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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34 -85927; File Nos. SR-BOX-2018-24, SR-BOX-2018-37, and SR-BOX-2019-04]

In the Matter of the BOX Exchange LLC Regarding an Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network; Order Granting Petition for Review and Scheduling Filing of Statements

May 23, 2019

This matter comes before the Securities and Exchange Commission (“Commission”) on petition to review the disapproval, through delegated authority, of the BOX Exchange LLC (f/k/a BOX Options Exchange LLC) (“BOX” or “Exchange”) proposed rule changes (File Nos. SR-BOX-2018-24, SR-BOX-2018-37, and SR-BOX-2019-04) to amend the fee schedule on the BOX Market LLC (“BOX”) options facility to establish certain connectivity fees and reclassify its high speed vendor feed connection as a port fee.

On July 19, 2018, the Exchange filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change (SR-BOX-2018-24) (“BOX 1”) to amend the BOX fee schedule to establish certain connectivity fees and reclassify its high speed vendor feed connection as a port fee. BOX 1 was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.³ BOX 1 was published for comment in the Federal Register on August 2, 2018.⁴ On September 17, 2018, the Division of Trading and Markets (“Division”), acting on behalf of the Commission by delegated authority, issued an order temporarily suspending BOX 1 pursuant to Section 19(b)(3)(C) of the Act⁵ and simultaneously instituting proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove BOX 1 (“Order Instituting Proceedings I”).⁷

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ See Securities Exchange Act Release No. 83728 (July 27, 2018), 83 FR 37853.

⁵ 15 U.S.C. 78s(b)(3)(C).

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 84168 (September 17, 2018), 83 FR 47947 (September 21, 2018).

On September 26, 2018, the Exchange filed a petition for review of Order Instituting Proceedings I (“BOX 1 Petition”).⁸ On November 16, 2018, the Commission granted the BOX 1 Petition.⁹ On January 25, 2019, pursuant to Section 19(b)(2) of the Act,¹⁰ the Commission designated a longer period within which to approve or disapprove BOX 1.¹¹ On February 25, 2019, the Commission issued an order affirming the staff’s action by delegated authority temporarily suspending the rule filing and instituting proceedings.¹²

On November 30, 2018, the Exchange filed with the Commission a second proposed rule change (SR-BOX-2018-37) (“BOX 2”) to amend the BOX fee schedule to establish the same fees established by BOX 1.¹³ BOX 2 was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.¹⁴ On December 14, 2018, the Division, acting on behalf of the Commission by delegated authority, issued a notice of BOX 2 and order temporarily suspending BOX 2 pursuant to Section 19(b)(3)(C) of the Act¹⁵ and simultaneously instituting proceedings under Section 19(b)(2)(B) of the Act¹⁶ to determine whether to approve or disapprove BOX 2.¹⁷

On February 13, 2019, the Exchange filed with the Commission a third proposed rule change (SR-BOX-2019-04) (“BOX 3” and, together with BOX 1 and BOX 2, “proposed rule changes”) to amend the BOX fee schedule to establish the same fees proposed by BOX 1 and

⁸ See Petition for Review of Order Temporarily Suspending BOX Exchange LLC’s Proposal to Amend the Fee Schedule on BOX Market LLC, dated September 26, 2018.

⁹ See Securities Exchange Act Release No. 84614 (November 16, 2018), 83 FR 59432 (November 23, 2018).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ See Securities Exchange Act Release No. 84989, 84 FR 858 (January 31, 2019). The Commission designated March 29, 2019, as the date by which the Commission would approve or disapprove BOX 1.

¹² See Securities Exchange Act Release No. 85184, 84 FR 6842 (February 28, 2019).

¹³ The proposed fees in BOX 2 were identical to those proposed in BOX 1 and the Form 19b-4 for the two filings were substantively identical, except BOX 2 also identified the categories of the Exchange’s costs to offer connectivity services and stated that the proposed fees would “offset” the Exchange’s costs. See Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363, 13364, n.22 (April 4, 2019) (“Disapproval Order”).

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 15 U.S.C. 78s(b)(3)(C).

¹⁶ 15 U.S.C. 78s(b)(2)(B).

¹⁷ See Securities Exchange Act Release No. 84823 (December 14, 2018), 83 FR 65381 (December 20, 2018).

BOX 2.¹⁸ BOX 3 was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.¹⁹ On February 26, 2019, the Division, acting on behalf of the Commission by delegated authority, issued a notice of BOX 3 and order temporarily suspending BOX 3 pursuant to Section 19(b)(3)(C) of the Act²⁰ and simultaneously instituting proceedings under Section 19(b)(2)(B) of the Act²¹ to determine whether to approve or disapprove BOX 3 (“Order Instituting Proceedings III”).²² On March 5, 2019, the Exchange filed a petition for review of Order Instituting Proceedings III (“BOX 3 Petition”).²³ On March 22, 2019, the Commission granted the BOX 3 Petition and issued an order affirming the action by delegated authority.²⁴

After consideration of the record in the proposed rule changes, the Division, pursuant to delegated authority,²⁵ issued an order disapproving the proposed rule changes on March 29, 2019.²⁶ On April 8, 2019, pursuant to Rule 430 of the Commission’s Rules of Practice,²⁷ the Exchange filed a petition for review of the Disapproval Order.

Pursuant to Rule 431 of the Commission’s Rules of Practice,²⁸ the Exchange’s petition for review of the Disapproval Order is granted. Further, the Commission hereby establishes that any party to the action or other person may file a written statement in support of or in opposition to the Disapproval Order on or before [insert date 21 days from date of publication in the Federal Register].

For the reasons stated above, it is hereby:

ORDERED that the Exchange’s petition for review of the Division’s action to disapprove the proposed rule changes by delegated authority is GRANTED; and

¹⁸ The proposed fees in BOX 3 were identical to those proposed in BOX 2 and the Form 19b-4 for the two filings were substantively identical. See Disapproval Order, supra note 13, at 13364, n.28.

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 15 U.S.C. 78s(b)(3)(C).

²¹ 15 U.S.C. 78s(b)(2)(B).

²² See Securities Exchange Act Release No. 85201, 84 FR 7146 (March 1, 2019).

²³ See Petition for Review of Order Temporarily Suspending BOX Exchange LLC’s Proposal to Amend the Fee Schedule on BOX Market LLC, dated March 5, 2019.

²⁴ See Securities Exchange Act Release No. 85399, 84 FR 11850 (March 28, 2019).

²⁵ 17 CFR 200.300-3(a)(12).

²⁶ See Disapproval Order, supra note 13.

²⁷ 17 CFR 201.430.

²⁸ 17 CFR 201.431.

It is further ORDERED that any party or other person may file a statement in support of or in opposition to the action made pursuant to delegated authority on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

The order disapproving the proposed rule changes shall remain in effect.

By the Commission.

Eduardo A. Aleman,
Deputy Secretary.

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