



8011-01p

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-70369; File No. SR-BOX-2013-44)

September 11, 2013

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fee Schedule to Make Permanent the Pilot Program of Liquidity Fees and Credits for Certain Transactions in the BOX Price Improvement Period

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 30, 2013, BOX Options Exchange LLC (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 Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,³ and Rule 19b-4(f)(2) thereunder,⁴ 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 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] to make permanent the pilot program of Liquidity Fees and Credits for certain transactions in the BOX Price Improvement Period (“PIP”) on the BOX Market LLC (“BOX”) options facility. The text

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

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, Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the BOX Fee Schedule to make permanent the pilot program of Liquidity Fees and Credits for certain transactions in the BOX PIP or (the "Program"). The Program was approved on a pilot basis in February 2012 and is scheduled to expire on August 31, 2013.⁵ The Exchange believes the data collected on PIP transactions over the past two years demonstrates that the Program does not place an undue burden on competition and proposes to make the applicable fees and credits free from any pilot restrictions.

⁵ See Securities Exchange Act Release Nos. 66278 (January 30, 2012), 77 FR 5590 (February 3, 2012) Commission Order Granting Accelerated Approval of the BOX Credits and Fees for PIP Transactions on a pilot basis (SR-BX-2011-046), 66979 (May 14, 2012), 77 FR 29740 (May 18, 2012) (Notice of Filing and Immediate Effectiveness to adopt the Fee Schedule for trading on BOX which included the Program) (SR-BOX-2012-002), and 69054 (March 7, 2013), 78 FR 16025 (March 13, 2013) (Notice of Filing

Under the Program, transactions in the BOX PIP are assessed either a fee for adding liquidity or provided a credit for removing liquidity regardless of account type. PIP Orders (i.e., the agency orders opposite the Primary Improvement Order⁶) receive the “removal” credit and Improvement Orders⁷ are charged the “add” fee. In particular, the Program permits a fee for adding liquidity or a credit for removing liquidity of \$0.75, regardless of account type, for PIP transactions where the minimum price variation is greater than \$0.01 (i.e., all non-Penny Pilot Classes, and Penny Pilot Classes where the trade price is equal to or greater than \$3.00, excluding QQQ, SPY, and IWM).⁸ The liquidity fees and credits are in addition to any applicable Exchange Fees as described in Section I of the Fee Schedule.

During the pilot period the Exchange has submitted to the Commission, and made publicly available on the Exchange website, monthly reports containing statistics on percent and amount of price improvement, the number of responders to a PIP auction, and the retention rates of Initiating Participants and those market makers who received PIP directed orders. Specifically, each report contains the following PIP transaction data in series traded in penny increments compared to series traded in nickel increments, subdivided by when BOX is at the NBBO and when BOX is not at the NBBO, including: (1) volume by number of contracts traded;

and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule for Trading on BOX) (SR-BOX-2013-09).

⁶ A Primary Improvement Order is the matching contra order submitted to the PIP on the opposite side of an agency order.

⁷ An Improvement Order is a response to a PIP auction. An Unrelated Order that is not immediately marketable will be charged as an Improvement Order when it executes against a PIP Order.

⁸ The Exchange notes that the Program also includes a fee for adding liquidity or a credit for removing liquidity of \$0.30, regardless of account type, for PIP transactions where the minimum price variation is \$0.01 (Penny Pilot classes where trade price is less than \$3.00, and all series in QQQ, SPY & IWM).

(2) number of contracts executed by the Initiating Participant as compared to others (“retention rate”); (3) percentage of contracts receiving price improvement when the Initiating Participant is the contra party and when others are the contra party; (4) average number of responders in the PIP; (5) average price improvement amount when the Initiating Participant is the contra party; (6) average price improvement amount when others are the contra party; and (7) percentage of contracts receiving price improvement greater than \$0.01, \$0.02 and \$0.03 when the Initiating Participant is the contra party and when others are the contra party.⁹

BOX provided these reports so the Commission could assess the impact of the Program on the competitiveness of the PIP and the extent of price improvement obtained for customers. Exhibit 3 to the Form 19b-4 contains PIP transaction data sets from June 2011 through July 2013.¹⁰ The Exchange has evaluated these reports to determine the impact of the Program on competition and price improvement, and believes the data confirms that the Program has not placed an undue

⁹ In June 2013 the Exchange posted revised reports for November 2011 through April 2013.

¹⁰ The Exchange believes the data gathered over this time period adequately represents the impact of the Program. While fees and credits applicable under the Program first went into effect on August 1, 2011, the Program was suspended by the Commission on September 13, 2011. The Exchange then filed a notice of intention to petition for review on September 20, 2011, which triggered an automatic stay of the suspension and the previous fee schedule was reinstated. On October 19, 2011, the Commission denied the Exchange’s petition and the applicable fees and credits were once again suspended. The Commission approved the proposed fee change on a pilot basis on January 30, 2012 and the Program has been in effect on the Exchange since February 1, 2012. See Securities Exchange Commission Release Nos. 65330 (September 13, 2011), 76 FR 58065, 58066 (September 19, 2011) (SR-BX-2011-046) (Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend the BOX Fee Schedule With Respect to Credits and Fees for Transactions in the BOX Price Improvement Period); and 66278 (January 30, 2012), 77 FR 5590 (February 3, 2012) (SR-BX-2011-46) (“Approval Order”).

burden on competition or lessened the amount of price improvement in the aggregate for customers in the PIP.¹¹

Overall, the Exchange believes that in the aggregate, the long term data trends demonstrate there has not been a decline in market quality. BOX's PIP auction continues to provide significant opportunities for price improvement and the data provided by BOX does not suggest any significant adverse impact of the Program on the competitiveness of the PIP auction or the extent of price improvement for orders executed in the PIP. Instead, the Exchange believes the Program has been successful at encouraging Participants to submit their customer orders to the PIP and allowing those orders the opportunity to benefit from its potential price improvement.

Before discussing the general trends below, the Exchange acknowledges that certain data points have seen significant fluctuation during the course of the Program. These variations are a result of conditions which the Exchange has no control over, such as Participant behavior changes, competitor pricing changes and overall market volatility. For example, market volatility creates wider spreads and can lead to significant growth in price improvement. Similarly, a change in Participant behavior can also have a considerable impact on specific data points in these reports.

Since the Program went into effect in February 2012,¹² the Exchange has focused its analysis on the average data from two three-month periods; one before the Program began (November 2011 through January 2012) and one that reflects the most recent impact of the

¹¹ The Commission released a memorandum with graphical representations of the BOX PIP data, which match the reports provided by the Exchange and referenced in this filing. See Memorandum on File No. SR-BOX-2013-09 from August, 16, 2013; <https://www.sec.gov/rules/sro/box/2012/box-2013-09-2012-002-pipmemo.pdf>.

¹² See supra, note 10 [sic].

Program (May 2013 through July 2013). The Exchange believes that using these two periods offers the best comparison of the PIP data because the first period reveals PIP data trends from when the Program was not yet in place, compared directly with the most recent PIP data trends. Additionally, averaging the data over a three-month period helps to negate any of the significant fluctuations discussed in the preceding paragraph.

A key indicator of competition is the average number of responders to the PIP auction. One of the central concerns expressed by commenters at the outset of the Program was that the increased fees and credits would burden competition by effectively barring certain participants from competing with initiators.¹³ Instead of declining, as predicted in the comment letters, the average number of responders has risen throughout the length of the Program. From November 2011 through January 2012 the average number of responders for PIP transactions when BOX was at the NBBO was 1.63 for penny classes and 2.41 for non-penny classes, and when BOX was not at the NBBO the average number of responders was 1.53 for penny classes and 2.21 for non-penny classes. From May 2013 through July 2013, the same data points rose to 3.14 and 4.05 when BOX was at the NBBO and 2.24 and 2.86 when BOX was not at the NBBO. This growth is also clear in the graphical representations created by the Commission based on the BOX PIP data.¹⁴ The Exchange believes this growth proves that the fees and credits assessed under the Program are not prohibitively high and therefore do not prevent responders from competing in the auction with the firm that submitted the original PIP order.

¹³ See Letters to Elizabeth Murphy, Secretary, Commission, from John C. Nagel, Managing Director and General Counsel, Citadel Securities LLC, dated August 12, 2011 (“Citadel Letter”); Andrew Stevens, Legal Counsel, IMC Financial Markets dated August 15, 2011 (“IMC Letter”); Michael J. Simon, Secretary, ISE, dated August 22, 2011 (“ISE Letter”), and Christopher Nagy, Managing Director Order Strategy, TD Ameritrade Inc., dated September 12, 2011 (“TD Ameritrade Letter”).

¹⁴ See supra, note 10 at page 9.

Similarly, the number of PIP transactions in non-penny classes, the class affected by the Program, has continued to grow. From November 2011 through January 2012, the monthly volume averaged approximately 650,000 contracts when BOX was at the NBBO and 550,000 when BOX was not at the NBBO. From May 2013 through July 2013, the same data points averaged 850,000 contracts when BOX was at the NBBO and 900,000 contracts when BOX was not at the NBBO.

The reports also showed growth in the average percentage of orders receiving price improvement when BOX was at the NBBO when compared to the total monthly trade volume on BOX.¹⁵ In fact, in the last three months of the Program (May 2013 through July 2013) more than 75% of all orders on non-penny series have received at least some improvement. From November 2011 through January 2012, this number never rose above 56% and averaged 53%. Clearly the Program did not make it more challenging for market participants to offer price improvement in the PIP auctions, as some critics argued in their comment letters.¹⁶

Finally, while the overall average price improvement, when improved, in non-penny classes fell slightly throughout the Program, most of this decline came from orders that were improved by the Initiator. From November 2011 through January 2012, the average price improvement of non-penny PIP transactions was \$0.037 for those orders receiving improvement. In comparable data from May 2013 through July 2013, the average price improvement for those orders receiving improvement fell to \$0.029. However, this same data indicator increased for orders improved by Directed Non-Affiliate responders, both when BOX was at the NBBO and not at the NBBO. This number also rose for “Other” responders when BOX was not at the

¹⁵ BOX trade volume can be found on the BOX website: <http://boxexchange.com/box-trade-volumes/>.

¹⁶ See supra, note 13.

NBBO. The Exchange believes this data demonstrates that the Program did not have an adverse impact on the extent of price improvement by making it “economically prohibitive for anyone other than the initiator to respond” to the PIP Auction.¹⁷

Another key indicator of competition, the average retention rate, measures the retention of the PIP order by the PIP initiator. While this data point has increased over the life of the Program, the average retention rate in non-penny classes was 38% from November 2011 through January 2012, and 51 % from May 2013 through July 2013; the growth has centered in non-penny transactions where BOX was at the NBBO and retention rates where BOX was not at the NBBO have remained relatively inline. The Exchange believes this uptick was a result of the reduced penny transaction volume in the PIP, where lower volume signals fewer participants in the PIP process, and does not indicate that the Program gives Initiators a competitive edge to retain a greater percentage of their orders.

For the reasons cited above, the Exchange believes the data confirms that competition did not decrease as a result of the additional fees and credits placed on non-penny PIP transactions. In fact, the reports show that in the aggregate, competition has remained inline and even grown throughout the length of the Program and there has been no adverse impact on price improvement.

¹⁷ See Citadel Letter, *supra* note 13 at page 2.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,¹⁸ in general, and Section 6(b)(4) of the Act,¹⁹ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Options Participants and other persons using its facilities. The Exchange also believes that the proposal is consistent with Section 6(b)(5) of the Act,²⁰ which, among other things, requires that rules of a national securities exchange be 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, to protect investors and the public interest, and to not permit unfair discrimination between customers, issuers, brokers, or dealers, and Section 6(b)(8) of the Act,²¹ which requires that the rules of a national securities exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In particular, the proposed change will result in permanent fees and credits for PIP transactions, which will in turn give BOX Participants greater certainty with regard to the potential fees and credits they will be assessed when participating in the PIP.

As stated in previous filings²², the Exchange believes that it is reasonable and equitable to provide the proposed credit to any Participant that removes liquidity from the BOX PIP. The Exchange further believes these credits will continue to attract order flow to BOX, resulting in greater liquidity to the benefit of all market participants. The Exchange believes that the

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(4).

²⁰ 15 U.S.C. 78f(b)(5).

²¹ 15 U.S.C. 78f(b)(8).

²² See supra, note 5.

proposed fees for adding liquidity and credits for removing liquidity are equitable and not unfairly discriminatory because such fees and credits apply uniformly to all categories of Participants, across all account types.

Further, the Exchange believes the proposed fees for PIP transactions to be reasonable. BOX operates within a highly competitive market in which market participants can readily direct order flow to any of several other competing venues if they deem fee levels at a particular venue to be excessive. The BOX credits and fees for PIP transactions are intended to attract order flow to BOX by offering incentives to all market participants to submit their orders to the PIP for potential price improvement. BOX notes that the fees collected will not necessarily result in additional revenue to BOX, but will simply allow BOX to provide the credit incentive to Participants to attract additional order flow to the PIP. BOX believes it is appropriate to provide incentives to market participants to use PIP, resulting in benefit to customers through potential price improvement, and to all market participants from greater liquidity on BOX.

In particular, the proposed change will allow the Exchange to continue the Program free of any pilot conditions which the Exchange believes are no longer necessary. The Program was put in place to determine the full impact of the liquidity fees and credits on competitiveness and price improvement in the PIP. The applicable fees and credits have been in place for eighteen months,²³ and there is no evidence to suggest that the Program has had any of the negative effects on the PIP that were predicted in the comment letters.²⁴ As such, removal of the pilot restrictions is the logical next step.

²³ See supra, note 5

²⁴ See supra, note 13.

In conclusion, the Exchange believes the data provided over the length of the Program demonstrates that there has been no adverse impact on the competitiveness of the PIP auction or the extent of price improvement in series that trade in non-penny increments. As such, the Exchange believes the proposed rule change is consistent with the Act.

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

While some have argued that the Program creates a disparity between the fees an Initiating Participant pays and the fees a competitive responder pays in the PIP that may make the Program discriminatory and an undue burden on competition, the Exchange believes the Program provides incentives for market participants to submit customer order flow to BOX and thus, creates a greater opportunity for retail customers to receive additional price improvement. The PIP provides the opportunity for market participants to compete for customer orders, and has no limitations regarding the number of Market Makers, Options Participants that are not Market Makers, and customers that can participate and compete for orders in the PIP. BOX asserts that Participants are actively competing for customer orders, which is clearly supported by the simple fact that price improvement has continued to occur in the PIP through the length of the Program.

BOX notes that its market model and fees are generally intended to benefit retail customers by providing incentives for Participants to submit their customer order flow to BOX, and to the PIP in particular. BOX makes a substantial amount of PIP-related data and statistics available to the public on its website www.boxexchange.com. Specifically, daily PIP volumes and average price improvement are available at: <http://boxexchange.com/box-trade-volumes/>; and BOX execution quality reports at: <http://boxexchange.com/execution-quality-report/>. The data indisputably supports that the PIP provides price improvement for customer orders.

Additionally, the Exchange believes the Program is more transparent than payment for order flow (“PFOF”) arrangements and notes its belief that the credit to remove liquidity on BOX is generally less than what firms receive through PFOF.

For the reasons stated above, the Exchange does not believe that the proposed rule change will impose any burden on competition either among BOX Participants, or among the various options exchanges, which 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

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 Act²⁵ and Rule 19b-4(f)(2) thereunder,²⁶ 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:

²⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁶ 17 CFR 240.19b-4(f)(2).

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BOX-2013-44 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-BOX-2013-44. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-BOX-2013-44 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

Kevin M. O'Neill
Deputy Secretary

[FR Doc. 2013-22509 Filed 09/16/2013 at 8:45 am; Publication Date: 09/17/2013]

²⁷ 17 CFR 200.30-3(a)(12).