

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-82654; File No. SR-BOX-2018-04)

February 7, 2018

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Section VI. (Technology Fees) of the BOX Fee Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 31, 2018, BOX Options 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 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 Section VI. (Technology Fees) of the BOX Fee Schedule. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on February 1, 2018. 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>.

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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).

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 VI (Technology Fees) in the Fee Schedule. Specifically, the Exchange proposes to amend Section VI.B. (High Speed Vendor Feed ("HSVF")) in the BOX Fee Schedule to revise the fee charged per month for all market participants for receiving the HSVF. The Exchange's proprietary HSVF is currently available to all market participants at a fee of \$750.00 per month; however, the Exchange now proposes to increase the fee to \$1500.00 per month for all market participants who receive the HSVF. This fee will be payable by any market participant that receives the HSVF through a direct connection to BOX and will be assessed once per market participant.

In February 2013, the Exchange made its proprietary direct market data product, the HSVF, available to all market participants at no cost.<sup>5</sup> In August 2016, the Exchange established a fee of \$750 per month for the HSVF for all market participants.<sup>6</sup> The Exchange now proposes to raise the monthly fee for the HSVF. The BOX HSVF is a proprietary product that provides: (i)

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<sup>5</sup> See Securities Exchange Act Release No. 68833 (February 5, 2013), 78 FR 9758 (February 11, 2013) (SR-BOX-2013-04).

<sup>6</sup> See Securities Exchange Act Release No. 78565 (August 18 [sic], 2016), 81 FR 55251 (August 3 [sic], 2016) (SR-BOX-2016-40).

trades and trade cancelation information; (ii) best-ranked price level to buy and the best-ranked price level to sell; (iii) instrument summaries (including information such as high, low, and last trade price and traded volume); (iv) the five best limit prices for each option instrument; (v) request for Quote messages<sup>7</sup>; (vi) PIP Order, Improvement Order and Block Trade Order (Facilitation and Solicitation) information<sup>8</sup>; (vii) orders exposed at NBBO<sup>9</sup>; (viii) instrument dictionary (e.g., strike price, expiration date, underlying symbol, price threshold, and minimum trading increment for instruments traded on BOX); (ix) options class and instrument status change notices (e.g., whether an instrument or class is in pre-opening, continuous trading, closed, halted, or prohibited from trading); and (x) options class opening time.

The Exchange notes that data connection fees are charged by other options markets such as Cboe BZX Exchange, Inc. (“BZX”), Cboe EDGX Exchange, Inc. (“EDGX”), Cboe Exchange, Inc. (“Cboe”), Cboe C2 Exchange, Inc. (“C2”), Nasdaq BX, Inc. (“BX”), The Nasdaq Options Market (“NOM”), and Nasdaq PHLX LLC (“PHLX”).<sup>10</sup>

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<sup>7</sup> See Exchange Rules 100(a)(57), 7070(h) and 8050.

<sup>8</sup> As set forth in Exchange Rules 7150 and 7270, respectively.

<sup>9</sup> As set forth in Exchange Rules 7130(b)(3) and 8040(d)(6), respectively.

<sup>10</sup> See the BZX Fee Schedule, available at: [http://markets.cboe.com/us/options/membership/fee\\_schedule/bzx/](http://markets.cboe.com/us/options/membership/fee_schedule/bzx/), the EDGX Fee Schedule, available at: [http://markets.cboe.com/us/options/membership/fee\\_schedule/edgx/](http://markets.cboe.com/us/options/membership/fee_schedule/edgx/), the Cboe Fee Schedule, available at <http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf> and the Cboe Data Services Fee Schedule, available at <https://www.cboe.org/publish/mdxfees/cboe-cds-fees-schedule-for-cboe-datafeeds.pdf>, the C2 Fee Schedule, available at: <http://www.cboe.com/publish/C2FeeSchedule/C2FeeSchedule.pdf> and the C2 Data Services Fee Schedule, available at: <https://www.cboe.org/publish/mdxfees/c2-cds-fees-schedule.pdf>, the BX Fee Schedule, available at: [http://nasdaqomxbx.cchwallstreet.com/NASDAQBXTools/PlatformViewer.asp?selectednode=chp\\_1\\_2\\_15&manual=%2FNASDAQOMXBX%2Fmain%2Fbx-eq-rules%2F](http://nasdaqomxbx.cchwallstreet.com/NASDAQBXTools/PlatformViewer.asp?selectednode=chp_1_2_15&manual=%2FNASDAQOMXBX%2Fmain%2Fbx-eq-rules%2F); the NOM Fee Schedule, available at: [http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp\\_](http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp_)

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>11</sup> in general, and Section 6(b)(4) and (5) of the Act,<sup>12</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 the Exchange’s facilities and is not designed to permit unfair discrimination among them.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and self-regulatory organization (“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>

Likewise, in *NetCoalition v. Securities and Exchange Commission*<sup>14</sup> (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based

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[1 1 15 1 2&manual=%2Fnasdaq%2Fmain%2Fnasdaq-optionsrules%2F](http://www.nasdaqtrader.com/Trader.aspx?id=DPPPriceListOptions), the PHLX Fee Schedule, available at:

[http://nasdaqomxphlx.cchwallstreet.com/NASDAQPHLXTools/PlatformViewer.asp?selectednode=chp\\_1\\_4\\_2&manual=%2Fnasdaqomxphlx%2Fphlx%2Fphlx-rulesbrd%2F](http://nasdaqomxphlx.cchwallstreet.com/NASDAQPHLXTools/PlatformViewer.asp?selectednode=chp_1_4_2&manual=%2Fnasdaqomxphlx%2Fphlx%2Fphlx-rulesbrd%2F), and the NASDAQ U.S. Derivatives Data Price List, available at:

<http://www.nasdaqtrader.com/Trader.aspx?id=DPPPriceListOptions>.

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

<sup>12</sup> 15 U.S.C. 78f(b)(4) and (5).

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

<sup>14</sup> *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

approach.<sup>15</sup> As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data .... to be made available to investors and at what cost.”<sup>16</sup>

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ ...As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’....”<sup>17</sup> Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

BOX believes that the allocation of the proposed fee is fair and equitable in accordance with Section 6(b)(4) of the Act, and not unreasonably discriminatory in accordance with Section 6(b)(5) of the Act. As described in greater detail below, if BOX has calculated improperly and the market deems the proposed fees to be unfair, inequitable, or unreasonably discriminatory, firms can discontinue the use of their data because the proposed product is entirely optional to all parties. Firms are not required to purchase data and BOX is not required to make data available or to offer specific pricing alternatives for potential purchases. BOX can discontinue offering a pricing alternative (as it has in the past) and firms can discontinue their use at any time and for any reason (as they often do), including due to their assessment of the reasonableness of fees

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<sup>15</sup> See NetCoalition, at 534 – 535.

<sup>16</sup> Id. at 537.

<sup>17</sup> Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

charged. BOX continues to establish and revise pricing policies aimed at increasing fairness and equitable allocation of fees among subscribers.

The Exchange's proprietary HSVF is currently available to all market participants at a fee of \$750.00 per month; however, the Exchange now proposes to increase the fee to \$1500.00 per month for all market participants who receive the HSVF. The Exchange believes that raising the HSVF fee to \$1500 per month per connection is reasonable and appropriate as it is within the connectivity fee range that is charged by other options exchanges.<sup>18</sup> The Exchange believes comparing the HSVF to the data connectivity fees at other exchanges is appropriate as the Exchange currently assess [sic] the HSVF fee by connection to and not consumption of the data.

In addition, the Exchange believes that its fees are equitable and not unfairly discriminatory because all market participants are charged the same fee for access to the HSVF. Further, the Exchange notes that all market participants who wish to receive the feed may, as the feed is available to anyone willing to pay the proposed \$1500 monthly fee.

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

The Exchange 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 Act. The proposed change to the Fee Schedule will simply allow the Exchange to charge all market

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<sup>18</sup> See supra, note 10. Cboe's and C2's data distributor CDS charges a \$500 port fee per month; BZX and EDGX charge a connectivity fee between \$250 and \$14,500 a month for connectivity depending upon the data feed; BX charges a port fee between \$500 and \$650 per month depending upon the port; NOM charges a port fee between \$650 and \$750 a month depending upon the port, and PHLX charges a connectivity fee between \$65 and \$6000 a month depending upon the data feed. The Exchange notes that the above mentioned exchanges charge these fees per port, while the Exchange proposes to assess the fee once per market participant. Furthermore, the Exchange notes that Cboe, C2, BZX, EDGX, NASDAQ BX, NOM, and PHLX charge the above mentioned connectivity fees in addition to data fees, which range from \$1 to \$14,500 depending upon the data feed and user type.

participants equally for the costs incurred by connecting to the BOX Network. The HSVF is similar to proprietary data products currently offered by other exchanges, and these other exchanges charge comparable monthly fees.<sup>19</sup> While connection to the HSVF is required to receive the broadcasts for and participate in the Exchange's auction mechanisms,<sup>20</sup> the Exchange does not believe [sic] the proposed monthly fee will impede competition within these auctions. As discussed above, the Exchange believes that fees for connectivity are constrained by the robust competition for order flow among exchanges and non-exchange markets. Further, excessive fees for connectivity would serve to impair [sic] ability to compete for order flow rather than burdening competition. 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.

Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the NetCoalition court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive. BOX believes that a record may readily be established to demonstrate the competitive nature of the market in question.

There is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. Data products are valuable to many end subscribers only insofar as they provide

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<sup>19</sup> Id.

<sup>20</sup> BOX's auction mechanisms include the Price Improvement Period ("PIP"), Complex Order Price Improvement Period ("COPIP"), Facilitation Auction and Solicitation Auction.

information that end Subscribers expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's Participant's view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer ("BD") will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the BD chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the BD will choose not to buy it. Moreover, as a BD chooses to direct fewer orders to a particular exchange, the value of the product to that BD decreases, for two reasons. First, the product will contain less information, because executions of the BD's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that BD because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the BD is directing orders will become correspondingly more valuable.

Thus, an increase in the fees charged for either transactions or data has the potential to impair revenues from both products. "No one disputes that competition for order flow is 'fierce'." NetCoalition at 24. However, the existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs with order flow, since they may readily reduce costs

by directing orders toward the lowest-cost trading venues. A BD that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected BDs will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. Some exchanges pay rebates to attract orders, charge relatively low prices for market information and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower liquidity rebates to attract orders, setting relatively low prices for accessing posted liquidity, and setting relatively high prices for market information. Still others may provide most data free of charge and rely exclusively on transaction fees to recover their costs. Finally, some

platforms may incentivize use by providing opportunities for equity ownership, which may allow them to charge lower direct fees for executions and data.

In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. Such regulation is unnecessary because an “excessive” price for one of the joint products will ultimately have to be reflected in lower prices for other products sold by the firm, or otherwise the firm will experience a loss in the volume of its sales that will be adverse to its overall profitability. In other words, an increase in the price of data will ultimately have to be accompanied by a decrease in the cost of executions, or the volume of both data and executions will fall.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including eleven SRO markets, as well as internalizing BDs and various forms of alternative trading systems (“ATs”), including dark pools and electronic communication networks (“ECNs”). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated TRFs compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, AT, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including BOX, NYSE, NYSE MKT, NYSE Arca, and BATS/Direct Edge.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSS or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple BDs' production of proprietary data products. The potential sources of proprietary products are virtually limitless. Notably, the potential sources of data include the BDs that submit trade reports to TRFs and that have the ability to consolidate and distribute their data without the involvement of FINRA or an exchange-operated TRF.

The fact that proprietary data from ATSS, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and NYSE Arca did before registering as exchanges by publishing proprietary book data on the internet. Second, because a single order or transaction report can appear in a core data product, a SRO proprietary product, and/or a non-SRO proprietary product, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and BATS/Direct Edge. A proliferation of dark pools and other ATSS operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While BDs have previously published their proprietary data individually, Regulation NMS encourages market data vendors and BDs to produce proprietary

products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg and Thomson Reuters. In Europe, Cinnober aggregates and disseminates data from over 40 brokers and multilateral trading facilities.<sup>21</sup>

In this environment, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. “No one disputes that competition for order flow is ‘fierce’.” NetCoalition I at 539. The existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A BD that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform’s market data and reduce its own need to consume data from the disfavored platform. If a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected BDs will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

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>22</sup> and Rule 19b-4(f)(2) thereunder,<sup>23</sup> because it establishes or changes a due, or

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<sup>21</sup> See <http://www.cinnober.com/boat-trade-reporting>

<sup>22</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>23</sup> 17 CFR 240.19b-4(f)(2).

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-2018-04 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-2018-04. 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-2018-04, 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>24</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>24</sup> 17 CFR 200.30-3(a)(12).