

these Conditions were approved by the Required Majority under section 57(f).

12. *Director Independence.* No Independent Director (including the non-interested members of any Independent Party) of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise be an "affiliated person" (as defined in the Act) of any Affiliated Fund.

13. *Expenses.* The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Advisers under their respective advisory agreements with the Regulated Funds and the Affiliated Funds, be shared by the Regulated Funds and the participating Affiliated Funds in proportion to the relative amounts of the securities held or being acquired or disposed of, as the case may be.

14. *Transaction Fees.*<sup>30</sup> Any transaction fee (including break-up, structuring, monitoring or commitment fees but excluding brokerage or underwriting compensation permitted by section 17(e) or 57(k)) received in connection with any Co-Investment Transaction will be distributed to the participants on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by the Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1), and the account will earn a competitive rate of interest that will also be divided pro rata among the participants. None of the Advisers, the Affiliated Funds, the other Regulated Funds or any affiliated person of the Affiliated Funds or the Regulated Funds will receive any additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction other than (i) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in Condition 2(c)(iii)(B)(z), (ii) brokerage or underwriting compensation permitted by section 17(e) or 57(k) or (iii) in the case of the Advisers, investment

advisory compensation paid in accordance with investment advisory agreements between the applicable Regulated Fund(s) or Affiliated Fund(s) and its Adviser.

15. *Independence.* If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund, then the Holders will vote such Shares as directed by an independent third party when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable State law affecting the Board's composition, size or manner of election.

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

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88892; File No. SR-BOX-2020-12]

### Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend BOX Rule 7270 (Block Trades) To Add an Automatic Matching Feature to the Facilitation Auction Mechanism

May 18, 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 May 7, 2020, BOX Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 amend BOX Rule 7270 (Block Trades) to add an automatic matching feature to the Facilitation Auction mechanism. 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 purpose of the proposed rule change is to amend Rule 7270 to add an automatic matching feature to the Facilitation Auction mechanism.

Currently, BOX's Facilitation Auction mechanism allows members to enter two-sided orders for execution with the possibility of the Agency Order receiving price improvement.<sup>3</sup> In this mechanism, an Agency Order is submitted to BOX by the Facilitating Participant with a matching guaranteed contra-side order ("Facilitation Order") equal to the full size of the Agency Order. The agency side of this two-sided order is then exposed to market participants during a one-second auction to give them an opportunity to compete so that they may participate in the execution of the Agency Order.

The Exchange now proposes to adopt auto-match functionality to the Facilitation Auction mechanism. Upon entry of an order into the Facilitation Mechanism, the Facilitating Participant can elect to automatically match the price and size of orders, quotes and responses received during the exposure period up to a specified limit price or without specifying a limit price ("auto-match"). In this case, the Facilitating Participant will be allocated its full size at each price point, or at each price point within its limit price if a limit is specified, until a price point is reached where the balance of the order can be fully executed. At such price point, the Facilitating Participant shall be allocated at least forty percent (40%) of the original size of the facilitation order, but only after Public Customer interest

<sup>30</sup> Applicants are not requesting and the Commission is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

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

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

<sup>3</sup> See BOX Rule 7270(a) (Facilitation Auction mechanism).

at such price point. Thereafter, all other orders, Responses, and quotes at the facilitation price will participate in the execution of the Agency Order based upon price/time priority. Further, the Exchange proposes that an election to automatically match better prices cannot be cancelled or altered during the exposure period.

Under the proposal, if a Facilitating Participant elects to use the auto-match feature, the Facilitation Order will be allocated its full size at each price level where there are competing quotes or orders, up to the auto-match limit if one is specified, until a price level is reached where the balance of the Agency Order can be fully executed. At such price level, the Facilitation order will be allocated the greater of one contract or 40% of the size of the Agency Order after Public Customers. The following examples illustrate how the proposed auto-match feature will operate in the Facilitation Auction mechanism.

Assume the NBBO is \$10.60 bid and \$10.70 offered. An Agency Order to sell 50 contracts at \$10.65 is entered into the Facilitation Mechanism by the Facilitating Participant with a Facilitation Order that has an auto-match limit of \$10.70:

- If one Response is received for 20 contracts to buy at \$10.70, the Agency Order will execute against 40 contracts at \$10.70 (20 against the Response and 20 against the Facilitation Order) and 10 contracts at \$10.65 (against the Facilitation Order).

In the same scenario above, with multiple Responses, the Facilitating Participant will be allocated its full size at each price point, or at each price point within its limit price if a limit is specified, until a price point is reached where the balance of the order can be fully executed. At such price point, the facilitating Participant shall be allocated at least forty percent (40%) of the original size of the facilitation order, but only after Public Customer interest at such price point.<sup>4</sup>

- If Response 1 is for 20 contracts to buy at \$10.70 and Response 2 and Response 3 are for 5 contracts (each respectively) to buy at \$10.65 (Response 2 is a Broker Dealer and Response 3 is a Market Maker), the Agency Order will execute against 40 contracts at \$10.70 (20 against Response 1 and 20 contracts against the Facilitation Order) and 10 contracts at \$10.65 against the Facilitation Order.

- If Response 1 is for 20 contracts to buy at \$10.70 and Response 2 and Response 3 are for 5 contracts (each

respectively) to buy at \$10.65 (Response 2 is a Public Customer and Response 3 is a Broker Dealer), the Agency Order will execute against: 40 Contracts at \$10.70 (20 contracts against Response 1 and 20 contracts against the Facilitation Order), 5 contracts at \$10.65 against Response 2 (Public Customer Response), and then the remaining 5 contracts at \$10.65 against the Facilitation Order.

Under the current rules, the Agency Order in the examples would sell 20 contracts at \$10.70 and the remaining contracts at \$10.65. Thus, the proposed auto-match feature will benefit the Agency Order because it sells an additional 20 contracts at the better price.

The Exchange notes that the Facilitation Auction mechanism allows for broad participation in its competitive auctions by all types of market participants (*e.g.*, Public Customers, Broker-Dealers, and Market Makers). All market participants are able to receive the auction broadcast and may respond by submitting competing interest (*i.e.*, responses, orders and quotes). All Agency Orders entered into the mechanisms will continue to be broadly exposed in the auction before the Facilitating Participant can execute against the Agency Order via the auto-match feature.

The Exchange notes that when the Facilitating Participant selects the auto-match feature prior to the start of an auction, the available liquidity at improved prices is increased and competitive final pricing is out of the Facilitating Participant's control. The Exchange believes that the proposal will increase competition in the auctions, will provide more options contracts with price improvement and incent market participants to initiate more auctions with the auto-match feature. Increases in the number of auctions initiated on the Exchange using the Facilitation Auction mechanism will directly correlate with an increase in the number of Agency Orders that are provided with the opportunity to receive price improvement over the NBBO.

The Exchange also notes that this auto-match feature has been implemented by another options exchange with respect to their facilitation auction mechanism.<sup>5</sup>

<sup>5</sup> See Nasdaq ISE ("ISE") Rule Options 3, Section 11(b)(C). The Exchange notes a minor difference between the proposed rule discussed herein and ISE's rule. ISE's rule states that ". . . thereafter, all other orders, Responses, and quotes at the price point will participate in the execution of the facilitation order based upon the percentage of the total number of contracts available at the facilitation

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>6</sup> in general, and Section 6(b)(5) of the Act,<sup>7</sup> in particular, that an exchange have rules that are designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism for a free and open market and a national market system, and in general, to protect investors and the public interest. In particular, the Exchange believes that the proposal will result in additional liquidity available at improved prices with competitive final pricing out of the Facilitating Participant's control, thus increasing competition in the Facilitation auctions and providing more options contracts with price improvement. As a result of the increased opportunity for price improvement, the Exchange believes that market participants will be incented to initiate more Facilitation auctions. Increases in the number of auctions will directly correlate with an increase in the number of customer orders that are provided with the opportunity to receive price improvement over the NBBO. Further, the Exchange notes that similar functionality currently exists at another options exchange in the industry.<sup>8</sup>

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

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed functionality, which is similar to functionality offered on another exchange, is voluntary and the Exchange therefore does not believe that providing this functionality will have any significant impact on competition. Further, the Exchange believes that the proposed change is evidence of the competitive environment in the options industry where exchanges must continually improve their offerings to maintain competitive standing. As such, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or

price that is represented by the size of the order, Response or quote." The Exchange notes that ISE is a pro-rata allocation exchange which is reflected by the rule text discussed above. Further, BOX is a price/time priority exchange. As such, the Exchange believes it is appropriate to reflect the use of price/time priority, not pro-rata, in the proposed change.

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> See *supra* note 5.

<sup>4</sup> See Proposed Rule 7270(a)(4).

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 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>9</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>10</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days from the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>11</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Commission notes that waiver of the operative delay would allow the Exchange to provide the auto-match functionality immediately available to Participants. The Commission also notes that the proposed rule change is substantially similar to functionality on another options exchange.<sup>12</sup> For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.<sup>13</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:

*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-2020-12 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-2020-12. 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-2020-12, and should be submitted on or before June 12, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020-11039 Filed 5-21-20; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-88894; File No. SR-BOX-2020-13]

**Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend IM-3120-2 to BOX Rule 3120 ("Position Limits") To Increase Position Limits for Options on Certain Exchange-Traded Funds ("ETFs"), and Thereby Similarly Increase Exercise Limits Under IM-3140-1 for Certain ETFs**

May 18, 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 May 7, 2020, BOX Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend IM-3120-2 to BOX Rule 3120 ("Position Limits") to increase position limits for options on certain exchange-traded funds ("ETFs"), and thereby similarly increase exercise limits under IM-3140-1 for certain ETFs. 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>.

<sup>14</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.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

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

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).