> of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5)<sup>8</sup> in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

investors and the public interest. The Exchange believes that permitting the expeditious approval of Apex Clearing as a BOX Options Participant will avoid interruption of the services PFSI currently provides to other BOX Options Participants. Based on information and representations provided by Apex Clearing, a temporary suspension of certain Exchange rules is needed based on the expedited nature of the transaction to enable seamless continuity with respect to the transferring accounts. Consequently, the Exchange believes that temporary suspension of its requirements for the applications and approval of new BOX Options Participants so that Apex Clearing can be approved immediately as a BOX Options Participant will help to foster cooperation and coordination with persons engaged in facilitating transactions in securities and is consistent with the Act.

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

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

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

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

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> Because the 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 prior to 30 days from the date on which it was

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>12</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>13</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>14</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Commission notes that the Exchange is proposing that certain of its rules relating to membership requirements be temporarily suspended so that Apex Clearing can be provisionally approved as a BOX Options Participant. The proposed relief does not exempt Apex Clearing from Exchange rule requirements governing Options Participants. Apex Clearing would have a 30 calendar day grace period within which to apply for and be approved under relevant Exchange rules. Moreover, the Commission believes that waiver of the 30-day operative delay is appropriate to ensure a smooth transition of PFSI operations to Apex Clearing. In particular, given the rapidity with which events have developed, waiver of the 30-day operative delay is necessary to avoid significant disruption to PFSI's existing customers and the

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission is waiving this five-day pre-filing requirement.

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).



market generally. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change as operative upon filing.<sup>15</sup>

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 necessary or appropriate in the public interest, for the protection of investors, or 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](mailto:rule-comments@sec.gov). Please include File Number SR-BOX-2012-006 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.

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

All submissions should refer to File Number SR-BOX-2012-006. 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 also will 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-2012-006 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.<sup>16</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).