

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-97772; File No. SR-BOX-2023-02)

June 20, 2023

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to amend BOX Rule 4120 (Transactions of Certain Public Customers) and BOX Rule 100 (Definitions) and adopt IM-4120-1.

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 June 5, 2023, BOX Exchange LLC (the “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 primarily by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

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

The Exchange proposes to amend BOX Rule 4120 (Transactions of Certain Public Customers) and BOX Rule 100 (Definitions) and adopt IM-4120-1. The text of the proposed rule change is available from the principal office of the Exchange, at the

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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).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

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 amend BOX Rule 4120 (Transactions of Certain Public Customers) and BOX Rule 100 (Definitions) and adopt IM-4120-1. The purpose of the proposed rule change is to amend the BOX Rule that governs interested transactions to, among other things, clarify that clearing firms are not intended to be included within the scope of BOX Rule 4120. The Exchange notes that the proposed changes are similar to the scope of activities covered by existing rules at other options exchanges.<sup>5</sup>

Rule 4120 and Proposed IM-4120-1

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<sup>5</sup> See NYSE Rule 407 and NYSE American Rule 407. The Exchange believes NYSE and NYSE American similarly do not include clearing firms within the scope of their rules.

Presently, BOX Rule 4120 prohibits an OFP,<sup>6</sup> without prior consent, from executing any transaction in securities or carrying a position in any security in which: (1) an officer or employee of the Exchange or any national securities exchange that is a participant of the Clearing Corporation,<sup>7</sup> or an officer or employee of a corporation in which the Exchange, or such other exchange owns the majority of the capital stock, is directly or indirectly interested; or (2) a partner, officer, director, principal shareholder or employee of another OFP is directly or indirectly interested. In such circumstances, the OFP is required to receive written consent from the Exchange or consent of the other OFP prior to taking such action.

This Rule 4120 is intended to govern conflicts of interest and regulate interested transactions.<sup>8</sup> The Rule prohibits OFPs from engaging in specified interested actions

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<sup>6</sup> The terms “Order Flow Provider” or “OFP” mean those Options Participants representing as agent Customer Orders on BOX and those non-Market Maker Participants conducting proprietary trading. See BOX Rule 100(a)(47). The term “Customer Order” means an agency order for the account of either a Public Customer, as defined herein, or a broker-dealer. See BOX Rule 100(a)(18). The term “Market Maker” means an Options Participant registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in the Rule 8000 Series. All Market Makers are designated as specialists on the Exchange for all purposes under the Exchange Act or Rules thereunder. The term “Public Customer” means a person that is not a broker or dealer in securities. See BOX Rule 100(a)(53).

<sup>7</sup> The term “Clearing Corporation” or “OCC” means The Options Clearing Corporation.

<sup>8</sup> BOX Rule 4120 governs direct or indirect conflicts of interest involving officers or employees of the Exchange or any national securities exchange that is a participant of the OCC, an officer or employee of a corporation in which the Exchange, or such other exchange owns the majority of the capital stock, and partners, officers, directors, principal shareholders or employees of another OFP. See BOX Rule 4120.

without obtaining prior written consent from the Exchange or consent of the other OFP prior to taking such action. For example, under Rule 4120, an OFP may not execute a transaction in a security in which an employee of the Exchange is directly interested, without first obtaining written consent from the Exchange. The Exchange is proposing to amend BOX Rule 4120 to clarify that clearing firms are not intended to be included within the scope of BOX Rule 4120. Specifically, the Exchange is proposing to add “open a securities or commodities account” and remove “in securities or carry a position in any security” within BOX Rule 4120(a) to amend the scope of this requirement, which is in line with the scope and language of other exchanges.<sup>9</sup> The Exchange believes that this change removes unintended parties from the scope of the rule and thus allows for more effective supervision of interested transactions. At present, due to the broad language within Rule 4120(a) stating that no OFP shall “carry a position in any security” clearing firms are being captured within the scope of the Rule. The Exchange is proposing to amend Rule 4120 to remove the language relating to carrying a position in a security to clarify that clearing firms are not included in the scope of this Rule due to only carrying a position, which the Exchange believes is in line with the intent of the rule and existing practices at other exchanges.<sup>10</sup>

The proposed amended language within BOX Rule 4120(a) would provide, “No OFP shall open a securities or commodities account or execute any transaction in which: (1) an officer or employee of the Exchange or any national securities exchange that is a participant of the Clearing Corporation, or an officer or employee of a corporation in

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<sup>9</sup> See supra note 3.

<sup>10</sup> Id.

which the Exchange, or such other exchange owns the majority of the capital stock, is directly or indirectly interested, without the prior written consent of the Exchange; or (2) a partner, officer, director, principal shareholder or employee of another OFP is directly or indirectly interested, without the consent of such other OFP.” Rule 4120 also requires that where the required consent has been granted, duplicate reports of the transaction and position shall promptly be sent to the Exchange or OFP, as the case may be.

Additionally, the Exchange is proposing to adopt language to provide that the Exchange may, upon written request, and where good cause is shown, waive any requirements of Rule 4120. The Exchange notes that this proposed waiver language is identical to language found within NYSE American Rule 407 and NYSE Rule 407.<sup>11</sup> The Exchange believes that the adoption of this provision will provide the Exchange with greater flexibility, to allow for more effective and efficient supervision of the interested transactions that are governed by Rule 4120.

The Exchange is also proposing to adopt IM-4120-1. Proposed IM-4120-1 would provide that the term “securities or commodities accounts” as used in Rule 4120 shall include, but not be limited to, limited or general partnership interests in investment partnerships. As part of the proposed changes detailed above, the Exchange is adopting language within Rule 4120(a) to provide that no OFP shall “open a securities or commodities account.” The Exchange believes that adopting IM-4120-1, which provides that for the purposes of Rule 4120, securities or commodities accounts also include limited or general partnership interests in investment partnerships, will reduce the potential for investor confusion regarding what is included within the scope

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<sup>11</sup> Id.

of the Rule. Additionally, proposed IM-4120-1 would require OFPs to develop and maintain written procedures for reviewing such accounts and transactions and assure that their associated persons are not improperly recommending or marketing such securities or products to others through Participants<sup>12</sup> or Participant organizations. At present, Rule 4120 is silent on the requirements for how an OFP must ensure compliance with this Rule. The Exchange is now proposing to adopt language codifying the requirement for OFPs to develop and maintain written procedures for reviewing these transactions and accounts. The Exchange believes that OFPs already maintain such written procedures in practice and is looking to codify the requirement for clarity. The Exchange is adopting IM-4120-1 to provide more clarity on what is covered under the term “securities or commodities accounts,” and the obligation for OFP’s to develop related written procedures.

The Exchange believes that proposed IM-4120-1, which provides greater clarity on the requirements of Rule 4120, will allow for more effective regulatory compliance. The Exchange also notes that proposed IM-4120-1 is substantively identical to an existing rule at NYSE American and NYSE.<sup>13</sup>

#### Technical Amendments

In addition to the proposed amendments, the Exchange is proposing to amend Rule 100(a)(16) to update the cross references to the rules of the OCC within the

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<sup>12</sup> The term “Participant” means a firm, or organization that is registered with the Exchange pursuant to the Rule 2000 Series for purposes of participating in trading on a facility of the Exchange and includes an “Options Participant” and “BSTX Participant.”

<sup>13</sup> See NYSE American Rule 407, Supplementary Material .11 and NYSE Rule 407, Supplementary Material .11.

definition of the term “covered short position.” The OCC has amended their Rule 610 since BOX adopted Rule 100(a)(16), so the Exchange is proposing to update the OCC cross references within BOX Rule 100(a)(16). The Exchange is proposing to update the cross reference to OCC Rule 610(f) to 610(A) and 610(B) and the cross reference to OCC Rule 610(g) to 610(C).<sup>14</sup> The Exchange is not proposing to make any substantive changes to Rule 100(a)(16).

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),<sup>15</sup> in general, and Section 6(b)(5) of the Act,<sup>16</sup> 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 open market and a national market system, and, in general to protect investors and the public interest.

### Rule 4120 and Proposed IM-4120-1

Together, the proposed amendment of Rule 4120 and the proposed adoption of IM-4120-1 are intended to amend the BOX Rule governing conflicts of interest by updating and adopting rules that regulate interested transactions.<sup>17</sup> Specifically, the

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<sup>14</sup> See OCC Rules 610A (Member Specific Deposits), 610B (Third-Party Specific Deposits), and 610C (Escrow Deposits).

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> See supra notes 3 and 11.

proposed changes are intended to clarify that clearing firms are not intended to be included within the scope of BOX Rule 4120. The Exchange believes that the proposed rule change may reduce potential investor or market participant confusion over which BOX Participants are covered under scope of BOX Rule 4120. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange also believes that the proposed rule change may result in more efficient regulatory compliance, as the proposed updates are similar in relevant part to existing rules at NYSE American and NYSE.<sup>18</sup> As such, the Exchange believes that the proposed rule change is in the public interest and therefore, is consistent with the Act.

#### Technical Changes

In addition, the Exchange believes that the proposed non-substantive clarifying changes described above to update the OCC cross references within BOX Rule 100(a)(16) would add clarity to the Exchange's rules. The Exchange believes that adding such clarity would also be consistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity, thereby reducing potential confusion. In addition, the Exchange believes that amending the OCC cross references to accurately reflect the updated section numbers within the OCC Rulebook would promote fairness and consistency in the marketplace by providing investors with access to the appropriate citations as detailed within the Rules of the OCC. The proposed change is not intended to make any

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<sup>18</sup> Id.

substantive change to the definition of “covered short position” within the BOX Rulebook.

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 the rule change is being proposed to clarify that clearing firms are not intended to be included within the scope of BOX Rule 4120. The Exchange notes that, the proposed updates are similar in relevant part to existing rules at NYSE American and NYSE.<sup>19</sup> The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The proposed rule change is not designed to address any competitive issues but rather to clarify that clearing firms are not intended to be included within the scope of BOX Rule 4120. The Exchange’s proposal to amend BOX Rule 4120 does not impose an undue burden on competition as all Participants that conduct business with the public would be subject to the proposed rules.

The proposed rule change is not designed to address any competitive issues but rather seeks to clarify that clearing firms are not intended to be included within the scope of BOX Rule 4120. The Exchange’s proposal to adopt proposed IM-4120-1 does not impose an undue burden on competition as all Participants that conduct business with the public would be subject to the proposed rules.

Technical Amendments

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<sup>19</sup> See supra notes 3 and 11.

The Exchange’s proposal to amend BOX Rule 100(a)(16) to update the cross references to the rules of the OCC within the definition of the term “covered short position” is a non-substantive amendment.

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

(a) This proposed rule change is filed pursuant to paragraph (A) of section 19(b)(3) of the Exchange Act<sup>20</sup> and Rule 19b-4(f)(6) thereunder.<sup>21</sup>

(b) This proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, 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 if consistent with the protection of investors and the public interest.

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.

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<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4(f)(6).

#### 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-2023-02 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-2023-02. 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, on official business days between the hours of 10:00 a.m. and 3:00 p.m., located at 100 F Street, NE,

Washington, DC 20549. 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-2023-02 and should be submitted on or before [date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

J. Matthew DeLesDernier,  
Deputy Secretary

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<sup>22</sup> 17 CFR 200.30-3(a)(12).