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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88934; File No. SR-BOX-2020-04]

Self-Regulatory Organizations; BOX Exchange LLC; Order Granting Approval of a Proposed Rule Change to Amend the Provisions of the Limited Liability Company Agreement and Bylaws

May 22, 2020.

I. Introduction

On February 4, 2020, BOX Exchange LLC (“Exchange”) filed with the Securities and Exchange Commission (“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 to amend the provisions of the Exchange’s limited liability company agreement and bylaws to accommodate the Exchange’s potential regulation of multiple facilities. The proposed rule change was published for comment in the Federal Register on February 25, 2020.³ On April 2, 2020, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ The Commission

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 88236 (February 19, 2020), 85 FR 10765 (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 88542, 85 FR 19787 (April 8, 2020). The Commission designated May 25, 2020, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

received no comment letters on the proposed rule change. The Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change⁶

According to the proposal, the Exchange currently regulates one facility, BOX Options Market LLC (“BOX Options Market”). The Exchange now proposes to amend the provisions of its limited liability company agreement (“LLC Agreement”) and bylaws (“Bylaws”) (collectively “Governing Documents”) to accommodate the Exchange’s regulation of potential multiple facilities.⁷ According to the Exchange, the proposed changes to the Governing Documents are designed to: (i) provide sufficient flexibility to contemplate multiple Exchange facilities under the Exchange’s regulatory authority; (ii) simplify the defined terms in the Governing Documents; and (iii) make certain other changes to the terms of the Governing Documents to align them with the structure of the Exchange and its relationships.⁸

Among other things, to provide for flexibility to accommodate more than one facility, the Exchange proposes to replace the term “BOX Options” and “BOX Options Market” with the term “Exchange Facility” in the LLC Agreement. Likewise, the Exchange would replace in the LLC Agreement the term “BOX Options Participant” with “Exchange Facility Participant.” And to simplify the defined terms in the Governing Documents, the Exchange proposes, for example, to remove the definition of “Related Agreements” from the LLC Agreement. According to the Exchange, the term is used in only one section of the LLC Agreement, and the Exchange believes that the deletion of the defined term would not otherwise affect the LLC Agreement.⁹

⁶ For a more complete description of all the changes as proposed, see Notice, supra note 3.

⁷ See id. at 10765.

⁸ See id. at 10765-66.

⁹ See id. at 10767.

Lastly, to align the Governing Documents with the structure of the Exchange and its relationships, the Exchange proposes to remove BOX Holdings Group LLC (“BOX Holdings”), the parent and 100% owner of BOX Options Market, as a party to the LLC Agreement, as well as remove its right to appoint a director to the Exchange Board of Directors (“Exchange Board”). In connection with these changes, the Exchange also proposes to provide Exchange Facility representation on the Exchange Board and its nominating committee (“Nominating Committee”), rather than BOX Holdings representation, as is currently provided in the Governing Documents.¹⁰ According to the Exchange, because BOX Holdings is the 100% owner of BOX Options Market and the composition of the board of directors for each entity is the same, the close alignment between the entities and their interests has allowed BOX Options Market to be fairly represented on the Exchange Board through BOX Holdings. However, the Exchange now proposes that any Exchange Facility would have direct representation on the Exchange Board and the Nominating Committee, rather than through BOX Holdings.¹¹

Finally, the Exchange proposes various technical amendments to the Governing Documents to effectuate the changes discussed above.¹²

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent

¹⁰ See id. at 10765, 10768-71.

¹¹ Specifically, the Exchange proposes to amend its Bylaws to ensure that each Exchange Facility would have a representative on the Exchange Board (“Facility Director”). According to the Exchange, the Facility Director would come from the leadership of and be directly designated by the Exchange Facility, rather than BOX Holdings. In addition, as is the case today, the Facility Director would serve on certain committees of the Exchange Board. See Notice, supra note 3, at 10771.

¹² For example, the Exchange proposes to amend the definition of “Confidential Information” in the LLC Agreement to remove the reference to “BOX Options Market” and replace it with a reference to the newly proposed defined term “Exchange Facility.” See Notice, supra note 3, at 10766-67.

with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,¹³ which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act. The Commission also finds that the proposed rule change is consistent with Section 6(b)(3) of the Act,¹⁴ which requires that the rules of a national securities exchange assure a fair representation of its members in the selection of its directors and the administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. The Commission further finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁵ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in, securities, 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 Exchange proposes to modify the Governing Documents to accommodate a potential for multiple facilities. To that end, the Exchange proposes to amend certain terms so that the Governing Documents more generally reference the Exchange's facility rather than BOX Options Market specifically. The Exchange also proposes to make certain ministerial

¹³ 15 U.S.C. 78f(b)(1).

¹⁴ 15 U.S.C. 78f(b)(3).

¹⁵ 15 U.S.C. 78f(b)(5).

amendments throughout its Governing Documents, such as deleting terms that are not deemed necessary.¹⁶ With respect to such changes and to changes that provide the Exchange with flexibility to operate more than one facility, the Commission finds that they are technical in nature, do not raise any material concerns, and are therefore consistent with the Act.

As discussed above, the proposal would also modify the Governing Documents to remove BOX Holdings as a party to the LLC Agreement and allow the Exchange's facility to have direct representation on the Exchange Board and Nominating Committee, rather than through BOX Holdings. In its proposal, the Exchange states that "it is in keeping with the original intent of the LLC Agreement with respect to BOX Options Market to have BOX Options Market's rights reside directly in BOX Options Market, rather than with its upstream owner, and that similar rights will reside directly with any other new Exchange Facility. . . ."¹⁷ The Exchange further states that "it is appropriate to provide direct representation on the Exchange Board to facilities of the Exchange to promote their fair representation in the administration of the Exchange's affairs and the selection of its directors."¹⁸ Further, the Exchange believes that the proposed removal of BOX Holdings from the LLC Agreement is consistent with the Act because BOX Holdings is only a party to the LLC Agreement with respect to its rights to appoint individuals to serve on the Exchange Board and the Nominating Committee, and the right to appoint a director to the Exchange Board is now proposed to reside in each Exchange Facility.

¹⁶ For example, the Exchange proposes to delete the terms "MX," "System" and "TOSA" from the LLC Agreement because these definitions have limited use in the LLC Agreement and removing them will simplify the structure of the defined terms in the LLC Agreement. See Notice, supra note 3, at 10767-68. See also supra note 9 and text discussing removal of defined term "Related Agreements."

¹⁷ See Notice, supra note 3, 10769.

¹⁸ See id. at 10768.

The Commission finds that the changes with respect to BOX Holdings and the representation of the Exchange's facility on the Exchange Board is consistent with the Act. The Commission believes that, to the extent that these changes provide mechanisms whereby a facility of the Exchange would have more direct representation on the Exchange Board, the changes are appropriate.

Based on the foregoing, the Commission therefore finds that the proposed rule change is consistent with the Act.¹⁹

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁰ that the proposed rule change (SR-BOX-2020-04) be, and hereby is approved.

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

J. Matthew DeLesDernier,

Assistant Secretary.

¹⁹ In approving these proposed rule changes, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 17 CFR 200.30-3(a)(12).

[FR Doc. 2020-11475 Filed: 5/27/2020 8:45 am; Publication Date: 5/28/2020]