

finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.¹² In particular, the Commission finds that the proposed rule changes are consistent with Section 6(b)(5) of the Act,¹³ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Commission finds that the proposed “substantially all” standard is a limited and sufficiently-defined modification to the Programs’ current RMO attestation requirements that does not constitute a significant departure from the Programs as initially approved by the Commission.¹⁴ The proposals make clear that to comply with the standard, RMOs may submit only isolated and *de minimis* amounts of agency orders that cannot be segregated from Retail Orders due to systems limitations.¹⁵ Furthermore, as the Exchanges note, RMOs will need to adequately document their compliance with the “substantially all” standard in their books and records. Specifically, an RMO would need to retain adequate documentation that substantially all orders sent to the Exchanges as Retail Orders met that definition, and that those orders not meeting that definition are agency orders that cannot be segregated from Retail Orders due to system limitations, and are *de minimis* in terms of the overall number of Retail

¹² In approving the proposals, the Commission has considered the proposed rules’ impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ The Commission notes that it approved the Programs on a pilot basis subject to ongoing Commission review.

¹⁵ While the Commission recognizes the potential benefit of the commenter’s suggestion concerning a bright-line definition of *de minimis*, see *supra* note 11, the Commission believes that, in light of the facts surrounding the instant proposals, the proposals, and the guidance that the Exchanges will provide to their members on this point, are sufficiently clear. The Commission also notes that the example the commenter cites is found in Regulation M, which governs different circumstances than those at issue here.

Orders sent to the Exchanges. The Commission also notes that FINRA will monitor an RMO’s compliance with this requirement.

Additionally, the Commission finds that the Exchanges have provided adequate justification for the proposals. The Exchanges represented that, as several significant retail brokers explained to them, the current “any order” standard is effectively prohibitive, given the brokers’ order flow aggregation and management systems. The Exchanges further represented that these retail brokers indicated their systems would allow them to comply with the “substantially all” standard, as proposed. By allowing these retail brokers to participate in the Programs, the proposals could bring the potential benefits of the Programs, including price improvement and increased transparency,¹⁶ to the retail order flow that these brokers represent.¹⁷

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rules changes (SR-NYSE-2013-08; SR-NYSEMK-2013-07) be, and hereby are, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Kevin M. O’Neill,

Deputy Secretary.

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¹⁶ For a more detailed discussion of the Program’s potential benefits, see RLP Approval Order, *supra* note 7.

¹⁷ The commenter also expressed concern that this proposal may increase the burden upon the Exchanges in monitoring compliance with the Programs. The Commission finds that any potential concerns raised by this assertion, which are disputed by the Exchanges, are outweighed by the potential benefits of the proposals; namely, that the proposals may allow more retail orders the opportunity to participate in the Programs and receive the attendant benefits of the Programs. With respect to the commenter’s concern that members may be subject to unfair discrimination in the approval and disqualification process for participation in the Programs, the Commission notes that it previously found that the Programs’ provisions concerning the certification, approval, and potential disqualification of RMOs and Retail Liquidity Providers are not inconsistent with the Act. See RLP Approval Order, *supra* note 7.

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(83).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69512; File No. SR-BOX-2013-23]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing of Proposed Rule Change To Provide for the Manner in Which Mini Options Will Trade as a Complex Order Pursuant to BOX Rule 7240

May 3, 2013.

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 2, 2013, BOX Options Exchange LLC (the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

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

The Exchange proposes to amend BOX Rule 7240 (Complex Orders). 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 Web site 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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to provide for the manner in which Mini Options will trade as a Complex Order pursuant to BOX Rule

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

7240. The Exchange previously filed to list and trade Mini Options.³ Whereas standard options contracts represent a deliverable of 100 shares of an underlying security, Mini Options contracts represent a deliverable of 10 shares. Except for the difference in the number of deliverable shares, Mini Options have the same terms and contract characteristics as regular-sized equity and ETF options, including exercise style. Accordingly, the Exchange noted in its Mini Options filing that Exchange rules that apply to the trading of standard options contracts would apply to Mini Option contracts as well.⁴

Prior to the launch of its new Complex Order Book,⁵ the Exchange proposes to amend Rule 7240 (Complex Orders) to provide that while Participants may execute complex orders involving Mini Options, if any leg of a complex order is a Mini Option contract, all options legs of such orders must also be Mini Option contracts.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),⁶ in general, and Section 6(b)(5) of the Act,⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Specifically, the Exchange believes that investors and other market participants would benefit from the current rule proposal because it provides that market participants may take advantage of legitimate investment strategies and execute complex orders involving Mini Options. Additionally, the Exchange believes the proposed rule change will avoid investor confusion by providing how Mini Options will trade

as compared to standard options with respect to Complex Orders.

The Exchange's proposal to permit Mini Options to trade as Complex Orders provided the strategy does not combine Mini Options and standard options serves to maintain the permissible ratios that are applicable to Complex Orders by separating the trading of standard Complex Orders and Mini Options Complex Orders.

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. All Participants may transact Complex Orders on BOX. The rule change does not permit unfair discrimination and does not impose a burden on Participants with respect to trading Mini Options.

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

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)⁸ of the Act and Rule 19b-4(f)(6)⁹ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) of the Act¹⁰ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii) of the Act,¹¹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested the Commission

to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. In January 2013, the Exchange filed a proposed rule change to amend its rules to list and trade certain mini-options contracts on the Exchange, and represented in that filing that the Exchange's rules that apply to the trading of standard options contracts would apply to mini-options contracts.¹² The Exchange has represented that it intends to launch its new complex order book, on which mini-options contracts may trade as components of complex orders, on May 3, 2013. The Exchange believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would minimize confusion among market participants about how complex orders involving mini-options contracts will trade.¹³

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Such waiver would allow the Exchange to implement the proposed rule change prior to the launch of its new complex order book on May 3, 2013, thereby mitigating potential investor confusion as to how complex orders involving mini-options contracts will trade. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.¹⁴

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

³ See Securities Exchange Act Release No. 68771 (January 30, 2013), 78 FR 8208 (February 5, 2013) (Notice of Filing and Immediate Effectiveness of SR-BOX-2013-07). The Exchange began trading Mini Options on March 18, 2013.

⁴ *Id.*

⁵ See Securities Exchange Act Release No. 69419 (April 19, 2013), 78 FR 24449 (April 25, 2013) (Approving SR-BOX-2013-01). The Exchange expects to launch its new Complex Order Book on May 3, 2013.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of the filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

¹² See Securities Exchange Act Release No. 68771 (January 30, 2013), 78 FR 8208 (February 5, 2013) (SR-BOX-2013-07).

¹³ See SR-BOX-2013-23, Item 7.

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 email to rule-comments@sec.gov. Please include File Number SR-BOX-2013-23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BOX-2013-23. 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 Web site (<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 Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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-2013-23, and should be submitted on or before May 30, 2013.

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

Kevin M. O'Neill,

Deputy Secretary.

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¹⁵ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69505; File No. SR-EDGA-2013-12]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGA Exchange, Inc. Fee Schedule

May 3, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 1, 2013, EDGA Exchange, Inc. (the "Exchange" or "EDGA") 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 self-regulatory organization. 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 its fees and rebates applicable to Members³ of the Exchange pursuant to EDGA Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at www.directedge.com, at the Exchange's principal office, and at the Public Reference Room of the Commission.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ As defined in Exchange Rule 1.5(n).

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

1. Purpose

In securities priced at or above \$1.00, the Exchange currently provides a rebate of \$0.0002 per share for Members' orders that yield Flag BY, which routes to BATS BYX ("BYX") and removes liquidity using routing strategies ROUC, ROUE, ROBY, ROBB or ROCO.⁴ The Exchange proposes to amend its fee schedule to increase the rebate it provides Members from \$0.0002 per share to \$0.0005 per share for Flag BY. The proposed change represents a pass through of the rate that Direct Edge ECN LLC (d/b/a DE Route) ("DE Route"), the Exchange's affiliated routing broker-dealer, is rebated for adding an average volume of 50,000 shares per day on BYX.⁵ DE Route passes through the rebate to the Exchange and the Exchange, in turn, passes through the rebate to its Members. The Exchange notes that the proposed change is in response to BYX's April 2013 fee filing with the Commission, wherein BYX increased the rate it rebates its customers, such as DE Route, from \$0.0002 per share to a rebate of \$0.0005 per share for orders that are routed to BYX and add a daily volume of at least 50,000 shares and remove liquidity.⁶

In securities priced at \$1.00 or above, the Exchange currently assesses a charge of \$0.0005 per share for Members' orders that yield Flag RY, which routes to BYX and adds liquidity. The Exchange proposes to amend its fee schedule to increase the rate it charges Members from \$0.0005 per share to \$0.0007 per share for Flag RY. The proposed change represents a pass through of the rate that DE Route is charged for routing orders to BYX that do not qualify for additional volume tiered discounts.⁷ DE Route passes through the charge to the Exchange and the Exchange, in turn, passes through the charge to its Members. The Exchange notes that the proposed change is in response to BYX's April 2013 fee filing with the Commission,

⁴ As defined in Exchange Rule 11.9(b)(2).

⁵ The Exchange notes that to the extent DE Route does or does not achieve any volume tiered rebate on BYX, its rate for Flag BY will not change.

⁶ See Securities Exchange Act Release No. 69317 (April 5, 2013), 78 FR 21651 (April 11, 2013) (SR-BYX-2013-012) (amending the rebate BYX provides for removing liquidity from the BYX order book for executions by members that add a daily average volume of at least 50,000 shares from \$0.0002 per share to \$0.0005 per share).

⁷ The Exchange notes that to the extent DE Route does or does not achieve any volume tiered rebate on BYX, its rate for Flag RY will not change.