

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- 92238; File No. SR-BOX-2021-15)

June 23, 2021

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fee Schedule on the BOX Options Market LLC Facility

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 June 10, 2021, BOX Exchange LLC (“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 Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,³ and Rule 19b-4(f)(2) thereunder,⁴ 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 the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the Fee Schedule on the BOX Options Market LLC (“BOX”) facility. 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://boxexchange.com>.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

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 to amend Section II (Manual Transaction Fees) on the BOX Fee Schedule. Specifically, the Exchange proposes to amend QOO Order Fees for Market Makers in Section II.A of the Fee Schedule. Currently, Floor Market Makers are charged \$0.25 per contract for QOO Orders for Penny and Non-Penny Interval Classes. The Exchange proposes to modify the rates charged for QOO Orders to \$0.35 for Market Makers in Penny and Non-Penny Interval Classes. The proposed changes are intended to provide consistency between the Exchange’s fees for manual transactions by Floor Market Makers and those charged by other markets.⁵ The

⁵ See e.g., Nasdaq PHLX LLC (“Phlx”) Pricing Schedule, available at: <https://listingcenter.nasdaq.com/rulebook/phlx/rules/Phlx%20Options%207> (providing \$0.35 per contract rate for manual transactions by market makers); Cboe Exchange, Inc. (“Cboe”) Fee Schedule, available at: https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf (providing \$0.35 per contract rate for manual transactions by market makers). The Exchange notes that Cboe filed to increase the Market Maker manual transaction fee - thereby increasing the fee disparity between Floor Market Makers and all other Floor Participants - in October 2020. See Securities Exchange Act Release No. 90232 (October 20, 2020), 85 FR 67782 (SR-CBOE-2020-097). The Exchange also notes that NYSE Arca LLC (“NYSE Arca”) recently filed a proposed change for immediate effectiveness that increased their manual transaction fees for Market Makers to \$0.35. In their filing, NYSE Arca stated that the purpose of the change was to better align their fees with other markets in the industry. BOX notes that the purpose of this filing is the same – to align its fees with other

Exchange notes that the disparity in fees between Floor Market Makers and other Floor Participants on the BOX Trading Floor are similar to disparities that currently exist at other trading floors in the industry.⁶

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5) of the Act,⁷ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed rule change is designed to bring the Exchange's fees for Market Maker manual transactions into alignment with those charged on other markets with trading floors. The Exchange believes it is reasonable to increase certain fees, consistent with fees offered by competing options exchanges for similar transactions.⁸ Further, the

exchanges with trading floors. See SR-NYSEArca-2021-042 available at <https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/rule-filings/filings/2021/SR-NYSEArca-2021-42.pdf>.

⁶ Currently, BOX Floor Brokers are charged \$0.25 per contract for manual transactions on the BOX Trading Floor. At Phlx, Cboe, and NYSE American, Floor Brokers are charged \$0.25 per contract for manual transactions. As discussed above, Floor Market Makers at Phlx, Cboe, and NYSE American are charged \$0.35 per contract for manual transactions. The Exchange also notes that BOX charges Professional Customers \$0.10 for manual transactions. The Exchange believes that the disparity between the Professional Customers and the proposed Floor Market Maker fee is reasonable as a similar disparity currently exists at another options exchange with a trading floor. See Cboe Fee Schedule. At Cboe, Professional Customers are charged \$0.12 for manual transactions and Floor Market Makers are charged \$0.35 for manual transactions. Lastly, BOX notes that Public Customers are not charged for manual transactions on the BOX Trading Floor while Floor Market Makers are charged \$0.35 for manual transactions. This is consistent with the fee disparities currently in place at the other exchanges with physical trading floors.

⁷ 15 U.S.C. 78f(b)(4) and (5).

⁸ See supra note 5.

Exchange believes that the proposed increased charge for manual transactions for Market Makers but not for other market participants is reasonable because the resulting disparity would align the Exchange's fees for manual transactions with the fees charged on other exchanges.⁹ In addition, the Exchange believes that other pricing incentives offered by the Exchange would continue to encourage Market Makers to conduct manual transactions on the Exchange.¹⁰ The Exchange thus believes the proposed changes, even though they are increased fees, would not discourage Market Makers from continuing to conduct manual transactions on the Exchange and would continue to attract volume and liquidity to the Exchange generally and would therefore benefit all market participants (including those that do not participate in manual transactions) through increased opportunities to trade.

Further, the Exchange believes the proposed rule change is reasonable and equitable as the proposal is based on the type of business transacted on the Exchange, and Market Makers can opt to participate in manual transactions or not. Finally, to the extent the proposed fees continue to encourage Market Makers to participate in manual transactions on the Exchange, the Exchange believes the proposed changes would continue to improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to maintain its market share relative to its competitors.

⁹ See supra note 6.

¹⁰ See BOX Fee Schedule Section II.A (Strategy QOO Order Fee Cap and Rebate). While the fee cap on Strategy transactions is available to all Participants, the Exchange notes that Floor Market Makers have a time and place advantage by virtue of their presence on the Trading Floor to participate in such transactions and therefore benefit from the fee cap.

Further, the Exchange believes the proposed change is equitable and not unfairly discriminatory as the proposed modifications would apply to all Floor Market Makers who execute manual transactions on an equal and non-discriminatory basis. The Exchange also believes that increasing fees for manual transactions by Market Makers, but not for other market participants, is not unfairly discriminatory given that the proposed rates (and resulting disparities) are a competitive response to rates charged on options exchanges for manual transactions by Market Makers and because these Participants may avail themselves of other incentives offered by the Exchange. Further, the Exchange believes the proposed change is reasonable, equitable, and not unfairly discriminatory because it is consistent with the manner in which other options exchanges with trading floors currently assess fees for Market Maker manual transactions. As discussed above, the Exchange notes that the disparity in fees between the Floor Market Makers and other Floor Participants on the BOX Trading Floor are similar to disparities that currently exist at other trading floors in the industry.¹¹

The Exchange notes that it operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹²

¹¹ See supra note 6.

¹² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) (“Reg NMS Adopting Release”).

There are currently 16 registered options exchanges competing for order flow. Based on publicly available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.¹³ Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in April 2021, the Exchange had less than 6% market share of executed volume of multiply-listed equity and ETF options trades.¹⁴

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees and rebates can have a direct effect on the ability of an exchange to compete for order flow. As such, the Exchange believes that the proposed change is reasonable, equitable, and not unfairly discriminatory as discussed above.

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. Instead, as discussed above, the Exchange believes that the proposed changes would be consistent with fees for similar transactions at other markets. As a result, the Exchange believes that the proposed changes

¹³ The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: <https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-OpenInterest/Monthly-Weekly-Volume-Statistics>

¹⁴ Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, see id.

further the Commission’s goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes “more efficient pricing of individual stocks for all types of orders, large and small.”¹⁵

The Exchange does not believe that the proposed change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change will apply uniformly to all Market Makers on the BOX Trading Floor. That is, all Market Makers transacting orders on the BOX Trading Floor will be assessed the proposed fees. The Exchange believes that the proposed increased fees for manual transactions by Market Makers, but not for other market participants, would not impose any burden on intermarket competition that is not necessary or appropriate because the proposed fees (and resulting disparities) are consistent with fees charged for manual transactions by Market Makers on other exchanges and because these Participants may avail themselves to other incentives offered by the Exchange.¹⁶ Further, the Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, as noted above, competing options exchanges with trading floors have similar fees for identical transactions on their respective trading floors.¹⁷

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with

¹⁵ See Reg NMS Adopting Release, supra note 12, at 37499.

¹⁶ See supra notes 5, 6, and 10.

¹⁷ See supra note 5.

other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act¹⁸ and Rule 19b-4(f)(2) thereunder,¹⁹ because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further 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

¹⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁹ 17 CFR 240.19b-4(f)(2).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BOX-2021-15 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.

All submissions should refer to File Number SR-BOX-2021-15. 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 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-2021-15, 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.²⁰

J. Matthew DeLesDernier
Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).