

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-84989; File No. SR-BOX-2018-24)

January 25, 2019

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Designation of Longer Period for Commission Action on Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network

On July 19, 2018, BOX Options Exchange LLC (“BOX” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to amend the BOX fee schedule to establish certain connectivity fees and reclassify its high speed vendor feed as a port fee. The proposed rule change was published in the Federal Register on August 2, 2018.<sup>3</sup> The Commission received one comment letter on the proposal urging the Commission to suspend the proposal and institute proceedings.<sup>4</sup> BOX submitted a response to comments on September 12, 2018.<sup>5</sup> On September 17, 2018, the Division of Trading and Markets (the “Division”), acting on behalf of the Commission by delegated authority, issued an order temporarily suspending the proposed rule change pursuant to Section 19(b)(3)(C) of the Act<sup>6</sup> and simultaneously instituting proceedings under Section 19(b)(2)(B) of the Act<sup>7</sup> to

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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> See Securities Exchange Act Release No. 83728 (July 27, 2018), 83 FR 37853.

<sup>4</sup> See letter from Tyler Gellasch, Executive Director, The Healthy Markets Association, to Brent J. Fields, Secretary, Commission, dated August 23, 2018 (“Healthy Markets Letter”).

<sup>5</sup> See letter from Lisa J. Fall, President, BOX, to Brent J. Fields, Secretary, Commission, dated September 12, 2018.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>7</sup> 15 U.S.C. 78s(b)(2)(B).

determine whether to approve or disapprove the proposed rule change (“Order Instituting Proceedings”).<sup>8</sup> The Commission thereafter received one additional comment letter on the proposal.<sup>9</sup>

On September 19, 2018, pursuant to Rule 430 of the Commission’s Rules of Practice,<sup>10</sup> the Exchange filed a notice of intention to petition for review of the Order Instituting Proceedings. Such action preserved the Exchange’s right to file a petition to review the Division’s action by delegated authority and, pursuant to Rule 431(e) of the Commission’s Rules of Practice, triggered an automatic stay of the action by delegated authority, which reinstated the Exchange’s authority to charge the connectivity fees at issue.<sup>11</sup> On September 26, 2018, the Exchange filed a petition for review of the Order Instituting Proceedings.<sup>12</sup> On November 16, 2018, the Commission granted the Exchange’s Petition and discontinued the automatic stay of the delegated action,<sup>13</sup> thereby suspending the Exchange’s ability to charge the connectivity fees at issue while the Commission conducts proceedings to consider the proposed fees’ consistency with the Exchange Act. In its order granting the Petition, the Commission also ordered that any

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<sup>8</sup> See Securities Exchange Act Release No. 84168 (September 17, 2018), 83 FR 47947 (September 21, 2018).

<sup>9</sup> See letter from Theodore R. Lazo, Managing Director and Associate General Counsel, and Ellen Greene, Managing Director, Financial Services Operations, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, Commission, dated October 15, 2018.

<sup>10</sup> 17 CFR 201.430.

<sup>11</sup> 17 CFR 201.431(e).

<sup>12</sup> See letter from Amir Tayrani, Partner, Gibson, Dunn & Crutcher LLP, dated September 19, 2018; Petition for Review of Order Temporarily Suspending BOX Exchange LLC’s Proposal to Amend the Fee Schedule on BOX Market LLC, dated September 26, 2018 (“Petition”). Pursuant to Rule 431(e) of the Commission’s Rules of Practice, a notice of intention to petition for review results in an automatic stay of the action by delegated authority. 17 CFR 201.431(e).

<sup>13</sup> See Securities Exchange Act Release No. 84614 (November 16, 2018), 83 FR 59432 (November 23, 2018).

party or other person could file a statement by November 27, 2018, in support or in opposition to the action made by delegated authority.<sup>14</sup> The Commission received two such statements from the Exchange.<sup>15</sup>

Section 19(b)(2) of the Act<sup>16</sup> provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. In this case, the proposed rule change was published for notice and comment in the Federal Register on August 2, 2018.<sup>17</sup> January 29, 2019, is 180 days from that date, and March 30, 2019, is 240 days from that date.

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<sup>14</sup> See id.

<sup>15</sup> See letter from Lisa J. Fall, President, BOX, to Brent J. Fields, Secretary, Commission, to Brent J. Fields, Secretary, Commission, dated December 7, 2018; and letter from Amir C. Tayrani, Gibson, Dunn & Crutcher LLP, to Brent J. Fields, Secretary, Commission, dated December 10, 2018 (submitted on behalf of the Exchange).

<sup>16</sup> 15 U.S.C. 78s(b)(2).

<sup>17</sup> See supra note 3.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>18</sup> designates March 29, 2019, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR-BOX-2018-24).<sup>19</sup>

By the Commission.

Brent J. Fields  
Secretary

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<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>19</sup> The Commission notes that March 30, 2019, is a Saturday and is, therefore, designating March 29, 2019, as the date by which the Commission shall either approve or disapprove the proposed rule change.