

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99401; File No. SR-BOX-2024-05)

January 19, 2024

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fee Schedule for Trading on the BOX Options Market LLC Facility to Modify Certain Electronic Non-Auction Transaction Fees

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 January 12, 2024, 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”) options 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 <https://rules.boxexchange.com/rulefilings>.

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).

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 amend Section IV.A, Non-Auction Transactions, of the BOX Fee Schedule. Specifically, the Exchange proposes to establish separate fees and rebates on electronic Non-Auction Transactions for options overlying the INVESCO QQQ TrustSM, Series 1 (“QQQ”), and iShares Russell 2000 Index Fund (“IWM”).

Non-Auction Transactions

Currently, in Section IV.A of the BOX Fee Schedule, fees and credits for electronic Non-Auction Transactions are assessed depending on three factors: (i) the account type of the Participant submitting the order; (ii) whether the Participant is a liquidity provider or liquidity taker; and (iii) the account type of the contra party.

The Exchange now proposes to assess separate fees for QQQ and IWM electronic Non-Auction Transactions. Currently, when a Public Customer QQQ or IWM order is a liquidity taker contra to a Professional Customer, Broker Dealer, or a Market Maker, the Public Customer is provided a \$0.20 rebate. The Exchange now proposes to increase Public Customer taker fees on QQQ and IWM electronic Non-Auction Transactions. Accordingly, when a Public Customer QQQ or IWM order is a liquidity taker contra to a Professional Customer,

Broker Dealer, or a Market Maker, the Public Customer will be assessed \$0.10. Further, under this proposal, Public Customer QQQ or IWM orders that interact with a Public Customer QQQ or IWM order will continue to not be assessed a fee.

Further, when a Professional Customer or Broker Dealer QQQ or IWM order interacts with a Public Customer QQQ or IWM order, the Exchange proposes to assess a \$0.50 fee when making liquidity or \$0.50 when taking liquidity. When a Professional Customer or Broker Dealer QQQ or IWM order interacts with a Professional Customer, Broker Dealer, or Market Maker QQQ or IWM order, the Exchange proposes to assess \$0.15 for making liquidity or \$0.50 for taking liquidity. The Exchange notes that these fees are the same as fees currently assessed to QQQ and IWM transactions as QQQ and IWM are Penny Interval Classes.⁵

When a Market Maker QQQ or IWM order interacts with a Public Customer QQQ or IWM order, the Exchange proposes to assess \$0.00 when making liquidity or \$0.50 when taking liquidity. The Exchange notes that assessing Market Maker QQQ and IWM orders that interact with Public Customers \$0.00 for making liquidity is a fee decrease from the current fee, which is \$0.50. Lastly, when a Market Maker QQQ or IWM order interacts with a Professional Customer, Broker Dealer, or Market Maker QQQ or IWM order, the Exchange proposes to assess no fee when making liquidity or \$0.50 when taking liquidity, which is the same as the currently assessed fee for QQQ and IWM orders.

The proposed fee structure for QQQ and IWM electronic Non-Auction Transactions will be as follows:

⁵ See BOX Informational Circular 2022-11 available at <https://boxoptions.com/assets/IC-2022-11-Penny-Program-Class-Removals-1.pdf>.

		SPY, QQQ, and IWM	
Account Type	Contra Party	Maker	Taker
Public Customer	Public Customer	\$0.00	\$0.00
	Professional Customer/ Broker Dealer	\$0.00	\$0.10
	Market Maker	\$0.00	\$0.10
Professional Customer or Broker Dealer	Public Customer	\$0.50	\$0.50
	Professional Customer/ Broker Dealer	\$0.15	\$0.50
	Market Maker	\$0.15	\$0.50
Market Maker	Public Customer	\$0.00	\$0.50
	Professional Customer/ Broker Dealer	\$0.00	\$0.50
	Market Maker	\$0.00	\$0.50

For example, under the proposal, if a Public Customer submitted a QQQ order to the BOX Book (making liquidity), the Public Customer would not be charged a fee if the order interacted with a Market Maker's QQQ order and the Market Maker (taking liquidity) would be charged \$0.50.

Tiered Volume Rebate for Non-Auction Transactions

The Exchange also proposes to amend Section IV.A.1 of the Fee Schedule, Tiered Volume Rebate for Non-Auction Transactions. Specifically, the Exchange proposes to adopt separate rebates for QQQ and IWM transactions for Public Customers in Non-Auction Transactions. For Tier 1, where percentage thresholds of Public Customer volume is 0.000% - 0.249%, the Exchange proposes no rebates. For Tier 2, where percentage thresholds of Public Customer volume is 0.250% - 0.499%, the Exchange proposes to offer a \$0.05 rebate when

making liquidity or no rebate when taking liquidity. For Tier 3, where percentage thresholds of Public Customer volume is 0.500% - 0.749%, the Exchange proposes a \$0.10 rebate when making liquidity or no rebate when taking liquidity. For Tier 4, where percentage thresholds of Public Customer volume is 0.750% - 0.999%, the Exchange proposes a \$0.20 rebate when making liquidity or no rebate for taking liquidity. In Tier 5, where percentage thresholds of Public Customer volume is 1.000% and above, the Exchange proposes a \$0.27 rebate when making liquidity or \$0.11 rebate when taking liquidity. The proposed rebate structure will be as follows:

		Per Contract Rebate	
		<i>SPY, QQQ, and IWM</i>	
Tier	Percentage Thresholds of National Customer Volume in Multiply-Listed Options Classes (Monthly)	Maker	Taker
1	0.000% - 0.249%	\$0.00	\$0.00
2	0.250% - 0.499%	(\$0.05)	\$0.00
3	0.500% - 0.749%	(\$0.10)	\$0.00
4	0.750% - 0.999%	(\$0.20)	\$0.00
5	1.000% and Above	(\$0.27)	(\$0.11)

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,⁶ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX

⁶ 15 U.S.C. 78f(b)(4) and (5).

Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange's proposal to adopt separate fees for QQQ and IWM electronic Non-Auction Transactions is reasonable, equitable, and not unfairly discriminatory because pricing by symbol is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in the most actively traded options classes. The Exchange notes that the proposed fees are identical to the fees currently assessed for SPY transactions on BOX. The Exchange also notes that other exchanges assess separate fees and credits for QQQ and IWM transactions.⁷ Further, QQQ and IWM are two of the most actively traded options and therefore the Exchange believes that separate fees are appropriate to more effectively attract order flow to BOX.

Non-Auction Transactions

The Exchange believes the proposed electronic Non-Auction Transaction fees for Public Customer QQQ and IWM transactions are reasonable. Under the proposal, Public Customers will never pay a fee for their QQQ or IWM Non-Auction Transactions when making liquidity against Public Customer or Non-Public Customer QQQ or IWM orders. The Exchange notes that Public Customers are not currently assessed a fee for their QQQ or IWM Non-Auction Transactions when making liquidity against Public Customer or Non-Public Customer QQQ or IWM orders. The securities markets generally, and BOX in particular, have historically aimed to improve markets for investors and develop various features within the market structure for Public Customer benefit. The Exchange believes that assessing no fee will attract Public Customer order

⁷ See Cboe C2 Exchange, Inc. Fee Schedule and MIAX PEARL, LLC Fee Schedule and Nasdaq BX, Inc. Fee Schedule.

flow, which provides increased opportunities to interact with Public Customer order flow to the benefit of all Participants. Accordingly, the Exchange believes that charging no fee for Public Customers when making liquidity for their QQQ and IWM transactions is appropriate and not unfairly discriminatory.

Under the proposal, Public Customer taker fees for QQQ and IWM electronic Non-Auction Transactions when taking liquidity against Professional Customers, Broker Dealers, or Market Makers will be \$0.10, which is a fee increase from what is currently assessed. The Exchange believes the proposed electronic Non-Auction transaction fees for Public Customer QQQ and IWM transactions are reasonable as the proposed fees are lower than similar transaction fees assessed at other exchanges.⁸ The Exchange further believes that the proposed QQQ and IWM taker fee for electronic Non-Auction Public Customer transactions will not disincentivize Public Customer order flow because BOX's electronic Non-Auction Transactions fee structure is designed to attract competitive quotes and orders, which results in liquid markets that Public Customers may find attractive. The Exchange believes that Public Customers may be willing to pay a fee of \$0.10 to access such competitive markets.

The Exchange believes further that charging a fee of \$0.10 to Public Customers for QQQ and IWM electronic Non-Auction Transactions is equitable and not unfairly discriminatory. The Exchange notes that Professional Customer, Broker Dealer, and Market Maker taker fees for QQQ and IWM electronic Non-Auction Transactions when taking liquidity against any contra party are \$0.50 while Public Customers will be assessed \$0.10 when taking liquidity against Professional Customers, Broker Dealers, and Market Makers. The Exchange again notes that the

⁸ See e.g., Cboe C2 Exchange, Inc. Fee Schedule ("Transaction Fees" applicable to QQQ and IWM for Public Customer Remove rates of \$0.37); MIAX PEARL, LLC Fee Schedule ("Transaction Rebates/Fees" for Priority Customer QQQ and IWM Taker in Tier 1 of \$0.48).

securities markets generally, and BOX in particular, have historically aimed to improve markets for investors and develop various features within the market structure for Public Customer benefit. The Exchange believes that assessing lower fees for Public Customers compared to other account types will attract Public Customer order flow, which provides increased opportunities to interact with Public Customer order flow to the benefit of all Participants. Accordingly, the Exchange believes that charging a lower fee for Public Customers for their QQQ and IWM transactions compared to other account types on BOX is appropriate and not unfairly discriminatory.

The Exchange believes that charging Professional Customers and Broker Dealers higher fees than Public Customers for QQQ and IWM electronic Non-Auction Transactions is equitable and not unfairly discriminatory. Professional Customers, while Public Customers by virtue of not being Broker Dealers, generally engage in trading activity more similar to Broker Dealer proprietary trading accounts (submitting more than 390 standard orders per day on average). The Exchange believes that the higher level of trading activity from these Participants will draw a greater amount of BOX system resources than that of non-professional, Public Customers. Because this higher level of trading activity will result in greater ongoing operational costs, the Exchange aims to recover its costs by assessing Professional Customers and Broker Dealers higher fees for transactions. The Exchange again notes that Professional Customers and Broker Dealers are currently assessed the same fees for their QQQ and IWM transactions as QQQ and IWM are Penny Interval Classes.⁹

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to assess no maker fee for BOX Market Makers trading against a Public Customer, Professional

⁹ See BOX Fee Schedule, Section IV.A.

Customer, Broker Dealer, or Market Maker for QQQ and IWM electronic Non-Auction Transactions. The Exchange notes that under this proposal Market Makers making liquidity against a Public Customer for QQQ and IWM electronic Non-Auction Transactions will not be assessed a fee, which is a fee decrease from what is currently assessed. As a result of this change, Market Makers may tighten their spreads in QQQ and IWM and therefore will increase market quality in QQQ and IWM options. Specifically, Market Makers can provide higher volumes of liquidity and lowering certain fees will help attract a higher level of Market Maker order flow to the BOX Book and create liquidity. As such, the Exchange believes it is appropriate that Market Makers be charged lower transaction fees than Professional Customers and Broker Dealers for QQQ and IWM electronic Non-Auction Transactions.

Tiered Volume Rebate for Non-Auction Transactions

The Exchange believes that the proposed Public Customer QQQ and IWM rebates in the Tiered Volume Rebate for Non-Auction Transactions structure are reasonable, equitable, and not unfairly discriminatory. The proposed volume thresholds and applicable rebates for QQQ and IWM transactions are meant to incentivize Public Customers to post orders on BOX to obtain the benefit of the rebate, which will in turn benefit all market participants by increasing liquidity on BOX. The Exchange notes that the proposed QQQ and IWM rebates are identical to the rebates that are currently assessed to SPY transactions today.

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 believes the proposed change will not impose a burden on intramarket competition as BOX believes that the changes will result in the Participants being charged appropriately for their QQQ and IWM

transactions. Specifically, the change to eliminate Market Maker maker fees when contra to Public Customers is designed to incentivize order flow to BOX by incentivizing Market Makers to provide tighter spreads thus improving market quality to the benefit of all BOX Participants. Additionally, the Exchange believes that eliminating Public Customer credits when taking liquidity contra to a Professional Customer, Broker Dealer, or Market Maker and instead assessing a fee will not disincentivize the sending of such orders because BOX's electronic Non-Auction Transactions fee structure is designed to attract competitive quotes and orders, which results in liquid markets that Public Customers may find attractive. The Exchange notes further that submitting an order is entirely voluntary and Participants can determine which type of order they wish to submit, if any, to BOX. Further, the Exchange believes the proposed changes will not impose a burden on intermarket competition as another exchange currently assesses separate fees for QQQ and IWM transactions.¹⁰

The Exchange believes the addition of QQQ and IWM to the rebate structure for Public Customer electronic Non-Auction Transactions will not impose a burden on competition among various Exchange Participants. The Exchange believes that the proposed changes will result in Public Customers being rebated appropriately for their QQQ and IWM transactions. Further, the Exchange believes that this proposal will enhance competition between exchanges because it is designed to allow BOX to better compete with other exchanges for this order flow.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

¹⁰ See supra note 7.

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 Act¹¹ and Rule 19b-4(f)(2) thereunder,¹² 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

(<https://www.sec.gov/rules/sro.shtml>); or

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).

- Send an email to rule-comments@sec.gov. Please include file number SR-BOX-2024-05 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-2024-05. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright

protection. All submissions should refer to file number SR-BOX-2024-05 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Sherry R. Haywood,

Assistant Secretary.

¹³ 17 CFR 200.30-3(a)(12).