

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-97174; File No. SR-BOX-2023-09)

March 21, 2023

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Introduce a New Historical Data Product to be Known as the Intraday Open-Close Data Report and to Adopt Fees for Such Product

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 6, 2023, BOX Exchange LLC (the “Exchange” or “BOX”) 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 Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) 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 Substance of the Proposed Rule Change

The Exchange proposes to introduce a new data product to be known as the Intraday Open-Close Data Report and to adopt fees for such product. The Exchange also proposes to add an academic discount for Open-Close Data Report End-of-Day Ad-hoc Requests as well as to clarify that the existing free trial is only available for the Open-Close Data Report End-of-Day Subscription. The text of the proposed rule change is available from the principal office of the

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 F17 CFR 240.19b-4(f)(2).

Exchange, at the Commission’s Public Reference Room and also on the Exchange’s Internet website at <https://rules.boxexchange.com/rulefilings>.

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

The Exchange proposes to introduce a new data product on BOX to be known as the Intraday Open-Close Data Report, which will be available for purchase to BOX Participants and non-Participants. The Exchange also proposes to adopt fees for the Intraday Open-Close Data Report. The Exchange will make the Intraday Open-Close Data Report available for purchase to Participants and non-Participants on the BOX website (www.boxoptions.com). The Exchange notes that a substantially similar product and fees for such product currently exist at other exchanges.⁵

The Exchange currently offers the Open-Close Data Report End-of-Day Subscription and End-of-Day Ad-hoc Request, to Participants and non-Participants, which is a volume summary

⁵ See Miami International Securities Exchange, LLC (“MIAX”) Fee Schedule and Cboe Exchange, Inc (“Cboe”) Fee Schedule and NYSE Arca, Inc (“NYSE Arca”) Fee Schedule. MIAX, Cboe, and NYSE Arca all offer intraday open-close reports to market participants. Further, MIAX, Cboe, and NYSE Arca charge \$2,000 per month for the intraday open-close report at their respective exchanges.

file for trading activity on BOX. The Exchange notes that the file contains proprietary BOX trade data and does not include trade data from any other exchanges. It is also a historical data product and not a real time data feed. The Open-Close Data Report End-of-Day Subscription is distributed at the end of each day and aggregates and buckets the volume by origin (Public Customer, Professional Customer, Broker Dealer, and Market Maker), buying/selling, and opening/closing criteria. Public Customer and Professional Customer volume is further broken down into trade size buckets (less than 100 contracts, 100-199 contracts, greater than 199 contracts). The Open-Close Data Report End-of-Day Ad-hoc Request provides the same information for a requested historical time period for any number of months beginning with January 2018.⁶

The Exchange now proposes to (1) offer an Intraday Open-Close Data Report; (2) assess a fee for the Intraday Open-Close Data Report; (3) add an academic discount for Open-Close Data Report End-of-Day Ad-hoc Requests; and (4) clarify that the existing free trial only applies to the Open-Close Data Report End-of-Day Subscription. The Intraday Open-Close Data Report would include the aggregated data described above, but would be produced and updated every 10 minutes during the trading day. Data would be captured in "snapshots" taken every 10 minutes throughout the trading day and would be available to subscribers within five minutes of the conclusion of each 10 minute period. For example, subscribers to the Intraday Open-Close Data Report product would receive the first calculation of intraday data no later than 9:45 a.m. ET, which represents data captured from 9:30 a.m. to 9:40 a.m. Subscribers would receive the next update by 9:55 a.m., representing the data previously provided aggregated with data captured up

⁶ See Securities Exchange Act Release No. 93394 (October 21, 2021), 86 FR 59439 (October 27, 2021) (“adopting Open-Close Data Report”).

to 9:50 a.m., and so forth. Each update will represent combined data captured from the current “snapshot” and all previous “snapshots” and thus will provide open-close data on an aggregate basis. As detailed above, the Intraday Open-Close Data Report will aggregate the volume by origin (Public Customer, Professional Customer, Broker Dealer, and Market Maker), buying/selling, and opening/closing criteria. Public Customer and Professional Customer volume is further broken down into trade size buckets (less than 100 contracts, 100-199 contracts, greater than 199 contracts).

The Exchange believes the proposed Intraday Open-Close Data Report may provide helpful trading information regarding investor sentiment and may be used to create and test trading models and analytical strategies and provides comprehensive insight into trading on BOX. It is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential subscribers may purchase it only if they voluntarily choose to do so. As stated above, other options exchanges offer a similar data product.⁷

The Exchange proposes to provide in its Fee Schedule that Participants and non-Participants may purchase the Intraday Open-Close Data Report on a subscription basis. The Exchange proposes to assess a monthly fee of \$1500 for subscribing to the Intraday Open-Close Data Report.

The Exchange also proposes to assess a fee of \$500 per request for up to a year of data for Open-Close Report End-of-Day Ad-hoc Requests by academic purchasers for academic

⁷ See supra note 5.

purposes only and not for actual securities trading. The Exchange notes that other exchanges provide a similar fee for a similar product.⁸

Lastly, the Exchange proposes to clarify that the existing free trial is only available for the Open-Close Data Report End-of-Day Subscription and not the Intraday Open-Close Data Report Subscription.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,⁹ in general, and Section 6(b)(5) of the Act,¹⁰ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposal to adopt fees for the Intraday Open-Close Data Report and to adopt an academic discount for the Open-Close Data Report End-of-Day Ad-hoc Request is consistent with Section 6(b) of the Act in general, and further the objectives of Section 6(b)(4) of the Act¹¹ in particular, in that it provides for an equitable allocation of dues, fees and other charges among its members and other recipients of Exchange data.

The proposed rule change would benefit investors by providing access to the Intraday Open-Close Data Report, which may promote better informed trading throughout the trading

⁸ See Cboe C2 Exchange, Inc. (“C2”) Fee Schedule and Nasdaq ISE, LLC (“Nasdaq ISE”) Options 7, Section 10A.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78f(b)(4).

day. Particularly, information regarding opening and closing activity across different option series during the trading day may indicate investor sentiment, which may allow market participants to make better informed trading decisions throughout the day. Subscribers to the data may also be able to enhance their ability to analyze option trade and volume data and create and test trading models and analytical strategies. The Exchange believes the Intraday Open-Close Data Report provides a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular series, but also emphasizes such data is not necessary for trading.

As noted herein, other exchanges currently offer a substantially identical data product.¹² Like the proposed product, the other exchanges' market data products provide such data to subscribers cumulatively every 10 minutes and within five minutes of the conclusion of each 10 minute period.

The Exchange notes that it operates in a highly competitive environment where there are currently 16 registered options exchanges that trade options. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, 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."¹³ Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge

¹² See supra note 5.

¹³ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

supracompetitive fees. In the event that a market participant views one exchange's data product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of the proposed Intraday Open-Close Data Report Subscription.

The Exchange believes the proposed fees are reasonable as the proposed fees are both modest and similar to the fees assessed by other exchanges that provide similar data products.¹⁴ Proposing fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange's data product, which as noted, is entirely optional. Like the Exchange's proposed Intraday Open-Close Data Report, other exchanges offer similar data products that each provide insight into trading on those markets and may likewise aid in assessing investor sentiment. Although each of these similar open-close data products provide only proprietary trade data and not trade data from other exchanges, it's possible investors are still able to gauge overall investor sentiment across different option series based on open and closing interest on any one exchange.¹⁵ Similarly, market participants may be able to analyze option trade and volume data, and create and test trading models and analytical strategies using only intraday open-close data relating to trading activity on one or more of the other markets that provide similar data products. As such, if a market participant views another exchange's intraday open-close data product as more attractive than the proposed Intraday Open-Close Data Report, then such market participant can merely choose not to purchase the Exchange's Intraday Open-Close Data Report and instead purchase another exchange's open-

¹⁴ See supra note 5.

¹⁵ The Exchange notes that its proposed Intraday Open-Close Data Report does not include data on any exclusive, singly-listed option series.

close data product, which offers similar data points, albeit based on that other market's trading activity.

The Exchange also believes the proposed fees are reasonable as they would support the introduction of a new market data product that is designed to aid investors by providing insight into trading on BOX. The proposed Intraday Open-Close Data Report would provide options market participants with valuable information about opening and closing transactions executed on the Exchange, similar to other historical trade data products offered by competing options exchanges. In turn, this data would assist market participants in gauging investor sentiment and trading activity, resulting in potentially better-informed trading decisions. As noted above, users may also use such data to create and test trading models and analytical strategies.

The Exchange believes the proposed fees are equitable and not unfairly discriminatory as the fees would apply equally to all users who choose to purchase such data. The Exchange's proposed fees would not differentiate between subscribers that purchase Intraday Open-Close Data Report and are set at a modest level that would allow any interested Participant or non-Participant to purchase such data based on their business needs.

Selling historical market data, such as the Intraday Open-Close Data Report, is also a means by which exchanges compete to attract business. To the extent that the Exchange is successful in attracting subscribers for the Intraday Open-Close Data Report, it may earn trading revenues and further enhance the value of its data products. If the market deems the proposed fees to be unfair or inequitable, firms can diminish or discontinue their use of the data and/or avail themselves of similar products offered by other exchanges. The Exchange therefore believes that the proposed fees for the Intraday Open-Close Data Report reflect the competitive environment and would be properly assessed on Participant or non-Participant users.

The Exchange reiterates that the decision as to whether or not to purchase the Intraday Open-Close Data Report is entirely optional for all potential subscribers. Indeed, no market participant is required to purchase the Intraday Open-Close Data Report, and the Exchange is not required to make the Intraday Open-Close Data Report available to all investors. Rather, the Exchange is voluntarily making the Intraday Open-Close Data Report available, as requested by customers, and market participants may choose to receive (and pay for) this data based on their own business needs. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data.

The Exchange believes further that the academic discount of the Open-Close Data Report End-of-Day Ad-hoc Request is reasonable because academic users are not able to monetize access to the data as they do not trade on the data set. The Exchange believes the proposed discount will allow for more academic purchasers to purchase an Open-Close Data Report End-of-Day Ad-hoc Request, and, as a result, promote research and studies of the options industry to the benefit of all market participants. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all academic purchasers for academic purposes only and not for actual securities trading. As a result, the Exchange believes the proposed discount is equitable and not unfairly discriminatory because academic purchasers do not use the data for vocational, commercial or other for-profit purposes. The Exchange notes that other exchanges offer similar academic discounts.¹⁶

Lastly, the Exchange believes that not extending the free trial to the Intraday Open-Close Data Report Subscription is reasonable because the Open-Close Data Report End-of-Day Subscription, for which there is a free trial, provides the same data elements as the Intraday

¹⁶ See supra note 8.

Open-Close Data Report Subscription only with less frequency. The Exchange believes further that clarifying the existing free trial only applies to the Open-Close Data Report End-of-Day Subscription is consistent with the Act, as it may reduce potential investor or market participant confusion regarding the Exchange's fees.

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 similar products and fees are offered at other exchanges.¹⁷ The Exchange believes that the proposal will promote competition by permitting the Exchange to introduce and sell a data product similar to those offered by other competitor options exchanges.¹⁸ The Exchange is proposing to introduce the Intraday Open-Close Data Report in order to keep pace with changes in the industry and evolving customer needs and believes this proposed rule change would contribute to robust competition among national securities exchanges. As noted, at least three other U.S. options exchanges offer a market data product that is substantially similar to the Intraday Open-Close Data Report product discussed herein. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

Furthermore, the Exchange operates in a highly competitive environment, and its ability to price the proposed data product is constrained by competition among exchanges that offer similar data products to their customers. As discussed, there are currently a number of similar products available to market participants and investors. At least three other U.S. options exchanges offer a market data product that is substantially similar to the Intraday Open-Close Data Report discussed

¹⁷ See supra note 5.

¹⁸ Id.

herein, which the Exchange must consider in its pricing discipline in order to compete for historical market data purchasers. For example, proposing fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange's data product, which as discussed, market participants are under no obligation to utilize. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange also does not believe the proposed fees would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own comparable data product and lower their prices to better compete with the Exchange's offering. The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed product and fee applies uniformly to any purchaser, in that it does not differentiate between subscribers that purchase the Intraday Open-Close Data Report. The proposed fees are set at a modest level that would allow any interested Participants or non-Participants to purchase such data based on their business needs.

The Exchange also does not believe that the proposed academic discount will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the exchanges are not competing for academic purchasers. Rather, the Exchange believes that academic purchasers' research and publications as a result of access to historical market data benefits all market participants. The Exchange notes that other exchanges currently offer similar historical data to academic purchasers at a discounted price.¹⁹

¹⁹ See supra note 8.

Further, the Exchange does not believe that the proposed academic discount will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because academic purchasers do not use the data for vocational, commercial or other for-profit purposes. The Exchange notes that all academic purchasers are treated equally and all Participants and non-Participants are treated equally.

As such, 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.

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

Because the foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁰ and Rule 19b-4(f)(6) thereunder.²¹

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act²² normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)²³

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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.

²² 17 CFR 240.19b-4(f)(6).

²³ 17 CFR 240.19b-4(f)(6)(iii).

permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. As other exchanges offer similar products to their members, the proposal does not raise new or novel issues. For these reasons, the Commission designates that the proposed rule change to be operative immediately upon filing.²⁴

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 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

²⁴ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BOX-2023-09 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-2023-09. 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-2023-09 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.²⁵

Sherry R. Haywood,
Assistant Secretary.

²⁵ 17 CFR 200.30-3(a)(12).