

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95174; File No. SR-BOX-2022-19)

June 29, 2022

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of Proposed Rule Change to Amend Article 4 of the Exchange's Bylaws to Establish a Staggered Board

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 17, 2022, BOX 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 self-regulatory organization. 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

The Exchange proposes to amend Article 4 of the Exchange's Bylaws to establish a staggered board. 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 its Bylaws to establish a staggered Board. Specifically, the Exchange proposes to amend Section 4.03 (Term of Directors) of the Exchange Bylaws to provide that Exchange Directors shall be divided into three classes, designated Class I, Class II and Class III, which shall be as nearly equal in number and classification as the total number of such Directors then serving on the Board permits.³ Section 4.03 of the Bylaws would further provide that each class of newly elected Directors shall serve staggered three-year terms, with the term of office of one class expiring each year.⁴

In order to commence such staggered three-year terms, the Exchange proposes to amend Section 4.03 of the Bylaws to provide that Class I Directors serving when amended Section 4.03 is adopted shall serve until the first annual meeting of Members following the adoption of amended Section 4.03; Class II Directors serving when amended Section 4.03 is adopted shall serve until the second annual meeting of Members following the adoption of amended Section

³ The current Exchange Board expects to initially designate: in Class I, one Non-Industry Director and one Participant Director; in Class II, two Non-Industry Directors, one of which is a Public Director; and in Class III, one Non-Industry Director and one Participant Director. These initial class designations are intended to balance, to the extent possible, the various categories of Directors among the three classes. Board actions are taken by majority vote in accordance with Section 4.11(j) of the Exchange Bylaws.

⁴ Currently under the Exchange's Bylaws, Directors serve one-year terms and all Directors are nominated and begin serving each year at the annual meeting of Members. This provision in Section 4.03 of the Exchange Bylaws is proposed to be changed to delete "Directors shall serve terms of one year each beginning each year at the annual meeting of the Members."

4.03; and Class III Directors serving when amended Section 4.03 is adopted shall serve until the third annual meeting of Members following the adoption of amended Section 4.03. The 2022 annual meeting of the Members of the Exchange has not yet occurred. Accordingly, if this proposed rule change is approved before the 2022 annual meeting of Members, the term of Class I Directors would end at the 2022 annual meeting of Members, a new slate of Class I Directors would be nominated and selected in 2022 in accordance with the Bylaws.⁵

The Exchange also proposes to amend Section 4.03 of the Bylaws to provide that, in the case of any new Director as contemplated by Article IV, Section 4.02, such Director shall be added to a class, as determined by the Board at the time of such Director's initial election or appointment, and shall have an initial term expiring at the same time as the term of the class to which such Director has been added. In making such determinations, the Board shall balance the categories of Directors (e.g. Non-Industry, Public, Participant and Facility Directors) among the classes to the extent possible. Pursuant to Section 4.02 of the Bylaws, the total number of Directors is determined by the Board and must be between five and eleven directors. Accordingly, the Exchange is adding this provision to specify that if a new Director is added to the Board, the term of that Director shall correspond to the class to which that Director is assigned at the time of election or appointment.

In addition, the Exchange proposes to amend Section 4.02 to specify that no decrease in the number of Directors shall have the effect of shortening the term of any incumbent Director.⁶ The purpose of this provision is to provide that, in the event that the Board determines to reduce

⁵ In this circumstance, the term of Class II and Class III directors would end at the Members annual meeting in 2023 and 2024, respectively.

⁶ This provision is substantially similar to a comparable provision in the bylaws of another national securities exchange that provides for a staggered board. See Amended and Restated By-Laws of Miami International Securities Exchange LLC, Section 2.2(a).

the number of overall Directors, the term of any incumbent Director will not be cut short because of such determination. The Exchange could not, for example, determine to reduce the size of the Board by eliminating the Director seat for a Director who had two years of his or her term remaining.

The Exchange also proposes to make certain other conforming edits to other provisions of the Bylaws to clarify the responsibilities of the Board's Nominating Committee and to address Director vacancies that may arise. Specifically, the Exchange proposes to amend Section 4.06 (Nominating Committee) of the Bylaws to specify that the Board's Nominating Committee will nominate individuals in advance of each annual meeting of the Members to begin service as Directors "for the applicable class term then expiring (i.e., Class I, Class II or Class III)" at such annual meeting of the Members.⁷ The Exchange also proposes to amend Section 4.06(d) (Selection of Directors) of the Bylaws to provide that, prior to each annual meeting of the Members, the Nominating Committee shall select nominees for each Director position "for the class with its term then expiring" to begin service as Directors.⁸ Finally, the Exchange proposes to amend Section 4.10 (Vacancies) by deleting the language "until the next annual meeting or until his or her successor is elected and qualified" and inserting the language "for the remainder of the applicable class term" to provide that a Director who is elected by the Board to fill a

⁷ Similarly, the Exchange also proposes to amend the final sentence of Section 4.06 to specify that at each annual meeting of the Members, the individuals selected "for the applicable class term" pursuant to Section 4.06 of the Bylaws shall begin serving as Directors.

⁸ The Exchange proposes to amend Section 4.06(d)(i) to include the same conforming edits to specify that the Nominating Committee shall meet for the purposes of selecting proposed Director nominees "for the class then expiring" and that the Nominating Committee shall provide the names of all proposed Director nominees "for the class then expiring" to the Exchange's Secretary not later than sixty days prior to the date of the annual meeting of the Members.

vacancy (e.g., as a result of the death, resignation, removal or increase in the authorized number of Directors), shall serve for the remainder of the applicable class term. For example, if a Director in Class II resigns, the Director elected to fill the vacancy would serve for the remainder of the term of Class II Directors.⁹

The Exchange notes that it is not proposing any change to the composition of the Board, such as the requirement that 20% of Directors must be a Participant Directors or that a majority of Directors must be Non-Industry Directors.¹⁰ All nominations and elections of Directors under the proposed staggered Board structure must be consistent with the existing composition requirements in the Bylaws. In addition, consistent with the existing Bylaws, Directors may serve consecutive terms.¹¹

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of the Exchange Act,¹² in general, and furthers the objective of Section 6(b)(5) of the Exchange Act,¹³ in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market

⁹ With respect to a vacancy arising from an increase in the number of authorized Directors, pursuant to proposed Section 4.03 of the Bylaws, the Director filling such vacancy would be assigned to a class by the Board and would have an initial term expiring at the same time as the term of the class to which such Director has been added.

¹⁰ See Section 4.02 of the Bylaws.

¹¹ See Section 4.03 of the Bylaws.

¹² 15 U.S.C. 78a et seq.

¹³ 15 U.S.C. 78f(b)(5).

system, and, in general, to protect investors and the public interest; and it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this Exchange Act matters not related to the purposes of the Exchange Act or the administration of the Exchange.

Specifically, the Exchange believes that the governance and administration of the Exchange would benefit from a Board structure in which Directors each serve staggered three-year terms in at least two ways. First, the Exchange believes that shifting from one-year terms for Exchange Directors to staggered three-year terms will help preserve institutional knowledge among Exchange Directors. Under the Exchange's current Bylaws, an entirely new set of Directors can be selected each year, which can potentially disrupt ongoing initiatives by the Exchange or result in a complete loss of institutional knowledge if all of the new Directors have no prior experience serving on the Exchange's Board. The Exchange believes that it benefits from the previous experience of those who have previously served as Exchange Directors and that ensuring some continuity among Directors promotes fair and orderly transitions to new Board leadership. By increasing the term length of each Director from one to three years, the Exchange can eliminate the possibility that an entirely new slate of Directors with no prior experience as a Director occurs. And, by staggering the election of Directors by dividing Directors into three classes with only one class elected each year, the Exchange can preserve institutional knowledge among a majority of the Directors over time. This change will ensure that at the time of every annual meeting of the Members, there will remain veteran leadership on the Board. In turn, the Exchange believes that these changes will help to improve the administration of the Exchange by fostering cooperation and coordination with persons, such as Directors, engaged in regulating and facilitating transactions in securities and removes impediments to and

perfects the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act.¹⁴ The Exchange also believes, consistent with Section 6(b)(5) of the Exchange Act, that these changes will also further the protection of investors and the public interest, which benefit from a governance structure that is designed to preserve institutional knowledge gained by incumbent Directors and through orderly transitions to new leadership among Directors.¹⁵

Second, the Exchange believes that the proposed staggered Board structure would help prevent any one Member or group of Members acting in coordination from exercising an undue influence over the Board through the election of Board Directors. As noted, currently the entire Board of Directors can be replaced each year. As a result, although no one Member has more than a 20% voting interest in the election of Directors, two or more Members acting in coordination could potentially exercise an outsized influence in the selection of Directors. Establishing a staggered Board would make it more difficult for such Members to take control of the Board, and therefore control of the Exchange, through a single election of the Board. By reducing the risk of coordinated Members taking control of the Board, the Board will be better positioned to address difficult, longer-term considerations related to management of the Exchange, rather than focusing on shorter-term considerations of certain Members. For example, a coordinated group of Members might seek to elect a slate of Directors that are more heavily focused on increasing Exchange profits without appropriate consideration of the longer-term growth of the Exchange. A staggered Board structure would make it more challenging for such Members to effect such a directional change by preventing the replacement of the entire

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ Id.

Board of Directors in a given year. In turn, the Exchange believes that this would, consistent with Section 6(b)(5) of the Exchange Act, further the protection of investors and the public interest who are likely to benefit from an Exchange that is able to focus on longer-term goals rather than shorter-term interests of certain Members.¹⁶

In addition, the Exchange notes that, consistent with Section 6(b)(5), the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.¹⁷ The existing composition requirements related to Directors would remain the same under the proposed rule change, so there would not be, for example, any reduction in the representation of Exchange Participants on the Board. Moreover, all Directors would be subject to the same requirements under the proposed rule change (i.e., all Directors, regardless of type, would be divided into one of three classes, each serving three-year terms).

The Exchange notes that, in order to commence the operation of the staggered Board, Directors assigned by the Board to Class I would serve for only one year following the adoption of this proposed rule change while Class II and Class III Directors would serve for two and three years respectively. While this could potentially be viewed as unfairly discriminatory against Class I and Class II Directors whose tenure would have a shorter duration than a Class III Director, these differing tenures are unavoidable to establish a staggered Board. Directors may also be re-elected and serve consecutive terms. As a result, although a Director assigned to Class I may have an initially shorter tenure, if re-elected at the time of the first annual meeting of Members following the adoption of this proposed rule change, such Director would then serve a three-year term.

¹⁶ Id.

¹⁷ Id.

Finally, the Exchange notes that the proposed staggered Board structure is substantially similar to the staggered board structure of at least two exchanges.¹⁸ Other exchanges have historically also operated with a substantially similar staggered board structure, including the BATS Exchange Inc. and EDGX Exchange Inc. and EDGA Exchange Inc. prior to their business combination with CBOE Holdings Inc.,¹⁹ as well as International Securities Exchange, LLC prior to 2013.²⁰ Accordingly, the Exchange’s proposed staggered Board structure does not present any novel considerations that the Commission has not previously considered.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.²¹ The proposed rule change is concerned only with the governance structure and internal administration of the Exchange Board and would establish a staggered Board structure that is substantially similar to the existing board structure of other exchanges and self-regulatory

¹⁸ See Amended and Restated By-Laws of Miami International Securities Exchange LLC (“MIAX”), Section 2.02(a) and First Amended and Restated Bylaws of Long-Term Stock Exchange, Inc. (“LTSE”), Section 3.3(b). The bylaws of The Options Clearing Corporation (“OCC”), another self-regulatory organization, also provide for a similar staggered board consisting of three classes. See OCC By-Laws, Article III, Section 3.

¹⁹ See Exchange Act Release No. 57322 (File No. 10-182), Exhibit A.3 of the BATS Exchange Inc. Form 1 Application, as modified by Amendment No. 1, (Amended and Restated By-Laws of BATS Exchange Inc. at Section 3(b)) (February 13, 2008), available at https://www.sec.gov/rules/other/2008/34-57322_application.htm#exhibit-a, and Exchange Act Release No. 60651 (File No. 10-193), Exhibit A.3 of the EDGX Exchange Inc. Form 1 Application, as modified by Amendment No. 1 (Amended and Restated Bylaws of EDGX Exchange Inc. at Section 3(b)) (September 11, 2009), available at <https://www.sec.gov/rules/other/2009/edgx-f1-application.htm#exhibit-a>.

²⁰ See Exchange Act Release No. 69164, 78 FR 17727 (March 22, 2013) (SR-ISE-2013-07).

²¹ 15 U.S.C. 78f(b)(8).

organizations. As a result, the Exchange does not believe that the proposed rule change would result in any burden on competition or other competition-related considerations between or among Exchange Participants or between different exchanges.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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-2022-19 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-2022-19. 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. 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-2022-19, 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.²²

Jill M. Peterson
Assistant Secretary

²² 17 CFR 200.30-3(a)(12).