

for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, 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.”²⁵ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers.’ . . .”.²⁶ Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is 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 neither solicited nor received comments on the proposed rule change.

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) of the Act²⁷ and paragraph (f) of Rule 19b-4²⁸ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission’s internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeEDGA-2023-020 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-CboeEDGA-2023-020. 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-CboeEDGA-2023-020 and should be submitted on or before December 19, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Christina Z. Milnor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35055; 812-15514]

IndexIQ Active ETF Trust and IndexIQ Advisors LLC

November 21, 2023.

AGENCY: Securities and Exchange Commission (“Commission” or “SEC”).
ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (“Act”) for an exemption from section 15(a) of the Act, as well as from certain disclosure requirements in rule 20a-1 under the Act, Item 19(a)(3) of Form N-1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and sections 6-07(2)(a), (b), and (c) of Regulation S-X (“Disclosure Requirements”).

Summary of Application: The requested exemption would permit Applicants to enter into and materially amend subadvisory agreements with subadvisers without shareholder approval and would grant relief from the Disclosure Requirements as they relate to fees paid to the subadvisers.

Applicants: IndexIQ Active ETF Trust and IndexIQ Advisors LLC.

Filing Dates: The application was filed on October 12, 2023.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC’s Secretary at Secretarys-Office@sec.gov and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on December 18, 2023, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should

²⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²⁶ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

²⁷ 15 U.S.C. 78s(b)(3)(A).

²⁸ 17 CFR 240.19b-4(f).

²⁹ 17 CFR 200.30-3(a)(12).

state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretaries-Office@sec.gov*. Applicants: Matthew V. Curtin, Esq., *IndexIQ* Advisors, *mcurtin@indexiq.com* and Barry I. Pershkov, Chapman and Cutler LLP, *pershkov@chapman.com*.

FOR FURTHER INFORMATION CONTACT: Trace W. Rakestraw, Senior Special Counsel, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' application, dated October 12, 2023, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC's EDGAR system. The SEC's EDGAR system may be searched at <https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html>. You may also call the SEC's Public Reference Room at (202) 551-8090.

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

J. Matthew DeLesDernier,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99009; File No. SR-BOX-2023-26]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BOX Rule 5050 (Series of Options Contracts Open for Trading)

November 21, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 15, 2023, 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 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 amend BOX Rule amend BOX Rule 5050 (Series of Options Contracts Open for Trading). 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 <https://rules.boxexchange.com/rulefilings>.

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 BOX Rule 5050 (Series of Options Contracts Open for Trading) to adopt IM-5050-12 to implement a new strike interval program for stocks that are priced less than \$2.50 and have an average daily trading volume of at least 1,000,000 shares per day for the three (3) preceding calendar months. The Exchange also proposes to amend the table in IM-5050-11 to harmonize the table to the proposed change. This is a competitive filing that is based on a proposal recently submitted by Miami International Securities Exchange, LLC ("MIAX") approved by the Commission.³

Background

Currently, BOX Rule 5050, Series of Options Contracts Open for Trading, describes the process and procedures for listing and trading series of options⁴ on

³ See Securities Exchange Act Release No. 98917 (November 13, 2023) (Order Approving SR-MIAX-2023-36).

⁴ The term "option contract" means a put or a call issued, or subject to issuance by the Clearing

the Exchange. IM-5050-3 provides for a \$2.50 Strike Price Program, where the Exchange may select up to 60 option classes⁵ on individual stocks for which the interval of strike prices will be \$2.50 where the strike price is greater than \$25.00 but less than \$50.00.⁶ IM-5050-2 also provides for a \$1 Strike Price Interval Program, where the interval between strike prices of series of options⁷ on individual stocks may be \$1.00 or greater provided the strike price is \$50.00 or less, but not less than \$1.00.⁸ Additionally, Rule 5050 provides for a \$0.50 Strike Program.⁹ The interval of strike prices of series of options on individual stocks may be \$0.50 or greater beginning at \$0.50 where the strike price is \$5.50 or less, but only for options classes whose underlying security closed at or below \$5.00 in its primary market on the previous trading day and which have national average daily volume that equals or exceeds 1,000 contracts per day as determined by The Options Clearing Corporation ("OCC") during the preceding three calendar months. The listing of \$0.50 strike prices is limited to options classes overlying no more than 20 individual stocks (the "\$0.50 Strike Program") as specifically designated by the Exchange. The Exchange may list \$0.50 strike prices on any other option classes if those classes are specifically designated by other securities exchanges that employ a similar \$0.50 Strike Program under their respective rules. A stock shall remain in the \$0.50 Strike Program until otherwise designated by the Exchange.¹⁰

Proposal

At this time, the Exchange proposes to adopt a new strike interval program for stocks that are not in the aforementioned \$0.50 Strike Program (or the Short Term Option Series Program)¹¹ and that close below \$2.50 and have an average daily trading volume of at least 1,000,000 shares per day for the three (3) preceding calendar months. The \$0.50 Strike Program considers stocks that have a closing price at or below \$5.00 whereas the Exchange's proposal will consider

Corporation pursuant to the Rules of the Clearing Corporation. See BOX Rule 100(a)(38).

⁵ The terms "class of options" means all options contracts of the same type and style covering the same underlying security. See BOX Rule 100(a)(11).

⁶ See IM-5050-3.

⁷ The term "series of options" means all options contracts of the same class of options having the same exercise price and expiration date. See BOX Rule 100(a)(63).

⁸ See IM-5050-2.

⁹ See IM-5050-5.

¹⁰ *Id.*

¹¹ See IM-5050-6.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.