

Commission waives the 30-day operative delay and designates the proposal operative upon filing.¹⁸

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 under Section 19(b)(2)(B)¹⁹ of the Act 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEAMER-2024-17 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-NYSEAMER-2024-17. 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 (<https://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

¹⁸ 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).

¹⁹ 15 U.S.C. 78s(b)(2)(B).

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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEAMER-2024-17 and should be submitted on or before April 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99793; File No. SR-BOX-2024-08]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Provide Enhancements to Current Risk Protections

March 20, 2024.

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 March 14, 2024, BOX Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission (the "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 Substance of the Proposed Rule Change

The Exchange proposes to provide enhancements to current risk protections. The text of the proposed rule change is available from the principal office of the Exchange, at the

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Commission's Public Reference Room and also on the Exchange's internet website at <https://rules.boxexchange.com/rulefilings>.

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 BOX Rules 7330 (Activity-Based Protections), 7340 (Global Counter), and 8130 (Automatic Quote Cancellation) to use a "look back" time interval for certain risk protections, to correct a non-substantive typographical error, and to make non-substantive clarifying changes. The Exchange notes that the proposed change to risk protections is similar to risk protection functionalities available at other exchanges.³

Background

Currently, BOX Rules 7330 and 7340 provide trade and trigger counters. The current counters are incremented so long as the time between the current trade and the previous trade does not exceed the "Time Interval," which is defined as the highest value between the Exchange default and Participant-provided value.⁴ BOX Rule 8130 operates in a similar fashion but applies to Market Maker quotations.⁵

Under current Rule 7330(a), the Traded Order Protection feature

³ See NYSE Arca Inc. ("NYSE Arca") Rule 6.40-O and NYSE American LLC ("NYSE American") Rule 928NY and Miami International Securities Exchange, LLC ("MIAX Options") Rules 519A and 612.

⁴ See BOX Rules 7330(a)(2) and (b)(2) (Time Interval) and 7340(a) (Global Time Interval). The term "Participant" means a firm, or organization that is registered with the Exchange pursuant to the Rule 2000 Series for purposes of participating in trading on a facility of the Exchange. See BOX Rule 100(a)(41).

⁵ The Exchange notes that Rules 7330 and 7340 apply to all Participants, while Rule 8130 applies only to Market Makers.

maintains a counting program for each Participant. The system maintains traded order counters for: (1) maximum number of trades from orders,⁶ (2) maximum traded order volume,⁷ (3) maximum traded order value,⁸ (4) delta maximum order traded volume,⁹ and (5) delta maximum order traded value.¹⁰ Participants can provide limits for these five counters and for the Time Interval.¹¹ The Exchange notes that Traded Order Protection is enabled when Participants contact the BOX Market Operations Center (“MOC”)¹² and provide values for the counters. The Exchange may also enable this feature and provide default values for the parameters.¹³

Under Rule 7330(b), the Trade Activity Protection feature maintains traded activity counters for: (1) maximum number of trades,¹⁴ (2) maximum traded volume,¹⁵ (3) maximum traded value,¹⁶ (4) delta maximum traded volume,¹⁷ and (5) delta maximum traded value.¹⁸

⁶ The maximum number of trades from orders counter will keep track of total trades in a class.

⁷ The maximum traded order volume counter is designed to count the total volume traded in a class.

⁸ The maximum traded order value counter is the absolute dollar value of contracts bought and sold in a class.

⁹ The delta maximum order value is the absolute value of the net position in a class between (i) calls purchased and puts sold, and (ii) calls sold and puts purchased.

¹⁰ The delta maximum order value is the absolute value of the net position in a class between (i) calls purchased and sold, (ii) puts and calls purchased; (iii) puts purchased and sold; or (iv) puts and calls sold.

¹¹ The “Time Interval” is the highest value between the Exchange default and Participant-provided value.

¹² The term “Market Operations Center” or “MOC” means the BOX Market Operations Center, which provides market support for Options Participants during the trading day. See BOX Rule 100(a)(32).

¹³ The Exchange’s trading system is designed with certain limits that are applicable to the activities covered under the Exchange’s Activity-Based Protections and essentially act as defaults. Outside of the system design, the Exchange has generally elected to not provide more restrictive thresholds because the Exchange believes that Participants are best suited to understand appropriate activity levels based on their individual needs and behavior.

¹⁴ The maximum number of trades counter will keep track of total trades involving orders and/or quotes in all classes.

¹⁵ The maximum traded volume counter is designed to count the total volume traded involving orders and/or quotes in all classes.

¹⁶ The maximum traded value counter is the absolute dollar value of contracts bought and sold in all classes from trades involving orders and/or quotes.

¹⁷ The delta maximum volume is the absolute value of the net position in all classes between (i) calls purchased and puts sold, and (ii) calls sold and puts purchased, for trades involving orders and/or quotes.

¹⁸ The delta maximum value is the absolute value of the net position in all classes between (i) calls

Participants can provide values for these five counters and for the Time Interval.¹⁹ The Exchange notes that Trade Activity Protection is enabled when Participants contact the MOC and provide values for the counters. The Exchange may also enable this feature and provide default values for the parameters.²⁰

Additionally, BOX Rule 7340 details the Global Counter functionality which counts the number of triggering events *i.e.* when any of the above counters exceeds the maximum permissible value, across BOX’s protection mechanisms per Participant ID. Specifically, the system will count the number of triggering events from the Traded Order Protection under Rule 7330(a), Trade Activity Protection under Rule 7330(b) (collectively, Activity-Based Protections), and Automatic Quote Cancellation under Rule 8130.²¹ The Exchange notes that Global Counter is enabled when Participants contact the MOC and provide a value for the Global Counter. The Exchange may also enable this feature and provide default values for the parameters.²²

Lastly, BOX Rule 8130 (Automatic Quote Cancellation) provides a trade counter applicable to trades against Market Maker quotations which resets if the time interval between a trade and its previous trade surpasses the specified time period.²³ The triggering

purchased and sold, (ii) puts and calls purchased; (iii) puts purchased and sold; or (iv) puts and calls sold, for trades involving orders and/or quotes.

¹⁹ When both the Exchange and a Participant provide values (other than zero) for the parameters, the most restrictive (*i.e.*, the smallest value for the five Traded Order Protection counters and the highest value for the Time Interval) will be used by the system when determining if a counter has been triggered.

²⁰ See *supra* note 13.

²¹ The Exchange notes if multiple counters within the same category of protection are triggered by the same trade, the Global Counter will only be incremented by one. If, however, multiple counters from different categories of protection are triggered by the same trade, the Global Counter will be incremented by one for each category of protection, regardless of the number of counters within the same category of protection that were triggered. For example, if the maximum traded order volume counter for the Traded Order Protections and the maximum traded volume for the Trade Activity Protection are triggered by the same trade, then the Global Counter will only be incremented by one.

²² See *supra* note 13.

²³ The Automatic Quote Cancellation trade counters will also reset when the Participant provides an update to the value of one of the parameters or the triggering of any of the time related counters. See BOX Rule 8130(c). The Exchange notes that similar functionality is not available for Activity-Based Protections and Global Counter. Specifically, Activity-Based Protections and Global Counter will be reset upon the triggering of any of the counters in Rule 7330 or if the Global Counter has reached or exceeded the limit, respectively.

parameters²⁴ are for when a Market Maker, during a specified time period: (1) trades a specified number of contracts in the aggregate across all series of an options class; (2) trades a specified absolute dollar value of contracts bought and sold in a class; (3) trades a specified number of contracts in a class of the net between (i) calls purchased plus puts sold, and (ii) calls sold and puts purchased; (4) trades a specified absolute dollar value of the net position in a class between (i) calls purchased and sold, (ii) puts and calls purchased; (iii) puts purchased and sold; or (iv) puts and calls sold; or (5) trades a percentage of the Market Maker’s quotes in a class.²⁵ The Exchange notes that Market Makers shall enable Automatic Quote Cancellation by establishing values for at least one triggering parameter and sending an enabling message to the system. The Exchange may also provide default values for some or all of the parameters.²⁶ The Exchange notes further that the Market Maker obligations in Rule 8050 (Market Maker Quotations) remain applicable to Market Maker quotations.²⁷

The actions taken when the Activity-Based Protections, Global Counter, and Automatic Quote Cancellation are triggered vary. Beginning with Activity-Based Protections, when the Traded Order Protection counter (Rule 7330(a)) is triggered because it exceeds the maximum permissible value,²⁸ all orders for that Participant ID in options on that class are cancelled unless such cancellation is not permitted under other rules.²⁹ When the Trade Activity

²⁴ The Exchange notes that Rule 8130 also refers to the triggering parameters as time related counters and parameters. See BOX Rule 8130.

²⁵ See BOX Rule 8130(b). Market Makers are required to enable the Automatic Quote Cancellation feature for the Market Maker’s appointed options classes and shall provide values for at least one of the triggering parameters. *Id.* The Exchange may also provide default values for some or all of the parameters; however, any Participant-provided value will override any Exchange defaults. See BOX Rule 8130(a).

²⁶ See *supra* note 13.

²⁷ See, *e.g.*, BOX Rules 8050(c), (d) and (e).

²⁸ When both the Exchange and a Participant provide values (other than zero) for the parameters, the most restrictive (*i.e.*, the smallest value for the five Traded Order Protection counters and the highest value for the Time Interval) will be used by the system when determining if a counter has been triggered.

²⁹ For a counter triggered for the incoming order side, action is taken following the trade that breached the limit. For a counter triggered for the resting order side, action is taken following the complete processing of the incoming order. If a cancellation is not permitted under other BOX Rules, the orders for that Participant ID will remain. For example, under BOX Rule 8050(d), Market Maker bids and offers are firm for the number of contracts specified in the bid or offer.

Protection counter (Rule 7330(b)) is triggered because it exceeds the maximum permissible value, all orders and quotes for that Participant ID in all classes are cancelled unless such cancellation is not permitted under other rules. When the Global Counter (Rule 7340) is triggered because it has reached or exceeded the limit for the Global Counter, the system will cancel all orders and/or quotes belonging to that Participant.³⁰ Lastly, when the Automatic Quote Cancellation (Rule 8130) is triggered because the parameters provided by the Market Maker or the Exchange are met, it will cause the Trading Host³¹ to cancel the Market Maker's quotes in the specified classes.³²

The Exchange notes the trading system will execute any marketable orders or quotes that are executable and received prior to the time any counting program or triggering parameter is triggered up to the size of the Participant's order or quote, even if such execution results in executions in excess of the Participant's applicable triggering value with respect to any parameter. Specifically, an order or quote on the BOX Book³³ is firm and may be executed up to the Participant or Market Maker's full size, regardless of whether such an execution results in executions in excess of the Participant or Market Maker's limits. Immediately after an order or quote in excess of the Participant or Market Maker's limits is executed, Activity-Based Protections or Automatic Quote Cancellation will be triggered and the actions described above will be taken.

Time Interval

The Exchange notes that the current operation of "Time Interval" in Rule 7330 (Activity-Based Protections), "Global Time Interval" in Rule 7340 (Global Counter), and the "time period" in Rule 8130 (Automatic Quote Cancellation) is the same. The "Time Interval," "Global Time Interval," and "time period" will hereinafter be collectively referred to as the "Time Periods".

³⁰ The Exchange notes that a Participant may also elect for the system to lock-out the Participant ID when the Global Counter is triggered or if the Exchange default requires a lock-out.

³¹ The term "Trading Host" means the automated trading system used by BOX for the trading of options contracts. See BOX Rule 100(a)(69).

³² See BOX Rule 8130(a). The Exchange notes that under BOX Rule 8050(d), Market Maker bids and offers are firm for the number of contracts specified in the bid or offer.

³³ The term "BOX Book" means the electronic book of orders on each single option series maintained by the BOX Trading Host. See BOX Rule 100(a)(10).

Under the system's current operation, when a Participant's order and/or quote is executed or incurs a triggering event, in the case of Global Counter, the system will compare the time of the most recent trade or triggering event to the time of the previous trade or triggering event. If the difference between the time of the current trade and the time of the previous trade from the same Participant identification number ("Participant ID") in the same class is greater than the Time Periods, then the counters will be reset before adding the current trade to them. If, however, the difference between the time of the current trade and the time of the previous trade from the same Participant ID in the same class is less than or equal to the Time Periods, then the counters will be incremented for the current trade without resetting them first.

Using the Trade Activity Protection (Rule 7330(a)) as an example, assume the Time Interval is 2 seconds and the maximum number of trades is 3. If an order in ABC executes at 10:31:02 and a second order in ABC executes at 10:31:03, then the maximum number of trades counter would be incremented by 1 for the first trade and 1 for the second trade. Now, if a third order in ABC executes at 10:31:04, the system would increment the maximum number of trades counter by 1 and maximum number of trades would be triggered. Conversely, if an order in ABC executes at 10:31:02 and a second order in ABC executes at 10:31:03 and a third order in ABC executes at 10:31:06, then the counter would be reset, incremented for the current trade, and would not trigger the maximum number of trades protection. The trade received at 10:31:06 is compared to the previous trade at 10:31:03. There is a 3 second difference which is greater than the 2 second Time Interval, thus the system takes no action and resets the trade counter.

Proposal

In response to Participants' requests, the Exchange now proposes to change the application of the Time Periods. Specifically, the Exchange proposes BOX Rule 7330(a)(2) (Traded Order Protection) to provide:

A counting program will be maintained for each Options Participant identification number ("Participant ID") and each counter in paragraph (a)(1) above. When an order-based trade occurs, the counting program will look back over a specified Time Interval where the "Time Interval" is the highest value between the Exchange default and Participant-provided value. The counting program includes the most current trade

involving an order along with all other order-based trades that occurred within the Time Interval.

Proposed BOX Rule 7330(b)(2) (Trade Activity Protection) will provide:

A counting program will be maintained for each Options Participant identification number ("Participant ID") and each counter in paragraph (b)(1) above. When an order-based or quote-based trade occurs, the counting program will look back over a specified Time Interval where the "Time Interval" is the highest value between the Exchange default and Participant-provided value. The counting program includes the most current trade along with all other order-based and quote-based trades that occurred within the Time Interval.

Proposed BOX Rule 7340(a) (Global Counter) will provide:

A counting program will be maintained and, when a triggering event occurs, the counting program will look back over a specified Global Time Interval where the "Global Time Interval" is the highest value between the Exchange default and Participant-provided value. The counting program includes the most current triggering event along with all other triggering events that occurred within the Global Time Interval.

The Exchange also proposes to amend BOX Rule 8130(c) (Automatic Quote Cancellation) to remove language indicating that the counters will reset when the time interval between a trade and its previous trade surpasses the time period. The Exchange notes the other conditions that reset counters which will remain unchanged.³⁴

Under this proposal, the duration of each look-back time period will be equal to the Time Periods such that when a trade occurs, that trade is counted along with all other trades that occurred within the look-back time period. Trades that occurred before the look-back time period will not be counted. Trades within each look-back time period, including the most current trade, will increment counters and if such counters equal or exceed configured limits, the counter will be triggered.³⁵ Again, using Trade Activity Protection as an example, assume the Time Interval is 2 seconds and the maximum number of trades is 3. If an order in ABC executes at 10:31:02 and a second order in ABC executes at 10:31:03, then the maximum number of trades counter would equal 2 which is less than the limit of 3 and no action is

³⁴ The counters will be reset when the Participant provides an update to the value of one of the parameters or upon the triggering of any of the time related counters. See proposed Rule 8130(c).

³⁵ The Exchange notes that when counters are triggered, the actions taken vary for each risk protection. See BOX Rules 7330(a)(3), (b)(3), and 8130(a).

taken. When a third order in ABC executes at 10:31:05, the trade counter would be triggered under the current functionality, but no action would be taken under the proposed functionality. Under the current functionality, the difference between 10:31:05 and 10:31:03 is 2 seconds and the Time Interval is 2 seconds, so trade counters would not be reset, the trade counter would be incremented from 2 to 3 which equals the limit of 3 and triggers the counter. Under the proposed functionality, the look-back time period is 2 seconds which would be between 10:31:03 and 10:31:05 and, because 2 trades have occurred during this look-back time period and the limit is 3, no action is taken. The Exchange notes that if a third order in ABC executed at 10:31:04 instead of 10:31:05, then the trade counter would trigger under both the current and the proposed functionality.

The Exchange notes that the use of look-back time periods for risk protections is not novel as other exchanges' rules provide for similar functionality. Specifically, NYSE Arca, Inc. ("NYSE Arca") and NYSE American LLC ("NYSE American") provide that their Risk Limitation Mechanism calculates for quotes and orders: the number of trades executed by the OTP Holder³⁶ in a particular options class; the volume of contracts traded by the OTP Holder in a particular options class; or the aggregate percentage of the Market Maker's quoted size or OTP Holder's order size(s) executed in a particular options class. To determine whether the mechanism is triggered (*i.e.*, the risk setting breached), NYSE Arca maintains separate counters that are incremented every time a trade is executed. A breach of the mechanism occurs if the number of increments to the counter, within a time period specified by NYSE Arca, exceeds the

³⁶ Market Makers are included in the definition of OTP Holders and therefore, unless NYSE Arca is discussing the quoting activity of Market Makers, NYSE Arca does not distinguish Market Makers from OTP Holders when discussing the risk limitation mechanisms. See NYSE Arca Rule 1.1 (defining OTP Holder as "a natural person, in good standing, who has been issued an OTP, or has been named as a Nominee" that is "a registered broker or dealer pursuant to Section 15 of the Securities Exchange Act of 1934, or a nominee or an associated person of a registered broker or dealer that has been approved by the Exchange to conduct business on the Exchange's Trading Facilities"). See also NYSE Arca Rule 6.32-O(a) (defining a Market Maker as an individual "registered with the Exchange for the purpose of making transactions as a dealer-specialist on the Floor of the Exchange or for the purpose of submitting quotes electronically and making transactions as a dealer-specialist through the NYSE Arca OX electronic trading system").

threshold set by the OTP Holder.³⁷ The timer elapses at the conclusion of the time period specified by NYSE Arca, unless a breach occurs sooner than the timer expiration. Both NYSE Arca and NYSE American modified this functionality in April of 2020 such that the time period is rolling (as opposed to static) and is activated each time a trade counter is incremented such that they "look back" at other trades that occurred within the time period to see if a breach has occurred.³⁸ The Exchange believes that while the application and specifics of these protections differ from those on the Exchange, the overarching concepts are similar.³⁹

The Exchange notes that Miami International Securities Exchange, LLC ("MIAX Options") also maintains a counting program ("counting program") for each Member⁴⁰ that will count the number of orders entered and the number of contracts traded via an order entered by a Member on MIAX Options within a specified time period that has been established by the Member (the "specified time period"). When a Member's order is entered or when an execution of a Member's order occurs, MIAX's system will look back over the specified time period to determine whether the order entered or the execution that occurred triggers the MIAX Options Risk Protection Monitor.⁴¹ As such, the Exchange believes that the trade counter on MIAX

³⁷ See NYSE Arca Rule 6.40-O and NYSE American Rule 928NY.

³⁸ See Securities Exchange Act Release No. 88755 (April 27, 2020), 85 FR 25493 (May 1, 2020) (SR-NYSEArca-2020-36) and Securities Exchange Act Release No. 88757 (April 27, 2020), 86 FR 25482 (May 1, 2020) (SR-NYSEAMER-2020-33).

³⁹ BOX notes that its functionality differs slightly from NYSE Arca and NYSE American. For example: (1) NYSE Arca and NYSE American counters consist of a Transaction-Based Risk Limit, Volume-Based Risk Limit, and Percentage-Based Risk Limit; (2) NYSE Arca offers Notification Only, Block Only, and Cancel and Block Automated Breach Actions; and (3) a Transaction-Based Risk Limit, Volume-Based Risk Limit, and Percentage-Based Risk Limit breach actions on NYSE Arca and NYSE American will be applied to orders and quotes in the affected class of options. See NYSE Arca Rule 6.40-O and NYSE American Rule 928NY. The Exchange believes that while application of these concepts may differ, the concepts are the same. Specifically, the Exchange proposes to set a look-back time period and count triggering events within a specified time period similar to the current functionality at NYSE Arca and NYSE American.

⁴⁰ The term "Member" means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed "members" under the Exchange Act. See MIAX Options Rule 100.

⁴¹ See Securities Exchange Act Release No. 74118 (January 22, 2015), 80 FR 4605 (January 28, 2015) (SR-MIAX-2015-03).

Options is similar to BOX's Activity-Based Protections.⁴²

The Exchange notes further that MIAX Options maintains a counting program for each Market Maker that will count the number of contracts traded by a Market Maker in an appointed option class within a specified time period ("Aggregate Risk Monitor").⁴³ When the MIAX Options counting program has determined that a Market Maker has traded during the specified time period a number of contracts equal to or above an Allowable Engagement Percentage, for each options class, as established by the Market Maker,⁴⁴ the Aggregate Risk Monitor will automatically remove such Market Maker's Standard quotes and Day eQuotes in all series of that particular option class.⁴⁵ The Exchange believes that this counting program and Aggregate Risk Monitor is similar to BOX's Automatic Quote Cancellation.

In addition to the proposed risk protection changes, above, the Exchange proposes to change the word "exceed" to "exceeded" in Rule 7330(a)(3). This is a non-substantive change that corrects a typographical error and is not intended to change the meaning or operation of the rule.

Lastly, the Exchange proposes clarifying changes to Rule 7330 (Activity-Based Protections) and Rule 8130 (Automatic Quote Cancellation). Specifically, Traded Order Protection and Trade Activity Protection counters

⁴² The Exchange notes that MIAX Options offers additional limits on Allowable Order Rate (the number of orders entered during the specific time period that has been established by the Member) and on Allowable Contract Execution Rate (the number of contracts executed during the specific time period that has been established by the Member). MIAX's members can also elect for MIAX Options to take different actions on a trigger: (1) stop accepting new orders but maintain existing orders; (2) stop accepting new orders and cancel existing orders; (3) send the Member a notification and take no further action. Further, MIAX Options' counting program counts the number of orders entered and the number of contracts traded. The Exchange believes that while MIAX Options offers additional functionality, the concepts are similar. Specifically, setting a look-back time period and counting contracts traded within that time period.

⁴³ See MIAX Options Rule 612. The Exchange notes that MIAX Options offers additional functionality such as Reset on Quote Functionality, Allowable Engagement Percentage, Net Offset, Market Maker Aggregate Class Protection, and Market Maker Single Side Protection.

⁴⁴ MIAX Options will establish a default specified time period and a default Allowable Engagement Percentage ("default settings") on behalf of a Market Maker that has not established a specified time period and/or an Allowable Engagement Percentage. The default Allowable Engagement Percentage shall not be less than 100%. The default settings will be determined by the Exchange on an Exchange-wide basis and announced to Members via Regulatory Circular. See MIAX Options Rule 612.

⁴⁵ *Id.* See also MIAX Options Rule 517 (Quote Types Defined).

will be reset upon the triggering of any of the counters in Rule 7330.⁴⁶ Additionally, the trading system will execute any marketable orders or quotes that are executable and received prior to the time any counting program or triggering parameter in Rules 7330 and 8130 is triggered up to the size of the Participant's order or quote, even if such execution results in executions in excess of the Participant's applicable triggering value with respect to any parameter.⁴⁷ The Exchange notes that these are non-substantive changes that seek to codify current system functionality.

The Exchange notes that it will announce an implementation date for the proposed changes to its Participants by Regulatory Notice.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,⁴⁸ in general, and Section 6(b)(5) of the Act,⁴⁹ in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by enhancing the risk protections available to Participants. The proposed rule change promotes policy goals of the Commission which has encouraged execution venues, exchange and non-exchange alike, to enhance risk protection tools and other mechanisms to decrease risk and increase stability.

The Exchange believes that the proposed rule change will assist with the maintenance of a fair and orderly market, remove impediments to and perfect the mechanism of a free and open market by modifying the Time Periods to be more predictable in terms of which trades or events will trigger Activity-Based Protections, the Global Counter, or Automatic Quote Cancellation on BOX. Specifically, trades that occurred during the look-

back time period will be counted and trades that occurred prior to the look-back time period will not be counted. As a result, Participants will be better able to track and monitor when their activity is likely to trigger an Activity-Based protection, the Global Counter, or Automatic Quote Cancellation. Further, the proposed change, which allows for a count after each transaction on a rolling "look back" basis, would provide a more finely tuned tracking method for Participants related to each transaction within a specified time period. The Exchange believes that providing a definite "look back" time period, in addition to the current risk protections available on BOX, will enable Participants to better control their trading activity and to better manage their trading risk.

The Exchange notes that Market Makers are required to continuously quote in assigned options, and quoting across many series in an option or multiple options creates the possibility of executions that can create large, unintended principal positions that could expose Market Makers to unnecessary risk. The Exchange believes that providing Market Makers with more precise risk protections mitigates their exposure to excessive risk which may improve their ability to provide liquid markets to the benefit of all investors. Ultimately, the Exchange believes that the proposal serves to perfect the mechanism of a free and open market and a national market system, and, in general protects investors and the public interest by improving Market Makers' ability to manage their risk. The Exchange notes that similar functionality currently exists at other exchanges.⁵⁰

The Exchange notes that the Market Maker obligations in Rule 8050 (Market Maker Quotations) remain applicable to Market Maker quotations.⁵¹ Specifically, a Market Maker that enters a bid (offer) in a class in which such Market Maker is appointed on BOX must enter an offer (bid) within the spread allowable under Rule 8040;⁵² Market Maker bids and offers are firm for all orders under this Rule and Rule 602 of Regulation NMS under the Exchange Act ("Rule 602") for the number of contracts specified in the bid or offer provided that such bid or offer must have an initial size of at least one;⁵³ and a Market Maker must enter quotations for the options classes to which it is appointed, on a daily basis, during regular market hours, make

markets, and enter into any resulting transactions consistent with the applicable quoting requirements, such that on a daily basis a Market Maker must post valid quotes at least sixty percent (60%) of the time that the classes are open for trading.⁵⁴

In addition to the proposed risk protection changes, above, the Exchange proposes to change the word "exceed" to "exceeded" in Rule 7330(a)(3). The Exchange believes that this change will remove impediments to and perfect the mechanism of a free and open market by correcting a typographical error that may inhibit a clear reading of the Rules. This change is non-substantive and is not intended to change the meaning of the Rule or its operation.

Lastly, the Exchange believes that the clarifying change to Rule 7330 (Activity-Based Protections) to specify that Traded Order Protection and Traded Activity Protection counters will be reset upon the triggering of any of the counters in Rule 7330 is consistent with the Act. The Exchange believes further that additional clarifying changes to Rules 7330 and 8130 providing that the trading system will execute any marketable orders or quotes that are executable and received prior to the time any counting program or triggering parameter in Rules 7330 or 8130 is triggered up to the size of the Participant's order or quote, even if such execution results in executions in excess of the Participant's applicable triggering value with respect to any parameter are consistent with the Act. Specifically, the proposed clarifying rule changes would provide Participants with transparency regarding the operation of Traded Order Protection, Trade Activity Protection, and Automatic Quote Cancellation, which removes impediments to and perfects the mechanism of a free and open market and a national market system by providing greater certainty with respect to how these risk protections function. The Exchange notes that these are non-substantive changes that seek to codify

⁴⁶ See proposed Rule 7330(c). The Exchange notes that Rule 7330 also refers to these counters as traded order counters, traded activity counters, and parameters. See BOX Rule 7330. The Exchange notes that Rule 8130 already provides that counters will be reset upon the triggering of any of the time related counters and Rule 7340 provides that if the Global Counter is triggered because it has reached or exceeded the limit, the counter is reset.

⁴⁷ See proposed Rules 7330(d) and 8130(d).

⁴⁸ 15 U.S.C. 78f(b).

⁴⁹ 15 U.S.C. 78f(b)(5).

⁵⁰ See *supra* note 3.

⁵¹ See, e.g., BOX Rules 8050(c), (d) and (e).

⁵² See BOX Rule 8050(c)(1).

⁵³ See BOX Rules 8050(b) and (d)(1).

⁵⁴ See BOX Rule 8050(e). The Exchange notes that these obligations will apply to all of the Market Maker's appointed classes collectively, rather than on a class-by-class basis. Further, if a technical failure or limitation of the BOX Trading Host prevents a Market Maker from maintaining, or prevents a Market Maker from communicating to BOX, timely and accurate electronic quotes in an appointed class, the duration of such failure shall not be considered in determining whether the Market Maker has satisfied the 60% quoting obligation with respect to that particular options class. An Exchange Official may consider other exceptions to this continuous electronic quote obligation based on demonstrated legal or regulatory requirements or other mitigating circumstances.

current system functionality and do not amend operation of the Rules.

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. The Exchange is proposing an enhancement that may enable Participants to better control their trading activity and to better manage their trading risk while submitting orders and quotes to BOX. The Exchange does not believe that the proposed enhancements to the existing Activity-Based Protections, Global Counter, and Automatic Quote Cancellation would impose a burden on competing options exchanges. Specifically, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. Additionally, the proposed enhancements to Activity-Based Protections, Global Counter, and Automatic Quote Cancellation are similar to functionality currently available on competing exchanges.⁵⁵ The Exchange believes that the proposal does not impose any burden on intramarket competition not necessary or appropriate in furtherance of the purposes of the Act because all Participants may avail themselves of the applicable risk controls on BOX. Further, the Exchange notes that the Time Periods are applied in the same manner for all Participants. Additionally, the Exchange does not believe that correcting a typographical error imposes any burden on competition because it is not intended to change the meaning or operation of the rule. Lastly, the Exchange does not believe that codifying the functionality that Traded Order Protection and Trade Activity Protection counters will be reset upon the triggering of any of the counters in Rule 7330 or the functionality that the trading system will execute any marketable orders or quotes that are executable and received prior to the time any counting program or triggering parameter in Rules 7330 or 8130 is triggered up to the size of the Participant's order or quote, even if such execution results in executions in excess of the Participant's applicable triggering value with respect to any parameter, imposes any burden on competition because these changes are intended to increase the transparency of current system functionality.

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 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁵⁶ and Rule 19b-4(f)(6) thereunder.⁵⁷

A proposed rule change filed under Rule 19b-4(f)(6)⁵⁸ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),⁵⁹ the Commission may 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 so that the proposal may become operative immediately upon filing.

The Commission finds that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay. As the Exchange notes, similar functionality currently exists at other exchanges.⁶⁰ Accordingly, the proposal raises no new or novel issues. Therefore, the Commission waives the 30-day operative delay and designates the proposal operative upon filing.⁶¹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may

⁵⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

⁵⁷ 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, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

⁵⁸ 17 CFR 240.19b-4(f)(6).

⁵⁹ 17 CFR 240.19b-4(f)(6)(iii).

⁶⁰ See *supra* note 3.

⁶¹ 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).

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 under Section 19(b)(2)(B)⁶² of the Act 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-BOX-2024-08 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-2024-08. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information

⁶² 15 U.S.C. 78s(b)(2)(B).

⁵⁵ See *supra* note 3.

that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–BOX–2024–08 and should be submitted on or before April 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶³

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024–06329 Filed 3–25–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99782; File No. SR–CboeBZX–2023–069]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of Amendment No. 1 to, and Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove, a Proposed Rule Change To List and Trade Shares of the VanEck Ethereum ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

March 20, 2024.

On September 6, 2023, Cboe BZX Exchange, Inc. (“BZX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b–4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the VanEck Ethereum ETF (“Trust”) under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on September 26, 2023.³

On September 27, 2023, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On December 18, 2023, the Commission instituted proceedings under Section 19(b)(2)(B) of

the Act⁶ to determine whether to approve or disapprove the proposed rule change.⁷ On February 16, 2024, the Exchange filed Amendment No. 1 to the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment No. 1 amended and replaced in its entirety the proposed rule change as originally submitted. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons and to extend the time period for approving or disapproving the proposed rule change, as modified by Amendment No. 1.

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

Cboe BZX Exchange, Inc. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change to list and trade shares of the VanEck Ethereum ETF (the “Trust”),⁸ under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

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

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

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

1. Purpose

This Amendment No. 1 to SR–CboeBZX–2023–069 amends and replaces in its entirety the proposal as

originally submitted on September 6, 2023. The Exchange submits this Amendment No. 1 in order to clarify certain points and add additional details to the proposal.

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(e)(4),⁹ which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.¹⁰ VanEck Digital Assets, LLC is the sponsor of the Trust (“Sponsor”). The Shares will be registered with the Commission by means of the Trust’s registration statement on Form S–1 (the “Registration Statement”).¹¹

The Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts, including spot-based Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.¹² With this in mind, the CME

⁹ The Commission approved BZX Rule 14.11(e)(4) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

¹⁰ Any of the statements or representations regarding the Benchmark composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, and intraday indicative values, or the applicability of Exchange listing rules specified in this filing to list a series of Other Securities (collectively, “Continued Listing Representations”) shall constitute continued listing requirements for the Shares listed on the Exchange.

¹¹ See Amendment No. 1 to Registration Statement on Form S–1, dated February 16, 2024, submitted to the Commission by the Sponsor on behalf of the Trust (333–255888). The descriptions of the Trust, the Shares, and the Benchmark contained herein are based, in part, on information in the Registration Statement. The Registration Statement is not yet effective and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

¹² See Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018). This proposal was subsequently disapproved by the Commission. See Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the “Winklevoss Order”). Prior orders from the Commission have pointed out that in every prior approval order for Commodity-Based Trust Shares, there has been a derivatives market that represents the regulated market of significant size, generally a Commodity Futures Trading Commission (the “CFTC”) regulated futures market. Further to this point, the Commission’s prior orders have noted that the spot commodities and currency markets for which it has previously approved spot ETPs are generally unregulated and that the Commission relied on the underlying futures market as the regulated market of significant size that formed the basis for approving the series of Currency and Commodity-Based Trust Shares, including gold, silver, platinum, palladium, copper, and other commodities and currencies. The Commission specifically noted in the Winklevoss Order that the approval order issued related to the first spot gold ETP “was based on an assumption

⁶³ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 98457 (Sept. 20, 2023), 88 FR 66076. Comments on the proposed rule change are available at: <https://www.sec.gov/comments/sr-cboebzx-2023-069/sr-cboebzx2023069.htm>.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 98566, 88 FR 68236 (Oct. 3, 2023).

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 99195, 88 FR 88683 (Dec. 22, 2023).

⁸ The Trust was formed as a Delaware statutory trust on June 22, 2021 and is operated as a grantor trust for U.S. federal tax purposes. The Trust has no fixed termination date.