

dealers'. . .'.<sup>29</sup> Accordingly, the Exchange does not believe its proposed changes to extend the above-mentioned fee waivers and incentive programs impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**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) of the Act<sup>30</sup> and paragraph (f) of Rule 19b-4<sup>31</sup> thereunder. 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 will 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. 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-CBOE-2020-011 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-CBOE-2020-011. 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-CBOE-2020-011 and should be submitted on or before March 17, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>32</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2020-03646 Filed 2-24-20; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-88236; File No. SR-BOX-2020-04]**

**Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of a Proposed Rule Change To Amend the Provisions of Its Limited Liability Company Agreement and Bylaws To Accommodate the Exchange's Regulation of Multiple Facilities**

February 19, 2020.

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 February 4, 2020, BOX Exchange LLC ("BOX" or

"Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the provisions of its limited liability company agreement (the "LLC Agreement") and bylaws (the "Bylaws") to accommodate the Exchange's regulation of multiple facilities. 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 is a Delaware limited liability company that therefore has an LLC Agreement. The Exchange also has Bylaws. The LLC Agreement and Bylaws, collectively, are the Exchange's source of governance and operating authority. Currently, the Exchange regulates only one facility, BOX Options Market LLC ("BOX Options Market"), which is reflected in the existing LLC Agreement and Bylaws. The Exchange proposes certain discrete amendments to the LLC Agreement and Bylaws that would (i) provide sufficient flexibility in the documents for them to contemplate that there may be multiple Exchange facilities under the Exchange's regulatory authority, (ii) simplify the structure of the defined terms in the LLC Agreement and Bylaws to make

<sup>29</sup> *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

<sup>30</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>31</sup> 17 CFR 240.19b-4(f).

<sup>32</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.

them easier to read and understand, and (iii) make certain other changes to the terms of the LLC Agreement and Bylaws to bring them current with the structure of the Exchange and its relationships.

The proposed rule changes are reflected in the LLC Agreement and the Bylaws of the Exchange. The description of the proposed rule changes is organized in three parts below. First, the description addresses the proposed changes to certain definitions that currently appear in the LLC Agreement and the Bylaws. Second, the description addresses proposed changes to the LLC Agreement other than the proposed changes to the LLC Agreement definitions. Third, the description addresses proposed changes to the Bylaws other than the Bylaw definitions.

#### Proposed Changes to Definitions Used in the LLC Agreement and Bylaws

Article 1, Section 1.1 of the LLC Agreement contains certain defined terms that are used in the LLC Agreement. In addition, Article 1, Section 1.01 of the Bylaws provides that terms that have initial capitalization in the Bylaws without further definition have the meaning assigned to such terms in the LLC Agreement. The following changes are proposed to the definitions that appear in the LLC Agreement and the Bylaws. Where appropriate, changes are also proposed to reorder the appearance of definitions in Article 1, Section 1.01 of the Bylaws based on the proposed additions and deletions.<sup>3</sup>

#### Proposed Changes to Definitions in the LLC Agreement

**BOX Holdings.** The Exchange is proposing to remove the definition of “BOX Holdings” from the LLC Agreement. The term is defined to mean “BOX Holdings Group LLC, a Delaware limited liability company” (“BOX Holdings”). BOX Holdings is the parent and 100% owner of BOX Options Market, which is currently the only facility<sup>4</sup> of the Exchange. As described

<sup>3</sup> Such reordering changes are not necessary to the LLC Agreement because the definitions that appear in Article 1, Section 1.1 appear only in alphabetical order without any additional subsection numbering or lettering.

<sup>4</sup> 15 U.S.C. 78c(a)(2). Section 3(a)(2) of the Exchange Act defines the term facility when used with respect to an exchange to include “its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.”

in more detail below, this change would be made in connection with removing BOX Holdings Group LLC as a party to the LLC Agreement and providing representation on the Exchange Board to entities that are facilities of the Exchange rather than to BOX Holdings through a “BOX Holdings Director” as that term is defined in the Bylaws.<sup>5</sup> For the reasons explained below, the change is designed to accommodate the Exchange’s contemplated regulation of multiple facilities as opposed to the current structure in which BOX Options Market is the only facility of the Exchange.

**BOX Options.** The Exchange is proposing to remove the term “BOX Options” from the LLC Agreement. The Exchange is proposing to remove the definition because the definition is specific to the regulation by the Exchange of the BOX Options Market facility. The Exchange would adopt a new defined term “Exchange Facility” in the LLC Agreement, as described below, to replace the defined term “BOX Options” and make the defined terms in the LLC Agreement flexible enough to accommodate multiple facilities of the Exchange and Exchange rules related thereto. For reasons explained below, the change is designed to accommodate the Exchange’s contemplated regulation of multiple facilities as opposed to the current structure in which BOX Options Market is the only facility of the Exchange.

**BOX Options Market.** The Exchange is proposing to remove the term “BOX Options Market” from the LLC Agreement. The Exchange is proposing to remove the definition because the definition is specific to the regulation by the Exchange of the BOX Options Market facility. The Exchange would use the proposed new defined term “Exchange Facility” in the LLC Agreement, as described below, to replace the defined term “BOX Options Market” and make the defined terms in the LLC Agreement flexible enough to accommodate multiple facilities of the Exchange and Exchange rules related thereto. For reasons explained below, the change is designed to accommodate the Exchange’s contemplated regulation of multiple facilities as opposed to the current structure in which BOX Options Market is the only facility of the Exchange.

**BOX Options Participant.** The Exchange is proposing to remove the term “BOX Options Participant” from the LLC Agreement. The Exchange is proposing to remove the definition because the definition is specific to the

regulation by the Exchange of the BOX Options Market facility. The Exchange would adopt a new defined term “Exchange Facility Participant” in the LLC Agreement, as described below, to replace the defined term “BOX Options Participant” and make the defined terms in the LLC Agreement flexible enough to accommodate multiple facilities of the Exchange and Exchange rules related thereto. For reasons explained below, the change is designed to accommodate the Exchange’s contemplated regulation of multiple facilities as opposed to the current structure in which BOX Options Market is the only facility of the Exchange.

**BOX Options Products.** The Exchange is proposing to remove the term “BOX Options Products” from the LLC Agreement because it is only used in the defined term “Trading” in the LLC Agreement and, as described below, the Exchange is also proposing to delete that term. Upon the deletion of the term “Trading” in the LLC Agreement, the defined term “BOX Options Products” would no longer be used anywhere in the LLC Agreement or in the Bylaws. Therefore, it would be unnecessary and the Exchange proposes to delete it as a streamlining change to eliminate unnecessary content from the LLC Agreement and to produce a simplified structure for the defined terms in the LLC Agreement that is easier to read and understand.

**BOX Options Rules.** The Exchange is proposing to remove the definition of “BOX Options Rules” from the LLC Agreement. The Exchange is proposing to remove the definition because the definition is specific to the regulation by the Exchange of the BOX Options Market facility. The Exchange would adopt a new defined term “Exchange Rules” in the LLC Agreement, as described below, to replace the defined term “BOX Options Rules” and make the defined terms in the LLC Agreement flexible enough to accommodate multiple facilities of the Exchange and Exchange rules related thereto.

**Confidential Information.** The Exchange is proposing to amend the definition of “Confidential Information” in the LLC Agreement to remove the reference to “BOX Options Market.” The definition of “Confidential Information” currently provides that it includes, but is not limited to, confidential information as it pertains to the Exchange or the BOX Options Market regarding disciplinary matters, trading data, trading practices and audit information. The Exchange would delete the reference to “BOX Options Market” and replace it with a reference to the newly proposed defined term

<sup>5</sup> See Bylaws, Section 1.01(b).

“Exchange Facility.” Because the proposed definition of “Exchange Facility” in the LLC Agreement would include the “BOX Options Market,” the definition of “Confidential Information” would continue to cover the same information that it does today in respect of the Exchange and BOX Options Market. However, the revised definition that is proposed would also cover the same information as it pertains to any facility of the Exchange.

*Exchange Facility.* The Exchange is proposing to add the definition of “Exchange Facility” to the LLC Agreement. The definition would cover any “facility” of the Exchange as that term is defined in Section 3 of the Exchange Act.<sup>6</sup> This change is designed to accommodate the Exchange’s contemplated regulation of multiple facilities as opposed to the current structure in which BOX Options Market is the only facility of the Exchange. The addition of this defined term would create a structure in the LLC Agreement that would pertain to every facility regulated by the Exchange, and the Exchange believes that this would promote readability and comprehension of the LLC Agreement and would thereby promote the protection of investors and the public interest.

*Exchange Facility Participant.* The Exchange is proposing to add the definition of “Exchange Facility Participant” to the LLC Agreement. The definition would mean “a firm or organization that is registered with the Exchange pursuant to the Exchange Rules for purposes of participating in trading on any Exchange Facility.” As described immediately above, the newly proposed term Exchange Facility would mean “any facility of the Exchange as the term ‘facility’ is defined in Section 3 of the Exchange Act.” Therefore, the term “Exchange Facility Participant” would create a defined term in the LLC Agreement that would be used to refer generally to any firm or organization that is registered with the Exchange for purposes of participating in trading on any “Exchange Facility.” Because the BOX Options Market is currently the only facility of the Exchange, the only participant definition maintained in the LLC Agreement is the definition of “BOX Options Participant,” which, as described above, the Exchange is proposing to delete. Therefore, the term “Exchange Facility Participant” would be defined broadly enough to refer to a current BOX Options Participant and any other type of “Exchange Facility Participant” as may become relevant in the future. Currently, the definition of

“BOX Options Participant” in the LLC Agreement refers to a firm or organization registered with the Exchange pursuant to the 2000 Series of the BOX Options Rules. With the proposed change to accommodate the Exchange’s contemplated regulation of multiple facilities, the Exchange Rules pertaining to participants on various facilities may be addressed in different series of the Exchange Rules yet to be enacted. As a consequence, the new definition of Exchange Facility Participant does not refer to any specific series in the Exchange Rules.

*Exchange Rules.* The Exchange is proposing to add the definition of “Exchange Rules” to the LLC Agreement. The term “Exchange Rules” would mean “the rules of the Exchange that constitute ‘rules of an exchange’ within the meaning of Section 3 of the Exchange Act.” Currently, the LLC Agreement provides this same definition in respect of the term “BOX Options Rules.” However, as described above, the Exchange proposes to delete the term “BOX Options Rules” in favor of the more general term “Exchange Rules” to make the defined terms in the LLC Agreement flexible enough to contemplate multiple facilities of the Exchange and the rules related thereto. The Exchange notes that as a substantive matter the term “Exchange Rules” would be defined in the same way that “BOX Options Rules” is currently defined with the exception that it would not also include a specific reference to the “BOX Options Market.”

*Individual U.S. Equities.* The Exchange is proposing to remove the definition of “Individual U.S. Equities” from the LLC Agreement. The Exchange is proposing to remove the definition because the definition is only used in the definition of “BOX Options Products,” which the Exchange, as described above, is also proposing to remove. Upon the deletion of the term “BOX Options Products” in the LLC Agreement, the defined term “Individual U.S. Equities” would no longer be used anywhere in the LLC Agreement or in the Bylaws. Therefore, it would be unnecessary and the Exchange proposes to delete it as a streamlining change to eliminate unnecessary content from the LLC Agreement and to create a more simplified set of defined terms.

*MX.* The Exchange is proposing to remove the definition of “MX” from the LLC Agreement. The term “MX” is currently defined to mean Bourse de Montréal, Inc. The Exchange is proposing to remove the definition because the term only appears in the defined terms “System” and “TOSA” in

the LLC Agreement and, as described below, the Exchange is also proposing to delete these definitions to achieve a more simplified structure of defined terms in the LLC Agreement that would be easier to understand.

*Regulatory Funds.* The Exchange is proposing to amend the definition of “Regulatory Funds” in the LLC Agreement to use the proposed defined term “Exchange Facility” within the definition rather than referencing “a facility of the Exchange.” The use of the proposed defined term rather than the existing text would not change the meaning of the definition of “Regulatory Funds” as it is currently provided for in the LLC Agreement. It is proposed as a conforming change to rely on the defined term “Exchange Facility” as it would be established in the LLC Agreement.

*Related Agreements.* The Exchange is proposing to remove the definition of “Related Agreements” from the LLC Agreement. The Exchange is proposing to remove the definition because it is only used in one section of the LLC Agreement, Section 15.4 (Ongoing Confidentiality Program), and the Exchange believes that the deletion of the defined term from the LLC Agreement and deletion of the single use of that term in Section 15.4(b) would not change the meaning of Section 15.4(b) or any other provision of the LLC Agreement.

Specifically, Section 15.4(b) is the only provision of the LLC Agreement in which the term “Related Agreements” is currently used, and it provides in relevant part that certain representatives of (i) the members of the LLC Agreement, (ii) BOX Options Market and (iii) the Exchange will have procedures designed to maintain confidentiality of certain information of the Exchange while facilitating business activities contemplated by the LLC Agreement and the “Related Agreements.” In turn, the term “Related Agreements” is defined to mean the Technical and Operational Services Agreement (“TOSA”) between MX and BOX Options Market, as further described below, a facility agreement entered into by and between BOX Options and the Exchange, dated May 7, 2012, and any other agreement between BOX Options Market and the Exchange or any Member, in all cases necessary for the conduct of the business of BOX Options. As currently formulated, the term “Related Agreements” encompasses all agreements necessary for the conduct of the business of BOX Options and merely lists a few examples thereof. The Exchange proposes to delete the reference to the defined term

<sup>6</sup> See *supra* note 4.

“Related Agreements” in Section 15.4(b) and to substitute therefor the words, “or the conduct of the business of the Exchange and any Exchange Facility,” which not only fully captures all agreements currently contemplated by the defined term “Related Agreements” but would be coextensive with the proposed new language which further extends to all conduct of the business of the Exchange and its Exchange Facilities. This change not only eliminates the superfluous defined term but fully preserves the scope and substantive meaning of Section 15.4(b).

*Related Person.* The Exchange is proposing to amend the definition of “Related Person” in the LLC Agreement. Specifically, the Exchange would replace references in the definition to “BOX Options Participant” with references to “Exchange Facility Participant” to reflect that the “Related Person” definition may apply in respect of facilities of the Exchange other than BOX Options Market as proposed herein.

*System.* The Exchange is proposing to remove the definition of “System” from the LLC Agreement. The Exchange is proposing to remove the definition because the defined term is currently of limited use in the LLC Agreement and the Exchange believes that where it is used it results in a definitional structure that may be difficult for a user to understand. The definition of “System” is only used in the LLC Agreement in the defined term “Trading,” which the Exchange is also proposing to delete for similar reasons related to streamlining as described below. The interrelationship between the defined term “System” and the defined term “Trading” requires a reader to refer to and understand both of these definitions to be able to understand the meaning of the defined term “Trading” as it is used in the defined terms “BOX Options Participant” and “BOX Options Products.” The Exchange believes that this structure is unnecessarily complex and that using the plain meaning of the word “trading” in the LLC Agreement instead, such as the Exchange proposes to do in the newly proposed defined term “Exchange Facility Participant,” would not materially change the meaning of any provisions in the LLC Agreement or the Bylaws and that the change would also support the existence of multiple facilities of the Exchange given that the current definition of “Trading” is specific to “BOX Options Products.”

*TOSA.* The Exchange is proposing to remove the definition of “TOSA” from the LLC Agreement. The term “TOSA” means the Technical and Operational

Services Agreement entered into by and between “MX” and “BOX Options” dated September 25, 2005 and amended as of January 1, 2007. The Exchange is proposing to remove the definition because it is an unnecessary defined term that is not used or relied upon outside of the defined terms of the LLC Agreement. Currently, the only use of the defined term “TOSA” appears in the defined term “Related Agreements.” For the reasons described above, the Exchange is proposing to remove that defined term from the LLC Agreement. Accordingly, the defined term “TOSA” would no longer be used in the LLC Agreement and the Exchange therefore proposes to remove the definition as a streamlining change to eliminate unnecessary content from the LLC Agreement and to create a more simplified set of defined terms.

*Trading.* The Exchange is proposing to remove the definition of “Trading” from the LLC Agreement. The Exchange is proposing to remove the definition to create a more simplified structure of defined terms in the LLC Agreement, as described above, in connection with the proposed deletion of the defined term “System.”

#### Proposed Changes to Definitions in the Bylaws

*BOX Holdings Director.* The Exchange is proposing to remove the definition of “BOX Holdings Director” from the Bylaws.<sup>7</sup> As noted above, BOX Holding is the parent and 100% owner of BOX Options Market, which is currently the only facility of the Exchange. While BOX Holdings and BOX Options Market are separate entities that have separate boards of directors, the composition of each board of directors is the same. Because BOX Holdings is the 100% owner of BOX Options Market and the composition of the board of directors for each entity is the same, the Exchange believes that this close alignment between the entities and their interests has allowed BOX Options Market to be fairly represented on the Board of the Exchange through the BOX Holdings Director. However, in anticipation of the Exchange continuing to regulate BOX Options Market but also potentially other facilities, the Exchange believes that it is appropriate to provide direct representation on the Exchange Board to the facilities of the Exchange to promote their fair representation in the administration of the Exchange’s affairs and the selection of its directors. The Exchange believes this more direct representation is important because not every facility of the Exchange would

necessarily share the same close alignment of interests that currently exists between BOX Holdings and BOX Options Market due to BOX Holdings being the 100% owner of the facility and given that the composition of the boards of directors of the two entities is the same.

The Exchange is therefore proposing to delete the definition of “BOX Holdings Director” from the Bylaws and to make certain conforming changes to the Bylaws that are described below that would instead provide representation on the Board and its nominating committee (“Nominating Committee”)<sup>8</sup> to “Facility Directors” and “Facility Representatives” as those terms are proposed to be added to the Bylaws. Also as described below, the Exchange would make a related conforming change to remove the right of BOX Holdings in the LLC Agreement to appoint one director to the Board.<sup>9</sup>

*BOX Options Participant.* The Exchange is proposing to remove the term “BOX Options Participant” from the Bylaws.<sup>10</sup> This change is proposed because the Exchange believes that it would be more appropriate to replace the use of the term “BOX Options Participant” throughout the Bylaws with the defined term “Exchange Facility Participant” as defined in the LLC Agreement. As noted above in connection with the proposed adoption of the term “Exchange Facility Participant” in the LLC Agreement, the term would be defined broadly enough to refer to a participant in the BOX Options Market and to any other type of “Exchange Facility Participant” as may become relevant in the future. Therefore, the Exchange believes that the deletion of the term “BOX Options Participant” from the Bylaws and the replacement of those references with “Exchange Facility Participant” would not change the meaning of the relevant Bylaw provisions other than to make them flexible enough to contemplate that the Exchange may regulate multiple facilities having their own participants. Additionally, the Exchange is proposing to delete the term “BOX Options Participant” from the LLC Agreement, as described above.

*Facility Director.* The Exchange is proposing to add the definition of “Facility Director” to the Bylaws.<sup>11</sup> The term “Facility Director” would mean “a Director who is a director or senior

<sup>8</sup> The Nominating Committee is not a Board Committee, but rather a committee of the Exchange.

<sup>9</sup> See *infra* regarding discussion of Section 4.1(a) of the LLC Agreement.

<sup>10</sup> See Bylaws, Art. 1, Section 1.01(c).

<sup>11</sup> See Bylaws, proposed Section 1.01(j).

<sup>7</sup> See Bylaws, Art. 1, Section 1.01(b).

executive officer of an Exchange Facility.” The use of the term “Director” in the definition refers to that term as it is defined in the LLC Agreement because it is a capitalized term that is not defined in the Bylaws, and Section 1.01 of the Bylaws states that any such capitalized term used in the Bylaws without definition has the meaning assigned to it in the LLC Agreement.<sup>12</sup> Accordingly, the proposed definition of “Facility Director” in the Bylaws refers to an individual who is both a “Director” on the Board and a director or senior executive officer of an “Exchange Facility,” as the Exchange proposes to add that defined term to its Bylaws.

**Facility Representative.** The Exchange is proposing to add the definition of “Facility Representative” to the Bylaws.<sup>13</sup> The term “Facility Representative” would mean “an individual who is a director or senior executive officer of an ‘Exchange Facility,’ as the Exchange proposes to add that defined term to its LLC Agreement. In contrast to a ‘Facility Director’ as described above, an individual who is a ‘Facility Representative’ would not also be a ‘Director’ of the Exchange.

**LLC Agreement.** The Exchange is proposing to update the definition of “LLC Agreement” in the Bylaws.<sup>14</sup> The definition would be changed to mean the Second Amended and Restated BOX Exchange LLC Limited Liability Company Agreement. The Exchange proposes this change in connection with the proposed changes to the LLC Agreement that are described herein because they would cause the LLC Agreement to be amended and restated a second time.

**Participant Representative.** The Exchange is proposing to amend the defined term “Participant Representative.”<sup>15</sup> It would be modified to provide that the term means an officer, director or employee of an “Exchange Facility Participant” rather than only applying to a “BOX Options Participant.”<sup>16</sup> The proposed change would accommodate the Exchange’s potential regulation of multiple facilities

by providing a broader definition. Additionally, the proposed change to the definition conforms to the language changes made throughout to change “BOX Options Participant” to “Exchange Facility Participant.”

**Public Director.** The Exchange is proposing to amend the definition of Public Director.<sup>17</sup> Specifically, the references in the definition to “BOX Options Participant” would be removed and replaced with the newly proposed defined term “Exchange Facility Participant” from the LLC Agreement. As described above in connection with the proposed deletion of the term “BOX Options Participant” from the Bylaws, the Exchange believes that the replacement of those references with “Exchange Facility Participant” would not change the meaning of the defined term “Public Director” other than to make it flexible enough to contemplate that the Exchange may regulate multiple facilities having their own participants.

**System.** The Exchange is proposing to remove the definition of “System” from the Bylaws.<sup>18</sup> The term is defined to mean “the electronic system operated by the Exchange that receives and disseminates quotes, executes orders and reports transactions.” The Exchange is proposing to remove the definition because it is only used in the Bylaws in two places—the definition of “BOX Options Participant” and in Section 5.03(b) of the Bylaws. For the reasons described above, the Exchange is also proposing to delete the definition of “BOX Options Participant” and therefore the only remaining use of the defined term “System” would appear in Section 5.03(b) of the Bylaws as proposed to be revised. However, the Exchange is also proposing to delete the use of “System” from Section 5.03(b) of the Bylaws because it believes that using the plain meaning of the word system is more efficient and would not materially change the meaning of any provisions in the Bylaws. Therefore, the Exchange proposes to delete the defined term “System” as a streamlining change to eliminate unnecessary content from the Bylaws and to produce a simplified structure for the definitions in the Bylaws that is easier to read and understand.

#### Proposed Changes to the LLC Agreement

In addition to the proposed changes to the definitions in the LLC Agreement described above, the Exchange is also proposing to make the following changes to the LLC Agreement.

BOX Holdings Group LLC is proposed to be removed as a party to the LLC Agreement. The current parties to the LLC Agreement are the Exchange, BOX Holdings, and the Exchange’s Members, who are each unit holders of the Exchange. BOX Holdings is not a Member of the Exchange and is only a party to the LLC Agreement with respect to its rights to appoint individuals to serve on the Exchange’s Board and Nominating Committee. As described above in connection with the description of the proposed changes to delete the defined term “BOX Holdings” from the LLC Agreement and the defined term “BOX Holdings Director” from the Bylaws, Section 4.1(a) of the LLC Agreement currently provides that BOX Holdings “shall have the right to appoint one (1) (but not more than one (1)) Director who is also an officer or director of BOX Holdings or an Affiliate of BOX Holdings.” Because the Exchange is proposing to transfer this right from BOX Holdings directly to the facility, BOX Options Market, for the reasons that are explained above in connection with the proposed removal of the defined term “BOX Holdings Director,” there would no longer be any substantive provisions in the LLC Agreement applicable to BOX Holdings that would be relevant for BOX Holdings to continue to be a party to the LLC Agreement. When the LLC Agreement was first approved, BOX Holdings was a holding company which wholly owned the Exchange’s only facility, BOX Options Market, and was therefore merely the alter ego of the facility. Since that time, however, BOX Holdings has grown to become the owner of multiple subsidiaries in addition to BOX Options Market. In addition, the Exchange now proposes to be permitted to regulate multiple facilities, each of which would have similar representation on the Exchange and its Board. The right to appoint a director to the Exchange Board is proposed to reside in each Exchange Facility. Therefore, the Exchange believes it is in keeping with the original intent of the LLC Agreement with respect to BOX Options Market to have BOX Options Market’s rights reside directly in BOX Options Market, rather than with its upstream owner, and that similar rights will reside directly with any other new Exchange Facility as proposed herein. Accordingly, the Exchange is proposing that BOX Holdings be removed as a party as it is no longer relevant. The Exchange would remain fully authorized to regulate BOX Options Market, and its parent, BOX Holdings,

<sup>12</sup> The term “Director” in the LLC Agreement states that it has the meaning set forth in Section 4.1 of the LLC Agreement. Section 4.1 provides that “[e]xcept as provided in this [LLC Agreement], the business and affairs of the Exchange shall be managed by, or under the direction of, a board of directors (the ‘Board’ and each member thereof, a ‘Director’).”

<sup>13</sup> See Bylaws, proposed Section 1.01(k).

<sup>14</sup> See Bylaws, Section 1.01(q).

<sup>15</sup> See Bylaws, Section 1.01(v).

<sup>16</sup> See proposed changes to Article 1 of the LLC Agreement to introduce the terms “Exchange Facility” and “Exchange Facility Participant.”

<sup>17</sup> See Bylaws, Section 1.01(w).

<sup>18</sup> See Bylaws, Section 1.01(z).

would not have any ability or incentive to disregard the Exchange's regulatory authority. All of the existing Members and the Exchange would continue to be parties to the LLC Agreement.

The Exchange does not believe the removal of BOX Holdings from the LLC Agreement will change the obligations of BOX Holdings. Although Sections 15.1 and 15.4 of the LLC Agreement currently include references to the "parties" to the LLC Agreement, these references do not impose any ongoing obligations upon BOX Holdings or otherwise bind BOX Holdings. In addition, a reference to the Confidential Information of BOX Holdings appears in Section 15.5, which obligates the Exchange to keep such information confidential. BOX Holdings currently has no obligations under Section 15.5 and the Exchange believes it is unlikely to include any Confidential Information of BOX Holdings in its books and records. As a result, the Exchange believes the removal of BOX Holdings as a party to the LLC Agreement will have no effect upon the confidentiality provisions in Article 15 thereof. However, the Exchange notes that BOX Holdings remains obligated, under Section 15.6 of the BOX Holdings limited liability company agreement, to protect and not disclose any confidential information of the Exchange of which BOX Holdings may become aware. The Exchange further notes that BOX Holdings remains obligated, under Section 11.1 of the BOX Holdings limited liability company agreement, to allow the Exchange to access, inspect and copy its books and records and to maintain those books and records in the United States. The Exchange does not propose to alter any provisions of the limited liability company agreement of BOX Holdings.<sup>19</sup>

In Section 2.2 of the LLC Agreement, the Exchange proposes an update to reflect a factual change in the address of its registered agent in Delaware.

The Exchange is proposing to change certain references to "BOX Options Market" throughout the LLC Agreement to the newly proposed defined term "Exchange Facility."<sup>20</sup> The proposed changes would modify the relevant provisions to create a structure in the LLC Agreement that contemplates the

Exchange's contemplated regulation of multiple facilities.

In Article 3 of the LLC Agreement, the Exchange is proposing to replace "an options market" with "securities markets." Article 3 of the LLC Agreement describes the purpose of forming the Exchange. The proposed change would provide that the purpose of the Exchange is, in part, to support the operation, regulation, and surveillance of securities markets—not just an options market as is currently stated. The proposed change would support the Exchange's contemplated regulation of potential new facilities that would facilitate trading in securities instruments that are not options.

The Exchange is proposing to amend Section 4.1(a) of the LLC Agreement to remove the requirement that BOX Holdings shall have the right to appoint one director. As described above, this change is proposed in connection with the Exchange's proposals to remove BOX Holdings as a party to the LLC Agreement, remove the defined term "BOX Holdings Director" from the Bylaws and provide direct representation on the Exchange Board to the facilities of the Exchange to promote their fair representation in the administration of the Exchange's affairs and the selection of its directors.

The Exchange is proposing to change references to "BOX Options Participant" to "Exchange Facility Participant" throughout the LLC Agreement.<sup>21</sup> The proposed change would contemplate the Exchange's potential regulation of multiple facilities and conform the LLC Agreement in response to the related changes in the definitions section.

The Exchange is proposing to change references to "BOX Options" to "any Exchange Facility" throughout the LLC Agreement.<sup>22</sup> The proposed change would contemplate the Exchange's potential regulation of multiple facilities and conform the LLC Agreement in response to the related changes in the definition section.

As described above, the Exchange is proposing to amend Section 15.4(b) of the LLC Agreement to remove a reference to "Related Agreements" because the Exchange is proposing to remove the defined term "Related Agreements" from the LLC Agreement. The Exchange would also add the words "or related to" in Section 15.4(b). Specifically, Section 15.4(b) currently provides in relevant part that certain

representatives of (i) the members of the LLC Agreement, (ii) BOX Options Market and (iii) the Exchange will have procedures designed to maintain confidentiality of certain information of the Exchange while facilitating business activities contemplated by the LLC Agreement and the "Related Agreements." In connection with deleting the reference to "Related Agreements," the Exchange would insert language to state that representatives of the relevant parties would be required to have procedures designed to maintain confidentiality of certain information of the Exchange while facilitating any business activities contemplated by "or related to" the LLC Agreement "or the conduct of the business of the Exchange and any Exchange Facility." This change would not bear on the substantive requirements that obligate representatives of the relevant parties to have procedures designed to maintain confidentiality of certain information of the Exchange.

The Exchange is proposing to amend Section 15.5 of the LLC Agreement to contemplate the potential regulation of multiple facilities. Section 15.5 currently provides in relevant part that certain confidential information of BOX Holdings, BOX Options Market or the Exchange pertaining to regulatory matters of BOX Holdings, BOX Options Market or the Exchange that is contained in the books and records of the Exchange or any of its subsidiaries shall be subject to certain confidential treatment. The Exchange is proposing to replace references to BOX Holdings and BOX Options Market with "any Exchange Facility, any Affiliate thereof." The result of this change would be that the confidentiality protections in Section 15.5 pertaining to regulatory matters would continue to apply to BOX Options Market as an "Exchange Facility" and would continue to apply to BOX Holdings as an affiliate of BOX Options Market. However, the confidentiality protections would also be broadened to apply to any new "Exchange Facility" as that term is proposed to be defined in the LLC Agreement and any affiliate thereof. The Exchange believes that these expanded confidentiality protections regarding certain information in the books and records of the Exchange or any of its subsidiaries is appropriate to promote strong commercial relationships between the Exchange and its facilities.

The Exchange is proposing to amend Section 18.3 of the LLC Agreement. Specifically, the Exchange would remove a provision applicable to providing notice to BOX Holdings

<sup>19</sup> The Exchange notes that the limited liability company agreement of BOX Holdings currently contains a number of provisions intended to provide protections for a regulated market, including, for example, Sections 4.12 and 11.1, Article 15, and Section 18.6 thereof. The changes proposed by this rule filing will not disrupt any of these provisions and will not change going forward.

<sup>20</sup> See proposed changes to Articles 2.5(d), 5.6, 5.7, and 8.1 of the LLC Agreement.

<sup>21</sup> See proposed changes to Articles 7.3(f), 7.3(g), and 7.3(i) of the LLC Agreement.

<sup>22</sup> See proposed changes to Articles 15.2(a), 15.3, 15.4(a), and 15.5 of the LLC Agreement.

because for the reasons described above the Exchange is proposing to remove BOX Holdings as a party to the LLC Agreement.

#### Proposed Changes to the Bylaws

The Exchange is proposing to change references to “BOX Options Participant” to “Exchange Facility Participant” throughout the Bylaws.<sup>23</sup> The proposed change would contemplate the Exchange’s potential regulation of multiple facilities and conform the LLC Agreement in response to the related changes in the definition section.

The Exchange is proposing to change references to “BOX Holdings Director” to “Facility Representative” or “Facility Director” throughout the Bylaws.<sup>24</sup> For the reasons described above in connection with the proposed removal of the definition of “BOX Holdings Director” from the Bylaws, the proposed change is a conforming change to accommodate the Exchange’s contemplated regulation of multiple facilities as opposed to regulating only a single facility—BOX Options Market. While the same individual may simultaneously fill the roles of Facility Director and Facility Representative, the proposed change allows each facility the flexibility, if the facility deems it prudent and convenient, to have one individual serve as the Facility Director on the Exchange Board and a different individual to serve as the Facility Representative on the Nominating Committee. The qualifications of individuals to serve as a Facility Director and/or a Facility Representative are the same—that such individual be a director or senior executive officer of the Exchange Facility—provided that a Facility Director must also be a Director of the Exchange while a Facility Representative need not be.

Under existing Section 4.02 of the Bylaws, at least twenty percent (20%) of the Board must be comprised of “Participant Directors.”<sup>25</sup> The existing definition of a “Participant Director” means a “Director”<sup>26</sup> who is a Participant Representative by virtue of being an officer, director or employee of a BOX Options Participant. The proposed changes to Section 4.02 would continue to require that at least twenty percent (20%) of the Board would be comprised of Participant Directors. In order to qualify as a Participant

Director, any person would be required to be serving as an officer, director or employee of an Exchange Facility Participant. The proposed changes would also provide that at least one (1) Participant Director shall be selected from among the Exchange Facility Participants of each Exchange Facility.

Section 4.02 of the Bylaws currently provides that the Board includes one (1) director who is a “BOX Holdings Director.” The Exchange proposes to remove this provision and replace it with a requirement that a number of directors that is equal to the number of Exchange Facilities shall be “Facility Directors” and that one (1) such “Facility Director” would be selected by each Exchange Facility. The existing provision provides the existing Exchange Facility (in this case, through its alter-ego parent entity, BOX Holdings) with representation on the Exchange Board, which fosters cooperation and communication between the Board and the Exchange Facility. The allowance of a single representative from the Exchange Facility to sit on the Exchange’s Board is appropriate but does not permit the Exchange Facility to exert control over the Exchange.

The proposed change here would accomplish two things. First, the change would allow each Exchange Facility to have the same representation on the Exchange Board. This would promote equal treatment of each Exchange Facility regulated by the Exchange. Second, since each potential new Exchange Facility may have a different ownership structure, this proposed change would uniformly require that each such representative would come from the leadership of, and be directly designated by, the actual Exchange Facility rather than a parent organization. This would create the best and closest representation to the Exchange for each Exchange Facility. The proposed change would apply to the existing Exchange Facility, BOX Options Market (and its parent, BOX Holdings), and would move the existing BOX Holdings Director to be a Facility Director. The Exchange believes this change is not substantive with respect to the BOX Options Market and BOX Holdings because, as described above, the two entities are under common control.

The proposed change would ensure that each Exchange Facility would have one (1) Facility Director serving on the Board. In order to qualify as a Facility Director, any person would be required to be serving as a director or senior executive officer of an Exchange Facility. This proposal is the same as

currently applies to BOX Options Market through its parent, BOX Holdings.

The existing BOX Holdings Director serves on committees of the Board but is prohibited from serving on the Exchange Board’s Compensation Committee and Regulatory Oversight Committee. This existing prohibition helps to ensure that the existing Exchange Facility, BOX Options Market (or its parent, BOX Holdings), will not have access to the confidential information considered by these committees and to eliminate any influence by BOX Options Market (or its parent, BOX Holdings) with respect to the matters decided by these committees, including regulatory matters related to BOX Options Market and compensation paid to Exchange directors, officers and employees who have supervisory authority over BOX Options Market. The proposed change provides that one (1) Facility Director from each Exchange Facility would serve on Board committees but would continue to prohibit Facility Directors from serving on the Compensation and Regulatory Oversight Committees. This proposed prohibition would continue to help ensure that no Exchange Facility would have access to the confidential information considered by these committees and to help prevent any Exchange Facility from exercising influence with respect to the matters decided by these committees, including regulatory matters related to an Exchange Facility and compensation paid to Exchange directors, officers and employees who have supervisory authority over Exchange Facilities. In the event an Executive Committee is appointed by the Board, each Exchange Facility would have the right to have one (1) of its Facility Directors sit on the Executive Committee, pursuant to Section 6.04 of the Bylaws.

As proposed in Section 4.02 of the Bylaws, as soon as practicable after a new Exchange Facility begins operating as an Exchange Facility, a Participant Director and a Facility Director of the new facility would be appointed by the Board and would serve until the next annual meeting of the Members, when the regular selection processes shall govern. The process for selecting, appointing and electing Participant Directors and Facility Directors to serve on the Board would remain essentially the same—with the only difference being that each Exchange Facility would be represented.

In accordance with Section 4.06 of the Bylaws, at least twenty percent (20%) of the Nominating Committee must be comprised of “Participant

<sup>23</sup> See proposed changes to Sections 4.02, 4.04(c), 4.06(d), 5.03(b)–(h), and 6.08(a)–(b) of the Bylaws.

<sup>24</sup> See proposed changes to proposed Sections 4.06(c) and 4.06(d) of the Bylaws and Sections 6.01, 6.06 and 6.07 of the Bylaws.

<sup>25</sup> See Bylaws, Section 1.01(u).

<sup>26</sup> See LLC Agreement, Article 1, Section 1.1 and Article 4, Section 4.1(a).

Representatives,”<sup>27</sup> which, as described above, would be defined in the Bylaws to mean officers, directors or employees of firms or organizations that are registered with the Exchange for purposes of participating in trading on the Exchange’s existing facility as an order flow provider or market maker. In order to qualify as a Participant Representative, any person would be required to be serving as an officer, director or employee of an Exchange Facility Participant. The proposed changes would continue to ensure that at least twenty percent (20%) of the Nominating Committee would be comprised of “Participant Representatives” but Section 4.06(a) would also provide that at least one (1) Participant Representative would be selected from each Exchange Facility.

Section 4.06(a) of the Bylaws also provides that the Nominating Committee currently includes one “BOX Holdings Director” unless that director declines to serve. The Exchange is proposing to delete this provision for the reasons described above regarding the proposed removal of the defined term “BOX Holdings Director” from the Bylaws. In order to qualify as a Facility Representative, any person would be required to be serving as a director or senior executive officer of an Exchange Facility. This proposal is the same as currently applies to BOX Options Market through its parent, BOX Holdings. In addition, the Exchange is proposing changes that would ensure that each Exchange Facility would have one (1) Facility Representative serving on the Nominating Committee.

As generally proposed in Section 4.02 of the Bylaws, as soon as practicable after a new Exchange Facility begins operating as a facility of the Exchange, a “Participant Representative”<sup>28</sup> and a “Facility Representative”<sup>29</sup> of the new Exchange Facility would be appointed by the Board and would serve until the next annual meeting of the Members, when the regular selection processes shall govern. The process for selecting, appointing and electing “Participant Representatives” and “Facility Representatives” to serve on the Nominating Committee would remain essentially the same—with the only difference being that each Exchange Facility would be represented.

Text that is no longer applicable would be eliminated from the end of Section 4.06(b) and (c) of the Bylaws. The text is no longer applicable because it is specific to the first annual meeting

of the Board that occurred after the Exchange was approved as an SRO and so the provisions are outdated and no longer relevant. Accordingly, these removals are streamlining changes that the Exchange is proposing to eliminate unnecessary content from the Bylaws and produce Bylaws that are easier to read and understand.

The Exchange proposes to eliminate the provision in Section 4.11(e) of the Bylaws that allows only a “BOX Holdings Director” to appoint an observer to attend Board meetings in such Director’s place. The provision would be removed in connection with the proposed removal of the defined term “BOX Holdings Director” from the Bylaws. This change is due to the proposed increased number of individuals serving as Facility Directors when multiple facilities are being regulated, resulting in a higher administrative burden on the Exchange to monitor and vet potential individuals who may only be briefly involved in the business of the Exchange. The Exchange believes this change will allow the Exchange to maintain its ability to regulate the individuals who have access to Exchange confidential information.

The Exchange is proposing a ministerial change to Section 4.11(f) to spell out the full legal name of BOX Holdings Group LLC. While the Exchange is proposing to remove the representation of BOX Holdings on the Board through the current “BOX Holdings Director” as described above, the reference to BOX Holdings in this Section 4.11(f) remains relevant as the provision establishes more general constraints on who may attend meetings of the Board.

The Exchange is proposing changes to Section 5.03 of the Bylaws that would provide rulemaking authority to the Exchange over multiple facilities. Specifically, Section 5.03 addresses the Board’s authority to adopt, amend or repeal rules of the Exchange. Existing references to “BOX Options Participants” would be replaced by references to the proposed term “Exchange Facility Participants” to contemplate that the Exchange may regulate other facilities in the future other than only the BOX Options Market and that the Exchange would also have rules in place that would apply to participants using those facilities. In addition, as described above, the Exchange proposes to eliminate the defined term “System” from the LLC Agreement and therefore Section 5.03(b) of the Bylaws is proposed to be revised to replace the term “System” with

descriptive text that conveys substantially the same meaning.

## 2. Statutory Basis

Section 6(b)(5) of the Exchange Act<sup>30</sup> requires, among other things, that the rules of a national securities exchange be designed to “foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities” and “to protect investors and the public interest.” The Exchange believes that the proposed rule change is consistent with these requirements for two primary reasons. First, the Exchange is proposing changes to the LLC Agreement and Bylaws that are designed to allow the Exchange to regulate multiple facilities. As described above, the Exchange currently regulates only the BOX Options Market as a facility, but it proposes to be able to add other facilities. Therefore, the changes to the LLC Agreement and Bylaws would promote the Exchange’s ability to regulate other facilities and the Exchange believes that this, in turn, would foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities traded through the facilities of the Exchange by notifying such persons of the potential for the Exchange to regulate multiple facilities in the future. Second, certain defined terms in the LLC Agreement and the Bylaws would be added, modified or removed to produce a simplified set of defined terms that is easier to read and understand and that is flexible enough to accommodate the potential for multiple facilities of the Exchange and rules related thereto. The Exchange believes that simplifying the defined terms used throughout the LLC Agreement and the Bylaws and making the terms consistent with the Exchange’s intent to regulate multiple facilities would promote readability and comprehension of the LLC Agreement and Bylaws that would promote the protection of investors and the public interest by making the related rights and responsibilities under the LLC Agreement and Bylaws clear and concise.

Section 6(b)(3) of the Exchange Act<sup>31</sup> requires, among other things, that the rules of a national securities exchange must “assure a fair representation of its members in the selection of its directors and administration of its affairs[.]” The

<sup>27</sup> See Bylaws, Section 1.01(v).

<sup>28</sup> See Bylaws, proposed Section 1.01(v).

<sup>29</sup> See Bylaws, proposed Section 1.01(k).

<sup>30</sup> 15 U.S.C. 78f(b).

<sup>31</sup> 15 U.S.C. 78f(b)(3).

Exchange believes that the proposed rule change is consistent with the fair representation requirements of Section 6(b)(3) of the Exchange Act because proposed Section 4.02 of the Bylaws would continue to provide that “Participant Directors” who are officers, directors, or employees of an “Exchange Facility Participant” would have at least twenty percent (20%) representation on the Board. This parallels the existing structure of the Bylaws as currently applicable to the BOX Options Market (through its parent, BOX Holdings) as the only facility of the Exchange. The proposed difference is that the requirements would be applied to “Exchange Facility Participants” as a more general mechanism to achieve fair representation on the Board of “Exchange Facility Participants” across all potential facilities of the Exchange. In addition, the proposed changes provide that each Exchange Facility will have at least one representative on the Board so that every Exchange Facility would be represented.

Similarly, the Exchange believes that the proposed rule change with respect to Section 4.06 of the Bylaws is also consistent with the fair representation requirements of Section 6(b)(3) of the Exchange Act because proposed Section 4.06 of the Bylaws would continue to provide that “Participant Representatives” who are officers, directors, or employees of an “Exchange Facility Participant” would have at least twenty percent (20%) representation on the Nominating Committee. This parallels the existing structure of those Bylaw provisions as currently applicable to the BOX Options Market as the only facility of the Exchange. The proposed difference is that the requirements would be applied to “Exchange Facility Participants” as a more general mechanism to achieve fair representation on the Nominating Committee of “Exchange Facility Participants” across all potential facilities of the Exchange. In addition, the proposed changes provide that each Exchange Facility will have at least one representative on the Nominating Committee so that every Exchange Facility is represented.

The Exchange believes that the proposed removal of BOX Holdings from the LLC Agreement is consistent with Section 6(b)(3) of the Exchange Act. As discussed above, BOX Holdings is not a Member of the Exchange and is only a party to the LLC Agreement with respect to its rights to appoint individuals to serve on the Exchange’s Board and Nominating Committee. The right to appoint a director to the Exchange Board is now proposed to

reside in each Exchange Facility, which is consistent with the fair representation requirements of Section 6(b)(3) of the Exchange Act by providing a more general mechanism to achieve fair representation on the Board.

The Exchange now proposes to be permitted to regulate multiple facilities, each of which would have similar representation on the Exchange and its Board. As such, removal of BOX Holdings is consistent with the requirements of the Act, particularly with Section 6(b)(1),<sup>32</sup> which requires, in part, an exchange be so organized and have the capacity to carry out the purposes of the Act by providing representation of each facility.

The Exchange believes the removal of BOX Holdings from the LLC Agreement is consistent with Section 6(b)(5) of the Exchange Act because, as explained above, with the proposed changes to the LLC Agreement designed to allow the Exchange to regulate multiple facilities it is no longer necessary to include BOX Holdings in the LLC Agreement. As such, the proposed change would promote readability and comprehension of the LLC Agreement that would promote the protection of investors and the public interest by making the related rights and responsibilities under the LLC Agreement clear and concise. As such, the Exchange believes the proposal to remove BOX Holdings is consistent with the requirements of Section 6(b) of the Act in general.

#### *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. As described above, the Exchange is proposing certain discrete amendments to the LLC Agreement and Bylaws that would (i) provide sufficient flexibility in the documents for them to contemplate that there may be multiple Exchange facilities under the Exchange’s regulatory authority, (ii) simplify the structure of the defined terms in the LLC Agreement and Bylaws to make them easier to read and understand, and (iii) make certain other changes to the terms of the LLC Agreement and Bylaws to bring them current with the structure of the Exchange and its relationships. To the extent that the proposed changes to the LLC Agreement and the Bylaws would apply to Exchange Facilities or participants in an Exchange Facility, the proposed changes would apply equally and would therefore not favor any particular Exchange Facility over any other or any particular participant in

any Exchange Facility over any other. For these reasons, the Exchange believes that the proposed changes are consistent with the Exchange Act because they would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.<sup>33</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**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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-2020-04 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-2020-04. 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 (<http://www.sec.gov/>

<sup>32</sup> 15 U.S.C. 78f(b)(1)

<sup>33</sup> 15 U.S.C. 78f(b)(8).

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-2020-04, and should be submitted on or before March 17, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>34</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2020-03640 Filed 2-24-20; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33800; File No. 812-15037]

### Prospect Capital Management L.P., et al.

February 19, 2020.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 18(a)(2), 18(c), and 18(i) of the Act, under sections 6(c) and 23(c) of the Act for an exemption from rule 23c-3 under the Act, and for an order pursuant to section 17(d) of the Act and rule 17d-1 under the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain registered closed-end management

investment companies to issue multiple classes of shares and to impose asset-based distribution and/or service fees, and early withdrawal charges ("EWCs").

**APPLICANTS:** Prospect Capital Management L.P. (the "Adviser"), Priority Senior Secured Income Management, LLC ("PSSIM"), and Priority Income Fund, Inc. (the "Initial Fund").

**FILING DATES:** The application was filed on May 28, 2019 and amended on September 17, 2019 and December 10, 2019.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 16, 2020, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090; Applicants: 10 East 40th Street, 42nd Floor, New York, NY 10016.

**FOR FURTHER INFORMATION CONTACT:** Barbara T. Heussler, Senior Counsel, at (202) 551-6990, or Trace W. Rakestraw, Branch Chief, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

### Applicants' Representations

1. The Initial Fund is a Maryland corporation that is registered under the Act as an externally managed, non-diversified, closed-end management investment company. The Initial Fund's investment objective is to generate current income and, as a secondary objective, long-term capital appreciation.

2. PSSIM is a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and currently serves as investment adviser to the Initial Fund pursuant to an advisory agreement. The Adviser is a Delaware limited partnership and is registered as an investment adviser under the Advisers Act. The Adviser owns 50% of PSSIM and is the operating member of PSSIM, responsible for making all investment and operational decisions for PSSIM.

3. The applicants seek an order to permit the Initial Fund to issue multiple classes of shares and to impose asset-based distribution and/or service fees, and EWCs.

4. Applicants request that the order also apply to any continuously offered registered closed-end management investment company, existing now or in the future, for which the Adviser or any entity controlling, controlled by, or under common control with the Adviser, or any successor in interest to any such entity,<sup>1</sup> acts as investment adviser and that operates as an interval fund pursuant to rule 23c-3 under the Act or provides periodic liquidity with respect to its shares pursuant to rule 13e-4 under the Securities Exchange Act of 1934 ("Exchange Act") (each, a "Future Fund" and together with the Initial Fund, the "Funds").<sup>2</sup>

5. The Initial Fund currently makes a continuous public offering of its shares. Applicants state that additional offerings by any Fund relying on the order may be on a private placement or public offering basis. Shares of the Funds will not be listed on any securities exchange, nor quoted on any quotation medium. The Funds do not expect there to be a secondary trading market for their shares.

6. If the requested relief is granted, the Initial Fund may also offer additional classes of shares in the future, with each class having its own fee and expense structure.

7. Applicants state that, from time to time, the Funds may create additional classes of shares, the terms of which may differ from the initial class pursuant to and in compliance with rule 18f-3 under the Act.

8. The Initial Fund provides periodic liquidity with respect to its shares

<sup>1</sup> A successor in interest is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

<sup>2</sup> Any Fund relying on this relief in the future will do so in compliance with the terms and conditions of the application. Applicants represent that each entity presently intending to rely on the requested relief is listed as an applicant.

<sup>34</sup> 17 CFR 200.30-3(a)(12)