

Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b-1 under the Act) received from a Fund by the Investing Fund Adviser, Trustee or Sponsor, or an affiliated person of the Investing Fund Adviser, Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Adviser, Trustee, or Sponsor, or its affiliated person by the Fund, in connection with the investment by the Investing Fund in the Fund. Any Investing Fund Sub-Adviser will waive fees otherwise payable to the Investing Fund Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Investing Fund Sub-Adviser, or an affiliated person of the Investing Fund Sub-Adviser, other than any advisory fees paid to the Investing Fund Sub-Adviser or its affiliated person by the Fund, in connection with any investment by the Investing Management Company in the Fund made at the direction of the Investing Fund Sub-Adviser. In the event that the Investing Fund Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an Affiliated Underwriting.

7. The Board, including a majority of the disinterested trustees, will adopt procedures reasonably designed to monitor any purchases of securities by a Fund in an Affiliated Underwriting, once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Fund. The Board will consider, among other things: (a) whether the purchases were consistent with the investment objectives and policies of the Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities

purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limits in section 12(d)(1)(A), each Investing Fund and the Fund will execute an Investing Fund Participation Agreement stating, without limitation, that their respective boards of directors or trustees and their investment advisers, or Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list of names as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the Investing Fund Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the

board of directors or trustees of each Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to an Investing Fund as set forth in Conduct Rule 2830 of the NASD.

12. No Fund will acquire securities of an investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69599; File No. SR-BOX-2013-28]

### Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Create a New Fee Structure for Complex Orders on the BOX Market LLC Options Facility

May 16, 2013.

Pursuant to Section 19(b)(1) under 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 May 16, 2013, BOX Options Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission (the "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

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 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 to create a new fee structure for Complex Orders on the BOX Market LLC ("BOX") options facility. Changes to the fee schedule pursuant to this proposal will be effective upon filing. 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 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, Proposed Rule Change*

#### **1. Purpose**

The Exchange proposes to amend the Fee Schedule for trading on BOX to create a new fee structure for Complex Orders. The Exchange recently amended its rules related to trading Complex Orders<sup>5</sup> on BOX. In particular, the Exchange amended the BOX Rules to facilitate interaction on a continuous and real-time basis among orders on BOX, consisting of Complex Orders on

the Complex Order Book<sup>6</sup> and interest on the BOX Book.<sup>7</sup> The Exchange is submitting this filing to describe the fees that are applicable to Complex Order transactions.

First, the Exchange proposes to establish a new section (Section III. Complex Order Transaction Fees) in the BOX Fee Schedule to detail the fee and credit structure for Complex Order executions (the "Complex Order Fees"). The remaining sections of the Fee Schedule (Eligible Orders Routed to an Away Exchange, Technology Fees, and Regulatory Fees) will be renumbered accordingly.

The Exchange then proposes to specify that the Complex Order Fees will be applied per contract per leg to all executions of Complex Orders. Executions of Complex Orders will not be subject to Sections I (Exchange Fees) and II (Liquidity Fees and Credits), and Complex Orders for Mini Options orders will be assessed 1/10th of the otherwise applicable Complex Order Fees.

The Exchange also proposes to count all Complex Order transactions by Market Makers toward their monthly average daily volume "ADV" as outlined in Section I.B. (Exchange Fees). BOX currently gives volume incentives for standard transaction fees to Market Makers that, on a daily basis, trade an average daily volume, as calculated at the end of the month, of more than 5,000 contracts on BOX. The Exchange notes that the Options Regulatory Fee outlined in Section V (Regulatory Fees) will apply to Complex Order Fees.<sup>8</sup>

The Exchange then proposes that Complex Order Fees will be determined according to whether the Complex Order executes against orders on the BOX Book or against another Complex Order and according to the account types of the Participant submitting the Complex Order and the contra party.

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

<sup>5</sup> "Complex Order" is defined as "any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy." See Securities Release No. 69419 (April 19, 2013), 78 FR 24449 (April 25, 2013) (SR-BOX-2013-01).

<sup>6</sup> "Complex Order Book" is defined as "the electronic book of Complex Orders maintained by the BOX Trading Host." See proposed Rule 7240(a)(6).

## **Complex Orders Executed Against Orders on the BOX Book**

In proposed Section III.A, Complex Orders Executed Against Orders on the BOX Book, the Exchange proposes to adopt a fee or credit based on the Participant's Account Type.<sup>9</sup> This fee structure will apply when a Complex Order executes against an order on the BOX Book. In these transactions the Exchange proposes to credit \$0.35 per contract per leg for Complex Orders executed by Public Customers, assess a fee of \$0.45 per contract per leg for Complex Orders executed by Professional Customers and Broker Dealers, and assess a fee of \$0.40 per contract per leg for Complex Orders executed by Market Makers.

For example, if a Professional Customer's Complex Order A+B executes against orders on the BOX Book, the Professional Customer will be charged \$0.90 (\$0.45 for A, plus \$0.45 for B). A Public Customer executing Complex Order A+B will receive a credit of \$0.70 (\$0.35 for A, plus \$0.35 for B).

## **Complex Orders Executed Against Other Complex Orders**

In proposed Section III.B, Complex Orders Executed Against Other Complex Orders, the Exchange proposes to adopt a fee or credit based on the Participant's account type and the contra party's account type. In these transactions, Complex Orders in penny pilot classes will be assessed a lower fee than those in non-penny pilot classes. This fee structure will apply when a Complex Order executes against another Complex Order on the Complex Order Book.

Specifically, the Exchange proposes to assess a distinct fee or credit, on a per contract per leg basis, for Complex Orders executed against another Complex Order on the Complex Order Book by each of Public Customers, Professional Customers, Broker Dealers and Market Makers depending upon the contra order account type in the transaction.

The Exchange proposes the fees and credits set forth in the table below (and included in proposed Section III.B) when Complex Orders execute against other Complex Orders on the Complex Order Book:

<sup>7</sup> "BOX Book" (also the "Central Order Book") is defined as "the electronic book of orders on each single series of options maintained by the BOX Trading Host." See proposed Rule 100(a)(10).

<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).

Account type	Contra party	Penny pilot classes	Non-Penny pilot classes
<i>Public Customer</i> .....	<i>Public Customer</i> .....	\$0.00	\$0.00
	<i>Professional Customer/Broker Dealer/Market Maker</i> .....	(0.35)	(0.70)
<i>Professional Customer</i> .....	<i>Public Customer</i> .....	0.45	0.80
	<i>Professional Customer/Broker Dealer/Market Maker</i> .....	0.20	0.40
<i>Broker Dealer</i> .....	<i>Public Customer</i> .....	0.45	0.80
	<i>Professional Customer/Broker Dealer/Market Maker</i> .....	0.20	0.40
<i>Market Maker</i> .....	<i>Public Customer</i> .....	0.40	0.75
	<i>Professional Customer/Broker Dealer/Market Maker</i> .....	0.10	0.20

For example, if a Professional Customer's Complex Order A+B in a penny pilot class executes against a Public Customer's Complex Order on the Complex Order Book, the Professional Customer will be charged \$0.90 (\$0.45 for A, plus \$0.45 for B) and the Public Customer will receive a \$0.70 credit (\$0.35 for A, plus \$0.35 for B). To expand upon this example, if the Professional Customer's same Complex Order is executed against a Market Maker's Complex Order on the Complex Order Book, the Professional Customer will be charged \$0.40 (\$0.20 for A, plus \$0.20 for B) and the Market Maker will be charged \$0.20 (\$0.10 for A, plus \$0.10 for B).

#### Orders on BOX Book Executed Against Complex Orders

In proposed Section III.C, Orders on BOX Book Executed Against Complex Orders, the Exchange proposes to clarify that orders on the BOX Book that execute against Complex Orders will be treated as standard orders for purposes of the Fee Schedule and continue to be subject to Sections I (Exchange Fees) and II (Liquidity Fees and Credits).

#### 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>10</sup> in general, and Sections 6(b)(4) and 6(b)(5) of the Act,<sup>11</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 believes that the proposed Complex Order Fees are reasonable, equitable and non-discriminatory. In particular, the proposed Complex Order Fees will allow the Exchange to be competitive with other exchanges and to apply fees and credits in a manner that is equitable among all BOX Participants. The Exchange operates within a highly competitive market in which market

participants can readily direct order flow to any other competing exchange if they determine fees at a particular exchange to be excessive. The proposed Complex Order Fees are intended to attract Complex Orders to the Exchange by offering market participants incentives to submit their Complex Orders to the Exchange. The Exchange believes it is appropriate to provide incentives for market participants to submit Complex Orders, resulting in greater liquidity and ultimately benefiting all Participants trading on the Exchange.

The Exchange believes that exempting Complex Orders from Section I (Exchange Fees) and Section II (Liquidity Fees and Credits) is reasonable, equitable and not unfairly discriminatory. The proposed Complex Order Fees are meant to take the place of Exchange Fees for Complex Order transactions. The Exchange's Liquidity Fees and Credits are intended to attract order flow to the Exchange by offering incentives to all market participants to submit orders to the Exchange and the Exchange believes that the proposed Complex Order fee structure will provided appropriate incentives to encourage Participants to submit Complex Orders. The Exchange believes that exempting Complex Orders from liquidity fees and credits is reasonable compared to the similar fees and credits offered by the other exchanges. The Exchange believes exempting Complex Orders from liquidity fees and credits is not unfairly discriminatory as the exemption of Complex Order transactions from exchange fees and liquidity fees and credits applies equally to all Participants on the Exchange.

The Exchange proposes Complex Order Fees in Mini Options at a rate that is 1/10th the rate of the otherwise applicable Complex Order Fees outlined above. The Exchange believes the proposed Complex Order Fees applicable to Mini Options are reasonable and equitable in light of the fact that Mini Options have a smaller exercise and assignment value, 1/10th that of a standard option contract.

Therefore, assessing 1/10th of the otherwise applicable Complex Order Fees is appropriate for Complex Orders involving Mini Options. Furthermore, Mini Options have been approved for trading at several other competing exchanges and market participants can readily direct their Complex Order flow to any these exchanges if they determine the Exchange's Complex Order Mini Option fees to be excessive.

The Exchange also believes it is reasonable, equitable and not unfairly discriminatory to include Complex Order transaction volume in each Market Maker's ADV calculation because doing so will provide the Market Maker with an opportunity to qualify for discounted fees and, therefore, further incentivize these essential Participants to trade more order flow on the Exchange, which the Exchange believes will ultimately benefit all Participants trading on BOX.

Increased Market Maker order flow will also benefit all market participants by deepening the BOX liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange believes that including Complex Order transaction volume in the ADV calculation will provide additional incentive for Market Makers to increase Complex Order volume on BOX. Increased Complex Order volume increases potential revenue to BOX, allowing the Exchange to spread its administrative and infrastructure costs over a greater number of transactions, which could lead to lower costs per transaction. The Exchange believes that the volume based discounts for Market Makers are equitable because they are open to all Market Makers on an equal basis and provide discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes.

With regard to the proposed Complex Order Fees that will be determined

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4) and (5).

according to whether the Complex Order executes against orders on the BOX Book or against another Complex Order and according to the account types of the Participant submitting the Complex Order and the contra party, the Exchange believes this fee structure is reasonable, equitable and non-discriminatory. The Complex Order Fees are competitive with the Complex Order fee structures in place on other exchanges. Specifically the Exchange is proposing to adopt Complex Order Fees similar to the model used by the NYSE Arca, Inc. ("NYSE Arca") that varies the Complex Order fees and credits depending on where the Complex Order executes, and the contra party account type that the Complex Order interacts with.<sup>12</sup> This model was adopted by NYSE Arca in 2012<sup>13</sup> and has been accepted by both the Commission and the industry. For example, a Public Customer executing a Complex Order on NYSE Arca will be charged \$0.45 per contract per leg for penny pilot issues or \$0.82 per contract per leg for non-penny pilot issues if that order executes on the regular order book. However, if the same Complex Order executes against a Complex Order on the exchange's Complex Order Book from a non-Public Customer (Professional Customer, Broker Dealer or Market Maker), the Customer will receive a \$0.39 credit per contract per leg for penny pilot issues and a \$0.75 credit per contract per leg for non-penny pilot issues. The result of this structure is that a NYSE Arca member does not know the fee it will be charged when submitting a Complex Order. Therefore, the member must recognize that it could be charged the highest applicable fee on the exchange's schedule, which may, instead, be lowered or changed to a credit depending how its Complex Order interacts.

The Exchange believes that the proposed Complex Order Fee model is reasonable because a Public Customer submitting Complex Orders on BOX will recognize that it will not pay a fee for these transactions. Depending on where and with whom the Complex Order executes, the Public Customer may receive an additional benefit for submitting the order. Likewise, a Professional Customer or Broker Dealer submitting Complex Orders will recognize that it will not be charged

more than \$0.45 in penny pilot issues and \$0.80 in non-penny pilot issues. The same is true for Market Makers, who will recognize that their maximum charge when submitting a Complex Order will be \$0.40 in penny pilot issues and \$0.75 in non-penny pilot issues.

The Exchange believes it is reasonable and equitable to assess Complex Order Fees based upon issue type, where the Complex Order executes, the account type of the Participant submitting the Complex Order and the contra party account type. The Exchange's Complex Order Fees must be competitive with other exchanges to attract order flow, execute orders and grow its market. The Exchange believes the proposed Complex Order Fees are competitive with both Arca and ISE.<sup>14</sup> The Exchange notes that submitting Complex Orders to BOX is entirely voluntary and that several other competing exchanges possess similar Complex Order functionalities, including Arca. Participants can therefore choose what type of order to submit to BOX, or direct their Complex Order flow to any other exchange if they determine the proposed Complex Order fee structure to be unreasonable.

The Exchange believes it is reasonable and equitable to provide credits for Public Customer Complex Orders and to charge fees to Professional Customers, Broker Dealers and Market Makers when their Complex Orders execute on the BOX Book. The Exchange believes that the proposed \$0.35 credit for Public Customers, \$0.45 fee for Professional Customers and Broker Dealers, and \$0.40 fee for Market Makers strikes an appropriate balance between the fees charged for standard orders and the proposed Complex Order Fees. The Complex Order Fees will continue to encourage Participants to execute Complex Orders by ensuring that they receive similar incentives regardless of where their Complex Order executes. The Exchange believes this will help attract Complex Order flow to the Exchange and create increased liquidity, which will ultimately benefit all Participants trading on BOX. The proposed fees and credits are also competitive with the fees and credits offered for similar transactions on at least one other exchange.<sup>15</sup>

<sup>12</sup> See NYSE Arca Options Schedule of Fees as of May 1, 2013, available at [http://globalderivatives.nyx.com/sites/globalderivatives.nyx.com/files/nysarc\\_options\\_fee\\_schedule\\_050113.pdf](http://globalderivatives.nyx.com/sites/globalderivatives.nyx.com/files/nysarc_options_fee_schedule_050113.pdf).

<sup>13</sup> See Securities Release No. 68405 (December 11, 2012), 77 FR 74719 (December 17, 2012) (SR-NYSEArca-2012-137).

The Exchange believes providing a credit to Public Customers for Complex Orders that execute against orders on the BOX Book is equitable and non-discriminatory. The securities markets generally, and BOX in particular, have historically aimed to improve markets for investors and develop various features within the market structure for customer benefit. Accordingly, the Exchange believes that providing a credit for Public Customer Complex Order transactions is appropriate and not unfairly discriminatory. Public Customers are less sophisticated than other Participants and the credit will help to attract a high level of Public Customer order flow to the Complex Order Book and create liquidity, which the Exchange believes will ultimately benefit all Participants trading on BOX.

The Exchange also believes it is equitable and not unfairly discriminatory for BOX Market Makers to be assessed lower fees than Professional Customers and Broker Dealers for Complex Orders that execute against orders on the BOX Book because of the significant contributions to overall market quality that Market Makers provide. Specifically, Market Makers can provide higher volumes of liquidity and lowering their Complex Order fees will help attract a higher level of Market Maker order flow to the Complex Order Book and create liquidity, which the Exchange believes will ultimately benefit all Participants trading on BOX. As such, the Exchange believes it is appropriate that Market Makers be charged lower Complex Order transaction fees. Market Makers also have additional obligations that are not applicable to Professional Customers and Broker Dealers.

As stated above, the Exchange believes that the Complex Order Fees proposed for Complex Orders that execute against other Complex Orders are reasonable and equitable. The proposed credits and fees are competitive with the credits offered for similar transactions on at least one other exchange.<sup>16</sup>

The Exchange also believes it is reasonable to charge Professional Customers, Broker Dealers, and Market Makers less for executions in penny pilot issues because these classes are typically the more actively traded and assessing lower fees will further incentivize Complex Order transaction in penny pilot issues on the Exchange, ultimately benefiting all Participants trading on BOX. The Complex Order Fees are competitive with the fees and credits offered for similar transactions

<sup>14</sup> See International Securities Exchange Schedule of Fees as of April 1, 2013, available at <http://www.ise.com/assets/documents/OptionsExchange/legal/fee/schedule.pdf>.

<sup>15</sup> For Complex Orders that interact with the regular order book, Arca charges Public Customers \$0.45 or \$0.82 (depending on issue), and charges Broker Dealers \$0.48 or \$0.87 (depending on issue).

<sup>16</sup> See *supra*, notes 12 and 14.

on at least one other exchange.<sup>17</sup> Additionally, the Exchange believes it is reasonable to give a greater credit to Public Customers in Complex Order transactions involving non-penny pilot issues. These classes have wider spreads and are less actively traded; and giving a larger credit will further incentivize Public Customers to trade in these classes. The proposed Public Customer credits are competitive with the credits offered for similar transactions on at least one other exchange.<sup>18</sup>

The Exchange believes that it is equitable and not unfairly discriminatory to exempt Public Customers from Complex Order fees when executing against another Public Customer's Complex Order and provide a credit when the same order executes against other Participant's Complex Orders. As stated above, BOX has historically tried to develop features within the market structure for the benefit of the customer. As such, the Exchange believes that exempting and crediting Public Customer Complex Order transactions is appropriate and not unfairly discriminatory. Public Customers are less sophisticated than other Participants and the Exchange believes exempting and crediting Public Customer Complex Order transactions will help to attract a high level of Public Customer order flow to the Complex Order Book and create liquidity, which will ultimately benefit all Participants trading on BOX. In addition, the proposed fees and credits are competitive with the Complex Order fees and credits on at least one other exchange.<sup>19</sup>

Further, the Exchange believes that the proposed Complex Order Fees for Professional Customers, Broker Dealers, and Market Makers interacting with other Complex Orders are equitable, reasonable and not unfairly discriminatory. Professional Customers, while Public Customers by virtue of not being Broker Dealers, generally engage in trading activity more similar to Broker Dealer proprietary trading accounts (more than 390 standard orders per day on average). The Exchange believes the relative activity of Professional Customers will be

<sup>17</sup> The ISE assesses Professional Customers and Broker Dealers \$0.40 for Complex Order transactions in Penny Names and \$.84 for Complex Order transactions in non-Penny Names.

<sup>18</sup> At the lowest volume tier level, the ISE gives Public Customers a \$0.33 credit for Complex Order transactions in Penny Names, and a \$0.66 credit for Complex Order transactions in non-Penny Names.

<sup>19</sup> The ISE exempts Public Customers Complex Orders from fees when trading against another Public Customer, and gives Public Customers a \$0.33 to \$0.66 credit when trading against non-Public Customers, depending on volume tier.

similar for Complex Orders, and the higher level of trading activity will draw a greater amount of BOX system resources than that of non-professional, Public Customers. Because this higher level of trading activity will result in greater ongoing operational costs, the Exchange aims to recover its costs by assessing Professional Customers and Broker Dealers a market competitive fee for Complex Order transactions.

Finally, the Exchange believes it is reasonable, equitable and non-discriminatory to give Public Customers a higher credit when their Complex Orders execute against a non-Public Customer on the Complex Order Book and, accordingly, charge non-Public Customers a higher fee when their Complex Order executes against a Public Customer on the Complex Order Book. The Exchange, and the securities market generally, aims to improve markets by developing features for the benefit of its customers. Similar to the payment for order flow and other pricing models that have been adopted by the Exchange and other exchanges to attract Public Customer order flow, the Exchange increases fees to non-Public Customers in order to provide incentives for Public Customers. The Exchange believes that providing incentives for Complex Order transactions by Public Customers is reasonable and, ultimately, will benefit all Participants trading on the Exchange by attracting Public Customer order flow. Accordingly, the Exchange believes that this fee differential is appropriate and not unfairly discriminatory.

The Exchange also believes it is equitable and not unfairly discriminatory for BOX Market Makers to be assessed lower Complex Order Fees than Professional Customers and Broker Dealers. As discussed above, Market Makers provide significant contributions to market quality and have additional obligations that Professional Customers and Broker Dealers do not.

The Exchange believes that the proposed Complex Order Fees will keep the Exchange competitive with other exchanges and will be applied in an equitable manner among all BOX Participants. The Exchange believes the proposed Complex Order Fees are fair and reasonable and competitive with fees in place on other exchanges. Further, the Exchange believes that the competitive marketplace impacts the fees proposed for BOX.

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

The Exchange believes that the Complex Order Fees will neither impose burdens on competition among various Exchange Participants nor impose any burden on competition among exchanges in the listed options marketplace, not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is designed to create an appropriate fee structure for Complex Orders on the Exchange.

The Exchange believes that adopting Complex Order Fees will not impose a burden on competition among various Exchange Participants. BOX currently assesses distinct standard contract Exchange fees for different account and transaction types. The Exchange believes that applying a fee structure that is determined by whether the Complex Order executes against orders on the BOX Book or against other Complex Orders, and according to the account types of the Participant submitting the Complex Order and the contra party, will result in Participants being charged appropriately for these transactions. Submitting a Complex Order is entirely voluntary and Participants can determine which type of order they wish to submit, if any, to the Exchange.

Further, the Exchange believes that this proposal will enhance competition between exchanges because it is designed to allow the Exchange to better compete with other exchanges for Complex Order flow. In this regard, Complex Orders are a new order type being introduced by the Exchange and BOX is unable to absolutely determine the impact that the Complex Order Fees proposed herein will have on trading. That said, however, the Exchange believes that the proposed Complex Order Fees would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing exchanges. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

*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>20</sup> and Rule 19b-4(f)(2) thereunder,<sup>21</sup> because it establishes or changes a due, fee, or other charge applicable only to a member.

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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BOX-2013-28 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-2013-28. 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, 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; 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-2013-28 and should be submitted on or before June 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-69596; File No. SR-NSCC-2013-06]**

**Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees Related to Portfolio Composition File Reporting in Addendum A of Its Rules and Procedures**

May 16, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 3, 2013, National Securities Clearing Corporation ("NSCC") 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 primarily by NSCC. NSCC filed the proposed rule change pursuant to

Section 19(b)(3)(A)(ii)<sup>3</sup> of the Act and Rule 19b-4(f)(2)<sup>4</sup> thereunder, so that the proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change is to modify the fee schedule related to NSCC's Portfolio Composition File Reporting in Addendum A of NSCC's Rules and Procedures ("Rules"), as described below.

**II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>5</sup>

**(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 for NSCC to revise its fee schedule (as listed in Addendum A of its Rules<sup>6</sup>) as it relates to charges for reports on Index Receipt Portfolio Composition Files. Portfolio Composition File reports, as currently offered, contain information on all Index Receipt Portfolios eligible for processing by NSCC ("Legacy Files"). NSCC releases two Legacy Files each business day—one file for domestic portfolios and one for foreign portfolios. The files are offered both as machine readable output ("MRO") and print image files. The fee associated with a Member's subscription to the Legacy Files is \$125 per file per month.

Pursuant to this proposed rule change, NSCC implemented new fees for the offering of an enhanced reporting interface that allows Members to receive a Portfolio Composition File that contains only the Index Receipt

<sup>1</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>3</sup> The Commission has modified the text of the summaries prepared by NSCC.

<sup>4</sup> NSCC Rules, Addendum A, [http://dtcc.com/legal/rules\\_proc/nscc\\_rules.pdf](http://dtcc.com/legal/rules_proc/nscc_rules.pdf).

<sup>20</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>21</sup> 17 CFR 240.19b-4(f)(2).

<sup>22</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.