

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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-NAT-2021-09, and should be submitted on or before May 13, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91585; File No. SR-BOX-2021-03]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Options Market LLC Facility

April 16, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 1, 2021, BOX Exchange LLC ("Exchange") filed with the Securities and Exchange Commission ("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 the 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 on the BOX Options Market LLC ("BOX") facility. The text 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, the Proposed Rule Change

1. Purpose

The Exchange expects to move to a new, larger, Trading Floor in Q2 2021. The move has been driven, in part, by an increase in demand for participation on the BOX Trading Floor, particularly for Floor Market Makers. The larger Trading Floor will allow a greater number of Floor Participants—specifically Floor Market Makers—and their associated personnel to be present on the Trading Floor while also continuing to follow the social distancing requirements imposed by the COVID-19 pandemic.⁵ In conjunction

with the move to a larger floor, the Exchange now proposes to modify the Fee Schedule for trading on BOX to amend certain fees in Section VIII.C. (Trading Floor Participant Fees) to allow the Exchange to more accurately assess fees for space utilized by Floor Participants and their associated personnel.

First, the Exchange proposes to amend the Trading Floor Participant Fees for Floor Market Makers. Currently, each Floor Market Maker pays a monthly Trading Floor Participant Fee which entitles the firm to one podium⁶ on the BOX Trading Floor⁷ and an unlimited amount of registered trading permits for the Floor Market Maker's employees to transact on the BOX Trading Floor.⁸ BOX also offers Floor Market Makers the option to pay \$1,500 per month for additional podiums on the Trading Floor.

The Exchange now proposes to remove the \$1,500 per month fee for an additional podium for Floor Market Makers. This proposed change would, in effect, require Floor Market Makers who would like to have two or more podiums on the BOX Trading Floor to purchase each additional podium at \$5,500 per month.⁹

BOX also charges a \$100 Badge Fee per month for persons who are not trading permit holders but are employed by or associated with a Floor Participant and have access to the BOX Trading Floor (e.g., Clerks, interns, stock execution clerks etc.).¹⁰ The Exchange is proposing to remove the current Section VIII(C)(c)(Badge Fee) and replace it with

[boxoptions.com/assets/BOX-Floor-Standards-of-Conduct_V1.1-1.pdf](https://www.boxoptions.com/assets/BOX-Floor-Standards-of-Conduct_V1.1-1.pdf). The Exchange notes that due to the social distancing requirements imposed by the COVID-19 pandemic the Exchange restricted "Other Registered On-Floor Persons" (defined below) access to the Trading Floor, as well as removed some Market Maker podia. Moving to the larger Trading Floor will enable the Exchange to allow those personnel to return to the Floor.

⁶ A podium is the term used within the industry for the Floor Market Maker workspace located in the middle of the Crowd Area (defined below).

⁷ The "Trading Floor" is the physical trading floor located in Chicago. The Trading Floor shall consist of one "Crowd Area" or "Pit" where all option classes will be located. The Crowd Area or Pit shall be marked with specific visible boundaries on the Trading Floor, as determined by the Exchange. See BOX Rule 100(a)(67).

⁸ The Exchange notes each podium is limited to one registered trading permit holder actively trading at any given time.

⁹ Floor Market Makers will continue to be allowed only one registered trading permit holder at a podium at any one time.

¹⁰ See BOX Rule 7630. The Exchange notes only registered trading permit holders are permitted to effect transactions on the Trading Floor. The Exchange also notes, registered trading permit holders (Floor Market Makers and Floor Brokers) are not assessed a Badge Fee as their access to the Trading Floor is granted through their registered trading permits.

²⁸ 17 CFR 200.30-3(a)(12).

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).

⁵ See Standards of Conduct for the Safety and Welfare of Persons on the BOX Trading Floor related to COVID-19, available at: https://www.boxoptions.com/assets/BOX-Floor-Standards-of-Conduct_V1.1-1.pdf.

the proposed Section VIII(C)(c)(Other Registered On-Floor Persons’).¹¹ The proposed change will retitle the subsection while continuing to assess the current Badge Fee of \$100 to all Other Registered On-Floor Persons associated with Floor Market Makers or Floor Brokers.¹² The Exchange also proposes to introduce a Desk Fee of \$350 per month for these Other Registered On-Floor Persons. Like the Desk Fee currently assessed for Floor Brokers, the proposed Desk Fee will entitle Other Registered On-Floor Persons associated with Floor Market Makers or Floor Brokers one desk adjacent to the Crowd Area on the Trading Floor.¹³ The Exchange notes, although no Floor Participant is required to have a Clerk, if a Floor Participant chooses to employ a Clerk(s) whom, by the nature of their roles, are consistently present on the Trading Floor, that Floor Participant will need to purchase a desk for such Clerk. In contrast, if a Floor Participant employs an IT professional to service their technology needs, and who only enters the Trading Floor on an infrequent basis, the Floor Participant will not need to purchase a desk for such personnel. For example, under the proposed fee structure, a Floor Broker that occupies one desk on the Trading Floor who wishes to have a Clerk¹⁴ would be assessed a \$5,000 per month Floor Broker Participant Fee¹⁵ and a \$350 Floor Broker Desk Fee. Their Clerk would be assessed a \$100 Badge Fee and a \$350 Desk Fee per month.¹⁶ The

¹¹ “Other Registered On-Floor Persons” include all persons registered to be on the Trading Floor except Floor Market Makers and Floor Brokers.

¹² The Exchange notes this part of the proposal does not change any fees assessed to Floor Participants.

¹³ Only one “Other Registered On-Floor Person” will be allowed at a desk at any one time, however, the Floor Participant may still have more than one “Other Registered On-Floor Persons”. For example, a Floor Market Maker may have one desk for Other Registered On-Floor Persons and employ two Clerks part-time; each Clerk will be assessed a \$100 Badge Fee per month, and only one Clerk at a time may be at the desk on the BOX Trading Floor. The Exchange believes this assessment of Desk Fees is reasonable and appropriate as it aligns with the Exchange’s effort to charge based on the space utilized by each firm.

¹⁴ A Clerk is a registered on-floor person employed by or associated with a Floor Broker or Floor Market Maker and who is not eligible to effect transactions on the Trading Floor as a Floor Market Maker or Floor Broker. See BOX Rule 7630 (Clerks).

¹⁵ Subject to the Trading Floor Credit Floor Brokers may receive.

¹⁶ Although no Floor Participant is required to employ Other Registered On-Floor Persons (e.g., Clerks), if a Floor Participant does employ such person(s), and that employee will be consistently on the Trading Floor, they are required to have a desk. The Exchange notes there will be variability on the required number of desks for each Floor Participant depending on the Floor Participants staffing needs.

Exchange notes, although Floor Market Makers operate at the point of sale in the Crowd Area/Pit, Floor Market Makers can employ support staff (Other Registered On-Floor Persons, for example Clerks) who may work at desks adjacent to the Crowd Area on the Trading Floor.¹⁷

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5) of the Act,¹⁸ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

First, the Exchange believes the proposed change to remove the \$1,500 monthly additional podium fee is reasonable, equitable, and not unfairly discriminatory. Market Maker podia must be located in the middle of the trading crowd, and as such, represent valuable space currently in high demand on the Exchange’s Trading Floor. The location of Market Maker podia is unique and different from that of Floor Broker booth space, and as such, represents valuable space currently in high demand on the Exchange’s Trading Floor. Market Maker podia must be located in the Crowd Area so that they may hear the open outcry of an order and respond accordingly. Unlike podia, Floor Broker booth space is outside of the Crowd Area along the walls of the Trading Floor. The Exchange notes Floor Market Maker podia space has reached maximum capacity on the current Trading Floor and the Exchange anticipates, due to increased demand, to have limited availability for such podia on its new floor as well. The Exchange does not currently have the same level of demand for Floor Broker booth space and will continue to have ample space on its new Trading Floor to accommodate Floor Brokers. Due to the

For example, a Floor Participant may employ multiple Clerks and only have one shared desk where each of those Clerks would work at any given time. The Exchange notes, in the aforementioned example, if the Participant was a Floor Market Maker, the Floor Market Maker Clerk would be charged the same Badge Fee and Desk Fee.

¹⁷ The Exchange notes desks for Floor Market Maker personnel is not considered “booth space.” Booth space is a term solely for Floor Brokers on the Trading Floor. Specifically, Floor Broker booth space is akin to private office space where employees of the same firm communicate with customers, receive orders, and coordinate covering the Trading Floor to announce such orders into the Crowd Area.

¹⁸ 15 U.S.C. 78f(b)(4) and (5).

increased demand for Floor Market Maker podia on the Exchange’s Trading Floor and the limited supply of such space—even in the larger Trading Floor footprint—the Exchange believes it is reasonable and appropriate to charge \$5,500 per month, per podium for the following reasons.¹⁹ Despite moving to a larger floor space, the Exchange’s proposed fee for each podium reflects the fact that the space available for podia is not unlimited and the Exchange is anticipating space to be further limited based on current Market Makers adding additional podia/desks and new market makers interested in joining BOX and utilizing more space on the new Trading Floor. Because Floor Market Maker podia are integrated in the Trading Floor, the more physical space occupied by a single Market Making firm (e.g., multiple podia) means less physical space for other Market Makers to participate in the trading crowd. Thus, the Exchange proposes to revise the podium fee to charge Floor Market Makers in a manner that reflects this reality and to encourage the efficient use of space by these Participants. Furthermore, the Exchange believes this part of the proposal is reasonable because the new, larger floor space (which includes more podia) will provide each Floor Market Making firm the opportunity to participate in additional options transactions. In addition, the Exchange believes the proposed fee is reasonable as the current amount assessed for one podium is \$5,500 per month. When the Exchange initially established the BOX Trading Floor (and in turn, the Additional Podium Fee), a lower rate was assessed because the Exchange was trying to incentivize participation on the BOX Trading Floor and was uncertain about the level of demand for such podia. Based on the increased interest in trading on the BOX Trading Floor, the Exchange now believes it is reasonable and appropriate to assess a higher fee for each podium.²⁰

The Exchange notes it operates in a highly competitive market in which market participants can readily move their options business to competing venues if they deem fee levels at a particular venue to be excessive or

¹⁹ The Exchange notes, currently there is a waiting list for Market Maker podia due to the space constraints caused by the COVID-19 social distancing requirements. Once the Exchange transitions to its new floor, there will be more space available, however, it will still be limited due to the COVID-19 safety measures in place.

²⁰ The Exchange again notes the demand from current Floor Market Makers and prospective firms necessitated the Exchange’s move to a new trading floor in order to accommodate these space requirements.

incentives to be insufficient.²¹ Further, transacting on the BOX Trading Floor is entirely voluntary and operating on the BOX Trading Floor is merely an additional option for Participants to transact on BOX. In addition, the Exchange believes offering one podium to Floor Market Makers for \$5,500 per month (and if necessary, additional podia for \$5,500 per month) will better incentivize market making firms to only purchase podia they will make productive use of on the Trading Floor. Removing the additional podium fee of \$1,500 per month reduces the potential for a single Market Making firm to use more podia space than needed on the Trading Floor. If a Market Making firm is required to pay the higher \$5,500 per month fee for each podium, the Exchange believes this will encourage the efficient use and allocation of such valuable space. Furthermore, the Exchange believes the proposed change is reasonable as it aligns the Exchange's fees with fees that are assessed at other exchanges with physical trading floors.²² The Exchange believes that the proposed change is equitable and not unfairly discriminatory as it will apply equally to all Floor Market Makers on the BOX Trading Floor.

Furthermore, the Exchange believes that it is equitable and not unfairly discriminatory to continue to charge Floor Market Makers more per month than Floor Brokers.²³ Unlike Floor Market Makers, Floor Brokers play a critical role in bringing liquidity to the BOX Trading Floor. Orders are brought to the Trading Floor by Floor Brokers

only, and benefit all Floor Participants by providing more trading opportunities, which may attract Market Makers, Customers and other market participants.²⁴ An increase in activity, in turn, may facilitate tighter spreads, contribute to overall deeper, more liquid market, and increase price discovery, which can benefit all market participants. The Exchange also notes that Floor Market Makers are not obligated to provide continuous quotes like Market Makers on BOX's electronic market.²⁵ Further, Floor Market Makers are not obligated to respond to all Floor Brokers Orders on the BOX Trading Floor. As such, the Exchange believes Floor Market Makers benefit from the access they have to interact with (at their discretion) orders which are made available in open outcry on the Trading Floor by Floor Brokers. The Exchange also notes that Floor Market Makers may choose to conduct their business on the Trading Floor, unlike Floor Brokers, who have a business model that is naturally tied to the physical trading space. The Exchange offers Market Makers a choice on how to conduct business, only electronic or floor and electronic. The Exchange believes that it is equitable and not unfairly discriminatory to assess Floor Market Makers a higher monthly fee because they have the benefit of trading on both if they so choose. The Exchange believes assessing Floor Brokers a lower fee accounts for the value Floor Brokers provide to the Exchange's market and other participants. As described above, Floor Market Makers benefit from the access they have on the BOX Trading Floor to interact with orders from Floor Brokers which are made available in open outcry on the Trading Floor.

In addition, the Exchange believes the fee differential between Floor Brokers and Floor Market Makers is reasonable and not unfairly discriminatory because pricing differences between these participant types currently exist at other

exchanges within the industry.²⁶ As an example, on Phlx, Floor Market Makers are charged \$6,000 per month per permit while Floor Brokers are charged \$4,000 per month per permit.²⁷ Further, other exchanges also seek to incentivize Floor Broker order flow by reducing their fees. The Exchange notes Cboe also has a fee structure in place to incentivize Floor Brokers to bring orders to the floor in order to avail themselves of reduced Permit Fees in comparison to Floor Market Makers.²⁸ In a previous filing, Cboe has stated that their Floor Broker ADV Discount (which allows Floor Brokers to pay lower fees than Floor Market Makers) "is designed to encourage the execution of orders in all classes via open outcry, which may increase volume, which would benefit all market participants . . . trading via open outcry."²⁹

In addition, the Exchange believes the proposal is equitable and not unfairly discriminatory because it aligns the Exchange's fees with at least one other competitor when considering the degree of price differentiation.³⁰ For example, assume that Market Making Firm A on NYSE American has two (2) registered ATPs³¹ and are therefore charged \$10,000 in monthly ATP Fees for operating on the trading floor.³² In addition, NYSE American Market Makers are charged \$90 per month per podium. As such, Market Making Firm A would be charged in total \$10,180 monthly for its permit fees and podia fees.³³ By comparison, Floor Brokers on

²⁶ The Exchange notes, pursuant to this proposal Floor Market Makers will continue to be charged \$500 more for a podium compared to Floor Broker firm's booth space (if the Floor Broker does not achieve their Trading Floor Credit).

²⁷ See Nasdaq Phlx Options 7 Pricing Schedule Section 8.A (Permit and Registration Fees).

²⁸ Cboe Options Fee Schedule, Floor Trading Permit Sliding Scales and Floor Broker ADV Discount. Cboe's monthly Permit Fees work on a sliding scale basis in conjunction with Floor Brokers being able to achieve discounts based on the Average Daily Volume ("ADV") Floor Brokers achieve each month.

²⁹ See Securities Exchange Act Release No. 34-89826 (September 10, 2020), 85 FR 57900 (September 16, 2020) (SR-CBOE-2020-086) (Noticed by Commission for Immediate Effectiveness).

³⁰ See NYSE American Options Fee Schedule Section III. Monthly Trading Permit, Rights, Floor Access and Premium Product Fees.

³¹ NYSE American "ATPs" are registered Broker-Dealers who are permit holders on the exchange, this includes NYSE American Floor Brokers and Market Makers. *See id.*; *See also* NYSEAm Rule 920NY. (Market Makers). These two participant types are analogous to BOX's Floor Brokers and Floor Market Makers.

³² *See id.*

³³ The Exchange notes, NYSE American limits the number of Floor Market Makers allowed on the floor to two ATPs per month, the Exchange is proposing no such restrictions at this time.

²¹ The Exchange is aware of multiple competitors with trading floors offering competing products and services to BOX. *See* Cboe Rule 5.80 (Admission to and Conduct on the Trading Floor); NYSEArca Rule 6.2-O (Admission to and Conduct on the Options Trading Floor); NYSEAm Rule 902NY (Admission and Conduct on the Options Trading Floor); Nasdaq Phlx Options 8 Floor Trading: Section 8 (Trading Floor Registration).

²² *See* Nasdaq Phlx Options 7 Pricing Schedule Section 8.A (Permit and Registration Fees). Phlx charges \$6,000 per month per permit for each Floor Market Maker with a physical presence on Phlx's trading floor. NYSE American charges \$5,000 per month for NYSE American Options Floor Market Makers. *See* NYSE American Options Fee Schedule III.A. NYSE American Options Market Makers are ATP Holders registered with the Exchange for the purpose of making transactions as a dealer-specialist on the Floor of the Exchange. *See* NYSE American Rule 920NY. *See also* Cboe Fee Schedule, Floor Trading Permit Sliding Scales (\$6,000 for 1 permit, \$4,500 for permits 2 to 5). Floor permit entitles the holder to act as a Market-Maker on the floor of the exchange.

²³ The Exchange notes that a Floor Market Maker is 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. A Floor Broker is an individual who is registered with the Exchange for the purpose, while on the Trading Floor, of accepting and handling options orders.

²⁴ The Exchange emphasizes that no market making firm would be interested in trading on the BOX Trading Floor unless Floor Brokers brought liquidity to the floor. Floor Brokers are essential to the operation of the Exchange's trading floor.

²⁵ Among other requirements and obligations, electronic Market Makers on BOX are required to post valid quotes at least sixty percent (60%) of the time that the classes are open for trading. *See* BOX Rule 8050(e). Floor Market Makers are instead obligated to, in response to any request for quote by a Floor Broker or Options Exchange Official, provide a two-sided market. *See* BOX Rule 8510(c). Therefore, because Floor Market Makers are deriving a substantial benefit from participating in transactions on the floor without carrying more significant obligations to quote on the Trading Floor, the Exchange believes it is fair and equitable to assess higher fees to Floor Market Makers.

NYSE American are assessed a \$500 per month ATP Fee and \$40 per linear foot per month for all booth space utilized by such Floor Broker.³⁴ Assume Floor Broker Firm B has two Floor Brokers and 10 linear feet of booth space for two, five-foot desks. Floor Broker Firm B would pay \$1,000 in ATP Fees and \$400 in booth space, for a total of \$1,400 per month. The fee differential between Market Making Firm A and Floor Broker Firm B on NYSE would be \$8,780 per month.

Now consider the same Market Making Firm A with two Market Makers on the BOX Trading Floor. Under this proposal, Market Making Firm A would be charged \$11,000 for their two Market Maker Trading Floor Participant fees. Next, assume Floor Broker Firm B is assessed their \$5,000 Trading Floor Participant Fee and do not execute a trade on more than 50% of the trading days in the given month.³⁵ Floor Broker B would be charged \$5,000 and \$350 for each desk for both Floor Brokers, for a total monthly fee of \$5,700. The fee differential between Market Making Firm A and Floor Broker Firm B would be \$5,300.

The Exchange notes, if Floor Broker Firm B achieved its Trading Floor Credit it would only pay for two desks, one for each of its Floor Brokers. Therefore, Floor Broker Firm B would only pay a total of \$700 per month in Floor Broker Desk Fees. The fee differential between Market Making Firm A and Floor Broker Firm B on BOX would be \$10,300. As discussed herein, when Floor Broker Firm B achieves their Trading Floor Credit, the fee differentials between Participant types are in line with the fee differential on NYSE American. The Exchange recognizes the value that Floor Brokers bring to trading floors and have in place reduced fees (like those discussed above when compared to Floor Market Makers) and other fee caps and rebates to the benefit of Floor Brokers in order to incentivize Floor Brokers to continue bringing their

customer order flow to the physical trading floor to the benefit of all market participants.

Second, the Exchange believes that replacing the Badge Fee subsection with the proposed Other Registered On-Floor Persons subsection is reasonable, equitable, and not unfairly discriminatory. The proposed change is reasonable as it seeks to consolidate the fees that are assessed to all Other Registered On-Floor Persons that are not Floor Brokers or Floor Market Makers. In addition, the Exchange believes it is reasonable to now assess a Desk Fee to Other Registered On-Floor Persons because of the space that these individuals will utilize on the new BOX Trading Floor.³⁶ The Exchange believes charging per desk will offer flexibility to Floor Participants to customize the precise amount of floor space needed for their business, while ensuring that each Floor Participant is charged equitably based on the amount of floor space all their Other Registered On-Floor Persons utilize. The Exchange believes the proposed Desk Fee for Other Registered On-Floor Persons is reasonable and appropriate as a similar fee is assessed on at least one other exchange with a physical trading floor³⁷ as well as identical to the current Desk fee assessed to BOX Floor Brokers. Finally, the Exchange believes the proposed Other Registered On-Floor Persons Desk Fee is equitable and not unfairly discriminatory as such fee will be applied to all Other Registered On-Floor Persons who are not a Floor Brokers or Floor Market Makers.

³⁶ The Exchange notes that Other Registered On-Floor Persons are not currently allowed on the BOX Trading Floor due to the space constraints caused by the COVID-19 social distancing requirements. Once the Exchange transitions to its new floor, there will be more space available and these individuals will be allowed to return to the BOX Trading Floor, however, space will still be limited due to the COVID-19 safety measures in place.

³⁷ In 2011, Phlx charged a flat \$300 per month fee for Trading/Administrative Booth paid by floor brokers and clearing firms. See Securities Exchange Act Release No. 34-66086 (January 3, 2012), 77 FR 1111 (January 9, 2012) (SR-Phlx-2011-181). In 2013, Phlx eliminated the Trading/Administrative Booth Fees but increased the Floor Facility Fee to \$330 per month and assessed this fee to Clerks among other persons. Clerks on Phlx are defined as "any registered on-floor person employed by or associated with a member or member organization who is not a member and is not eligible to effect transactions on the Options Floor as a Lead Market Maker, Floor Market Maker, or Floor Broker." See Phlx Options 8 Section 12 (defining "Clerks"). As such, the Exchange believes that the proposed Desk Fee for "all Other Registered On-Floor Persons" is reasonable and appropriate as a similar fee (the Floor Facility Fee) currently exists to cover similar costs on Phlx. See Securities Exchange Act Release No. 69672 (May 30, 2013), 78 FR 33873 (June 5, 2013) (SR-Phlx-2013-58). See also Phlx Fee Schedule Options 7, Section 9A.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule changes will impose any burden on intramarket competition because the proposed changes would be applied to all similarly situated participants (*i.e.*, Floor Market Makers, Clerks), and as such, would not impose a disparate burden on competition among the same classes of market participants. As described in further detail above, the proposed removal of additional podium fees for Floor Market Makers does not impose an undue burden on intermarket competition because the resulting fee per podium is similar to other fees at competing exchanges with trading floors.³⁸ Further, the Exchange believes assessing a Desk Fee to Other Registered On-Floor Persons does not create an undue burden on competition because the Exchange is allocating fees to market participants depending on the space they utilize on the Trading Floor. Further, at least one other exchange with a physical trading floor assesses a similar fee for Other Registered On-Floor Persons.³⁹ Lastly, purchasing Desk Space for Other Registered On-Floor Persons employed by a Floor Participant is entirely voluntary.

Furthermore, as noted above, the Exchange operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is limited. For the reasons discussed above, the Exchange believes that the proposed changes do not impose an undue burden on competition.

Lastly, as described above, the Trading Floor Participant Fees for Floor Market Makers are in line with fees assessed at other exchanges with physical trading floors.⁴⁰ The Exchange, along with at least one other competitor, recognize the value that Floor Brokers bring to trading floors and, as such, offer reduced Trading Participant Fees to

³⁸ See *supra* note 22.

³⁹ See *supra* note 37.

⁴⁰ See *supra* note 22.

³⁴ The Exchange notes NYSE American also has an incentive and rebate structure in place to incent Floor Brokers to bring liquidity and execute orders on its floor. See NYSE American Options Fee Schedule, Section III.E. Floor Broker Incentive and Rebate Programs. The FB Prepay Program affords Floor Brokers the opportunity to prepay Monthly ATP Fees (in addition to other fixed costs) and thereby qualify for a percentage reduction of pre-paid annual eligible fixed costs (*e.g.*, ATP Fees) or an Alternative Rebate. If a Floor Broker firm achieves the highest Tier 4, it is eligible for 100% refund of eligible fixed costs, or \$16,000 per month rebate of eligible fixed costs.

³⁵ The Exchange notes, if a Floor Broker firm executes a trade on 50% or more of trading days in a given month, the firm receives a \$5,000 Trading Floor Credit which equals its Trading Floor Participant Fee of \$5,000 per month.

Floor Brokers (in comparison to Floor Market Makers) in order to incentivize Floor Brokers to continue to bring customer order flow to physical trading floors for the benefit of all market participants.⁴¹

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 Act⁴² and Rule 19b-4(f)(2) thereunder,⁴³ 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:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-BOX-2021-03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-BOX-2021-03. This file number should be included on the subject line if email 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BOX-2021-03, and should be submitted on or before May 13, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁴

J. Lynn Taylor,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91605; File No. SR-PEARL-2021-16]

Self-Regulatory Organizations: MIAx PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAx Pearl Fee Schedule

April 16, 2021.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 8, 2021, MIAx PEARL, LLC ("MIAx Pearl" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items

have been prepared by the Exchange. 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 a proposal to amend the MIAx Pearl Fee Schedule (the "Fee Schedule") for the Exchange's options market.

The text of the proposed rule change is available on the Exchange's website at <http://www.miaxoptions.com/rule-filings/pearl> at MIAx Pearl's principal office, 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 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, the Proposed Rule Change

1. Purpose

The Exchange proposes to make several amendments to the tables for the Add/Remove Tiered Rebates/Fees set forth in Section (1)(a) of the Fee Schedule that apply to the Priority Customer³ Origin, MIAx Pearl Market Maker⁴ Origin, and Non-Priority Customer, Firm, BD, and Non-MIAx Pearl Market Maker Origin (collectively, "Professional Members"). As described more fully below, the Exchange proposes to: (i) Modify the volume

³ "Priority Customer" means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). The number of orders shall be counted in accordance with Interpretation and Policy .01 of Exchange Rule 100. See the Definitions Section of the Fee Schedule and Exchange Rule 100, including Interpretation and Policy .01.

⁴ "Market Maker" means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of Exchange Rules. See the Definitions Section of the Fee Schedule.

⁴¹ See *supra* note 30.

⁴² 15 U.S.C. 78s(b)(3)(A)(ii).

⁴³ 17 CFR 240.19b-4(f)(2).

⁴⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.