

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-CboeBZX-2019-035 and should be submitted on or before June 4, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85803; File No. SR-BOX-2019-16]

### Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt BOX Rule 7620 (Accommodation Transactions) Establishing Cabinet Trading on the Exchange's Trading Floor

May 8, 2019.

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 April 25, 2019, BOX Exchange LLC ("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 self-regulatory organization. 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 Substance of the Proposed Rule Change

The Exchange proposes to establish BOX Rule 7620 (Accommodation Transactions) which provides for cabinet trading on the Exchange's

Trading Floor. 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://boxoptions.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 Exchange proposes to establish BOX Rule 7620 (Accommodation Transactions) which provides for cabinet trading<sup>3</sup> on the Exchange's Trading Floor. The Exchange notes that the proposed rule is substantially similar to a rule on another exchange.<sup>4</sup>

Proposed Rule 7620 defines the term "cabinet order" as a closing limit order at a price of \$1 per option contract for the account of a customer or Floor Market Maker. Rule 7620 also states that an opening order is not a "cabinet order" but may in certain cases be matched with a cabinet order pursuant to subsection proposed Rule 7620(c) and (d). For purposes of this rule filing, the Exchange specifies that an "opening order" is a contra-side opening order in response to a Customer who submits a closing order to clear their position. The rule further states that only Floor Brokers may represent cabinet orders. Further, under proposed Rule 7620, cabinet trading shall be available for each series of options open for trading

<sup>3</sup> An "accommodation" or "cabinet" trade refers to trades in listed options on the Exchange that are worthless or not actively traded, often times conducted to establish tax losses. Cabinet or accommodation trading of option contracts is intended to accommodate persons wishing to effect closing transactions in those series of options dealt in on the Exchange for which there is no auction market. A cabinet trade is a transaction in which the per-contract value of the cabinet trade is less than the per-contract value of a trade at the specified minimum increment for the option contract.

<sup>4</sup> See Nasdaq Phlx Rule 1059 (allowing for accommodation trades).

on the Exchange under the following terms and conditions (a) trading shall be conducted in accordance with other Exchange rules except as otherwise provided herein or unless the context otherwise requires; and (b) cabinet orders may be submitted to Floor Brokers. Floor Brokers must use the designated cabinet transaction forms provided by the Exchange to document receipt of a cabinet order and the execution of a cabinet transaction. Further, the proposed rule states that Rule 7580(e)(1) shall not apply to orders placed in the cabinet or executed in the cabinet.<sup>5</sup>

The Exchange also proposes to add Rule 7620(c), (d), and (e) which specifies the procedures to be followed by the Floor Broker and other trading crowd participants to execute cabinet orders in two different scenarios. In each case, the Floor Broker would be required to act in the presence of at least one Market Maker and Options Exchange Official.

Proposed Rule 7620(c) governs cases where a Floor Broker holds a cabinet order but does not also hold contra-side interest. In that case, the Floor Broker shall announce the terms of the cabinet order to the trading crowd to solicit interest to participate on the closing position. All matching cabinet orders shall be assigned priority based upon the sequence in which such orders are received by the Floor Broker. If there is no matching cabinet order, the Floor Broker may match the cabinet order with a matching opening buy or sell limit order priced at \$1 per option contract. If there is no matching cabinet order or opening order, the Floor Broker may seek matching bids or offers for accounts of Floor Participants. Floor Participants can only participate after all other orders have been matched.

Rule 7620(d) governs cases where a Floor Broker holds a cabinet order and also a contra-side cabinet order. In that situation, the Floor Broker is required to announce the terms of the cabinet orders to the trading crowd. The cabinet orders shall then be immediately crossed by the Floor Broker.

Finally, proposed Rule 7620(e) applies where a Floor Broker holds both a cabinet order and a contra-side opening order. In that situation, the Floor Broker is required to announce the terms of the cabinet order to the trading crowd. If there is a matching cabinet order, the Floor Broker shall match the two cabinet orders. If there is no

<sup>5</sup> Rule 7580(e)(1) provides for the use on the trading floor of the Floor Broker's order entry mechanism to record all options orders represented by such Floor Broker.

<sup>25</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.

matching cabinet order, the cabinet order shall then be immediately crossed by the Floor Broker with the opening order held by the Floor Broker.

The proposed priority rules focus on the cabinet order at the time it is represented by a Floor Broker in the trading crowd. Thus, as proposed, each Floor Broker holding a cabinet order only would be required to assign priority to cabinet orders he holds based upon the sequence in which he receives such orders, therefore, each Floor Broker would not be required to cede priority to a cabinet order represented in the crowd at an earlier time by another Floor Broker.

The Floor Broker is then to assign matching cabinet orders from the crowd based upon the sequence in which the orders are received by that floor broker representing such order. For example, the "Floor Broker A" receives a cabinet order to buy 500 contracts and represents to the trading crowd. At the time of representation to the crowd, "Floor Broker B" has a matching cabinet order for 250 contracts and "Floor Broker C" enters the trading crowd after "Floor Broker B" with a matching cabinet order for 500 contracts. "Floor Broker A" then proceeds to match his 500 contracts to buy cabinet order with the matching cabinet order from "Floor Broker B" for 250 contracts and matching the balance of 250 contracts with "Floor Broker C". The Floor Broker matched the cabinet orders based on the sequence in which the orders were received in the crowd at the time the cabinet order was represented. If there are no matching cabinet orders from the crowd, the Floor Broker may match the cabinet order with a matching opening order from the crowd. If however the Floor Broker holds both a cabinet order and a contra side cabinet order, the Floor Broker would be required to immediately cross those orders after announcing their terms in the crowd, regardless of cabinet orders held by other Floor Brokers.

In addition, the Exchange proposes Rule 7620(f) which requires that, once the cabinet order has been either crossed or matched, the Floor Broker must submit the designated cabinet form as soon as possible to the Exchange's Market Operations staff for clearance and reporting. Finally, the Exchange proposes Rule 7620(g) which states that Floor Market Makers shall not be subject to the requirements of Rule 8510 in respect to orders placed pursuant to this proposed rule. Further, proposed Rule 7620(g) states that the provisions of Rule 7040(a) through (c), and Rule 7050 would not apply to

orders placed in the cabinet.<sup>6</sup> The proposed rule is substantially similar to that of another Exchange because it will give market participants the ability to close out positions in which the value of the contract is less than the value of the contract at the minimum increment.<sup>7</sup>

## 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"),<sup>8</sup> in general, and Section 6(b)(5) of the Act,<sup>9</sup> 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. In particular, by adopting the proposed cabinet rule above, the Exchange will provide the ability for market participants to close out positions in which the value of the contract is less than the value of the contract at the minimum increment. The proposed rule change will permit market participants to execute cabinet trades on the Exchange, even without the participation of Floor Market Makers. The proposed rule promotes just and equitable principles of trade by setting forth priority rules for trade executions, and by requiring use of Exchange designated cabinet transaction forms to record information and the submission of the forms to Market Operations Center staff for the clearance and reporting of the cabinet trades.

The proposed rule would give market participants' the ability to execute cabinet transactions on the Exchange's Trading Floor, in an open manner and in compliance with new procedures specified by this rule.

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

The Exchange does not believe that the proposed rule change will impose

<sup>6</sup> Exchange Rule 8510 discusses the obligations and restrictions applicable to floor market makers. Exchange Rule 7040 sets out the meanings for premium quotes and orders, and Exchange Rule 7050 details minimum trading increments for options contracts traded on BOX.

<sup>7</sup> See *supra*, note 4. The Exchange's proposed rule differs in one material respect, by allowing the Market Operations Center staff to clear and report cabinet trades immediately rather than at the close of the business day.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule would apply to all Floor Brokers. In this regard and as indicated above, the Exchange notes that the proposed rule is substantially similar to Phlx rule that was approved by the Commission.<sup>10</sup>

## 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)(iii) of the Act<sup>11</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>12</sup>

At any time within 60 days of the filing of the 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 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:

<sup>10</sup> See *supra*, note 4.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

*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-2019-16 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR-BOX-2019-16. 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 (<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-2019-16 and should be submitted on or before June 4, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Eduardo A. Aleman,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-85806; File No. SR-NASDAQ-2019-035]

**Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Remove the Exchange's Current Primary Contingency Procedure From the Exchange's Rule Book**

May 8, 2019.

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 April 26, 2019, The Nasdaq Stock Market LLC ("Nasdaq" or "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 change from interested persons.

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

The Exchange proposes to remove the Exchange's current Primary Contingency Procedure from the Exchange's rule book and designate the Exchange's current Secondary Contingency Procedure as the default contingency procedure when a disruption occurs that prevents the execution of the closing cross for a security.

The text of the proposed rule change is available on the Exchange's website at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

**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

Nasdaq currently has two contingency plans for determining the Nasdaq Official Closing Price ("NOCP") for a security in the event that Nasdaq experiences a system disruption that precludes normal execution of the Nasdaq closing cross pursuant to Rule 4754. In the event of such disruption, the President of Nasdaq or any Senior Executive designated by the President will be authorized to invoke either the Primary Contingency Procedures set forth in Rule 4754(b)(7) or the Secondary Contingency Procedures set forth in Rule 4754(b)(8) to determine the NOCP, which would be published to the Consolidated Quote/Consolidated Tape Plan ("SIPs"). Nasdaq will employ the Primary Contingency Procedures if at all possible, and it will employ the Secondary Contingency Procedures only if it determines that both the standard procedures and the Primary Contingency Procedures are unavailable.

Under the Primary Contingency Procedures, Nasdaq will employ an offline process using stored order files to determine the size and component executions for the closing cross trade in any and all affected securities on a security-by-security basis and manually deliver execution reports to members.<sup>3</sup> Currently, Nasdaq maintains a database of all closing cross orders entered into

<sup>3</sup> Currently, under Rule 4754(b)(7), when a disruption occurs that prevents the execution of the closing cross for any security, Nasdaq will identify the last regular way trade reported by the network processor prior to 4:00 p.m. and will publish that price as the NOCP. In the event an impacted security has no consolidated trading in that security for that day, Nasdaq will have no NOCP and no contingency cross for that security. Once Nasdaq has identified the NOCP for a given security, Nasdaq will operate a modified closing cross to determine the number of shares and the specific orders that can be executed at the NOCP. All Market-on-Close ("MOC") orders entered prior to 3:55 p.m., Limit-on-Close ("LOC") orders entered prior to 3:58 p.m., and Imbalance Only orders entered prior to 4:00 p.m. will be eligible to participate in the Contingency Closing Cross. Nasdaq will cross and execute eligible MOC and LOC orders in price-time priority. If an order imbalance exists in the MOC and LOC interest that is marketable at the NOCP, Nasdaq will include in the cross Imbalance Only orders on the side of the market with less trading interest in price/time priority, and then execute all MOC, LOC and Imbalance Only orders at the NOCP. Once Nasdaq has completed the Contingency Closing Cross, it will report the results to the appropriate network processor and deliver execution reports to members. After hours trading will begin either as scheduled at 4:00 p.m. or upon resolution of the disruption that triggered Nasdaq to operate the Contingency Closing Cross.

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

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

<sup>13</sup> 17 CFR 200.30-3(a)(12).