

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-97418; File No. SR-BOX-2023-12)

May 2, 2023

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 to Establish a Monthly Dividend Strategy Fee Cap for Dividend Strategy Qualified Open Outcry Orders

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 1, 2023, 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,<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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 to establish a monthly dividend strategy fee cap for dividend strategy Qualified Open Outcry (“QOO”) Orders on the BOX Options Market LLC (“BOX”) options facility. The text of the proposed rule change is available from the principal

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

office of the 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 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 BOX Fee Schedule to establish a monthly dividend strategy fee cap for dividend strategy Qualified Open Outcry (“QOO”) Orders. Specifically, the Exchange is proposing to: (1) rename Section V.D to Section V.D.1; (2) add Section V.D.2; and (3) to establish a monthly dividend strategy fee cap for dividend strategy QOO Orders.

Currently, the transaction fees for QOO Orders, including Strategy<sup>5</sup> QOO Orders, are detailed in Section V of the BOX Fee Schedule. Specifically, Broker Dealer QOO transactions

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<sup>5</sup> Strategy orders are defined as one of the following: A “short stock interest strategy” is defined as a transaction done to achieve a short stock interest arbitrage involving the purchase, sale, and exercise of in-the-money options of the same class. A “long stock interest strategy” is defined as a transaction done to achieve long stock involving the purchase, sale, and exercise of in-the-money options of the same class. A “merger strategy” is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, each executed prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock. A “reversal strategy” is established by combining a short security position with a short put and a long call position that shares the same strike and expiration. A “conversion strategy” is established by combining a long position in the underlying security with a long put and a short call position that

are assessed \$0.25 per contract and Market Maker QOO transactions are assessed \$0.35 per contract. Public Customers and Broker Dealers facilitating a Public Customer are assessed \$0.00. Professional Customers are assessed \$0.10 per contract.<sup>6</sup> Additionally, Floor Brokers are eligible for a rebate for QOO Orders presented on the Trading Floor.<sup>7</sup> The rebate does not apply to Public Customer executions, executions subject to the Strategy QOO Order Fee Cap and Rebate, discussed below, or Broker Dealer executions where the Broker Dealer is facilitating a Public Customer.

Currently, to further incentivize Participants to execute strategy QOO transactions on BOX, BOX offers the Strategy QOO Order Fee Cap and Rebate in Section V.D of its Fee Schedule.<sup>8</sup> Specifically, the manual transaction fees for certain Strategy QOO Orders are capped on a daily basis. Short stock interest, long stock interest, merger, reversal, conversion, jelly roll, and box spread strategies executed on the same trading day are capped at \$500 per day per customer. Further, dividend strategies executed on the same trading day in the same options class are capped at \$1,000 per day per customer. In addition to the fee caps detailed above, on

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shares the same strike and expiration. A “jelly roll strategy” is created by entering into two separate positions simultaneously. One position involves buying a put and selling a call with the same strike price and expiration. The second position involves selling a put and buying a call, with the same strike price, but with a different expiration from the first position. A “box spread strategy” is a strategy that synthesizes long and short stock positions to create a profit. Specifically, a long call and short put at one strike is combined with a short call and long put at a different strike to create synthetic long and synthetic short stock positions, respectively. A “dividend strategy” is defined as a transaction done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend. See BOX Fee Schedule, notes 30 and 36.

<sup>6</sup> See BOX Fee Schedule, Section V.A, “Manual Transaction Fees”.

<sup>7</sup> See BOX Fee Schedule, Section V.C, “QOO Order Rebate”.

<sup>8</sup> See BOX Fee Schedule, Section V.D, “Strategy QOO Order Fee Cap and Rebate”.

each trading day, Floor Brokers are eligible to receive a \$500 rebate per customer for presenting certain Strategy QOO Orders on the Trading Floor. The rebate is applied once the \$500 fee cap, per customer, for all short stock interest, long stock interest, merger, reversal, conversion, jelly roll, and box spread strategies is met. For dividend strategies, the rebate of \$500 per customer is applied once the \$1,000 fee cap, per customer, is met.<sup>9</sup>

The Exchange now proposes to: (1) rename Section V.D to Section V.D.1; (2) add Section V.D.2; and (3) to establish a monthly dividend strategy QOO Order fee cap. The Exchange proposes to add Section V.D.2 in order to separate dividend strategy fee caps and rebates from short stock interest, long stock interest, merger, reversal, conversion, jelly roll, and box spread strategy fee caps and rebates. Specifically, the references to dividend strategies in current Section V.D will be removed and added to proposed Section V.D.2 and what remains of current Section V.D will be renamed Section V.D.1. As such, proposed Section V.D.2 will include the dividend strategy provisions moved from current Section V.D and will establish a new monthly fee cap for dividend strategy QOO Orders. Specifically, under this proposal, dividend strategies executed in the same month will be capped at \$65,000 per month per customer. Manual transaction fees for dividend strategies will continue to be capped at \$1,000 per day per options class per customer. The monthly cap for dividend strategies will be applied to manual transaction fees for dividend strategies executed in the same month per customer. Floor Brokers will not be eligible to receive a \$500 daily rebate for dividend strategies once the monthly cap is met.

The Exchange notes that all Strategy QOO and dividend strategy transactions will continue to count toward Market Maker and Public Customer monthly executed volume on

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<sup>9</sup> Id.

BOX, as detailed in Section IV.A.1 (Tiered Volume Rebate for Non-Auction Transactions) of the BOX Fee Schedule.

The Exchange notes that the proposed change is designed to compete with another monthly fee cap for strategy orders.<sup>10</sup> Therefore, the Exchange believes the proposed change may further incentivize Participants to direct dividend strategy order volume to the BOX Trading Floor.

## 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,<sup>11</sup> 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 environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 18% of the market share and currently the Exchange represents only approximately 5% of the market share.<sup>12</sup> The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining

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<sup>10</sup> See Nasdaq PHLX LLC (“PHLX”) Options 7, Section 4 (providing that dividend strategies, among others, per member organization’s combined executions in a month when trading in its own proprietary accounts qualify for a \$65,000 monthly cap if the buy and sell side of a transaction originates either from the PHLX Trading Floor or as a Floor Qualified Contingent Cross Order). The Exchange notes that PHLX’s monthly fee cap applies to dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategies, while this proposal applies only to dividend strategies.

<sup>11</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>12</sup> See Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (February 13, 2023), available at [https://markets.cboe.com/us/options/market\\_statistics/](https://markets.cboe.com/us/options/market_statistics/).

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.”<sup>13</sup> As stated above, the Exchange 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 proposed fee changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to BOX, in particular dividend strategy QOO Orders.

The Exchange believes the proposed change is reasonable, equitable, and not unfairly discriminatory as there is another exchange with a similar monthly fee cap for strategy orders<sup>14</sup> and the proposed fee cap is uniformly applicable to all Participants. The Exchange also believes the proposed change would further incentivize Participants to execute dividend strategy QOO Orders on BOX and may encourage Participants to aggregate all types of strategy orders at BOX as a primary execution venue. The Exchange believes that Participants may consolidate different order types for execution on a single exchange because it increases the volume counted towards volume-based fee incentives, such as, the Tiered Volume Rebate for Non-Auction Transactions in Section IV.A.1., of the BOX Fee Schedule, which provides Market Makers and Public

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<sup>13</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>14</sup> See supra note 10.

Customers with incentives to achieve certain volume thresholds on BOX.<sup>15</sup> To the extent that the proposed change attracts more dividend strategy orders to BOX, this increased order flow may make BOX a more competitive venue for order execution.

The Exchange also believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue or reduce use of certain categories of products in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated differently, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow. The Exchange believes the proposed change is a reasonable attempt to effectively compete for manual dividend strategy orders. The Exchange believes that the proposed change may encourage Participants to execute dividend strategy orders on BOX and, in turn, may increase the depth of the market to the benefit of all market participants. The Exchange notes that Participants may avail themselves of the proposed dividend strategy order pricing on BOX or they can opt for similar offerings at another exchange.<sup>16</sup>

The Exchange believes that not allowing Floor Brokers to be eligible to receive a daily \$500 rebate for dividend strategies once the monthly cap is met is reasonable, equitable and not unfairly discriminatory because, as proposed, this limitation applies to all Floor Brokers equally and a fee is not assessed for transactions once the monthly cap is met. As such, the Exchange believes that Participants do not require additional incentives to execute these transactions on BOX once the monthly cap is met.

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<sup>15</sup> See BOX Fee Schedule, Section IV.A.1, “Tiered Volume Rebate for Non-Auction Transactions”.

<sup>16</sup> See supra note 10.

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.

The proposed change is designed to attract additional order flow to BOX. The Exchange believes that the proposed change could further incentivize market participants to direct their dividend strategy orders to BOX. As noted herein, the proposed monthly cap for dividend strategy fees would be applicable to all similarly situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among Participants on BOX.

Further, the Exchange also does not believe that the proposed fees will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the Act because, as noted above, another competing options exchange currently has a similar fee cap in place in connection with strategy orders.<sup>17</sup> Because competitors are free to modify their own fees or fee caps in response to competing exchanges, the Exchange believes that the degree to which changes in this market may impose any burden on competition is limited. Further, the Exchange believes that the proposed change could promote competition between BOX and other execution venues, including those that currently offer similar strategy order fees or fee caps. Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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Id.

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 Act<sup>18</sup> and Rule 19b-4(f)(2) thereunder,<sup>19</sup> because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BOX-2023-12 on the subject line.

Paper comments:

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<sup>18</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>19</sup> 17 CFR 240.19b-4(f)(2).

- 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-2023-12. 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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to File Number SR-BOX-2023-12, 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.<sup>20</sup>

Sherry R. Haywood

Assistant Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).