

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95414; File No. SR-BOX-2022-23)

August 3, 2022

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to amend IM-2040-5 to add the Firm Element Component to the Continuing Education Requirement, and Make Other Conforming and Clerical Updates to IM-2040-4 and Delete IM 2020-1

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 July 26, 2022, BOX Exchange LLC (“BOX” or 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 Exchange. The Exchange is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend BOX IM-2040-5 to add the Firm Element component to the Continuing Education requirement. The Exchange also proposes to make other conforming and clerical updates to IM-2040-4 and to delete IM-2020-1 (Temporary Extension for Representatives to Function as Principals). 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.

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 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

As set forth below, the Exchange proposes to amend IM-2040-5 to add the Firm Element to require broker-dealers to establish a formal training program to keep registered persons up to date on job- and product-related subjects. The Exchange also proposes to make other conforming and clerical updates to IM-2040-4 and to delete IM-2020-1 (Temporary Extension for Representatives to Function as Principals).

IM-2040-5

The Exchange recently filed SR-BOX-2022-16 in which the Exchange amended IM-2040-5 and established BOX Rule 2130 (Continuing Education Program for Persons Maintaining Their Qualification Following the Termination of a Registration Category) and IM-2130-1 to require that the Regulatory Element of Continuing Education be completed annually rather than every three years and provide a path through Continuing Education for individuals to maintain their qualification following the termination of a registration.³ This was a conforming filing that was based on a filing submitted by the Financial Industry Regulatory Authority, Inc. (“FINRA”),

³ See Securities Exchange Act Release No. 34-94794 (April 26, 2022), 87 FR 25683 (May 2, 2022)(SR-BOX-2022-16).

and was intended to harmonize the Exchange's Continuing Education rules with those of FINRA so as to promote uniform standards across the securities industry.⁴ The Exchange now proposes to make additional conforming changes to IM-2040-5 to further align with the FINRA Continuing Education Rule Change by adding the Firm Element component to IM-2040-5.

The Continuing Education requirements for BOX Participants are detailed in IM-2040-5. No Participant shall permit any Representative or Principal to continue to, and no Representative or Principal shall continue to, perform his or her respective duties on behalf of such Participant unless such person has complied with the requirements of this IM-2040-5. This filing adds the Firm Element as a part of the Exchange's Continuing Education program to require broker-dealers to establish a formal training program to keep registered persons up to date on job- and product-related subjects.

To adopt the Firm Element program the Exchange proposes to add paragraph (b)(2) under IM-2040-5 to require each Participant to implement and administer a required annual Firm Element training program for registered persons.⁵ Proposed paragraph (b)(2) is based on and substantially similar to FINRA Rule 1240(b), as amended. As proposed, each Participant shall conduct an annual needs analysis to determine the appropriate training.⁶ At a minimum the Firm

⁴ See Securities Exchange Act Release No. 93097 (September 21, 2021), 86 FR 53358 (September 27, 2021) (SR-FINRA-2021-015) ("FINRA Continuing Education Rule Change"). The proposed changes are based on the changes to the Firm Element Program approved by the Commission in the approval order for SR-FINRA-2021-015. The Exchange is proposing to adopt such Firm Element changes substantially in the same form as proposed by FINRA, with the exception of differences necessary to update the Exchange's Continuing Education rules.

⁵ See proposed IM-2040-5(b)(2)(a) Standards for the Firm Element. Each Participant must maintain a continuing and current education program for its registered persons to enhance their securities knowledge, skill, and professionalism. At a minimum, each Participant shall at least annually evaluate and prioritize its training needs and develop a written training plan. The plan must take into consideration the Participant's size, organizational structure, and scope of business activities, as well as regulatory developments and the performance of registered persons in the Regulatory Element. If a Participant's analysis establishes the need for supervisory training for persons with supervisory responsibilities, such training must be included in the Participant's training plan.

⁶ See proposed IM-2040-5(b)(2)(b) Minimum Standards for Training Programs. Programs used to implement a Participant's training plan must be appropriate for the business of the Participant and, at a minimum must cover training topics related to the role, activities or responsibilities of the registered person and to professional responsibility.

Element training must cover ethics and professional responsibility, as well as applicable regulatory requirements.⁷

The Exchange then proposes to specify that a Participant, consistent with its needs analysis, may determine to apply toward the Firm Element other required training. The Participant may consider training relating to its anti-money laundering (“AML”) compliance program toward satisfying an individual’s annual Firm Element requirement.⁸ To better align the Firm Element requirement with other required training, the Exchange proposes amending IM-2040-5 to expressly allow Participants to consider training relating to the AML compliance program and the annual compliance meeting toward satisfying an individual’s annual Firm Element requirement.⁹ The Exchange also proposes amending IM-2040-5 to extend the Firm Element requirement to all registered persons, including individuals who maintain solely a permissive registration consistent with BOX Rule 2020 (Participant Eligibility and Registration), thereby further aligning the Firm Element requirement with other broadly-based training requirements.¹⁰ Consistent with FINRA’s amendments, the Exchange shall extend Firm Element requirements to all registered persons, with such training to cover topics related to the role, activities, or responsibilities of the individual registered persons and to professional responsibility.¹¹

⁷ See proposed IM-2040-5(b)(2)(c) Administration of Continuing Education Program. A Participant must administer its Continuing Education programs under this paragraph (2) in accordance with its annual evaluation and written plan and must maintain records documenting the content of the programs and completion of the programs by registered persons.

⁸ See proposed IM-2040-5(b)(2)(d) Participation in Other Required Training. A Participant may consider a registered person’s participation in the Participant’s anti-money laundering compliance training under Rule 10070 toward satisfying the registered person’s Continuing Education requirement under this paragraph (2).

⁹ *Id.*

¹⁰ See proposed IM-2040-5(b)(2).

¹¹ See proposed IM-2040-5(b)(2)(e) Participation in the Firm Element. Registered persons of a Participant must take all appropriate and reasonable steps to participate in Continuing Education programs under this paragraph (2) as required by the Participant. See also proposed IM-2040-5(b)(2)(f) Specific Training Requirements. The Exchange may require a Participant, individually or as part of a larger group, to provide specific training to its registered persons in such areas as the Exchange deems appropriate. Such a requirement may stipulate the class of registered

IM-2040-4

The Exchange then proposes to make minor clerical and conforming changes to IM-2040-4. First the Exchange proposes to remove the term “options” from IM-2040-4 to reflect and make clear that the rule does not apply solely to those engaged in the “options” securities business but would also apply to a Boston Security Token Exchange (“BSTX”) Participant engaged in the equities securities business.¹²

The Exchange also proposes to amend IM-2040-4 to include the “Firm Element” as a part of its Continuing Education requirement for all persons engaged in the securities business. Proposed IM-2040-4 would reflect that the Continuing Education requirement is not options specific and that the proposed rule change applies for all persons engaged in the securities business of a Participant who are to function as Principals or Representatives of Members.¹³

The Exchange notes the proposed rule changes to IM-2040-4 and IM-2040-5 to include the Firm Element will have an implementation date of January 1, 2023.¹⁴

The Exchange’s clerical updates to remove the term “options” from IM-2040-4 would be immediately effective to reflect and make clear that the rule does not apply solely to those

persons for which it is applicable, the time period in which the requirement must be satisfied and, where appropriate, the actual training content.

¹² See Securities Exchange Act Release No. 34-94092 (January 27, 2022), 87 FR 5881 (February 2, 2022)(SR-BOX-2021-06, Amendment Nos. 2 and 3). The rules for the BSTX trading facility were recently approved and would introduce the trading of equity securities on the Exchange when launched.

¹³ The Exchange notes that none of the proposed changes to the current IM-2040-4 would materially alter the application of the rule, other than by extending IM-2040-4 to apply to BSTX Participants and including the Firm Element as a requirement of the Continuing Education requirement.

¹⁴ See FINRA Regulatory Notice 21-41 at <https://www.finra.org/rules-guidance/notices/21-41>. In SR-BOX-2022-16 the Exchange made changes to IM-2040-5 and established Rule 2130 and IM-2130-1 to: (1) provide eligible individuals who terminate any of their representative or principal registration categories the option of maintaining their qualification for any terminated registration categories by completing annual Continuing Education (“CE”) through a new program, the Maintaining Qualifications Program (“MQP”); and (2) require registered persons to complete CE Regulatory Element annually for each representative or principal registration category that they hold. The adoption of Rule 2130 and IM-2130-1 to establish the MQP became effective April 13, 2022. All other changes to the Exchange’s Continuing Education requirement, including the changes relating to the Regulatory Element and the two-year qualification period, will have an implementation date of January 1, 2023. The Exchange’s proposed change to IM-2040-5 to include the Firm Element will also have an implementation date of January 1, 2023.

engaged in the “options” securities business but would also apply to a BSTX Participant engaged in the equities securities business, accounting for the recent approval of the BSTX trading facility which would introduce the trading of equity securities on the Exchange when launched.

IM-2020-1

Finally, the Exchange proposes to delete IM-2020-1 as the temporary extension period detailed within the rule has expired. Neither FINRA nor the Exchange has elected to further extend the temporary relief granted in IM-2020-1 and therefore the Exchange proposes to delete the rule as it is no longer necessary.¹⁵ The Exchange’s proposed elimination of the obsolete IM-2020-1 would be immediately effective to reduce potential confusion and improve the clarity of the Exchange’s rules, thereby ensuring that participants, regulators, and the public can more easily navigate and understand the Exchange’s rulebook.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,¹⁶ in general, and Section 6(b)(5) of the Act,¹⁷ 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

¹⁵ See BOX IM-2020-1 (Temporary Extension for Representatives to Function as Principals). IM-2020-1 currently provides that any Representative who was designated to function as a Principal under paragraph (d) of this Rule prior to March 3, 2021, may continue to function as a Principal without having successfully passed an appropriate qualification examination until June 30, 2021. IM-2020-1 is based on a filing submitted by the FINRA in response to the COVID-19 global pandemic to address disruptions to the administration of FINRA qualification examinations caused by the pandemic that had significantly limited the ability of individuals to sit for examinations due to Prometric test center capacity issues. See also Exchange Act Release No. 34-91506 (April 8, 2021), 86 FR 19671 (April 14, 2021) (SR-FINRA-2021-005).

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

open market and a national market system, and, in general to protect investors and the public interest.

As noted above, the proposed rule change to add the Firm Element component to the Exchange's Continuing Education requirement seeks to align the Exchange Rules with recent changes submitted by FINRA to the Commission.¹⁸ Recently the Exchange filed SR-BOX-2022-16,¹⁹ in which the Exchange amended IM-2040-5 and established BOX Rule 2130 (Continuing Education Program for Persons Maintaining Their Qualification Following the Termination of a Registration Category) and IM-2130-1 to require that the Regulatory Element of Continuing Education be completed annually rather than every three years and provide a path through Continuing Education for individuals to maintain their qualification following the termination of a registration. The Exchange is now proposing to make additional conforming changes to align with the FINRA Continuing Education Rule Change by adding the Firm Element component under IM-2040-5. The Exchange's proposed additional conforming changes would allow the Exchange to harmonize the Exchange's Continuing Education rules with the FINRA Continuing Education Rule Change by adding the Firm Element under IM-2040-5.²⁰ The Exchange believes the proposed changes to the Firm Element will ensure registered individuals receive timely and relevant training, which will, in turn, enhance compliance and investor protection.²¹

The Exchange believes the proposed change to IM-2040-5 to include the Firm Element is consistent with the Act as the proposed change is a conforming change that is based on a filing

¹⁸ See supra note 3.

¹⁹ Id.

²⁰ The proposed changes to IM-2040-5, including new paragraph (b)(2) and subsections (a) through (f) are based on and substantially similar to FINRA Rules 1240(b)(1)-(4).

²¹ The Exchange previously filed SR-BOX-2022-16, in that filing the Exchange adopted the Regulatory Element component of the FINRA Continuing Education Rule Change. The Exchange is now proposing to complete the harmonization of its Continuing Education rules with FINRA by including the Firm Element components in its current filing.

submitted by FINRA and approved by the Commission and is intended to harmonize the Exchange's Continuing Education rules with those of FINRA so as to promote uniform standards across the securities industry.²²

The Exchange believes the proposed rule change to IM-2040-4 is consistent with the Act as the Exchange is clarifying that the Continuing Education requirement is not limited to only Participants engaged in options securities but applies to a wider range of Participants trading in both equity and/or options securities.²³ The Exchange believes the removal of the term "options" from IM-2040-4 to reflect and make clear that the rule does not apply solely to those engaged in the "options" securities business but would also apply to a BSTX Participant engaged in the equities securities business is consistent with the Act.²⁴ Further, the Exchange believes that, by ensuring the rulebook accurately reflects the intention of the Exchange's rules, the proposed rule change reduces potential investor or market participant confusion. Additionally, the inclusion of the Firm Element as part of the Continuing Education requirement is consistent with the Act as the proposed change is a part of the Exchange's conforming change that is intended to harmonize the Exchange's Continuing Education rules with those of FINRA so as to promote uniform standards across the securities industry.²⁵

The Exchange believes the proposed removal of IM-2020-1 is consistent with the just and equitable principles of trade. By deleting IM-2020-1 the Exchange would remove an outdated and potentially confusing rule. The temporary extension period expired on June 30, 2021, and both FINRA and the Exchange have declined to extend the temporary relief.²⁶ Thus, the

²² See supra note 3.

²³ See supra notes 12 and 13.

²⁴ See supra note 12.

²⁵ See supra note 4.

²⁶ See supra note 15.

Exchange believes that the elimination of the obsolete IM-2020-1 would reduce potential confusion and improve the clarity of the Exchange's rules, thereby ensuring that participants, regulators, and the public can more easily navigate and understand the Exchange's rulebook.

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change, which harmonizes its rules with recent rule changes adopted by FINRA, will reduce the regulatory burden placed on market participants engaged in trading activities across different markets. The Exchange recently filed SR-BOX-2022-16 in which the Exchange amended IM-2040-5 and established BOX Rule 2130 and IM-2130-1 to require that the Regulatory Element of Continuing Education be completed annually rather than every three years and provide a path through Continuing Education for individuals to maintain their qualifications following the termination of a registration. The Exchange does not believe that the proposed rule changes to add the Firm Element component to its Continuing Education requirement will impose any burden on competition as the proposed rule change to include the Firm Element further harmonizes the Exchange's Continuing Education rules with those of FINRA.

The Exchange does not believe the proposed changes to IM-2040-4 will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Further, the Exchange believes that the proposed rule change does not alter the application of the rule, except as described herein. The Exchange believes that by removing the term "options" from IM-2040-4, it would reflect and make clear that the rule does not apply solely to those engaged in the "options" securities business, it would become clear that a person engaged, or to be engaged in the securities business of a Participant, such as a BSTX Participant engaged in the

equities business, would be required to satisfy the Exchange's Continuing Education requirement.

The Exchange does not believe the proposed change to IM-2020-1 will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue, but rather it is designed to eliminate an obsolete rule and enhance the clarity of the Exchange's rules.

As such, the Exchange does not believe that the proposed rule changes will impose any burden on competition 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

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 Effectiveness

Because the proposed rule change is one that that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁷ and Rule 19b-4(f)(6) thereunder.²⁸

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii), 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-

²⁷ 15 U.S.C. 78s(b)(3)(A).

²⁸ 17 CFR 240.19b-4(f)(6).

day operative delay so that the proposed rule change may become operative immediately upon filing.

Waiver of the 30-day operative delay would permit the Exchange to include both the Regulatory Element rules discussed in SR-BOX-2022-16, and the proposed Firm Element rules discussed herein as a part of its annual 17d-2 review.²⁹ As a part of the Exchange's 17d-2 agreement with FINRA, FINRA would have regulatory responsibility for the Exchange's Continuing Education requirement, including both the Regulatory Element and the proposed Firm Element components of the Exchange's Continuing Education requirement.³⁰ Waiver of the 30-day period would allow the Exchange to implement its plan for allocating regulatory responsibility to FINRA to include the Firm Element as part of the Exchange's ongoing Rule 17d-2 agreement. Additionally, waiver of the operative delay is appropriate here because the Exchange seeks to adopt changes already approved by the Commission for FINRA and would help avoid confusion for Participants of the Exchange that are also FINRA members. For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the

²⁹ The Exchange currently has a 17d-2 agreement in place with FINRA permitting the Exchange to allocate to FINRA certain regulatory responsibilities for common members to eliminate regulatory duplication. As part of the Exchange's agreement, FINRA would have regulatory responsibility for the Exchange's Continuing Education requirement, which as proposed, includes both the Regulatory Element and Firm Element components of the Exchange's Continuing Education requirement. Waiver of the 30-day period would allow the Exchange to implement its plan for allocating regulatory responsibility to FINRA to include the Firm Element as part of the Exchange's ongoing 17d-2 agreement.

³⁰ Id.

Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.³¹

At any time within 60 days of the filing of the 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 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BOX-2022-23 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-2022-23. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

³¹ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2022-23 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.³²

J. Matthew DeLesDernier
Deputy Secretary

³² 17 CFR 200.30-3(a)(12).