

SR-MRX-2023-10 and should be submitted on or before July 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>95</sup>

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97723; File No. SR-BOX-2023-16]

### Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule for Trading on the BOX Options Market LLC Facility To Offer Ad-Hoc Historical Requests for the Intraday Open-Close Data Report and Adopt Fees for This Data

June 14, 2023.

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 June 12, 2023, BOX Exchange LLC (“Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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> which renders the proposal effective upon filing with the Commission. 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 is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the Fee Schedule to amend the Fee Schedule [sic] on the BOX Options Market LLC (“BOX”) options facility to offer ad-hoc historical requests for the Intraday Open-Close Data Report and adopt fees for this data. 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 Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

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

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

###### 1. Purpose

The Exchange recently adopted a new data product on BOX known as the Intraday Open-Close Data Report.<sup>5</sup> When the Exchange established the Intraday Open-Close Data Report data, it did not include ad-hoc requests for the Intraday Open-Close historical data. Since establishing the Intraday Open-Close Data Report, Participants and non-Participants have expressed interest in ad-hoc historical requests for the Intraday Open-Close Data Report. As such, the Exchange now proposes to offer ad-hoc historical requests for the Intraday Open-Close Data Report and adopt fees for this data. Specifically, the Exchange proposes to assess a \$1,000 fee per request per month for the historical data.

Similar to the ad-hoc requests for the End-of-Day Open Close Data Report, ad-hoc requests for the Intraday Open-Close Data Report can be for any number of months beginning with January 2018 for which the data is available.<sup>6</sup> The proposed fee will apply

<sup>5</sup> See Securities Exchange Act Release No. 97174 (March 21, 2023), 88 FR 18201 (March 27, 2023) (SR-BOX-2023-09).

<sup>6</sup> For example, a Participant or non-Participant that requests historical Intraday Open-Close Data for the months of January 2018 and February 2018, would be assessed a total of \$2,000. Participants and non-Participants are permitted to make ad-hoc requests for any number of days within a month for the Intraday Open-Close Data Report. For example, a Participant or non-Participant may make an ad-hoc request for the Intraday Open-Close Data Report from May 1st to May 20th. The accounting will be prorated based on the number of trading days in the month versus the number of trading days received.

to both Participants and non-Participants. The Exchange notes that another exchange provides similar data that may be purchased on an ad-hoc basis and is similarly priced.<sup>7</sup>

By way of background, the Exchange currently offers the Intraday Open-Close Data Report to Participants and non-Participants, which is a volume summary file for trading activity on BOX. The Exchange notes that the file contains proprietary BOX trade data and does not include trade data from any other exchanges. It is also a historical data product and not a real time data feed. The Intraday Open-Close Data Report is produced and updated every 10 minutes during the trading day. Data is captured in “snapshots” taken every 10 minutes throughout the trading day and available to subscribers within five minutes of the conclusion of each 10-minute period. Each update will represent combined data captured from the current “snapshot” and all previous “snapshots” and thus will provide open-close data on an aggregate basis. The Intraday Open-Close Data Report aggregates the volume by origin (Public Customer, Professional Customer, Broker Dealer, and Market Maker), buying/selling, and opening/closing criteria. Public Customer and Professional Customer volume is further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts). Ad-hoc requests for Intraday Open-Close Data Report will provide the same information for a requested historical time period for any number of months beginning with January 2018.<sup>8</sup>

This product is offered to Participants on a completely voluntary basis in that the Exchange is not required by any rule or regulation to make this data available and potential subscribers may purchase the Intraday Open-Close Data Report or

The Participant or non-Participant will be charged for the request on a prorated basis. The Exchange is proposing to allow ad-hoc requests for the Intraday Open-Close Data Report for any month starting January 2018, as this is what is currently offered for End-of-Day historical data requests. The Exchange notes that it may make historical data prior to January 2018 available in the future and that such historical data would be available to all Participants or non-Participants.

<sup>7</sup> See Miami International Securities Exchange, LLC (“MIAX”) Fee Schedule. MIAX assesses \$1,000 per request per month for the Intra-Day Ad-Hoc Request for historical data.

<sup>8</sup> The historical monthly reports of the Intraday Open-Close Data Report will contain all series in an underlying security if the security had volume on BOX during that month. The Intraday Open-Close Data Report file format specifications can be found at [www.boxoptions.com](http://www.boxoptions.com).

<sup>95</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)(ii).

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

make ad-hoc requests for the Intraday Open-Close Data Report only if they voluntarily choose to do so. It is a business decision of each potential subscriber whether to subscribe to the Intraday Open-Close Data Report and/or make ad-hoc requests for the Intraday Open-Close Data Report.

The Exchange also proposes to make a clarifying change to the End-of-Day Ad-hoc Request (historical data) section of the BOX Fee Schedule. Specifically, the Exchange proposes to add that mid-month requests for End-of Day historical data will be prorated based on the number of trading days in the month versus the number of trading days received. The Exchange notes that it is not proposing to change an existing practice, as this is how mid-month requests for End-of-Day historical data are currently processed. The Exchange believes this will add transparency and clarity to the Fee Schedule with respect to how fees are assessed for End-of-Day Ad-hoc Requests.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of section 6(b) of the Act,<sup>9</sup> in general, and section 6(b)(4) and 6(b)(5) of the Act,<sup>10</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 also believes that its proposed changes to its Fee Schedule concerning fees for the Intraday Ad-hoc Open-Close Data Report is consistent with section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of section 6(b)(4) of the Act,<sup>12</sup> in particular, in that it is an equitable allocation of dues, fees and other charges among its Participants and other recipients of Exchange data.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. Particularly, the Intraday Open-Close Data Report further broadens the availability of U.S. option market data to investors consistent with

the principles of Regulation NMS. The data product also promotes increased transparency through the dissemination of the Intraday Ad-hoc Open-Close Data Report. Particularly, information regarding opening and closing activity across different option series during the trading day may indicate investor sentiment, which may allow market participants to make better informed trading decisions throughout the day. Subscribers to the data may also be able to enhance their ability to analyze option trade and volume data and create and test trading models and analytical strategies. The Exchange believes the Intraday Open-Close Data Report provides a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular series, but also emphasizes such data is not necessary for trading and completely optional. Moreover, another exchange offers a similar data product.<sup>13</sup> This proposal seeks to respond to Participant requests for ad-hoc Intraday Open-Close data and adopt a fee of \$1,000 per request per month for such requests.

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, for the month of March 2023, no single options exchange had more than approximately 16% of the equity options market share and the Exchange represented only approximately 6.19% of the equity options market share for the month of May 2023.<sup>14</sup> The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>15</sup> Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supra-competitive fees. In the event that a market participant views

one exchange’s data product as more or less attractive than the competition they can and do switch between similar products.

The Exchange believes the proposed fee is reasonable as the proposed fee is similar to a fee currently assessed by another exchange that provides a similar data product.<sup>16</sup> Further, the Exchange notes that an ad-hoc request for the Intraday Day Open-Close Data Report is entirely optional and if a market participant views another exchange’s data as more attractive than the proposed Intraday Open-Close data product, then such market participant can choose not to purchase BOX’s data and instead purchase another exchange’s data product, which offer similar data points, albeit based on that other market’s trading activity.

The Exchange also believes that its proposal to respond to market participant requests and adopt fees for ad-hoc requests for the Intraday Open-Close Data Report is reasonable as this would further support the current offering of the Intraday Open-Close Data Report that is designed to aid investors by providing insight into trading on BOX. The proposed ad-hoc requests for Intraday Open-Close Data Report would provide interested options market participants with valuable information about opening and closing transactions executed on BOX, similar to other historical trade data products offered by competing options exchanges. In turn, this data would assist market participants in gauging investor sentiment and trading activity, resulting in potentially better-informed trading decisions. As noted above, users may also use such data to create and test trading models and analytical strategies.

Providing market data, such as the Intraday Open-Close Data Report, is also a means by which exchanges compete to attract business. Subscribers that receive the Intraday Open-Close Data Report in response to an ad hoc request, may use such data to evaluate the usefulness of BOX’s Intraday Open-Close Data Report and decide, based on that data, whether to subscribe to the Intraday Open-Close Data Report on a monthly basis. To the extent that the Exchange is successful in attracting subscribers for the Intraday Open-Close Data Report through this proposal, it may earn trading revenues and further enhance the value of its data products. If the market deems the proposal to be unfair or inequitable, firms can diminish or discontinue their use of the data and/or avail themselves

<sup>9</sup> See *supra* note 7.

<sup>14</sup> See Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (May 5, 2023), available at [https://markets.cboe.com/us/options/market\\_statistics/](https://markets.cboe.com/us/options/market_statistics/).

<sup>15</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>16</sup> See *supra* note 7.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(4).

of similar products offered by other exchanges.<sup>17</sup>

The Exchange believes the proposed fee is equitable and not unfairly discriminatory as the fee would apply equally to all users who choose to purchase the historical data. The Exchange's proposed fee would not differentiate between subscribers that purchase the ad-hoc Intraday Open-Close Data Report and is set at a modest level that would allow any interested Participant or non-Participant to purchase such data based on their business needs.

The Exchange reiterates that the decision as to whether or not to purchase the ad-hoc Intraday Open-Close Data Report is entirely optional for all potential subscribers. Indeed, no market participant is required to purchase the ad-hoc Intraday Open-Close Data Report, and the Exchange is not required to make the ad-hoc Intraday Open-Close Data Report available to all investors. Rather, the Exchange is voluntarily making the ad-hoc Intraday Open-Close Data Report available, as requested by customers, and market participants may choose to receive (and pay for) this data based on their own business needs. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data.

Lastly, the Exchange believes that the proposed change to the End-of-Day Ad-Hoc request is reasonable and appropriate as the added language will provide clarity and transparency with respect to mid-month requests for this End-of-Day Ad-hoc Requests.

#### *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. Rather, the Exchange believes that the proposal will promote competition by permitting the Exchange to sell a data product similar to those offered by another competitor options exchange.<sup>18</sup> The Exchange also does not believe the proposed fees would cause any unnecessary or in appropriate burden on intermarket competition as other exchanges are free to introduce their own comparable data product and lower their prices to better compete with the Exchange's offering. The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly,

the proposed fee applies uniformly to any purchaser, in that it does not differentiate between subscribers that purchase Intraday Open-Close Data Report. The proposed fees are set at a modest level that would allow any interested Participant or non-Participant to purchase such data based on their business needs.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

#### *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**

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Exchange Act<sup>19</sup> and Rule 19b-4(f)(2) thereunder,<sup>20</sup> because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further 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 (<https://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-2023-16 on the subject line.

#### *Paper Comments*

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

All submissions should refer to file number SR-BOX-2023-16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-BOX-2023-16 and should be submitted on or before July 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Sherry R. Haywood,**

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>20</sup> 17 CFR 240.19b-4(f)(2).

<sup>21</sup> 17 CFR 200.30-3(a)(12).