

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85453; File No. SR-BOX-2019-08)

March 29, 2019

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Allow for Replacement Issues to be Added to the Penny Pilot Program (“Pilot Program”) on a Quarterly Basis

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 22, 2019, BOX Exchange LLC (the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 BOX Rule 7260 (Penny Pilot Program) to allow for replacement issues to be added to the Pilot Program on a quarterly basis, without altering the expiration date of the Pilot Program, which is June 30, 2019. 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 <http://boxoptions.com>.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

specified in Item IV below. The self-regulatory organization 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 to amend BOX Rule 7260 (Penny Pilot Program) to allow for replacement issues to be added to the Pilot Program on a quarterly basis, without altering the expiration date of the Pilot Program. This is a competitive filing that is based on a proposal recently submitted by NYSE American LLC (“NYSEAMER”).³

The Exchange recently filed to extend the Pilot Program until June 30, 2019 (from December 31, 2018) and also updated the rule text to provide that replacement issues may be added to the Pilot on the second trading day following January 1, 2019.⁴ The Rule authorizes the Exchange to replace any options issues in the Pilot Program that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the Pilot Program, based on trading activity in the previous six months.⁵ The Exchange proposes to modify BOX Rule 7260 to allow the Exchange to add replacement issues (for Pilot issues that have been delisted) on a quarterly basis. The Exchange added replacement issues in January 2019 and would be eligible to add replacement issues in April, July, and October. The Exchange believes this change would allow the Exchange to update issues eligible for the Pilot Program (by replacing

³ See Securities Exchange Act Release No. 34-85348 (March 18, 2019) (Order Approving SR-NYSEAMER-2019-05).

⁴ See Securities Exchange Act Release No. 34-84869 (December 19, 2018), 83 FR 66806 (December 27, 2018) (SR-BOX-2018-38). On January 3, 2019, the Exchange added new issues to replace delisted Pilot Program issues, as announced by Regulatory Circular, available here, <https://boxoptions.com/assets/RC-2019-01-Penny-Pilot-Issue-Replacements-Update-v2.pdf>.

⁵ See BOX Rule 7260.

delisted issues) on a quarterly basis (as opposed to semi-annual) and would enable further analysis of the Pilot Program and a determination of how the Pilot Program should be structured in the future.

As is the case today, the Exchange will determine replacement issues based on trading activity in the previous six months (the “six month lookback”) but will not use the month immediately preceding the addition of a replacement to the Pilot Program. Thus, a replacement class to be added on the second trading day following April 1, 2019 would be identified based on The Option Clearing Corporation’s trading volume data from September 1, 2018 through February 28, 2019.⁶ The Exchange believes the six month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as corporate action (i.e., it would result in a more reliable measure of average daily trading volume than would a shorter period).

This filing does not propose any substantive changes to the Pilot Program: all classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic. Lastly, in order to conform to the proposed Pilot Program, the Exchange proposes to remove the specific dates for the lookback period and replace it with language referencing the previous six months. This language replacement will have no substantive impact on the rule.

⁶ The Rule continues to obligate the Exchange to announce the replacement issues by Regulatory Circular. See id.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),⁷ in general, and Section 6(b)(5) of the Act,⁸ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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. In particular, the Exchange believes the proposal to allow the addition of replacement issues to the Pilot Program on a quarterly basis would result in a more current list of Pilot-eligible issues and would enable further analysis of the Pilot Program, including for a determination of how the Pilot Program should be structured in the future. Further, the Exchange believes the six month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (i.e., it would result in a more reliable measure of average daily trading volume than would a shorter period). Thus, the Exchange believes this proposal would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanisms of a free and open market and a national market system.

The Exchanges notes that it [sic] not making any other substantive changes to the Pilot Program, other than modifying the timing for replacement issues and therefore the Exchange will continue to participate in a program that has been viewed as beneficial to traders,

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

investors and public customers and viewed as successful by the other options exchanges participating in it.

The Exchange believes that the Pilot Program would continue to promote just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to a filing submitted by NYSEAMER.⁹ In addition, the Exchange believes that allowing the Exchange to add replacement issues to the Pilot Program on a quarterly basis would make the list of Pilot-eligible issues more current and would enable further analysis of the Pilot, including for a determination of how the Pilot Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Pilot Program is an industry-wide initiative supported by all other option exchanges. The Exchange believes that the proposed change would allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot Program.

⁹ See supra, note 3.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ 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 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 and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹³ 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 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The change will allow the Exchange to add classes to the pilot that are actively traded at the start of the second quarter (i.e., in April 2019)

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) 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 Exchange has satisfied this requirement.

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

and replace those that have been delisted and are no longer trading on a more frequent basis. This will help ensure that the top 363 most actively traded, multiply-listed classes are included in the Pilot, which will enable further analysis of the Pilot.¹⁴

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)¹⁵ of the Act to determine whether the proposed rule change 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. Please include File Number SR-BOX-2019-08 on the subject line.

Paper Comments

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

¹⁴ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁵ 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR-BOX-2019-08. 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-2019-08 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.¹⁶

Eduardo A. Aleman
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).