

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91368; File No. SR–BOX–2020–38]

Self-Regulatory Organizations; BOX Exchange LLC; Order Approving a Proposed Rule Change To Amend BOX Rule 7620 (Accommodation Transactions)

March 19, 2021.

I. Introduction

On December 10, 2020, BOX Exchange LLC (“BOX” or “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 BOX Rule 7620 (Accommodation Transactions) to allow Floor Brokers³ to enter opening cabinet orders at a price of \$1 per option contract on behalf of customers and Floor Market Makers,⁴ and require all cabinet trades to follow the Exchange’s existing open outcry rules pursuant to BOX Rule 7600 series. The proposed rule change was published for comment in the **Federal Register** on December 30, 2020.⁵ On February 8, 2021, the Commission extended the time period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the proposed rule change.⁶ The Commission received no comments on the proposed rule change. The Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

Currently, BOX Rule 7620 defines a “cabinet order” as “a closing limit order at a price of \$1 per option contract for

the account of a customer or Floor Market Maker.”⁷ Only closing limit orders may be submitted as orders to the cabinet. Although BOX Rule 7620 specifies that “opening orders” are not cabinet orders, the rule currently allows opening orders to be matched with cabinet orders in certain specified circumstances.⁸

BOX proposes to amend BOX Rule 7620 to allow all cabinet trades (both opening and closing) to occur via open outcry pursuant to BOX’s existing Rule 7600 series. To effectuate this change, BOX proposes to expand the definition of “cabinet orders” to include opening orders as well as closing orders.⁹ Further, as proposed, the Exchange would preserve the primacy of existing closing cabinet orders by requiring cabinet orders, whether opening or closing, to yield priority to all existing closing cabinet orders represented by the trading crowd.¹⁰ Cabinet trading would not be available in options classes participating in the Penny Interval Program.¹¹

Further, under the proposal, as is the case today, only Floor Brokers would be permitted to represent cabinet orders and such orders would only be permitted to execute on the Exchange’s Trading Floor.¹² The Exchange proposes to codify that cabinet orders would be subject to the existing BOX Rule 7600 series¹³ and therefore would execute in open outcry in the same manner as all other orders execute on the Trading Floor (*i.e.*, in accordance with the order allocation, priority, and execution rules applicable to all Qualified Open Outcry (“QOO”) Orders).¹⁴ In addition, under the proposal, cabinet orders would no longer be subject to separate manual recordation requirements and would instead be subject to the same systematization and order recordation requirements that currently apply to all other QOO Orders.¹⁵

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁶ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁷ which requires that the rules of an exchange be designed, among other things, 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 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, and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Commission also finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,¹⁸ which requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that the proposed rule change to allow bids and offers (whether opening or closing) at a price of \$1 per option contract to be executed by Floor Brokers in open outcry on the Exchange’s Trading Floor subject to the existing BOX Rule 7600 series appears reasonably designed to provide market participants with an additional means by which they can close out worthless positions in series of options that are not actively traded and thereby avoid unwanted risk. According to the Exchange, opening cabinet trades are not profitable for participants, but participants can use them to change their risk profile. The Exchange asserts that the proposed change is in line with the primary purpose of cabinet trading in that it would allow participants to submit opening cabinet orders in series that are not actively traded to effectively close out (“synthetically”) the risk associated with current positions.¹⁹ The

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See BOX Rule 7540 (defining “Floor Broker” as “an individual who is registered with the Exchange for the purpose, while on the Trading Floor, of accepting and handling options orders. A Floor Broker must be registered as an Options Participant prior to registering as a Floor Broker. A Floor Broker may take into his own account, and subsequently liquidate, any position that results from an error made while attempting to execute, as Floor Broker, an order.”).

⁴ See BOX Rule 8510(b) (defining “Floor Market Maker” as an Options Participant of the Exchange located on the Trading Floor who has received permission from the Exchange to trade in options for his own account.”).

⁵ See Securities Exchange Act Release No. 90792 (December 23, 2020), 85 FR 86610 (“Notice”).

⁶ See Securities Exchange Act Release No. 91077, 86 FR 9403 (February 12, 2021), in which the Commission designated March 30, 2021 as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

⁷ See BOX Rule 7620.

⁸ See BOX Rule 7620(c)–(e) (specifying limited circumstances in which an opening order may be matched with a cabinet order). See also Notice, *supra* note 5, at 86611–13.

⁹ See proposed BOX Rule 7620. As proposed, “cabinet orders” would be defined as “bids and offers (whether opening or closing) at a price of \$1 per option contract for the account of a customer or Floor Market Maker.”

¹⁰ See proposed BOX Rule 7620(c). See also Notice, *supra* note 5, at 86612–13.

¹¹ See proposed BOX Rule 7620(b).

¹² See BOX Rule 7620. See also Notice, *supra* note 5, at 86611.

¹³ See Proposed BOX Rule 7620.

¹⁴ See Notice, *supra* note 5, at 86611.

¹⁵ See Notice, *supra* note 5, at 86612. Specifically, BOX Rule 7580(e)(1) would require Floor Brokers to contemporaneously upon receipt of a cabinet order to record specific information about the order onto the Floor Broker’s order entry mechanism. See *id.* at 86612 n.17.

¹⁶ 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).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ 15 U.S.C. 78f(b)(8).

¹⁹ See Notice, *supra* note 5, at 86613. See also Notice, *supra* note 5, at 86611 n.9–10 and accompanying text (providing an example of the use of an opening cabinet order to synthetically

Commission believes that the proposed rule change will permit market participants to effectively close out worthless positions prior to their expiration using closing or opening cabinet orders in a manner that is consistent with the original purpose of the cabinet and in so doing will allow market participants to better manage their capital and risk exposures. In this regard, the Commission notes that all orders traded pursuant to BOX Rule 7620 must meet the proposed definition of “cabinet order” and be bona fide trades. Further, cabinet orders (whether opening or closing) may not be conducted for any improper purpose or be executed in a manner that would be inconsistent with the Exchange’s other rules. For example, the Commission believes that it would be inconsistent with the just and equitable principles of trade for a participant to utilize the cabinet trading rules for the purpose of avoiding the exchange’s minimum trading increment rules. The Commission believes subjecting cabinet orders to the same order entry, recordation, and processing requirements as currently apply to all QOO Orders will create an electronic audit trail for cabinet orders and should promote consistency and facilitate regulatory oversight of trading on the Trading Floor.

For the reasons set forth above, the Commission believes that the proposed rule change is consistent with the requirements of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁰ that the proposed rule change (SR-BOX-2020-38) hereby is approved.

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

Eduardo A. Aleman,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91367; File No. SR-NYSEAMER-2021-15]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE American Equities Proprietary Market Data Fee Schedule and the NYSE American Options Proprietary Market Data Fee Schedule

March 19, 2021.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 (the “Act”) ² and Rule 19b-4 thereunder,³ notice is hereby given that on March 10, 2021, NYSE American LLC (“NYSE American” or 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 self-regulatory organization. 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 proposes to amend the NYSE American Equities Proprietary Market Data Fee Schedule and the NYSE American Options Proprietary Market Data Fee Schedule (together, “Market Data Fee Schedules”) to adopt a billing dispute practice substantially similar to the practice adopted by another group of exchanges for their transaction and market data fees. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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 those 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 parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Market Data Fee Schedules to adopt a billing dispute practice similar to the practice adopted by another group of exchanges for their transaction and market data fees. As discussed below, the proposed provision would be substantially similar to provision in the fee schedules of the Cboe U.S. Equities markets—Cboe BZX Exchange, Inc. (“BZX Equities”),⁴ Cboe BYX Exchange, Inc. (“BYX Equities”),⁵ Cboe EDGA Exchange, Inc. (“EDGA Equities”),⁶ Cboe EDGX Exchange, Inc. (“EDGX Equities”) ⁷—and the Cboe U.S. Options markets—Cboe Exchange, Inc. (“Cboe Options”),⁸ Cboe C2 Exchange, Inc. (“C2 Options”),⁹ the options platform of Cboe BZX Exchange, Inc. (“BZX Options”),¹⁰ the options platform of Cboe EDGX Exchange, Inc. (“EDGX Options”) (collectively, the “Cboe Exchanges”).¹¹ In addition, the Exchange and the Exchange’s affiliates, New York Stock Exchange LLC (“NYSE”), NYSE Arca, Inc. (“NYSE Arca”), NYSE Chicago, Inc.

⁴ See BZX Equities Fee Schedule, available at, https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/. See also Securities Exchange Act Release No. 90897 (January 11, 2021), 86 FR 4161 (January 15, 2021) (SR-CboeBZX-2020-094).

⁵ See BYX Equities Fee Schedule, available at, https://markets.cboe.com/us/equities/membership/fee_schedule/byx/. See also Securities Exchange Act Release No. 90899 (January 11, 2021), 86 FR 4156 (January 15, 2021) (SR-CboeBYX-2020-034).

⁶ See EDGA Equities Fee Schedule, available at, https://markets.cboe.com/us/equities/membership/fee_schedule/edga/. See also Securities Exchange Act Release No. 90900 (January 11, 2021), 86 FR 4149 (January 15, 2021) (SR-CboeEDGA-2020-032).

⁷ See EDGX Equities Fee Schedule, available at, https://markets.cboe.com/us/equities/membership/fee_schedule/edgx/. See also Securities Exchange Act Release No. 90901 (January 11, 2021), 86 FR 4137 (January 15, 2021) (SR-CboeEDGX-2020-064).

⁸ See Cboe Options Fee Schedule, footnote 7, available at, https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf. See also Securities Exchange Act Release No. 91053 (February 3, 2021), 86 FR 8814 (February 9, 2021) (SR-Cboe-2021-010).

⁹ See C2 Options Fee Schedule, available at, https://markets.cboe.com/us/options/membership/fee_schedule/ctwo/. See also Securities Exchange Act Release No. 91049 (February 3, 2021), 86 FR 8824 (February 9, 2021) (SR-C2-2021-002).

¹⁰ See BZX Options Fee Schedule, available at, https://markets.cboe.com/us/options/membership/fee_schedule/bzx/. See also Securities Exchange Act Release No. 90897 (January 11, 2021), 86 FR 4161 (January 15, 2021) (SR-CboeBZX-2020-094).

¹¹ See EDGX Options Fee Schedule, available at, https://markets.cboe.com/us/options/membership/fee_schedule/edgx/. See also Securities Exchange Act Release No. 90901 (January 11, 2021), 86 FR 4137 (January 15, 2021) (SR-CboeEDGX-2020-064).

close a Market Maker’s position in a worthless option and thereby hedge unwanted portfolio risk).

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.