

operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>15</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>16</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>17</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>18</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Exchange represents that it disseminated advance notice of the proposed change to market participants on March 27, 2020 and plans to announce a specific implementation date in the near future. In addition, the Exchange states that the proposal is consistent with quoting functionality on other options exchanges which currently offer such functionality only to their market makers. The Commission notes that the proposed rule change does not present any unique or novel regulatory issues. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.<sup>19</sup>

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

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day pre-filing requirement in this case.

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

<sup>18</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>19</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

#### 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-C2-2020-005 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-C2-2020-005. 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-C2-2020-005 and should be submitted on or before June 1, 2020.

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

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020-09955 Filed 5-8-20; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88810; File No. SR-BOX-2020-09]

### Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of Proposed Rule Change To Adopt New Rule Regarding Transfer of Positions

May 5, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 28, 2020, BOX Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

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

The Exchange proposes to establish BOX Rule 7160 ("Transfer of Positions") to provide a process by which Participants may transfer option positions in limited circumstances off the floor. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at <http://boxoptions.com>.

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

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

<sup>20</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.

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 establish Rule 7160 ("Transfer of Positions") to provide a process by which Participants may transfer option positions in limited circumstances off the floor. Rule 7160 will specify the circumstances under which a Participant may effect transfers of positions to permit market participants to move positions from one account to another without exposure to the BOX Trading Floor and to permit transfers upon the occurrence of significant, non-recurring events. The proposed rule change is similar to Cboe Rule 6.7.<sup>3</sup>

Currently, Exchange Rules do not specifically address transfers of option positions between accounts, individuals or entities. The Exchange, however, plans on aligning its Rules with its competitors by allowing off the floor transfers in situations similar to those permitted on other exchanges. The proposed rule will establish Exchange policy with respect to off the floor transfers of options positions in certain limited circumstances.

Specifically, the Exchange proposes to state, "existing positions in options listed on the Exchange, of a Participant or person associated with the Participant, or non-Participant, or person associated with a non-Participant that are to be transferred on, from, or to the books of a Clearing Participant may be transferred off the Exchange if the transfer involves one or more of the flooring events: . . . ." The proposed rule language makes clear that the Rule will not apply to products other than options listed on the Exchange.<sup>4</sup> The proposed rule text also mandates that a Participant or person associated with the Participant must be on at least one side of the transfer. The proposed rule change also states that transferred positions must be on, from, or to the books of a Clearing Participant.<sup>5</sup> The proposed rule change

also states that existing positions of a Participant or person associated with a Participant, or non-Participant, or person associated with a non-Participant may be subject to a transfer, except under specified circumstances in which a transfer may only be effected for positions of a Participant or person associated with the Participant.<sup>6</sup>

The Exchange notes transfers of positions in Exchange-listed options may also be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations.<sup>7</sup> Except as explicitly provided in the proposed rule text, the proposed rule change is not intended to exempt position transfers from any other applicable rules or regulations, and proposed paragraph (g) makes this clear in the rule.

The proposed rule change adds ten events where a transfer would be permitted to occur.

- Proposed subparagraph (a)(1) permits a transfer to occur if it, pursuant to Rule 3000, is an adjustment or transfer in connection with the correction of a bona fide error in the recording of a transaction or the transferring of a position to another account, provided that the original trade documentation confirms the error.

- Proposed subparagraph (a)(2) permits a transfer if it is a transfer of positions from one account to another account where there is no change in ownership involved (*i.e.*, the accounts are for the same Person),<sup>8</sup> provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements. The proposed rule change provides market participants with flexibility to maintain positions in accounts used for the same trading purpose in a manner consistent with their businesses. Such transfers are not intended to be transactions among different market participants, as there would be no change in ownership permitted under the provision, and would also not permit transfers among different trading units for which

accounts are otherwise required to be maintained separately.<sup>9</sup>

- Proposed subparagraph (a)(3) similarly permits a transfer if it is a consolidation of accounts<sup>10</sup> where no change in ownership is involved.

- Proposed subparagraph (a)(4) permits a transfer if it is a merger, acquisition, consolidation, or similar non-recurring transaction for a Person. For example, a Participant that is undergoing a structural change and a one-time movement of positions may require a transfer of positions.

- Proposed subparagraph (a)(5) permits a transfer involving the dissolution of a joint account in which the remaining Participant or person associated with the Participant assumes the positions of the joint account. For example, a person associated with a Participant is leaving a firm that will no longer be in business may require a transfer of positions to another firm.

- Proposed subparagraph (a)(6) permits a transfer involving the dissolution of a corporation or partnership in which a former nominee of the corporation or partnership assumes the positions.

- Proposed subparagraph (a)(7) permits a position transfer as part of a Participant's or associated person's capital contribution to a new joint account, partnership, or corporations.

- Proposed subparagraph (a)(8) permits a transfer regarding the donation of positions to a not-for-profit corporation. The Exchange believes that permitting such a transfer in very limited circumstances is reasonable, as it allows organizations to accomplish certain goals more efficiently.

- Proposed subparagraph (a)(9) permits the transfer of positions to a minor under the Uniform Gifts to Minors Act.

- Proposed subparagraph (a)(10) permits the transfer of positions through operation of law from death, bankruptcy, or otherwise. This provision is consistent with applicable laws, rules, and regulations that legally require transfers in certain circumstances. This proposed rule change is consistent with the purposes of other circumstances in the current rule, such as the transfer of positions to a minor or dissolution of a corporation.

The Exchange believes these proposed events all have similar purposes in that

<sup>3</sup> The Exchange notes the proposed rule change is also similar to NASDAQ PHLX Options 6; Section 5 Transfer of Positions.

<sup>4</sup> Proposed paragraph (h) also states that the transfer procedure only applies to positions in options listed on the Exchange, and that transfers of non-Exchange-listed options and other financial instruments are not governed by Rule 7160.

<sup>5</sup> The Exchange understands that this is consistent with how transfers are currently effected on competitor exchanges. See Nasdaq Phlx LLC

("Phlx") Options 6, Section 5; See also Cboe Exchange, Inc. ("Cboe") Rule 6.7.

<sup>6</sup> See proposed subparagraphs (a)(5) and (7).

<sup>7</sup> See proposed paragraph (h).

<sup>8</sup> The Exchange proposes to define the term "Person" within this proposed Rule 7160 as "For purposes of this rule, the term 'Person' shall be defined as an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof." This definition is identical to Cboe Rule 1.1.

<sup>9</sup> Various rules (for example, Regulation SHO in certain circumstances) require accounts to be maintained separately, and the proposed rule change is consistent with those rules.

<sup>10</sup> This refers to the consolidation of entire accounts (*e.g.*, combining two separate accounts (including the positions in each account into a single account)).

they will enable market participants to move positions from one account to another and to permit transfers upon the occurrence of significant, non-recurring events.<sup>11</sup> As noted above, the proposed rule change is consistent with current rules of other self-regulatory organizations.

The proposed Exchange Rule 7160(b) provides that unless otherwise permitted by paragraph (f), no position may net against another position (“netting”), and no position transfer may result in preferential margin or haircut treatment.<sup>12</sup> Netting occurs when long positions and short positions in the same series “offset” against each other, leaving no or a reduced position. For example, if a Participant or associated person wanted to transfer 100 long calls to another account that contained short calls of the same options series as well as other positions, even if the transfer is permitted pursuant to one of the 10 permissible events listed in the Proposed Rule, the Participant or associated person could not transfer the offsetting series, as they would net against each other and close the positions.

However, netting is permitted for transfers on behalf of a Market Maker account for transactions in multiply listed options series on different options exchanges, but only if the Market Maker nominees are trading for the same Participant or associated person, and the options transactions on the different options exchanges clear into separate exchange-specific accounts because they cannot easily clear into the same Market Maker account at the Clearing Corporation. In such instances, all Market Maker positions in the exchange-specific accounts for the multiply listed class would be automatically transferred on their trade date into one central Market Maker account (commonly referred to as a “universal account”) at the Clearing Corporation. Positions cleared into a universal account would automatically net against each other. Options exchanges permit different naming conventions with respect to Market Maker account acronyms (for example, lettering versus numbering and number of characters), which are used for accounts at the Clearing Corporation. A Market Maker may have a nominee with an appointment in class XYZ on BOX, and have another nominee with an

appointment in class XYZ on Phlx, but due to account acronym naming conventions, those nominees may need to clear their transactions into separate accounts (one for BOX transactions and another for Phlx transactions) at the Clearing Corporation rather into a universal account (in which account the positions may net). The proposed rule change permits transfers from these separate exchange-specific accounts into the Market Maker’s universal account in this circumstance to achieve this purpose.

#### Transfer Price

The Exchange proposes to state that the transfer price, to the extent it is consistent with applicable laws, rules, and regulations, including rules of other self-regulatory organizations, and tax and accounting rules and regulations, at which a transfer is effected may be: (1) The original trade prices of the positions that appear on the books of the trading Clearing Participant, in which case the records of the transfer must indicate the original trade dates for the positions; provided, transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1) must be transferred at the correct original trade prices; (2) mark-to-market prices of the positions at the close of trading on the transfer date; (3) mark-to-market prices of the positions at the close of trading on the trade date prior to the transfer date;<sup>13</sup> or (4) the then-current market price of the positions at the time the transfer is effected.<sup>14</sup> The proposed rule text regarding permissible transfer prices provides market participants with flexibility to determine the transfer price at which the transfer may be effected. The Exchange proposes the four options noted above with respect to the transfer price.

This proposed rule change provides market participants that effect transactions with flexibility to select a transfer price based on circumstances of the transfer and their business. However, for corrections of bona fide errors, because those transfers are necessary to correct processing errors that occurred at the time of transaction, those transfers would occur at the original transaction price, as the purpose of the transfer is to create the originally intended result of the transaction.

<sup>13</sup> For example, for a transfer that occurs on a Tuesday, the transfer price may be based on the closing market price on Monday.

<sup>14</sup> See proposed paragraph (c).

#### Prior Written Notice

Proposed Exchange Rule 7160(b) requires a Participant or person(s) associated with the Participant and its Clearing Participant(s) (to the extent the Participant or associated person are not self-clearing) to submit to the Exchange, in a manner determined by the Exchange, written notice prior to effecting a transfer from or to the account of a Participant(s) or associated person(s).<sup>15</sup> The notice must indicate: The Exchange-listed options positions to be transferred; the nature of the transaction; the enumerated provision(s) under proposed paragraph (a) pursuant to which the positions are being transferred; the name of the counterparty(ies); the anticipated transfer date; the method for determining the transfer price; and any other information requested by the Exchange.<sup>16</sup> The proposed notice will ensure the Exchange is aware of all transfers so that it can monitor and review them (including the records that must be retained pursuant to proposed paragraph (e)) to determine whether they are effected in accordance with the Rules. The proposed rule text requires additional information with respect to the prior written notification that is required to effect a transfer.

Additionally, requiring notice from the Participant or person(s) associated with the Participant and its Clearing Participant will ensure both parties are in agreement with respect to the terms of the transfer. As noted in proposed subparagraph (d)(2), receipt of notice of an transfer does not constitute a determination by the Exchange that the transfer was effected or reported in conformity with the requirements of the proposed Rule 7160. Notwithstanding submission of written notice to the Exchange, Participants or person(s) associated with the Participant and Clearing Participant(s) that effect transfers that do not conform to the requirements of the proposed Rule will be subject to appropriate disciplinary action in accordance with the Rules.

#### Records

The proposed Exchange Rule 7160(e) requires each Participant or person(s) associated with the Participant and each Clearing Participant that is a party to a transfer must make and retain records of

<sup>15</sup> This notice provision applies only to transfers involving a Participant’s or associated persons’ positions and not to positions of non-Participants and non-Participant associated persons, as they are not subject to the Rules. In addition, no notice would be required to effect transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1).

<sup>16</sup> See proposed paragraph (d).

<sup>11</sup> See proposed paragraph (g).

<sup>12</sup> For example, positions may not transfer from a customer, joint back office, or firm account to a Market Maker account. However, positions may transfer from a Market Maker account to a customer, joint back office, or firm account (assuming no netting of positions occurs).

the information provided in the written notice to the Exchange pursuant to proposed subparagraph (e)(1), as well as information on the actual Exchange-listed options that are ultimately transferred, the actual transfer date, and the actual transfer price (and the original trade dates, if applicable), and any other information the Exchange may request the Participant or associated persons, or Clearing Participant to provide.<sup>17</sup>

#### Presidential Exemption

Proposed paragraph (f) provides exemptions approved by the Exchange's Chief Executive Officer or President (or senior-level designee). Specifically, this provision is in addition to the exemptions set forth in proposed paragraph (a). The Exchange proposes that the Exchange Chief Executive Officer or President (or senior-level designee) may grant an exemption from the requirement of this proposed Rule, on his or her own motion or upon application of the Participant or person(s) associated with the Participant (with respect to the Participant or person(s) associated with the Participant's positions) or a Clearing Participant (with respect to positions carried and cleared by the Clearing Participants). The Chief Executive Officer, the President, or his or her designee, may permit a transfer if necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances. For example, an exemption may be granted if the market value of the Person's positions would be compromised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or when, in the judgment of the Chief Executive Officer, President, or his or her designee, market conditions make trading on the Exchange impractical.<sup>18</sup>

#### Routine, Recurring Transfers

The Exchange proposes to state that the transfer procedure set forth in Rule 7160 is intended to facilitate non-routine, nonrecurring movements of positions.<sup>19</sup> The transfer procedure is not to be used repeatedly or routinely in circumvention of the normal auction market process.

#### Exchange-Listed Options

Lastly, the Exchange proposes paragraph (h) which notes that the transfer procedure set forth in the proposed rule is only applicable to positions in options listed on the Exchange. Transfers of positions in Exchange-listed options may also be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations. Transfers of non-Exchange listed options and other financial instruments are not governed by the proposed rule.

#### 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>20</sup> in general, and Section 6(b)(5) of the Act,<sup>21</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.

Specifically, the Exchange believes the proposed transfer rule is consistent with the Section 6(b)(5)<sup>22</sup> requirements that the rules of an exchange be 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 regulating, clearing, settling, processing information with respect to, and 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>23</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that permitting the transfers in very limited circumstances, such as where there is no change in beneficial ownership, a transfer by operation of law or an adjustment or transfer in connection with the correction of a bona fide error, is reasonable to allow a Participant or associated person(s) to accomplish certain goals efficiently. As noted above for example, a Participant or associated person that is undergoing a structural change and a one-time movement of

positions may require a transfer of positions, or a Participant or associated person that is leaving a firm that will no longer be in business may require a transfer of positions to another firm. Also, a Participant or associated person may require a transfer of positions to make a capital contribution. The above-referenced circumstances are non-recurring situations where the transferor continues to maintain some ownership interest or manage the positions transferred. By contrast, repeated or routine transfers between entities or accounts—even if there is no change in beneficial ownership as a result of the transfer—is inconsistent with the purposes for which the proposed rule will be adopted. Accordingly, the Exchange believes that such activity should not be permitted under the rules and thus, seeks to adopt language in proposed paragraph (f) that dictates the transfer of positions procedures set forth in the proposed rule are intended to facilitate non-recurring movements of positions.

The Exchange believes the proposed rule change would benefit investors, as it adds transparency and consistency between BOX's rulebook and other exchange rulebooks.<sup>24</sup> The purpose of the proposed rule allowing for limited circumstances in which market participants may conduct transfers is consistent with the purpose of the circumstances currently permitted on another exchange.<sup>25</sup> The proposed rule change will provide market participants that experience these limited, non-recurring events with an efficient and effective means to transfer positions in these situations. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which maintain cost bases in accordance with normal accounting practices and removes impediments to a free and open market.

The proposed rule change which requires notice and maintenance of records will ensure the Exchange is able to review transfers for compliance with the Rules, which prevents fraudulent and manipulative acts and practices. The requirement to retain records is consistent with the requirements of Rule 17a-3 and 17a-4 under the Act.

<sup>24</sup> See Phlx Options 6, Section 5; See also Cboe Rule 6.7.

<sup>25</sup> See Securities Exchange Act Release No. 34-88424 (March 19, 2020), 85 FR 16981 (March 25, 2020) (Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Regarding Off-Floor Position Transfers).

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

<sup>21</sup> 15 U.S.C. 78f(b)(5).

<sup>22</sup> 15 U.S.C. 78f(b)(5).

<sup>23</sup> *Id.*

<sup>17</sup> See proposed paragraph (e).

<sup>18</sup> See proposed Rule (f).

<sup>19</sup> See proposed Rule (g).

Similar to Cboe and Phlx rules, the Exchange would permit a presidential exemption. The Exchange believes that this exemption is consistent with the Act because the Exchange's Chief Executive Officer or President (or senior-level designee) would consider an exemption in very limited circumstances. The transfer process is intended to facilitate non-routine, nonrecurring movements of positions and, therefore, is not to be used repeatedly or routinely in circumvention of the normal auction market process. The proposed rule text specifically provides within the rule text that the Exchange's Chief Executive Officer or President (or senior-level designee) may in his or her judgment allow a transfer if it is necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances such as the market value of the Person's positions will be comprised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or, when in the judgment of President or his or her designee, market conditions make trading on the Exchange impractical. These standards within the proposed rule paragraph (f) are intended to provide guidance concerning the use of this exemption which is intended to provide the Exchange with the ability to utilize the exemption for the maintenance of a fair and orderly market and the protection of investors and is in the public interest. The Exchange believes that the exemption is consistent with the Act because it would allow the Exchange's Chief Executive Officer or President (or senior-level designee) to act in certain situations which comply with the guidance within paragraph (f) which is intended to protect investors and the general public. Although Cboe's rule grants an exemption to the President (or senior-level designee),<sup>26</sup> the Exchange has elected to parallel Phlx and grant an exemption to the Exchange's Chief Executive Officer or President (or senior-level designee), who are similarly situated within BOX's organization as senior-level individuals.<sup>27</sup>

#### *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 that is not

necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe the proposed rule change will impose an undue burden on intra-market competition as the transfer procedure may be utilized by any Participant or person associated with the Participant and the rule will apply uniformly to all Participants and associated persons. Use of the transfer procedure is voluntary, and all Participants or associated persons may use the procedure to transfer positions as long as the criteria in the proposed rule are satisfied. With the establishment of the proposed rule, a Participant or person(s) associated with a Participant that experiences limited permissible, non-recurring events would have an efficient and effective means to transfer positions in these situations. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which determine prices in accordance with normal accounting practices and removes impediments to a free and open market. The Exchange does not believe the proposed notice and record requirements are unduly burdensome to market participants. The Exchange believes the proposed requirements are reasonable and will ensure the Exchange is aware of transfers and would be able to monitor and review the transfers to ensure the transfer falls within the proposed rule.

Adopting an exemption, similar to Phlx Section 5(f), to permit the Exchange's Chief Executive Officer or President (or senior-level designee) to grant an exemption, in addition to the limited circumstances of the proposed rule, in his or her judgment, does not impose an undue burden on competition. Such an exemption would only be applied when in the judgment of the Chief Executive Officer, or President or his or her designee, the off-floor transfer is necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances, such as the possibility that the market value of a Person's positions would be compromised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or when market conditions make trading on the Exchange impractical.

The Exchange does not believe the proposed rule change will impose an undue burden on inter-market competition. The proposed position transfer procedure is not intended to be

a competitive trading tool. The proposed rule change is an accommodative trading tool because it permits, in limited circumstances, a transfer to facilitate non-routine, nonrecurring movements of positions. As provided for in proposed paragraph (g), it would not be used repeatedly or routinely in circumvention of the normal auction market process. In addition, proposed paragraph (f) provides within the rule text that the Exchange's Chief Executive Officer or President (or senior-level designee) may in his or her judgment allow a transfer for the maintenance of a fair and orderly market and the protection of investors and is in the public interest. The Exchange believes that the exemption does not impose an undue burden on competition as the Exchange's Chief Executive Officer or President (or senior-level designee) would apply the exemption consistent with the guidance laid out in the proposed rule text. Additionally, as discussed above, the proposed rule change is similar to Cboe Rule 6.7 and Phlx Options 6, Section 5 rule text, therefore, the Exchange believes having similar rules related to transfer positions to those of other options exchanges will reduce the administrative burden on market participants of determining whether their transfers complies with multiple sets of rules.

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.

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

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

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>28</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>29</sup>

<sup>28</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>29</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give

<sup>26</sup> See Cboe Rule 6.7(f).

<sup>27</sup> See Phlx Section 5(f).

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days from the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>30</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Commission notes that the proposal is substantively similar to rules of Cboe and Phlx and raises no new or novel issues.<sup>31</sup> The Commission therefore believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.<sup>32</sup>

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

#### IV. Solicitation of Comments

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

##### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BOX-2020-09 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.

the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>30</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>31</sup> See CBOE Rule 6.7 and NASDAQ PHLX Options 6; Section 5.

<sup>32</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

All submissions should refer to File Number SR-BOX-2020-09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BOX-2020-09 and should be submitted on or before June 1, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>33</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020-09954 Filed 5-8-20; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88812; File No. SR-NYSEArca-2020-38]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NYSE Arca Options Fee Schedule

May 5, 2020.

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>

<sup>33</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.

notice is hereby given that, on April 29, 2020, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III 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 modify the NYSE Arca Options Fee Schedule ("Fee Schedule") to waive certain Floor-based fixed fees for the month of May 2020. The Exchange proposes to implement the fee change effective April 29, 2020. 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 Statutory Basis for, the Proposed Rule Change*

###### 1. Purpose

The purpose of this filing is to modify the Fee Schedule to waive certain Floor-based fixed fees for the month of May 2020. The Exchange proposes to implement the fee change effective April 29, 2020.

On March 18, 2020, the Exchange announced that it would temporarily close the Trading Floor, effective Monday, March 23, 2020, as a precautionary measure to prevent the potential spread of COVID-19. Following the temporary closure of the Trading Floor, the Exchange waived certain Floor-based fixed fees for April