

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95081; File No. SR-BOX-2022-20)

June 9, 2022

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

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, 2022, BOX Exchange LLC (“BOX” or “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 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 is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the Fee Schedule 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, 2022. 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

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 recently adopted new data products known as the Liquidity Taker Event Report – Simple Orders (the “Simple Order Report”) and the Liquidity Taker Event Report – Complex Orders (the “Complex Order Report”), (collectively, the “Reports”) which will be available for purchase by Exchange Participants³ on a voluntary basis. The Exchange now proposes to adopt fees for the Reports.⁴

By way of background, the Reports are daily reports that provide a Participant (“Recipient Participant”) with its liquidity response time details for executions of an order resting on the BOX Book or Complex Order Book,⁵ where that Recipient Participant attempted to execute against such resting order⁶ within a certain timeframe. The purpose of the Reports is

³ 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. See BOX Rule 100(a)(41).

⁴ The Exchange recently established these Reports as described under BOX Rule 7350(b) and (c). See Securities Exchange Act Release 34-94563 (March 31, 2022), 87 FR 19985 (April 6, 2022) (Notice of Filing of Immediate Effectiveness of SR-BOX-2022-10). See Securities Exchange Act Release 34-94920 (May 16, 2022), 87 FR 31013 (May 20, 2022) (Notice of Filing of Immediate Effectiveness of SR-BOX-2022-18).

⁵ The term “BOX Book” means the electronic book of orders on each single option series maintained by the BOX Trading Host. See BOX Rule 100(a)(10). The term “Complex Order Book” means the electronic book of Complex Orders maintained by the BOX Trading Host. See BOX Rule 7240(a)(8).

⁶ Only displayed orders will be included in the Simple Order Report. The Exchange notes that it does not currently offer any non-displayed order types on its options trading platform.

to provide Participants the necessary data in a standardized format on a T+1 basis to those that subscribe to the Simple Order Report and/or the Complex Order Report on an equal basis. These products are offered to Participants on a completely voluntary basis in that the Exchange is not required by any rule of regulation to make this data available and potential subscribers may purchase the Simple Order Report and/or the Complex Order Report only if they voluntarily choose to do so. It is a business decision of each Participant whether to subscribe to the Simple Order Report and/or the Complex Order Report or not.

First, the Exchange proposes to rename current Section III.C of the BOX Fee Schedule from “Open-Close Data Report” to “Reports.” Further, the Exchange proposes to move current Section III.C (Open-Close Data Report) to new Section III.C.1.⁷ The Exchange believes that moving current Section III.C. to new Section III.C.1 and renaming Section III.C “Reports” will improve the overall readability of the BOX Fee Schedule and help prevent investor confusion because the fees for all market data reports will reside in one place in the BOX Fee Schedule.

Next, the Exchange proposes to adopt new Section III.C.2 (Liquidity Taker Event Reports) in the BOX Fee Schedule. Section III.C.2 will provide that Participants may purchase the Simple Order Report and/or the Complex Order Report on a monthly or annual (12 month) basis. The Exchange proposes to assess a fee of \$4,000 per month and a fee of \$24,000 per year for a 12 month subscription for the Simple Order Report. The Exchange also proposes to assess a fee of \$4,000 per month and a fee of \$24,000 per year for a 12 month subscription for the Complex Order Report. Participants may cancel their subscription at any time. The Exchange proposes further to specify that for mid-month subscriptions, new subscribers to the Simple

⁷ The Exchange notes that no changes are being made to the Open-Close Data Report fees. The Exchange is simply rearranging the Fee Schedule to account for more market data products being offered by BOX.

Order Report and/or the Complex Order Report will be charged for the full calendar month for which they subscribe and will be provided Simple Order Report and/or Complex Order Report data for each trading day of the calendar month prior to the day on which they subscribed. Additionally, the Exchange proposes to offer a 12 month subscription discount whereby Participants will be charged a discounted fee of \$40,000 per year when they purchase 12 month subscriptions to both the Simple Order Report and the Complex Order Report. Participants with an existing 12 month subscription to either the Simple Order Report or the Complex Order Report, but not both, may add a subscription to the Simple Order Report or Complex Order Report during their current 12 month subscription. In such case, the fee for the added Report will be pro-rated for the remainder of the Participant's current 12 month subscription based on the amount of the 12 month subscription discount. Participants would then receive the 12 month subscription discount for subscribing to both Reports on the renewal date of their original subscription if desired.

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,⁸ 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 also believes that its proposal to adopt fees for the Simple Order Report and the Complex Order Report is consistent with Section 6(b) of the

⁸ 15 U.S.C. 78f(b)(4) and (5).

Act⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁰ in particular, in that it is an equitable allocation of dues, fees and other charges among its Participants and other recipients of Exchange data.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the Simple Order Report and the Complex Order Report further broaden the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The Simple Order Report and the Complex Order Report also promote increased transparency through the dissemination of the Simple Order Report and the Complex Order Report. Particularly, the Simple Order Report and the Complex Order Report will benefit investors by facilitating their prompt access to the value-added information that is included in the Simple Order Report and the Complex Order Report. The Simple Order Report and Complex Order Report will allow Participants to access information regarding their trading activity that they may utilize to evaluate their own trading behavior and order interactions.

The Exchange 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 15% of the market share and currently the Exchange represents only approximately 5.68% of the market share.¹¹ The Commission has repeatedly

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ See Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (March 18, 2022), available at https://markets.cboe.com/us/options/market_statistics/.

expressed its preference for competition over regulatory intervention in determining 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.”¹² Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchange’s data product as more attractive than the competition, that market participant can, and often does, switch between similar products. The proposed fees are a result of the competitive environment of the U.S. options industry as the Exchange seeks to adopt fees to attract purchasers of the recently established Simple Order Report and Complex Order Report.

The Exchange believes the proposed fees are reasonable as the proposed fees are similar to fees assessed by another exchange that provides similar data products.¹³ The Exchange notes that if market participants viewed the proposed fees discussed herein as excessively high, then the proposed fees would simply serve to reduce demand for the Exchange’s data product, which as noted, is entirely optional. Other options exchanges are also free to introduce their own comparable data products with lower prices to better compete with the Exchange’s offering. As

¹² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹³ See Securities Exchange Act Release 34-94384 (March 9, 2022), 87 FR 14598 (March 15, 2022) (SR-MIAX-2022-11). See also Miami International Securities Exchange, LLC (“MIAX”) Fee Schedule, Section 7, Reports. The Exchange notes that the proposed fees are identical to the fees assessed at MIAX. See also Securities Exchange Act Release 34-94386 (March 9, 2022), 87 FR 14603 (March 15, 2022) (SR-Emerald-2022-08).

such, the Exchange believes that the proposed fees are reasonable and set at a level to compete with other options exchanges that may choose to offer similar reports. Moreover, if a market participant views another exchange's potential report as more attractive, then such market participant can merely choose not to purchase the Exchange's Simple Order Report and Complex Order Report and instead purchase another exchange's similar data product, which may offer similar data points, albeit based on that other market's trading activity.

The Exchange also believes providing an annual subscription for an overall lower fee than a monthly subscription is equitable and reasonable because it would enable the Exchange to gauge long-term interest in the Simple Order Report and the Complex Order Report. A lower annual subscription fee would also incentivize Participants to subscribe to the Simple Order Report and the Complex Order Report on a long-term basis, thereby improving the efficiency by which the Exchange may deliver the Simple Order Report and Complex Order Report by doing so on a regular basis over a prolonged and set period of time. The Exchange notes that other exchanges provide annual subscriptions for reports concerning their data product offerings.¹⁴

Another exchange also offers a further 12 month discount for subscribers of both the Simple Order Report and the Complex Order Report which the Exchange proposes to adopt as well. The Exchange is proposing to apply this discount for any period during which a Participant subscribes to both reports and then renews if desired at the discounted rate on the anniversary date of the first subscription. For example, assume "Participant A" previously subscribed to the Simple Order Report on September 1, 2021 and paid \$24,000 for a 12 month subscription to the Simple Order Report. Participant A's current subscription expires on August 31, 2022 for the

¹⁴ See MIAX Fee Schedule, Section 7, Reports. The Exchange also notes that Cboe Exchange, Inc. assesses a \$24,000 annual fee for an intra-day subscription to Open-Close Data. See https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf.

Simple Order Report. Before Participant A's subscription to the Simple Order Report expires, Participant A decides to subscribe to the Complex Order Report, beginning March 1, 2022. Rather than being immediately charged \$40,000 for the 12 month subscription discount for subscribing to both Reports (Participant A already paid \$24,000 upfront for the Simple Order Report 12 month subscription), Participant A would only be charged an additional \$8,000 to add the Complex Order Report for the remaining months of Participant A's current 12 month subscription to the Simple Order Report. On September 1, 2022, assuming Participant A decided to keep both Reports, Participant A would then be charged the 12 month discounted rate of \$40,000 for both Reports for the next year. The Exchange proposes to determine the pro-rated fee described above as follows: on the date that Participant A wanted to begin subscribing to the Complex Order Report (March 1, 2022), there were six months remaining on Participant A's existing 12 month subscription to the Simple Order Report (March, April, May, June, July and August). The added cost would be calculated as $(6 \text{ months remaining} / 12 \text{ months total}) * (\$40,000 \text{ discounted annual subscription for both Reports} - \$24,000 \text{ for annual subscription to each Report individually}) = \$8,000$ for remaining 6 months. Beginning September 1, 2022 (the original renewal date for the Simple Order Report), Participant A would then be charged the discounted 12 month subscription rate of \$40,000, assuming Participant A renews their subscriptions to both the Simple Order Report and the Complex Order Report.

The Exchange also believes the proposed fees are reasonable as they would support the introduction of new market data products to Participants that are interested in gaining insight into latency in connection with orders that failed to execute against an order resting on the Exchange's Book and Complex Order Book. The Simple Order Report and the Complex Order Report accomplish this by providing those Participants data to analyze by how much time their

order may have missed an execution against a contra-side order resting on the Book or the Complex Order Book. Participants may use this data to optimize their models and trading patterns in an effort to yield better execution results by calculating by how much time their order may have missed an execution.

Selling market data, such as the Simple Order Report and Complex Order Report, is also a means by which exchanges compete to attract business. To the extent that the Exchange is successful in attracting subscribers for the Simple Order Report and Complex Order Report, it may earn trading revenues and further enhance the value of its data products. If the market deems the proposed fees to be unfair or inequitable, firms can diminish or discontinue their use of the data and/or avail themselves of similar products offered by other exchanges.¹⁵ The Exchange therefore believes that the proposed fees for the Simple Order Report and Complex Order Report reflect the competitive environment and would be properly assessed on Participant users. The Exchange also believes the proposed fees are equitable and not unfairly discriminatory as the fees would apply equally to all users who choose to purchase such data. It is a business decision of each Participant that chooses to purchase the Simple Order Report and/or the Complex Order Report. The Exchange's proposed fees would not differentiate between subscribers that purchase the Simple Order Report and the Complex Order Report and are set at a modest level that would allow any interested Participant to purchase such data based on their business needs.

The Exchange reiterates that the decision as to whether or not to purchase the Simple Order Report and/or the Complex Order Report is entirely optional for all potential subscribers. Indeed, no market participant is required to purchase the Simple Order Report or the Complex

¹⁵ See supra note 13.

Order Report, and the Exchange is not required to make the Simple Order Report or the Complex Order Report available to all investors. It is entirely a business decision of each Participant to subscribe to the Simple Order Report and/or the Complex Order Report. The Exchange will offer the Simple Order Report and the Complex Order Report as a convenience to Participants to provide them with additional information regarding trading activity on the Exchange on a delayed basis after the close of regular trading hours. A Participant that chooses to subscribe to the Simple Order Report and/or the Complex Order Report may discontinue receiving the Simple Order Report and/or the Complex Order Report at any time if that Participant determines that the information contained in the Simple Order Report and/or the Complex Order Report is no longer useful.

Lastly, the Exchange is also proposing to rename current Section III.C of the BOX Fee Schedule from “Open-Close Data Report” to “Reports,” and to move current Section III.C (Open-Close Data Report) to new Section III.C.1.¹⁶ The Exchange believes that moving current Section III.C. to new Section III.C.1 and renaming Section III.C “Reports” is reasonable as it will improve the overall readability of the BOX Fee Schedule and help prevent investor confusion because the fees for all market data reports will reside in one place in the BOX Fee Schedule.

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 will make the Simple Order Report and the Complex Order Report available in order

¹⁶ The Exchange notes that no changes are being made to the Open-Close Data Report fees. The Exchange is simply rearranging the Fee Schedule to account for more market data products being offered by BOX.

to keep pace with changes in the industry and evolving customer needs and demands, and believes the data products will contribute to robust competition among national securities exchanges. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange also does not believe the proposed fees would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own comparable data product with lower prices to better compete with the Exchange's offerings. The Exchange operates in a highly competitive environment, and its ability to price the Simple Order Report and the Complex Order Report is constrained by competition among exchanges who choose to adopt a similar product. The Exchange must consider this in its pricing discipline in order to competitively offer market data products. For example, proposing fees that are excessively higher than fees for potentially similar data products would simply serve to reduce demand for the Exchange's data products, which as discussed, market participants are under no obligation to utilize. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed fees apply uniformly to any purchaser in that the Exchange does not differentiate between subscribers that purchase the Simple Order Report and/or the Complex Order Report. The proposed fees are set at a modest level that would allow any interested Participant to purchase such data based on their business needs.

The Exchange also believes providing a 12 month discounted fee for subscribers of both the Simple Order Report and the Complex Order Report is equitable and reasonable because it would enable the Exchange to gauge long-term interest in both Reports. The Exchange believes that a lower annual combined subscription fee may incentivize Participants to subscribe to both Reports on a long-term basis, thereby allowing the Exchange to better gauge demand for both Reports over a longer period of time. Doing so will enable the Exchange to better predict the future demand for both Reports. This will allow the Exchange to better prepare and adjust resources for the production and delivery of both Reports to Participants, improving the efficiency by which the Exchange may deliver both Reports over a prolonged and set period of time. The Exchange also believes that it is reasonable, equitable and not unfairly discriminatory to offer a 12 month discounted fee for Participants that subscribe to both Reports because all Participants may subscribe to both Reports and receive the discounted rate.

Lastly, the Exchange does not believe that the proposed change to rename current Section III.C of the BOX Fee Schedule from “Open-Close Data Report” to “Reports,” and to move current Section III.C (Open-Close Data Report) to new Section III.C.1 will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. This proposed clarifying change has no competitive purpose and is only intended to improve the overall readability of the BOX Fee Schedule and help prevent investor confusion by including the fees for all market data reports in one place in the BOX Fee Schedule.

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 Act¹⁷ and Rule 19b-4(f)(2) thereunder,¹⁸ 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. Please include File Number SR-BOX-2022-20 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.

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁸ 17 CFR 240.19b-4(f)(2).

All submissions should refer to File Number SR-BOX-2022-20. 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 the 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-2022-20, 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.¹⁹

J. Matthew DeLesDernier,
Assistant Secretary.

¹⁹ 17 CFR 200.30-3(a)(12).