

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93778; File No. SR-BOX-2021-19]

### Self-Regulatory Organizations; BOX Exchange LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, Related to BOX Exchange LLC and BOX Holdings Group LLC Ownership Transfer Transactions

December 14, 2021.

#### I. Introduction

On August 27, 2021, BOX Exchange LLC (“BOX Exchange” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change related to the Exchange and BOX Holdings Group LLC (“BOX Holdings”) ownership transfer transactions. The proposed rule change was published for comment in the **Federal Register** on September 15, 2021.<sup>3</sup> The Commission received one comment on the proposed rule change.<sup>4</sup> On September 28, 2021, pursuant to Section 19(b)(2) of the Act,<sup>5</sup>

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.<sup>6</sup> On December 13, 2021, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and superseded the Notice in its entirety.<sup>7</sup> The Commission is approving the proposed rule change, as modified by Amendment No. 1.

#### II. Description of the Proposed Rule Change<sup>8</sup>

The Exchange is a limited liability company, organized under the laws of the State of Delaware on August 26, 2010. The Exchange’s charter is a Second Amended and Restated Limited Liability Company Agreement, dated as of May 29, 2020, as amended November 30, 2020 (“BOX Exchange LLC Agreement”). Citigroup Financial Products Inc. (“Citi”), CSFB Next Fund Inc. (“CSFB”), and MX US 2, Inc., (“MXUS2”) each became a Member<sup>9</sup> of the Exchange on May 10, 2012. Wolverine Holdings, L.P. (“Wolverine”) is not currently a Member of the Exchange.

BOX Holdings is a limited liability company, organized under the laws of the State of Delaware on August 26, 2010. BOX Holdings is the sole owner of BOX Options Market LLC, a facility of the Exchange (“BOX Options”). The BOX Holdings charter is a Second Amended and Restated Limited Liability Company Agreement, dated as of September 13, 2018 (“BOX Holdings LLC Agreement”). Citi and CSFB each became a Member<sup>10</sup> of BOX Holdings on May 10, 2012.

The Exchange proposes several transactions related to the ownership of the Exchange and BOX Holdings. First, the Exchange would repurchase the ownership interests in the Exchange held by Citi and CSFB.<sup>11</sup> Second, BOX Holdings would repurchase the ownership interests in BOX Holdings held by Citi and CSFB.<sup>12</sup> Finally, Wolverine would purchase an ownership interest in the Exchange from MXUS2.<sup>13</sup> The charts below summarize the ownership and voting percentage changes in the Exchange and BOX Holdings that would result from the proposed transactions:

#### BOX Exchange

Exchange unit holder	Current economic percentage interest <sup>14</sup>	Proposed economic percentage interest
MXUS2 .....	40.00	40.00
IB .....	20.00	20.00
Citadel .....	7.68	12.28
Citi .....	7.68	.....
UBS .....	7.45	11.92
CSFB .....	7.30	.....
LabMorgan Corp./JPMC .....	7.30	11.67
Aragon .....	2.58	4.13

<sup>1</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> See Securities Exchange Act Release No. 92926 (September 9, 2021), 86 FR 51410 (“Notice”).

<sup>4</sup> See letter from Seymour Johnson, dated September 10, 2021, available at <https://www.sec.gov/comments/sr-box-2021-19/srbox202119-9221992-250319.htm>. The commenter is critical of the voting and economic interests of Citadel Securities Principal Investments LLC (“Citadel”) in BOX Holdings Group and believes that such interests should be reduced.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> See Securities Exchange Act Release No. 93156, 86 FR 54780 (October 4, 2021). The Commission designated December 14, 2021, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

<sup>7</sup> In Amendment No. 1, the Exchange revised the proposal to: (1) Provide updated and additional ownership and voting percentage interests information; (2) correct a reference from BOX Holdings to BOX Options Market LLC; (3) specify that all foreign upstream owners have signed onto the BOX Exchange LLC Agreement and the BOX Holdings LLC Agreement. Because Amendment No. 1 is a technical amendment that does not materially

alter the substance of the proposed rule change or raise unique or novel regulatory issues, it is not subject to notice and comment. Amendment No. 1 to the proposed rule change is available at <https://www.sec.gov/rules/sro/box.htm>.

<sup>8</sup> For a more complete description of all the changes as proposed, see Amendment No. 1, *supra* note 7.

<sup>9</sup> A “Member” of the Exchange means the current owners of Economic Units and Voting Units of the Exchange and includes any person subsequently admitted to the Exchange as an additional or substitute Member of the Exchange. See Article 1.1 of the BOX Exchange LLC Agreement. “Economic Units” refer to equal units of limited liability company interest in the Exchange collectively comprising all interests in the profits and losses of the Exchange and all rights to receive distributions from the Exchange as set forth in the BOX Exchange LLC Agreement. See Article 2.5(a) of the BOX Exchange LLC Agreement. “Voting Units” refer to equal units of limited liability company interest in the Exchange collectively comprising all voting interests of Members with respect to Exchange matters. See Article 2.5(b) of the BOX Exchange LLC Agreement.

<sup>10</sup> A “Member” of BOX Holdings means the current owners of BOX Holdings Units and includes

any Person subsequently admitted to BOX Holdings as an additional or substitute Member of BOX Holdings. See BOX Holdings LLC Agreement § 1.1. BOX Holdings “Units” means Class A Membership Units, Class B Membership Units, and Class C Membership Units of BOX Holdings. See Article 1.1 of the BOX Holdings LLC Agreement. The current Members of BOX Holdings are: MXUS2, IB Exchange Corp. (“IB”), Citadel, Citi, UBS Americas Inc. (“UBS”), CSFB, JPMC Strategic Investments I Corporation (“JPMC”), Wolverine, and Aragon Solutions Ltd (“Aragon”).

<sup>11</sup> See Notice, *supra* note 3, 86 FR at 51411 and Amendment No. 1, *supra* note 7.

<sup>12</sup> See *id.*

<sup>13</sup> See Notice, *supra* note 3, 86 FR at 51411–12 and Amendment No. 1, *supra* note 7.

<sup>14</sup> “Economic Percentage Interest” with respect to a Member of the Exchange means the ratio of the number of Economic Units held by the Member, directly or indirectly, of record or beneficially, to the total of all of the issued and outstanding Economic Units held by Members, expressed as a percentage. See Article 1.1 of the BOX Exchange LLC Agreement.

Exchange unit holder	Current economic percentage interest <sup>14</sup>	Proposed economic percentage interest
Wolverine .....	.....	<0.01

Exchange unit holder	Current voting percentage interest <sup>15</sup>	Proposed voting percentage interest
MXUS2 .....	20.00	20.00
IB .....	20.00	20.00
Citadel .....	18.73	20.00
Citi .....	10.00	.....
UBS .....	4.99	4.99
CSFB .....	10.00	.....
LabMorgan Corp./JPMC .....	9.99	9.99
Aragon .....	6.30	20.00
Wolverine .....	.....	5.03

*BOX Holdings*

BOX holdings unit holder	Current percentage interest <sup>16</sup>	Proposed percentage interest
MXUS2 .....	42.62	47.89
IB .....	22.69	25.50
Citadel .....	13.80	15.50
Citi .....	7.85	.....
UBS .....	3.23	3.63
CSFB .....	3.16	.....
LabMorgan Corp./JPMC .....	3.16	3.55
Aragon .....	1.12	1.26
Wolverine .....	2.38	2.67

BOX holdings unit holder	Current voting power	Proposed voting power
MXUS2 .....	44.10% (Member votes) ..... 45.50% (total Board voting power) .....	51.43
IB .....	20.00% .....	20.00
Citadel .....	14.28% (Member votes) ..... 14.73% (total Board voting power) .....	16.65
Citi .....	8.13% (Member votes) ..... 8.38% (total Board voting power) .....	.....
UBS .....	3.34% (Member votes) ..... 3.45% (total Board voting power) .....	3.90
CSFB .....	3.27% (Member votes) ..... 3.37% (total Board voting power) .....	.....
LabMorgan Corp./JPMC .....	3.27% (Member votes) ..... 3.37% (total Board voting power) .....	3.82
Aragon .....	1.16% (Member votes) ..... 1.19% (total Board voting power) .....	1.35
Wolverine .....	2.46% (Member votes) ..... 0.00% (total Board voting power because Wolverine does not have a Board seat) .....	2.87

<sup>15</sup> "Voting Percentage Interest" with respect to a Member of the Exchange means the ratio of the number of Voting Units held by the Member, directly or indirectly, of record or beneficially, to the total of all of the issued and outstanding Voting Units held by Members, expressed as a percentage.

Voting Units held by a Member of the Exchange that are ineligible to vote shall not be counted in the numerator or the denominator when determining such ratio. *See id.*

<sup>16</sup> "Percentage Interest" with respect to a Member of BOX Holdings means the ratio of the number of

Units held by the Member to the total of all of the issued Units, expressed as a percentage and determined with respect to each class of Units, whenever applicable. *See id.*

In addition to the transactions, the Exchange proposes to update the name of one of its Members in the BOX Exchange LLC Agreement. LabMorgan Corp., a Member of the Exchange, has changed its legal name to “JPMC Strategic Investments I Corporation.”<sup>17</sup>

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>18</sup> In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,<sup>19</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 Commission also finds that these proposed rule changes, as modified by Amendment No. 1, are consistent with Section 6(b)(1) of the Act, which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange.

Both the BOX Exchange LLC Agreement and the BOX Holdings LLC Agreement contain provisions relating to limitations on ownership and voting power. In particular, the BOX Exchange LLC Agreement provides that no Person,<sup>20</sup> either alone or together with any Related Persons<sup>21</sup> may own, directly or indirectly, of record or

beneficially, an aggregate Economic Percentage Interest greater than 40%.<sup>22</sup> Exchange Facility Participants,<sup>23</sup> alone or together with any Related Persons may not own, directly or indirectly, of record or beneficially, an Economic Percentage Interest greater than 20%.<sup>24</sup> In addition, no Person, either alone or together with any Related Persons, may own, directly or indirectly, of record or beneficially, an aggregate Voting Percentage Interest greater than 20%.<sup>25</sup> Moreover, any Member<sup>26</sup> of the Exchange involved in a transaction that would result in a Member having a Voting Percentage Interest or Economic Percentage Interest, alone or together with any Related Person, of record or beneficially, of 5% or more will be required to provide written notice to BOX Exchange 14 days before the transaction that would exceed the 5% limit.<sup>27</sup> BOX Exchange will then be required to provide written notice to the Commission 10 days before the transaction.<sup>28</sup>

In addition, the BOX Holdings LLC Agreement provides that if a Member<sup>29</sup> of BOX Holdings or any of its Related Persons<sup>30</sup> is approved by the Exchange as a BOX Options Participant,<sup>31</sup> and if such Member, alone or together with the Related Persons, own more than 20% of BOX Holdings Units,<sup>32</sup> then such Member and any director of BOX Holdings designated by such Member will not have any voting rights with respect to any Units owned in excess of 20%.<sup>33</sup> The BOX Holdings LLC Agreement further provides that any Member of BOX Holdings involved in a transaction in which the Member's Percentage Interest<sup>34</sup> in BOX Holdings,

either alone or together with any Related Person, will meet or cross the threshold level of 5% or the successive 5% percentage levels of 10% and 15% will be required to provide written notice to BOX Holdings 14 days before the transaction.<sup>35</sup> BOX Holdings will then be required to provide written notice to BOX Exchange and the Commission 10 days before the transaction.<sup>36</sup> In addition to these notices, any transaction of Units that results in the acquisition and holding by any Person,<sup>37</sup> alone or with its Related Persons, of a Percentage Interest that meets or crosses the threshold level of 20% or any successive 5% percentage interest will be subject to the rule filing process of Section 19 of the Act.<sup>38</sup> Further, any transaction that is in contravention of the notification and filing provisions shall be void.<sup>39</sup>

The ownership and voting limitations are designed to help ensure that BOX Exchange is able to effectively carry out its regulatory obligations under the Act. In addition, the limitations are designed to address the conflicts of interests that might result from a member of a national securities exchange owning interests in the exchange. The Commission believes that the Exchange has followed the required notice procedures set forth in the BOX Exchange LLC Agreement and BOX Holdings LLC Agreement and that the proposed transactions are in compliance with the ownership and voting limitations in the governance documents.<sup>40</sup> The Commission also notes that the BOX Exchange LLC Agreement<sup>41</sup> and BOX Holdings LLC

<sup>35</sup> See Article 7.4(e) of the BOX Holdings LLC Agreement.

<sup>36</sup> *Id.*

<sup>37</sup> “Person” means any individual, partnership, corporation, association, trust, limited liability company, joint venture, unincorporated organization and any government, governmental department or agency or political subdivision thereof. See Article 1.1 of the BOX Holdings LLC Agreement.

<sup>38</sup> See Article 7.4(f) of the BOX Holdings LLC Agreement.

<sup>39</sup> See Article 7.4(d) of the BOX Holdings LLC Agreement.

<sup>40</sup> Although a commenter objects to Citadel's ownership and voting percentages in BOX Holdings increasing because of the contemplated transaction, the increase is consistent with the ownership and voting limitations set forth in BOX Holdings governing documents as previously approved by the Commission. See Securities Exchange Act Release No. 66871 (April 27, 2012), 77 FR 26323 (May 3, 2012).

<sup>41</sup> See, e.g., Article 4.6(b) of the BOX Exchange LLC Agreement (requiring the Exchange and its Members to cooperate with BOX Exchange and the Commission and to comply with federal securities laws); and Article 18.6(b) of the BOX Holdings LLC Agreement (deeming the Exchange, its Members and officers, directors, employees and agents of

<sup>22</sup> See Article 7.3(f) of the BOX Exchange LLC Agreement.

<sup>23</sup> “Exchange Facility Participant” means a firm or organization that is registered with the Exchange pursuant to the Exchange Rules for purposes of participant in trading on any Exchange Facility. See Article 1.1 of the BOX Exchange LLC Agreement. “Exchange Facility” means any facility of the Exchange as the term “facility” is defined in Section 3 of the Act. See *id.*

<sup>24</sup> *Id.*

<sup>25</sup> See Article 7.3(g)(i) of the BOX Exchange LLC Agreement.

<sup>26</sup> See *supra* note 9.

<sup>27</sup> See Article 7.3(e) of the BOX Exchange LLC Agreement.

<sup>28</sup> *Id.*

<sup>29</sup> See *supra* note 10.

<sup>30</sup> The term “Related Person” is defined in Article 1.1 of the BOX Holdings LLC Agreement.

<sup>31</sup> “Options Participant” means a firm, or organization that is registered with the Exchange pursuant to the Rule 2000 Series for purposes of participating in trading on a facility of the Exchange. See BOX Rule 100(a)(41).

<sup>32</sup> See *supra* note 10.

<sup>33</sup> See Article 7.4(h) of the BOX Holdings LLC Agreement.

<sup>34</sup> See *supra* note 16.

<sup>17</sup> See Notice, *supra* note 3, 86 FR at 51413, and Amendment No. 1, *supra* note 7.

<sup>18</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> “Person” means any individual, partnership, corporation, association, trust, limited liability company, joint venture, unincorporated organization and any government, governmental department or agency or political subdivision thereof. See Article 1.1 of the BOX Exchange LLC Agreement.

<sup>21</sup> The term “Related Person” is defined in Article 1.1 of the BOX Exchange LLC Agreement.

Agreement<sup>42</sup> contain certain provisions designed to help maintain the independence of the regulatory functions of BOX Exchange. The Commission believes that the potential for conflicts of interest or unfair competition is mitigated by these provisions.

With respect to the ownership of BOX Exchange, the Commission notes that no BOX Exchange Member will own in excess of 40% of the Exchange's Economic Units (20% if an Exchange Facility Participant) and 20% of the Exchange's Voting Units. The board composition of the Exchange will not change. And although BOX Holdings is not independently responsible for regulation of BOX Options, its activities with respect to the operation of BOX Options must be consistent with, and not interfere with, the self-regulatory obligations of BOX Exchange. Pursuant to the transaction, with respect to the ownership of BOX Holdings, the voting power of IB, a BOX Options Participant, would remain at 20.00%. Further, while MXUS2's voting power in BOX Holdings would increase, MXUS2's power to appoint directors would remain unchanged.<sup>43</sup> The Commission accordingly believes that the proposed transfers are in compliance with requirements in the BOX Exchange LLC Agreement and the BOX Holdings LLC Agreement and provisions designed to help maintain BOX Exchange's regulatory function.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>44</sup> that the proposed rule change (SR-BOX-2021-19), as modified by Amendment No. 1, be, and hereby is, approved.

each to submit to the jurisdiction of the US federal courts and the Commission).

<sup>42</sup> See, e.g., Article 4.12(b) of the BOX Holdings LLC Agreement (requiring BOX Holdings and its Members to cooperate with BOX Exchange and the Commission and to comply with federal securities laws); Article 11.1 of the BOX Holdings LLC Agreement (requiring the books and records of BOX Holdings and its Members to be subject to inspection and copying by the Exchange and the Commission at all times); and Article 18.6(b) of the BOX Holdings LLC Agreement (deeming BOX Holdings, its Members and officers, directors, employees and agents of each to submit to the jurisdiction of the US federal courts, the Commission, and BOX Exchange).

<sup>43</sup> MXUS2 (through MXUS1) is a wholly-owned subsidiary of the Bourse de Montreal ("Bourse") and the Bourse is a wholly-owned subsidiary of TMX Group Limited. Each of MXUS1, Bourse, and TMX Group Limited is a party to the BOX Exchange LLC Agreement and BOX Holdings LLC Agreement and has all the rights and responsibilities of the Members of BOX Exchange and BOX Holdings. See Amendment No 1, *supra* note 7.

<sup>44</sup> *Id.*

<sup>45</sup> 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>45</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-27427 Filed 12-17-21; 8:45 am]

**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-232, OMB Control No. 3235-0225]

#### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

Extension:  
Rule 17f-4

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (the "Paperwork Reduction Act"), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Section 17(f) (15 U.S.C. 80a-17(f)) under the Investment Company Act of 1940 (the "Act")<sup>1</sup> permits registered management investment companies and their custodians to deposit the securities they own in a system for the central handling of securities ("securities depositories"), subject to rules adopted by the Commission.

Rule 17f-4 (17 CFR 270.17f-4) under the Act specifies the conditions for the use of securities depositories by funds<sup>2</sup> and their custodians.

The Commission staff estimates that 794 respondents (including an estimated 768 funds that may deal directly with a securities depository, an estimated 13 custodians, including 7 sub-custodians and 13 possible securities depositories)<sup>3</sup> are subject to

<sup>1</sup> 15 U.S.C. 80a.

<sup>2</sup> As amended in 2003, rule 17f-4 permits any registered investment company, including a unit investment trust or a face-amount certificate company, to use a security depository. See Custody of Investment Company Assets With a Securities Depository, Investment Company Act Release No. 25934 (Feb. 13, 2003) (68 FR 8438 (Feb. 20, 2003)). The terms "fund" or "fund series" are used in this Notice to mean a registered investment company.

<sup>3</sup> The Commission estimates that, as permitted by the rule, an estimated 4% of all funds may deal directly with a securities depository. The Commission estimates that, as permitted by the

the requirements in rule 17f-4. To the extent that Rule 17f-4(c)(4) provides that a sub-custodian can be qualified as a custodian for purposes of Rule 17f-4, sub-custodians are included as "custodians" in the estimates of burden hours and costs. While the rule is elective, most, if not all, funds use depository custody arrangements.<sup>4</sup>

Rule 17f-4 contains two general conditions. First, a fund's custodian must be obligated, at a minimum, to exercise due care in accordance with reasonable commercial standards in discharging its duty as a securities intermediary to obtain and thereafter maintain financial assets. If the fund deals directly with a depository, the depository's contract or written rules for its participants must provide that the depository will meet similar obligations. All funds that deal directly with securities depositories in reliance on rule 17f-4 should have either modified their contracts with the relevant securities depository, or negotiated a modification in the securities depository's written rules when the rule was amended. Therefore, we estimate there is no ongoing burden associated with this collection of information.<sup>5</sup>

Second, the custodian must provide, promptly upon request by the fund, such reports as are available about the internal accounting controls and financial strength of the custodian. If a fund deals directly with a depository, the depository's contract with or written rules for its participants must provide that the depository will provide similar financial reports. Custodians and depositories usually transmit financial reports to funds twice each year.<sup>6</sup> The

rule, an estimated 4% of all funds may deal directly with a securities depository. The number of custodians, including the number of sub-custodians is estimated from information collected from Form N-CENs filed with the Commission as of October 15, 2021. In addition, the Commission staff estimates the number of possible securities depositories by adding the 12 Federal Reserve Banks and one active registered clearing agency. The Commission staff recognizes that not all of these entities may currently be acting as a securities depository for fund securities.

<sup>4</sup> Based on responses to Item C.12 of Form N-CEN (17 CFR 274.101), approximately 96 percent of funds' custodians maintain some or all fund securities in a securities depository pursuant to rule 17f-4.

<sup>5</sup> The Commission staff assumes that new funds relying on 17f-4 would choose to use a custodian instead of directly dealing with a securities depository because of the high costs associated with maintaining an account with a securities depository. Thus, new funds would not be subject to this condition.

<sup>6</sup> The estimated 13 custodians would handle requests for reports from 9,984 fund clients (approximately 768 fund clients per custodian) and the depositories from the remaining 768 funds that choose to deal directly with a depository. It is our understanding based on staff conversations with