

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97673; File No. SR-BOX-2023-15)

June 8, 2023

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Establish Separate Fees and Rebates on Non-Auction Transactions for Options Overlying the Standard and Poor's Depository Receipts Trust.

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 May 31, 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,³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend the Fee Schedule to establish separate fees and rebates on Non-Auction transactions for options overlying the Standard and Poor's Depository Receipts Trust ("SPY") on the BOX Options Market LLC ("BOX") options facility. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on June 1, 2023. The text of the proposed rule change is available from the principal

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

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 Section IV, Non-Auction Transactions, of the BOX Fee Schedule. Specifically, the Exchange proposes to establish separate fees and rebates on Non-Auction transactions for options overlying the Standard and Poor’s Depository Receipts Trust (“SPY”).⁵

Non-Auction Transactions

Currently, in Section IV.A of the BOX Fee Schedule, fees and credits for Non-Auction transactions are assessed depending on three factors: (i) the account type of the Participant submitting the order; (ii) whether the Participant is a liquidity provider or liquidity taker; and (iii) the account type of the contra party.

⁵ Options overlying Standard and Poor's Depository Receipts/SPDRs (“SPY”) are based on the SPDR exchange-traded fund (“ETF”), which is designed to track the performance of the S&P 500 Index.

The Exchange now proposes to assess separate fees for SPY Non-Auction transactions. Specifically, when a Public Customer SPY order interacts with a Public Customer or non-Public Customer SPY order, the Exchange will not assess a fee or credit.

Further, when a Professional Customer or Broker Dealer SPY order interacts with a Public Customer SPY order, the Exchange proposes to assess a \$0.60 fee when making liquidity or \$0.50 when taking liquidity. When a Professional Customer or Broker Dealer SPY order interacts with a Professional Customer, Broker Dealer, or Market Maker SPY order, the Exchange proposes to assess \$0.15 for making liquidity or \$0.50 for taking liquidity. The Exchange notes that these fees are currently assessed to SPY transactions today as SPY is a Penny Interval Class.⁶

When a Market Maker SPY order interacts with a Public Customer SPY order, the Exchange proposes to assess no fee when making liquidity or \$0.50 when taking liquidity. When a Market Maker SPY order interacts with a Professional Customer, Broker Dealer, or Market Maker SPY order, the Exchange proposes to assess no fee when making liquidity or \$0.50 when taking liquidity.

The proposed fee structure for SPY Non-Auction Transactions will be as follows:

		SPY	
Account Type	Contra Party	Maker	Taker
Public Customer	Public Customer	\$0.00	\$0.00
	Professional Customer/ Broker Dealer	\$0.00	\$0.00
	Market Maker	\$0.00	\$0.00

⁶ See BOX Informational Circular 2022-11 available at <https://boxoptions.com/assets/IC-2022-11-Penny-Program-Class-Removals-1.pdf>.

Professional Customer or Broker Dealer	Public Customer	\$0.60	\$0.50
	Professional Customer/ Broker Dealer	\$0.15	\$0.50
	Market Maker	\$0.15	\$0.50
Market Maker	Public Customer	\$0.00	\$0.50
	Professional Customer/ Broker Dealer	\$0.00	\$0.50
	Market Maker	\$0.00	\$0.50

For example, under the proposal, if a Public Customer submitted a SPY order to the BOX Book (making liquidity), the Public Customer would not be offered a rebate or charged a fee if the order interacted with a Market Maker's SPY order and the Market Maker (taking liquidity) would be charged \$0.50.

Tiered Volume Rebate for Non-Auction Transactions

The Exchange also proposes to amend Section IV.A.1 of the Fee Schedule, Tiered Volume Rebate for Non-Auction Transactions. Specifically, the Exchange proposes to adopt separate rebates for SPY transactions for Public Customers in Non-Auction Transactions. For Tier 1, where percentage thresholds of Public Customer volume is 0.000% - 0.129%, the Exchange proposes no rebates. For Tier 2, where percentage thresholds of Public Customer volume is 0.130% - 0.339%, the Exchange proposes to assess a \$0.05 rebate when making liquidity or no rebate when taking liquidity. For Tier 3, where percentage thresholds of Public Customer volume is 0.340% - 0.549%, the Exchange proposes a \$0.10 rebate when making liquidity or no rebate when taking liquidity. For Tier 4, where percentage thresholds of Public Customer volume is 0.550% and above, the Exchange proposes a \$0.27 rebate when making liquidity or no rebate for taking liquidity. The proposed rebate structure will be as follows:

		Per Contract Rebate	
		<u>SPY</u>	
Tier	Percentage Thresholds of National Customer Volume in Multiply-Listed Options Classes (Monthly)	<u>Maker</u>	<u>Taker</u>
1	0.000% - 0.129%	\$0.00	\$0.00
2	0.130% - 0.339%	(\$0.05)	\$0.00
3	0.340% - 0.549%	(\$0.10)	\$0.00
4	0.550% and Above	(\$0.27)	\$0.00

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,⁷ 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's proposal to adopt separate fees for SPY Non-Auction Transactions is reasonable, equitable, and not unfairly discriminatory because pricing by symbol is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in the most actively traded options classes. The Exchange believes that eliminating maker fees for Market Makers when trading against Public Customers will incentivize Market Makers to provide tighter spreads in SPY which may lead to increased order flow to BOX and result in increased liquidity on the Exchange, benefitting all market participants. The Exchange also proposes to eliminate Public Customer rebates for transactions

⁷ 15 U.S.C. 78f(b)(4) and (5).

when the Market Maker is a maker and the Public Customer is a taker because BOX will no longer receive fees when the Market Maker is a maker and the Public Customer is a taker. The Exchange notes that other exchanges assess separate fees and credits for SPY transactions,⁸ and that it currently assesses separate fees and rebates for SPY transactions for PIP and COPIP Transactions on BOX.⁹ The Exchange also notes that SPY has the most actively traded options¹⁰ and therefore the Exchange believes that separate fees are appropriate to more effectively attract order flow to BOX.

Non-Auction Transactions

The Exchange believes the proposed Non-Auction Transaction fees for Public Customer SPY transactions are reasonable. Under the proposal, Public Customers will never pay a fee for their SPY Non-Auction Transactions and may be eligible for a rebate depending on their monthly volume for all transactions executed on BOX under Section IV.A.1. The Exchange believes that charging no fee to Public Customers for SPY Non-Auction Transactions is equitable and not unfairly discriminatory. The securities markets generally, and BOX in particular, have historically aimed to improve markets for investors and develop various features within the market structure for Public Customer benefit. Accordingly, the Exchange believes that charging no fee for Public Customers for their SPY transactions is appropriate and not unfairly discriminatory. The Exchange notes that where the Public Customer is a taker against

⁸ See Nasdaq Phlx LLC (“Phlx”) Fee Schedule, Section 3 (Rebates and Fees for Adding and Removing Liquidity in SPY). The Exchange notes that while PHLX differentiates SPY from other symbols for fee purposes, the structure and amount of the fees are different than the proposal discussed herein.

⁹ See BOX Fee Schedule, Section IV.B (PIP and COPIP Transactions).

¹⁰ See <https://www.optionseducation.org/toolsoptionquotes/today-s-most-active-options> (providing a daily list of the most active options by type).

Professional Customer/Broker Dealer or Market Maker, the Public Customer will no longer receive a rebate. The Exchange believes that any disincentive created by removing this rebate will be more than offset by Market Makers providing tighter spreads in response to the elimination of maker fees for Market Makers trading against Public Customers. Tighter spreads may attract a higher level of Public Customer order flow to the BOX Book and create liquidity, which will ultimately benefit all Participants trading on BOX.

The Exchange believes that charging Professional Customers and Broker Dealers higher fees than Public Customers for SPY Non-Auction Transactions is equitable and not unfairly discriminatory. Professional Customers, while Public Customers by virtue of not being Broker Dealers, generally engage in trading activity more similar to Broker Dealer proprietary trading accounts (submitting more than 390 standard orders per day on average). The Exchange believes that the higher level of trading activity from these Participants will draw a greater amount of BOX system resources than that of non-professional, Public Customers. Because this higher level of trading activity will result in greater ongoing operational costs, the Exchange aims to recover its costs by assessing Professional Customers and Broker Dealers higher fees for transactions. The Exchange notes that the proposed SPY transaction fees for Professional Customers and Broker Dealers is identical to what their SPY transactions are assessed today.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to assess no maker fee for BOX Market Makers trading against Public Customers and to eliminate rebates when the Public Customer is a taker against a Professional Customer, Broker Dealer, or Market Maker for SPY Non-Auction Transactions because, when being charged no fee for their transactions, Market Makers may tighten their spreads in SPY and therefore will increase market quality in SPY options. Specifically, Market Makers can provide higher volumes of liquidity and

lowering certain fees will help attract a higher level of Market Maker order flow to the BOX Book and create liquidity, which the Exchange believes will make Public Customer taker rebates unnecessary to attract order flow. As such, the Exchange believes it is appropriate that Market Makers be charged lower transaction fees than Professional Customers and Broker Dealers for SPY Non-Auction Transactions and that Public Customers not receive rebates when the Public Customer is a taker against a Professional Customer, Broker Dealer, or Market Maker.

Tiered Volume Rebate for Non-Auction Transactions

The Exchange believes that the proposed Public Customer SPY rebates in the Tiered Volume Rebate for Non-Auction Transactions structure are reasonable, equitable, and not unfairly discriminatory. The proposed volume thresholds and applicable rebates for SPY are meant to incentivize Public Customers to post orders on the Exchange to obtain the benefit of the rebate, which will in turn benefit all market participants by increasing liquidity on the Exchange. The Exchange notes that the proposed SPY maker rebates are identical to the rebates that are currently assessed to SPY transactions today. The Exchange believes that offering no rebate for SPY taker transactions is reasonable and appropriate because assessing no maker fee for Market Makers may result in tighter spreads in SPY, thus eliminating the need for additional volume-based incentives for Public Customers to take liquidity on BOX.

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 Exchange believes the proposed changes to the fees in the Non-Auction Transactions fee structure will not impose a burden on intramarket competition as BOX believes that the changes will result in the Participants being charged appropriately for their SPY transactions and are

designed to incentivize order flow to BOX by incentivizing Market Makers to provide tighter spreads. Submitting an order is entirely voluntary and Participants can determine which type of order they wish to submit, if any, to BOX. Further, the Exchange believes the proposed changes in the Non-Auction Transaction fee structure will not impose a burden on intermarket competition as another exchange currently assesses separate fees for SPY transactions.¹¹

The Exchange believes the proposed changes to the rebate structure for Public Customer Non-Auction Transactions will not impose a burden on competition among various Exchange Participants. The Exchange believes that the proposed changes will result in Public Customers being rebated appropriately for their SPY transactions. Further, the Exchange believes that this proposal will enhance competition between exchanges because it is designed to allow the Exchange to better compete with other exchanges for this order flow.

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 rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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

¹¹ See supra note 8.

Exchange Act¹² and Rule 19b-4(f)(2) thereunder,¹³ 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-BOX-2023-15 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.

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4(f)(2).

All submissions should refer to file number SR-BOX-2023-15. This file number should be included on the subject line if email 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 (<https://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 a.m. and 3 p.m. Copies of the 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-2023-15 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,
Assistant Secretary.

¹⁴ 17 CFR 200.30-3(a)(12).