

options exchanges to harmonize and improve the process related to the adjustment and nullification of erroneous options transactions. The Exchange does not believe that the rules applicable to such process is an area where options exchanges should compete, but rather, that all options exchanges should have consistent rules to the extent possible. Particularly where a market participant trades on several different exchanges and an erroneous trade may occur on multiple markets nearly simultaneously, the Exchange believes that a participant should have a consistent experience with respect to the nullification or adjustment of transactions. Several other options exchanges have virtually identical rules.<sup>34</sup>

The Exchange does not believe that the proposed rule change imposes a burden on intramarket competition because the obvious error provisions apply to all market participants equally within each participant category (*i.e.*, Customers and non-Customers). With respect to competition between Customer and non-Customer market participants, the Exchange believes that the proposed rule change acknowledges competing concerns and tries to strike the appropriate balance between such concerns. For instance, the Exchange believes that protection of Customers is important due to their direct participation in the options markets as well as the fact that they are not, by definition, market professionals. At the same time, the Exchange believes due to the quote-driven nature of the options markets, the importance of liquidity provision in such markets and the risk that liquidity providers bear when quoting a large breadth of products that are derivative of underlying securities, that the protection of liquidity providers and the practice of adjusting transactions rather than nullifying them is of critical importance. As described above, the Exchange will apply specific and objective criteria to determine whether an erroneous transaction has occurred and, if so, how to adjust or nullify a transaction.

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

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

<sup>34</sup> See Cboe Options Rule 6.25, Interpretation and Policy .07, ISE Rule 720, Supplementary Material .05, and MIAX Rule 521, Interpretation and Policy .03.

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

Because the foregoing proposed rule change does not:

- A. significantly affect the protection of investors or the public interest;
- B. impose any significant burden on competition; and
- C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>35</sup> and Rule 19b-4(f)(6)<sup>36</sup>

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

### IV. Solicitation of Comments

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

*Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeEDGX-2019-005 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-CboeEDGX-2019-005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGX-2019-005 and should be submitted on or before March 22, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>37</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019-03705 Filed 2-28-19; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-85201; File No. SR-BOX-2019-04]**

### Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of a Proposed Rule Change To Amend the Fee Schedule on the BOX Market LLC ("BOX") Options Facility To Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

February 26, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 13, 2019, BOX Exchange LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I and II below, which Items have been prepared by the

<sup>37</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>35</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>36</sup> 17 CFR 240.19b-4(f)(6).

Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> and Rule 19b-4(f)(2) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is, pursuant to Section 19(b)(3)(C) of the Act, hereby: (i) Temporarily suspending the proposed rule change; and (ii) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

## I. Self-Regulatory Organization's Statement of the Terms of 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 BOX Connectivity Fees for Participants and non-Participants who connect to the BOX network. 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 Description of 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 Section VI. (Technology Fees) of the BOX Fee Schedule to establish BOX Connectivity Fees for Participants and non-Participants who connect to the BOX network. Connectivity fees will be based upon the amount of bandwidth that will be used by the Participant or non-Participant. Further, BOX Participants or non-Participants connected as of the last trading day of each calendar month will be charged the applicable Connectivity Fee for that month. The Connectivity Fees will be as follows:

Connection type	Monthly fees
Non-10 Gb Connection.	\$1,000 per connection.
10 Gb Connection .....	\$5,000 per connection.

The Exchange also proposes to amend certain language and numbering in Section VI.A to reflect the changes discussed above. Specifically, BOX proposes to add the title "Third Party Connectivity Fees" under Section VI.A. Further, the Exchange proposes to add Section VI.A.2, which details the proposed BOX Connectivity Fees discussed above.

Participants and non-Participants with ten (10) Gigabit ("Gb") connections will be charged a monthly fee of \$5,000 per connection. Participants and non-Participants with non-10 Gb connections will be charged a monthly fee of \$1,000 per connection. The Exchange notes that another exchange in the industry has similar connectivity fees<sup>5</sup> and that several other exchanges charge higher connectivity fees.<sup>6</sup> The Exchange also notes that certain fees will continue to be assessed by the datacenters and will be billed directly to the market participant.

Next, the Exchange is amending Section VI.C. High Speed Vendor Feed ("HSVf") of the Fee Schedule. Specifically, BOX is proposing to delete Section VI.C. and reclassify the HSVf Connection as a Port Fee. The Exchange believes this reclassification is more accurate, as HSVf subscription is not dependent on a physical connection to the Exchange. Instead, subscribers must be credentialed by BOX to receive the HSVf. The HSVf Fee will remain unchanged; BOX will assess a HSVf Port Fee of \$1,500 per month<sup>7</sup> for each

<sup>5</sup> See Miami International Securities Exchange LLC ("MIAX") Fee Schedule. MIAX charges its Members and non-Members a monthly fee of \$1,100 for each 1 Gigabit connection and \$5,500 for each 10 Gigabit connection to MIAX's Primary/Secondary Facility. The Exchange notes a minor difference between MIAX's connectivity fees and BOX's proposal. MIAX prorates their connectivity fees when a Member makes a change to their connectivity (by adding or deleting connections). BOX notes that, like the Exchange's Port Fees and HSVf Fees, Participants or non-Participants connected as of the last trading day of each calendar month will be charged the applicable Connectivity Fee for that month.

<sup>6</sup> See *infra* note 12.

<sup>7</sup> The Exchange notes that with the proposed change discussed herein, Participants and non-Participants credentialed to use the HSVf Port who also have physical connections to the BOX system will be charged for both the HSVf monthly fee and the applicable amount for their physical connections to BOX. For example, if non-Participant X is credentialed to use the HSVf Port and has three (3) physical non-10Gb connections to BOX, non-Participant X will be charged \$1500 for the monthly HSVf Port Fee and \$3000 for the three non-10Gb physical connections to BOX.

month a Participant or non-Participant is credentialed to use the HSVf Port. The Exchange notes that another exchange has a similar classification and charges similar fees.<sup>8</sup>

The Exchange initially filed the proposed fees on July 19, 2018, designating the proposed fees effective July 1, 2018 [sic]. The proposed rule change was published for comment in the **Federal Register** on August 2, 2018.<sup>9</sup> The Commission received one comment letter on the proposal.<sup>10</sup> The proposed fees remained in effect until they were temporarily suspended pursuant to a suspension order (the "Suspension Order") issued by the Division of Trading and Markets, which also instituted proceedings to determine whether to approve or disapprove the proposed rule change.<sup>11</sup> The Commission subsequently received one further comment letter on the proposed rule change, supporting the decision to suspend and institute proceedings on the proposed fee change.<sup>12</sup>

In response to the Suspension Order, the Exchange timely filed a Notice of Intention to Petition for Review<sup>13</sup> and Petition for Review to vacate the Division's Order,<sup>14</sup> which stayed the Division's suspension of the filing. On November 16, 2018 the Commission granted the Exchange's Petition for Review but discontinued the automatic stay.<sup>15</sup> The Exchange then filed a

<sup>8</sup> See Cboe Data Services, LLC. ("Cboe CDS") Fee Schedule. Cboe CDS charges its Customers that receive data through a direct connection to CDS or through a connection to CDS provided by an extranet provider \$500 per port per month. Cboe CDS's port fee applies to receipt of any Cboe Options data feed but is only assessed once per data port. In addition to the data port fee, Cboe Exchange Inc. ("Cboe") charges connectivity fees based on the bandwidth used to connect to the Exchange to receive such data. See Cboe Fee Schedule.

<sup>9</sup> See Securities Exchange Act Release No. 83728 (July 27, 2018), 83 FR 37853 (August 2, 2018) (SR-BOX-2018-24).

<sup>10</sup> See Letter from Tyler Gellasch, Executive Director, The Healthy Markets Association, to Brent J. Fields, Secretary, Commission, dated August 23, 2018 ("Healthy Markets Letter").

<sup>11</sup> See Securities Exchange Act Release No. 34-84168 (September 17, 2018).

<sup>12</sup> See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, and Ellen Greene, Managing Director, Financial Services Operations, Securities Industry and Financial Markets Association, dated October 15, 2018.

<sup>13</sup> See Letter from Amir Tayrani, Partner, Gibson, Dunn & Crutcher LLP, dated September 19, 2018.

<sup>14</sup> See Petition for Review of Order Temporarily Suspending BOX Exchange LLC's Proposal to Amend the Fee Schedule on BOX Market LLC, dated September 26, 2018.

<sup>15</sup> See Securities Exchange Act Release No. 84614. Order Granting Petition for Review and Scheduling Filing of Statements, dated November 16, 2018. Separately, the Securities Industry and Financial Markets Association filed an application under Section 19(d) of the Exchange Act challenging the

Continued

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

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

statement to reiterate the arguments set for in its petition for review and to supplement that petition with additional information.<sup>16</sup>

The Exchange subsequently refiled its fee proposal on November 30th, 2018. The proposed fees were noticed and again temporarily suspended pursuant to a suspension order issued by the Division of Trading and Markets, which also instituted proceedings to determine whether to approve or disapprove the proposed rule change.<sup>17</sup> The Commission received two comment letters supporting the decision to suspend and institute proceedings on the proposed fee change.<sup>18</sup>

The SIFMA, Healthy Markets and Chester Spatt Comment Letters (collectively, the “Comment Letters”) argued that the Exchange did not provide sufficient information in its filing to support a finding that the proposal is consistent with the Act. Specifically, the Comment Letters objected to the Exchange’s reliance on the fees of other exchanges to demonstrate that its fee increases are consistent with the Act. In addition, the Comment Letters argued that the Exchange did not offer any details to support its basis for asserting that the proposed fees are consistent with the Act.

The Exchange is once again re-filing the proposed fees. The proposed rule change is immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.

Exchange’s proposed fees as alleged prohibitions or limitations on access. See *In re Securities Industry and Financial Markets Association*, Admin. Proc. File No. 3-18680 (Aug. 24, 2018). The Commission thereafter remanded that denial-of-access proceeding to the Exchange while “express[ing] no view regarding the merits” and emphasizing that it was “not set[ting] aside the challenged rule change [.]” *In re Applications of SIFMA & Bloomberg*, Exchange Act Rel. No. 84433, at 2 (Oct. 16, 2018) (“Remand Order”), available at <https://www.sec.gov/litigation/opinions/2018/34-84433.pdf>. The Division’s Suspension Order is inconsistent with the Commission’s intent in the Remand Order to leave the challenged fees in place during the pendency of the remand proceedings and singles out the Exchange for disparate treatment because it means that the Exchange—unlike every other exchange whose rule changes were the subject of the Remand Order—is not permitted to continue charging the challenged fees during the remand proceedings.

<sup>16</sup> See Letter from Amir Tayrani, Partner, Gibson, Dunn & Crutcher LLP, dated December 10, 2018.

<sup>17</sup> See Securities Exchange Act Release No. 84823 (December 14, 2018), 83 FR 65381 (December 20, 2018) (SR-BOX-2018-37).

<sup>18</sup> See Letters from Tyler Gellasch, Executive Director, The Healthy Markets Association (“Second Healthy Markets Letter”), and Chester Spatt, Pamela R. and Kenneth B. Dunn Professor of Finance, Tepper School of Business, Carnegie Mellon University (“Chester Spatt Letter”), to Brent J. Fields, Secretary, Commission, dated January 2, 2019.

The Exchange has always offered various bandwidth choices for physical connectivity to the Exchange for Participants and non-Participants to access the Exchange’s trading platforms, market data, test systems and disaster recovery facilities. These physical connections consist of 10Gb and non-10Gb connections, where the 10Gb connection provides for faster processing of messages sent to it in comparison to the non-10Gb connection. While the Exchange has not charged for physical connectivity before, the Exchange believes that it is reasonable and appropriate to begin charging for this physical connectivity to partially offset the costs associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the US options industry. Additionally, there are significant costs associated with various projects and initiatives to improve overall network performance and stability, as well as costs paid to the third-party data centers for space rental, power used, etc. The Exchange notes that unlike other options exchanges, the Exchange does not own and operate its own data center and therefore cannot control data center costs.

The Exchange also notes that all other options exchanges charge for similar physical connectivity,<sup>19</sup> and by suspending the Exchange’s initial fee filing the Division has placed the Exchange at a competitive disadvantage within the US options industry. Without

these fees to partially offset the costs associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the US options industry, the Exchange may not be able to make the planned enhancements to its infrastructure.

## 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,<sup>20</sup> 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 believes that the proposed Connectivity Fees in general constitute an equitable allocation of fees, and are not unfairly discriminatory, because they allow the Exchange to recover costs associated with offering access through the network connections. The proposed Connectivity Fees are also expected to offset the costs both the Exchange and BOX incur in maintaining and implementing ongoing improvements to the trading systems, including connectivity costs, costs incurred on software and hardware enhancements and resources dedicated to software development, quality assurance, and technology support. The Exchange believes that its proposed fees are reasonable in that they are comparable to those charged by another exchange and lower than those charged by several other exchanges. Further, the Exchange believes that the proposed Connectivity Fees are not unfairly discriminatory as they are assessed to all market participants who wish to connect to the BOX network.

The Exchange believes that the proposed HSVF Port Fee is reasonable as it is similar to fees assessed at another exchange in the industry.<sup>21</sup> Further, the Exchange believes that charging Participants and non-Participants for both the HSVF monthly fee and applicable physical connection fees as outlined in the example above is reasonable as it is in line with another exchange in the industry.<sup>22</sup> Further, the Exchange believes that the proposed change is equitable and not unfairly discriminatory because it allows the Exchange to recoup ongoing expenditures made by the Exchange in

<sup>19</sup> In addition to the MIAX connectivity fees cited above, Nasdaq PHLX LLC (“Phlx”), The Nasdaq Stock Market LLC (“Nasdaq”), NYSE Arca, Inc. (“Arca”), NYSE American LLC (“NYSE American”), Nasdaq ISE, LLC (“ISE”), Cboe Exchange, Inc. (“Cboe”), Cboe BXZ Exchange, Inc. (“CboeBXZ”), Cboe EDGX Exchange, Inc. (“CboeEDGX”) and Cboe C2 Exchange, Inc. (“C2”) all offer a type of 10Gb and non-10Gb connectivity alternative to their participants. See Phlx, and ISE Rules, General Equity and Options Rules, General 8, Section 1(b). Phlx and ISE each charge a monthly fee of \$2,500 for each 1Gb connection, \$10,000 for each 10Gb connection and \$15,000 for each 10Gb Ultra connection, which is the equivalent of the Exchange’s 10Gb ULL connection. See also Nasdaq Price List—Trading Connectivity. Nasdaq charges a monthly fee of \$7,500 for each 10Gb direct connection to Nasdaq and \$2,500 for each direct connection that supports up to 1Gb. See also NYSE American Fee Schedule, Section V.B, and Arca Fees and Charges, Co-Location Fees. NYSE American and Arca each charge a monthly fee of \$5,000 for each 1Gb circuit, \$14,000 for each 10Gb circuit and \$22,000 for each 10Gb LX circuit, which is the equivalent of the Exchange’s 10Gb ULL connection. See also Cboe, CboeBXZ, CboeEDGX and C2 Fee Schedules. Cboe charges monthly quoting and order entry bandwidth packet fees. Specifically, Cboe charges \$1,600 for the 1st through 5th packet, \$800 for the 6th through 8th packet, \$400 for the 9th through 13th packet and \$200 for the 14th packet and each additional packet. CboeBXZ, CboeEDGX and C2 each charge a monthly fee of \$2,500 for each 1Gb connection and \$7,500 for each 10Gb connection.

<sup>20</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>21</sup> See *supra* note 8.

<sup>22</sup> *Id.*

order to offer such services to Participants and non-Participants.

*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. Unilateral action by the Exchange in establishing fees for services provided to its Participants and others using its facilities will not have an impact on competition. As a small exchange in the already highly competitive environment for options trading, the Exchange does not have the market power necessary to set prices for services that are unreasonable or unfairly discriminatory in violation of the Exchange Act. The Exchange's proposed fees, as described herein, are comparable to and generally lower than fees charged by other options exchanges for the same or similar services. Lastly, the Exchange believes the proposed change will not impose a burden on intramarket competition as the proposed fees are applicable to all Participants and others using its facilities that connect to BOX.

*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. Suspension of the Proposed Rule Change**

Pursuant to Section 19(b)(3)(C) of the Act,<sup>23</sup> at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act,<sup>24</sup> the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization ("SRO") 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. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

Identical fee changes to those proposed herein were originally filed on July 19, 2018. That proposal, BOX-2018-24, was published for comment in the **Federal Register** on August 2,

2018.<sup>25</sup> The Commission received one comment letter on that proposal.<sup>26</sup> On September 17, 2018, pursuant to Section 19(b)(3)(C) of the Act, the Commission: (1) Temporarily suspended the proposed rule change; and (2) instituted proceedings to determine whether to approve or disapprove the proposal.<sup>27</sup> The Commission received one additional comment letter on that proposal in response to the Order Instituting Proceedings.<sup>28</sup> On September 19, 2018, pursuant to Rule 430 of the Commission's Rules of Practice,<sup>29</sup> the Exchange filed a notice of intention to petition for review of the Order Instituting Proceedings and, on September 26, 2018, the Exchange filed a petition for review of the Order Instituting Proceedings.<sup>30</sup> On November 16, 2018, the Commission granted the Exchange's Petition and discontinued the automatic stay of delegated action.<sup>31</sup> In addition, the Commission ordered that any party or other person could file a statement in support or in opposition to the action made by delegated authority provided such statement was filed on or before December 10, 2018.<sup>32</sup> The Commission received two such statements from the Exchange.<sup>33</sup>

Identical fee changes to those proposed herein were again filed on November 30, 2018. That proposal, BOX-2018-37, was published for comment in the **Federal Register** on December 20, 2018.<sup>34</sup> Simultaneous with the publication of such notice, pursuant to Section 19(b)(3)(C) of the Act, the Commission: (1) Temporarily suspended the proposed rule change; and (2) instituted proceedings to determine whether to approve or disapprove the proposal.<sup>35</sup> The Commission received two comment letters in response to the proposal.<sup>36</sup> The instant filing proposes identical

<sup>25</sup> See *supra* note 9, and accompanying text.

<sup>26</sup> See *supra* note 10.

<sup>27</sup> See Securities Exchange Act Release No. 84168 (September 17, 2018), 83 FR 47947 (September 21, 2018) ("Order Instituting Proceedings").

<sup>28</sup> See *supra* note 12.

<sup>29</sup> 17 CFR 201.430.

<sup>30</sup> See *supra* notes 13–14, and accompanying text. Pursuant to Rule 431(e) of the Commission's Rules of Practice, a notice of intention to petition for review results in an automatic stay of the action by delegated authority. 17 CFR 201.431(e).

<sup>31</sup> See *supra* note 15, and accompanying text.

<sup>32</sup> See Securities Exchange Act Release No. 84614 (November 16, 2018), 83 FR 59432 (November 23, 2018).

<sup>33</sup> See letters to Brent J. Fields, Secretary, Commission, from Lisa J. Fall, President, BOX, dated December 7, 2018, and Amir C. Tayrani, Gibson, Dunn & Crutcher LLP, dated December 10, 2018.

<sup>34</sup> See Securities Exchange Act Release No. 84823 (December 14, 2018), 83 FR 65381.

<sup>35</sup> See *id.*

<sup>36</sup> See *supra* note 18.

fees and raises similar concerns as to whether they are consistent with the Act.<sup>37</sup>

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.<sup>38</sup> The instructions to Form 19b-4, on which exchanges file their proposed rule changes, specify that such statement "should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements."<sup>39</sup>

Among other things, exchange proposed rule changes are subject to Section 6 of the Act, including Sections 6(b)(4), (5), and (8), which requires the rules of an exchange to (1) provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities;<sup>40</sup> (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers;<sup>41</sup> and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.<sup>42</sup>

In temporarily suspending the Exchange's fee change, the Commission intends to further consider whether the proposed fees to connect to the Exchange are consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.<sup>43</sup>

<sup>37</sup> See Order Instituting Proceedings, *supra* note 27.

<sup>38</sup> See 17 CFR 240.19b-4 (Item 3 entitled "Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change").

<sup>39</sup> *Id.*

<sup>40</sup> 15 U.S.C. 78f(b)(4).

<sup>41</sup> 15 U.S.C. 78f(b)(5).

<sup>42</sup> 15 U.S.C. 78f(b)(8).

<sup>43</sup> See 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

<sup>23</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>24</sup> 15 U.S.C. 78s(b)(1).

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.<sup>44</sup>

#### IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

The Commission is instituting proceedings pursuant to Sections 19(b)(3)(C)<sup>45</sup> and 19(b)(2)(B) of the Act<sup>46</sup> to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>47</sup> the Commission is providing notice of the grounds for possible disapproval under consideration:

- Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange "provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities,"<sup>48</sup>
- Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to "perfect the mechanism of a free and open market and a national market system" and "protect investors and the public interest," and not be "designed to permit unfair discrimination between customers, issuers, brokers, or dealers,"<sup>49</sup> and
- Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange "not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]."<sup>50</sup>

As noted above, the proposal imposes new fees for physical connections to the

Exchange. The Exchange states that these fees would partially offset costs associated with maintaining and enhancing this technology.<sup>51</sup> In the instant filing the Exchange states that its associated costs relate to costs paid to the Exchange's third-party data center and costs associated with projects and initiatives designed to improve overall network performance and stability.<sup>52</sup> The Exchange also states that these fees are expected to offset costs of maintaining and implementing ongoing improvements to BOX's trading systems, including connectivity costs, costs incurred on software and hardware enhancements, and resources dedicated to software development, quality assurance, and technology support.<sup>53</sup>

Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change."<sup>54</sup> The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,<sup>55</sup> and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.<sup>56</sup>

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fees are consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and equitably allocated; be designed to perfect the mechanism of a free and open market and the national market system, protect investors and the public interest, and not be unfairly discriminatory; or not impose an unnecessary or inappropriate burden on competition.<sup>57</sup>

#### V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well

as any other relevant concerns. Such comments should be submitted by March 11, 2019. Rebuttal comments should be submitted by March 18, 2019. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>58</sup>

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, 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-2019-04 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-BOX-2019-04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/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

<sup>44</sup> For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

<sup>45</sup> 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

<sup>46</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>47</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>48</sup> 15 U.S.C. 78f(b)(4).

<sup>49</sup> 15 U.S.C. 78f(b)(5).

<sup>50</sup> 15 U.S.C. 78f(b)(8).

<sup>51</sup> *See supra* Section II.A.1.

<sup>52</sup> *See id.*

<sup>53</sup> *See supra* Section II.A.2.

<sup>54</sup> Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

<sup>55</sup> *See id.*

<sup>56</sup> *See id.*

<sup>57</sup> *See* 15 U.S.C. 78f(b)(4), (5), and (8).

<sup>58</sup> 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BOX-2019-04 and should be submitted on or before March 11, 2019. Rebuttal comments should be submitted by March 18, 2019.

## VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(3)(C) of the Act,<sup>59</sup> that File Number SR-BOX-2019-04 be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>60</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019-03706 Filed 2-28-19; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85187; File No. SR-ICEEU-2019-002]

### Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the ICE Clear Europe Delivery Procedures

February 25, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 15, 2019, ICE Clear Europe Limited ("ICE Clear Europe" or the "Clearing House") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes described in Items I, II and III below, which Items have been prepared by ICE Clear

Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(4)(ii) thereunder,<sup>4</sup> so that the proposal was immediately effective upon filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed amendments is for ICE Clear Europe to [sic] add delivery terms relating to the ICE Futures Europe ("ICE Futures Europe" or "IFEU") Permian West Texas Intermediate Crude Oil Storage Futures Contracts (the "Contracts").<sup>5</sup>

#### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

##### (A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### (a) Purpose

ICE Clear Europe is amending its Delivery Procedures to add a new Section 10 and a new Part DD regarding delivery procedures relating to a new Contract that will be traded on ICE Futures Europe and cleared by ICE Clear Europe.

New Part DD sets out the delivery specifications and procedures for deliveries of storage capacity under the Contract. Delivery is effected by Magellan Crude Oil Pipeline Company, L.P. ("Magellan") providing to the buyer a Capacity Allocation Contract ("CAC")<sup>6</sup> for storage of one or more increments of 1,000 barrels of Permian West Texas Intermediate crude oil for a

<sup>59</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>60</sup> 17 CFR 200.30-3(a)(12), (57), and (58).

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

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

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

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

<sup>5</sup> Capitalized terms used but not defined herein have the meaning specified in the ICE Clear Europe Clearing Rules (the "Rules").

<sup>6</sup> This is a standardized agreement between Magellan and a buyer providing the contractual right to use designated Permian WTI Storage in the delivery month as further detailed in the Permian WTI Storage Contract.

named calendar month at Magellan's East Houston terminal ("MEH"). The amendments also establish standards for the storage provided, as well as relevant procedures for exchange of futures for physical transactions under exchange rules.

Part DD addresses certain the responsibilities of the Clearing House and relevant parties for delivery under the Contracts, supplementing the existing provisions of the Rules.

Specifically, neither the Clearing House nor ICE Futures Europe are responsible for the performance of Magellan or any person operating MEH, nor do they give any undertaking or warranty to any person as to the effect of the Contract Terms and Delivery Procedures as regards title to Permian WTI Storage. Further, neither the Clearing House nor ICE Futures Europe will have any liability for the condition of the Magellan storage system or for the performance by Magellan or any person who operates such system of any responsibilities they may assume towards Clearing Members or other persons pursuant to the Contract Terms, except for liability for fraud or bad faith or liability which cannot lawfully be excluded. Neither the Clearing House nor ICE Futures Europe has any obligation to any person to ensure the accuracy or availability of any information in Magellan's records in relation to storage rights arising from CACs in relation to Permian WTI Storage.

Part DD addresses delivery margin and invoicing with respect to the Contract and specifies certain details of the delivery process. Delivery of Contracts will be based on open contract positions at the close of trading on the last trading day for which physical delivery is specified. The procedures include a detailed timeframe for relevant notices of intent to deliver or receive, nominations of parties to delivery or receive, delivery confirmations, invoicing, release of delivery margin following completion of delivery and other matters.

New Section 10 addresses alternative delivery procedures (ADP) that the parties to a Contract may agree in lieu of the standard delivery arrangements in Part DD and relevant exchange rules. Section 10 addresses procedures for requesting such an alternative arrangement, disclosure of the counterparty (if amenable to an alternative arrangement), and confirmation and settlement of the alternative arrangement.