

Investment Transaction for all purposes and subject to the other conditions set forth in the application.

9. The Non-Interested Trustees of each Regulated Fund will be provided quarterly for review all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by any other Regulated Funds or Affiliated Funds that the Regulated Fund considered but declined to participate in, so that the Non-Interested Trustees may determine whether all investments made during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the conditions of the Order. In addition, the Non-Interested Trustees will consider at least annually the continued appropriateness for the Regulated Fund of participating in new and existing Co-Investment Transactions.

10. Each Regulated Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these conditions were approved by the Required Majority under section 57(f) of the Act.

11. No Non-Interested Trustee of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise an "affiliated person" (as defined in the Act) of an Affiliated Fund.

12. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the 1933 Act) will, to the extent not payable by the Advisers under their respective investment advisory agreements with Affiliated Funds and the Regulated Funds, be shared by the Regulated Funds and the Affiliated Funds in proportion to the relative amounts of the securities held or to be acquired or disposed of, as the case may be.

13. Any transaction fee<sup>13</sup> (including break-up or commitment fees but excluding broker's fees contemplated section 17(e) of the Act) received in connection with a Co-Investment Transaction will be distributed to the participating Regulated Funds and Affiliated Funds on a pro rata basis based on the amounts they invested or committed, as the case may be, in such

Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the Co-Investment Transaction, the fee will be deposited into an account maintained by such Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1) of the Act, and the account will earn a competitive rate of interest that will also be divided pro rata among the participating Regulated Funds and Affiliated Funds based on the amounts they invest in such Co-Investment Transaction. None of the Affiliated Funds, the Advisers, the other Regulated Funds, or any affiliated person of the Regulated Funds or Affiliated Funds will receive additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction (other than (a) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in condition 2(c)(iii)(C); and (b) in the case of an Adviser, investment advisory fees paid in accordance with the investment advisory agreements between such Adviser and the Regulated Fund or Affiliated Fund).

14. If the Holders own in the aggregate more than 25% of the Shares of a Regulated Fund, then the Holders will vote such Shares in the same percentages as the Regulated Fund's other shareholders (not including the Holders) when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable state law affecting the Board's composition, size or manner of election.

15. Each Regulated Fund's chief compliance officer, as defined in rule 38a-1(a)(4) under the Act, will prepare an annual report for the Board of such Regulated Fund that evaluates (and documents the basis of that evaluation) the Regulated Fund's compliance with the terms and conditions of the application and procedures established to achieve such compliance.

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

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91843; File No. SR-NASDAQ-2021-039]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Temporarily Suspend Publication on Certain Proprietary Data Feeds

May 11, 2021.

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 May 4, 2021, The Nasdaq Stock Market LLC ("Nasdaq" or "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 Exchange. 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 temporarily suspend publication on certain proprietary data feeds of last sale information on securities that are projected to exceed 98 percent of the maximum allowable value of the feed. The suspension will be effective on May 4, 2021, and will conclude on May 17, 2021, when the maximum allowable value of the feed will be substantially enhanced. The proposed suspension will impact the following data feeds: Nasdaq Last Sale and Nasdaq Last Sale Plus (Equity 7, Section 139), Nasdaq Basic (Equity 7, Section 147), and Nasdaq FilterView (Equity 7, Section 137).

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, 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 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

<sup>13</sup> The Applicants are not requesting, and the staff is not providing, any relief for transaction fees received in connection with any Co-Investment Transaction.

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

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

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

Nasdaq proposes to temporarily suspend, on an emergency basis, the publication on certain proprietary data feeds of last sale information on securities that are projected to exceed 98 percent of the maximum allowable value of the feed. The suspension will be effective on May 4, 2021, and will conclude on May 17, 2021, when the maximum allowable value of the feed will be substantially enhanced. The proposed suspension will impact the following data feeds: Nasdaq Last Sale and Nasdaq Last Sale Plus (Equity 7, Section 139), Nasdaq Basic (Equity 7, Section 147), and Nasdaq FilterView (Equity 7, Section 137).

The last sale data on the four data feeds listed above is currently written in a 4-byte hexadecimal computer code format, which establishes a maximum allowable value of \$429,496.7926. If the price of a security meets the maximum allowable price, it resets to zero. Nasdaq plans to remove that maximum allowable price on May 17, 2021, by substituting the 4-byte hexadecimal format with an 8-byte hexadecimal format using a long-form trade message, eliminating the possibility that the price of any existing security will reset to zero. Until May 17, however, as a protective safeguard to prevent the dissemination of incorrect data, Nasdaq proposes to suspend reporting of any security that is projected to exceed 98 percent of the maximum allowable value of the feed (\$420,906.856). This is a temporary measure that will have no permanent impact on any of the four data feeds listed above after the upgrade goes into effect on May 17, 2021.

Only one NMS security is projected to exceed 98 percent of the maximum allowable value between May 4 and May 17, 2021, based on intraday price movements observed on May 3, 2021.

The last sale data for any security not published on the Nasdaq proprietary data feeds will be available through the securities information processors.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>3</sup> in general, and furthers the

objectives of Section 6(b)(5) of the Act,<sup>4</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.

The purpose of this proposal is to prevent the last sale price for any of the proprietary data feeds listed above from resetting to zero because a security has reached the maximum allowable value of \$429,496.7926. Nasdaq believes that this protective safeguard will prevent the dissemination of incorrect data, and will thereby promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

*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. As explained above, the Proposal is a protective safeguard to prevent the dissemination of incorrect data. It will have no impact on intermarket competition (the competition among SROs) because this temporary measure will have no long-term impact on the competition among exchanges in the sale of top-of-book data. It will have no impact on intramarket competition (the competition among exchange customers) because no purchaser of the affected data feeds will be treated any differently than any other purchaser of the affected data feeds.

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

No written comments were either solicited or received.

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

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) of the Act<sup>5</sup> and Rule 19b-4(f)(6) thereunder.<sup>6</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>7</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>8</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 requested that the Commission waive the 30-day operative delay. Waiver of the operative delay would allow the Exchange to avoid disseminating inaccurate last sale information in its proprietary market data feeds without delay, in the event the last sale price for any security reaches the maximum allowable value of \$429,496.7926. According to the Exchange, only one NMS security is projected to be affected by the temporary suspension, which will conclude on May 17, 2021 when the maximum allowable value of the feeds will be substantially enhanced. Moreover, last sale information for any security not published on the Exchange's proprietary market data feeds will be available through the securities information processors. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.<sup>9</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 change should be approved or disapproved.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

<sup>8</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>9</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).

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

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

#### 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-NASDAQ-2021-039 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-NASDAQ-2021-039. 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-NASDAQ-2021-039 and should be submitted on or before June 7, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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#### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-91836; File No. SR-BOX-2021-08]**

#### **Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Options Market LLC Facility To Establish a Policy Relating to Billing Errors**

May 11, 2021.

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 May 6, 2021, BOX Exchange LLC ("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 Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 the Fee Schedule on the BOX Options Market LLC ("BOX") facility to establish a policy relating to billing errors. 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 Sections A, B, and C below, of the most significant aspects of such statements.

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

##### 1. Purpose

The purpose of the proposed rule change is to amend its Fee Schedule to establish a provision related to billing errors and fee disputes. More specifically, the Exchange would adopt language in Section VII.B of the BOX Fee Schedule (Fee Disputes) that would provide that all fees and rebates assessed prior to the three full calendar months before the month in which the Exchange becomes aware of a billing error shall be considered final. Particularly, the Exchange will resolve an error by crediting or debiting Participants and Non-Participants based on the fees or rebates that should have been applied in the three full calendar months preceding the month in which the Exchange became aware of the error, which includes all impacted transactions that occurred during those months.<sup>5</sup> The Exchange will apply the three month look back regardless of whether the error was discovered by the Exchange or by a Participant or Non-Participant that submitted a fee dispute to the Exchange.<sup>6</sup>

The purpose of the proposed change is to encourage Participants and Non-Participants to promptly review their Exchange invoices so that any disputed charges can be addressed in a timely manner. The Exchange notes that it provides Participants with both daily and monthly fee reports and thus believes they should be aware of any potential billing errors within three months. Further, any fees assessed on Non-Participants are sent as monthly

<sup>5</sup> For example, if the Exchange becomes aware of a transaction fee billing error on April 1, 2021, the Exchange will resolve the error by crediting or debiting Participants based on the fees or rebates that should have been applied to any impacted transactions during January, February and March 2021. The Exchange notes that because it bills in arrears, the Exchange would be able to correct the error in advance of issuing the April 2021 invoice and therefore, transactions impacted through the date of discovery (in this example, April 1, 2021) and thereafter, would be billed correctly.

<sup>6</sup> The Exchange notes that the current policy which states that all fee disputes must be submitted no later than sixty (60) calendar days after receipt of a billing invoice will remain in place.

<sup>10</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>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

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