

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92980; File No. SR-BOX-2021-20)

September 14, 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 September 1, 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”) options facility. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on September 1, 2021. 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 the Fee Schedule for trading on BOX to amend Section I.D.1. (QCC Rebate). Specifically, the Exchange proposes to remove the current flat rate rebates for QCC transactions and establish a QCC rebate tier structure.

By way of background, a Qualified Contingent Cross (“QCC”) transaction is comprised of an originating order to buy or sell at least 1,000 contracts, or 10,000 mini-option contracts, that is identified as being part of a qualified contingent trade, coupled with a contra-side order or orders totaling an equal number of contracts.⁵ Currently, the Exchange assesses a fee of \$0.17 per contract for Broker Dealers and Market Makers for all Agency Order, the originating order, and contra-side orders that are part of a QCC transaction.⁶ The Exchange currently applies a \$0.14 per contract rebate to all QCC Agency Orders where at least one party to the QCC transaction is a Broker Dealer or Market Maker and a \$0.22 per contract rebate to all QCC

⁵ See BOX Rule 7110(c)(6).

⁶ Public Customers and Professional Customers are not assessed fees for QCC transactions on BOX. The Exchange notes that, under this proposal, the QCC transaction fees will remain the same.

Agency Order when both parties to the QCC transaction are a Broker Dealer or Market Maker. The above rebates are paid to the Participant that entered the order into the BOX system.

The Exchange now proposes to remove the flat rate QCC rebates currently in place and establish a tiered rebate structure where the amount of the rebate will be based off of incrementally increasing volume thresholds of QCC transactions on BOX. The Exchange notes that the way in which the rebates will be applied to the QCC transactions remains the same as it is today. The QCC rebates will still be applied to the QCC Agency Order when both parties to the QCC transaction are a Broker Dealer or Market Maker. Also, the rebate will continue to be paid to the Participant that entered the order into the BOX system when at least one party to the QCC transaction is a Broker Dealer or Market Maker. Under this proposal, the per contract rebate for QCC transactions will now be applied according to the volume threshold tier achieved. Volume thresholds will be calculated on a monthly basis by totaling the Participant's QCC Agency Order volume on BOX. Specifically, the Exchange proposes the QCC Agency Order volume thresholds as follows:

- To receive the rebate in Tier 1, a Participant must submit QCC Agency Orders totaling 0 to 1,499,999 contracts per month.
- To receive the rebate in Tier 2, a Participant must submit QCC Agency Orders totaling 1,500,000 to 2,499,999 contracts per month.
- To receive the rebate in Tier 3, a Participant must submit QCC Agency Orders totaling 2,500,000 to 3,499,999 contracts per month.
- To receive the rebate in Tier 4, a Participant must submit QCC Agency Orders totaling 3,500,000 or more contracts per month.

The proposed tiered rebate structure, including volume thresholds and applicable rebates, will be as follows:

Tier	QCC Agency Order Volume on BOX (per month)	Rebate 1 (per contract)	Rebate 2 (per contract)
1	0 to 1,499,999 contracts	(\$0.14)	\$0.22)
2	1,500,000 to 2,499,999 contracts	(\$0.15)	(\$0.23)
3	2,500,000 to 3,499,999 contracts	(\$0.15)	(\$0.24)
4	3,500,000+ contracts	(\$0.15)	(\$0.25)

When only one side of the QCC transaction is a Broker Dealer or Market Maker, Rebate 1 will apply. When both parties to the QCC transaction are a Broker Dealer or Market Maker, Rebate 2 will apply. If the Participant qualifies for both rebates, only the larger rebate will be applied to the Agency Order.⁷ The Exchange notes that a similar rebate structure and rebates for QCC transactions exist at another exchange.⁸

⁷ The Exchange again notes that this is how BOX currently assesses the flat rate rebates for QCC transactions.

⁸ See Cboe EDGX Exchange, Inc. (“CboeEDGX”) Fee Schedule. The Exchange notes that the proposed volume thresholds are slightly higher than the volume thresholds at CboeEDGX. Also, the Exchange notes that the rebate amounts in Rebate 1 and Rebate 2 differ slightly from CboeEDGX. Despite the differences, the Exchange believes the proposed rebate structure and rebates discussed herein are reasonable as they provide an incremental incentive for Participants to strive for the higher tier levels, which provide increasingly higher rebates for incrementally more QCC volume achieved, which the Exchange believes is a reasonably designed incentive for Participants to grow their QCC order flow to receive the enhanced rebates. Further, the Exchange notes that the QCC transaction fees at BOX will remain unchanged at \$0.17 for Broker Dealer and Market Maker Agency Orders and Contra Orders for QCC Transactions. The Exchange notes that CboeEDGX assesses \$0.20 to Broker Dealers and Market Makers for Agency Orders and Contra Orders for QCC transactions. As such, the Exchange believes the proposed rebate structure and rebates is reasonable and appropriate.

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,⁹ 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 notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Exchange is only one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. The proposed changes reflect a competitive pricing structure designed to incentivize market participants to direct their QCC order flow, which the Exchange believes would enhance market quality to the benefit of all Participants.

The Exchange believes the proposed changes to the QCC Rebate structure are reasonable because the proposed changes provide opportunities for Participants to receive higher rebates for incrementally increasing the Participant's Agency QCC Order volume. The Exchange again notes that a volume-based incentive structure exists at another exchange,¹⁰ and believes that the proposed tiers are reasonable, equitable, and non-discriminatory because they are open to all Participants on an equal basis.

⁹ 15 U.S.C. 78f(b)(4) and (5).

¹⁰ See supra note 8.

The Exchange believes the proposed QCC Rebate tiers are a reasonable means to encourage Participants to increase their liquidity on the Exchange, particularly in connection with additional QCC Agency Order flow to the Exchange in order to benefit from the proposed enhanced rebates. The Exchange believes that the proposed tiers are reasonable in that they provide an ample number of opportunities for a Participant to receive an enhanced rebate for qualifying orders. The proposed tiers provide an incremental incentive for Participants to strive for higher tier levels, which provide increasingly higher rebates for incrementally more QCC Agency Order volume achieved, which the Exchange believes is a reasonably designed incentive for Participants to grow their QCC order flow to receive the enhanced rebates. Further, the Exchange believes the proposed rebate structure is reasonable, as the fees assessed for QCC transactions on BOX will remain the same.

The Exchange believes the proposed enhanced rebates are reasonable and proportionate with the difficulty of the proposed volume threshold criteria and that the tiers continue to provide an incremental incentive for Participants to strive for higher tier levels, which provides increasingly higher rebates for satisfying increasingly more stringent criteria. As noted above, the Exchange also believes the proposal to adopt two alternative rebates (depending on the capacity of the parties to the transaction) is reasonable as this is how the Exchange currently assesses the flat rate rebates for QCC transactions today.

Lastly, the Exchange believes that the proposed changes represent an equitable allocation of fees and is not unfairly discriminatory because all Broker Dealer and Market Makers will be eligible for the proposed tiers and corresponding enhanced rebates. Additionally, the enhanced rebates will apply uniformly to the Participants that reach the proposed tiers. Further, the Exchange believes that applying the proposed rebates where at least one party to the QCC

transaction is a Broker Dealer or Market Maker is reasonable, equitable, and not unfairly discriminatory because Public Customers and Professional Customers are not assessed fees for these transactions and, in turn, do not need the incentive of the rebate. As such, the Exchange believes the proposed changes are equitable and not unfairly discriminatory because the rebates potentially apply to all Participants that enter the originating order (except for when both the Agency Order and the Contra Order are Public Customers or Professional Customers) and because it is intended to incentivize the sending of more QCC Order to the Exchange.

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. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives, and enhanced execution opportunities for all Participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small.

The Exchange believes that the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the Act. First, the Exchange notes that the proposed changes apply uniformly to similarly situated Participants. The Exchange believes that the proposed changes related to QCC transactions would not impose any burden on intramarket competition, but rather, serves to increase intramarket competition by incentivizing market participants, to direct their QCC orders to the Exchange, in turn providing for more opportunities to compete at improved prices. Additionally, the proposed rule change benefits

all market participants as any overall increased liquidity that may result from the proposed tier incentives benefits all investors by offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Participants have numerous alternative venues they may participate on and direct their order flow, including 15 other options exchanges. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 15% of the market share.¹¹ Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange believes that the proposed rebates under the QCC rebate tiers is comparable to that of another exchange offering QCC functionality.¹² Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, 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.” The fact that this market is competitive has also long been recognized by the courts. In

¹¹ See Cboe Global Markets U.S. Options Market Monthly Volume Summary (August 16, 2021), available at https://markets.cboe.com/us/options/market_statistics/.

¹² See supra note 8.

NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”.

Accordingly, the Exchange does not believe the proposed change discussed herein imposes any burden on competition that is 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

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 Act¹³ and Rule 19b-4(f)(2) thereunder,¹⁴ 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.

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁴ 17 CFR 240.19b-4(f)(2).

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-2021-20 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-2021-20. 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-2021-20, 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.¹⁵

J. Matthew DeLesDernier
Assistant Secretary

¹⁵ 17 CFR 200.30-3(a)(12).