



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99400; File No. SR-BOX-2024-04]

### **Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fee Schedule for Trading on the BOX Options Market LLC Facility to Decrease Certain Electronic Non-Auction Transaction Fees**

January 19, 2024.

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 January 12, 2024, BOX Exchange LLC (“Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,<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 the Fee Schedule on the BOX Options Market LLC (“BOX”) options facility. 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 <https://rules.boxexchange.com/rulefilings>.

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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 IV.A (Non-Auction Transactions) of the BOX Fee Schedule. The Exchange proposes to decrease Professional Customer and Broker Dealer maker fees on transactions in Penny Interval Classes and SPY where the contra party is a Public Customer.

In Section IV.A of the BOX Fee Schedule, fees and credits for electronic Non-Auction Transactions are assessed depending on three factors: (i) the account type of the Participant submitting the order; (ii) whether the Participant is a liquidity provider or liquidity taker; and (iii) the account type of the contra party. Currently, when a Professional Customer or Broker Dealer Penny Interval Class or SPY order is a liquidity maker contra to a Public Customer, the Professional Customer or Broker Dealer is assessed a fee of \$0.60. The Exchange now proposes to decrease Professional Customer and Broker Dealer maker fees on Penny Interval Classes and SPY electronic Non-Auction Transactions contra to a Public Customer.

Accordingly, when a Professional Customer or Broker Dealer order in a Penny Interval Class or SPY is a liquidity maker contra to a Public Customer, the Professional Customer or Broker Dealer will be assessed a fee of \$0.50.

The Exchange notes that the proposed fees are comparable in amount with the fees at several other exchanges.<sup>5</sup> The Exchange believes that the proposed changes are reasonable and competitive when compared to other exchanges and that the changes will attract order flow, thus improving the markets on BOX to the benefit of all Participants.

## 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,<sup>6</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 its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange notes that it operates in a highly competitive environment. Indeed, there are currently 17 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 17% of the market share and currently the Exchange represents only approximately 7% of the market share.<sup>7</sup> The Commission has repeatedly 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.”<sup>8</sup> As stated above, the Exchange operates in a highly competitive

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<sup>5</sup> See e.g., NYSE American LLC Options Fee Schedule, Section I (“Options Transaction Fees and Credits” applicable to Penny for Broker-Dealer and Professional Customer of \$0.50); Cboe EDGX Exchange, Inc. Fee Schedule (“Transaction Fees” applicable to Penny Program Securities for Away Market Maker, Broker Dealer, and Professional of \$0.48); Miami International Securities Exchange, LLC Fee Schedule (“Transaction Fees” applicable to Penny Classes for Public Customer that is Not a Priority Customer, Non-MIAX Market Maker, and Non-Member Broker-Dealer of \$0.47).

<sup>6</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>7</sup> See Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (December 13, 2023), available at [https://markets.cboe.com/us/options/market\\_statistics/](https://markets.cboe.com/us/options/market_statistics/).

<sup>8</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed fee changes reflect a competitive pricing structure designed to attract Professional Customer and Broker Dealer electronic non-auction order flow to BOX.

The Exchange believes the proposed electronic Non-Auction Transaction fees for Professional Customer and Broker Dealer Penny Interval Class and SPY transactions contra to Public Customers are reasonable as the proposed fees are comparable to similar transaction fees assessed at other exchanges.<sup>9</sup> The Exchange further believes that the proposed Professional Customer and Broker Dealer Penny Interval Class and SPY transaction fees will attract order flow because the reduced fees will be competitive with other exchanges. The Exchange notes that other exchanges assess fees between \$0.47 and \$0.50 for Professional Customer and Broker Dealer transactions in Penny Interval Classes, including SPY.<sup>10</sup>

The Exchange believes that assessing Professional Customers and Broker Dealers \$0.50 for Penny Interval Class and SPY electronic Non-Auction Transactions contra to Public Customers is equitable and not unfairly discriminatory. The Exchange notes that Market Maker maker fees assessed for Penny Interval Classes contra to Public Customers for electronic Non-Auction Transactions are \$0.50 and Market Maker maker fees assessed for SPY contra to Public Customers for electronic Non-Auction Transactions are \$0.00. Thus, Professional Customer, Broker Dealer, and Market Maker maker fees in Penny Interval Classes contra to Public Customers for electronic Non-Auction Transactions will be the same.

The Exchange notes that Professional Customer and Broker Dealer maker fees for Penny Interval Classes and SPY contra to Public Customers for electronic Non-Auction Transactions will remain higher than Public Customer transactions where the contra party is another Public Customer. The securities markets generally, and BOX in particular, have historically aimed to

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<sup>9</sup> See supra note 5.

<sup>10</sup> Id.

improve markets for investors and develop various features within the market structure for Public Customer benefit. Accordingly, the Exchange believes that charging a lower fee for Public Customers compared to other account types on BOX is appropriate and not unfairly discriminatory. The Exchange believes that charging a lower fee for Public Customers will attract a high level of Public Customer order flow and create liquidity which will ultimately benefit all Participants trading on BOX.

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow and discontinue or reduce use of certain categories of products in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated differently, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow. The Exchange believes the proposed changes are a reasonable attempt to effectively compete for electronic non-auction Professional Customer and Broker Dealer orders. The Exchange believes that the proposed change may incentivize Professional Customer and Broker Dealer order flow and, in turn, may make BOX a more competitive venue for order execution to the benefit of all Participants. Finally, the Exchange believes the proposed changes are consistent with the Act because, to the extent the modifications permit the Exchange to continue to attract greater volume and liquidity, the proposed changes would improve BOX's overall competitiveness and strengthen market quality for all market participants.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes the proposed changes to Professional Customer and Broker Dealer maker fees for Penny Interval Classes and SPY contra to Public Customers in the electronic Non-Auction Transactions fee structure will not impose a burden on intramarket competition as BOX believes that the changes will result in Professional Customers and Broker Dealers being charged

appropriately for their Penny Interval Class and SPY maker transactions contra to Public Customers. The proposed change would apply to all similarly situated market participants and, accordingly, the proposed change would not impose a disparate burden on competition among Participants on BOX. The proposed change is designed to compete with other options exchanges and to attract order flow. The Exchange notes that Public Customer fees remain lower than Professional Customer, Broker Dealer, and certain Market Maker fees because BOX has historically aimed to improve markets for investors and develop various features within the market structure for Public Customer benefit.<sup>11</sup> The Exchange believes further the proposed changes to Professional Customer and Broker Dealer Penny Interval Class and SPY maker fees contra to Public Customers in the electronic Non-Auction Transactions fee structure will not impose a burden on intermarket competition. The Exchange notes that the Non-Auction Transaction fee structure as a whole, including the proposed change, is designed to be competitive with other options exchanges and to attract order flow. The Exchange believes the electronic Non-Auction Transactions fee structure, including the proposed change, will remain competitive with other options exchanges.<sup>12</sup>

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. Because competitors are free to modify their own fees and rebates in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee or rebate changes in this market may impose any burden on competition is extremely limited. For the reasons described above, the Exchange believes that the proposed rule change will encourage intermarket competition.

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<sup>11</sup> The Exchange notes that Public Customer fees remain lower than Market Maker fees, with the exception of Market Maker maker fees contra to Non-Public Customers for electronic Non-Auction Transactions, as well as Market Maker maker fees contra to Public Customers assessed in SPY for electronic Non-Auction Transactions. Similar to Public Customers, Market Makers are assessed no fee for the above transactions.

<sup>12</sup> See supra note 5.

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>13</sup> and Rule 19b-4(f)(2) thereunder,<sup>14</sup> because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-BOX-2024-04 on the subject line.

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

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-2024-04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-BOX-2024-04 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

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<sup>15</sup> 17 CFR 200.30-3(a)(12).

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024-01392 Filed: 1/24/2024 8:45 am; Publication Date: 1/25/2024]