amount of no more than $3 billion, subject to a phase-in level of an aggregate gross notional amount of no more than $8 billion.[6] For security-based swaps that are not credit default swaps, the *de minimis* threshold is an aggregate gross notional amount of no more than $150 million, subject to a phase-in level of an aggregate gross notional amount of no more than $400 million.[7]

The phase-in period for these *de minimis* security-based swap dealing activity thresholds is available until the ''phase-in termination date.''[8] The phase-in termination date, in turn, depends in part on the ''data collection initiation date'' established pursuant to Exchange Act Rule 3a71–2(a)(2)(iii). That rule provides that the data collection initiation date was the later of (1) the last compliance date for the registration and regulatory requirements for SBSDs and major security-based swap participants under Exchange Act Section 15F,[9] and (2) the first date on which compliance with the trade-by-trade reporting rules for credit-related and equity-related security-based swaps to a registered security-based swap data repository is required. With respect to the first prong of Exchange Act Rule 3a71–2(a)(2)(iii), the compliance date for registration and regulatory requirements for SBSDs and major security-based swap participants under Exchange Act Section 15F was October 6, 2021.[10] With respect to the second prong of Exchange Act Rule 3a71–2(a)(2)(iii), on May 7, 2021, DTCC Data Repository registered with the Commission, which definitively set November 8, 2021, as the first compliance date for Regulation SBSR's requirements regarding reporting of credit-related and equity-related security-based swaps.[11] Pursuant to Exchange Act Rule 3a71–2(a)(2)(iii), the data collection initiation date thus was November 8, 2021.

The phase-in termination date is determined through a separate mechanism that depends in part on the data collection initiation date and also, as explained below, in part upon the timing of a Commission staff report addressing the rules and interpretations further defining the Exchange Act's definition of the term ''security-based swap dealer,'' including the *de minimis* exception to that definition.[12] The report must be published in the **Federal Register** for public comment no later than three years following the data collection initiation date, or November 8, 2024, and could be published earlier.[13] Nine months after the publication of the report, the Commission may by order either terminate the phase-in period for the *de minimis* thresholds or provide notice of its determination that it is necessary or appropriate in the public interest to propose through rulemaking an alternative to the $3 billion and $150 million *de minimis* thresholds. The Commission's order in either case shall establish the phase-in termination date.[14] Alternatively, if the phase-in termination date has not been previously established in such an order, the phase-in termination date shall be five years after the data collection initiation date,[15] or November 8, 2026.

Commission Announcement

The data collection initiation date referenced in Exchange Act Rules 3a71–2 and 3a71–2A was November 8, 2021. Absent additional Commission action establishing the phase-in termination date pursuant to Exchange Act Rule 3a71–2(a)(2)(ii)(A), the phase-in termination date shall be November 8, 2026.

By the Commission.

Dated: May 11, 2022.

Eduardo A. Aleman,

Deputy Secretary.

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[6] Exchange Act Rule 3a71–2(a)(1)(i).

[7] Exchange Act Rule 3a71–2(a)(1)(ii).

[8] Exchange Act Rule 3a71–2(a)(2)(i).

[9] 15 U.S.C. 78o–10.

[10] *See* Cross-Border Application of Certain Security-Based Swap Requirements, Release No. 34–87780 (Dec. 18, 2019) [85 FR 6270, 6345 (Feb. 4, 2020)] (''Cross-Border Amendments Release''). In the Cross-Border Amendments Release, the Commission set the compliance date for registration and regulatory requirements for SBSDs and major security-based swap participants as 18 months after the effective date described therein; that effective date was 60 days after publication of the Cross-Border Amendments Release in the **Federal Register**. The Cross-Border Amendments Release was published in the **Federal Register** on Feb. 4, 2020; 60 days after that date was Apr. 6, 2020. Eighteen months after Apr. 6, 2020, was Oct. 6, 2021.

[11] The first compliance date for Regulation SBSR with respect to a security-based swap asset class was the first Monday that was the later of: (1) Six months after the date on which the first security-based swap data repository that can accept transaction reports in that asset class registers with the Commission; or (2) one month after the compliance date for registration and regulatory requirements for SBSDs and major security-based swap participants. *See* Cross-Border Amendments Release, 85 FR 6346. DTCC Data Repository (U.S.), LLC registered as a security-based swap data repository for credit and equity asset classes (*i.e.,* the asset classes referenced in Exchange Act Rule 3a71–2(a)(2)(iii)) on May 7, 2021. *See* Security-Based Swap Data Repositories; DTCC Data Repository (U.S.), LLC; Order Approving Application for Registration as a Security-Based Swap Data Repository, Release No. 34–91798 (May 7, 2021) [86 FR 26115 (May 12, 2021)]. Nov. 8, 2021, was both the first Monday that was six months after May 7, 2021, and the first Monday that was one month after the Oct. 6, 2021, compliance date for registration and regulatory requirements for SBSDs and major security-based swap participants. *See also* SEC Approves Registration of First Security-Based Swap Data Repository; Sets the First Compliance Date for Regulation SBSR, Press Release No. 2021–80 (May 7, 2021), available at *https://www.sec.gov/news/press-release/2021-80* (''Today's SEC action sets Nov. 8, 2021, as the first compliance date for Regulation SBSR, which governs regulatory reporting and public dissemination of security-based swap transactions.'').

[12] *See* Exchange Act Rule 3a71–2A note. As appropriate, based on the availability of data and information, the report generally should assess whether any of the *de minimis* thresholds should be increased or decreased. *See* Exchange Act Rule 3a71–2A(a)(1). The Commission intends to consider this report in reviewing the effect and application of the *de minimis* thresholds based on the evolution of the security-based swap market following the implementation of the registration and regulatory requirements of Exchange Act Section 15F; the report may also be informative as to potential changes to the rules further defining the term ''security-based swap dealer.'' *See* Exchange Act Rule 3a71–2A note. The Commission directed staff also to report on the rules and interpretations further defining the Exchange Act's definition of the term ''major security-based swap participant,'' to which the *de minimis* thresholds in Exchange Act Rule 3a71–2 do not apply.

[13] *See* Exchange Act Rule 3a71–2A(b) through (c).

[14] *See* Exchange Act Rule 3a71–2(a)(2)(ii)(A).

[15] Exchange Act Rule 3a71–2(a)(2)(ii)(B).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94894; File No. SR–BOX–2022–17]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Options Market LLC Facility To Adopt Electronic Market Maker Trading Permit Fees

May 11, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 27, 2022, BOX Exchange LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

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 is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the Fee Schedule to establish a new monthly Participant Fee on the BOX Options Market LLC (''BOX'') options facility. 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://boxexchange.com.*

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

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

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

1. Purpose

The Exchange proposes to amend the Fee Schedule to establish a new monthly Participant Fee. Specifically, the Exchange proposes to adopt electronic Market Maker Trading Permit Fees as follows: (i) $4,000 per month for Market Maker Appointments in up to and including 10 classes; (ii) $6,000 per month for Market Maker Appointments in up to and including 40 classes; (iii) $8,000 per month for Market Maker Appointments in up to and including 100 classes; and (iv) $10,000 per month for Market Maker Appointments for over 100 classes. For the calculation of the monthly electronic Market Maker Trading Permit fees, the number of classes is defined as the greatest number of classes the Market Maker was appointed to quote in on any given day within the calendar month. The Exchange notes that the proposed electronic Market Maker Trading Permit fees are lower than fees assessed at competing options exchanges.[5] The Exchange notes the current monthly Participant Fee of $1,500 per month will not apply to electronic Market Makers. Under this proposal, electronic Market Makers will pay the applicable monthly electronic Market Maker Trading Permit fee only. All other electronic Participants[6] will continue to pay the monthly Participant Fee in Section I.B of the BOX Fee Schedule.

The Exchange initially filed the proposed fee change on January 3, 2022 (SR–BOX–2022–01) (the ''Original Filing''). BOX withdrew the Original Filing and submitted SR–BOX–2022–04 (the ''Second Proposed Rule Change''). BOX withdrew the Second Proposed Rule Change and submitted the SR–BOX–2022–06 (the ''Third Proposed Rule Change''). On February 1, 2022, BOX withdrew the Third Proposed Rule Change and submitted SR–BOX–2022–07 (the ''Fourth Proposed Rule Change'') to lower the fees detailed in the past filings after industry feedback. On April 5, 2022, BOX withdrew and submitted SR–BOX–2022–12 (the ''Fifth Proposed Rule Change''). On April 11, 2022, BOX withdrew and submitted SR–BOX–2022–15 (the ''Sixth Proposed Rule Change''). The Exchange is now withdrawing the Sixth Proposed Rule Change and submitting this filing (the ''Seventh Proposed Rule Change'').

The Exchange notes that the proposed electronic Market Maker Trading Permit fees have been effective, and thus paid by BOX Market Makers, since January 1, 2022.[7] The Exchange believes it is notable that during this time, there have been no comment letters submitted to the Commission arguing that the Exchange's new fees are unreasonable. The Exchange also believes it's significant and notable that, due to industry feedback received in January from BOX Market Makers, the Exchange withdrew its proposed fee change and refiled to decrease the proposed fees in response to the feedback.

As discussed herein, the Exchange believes the proposed changes are consistent with the Act because they are reasonable, equitably allocated, and not unfairly discriminatory, and not an undue burden on competition, as they are supported by evidence (including data and analysis) and are constrained by significant competitive forces. The Exchange also believes the proposed fees are reasonable as they are in line with the amounts assessed to Market Makers by other exchanges for similar permits. Accordingly, the Exchange believes that the proposed fees are consistent with the Act. The proposed rule change is immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange established the $1,500 monthly Participant Fee in October 2016 for all Participants regardless of account type.[9] At the time BOX established this Participant Fee, BOX's market share was 2.45% and the total volume of options contracts traded on BOX in September 2016 was 8,737,707. The Exchange established this lower (when compared to other options exchanges in the industry) Participant Fee in order to encourage market participants to become Participants of BOX and register as BOX Market Makers. Since 2016, BOX has grown its market share and membership base significantly. Specifically, in September 2021, BOX's market share was 5.19% and the total volume of option contracts traded on BOX in September 2021 was 42,098,287. BOX recently reviewed its current Participant Fees detailed in Section I of the BOX Fee Schedule. In its review, BOX determined that

[5] *See* NYSE Arca, Inc. (''NYSEArca'') Fee Schedule (assessing Market Makers $6,000 for up to 175 option issues, an additional $5,000 for up to 350 option issues, an additional $4,000 for up to 1,000 option issues, and an additional $3,000 for all option issues traded on the Exchange). The Exchange notes that these fees are compounded, so Market Makers who trade in all option issues on the exchange are assessed $18,000 per month. *See also* Miami International Securities Exchange, LLC (''MIAX'') Fee Schedule (assessing Market Makers $7,000 for up to 10 classes or up to 20% of classes by volume, $12,000 for up to 40 classes or up to 35% of classes by volume, $17,000 for up to 100 classes or up to 50% or classes by volume, and $22,000 for over 100 classes or over 50% of classes by volume up to all classes listed on MIAX).

[6] The Exchange notes the following Participant types on BOX: Public Customers, Professional Customers, Broker Dealers, and Market Makers. Pursuant to this proposal, Public Customers, Professional Customers, and Broker Dealers will continue to be charged the $1,500 Participant Fee detailed in Section I.B of the BOX Fee Schedule.

[7] The Exchange notes that the higher fees from the Original Filing were assessed for the month of January 2022, however the proposed fees were assessed for February 2022 and will continue to be assessed.

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] *See* Securities Exchange Act Release No. 79038 (October 4, 2016), 81 FR 70214 (October 11, 2016) (SR–BOX–2016–47).

Participant Fees would need to be raised, and a flat fee for all Participant types is no longer appropriate. Specifically, BOX found that electronic Market Makers had been benefitting from a flat Participant Fee rate while (1) consuming the most bandwidth and resources of the network; (2) transacting the vast majority of the volume on BOX; and (3) requiring the high touch network support services provided by BOX and its staff. The Exchange notes that Broker Dealers, Professional Customers, and Public Customers take up significantly less BOX resources and costs as discussed further below. Further, BOX notes that Market Makers account for greater than 99% of message traffic over the network, while other non-Market Maker market participants account for less than 1% of message traffic over the network. In BOX's experience, most BOX Participants do not have a business need for the high performance network solutions required by Market Makers. BOX's high performance network solutions and supporting infrastructure (including employee support), provides unparalleled system throughput and the capacity to handle approximately 3 million quote messages per second. On an average day, the BOX Trading Host handles over 1.6 billion total messages. Of those 1.6 billion daily messages, BOX Market Makers generate 1.59 billion of those messages, while other BOX Participants generate 9.5 million messages. Additionally, in order to achieve consistent, premium network performance, BOX must build out and maintain a network that has the capacity to handle the message rate requirements beyond those 1.6 billion daily messages. These billions of messages per day consume BOX's resources and significantly contribute to the overall expense for storage and network transport capabilities. Given this difference in network utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that Market Makers begin to pay for a higher portion of the access costs (compared to other BOX Participant types).

BOX notes that while Market Makers continue to account for a vast majority of the increased costs and resources placed on BOX and its systems (as discussed herein), Market Makers continue to be valuable market participants on the exchanges as the options market is a quote driven industry. BOX recognizes the value that Market Makers bring to the Exchange. In fact, BOX provides Market Makers volume-based discounts and rebates to incentivize Market Makers to direct order flow to the Exchange to obtain the benefit of the rebate, which will in turn benefit all market participants by increasing liquidity on the Exchange. Additionally, for certain transactions, BOX also assesses a lower fee for Market Makers compared to the fee for Broker Dealers or Professional Customers for the same reason.[10] The proposed Trading Permit fees discussed herein are meant to strike a balance between offsetting the costs to which Market Makers place on BOX and continuing to incentivize Market Makers to access and make a market on BOX.

In its review of Participant Fees, BOX found that since 2016, Market Makers have had the luxury of paying the same Participant Fees as other account types despite Market Makers consuming the most resources on the BOX system and contributing to increased costs for BOX. As such, the Exchange proposes to establish higher, separate electronic Trading Permit fees for Market Makers that are more aligned with the costs and resources that Market Makers continue to place on BOX and its systems. Additionally, the Exchange believes that the proposed change will better align BOX Participant Fees with rates charged by competing options exchanges in the industry for similar Trading Permits for such market participants. As such, BOX believes the proposed electronic Market Maker Trading Permit fees are reasonable in that they are lower than comparable fees at other options exchanges.[11] Further, the Exchange believes that the proposal is reasonably designed to continue to compete with other options exchanges by incentivizing market participants to register as Market Makers on BOX in a manner than enables BOX to improve its overall competitiveness and strengthen market quality for all market participants. As stated above, the Exchange believes the proposed Market Maker Trading Permit fees are an appropriate balance between offsetting the costs to which Market Makers cost BOX and continuing to incentivize Market Makers to access and make a market on BOX.

The proposed fees are equitable and not unfairly discriminatory as the fees apply equally to all electronic Market Makers. As such, all similarly situated electronic Market Makers, with the same number of appointments, will be subject to the same electronic Market Maker Trading Permit fee. The Exchange also believes that assessing lower fees to electronic Market Makers that quote in fewer classes is reasonable and appropriate as it will allow BOX to retain and attract smaller-scale electronic Market Makers, which are an integral component of the options industry marketplace. Since these smaller electronic Market Makers utilize less bandwidth and capacity on the BOX network due to the lower number of quoted classes, the Exchange believes it is reasonable and appropriate to offer such electronic Market Makers a lower fee. The Exchange also notes that other options exchanges assess permit fees at different rates, based upon a member's participation on that exchange,[12] and, as such, this concept is not new or novel.

Further, the Exchange believes the proposed tiered structure of the electronic Market Maker Trading Permit fees is reasonable and appropriate. Under the proposal, electronic Market Makers will be charged monthly fees based on the greatest number of classes quoted on any given trading day in a calendar month. Under the proposed fee structure, the fees increase as the number of classes quoted by a Market Maker increases. The Exchange believes this structure is reasonable because the BOX system requires increased performance and capacity in order to provide the opportunity for Market Makers to quote in a higher number of options classes on BOX. Specifically, the more classes that are actively quoted

[10] For example, in Section IV.A (Non-Auction Transactions) of the BOX Fee Schedule, Market Makers are assessed a lower fee than Broker Dealers and Professional Customers when their orders interact with Public Customers, Professional Customers, Broker Dealers, and Market Makers. They are also eligible for rebates under the Tiered Volume Rebate for Non-Auction Transactions in Section IV.A.1 of the BOX Fee Schedule. Additionally, Market Makers are assessed lower fees on opening or re-opening transactions than Professional Customers and Broker Dealers under Section IV.A.2 of the BOX Fee Schedule.

[11] *See supra* note 5.

[12] *See e.g.,* NYSE Arca Options Fees and Charges, p.1 (assessing market makers $6,000 for up to 175 option issues, an additional $5,000 for up to 350 option issues, an additional $4,000 for up to 1,000 option issues, an additional $3,000 for all option issues on the exchange, and an additional $1,000 for the fifth trading permit and for each trading permit thereafter); NYSE American Options Fee Schedule, p. 23 (assessing market makers $8,000 for up to 60 plus the bottom 45% of option issues, an additional $6,000 for up to 150 plus the bottom 45% of option issues, an additional $5,000 for up to 500 plus the bottom 45% of option issues, and additional $4,000 for up to 1,100 plus the bottom 45% of option issues, an additional $3,000 for all issues traded on the exchange, and an additional $2,000 for 6th to 9th ATPs; plus an addition fee for premium products). *See also* Cboe BZX Options Exchange (''BZX Options'') assesses the Participant Fee, which is a membership fee, according to a member's ADV. *See* Cboe BZX Options Exchange Fee Schedule under ''Membership Fees''. The Participant Fee is $500 if the member ADV is less than 5000 contracts and $1,000 if the member ADV is equal to or greater than 5000 contracts.

on BOX by a Market Maker requires increased memory for record retention, increased bandwidth for optimized performance, increased functionalities on each application layer, and increased optimization with regard to surveillance and monitoring of such classes quoted. As such, basing the Market Maker Trading Permit fee on the greatest number of classes quoted in on any given day in a calendar month is reasonable and appropriate when taking into account how the increased number of quoted classes directly impact the costs and resources required for BOX. Further, the Exchange believes that the proposed tiered structure is equitable and not unfairly discriminatory as all similarly situated Market Makers will be charged the same fee. The Exchange notes that another options exchange in the industry calculates Market Maker Permit Fees in the same manner.[13]

The Exchange notes that there is no regulatory requirement that market makers connect and access any one options exchange. Moreover, a Market Maker membership is not a requirement to participate on the Exchange and participation on an exchange is completely voluntary. BOX reviewed membership details at three options exchanges and found that there are 62 market making firms across these three exchanges.[14] Further, BOX found that 42 of the 62 market making firms access only one of the three exchanges. Additionally, BOX has identified numerous market makers that are members of other options exchanges, but not the Exchange. For example, BOX identified 47 market makers that are members of Cboe Exchange Inc. (an exchange that only lists options), but not the Exchange (which also lists only options). Not only is there not an actual regulatory requirement to connect to every options exchange, the Exchange believes there is also no ''de facto'' or practical requirement as well, as further evidenced by the market maker membership analysis of three options exchanges discussed above. Indeed, Market Makers choose if and how to access a particular exchange and because it is a choice, BOX must set reasonable pricing, otherwise prospective market makers would not connect and existing Market Makers would disconnect from the Exchange.

As discussed above, BOX responded to Market Maker feedback to the proposed fees in January 2022 and due to this valuable feedback, BOX lowered the proposed fees. The Exchange believes that this reduction demonstrates that competitive constraints do not depend on showing that a Market Maker walked away, or threatened to walk away, from BOX due to a pricing change. Rather, the absence of negative feedback (in and of itself, and particularly when coupled with valuable feedback suggesting modifications or alternatives) is indicative that the proposed fees are, in fact, reasonable and consistent with BOX being subject to competitive forces in setting fees. Accordingly, the Exchange believes the Commission has a sufficient basis to determine that BOX was subject to significant competitive forces in setting the terms of its proposed fees. Moreover, the Commission has found that, if an exchange meets the burden of demonstrating it was subject to significant competitive forces in setting its fees, the Commission ''will find that its fee rule is consistent with the Act unless 'there is a substantial countervailing basis to find that the terms' of the rule violate the Act or the rules thereunder.'' [15] The Exchange is not aware of, nor has the Commission articulated, a substantial countervailing basis for finding the proposal violates the Act or the rules thereunder.

In order to provide more detail and to quantify BOX's costs associated with providing access to the BOX network in general, BOX notes that there are material costs associated with providing the infrastructure and headcount to fully-support access to BOX. BOX incurs technology expenses related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting associated with its network technology. While some of the expense is fixed, much of the expense is not fixed, and thus increases as the expenses associated with access services for electronic Market Makers increases. For example, new Market Makers to BOX may require the purchase of additional hardware to support those Participants as well as enhanced monitoring and reporting of customer performance that BOX provides. Further, as the total number of Market Makers increase, BOX may need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to BOX to provide access to its electronic Market Makers is not fixed. BOX believes the proposed electronic Market Maker Trading Permit fees are reasonable in order to offset a portion of the costs to BOX associated with providing access to Market Makers to its network infrastructure.

As discussed above, BOX Market Makers have and continue to account for the vast majority of network capacity utilization and trading activity on BOX and thus account for the majority of expenses placed on BOX systems. Specifically, in 2017 (the year after BOX established the flat Participant Fee), the total expense for providing access services for all Participant types was approximately $819,000. Broken down further, in 2017, the total expense for providing access services to non-Market Maker Participants was approximately $117,000 and the total expense for providing access services to Market Makers was approximately $702,000. The Exchange has seen this disparity in access expenses between non-Market Makers and Market Makers year after year since the establishment of the Participant Fee in 2016. In 2018, the total expense for providing access services for all Participant types was approximately $763,000—approximately $109,000 allocated to non-Market Maker expenses and approximately $654,000 allocated to Market Maker expenses. In 2019, the total expense for providing access services for all Participant types was approximately $722,000—approximately $103,000 allocated to non-Market Maker expenses and approximately $619,000 allocated to Market Makers. In 2020, the total expense for providing access services for all Participant types was approximately $1.1 million—approximately $161,000 allocated to non-Market Maker expenses and approximately $971,000 allocated to Market Makers. Further, as discussed herein, BOX experienced a material increase in costs in 2021 and projects a similar material increase for 2022 due to projects to make its network environment more transparent and deterministic, and increased order flow seen throughout the industry. Specifically, in 2021, the total expense for providing access services for all Participant types was approximately $1.29 million—approximately $190,000 allocated to non-Market Maker expenses

[13] *See* Nasdaq Phlx LLC (''Phlx'') Fee Schedule, Section 8(B) detailing the tiered structure for Streaming Quote Trader (''SQT'') Fees.

[14] BOX reviewed membership lists at Cboe Exchange Inc. (''Cboe''), Miami International Securities Exchange, LLC (''MIAX''), and BOX—all of which detail the firms registered as making makers on their respective exchanges. The Nasdaq and NYSE exchange groups do not provide this level of detail in their membership lists. As such, BOX has not included the Nasdaq and NYSE exchanges in this analysis.

[15] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) (''2008 ArcaBook Approval Order'') (approving proposed rule change to establish fees for a depth-of-book market data product).

and approximately $1.1 million allocated to Market Makers. Further, in the projected expenses for 2022, the total projected expense for providing access services for all Participant types is approximately $1.89 million—approximately $270,000 allocated to non-Market Maker expenses and $1.62 million allocated to Market Makers. As illustrated by these access expenses year over year, it is clear that BOX Market Makers account for the majority of expenses related to the provision of access services for BOX Participants. Accordingly, BOX believes that it is reasonable and appropriate to charge electronic Market Makers more than other BOX Participants for electronic Trading Permits to access the BOX network.

The Exchange believes that the proposed electronic Market Maker Trading Permit fees are reasonable, equitable, and not unfairly discriminatory. The Exchange believes that the reasonableness of its proposed fees is demonstrated by the very fact that such fees are in line with, and in some cases lower than, the costs of similar access fees at other exchanges.[16] The Exchange notes these fees were similarly filed with the Commission and neither suspended nor disapproved.[17] The proposed fees are fair and equitable and not unfairly discriminatory because they apply equally to all Market Makers and access to BOX is offered on terms that are not unfairly discriminatory. BOX designed the fee rates in order to provide objective criteria for Market Makers of different sizes and business models that best matches their quoting activity on BOX. BOX believes that the proposed fee rates and criteria provide an objective and flexible framework that will encourage Market Makers to be appointed and quote in option classes while also equitably allocating the fees in a reasonable manner amongst Market Maker appointments to account for quoting and trading activity.[18]

The Exchange again notes that it operates in a highly competitive market in which market makers can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, BOX must continually adjust its fees for services and products, in addition to order flow, to remain competitive with other exchanges. BOX believes that the proposed changes reflect this competitive environment.

The Exchange again notes it is not aware of any reason why Market Makers could not simply drop their access to an exchange (or not initially access an exchange) if an exchange were to establish prices for its non-transaction fees that, in the determination of such Market Maker, did not make business or economic sense for such Market Maker to access such exchange. The Exchange again notes that no market makers are required by rule, regulation, or competitive forces to be a Market Maker on the Exchange.

Furthermore, the Exchange wishes to highlight that one Market Maker modified their access to BOX since the implementation of the proposed fee change. This Market Maker was approved as an electronic Market Maker in 2017 but never underwent the process of provisioning itself to access the BOX systems.[19] After the Market Maker reviewed the notice the Exchange issued describing the proposed fees, the Market Maker informed the Exchange that it would terminate its Market Maker status on BOX as it had no intention to provision itself for access. The Exchange believes this further demonstrates competition within the market for exchange access, which as a result constrains fees the Exchange may charge for that access. The Exchange believes the fact that this Participant chose to terminate its Market Maker status on BOX but retained its status as an Order Flow Provider on BOX demonstrates that market participants can and do alter their membership statuses at exchanges if the market participant deems any fees as too high for its relevant marketplace. In BOX's case, the Participant determined that the Exchange's proposed fees for electronic Market Makers did not make business sense for itself, however it retained its membership as a BOX Participant in a different capacity.

In sum, the Exchange believes the proposed fees are reasonable and reflect a competitive environment, as BOX seeks to amend its Trading Permit fees for Market Makers, while still attracting Market Makers to continue to, or seek to, access BOX. The Exchange further believes the proposed Trading Permit fees discussed herein are an appropriate balance between offsetting the costs to which Market Makers cost BOX and continuing to incentivize Market Makers to access and make a market on BOX.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes that the proposed electronic Market Maker Trading Permit fees do not place certain market participants at a relative disadvantage to other market participants because the proposed fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the fee rates are designed in order to provide objective criteria for Market Makers of different sizes and business models that best matches their quoting activity on BOX. Further, the Exchange believes that the proposed electronic Market Maker Trading Permit fees will not impose a burden on intramarket competition because, when these fees are viewed in the context of the overall activity on BOX, Market Makers: (1) Consume the most bandwidth and resources of the network; (2) transact the vast majority of the volume on BOX; and (3) require the high touch network support services provided by BOX and its staff, including more costly network monitoring, reporting and support services, resulting in a much higher cost to BOX. The Exchange notes that the majority of customer demand comes from Market Makers, whose transactions make up a majority of the volume on BOX. Further, as discussed herein, other Participant types (Broker Dealers, Professional Customers, and Public Customers) take up significantly less BOX resources and costs. As such, the Exchange does not believe charging electronic Market Makers higher Trading Permit fees than other Participant types will impose a burden on intramarket competition.

The Exchange believes that the tiered structure of the proposed electronic Market Maker Trading Permit fees will not impose a burden on intramarket competition because the tiered structure takes into account the number of classes quoted by each individual Market Maker. As discussed herein, the BOX system requires increased performance and capacity in order to provide the opportunity for each Market Maker to quote in a higher number of options classes on BOX. Specifically, the more

[16] *See supra* note 5.

[17] The Exchange presumes that the fees of other exchanges are reasonable, as required by the Exchange Act in the absence of any suspension or disapproval order by the Commission providing otherwise.

[18] Prior to filing the Original Proposal, the Exchange notes that BOX Market Makers were made aware of the proposed tier structure and fee change. BOX received feedback from Market Makers and adjusted the fees accordingly based on their feedback. Market Makers are not required to quote on every options exchange. BOX Market Makers choose to quote and transact business on BOX because BOX is providing increased trading opportunities for these firms.

[19] The Exchange notes that the Participant is also currently an Order Flow Provider on BOX.

classes that are actively quoted on BOX by a Market Maker requires increased memory for record retention, increased bandwidth for optimized performance, increased functionalities on each application layer, and increased optimization with regard to surveillance and monitoring of such classes quoted. As such, basing the Market Maker Trading Permit fee on the greatest number of classes quoted in on any given day in a calendar month is reasonable and appropriate when taking into account how the increased number of quoted classes directly impact the costs and resources for BOX.

Inter-Market Competition

The Exchange believes the proposed Market Maker Trading Permit Fees do not place an undue burden on competition on other SROs that is not necessary or appropriate. In particular, market making firms are not forced to become market makers on all options exchanges. The Exchange notes that it has far less Market Makers as compared to the much greater number of market makers at other options exchanges. There are a number of large market makers that are participants of other options exchange but not Participants of BOX. The Exchange is also unaware of any assertion that its existing fee levels or the proposed electronic Market Maker Fees would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by a market making firm, they can simply discontinue their membership with BOX.

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 15 competing options venues if they deem fee levels at a particular venue to be excessive. Based on publicly-available information, and excluding index-based options, no single exchange has more than 17% market share. Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. For the month of November 2021, BOX had a market share of approximately 5.58% of executed multiply-listed equity options [20] and BOX believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to fee changes. In such an environment, BOX must continually adjust its fees and fee waivers to remain competitive with other exchanges and to attract order flow to the facility.

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

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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act [21] and Rule 19b–4(f)(2) thereunder,[22] because it establishes or changes a due, or fee.

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

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2022–17 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–2022–17. 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. 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–2022–17, and should be submitted on or before June 7, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

J. Matthew DeLesDernier,

Assistant Secretary.

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[20] *See* Options Volume by Exchange available at *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Volume-by-Exchange.*

[21] 15 U.S.C. 78s(b)(3)(A)(ii).

[22] 17 CFR 240.19b–4(f)(2).

[23] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the