

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-80789; File No. SR-BOX-2017-17)

May 26, 2017

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing of Proposed Rule Change to Eliminate Requirements That Will Be Duplicative of CAT

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 15, 2017, BOX Options Exchange LLC (the “Exchange” or “SRO”) 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 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 amend Rules 7120, 8060 and 10040 to the extent these rules collect information that is duplicative of the data collection requirements of the consolidated audit trail (“CAT”) adopted pursuant to the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”).<sup>3</sup> 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>.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

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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> Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth herein, or in the CAT Compliance Rule Series or in the CAT NMS Plan.

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

Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. (“FINRA”), Investors’ Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC,<sup>4</sup> NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE MKT LLC, NYSE Arca, Inc. and NYSE National, Inc.<sup>5</sup> (collectively, the “Participants”) filed with the Commission, pursuant to Section 11A of the Exchange Act<sup>6</sup> and Rule 608 of Regulation NMS thereunder,<sup>7</sup> CAT NMS Plan.<sup>8</sup> The

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<sup>4</sup> ISE Gemini, LLC, ISE Mercury, LLC and International Securities Exchange, LLC have been renamed Nasdaq GEMX, LLC, Nasdaq MRX, LLC, and Nasdaq ISE, LLC, respectively. See Securities Exchange Act Rel. No. 80248 (Mar. 15, 2017), 82 FR 14547 (Mar. 21, 2017); Securities Exchange Act Rel. No. 80326 (Mar. 29, 2017), 82 FR 16460 (Apr. 4, 2017); and Securities Exchange Act Rel. No. 80325 (Mar. 29, 2017), 82 FR 16445 (Apr. 4, 2017).

<sup>5</sup> National Stock Exchange, Inc. has been renamed NYSE National, Inc. See Securities Exchange Act Rel. No. 79902 (Jan. 30, 2017), 82 FR 9258 (Feb. 3, 2017).

<sup>6</sup> 15 U.S.C. 78k-1.

<sup>7</sup> 17 CFR 242.608.

<sup>8</sup> See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated

Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act. The Plan was published for comment in the Federal Register on May 17, 2016,<sup>9</sup> and approved by the Commission, as modified, on November 15, 2016.<sup>10</sup> The Plan is designed to create, implement and maintain a CAT that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. Pursuant to Appendix C of the CAT NMS Plan, each Participant is required to conduct analyses of which of its existing trade and order data rules and systems require the collection of information that is duplicative of information collected for the CAT.<sup>11</sup> In addition, among other things, Section C.9 of Appendix C to the Plan, as modified by the Commission, requires each Participant to “file with the SEC the relevant rule change filing to eliminate or modify its duplicative rules within six (6) months of the SEC’s approval of the CAT NMS Plan.”<sup>12</sup> The Plan notes that “the elimination of such rules and the retirement of such systems [will] be effective at such time as CAT Data meets minimum standards of accuracy and reliability.”<sup>13</sup>

After conducting its analysis of its rules in accordance with the CAT NMS Plan, SRO determined that certain audit trail information collected under the BOX Rules is intended to be collected by the CAT. Therefore, SRO believes that these rules may no longer be necessary once

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September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

<sup>9</sup> Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

<sup>10</sup> Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“Approval Order”).

<sup>11</sup> Appendix C of CAT NMS Plan, Approval Order at 85010.

<sup>12</sup> Id.

<sup>13</sup> Id.

the CAT is operational. Accordingly, SRO submits this proposed rule change to amend Rules 7120, 8060 and 10040 once certain accuracy and reliability standards are met. Discussed below is a description of the duplicative rule requirements as well as the timeline for eliminating the duplicative rule.

**(1) Duplicative COATS Requirements**

The options exchanges utilize the consolidated options audit trail system (“COATS”) to collect and review data regarding options orders, quotes and transactions. The Participants have provided COATS technical specifications to the Plan Processor for the CAT for use in developing the Technical Specifications for the CAT, and the Participants are working with the Plan Processor to include the necessary COATS data elements in the CAT Technical Specifications. Accordingly, although the Technical Specifications for the CAT have not yet been finalized, SRO and the other options exchanges propose to eliminate COATS in accordance with the proposed timeline discussed below.

The proposed rule change proposes to add new Interpretive Materials to Rules 7120,- [sic] 8060 and 10040 to clarify how SRO will request data under these rules after members are reporting to the CAT. Specifically, the proposed Interpretive Materials will note that SRO will request information only if the information is not available in the CAT because, for example, the transactions in question occurred before the firm was reporting information to the CAT or involved securities that are not reportable to the CAT. In essence, under the new Interpretive Materials, SRO will make requests under these rules if and only if the information is not otherwise available through the CAT.

**(2) The EBS Rule**

The EBS Rule is SRO's rule regarding the automated submission of specific trading data to SRO upon request using the Electronic Blue Sheet ("EBS") system. Once broker-dealer reporting to the CAT has begun, the CAT will contain the data the Participants would otherwise have requested via the EBS system for purposes of NMS Securities and OTC Equity Securities. Consequently, SRO will not need to use the EBS system or request information pursuant to the EBS Rule for NMS Securities for time periods after CAT reporting has begun if the appropriate accuracy and reliability thresholds are achieved, including an acceptable accuracy rate for customer and account information. However, the EBS Rule cannot be completely eliminated immediately upon the CAT achieving the appropriate thresholds because SRO staff may still need to request information pursuant to the EBS Rule for trading activity occurring before a member was reporting to the CAT.<sup>14</sup>

The proposed rule change proposes to add new Interpretive Material to Rule 10040 to clarify how SRO will request data under these rules after members are reporting to the CAT. Specifically, the proposed Interpretive Material will note that SRO will request information only if the information is not available in the CAT because, for example, the transactions in question occurred before the firm was reporting information to the CAT or involved securities that are not reportable to the CAT. In essence, under the new Interpretive Material, SRO will make requests under these rules if and only if the information is not otherwise available through the CAT.

### **(3) Timeline for Elimination of Duplicative Rule**

The CAT NMS Plan states that the elimination of rules that are duplicative of the requirements of the CAT and the retirement of the related systems should be effective at such

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<sup>14</sup> Firms are required to maintain the trade information for pre-CAT transactions in equities and options pursuant to applicable rules, such as books and records retention requirements, for the relevant time period, which is generally three or six years depending upon the record. See 17 CFR 240.17a-3(a), 240.17a-4.

time as CAT Data meets minimum standards of accuracy and reliability.<sup>15</sup> As discussed in more detail below, SRO and the other options exchanges believe that COATS and EBS may be retired at a date after all Industry Members are reporting to the CAT when the proposed error rate thresholds have been met, and SRO has determined that its usage of the CAT Data has not revealed material issues that have not been corrected, confirmed that the CAT includes all data necessary to allow SRO to continue to meet its surveillance obligations, and confirmed that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.

SRO believes COATS and EBS should not be retired until all Participants and Industry Members that report data to COATS and EBS are reporting comparable data to the CAT. In this way, SRO will continue to have access to the necessary data to perform its regulatory duties.

The CAT NMS Plan requires that a rule filing to eliminate a duplicative rule address whether “the availability of certain data from Small Industry Members two years after the Effective Date would facilitate a more expeditious retirement of duplicative systems.”<sup>16</sup> SRO believes COATS and EBS should not be retired until all Participants and Industry Members that report data to COATS are reporting comparable data to the CAT. While the early submission of options data to the CAT by Small Industry Members could expedite the retirement of COATS, SRO believes that it premature to consider such a change and that additional analysis would be necessary to determine whether such early reporting by Small Industry Members would be feasible.

The CAT NMS Plan requires that this rule filing address “whether individual Industry Members can be exempted from reporting to duplicative systems once their CAT reporting meets specified accuracy and reliability standards, including, but not limited to, ways in which

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<sup>15</sup> Id. [sic]

<sup>16</sup> Id.

establishing cross-system regulatory functionality or integrating data from existing systems and the CAT would facilitate such Individual Industry Member exemptions.”<sup>17</sup> SRO believes that a single cut-over from COATS and EBS to CAT is highly preferable to a firm-by-firm approach and is not proposing to exempt members from the COATS and EBS requirements on a firm-by-firm basis. SRO and the other options exchanges believe that providing such individual exemptions to Industry Members would be inefficient, more costly, and less reliable than the single cut-over. Providing individual exemptions would require the options exchanges to create, for a brief temporary period, a cross-system regulatory function and to integrate data from COATS and EBS and the CAT to avoid creating any regulatory gaps as a result of such exemptions. Such a function would be costly to create and would give rise to a greater likelihood of data errors or other issues. Given the limited time in which such exemptions would be necessary, SRO and the other options exchanges do not believe that such exemptions would be an appropriate use of limited resources.

The CAT NMS Plan also requires that a rule filing to eliminate a duplicative rule to provide “specific accuracy and reliability standards that will determine when duplicative systems will be retired, including, but not limited to, whether the attainment of a certain Error Rate should determine when a system duplicative of the CAT can be retired.”<sup>18</sup> SRO believes that it is critical that the CAT Data be sufficiently accurate and reliable for SRO to perform the regulatory functions that it now performs via COATS and EBS. Accordingly, SRO believes that the CAT Data should meet specific quantitative error rates, as well as certain qualitative requirements.

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<sup>17</sup> Id.

<sup>18</sup> Id.

SRO and the other options exchanges believe that, before COATS may be retired, the CAT would need to achieve a sustained error rate for a period of at least 180 days of 5% or lower measured on a pre-correction or as-submitted basis, and 2% or lower on a post-correction basis (measured at T+5).<sup>19</sup> SRO proposes to measure the 5% pre-correction and 2% post-correction thresholds by averaging the error rate across the period, not require a 5% pre-correction and 2% post-correction maximum each day for 180 consecutive days. SRO believes that measuring each of the thresholds over the course of 180 days will ensure that the CAT consistently meets minimum accuracy and reliability thresholds while also ensuring that single-day measurements do not unduly affect the overall measurements. SRO proposes to measure the appropriate error rates in the aggregate, rather than firm-by-firm. In addition, SRO proposes to measure the error rates for options only, not equity securities, as only options are subject to COATS. The 2% and 5% error rates are in line with the proposed retirement threshold for FINRA's Order Audit Trail System ("OATS").

In addition to these minimum error rates before COATS can be retired, SRO believes that during the minimum 180-day period during which the thresholds are calculated, SRO's use of the data in the CAT must confirm that (i) usage over that time period has not revealed material issues that have not been corrected, (ii) the CAT includes all data necessary to allow SRO to continue to meet its surveillance obligations, and (iii) the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan. SRO believes this time period to use the CAT Data is necessary to reveal any errors that may manifest themselves only after surveillance

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<sup>19</sup> The Plan requires that the Plan Processor must ensure that regulators have access to corrected and linked order and Customer data by 8:00 a.m. Eastern Time on T+5. See CAT NMS Plan, at C-15.

patterns and other queries have been run and to confirm that the Plan Processor is meeting its obligations and performing its functions adequately.

If the Commission approves the proposed rule change, SRO will announce the date for the retirement of COATS and the implementation date of the proposed rule change in a Regulatory Circular that will be published once the options exchanges determine that the thresholds for accuracy and reliability described above have been met and that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.

## 2. Statutory Basis

SRO believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Exchange Act<sup>20</sup>, which require, among other things, that the SRO rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers and dealer. SRO believes that this proposal is consistent with the Exchange Act because it fulfills the obligation in the CAT NMS Plan for SRO to submit a proposed rule change to eliminate or modify duplicative rules. In approving the Plan, the SEC noted that the Plan “is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.”<sup>21</sup> As this proposal implements the Plan, SRO believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

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<sup>20</sup> 15 U.S.C. 78f(b)(5).

<sup>21</sup> Approval Order at 84697.

Moreover, the purpose of the proposed rule change is to clarify how SRO will treat rules that require the submission of duplicative data to the exchange. The elimination of such duplicative requirements will reduce unnecessary costs and other compliance burdens for SRO and its members, and therefore, will enhance the efficiency of the securities markets. Furthermore, SRO believes that the approach set forth in the proposed rule change strikes the appropriate balance between ensuring that SRO is able to continue to fulfill its statutory obligation to protect investors and the public interest by ensuring its surveillance of market activity remains accurate and effective while also establishing a reasonable timeframe for elimination or modification of its rules that will be rendered duplicative after implementation of the CAT.

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

Section 6(b)(8) of the Exchange Act<sup>22</sup> requires that SRO rules not impose any burden on competition that is not necessary or appropriate. SRO does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. SRO notes that the proposed rule change implements the requirements of the CAT NMS Plan approved by the Commission regarding the elimination of rules and systems that are duplicative the CAT, and is designed to assist SRO in meeting its regulatory obligations pursuant to the Plan. Similarly, all options exchanges are proposing the elimination of COATS and EBS and their rules related to COATS and EBS to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive rule filing and, therefore, it does not raise competition issues between and among the options exchanges and/or their members.

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<sup>22</sup> 15 U.S.C. 78f(b)(8)

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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-2017-17 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-2017-17. 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 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make

available publicly. All submissions should refer to File Number SR-BOX-2017-17 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>23</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>23</sup> 17 CFR 200.30-3(a)(12).