

### *Asset-Based Distribution and/or Service Fees*

1. Section 17(d) of the Act and rule 17d-1 under the Act prohibit an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d-1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d-3 under the Act provides an exemption from section 17(d) and rule 17d-1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b-1 under the Act. Applicants request an order under section 17(d) and rule 17d-1 under the Act to the extent necessary to permit the Fund to impose asset-based distribution and/or service fees. Applicants have agreed to comply with rules 12b-1 and 17d-3 as if those rules applied to closed-end investment companies, which they believe will resolve any concerns that might arise in connection with a Fund financing the distribution of its shares through asset-based fees.

For the reasons stated above, applicants submit that the exemptions requested under section 6(c) are necessary and appropriate in the public interest and are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants further submit that the relief requested pursuant to section 23(c)(3) will be consistent with the protection of investors and will insure that applicants do not unfairly discriminate against any holders of the class of securities to be purchased. Finally, applicants state that the Funds' imposition of asset-based distribution and/or service fees is consistent with the provisions, policies and purposes of the Act and does not involve participation on a basis different from or less advantageous than that of other participants. Applicants therefore believe that the requested relief meets the standards of section 6(c) of the Act.

### **Applicants' Condition**

Applicants agree that any order granting the requested relief will be subject to the following condition:

Each Fund relying on the order will comply with the provisions of rules 6c-10, 12b-1, 17d-3, 18f-3, 22d-1, and, where applicable, 11a-3 under the Act, as amended from time to time, as if those rules applied to closed-end management investment companies, and will comply with the FINRA Sales Charge Rule, as amended from time to time, as if that rule applied to all closed-end management investment companies.

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

**Eduardo A. Aleman,**

*Assistant Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-83317; File No. SR-BOX-2018-17]**

#### **Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing of Proposed Rule Change To Amend Rules 7150 and 7245**

May 24, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 14, 2018, BOX Options Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rules 7150 and 7245. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at <http://boxoptions.com>.

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

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

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

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

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

###### **1. Purpose**

The Exchange proposes to amend Rules 7150 (Price Improvement Period ("PIP")) and 7245 (Complex Price Improvement Period ("COPIP")) to provide additional information in the respective auction notifications. Specifically, the Exchange is proposing to provide the account type of the PIP Order<sup>3</sup> and COPIP Order<sup>4</sup> as part of the auction broadcast.<sup>5</sup>

The system commences a PIP and COPIP Auction by broadcasting a message via the High Speed Vendor Feed ("HSVF").<sup>6</sup> Currently, the broadcast: (1) States that a Primary Improvement Order<sup>7</sup> has been processed; (2) contains information concerning series,<sup>8</sup> size, start price, and side of market; and (3) states when the auction will conclude. The Exchange is now proposing that, in addition to the above information, the broadcast will include the account type of the PIP and COPIP Order.<sup>9</sup> The Exchange notes that other option exchanges provide account type information for orders on their electronic book as part of their data feeds.<sup>10</sup>

<sup>3</sup> A PIP Order is an order that is executed entirely via the Price Improvement Period ("PIP"). See Rule 7150(f).

<sup>4</sup> A COPIP Order is a Complex Order that is executed via the Complex Order Price Improvement Period ("COPIP"). See Rule 7245(f).

<sup>5</sup> BOX has the following account types: Public Customer, Professional Customer, Broker Dealer, Market Maker and Away Market Maker. See RC-2014-05A for more details.

<sup>6</sup> See Rules 7150(f) and 7245(f).

<sup>7</sup> A Primary Improvement Order is a contra side order equal to the full size of the PIP or COPIP Order. See Rules 7150(f) and 7245(f).

<sup>8</sup> For a COPIP, the strategy identifier is broadcasted.

<sup>9</sup> See proposed changes to Rules 7150(f) and 7245(f).

<sup>10</sup> See Securities Exchange Act Release No. 74759 (April 17, 2015), 80 FR 22749 (Notice of Filing and

The HSVF provides data to enhance the ability of subscribers to analyze market conditions and to create and test trading models and analytical strategies. In response to Participant feedback, the Exchange is exploring the feasibility of adding information (*i.e.* account type) that market participants can use to gain comprehensive insight into the trading activity on the Exchange as well as additional transparency with regard to orders submitted to the Exchange. The Exchange is proposing to first include the account type of the PIP and COPIP Order into the PIP Broadcast because such a change can be implemented quickly.<sup>11</sup> The Exchange believes that providing the proposed information is important as it will provide additional transparency to market participants so they may have greater insight into the order flow on the Exchange.

The Exchange does not believe the proposed change will have a material impact on competition. Specifically, the Exchange does not believe that the proposed change will have a noticeable impact on competition or the level of responses during an auction. The Exchange believes that Participants will ultimately make a determination on whether to respond to the auction based on price, size, current quote and market conditions. The proposed information will provide additional transparency to Participants; however, it should not materially affect participation during the auctions. As such, the Exchange believes the proposed change is not unfairly discriminatory.<sup>12</sup>

Immediate Effectiveness SR-MIAX-2015-28). The MIAX Order Feed provides, among other things, the origin of each order for the entire order book to its users. The Exchange notes there are certain differences between the proposal and the MIAX Order Feed. Specifically, the Exchange is only proposing to provide the account type for PIP and COPIP Orders while MIAX provides the account type of each order for the entire order book, but not for auctions. The Exchange believes this is a minor difference because both exchanges are providing the same information (*i.e.*, account type) with BOX providing it to a limited subset of orders where MIAX is not providing such information. Further, as expressed in the proposal, the Exchange does not believe that the proposed information will have a material impact on the participation during the PIP and COPIP auctions. Therefore, the Exchange believes it is reasonable and consistent with the Act to provide the proposed information for PIP and COPIP Orders. *See also* Securities Exchange Act Release No. 66993 (May 15, 2012), 77 FR 30043 (Notice of Filing and Immediate Effectiveness SR-PHLX-2012-63).

<sup>11</sup> The Exchange notes that including the account type of all orders on the BOX Book would take substantially longer to implement. The Exchange believes that providing the account type for PIP and COPIP Orders can be implemented in a short time frame and will allow the Exchange to assess whether such information would be beneficial in BOX's HSVF.

<sup>12</sup> The Exchange notes that PIP and COPIP Orders are entered into the system with a contra-side order

The Exchange anticipates implementing the proposed change during the third quarter of 2018, pending approval of this filing. The Exchange will provide at least two weeks notification to Participants of the exact implementation date via Circular.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>13</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>14</sup> in particular, in that it is designed to promote just and equitable principles of trade, 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.

In particular, the Exchange believes the proposed rule change is designed to remove impediments to and perfect the mechanisms of a free and open market and a national market system by providing additional information and insight to Participants. Further, the Exchange believes that the proposed change will enhance Participants' ability to make more informed and timely trading decisions. Additionally, as set forth above, the Exchange believes that the proposed change is reasonable and appropriate as another options exchange disseminates account type information on orders.<sup>15</sup>

The Exchange believes the proposed change is not unfairly discriminatory because the proposed information will be available to all subscribers of the HSVF. As such, the Exchange does not believe the proposed change will have an adverse impact on any market participant. Additionally, as explained above, the Exchange does not believe the proposed change will have a material impact on competition during the auctions.

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

This proposed change will give market participants greater information on which to base their trading strategies. As such, 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. As discussed above, other option exchanges include account type information in their data feeds. Additionally, the Exchange does

guaranteeing the full size of the PIP or COPIP Order. Therefore, the PIP and COPIP Order is fully guaranteed and will always receive a full execution once submitted to the system.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> *See supra* note 10.

not believe that the proposed change will have a material impact on competition during the auction.

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

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

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

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

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

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

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

### Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BOX-2018-17 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-2018-17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BOX-2018-17, and should be submitted on or before June 21, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83324; File No. SR-NYSEArca-2018-31]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NYSE Arca Rule 5.3-E To Exclude Certain Categories of Issuers From the Exchange's Annual Meeting Requirement

May 24, 2018.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on May 16, 2018, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") 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 amend NYSE Arca Rule 5.3-E to exclude certain categories of issuers from the Exchange's annual meeting requirement. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, 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 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 those 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 parts of such statements.

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

###### 1. Purpose

NYSE Arca proposes to amend NYSE Arca Rule 5.3-E to exclude certain categories of issuers from the Exchange's annual meeting requirement.

NYSE Arca Rule 5.3-E(e) provides that a listed company is required to hold an annual meeting of shareholders to elect directors and to take action on other corporate matters in accordance with its charter, by-laws and applicable state or other laws. The preamble to Rule 5.3-E provides that preferred and debt listings, passive business organizations (such as royalty trusts), derivative and special purpose securities<sup>4</sup> are not required to comply with certain of the Corporate Governance and Disclosure Policies set forth in NYSE Arca Rule 5.3-E.<sup>5</sup> However, the preamble does not exclude the obligation to hold an annual meeting pursuant to NYSE Arca Rule 5.3-E(e) from those requirements with which such issuers must comply.

Holders of non-voting preferred and debt securities, securities of passive

business organizations (such as royalty trusts) and derivative and special purpose securities either do not have the right to elect directors at annual meetings or have the right to elect directors only in very limited circumstances. For example, holders of non-voting preferred securities may have the right to temporarily elect directors if dividends on such securities have not been paid for a specified period of time. Absent such special circumstances, in no event do holders of the securities listed above elect directors on an annual basis. Despite the fact that there is no matter with respect to which holders of these securities have an annual voting right under state law or their governing documents, NYSE Arca rules currently do not exclude the issuers of such securities from the requirement that they hold an annual meeting of shareholders.

NYSE Arca now proposes to change the preamble to Rule 5.3-E to provide that issuers of these securities would not need to satisfy the requirement to hold an annual meeting under Rule 5.3-E(e)(1). The Exchange also proposes to clarify that the exclusions for preferred stock set forth in that provision are specifically applicable only to non-voting preferred stock. Notwithstanding the exclusions noted above, if an issuer also lists common stock or voting preferred stock, or their equivalent, such issuer must still hold an annual meeting for the holders of that common stock or voting preferred stock, or their equivalent. The Exchange further proposes to clarify NYSE Arca Rule 5.3-E(e)(1) by specifying that the annual meeting requirement contained in such rule is applicable to issuers listing common stock or voting preferred stock, and their equivalents<sup>6</sup> and that such annual meeting requirement is inapplicable to preferred and debt listings, passive business organizations (such as royalty trusts), and certain categories of derivative and special purpose securities listed pursuant to Rules 5.2-E(h), 5.2-E(j)(2)-(6) and 8-E (8.100-E, 8.200-E, 8.201-E, 8.202-E, 8.203-E, 8.204-E, 8.300-E, 8.400-E, 8.600-E and 8.700-E).

The Exchange notes that the listing rules of the NASDAQ Stock Market LLC ("NASDAQ"), Cboe BZX Exchange, Inc. ("Cboe BZX") and NYSE American LLC ("NYSE American") all provide explicit exclusions for issuers of ETFs and other derivative securities products from the annual meeting requirements in their

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> Derivative and special purpose securities are securities listed pursuant to Rules 5.2-E(h), 5.2-E(j)(2)-(6) and Rule 8-E (8.100-E, 8.200-E, 8.201-E, 8.202-E, 8.203-E, 8.204-E, 8.300-E, 8.400-E, 8.600-E and 8.700-E), including Exchange Traded Funds ("ETFs") and similar products.

<sup>5</sup> See Securities Exchange Act Release No. 49810 (June 4, 2004), 69 FR 32647 (June 10, 2004).

<sup>6</sup> This language is identical to that used in the NASDAQ annual meeting rule. See NASDAQ Marketplace Rules IM-5620.