

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95961; File No. SR-BOX-2022-19)

September 30, 2022

Self-Regulatory Organizations; BOX Exchange LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to Amend Article 4 of the Exchange's Bylaws to Establish a Staggered Board

I. Introduction

On June 17, 2022, BOX Exchange LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Article 4 of the Exchange's Bylaws ("Bylaws") to establish a staggered board. The proposed rule change was published for comment in the Federal Register on July 6, 2022.³ On August 9, 2022, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On September 28, 2022, the Exchange filed Amendment No. 1 to the proposed rule change.⁶ The Commission

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 95174 (June 29, 2022), 87 FR 40321 ("Notice").

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 95446 (August 9, 2022), 87 FR 50142 (August 15, 2022). The Commission designated October 4, 2022, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁶ In Amendment No. 1, the Exchange clarified how the transition to a staggered board would be implemented. Because Amendment No. 1 does not materially alter the substance of the proposed rule change, Amendment No. 1 is not subject to notice and comment. Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-box->

received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change⁷

The Exchange proposes to amend its Bylaws to establish a staggered Board. Specifically, the Exchange proposes to amend Section 4.03 (“Term of Directors”) of the Bylaws to provide that Exchange Directors will be divided into three classes, designated Class I, Class II and Class III, which will be as nearly equal in number and classification as the total number of such Directors then serving on the Board permits. As proposed, each class of Directors will serve staggered three-year terms, with the term of office of one class expiring each year.⁸

In order to commence such staggered three-year terms, the Exchange proposes to amend Section 4.03 of the Bylaws to provide that Class I Directors will initially serve a one-year term; Class II Directors will initially serve a two-year term; and Class III Directors will initially serve a three-year term.⁹ Thereafter, all Directors shall serve staggered three-year

2022-19/srbox202219-20144374-309297.pdf (“Amendment No. 1”).

⁷ For a more complete description of the changes proposed, see Notice, supra note 3.

⁸ Currently, Directors serve one-year terms, and all Directors are nominated and begin serving each year at the annual meeting of Members. See Notice, supra note 3, at 40322 n.4.

⁹ According to the Exchange, the 2022 annual meeting of the Members of the Exchange has not yet occurred. If the proposed rule change is approved before the 2022 annual meeting of Members, Class I Directors, Class II Directors and Class III Directors would each be nominated and selected in 2022 and the initial term of Class I Directors would end at the 2023 annual meeting of Members, and a new slate of Class I Directors would be nominated and selected in 2023 in accordance with the Bylaws. See Amendment 1, supra note 6, at 2. In this circumstance, the term of Class II and Class III directors would end at the Members annual meeting in 2024 and 2025, respectively. See id. at 2 n.5.

terms, with the term of office of one class expiring each year.¹⁰

The Exchange further proposes to amend Section 4.03 of the Bylaws to provide that, in the case of any new Director as contemplated by Article IV, Section 4.02, such Director will be added to a class, as determined by the Board at the time of such Director's initial election or appointment, and will have an initial term expiring at the same time as the term of the class to which such Director has been added. In making such determinations, the Board will balance the categories of Directors (e.g., Non-Industry, Public, Participant, and Facility Directors) among the classes to the extent possible. Pursuant to Section 4.02 of the Bylaws, the total number of Directors is determined by the Board and must be between five and eleven directors. Therefore, the Exchange proposes this provision specify that if a new Director is added to the Board, the term of that Director will correspond to the class to which that Director is assigned at the time of election or appointment.¹¹ In addition, the Exchange proposes to amend Section 4.02 of the Bylaws to specify that no decrease in the number of Directors will have the effect of shortening the term of any incumbent Director.¹²

The Exchange also proposes to make certain conforming edits to other provisions of the Bylaws to clarify the responsibilities of the Board's Nominating Committee and to address Director vacancies that may arise. For example, the Exchange proposes to amend Section 4.06 ("Nominating Committee") of the Bylaws to specify that the Board's Nominating Committee will nominate individuals in advance of each annual meeting of the Members to

¹⁰ See Amendment 1, supra note 6 at 2.

¹¹ See Notice, supra note 3, at 40322.

¹² For example, the Exchange notes that it could not determine to reduce the size of the Board by eliminating the Director seat for a Director who had two years of his or her term remaining. See Notice, supra note 3, at 40322.

begin service as Directors “for the applicable class term then expiring (i.e., Class I, Class II or Class III)” at such annual meeting of the Members.¹³ The Exchange also proposes to amend Section 4.06(d) (“Selection of Directors”) of the Bylaws to provide that, prior to the first annual meeting of the Members following adoption of the amended Section 4.06(d), each Director position set forth in Section 4.02 shall be designated, as determined by the Board, to one of the three classes for nomination by the Nominating Committee to begin service at such annual meeting. Thereafter, prior to each annual meeting of the Members, the Nominating Committee will select nominees for each Director position “for the class with its term then expiring” to begin service as Directors.¹⁴ Finally, the Exchange proposes to amend Section 4.10 (“Vacancies”) to provide that a Director who is elected by the Board to fill a vacancy (e.g., as a result of the death, resignation, removal, or increase in the authorized number of Directors), will serve for the remainder of the applicable class term. For example, according to the Exchange, if a Director in Class II resigns, the Director elected to fill the vacancy would serve for the remainder of the term of Class II Directors.¹⁵

¹³ Similarly, the Exchange also proposes to amend the final sentence of Section 4.06 to specify that at each annual meeting of the Members, the individuals selected “for the applicable class term” pursuant to Section 4.06 of the Bylaws would begin serving as Directors. See Notice, supra note 3, at 40322 n.7.

¹⁴ The Exchange proposes to amend Section 4.06(d)(i) to include the same conforming edits to specify that the Nominating Committee will meet for the purposes of selecting proposed Director nominees “for the class then expiring” and that the Nominating Committee will provide the names of all proposed Director nominees “for the class then expiring” to the Exchange’s Secretary not later than sixty days prior to the date of the annual meeting of the Members. See Notice, supra note 3, at 40322 n.8.

¹⁵ With respect to a vacancy arising from an increase in the number of authorized Directors, pursuant to proposed Section 4.03 of the Bylaws, the Director filling such vacancy would be assigned to a class by the Board and would have an initial term expiring at the same time as the term of the class to which such Director has been added. See Notice, supra note 3, at 40322 n.9.

The Exchange notes that it is not proposing any change to the composition of the Board, such as the requirement that 20% of Directors must be a Participant Directors or that a majority of Directors must be Non-Industry Directors.¹⁶ Further, all nominations and elections of Directors under the proposed staggered Board structure must be consistent with the existing composition requirements in the Bylaws and Directors may continue to serve consecutive terms.¹⁷

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.¹⁸ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁹ 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 the proposed rule change, as amended, is consistent with Section 6(b)(3) of the Exchange Act,²⁰ which, among other things, requires that the rules of a national securities exchange ensure fair representation of its members in the selection of its directors and administration of its affairs.

¹⁶ See Notice, supra note 3, at 40323; Section 4.02 of the Bylaws.

¹⁷ See Notice, supra note 3, at 40323; Section 4.03 of the Bylaws.

¹⁸ 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).

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ 15 U.S.C. 78f(b)(3).

As discussed above, the Exchange proposes to amend its Bylaws to establish a staggered Board. The Commission believes that, by dividing Directors into three classes with only one class selected by the Nominating Committee each year to serve a three-year term, a staggered Board may improve the function of the Board by ensuring continuity and preserving institutional knowledge among its Directors. As the Exchange notes, retaining a majority of the incumbent Directors year-to-year may facilitate an orderly transition to new leadership. Moreover, according to the Exchange, the existing composition requirements related to Directors would remain the same under the proposed rule change and categories of Directors shall be balanced among the classes. Further, all Directors would be subject to the same requirements under the proposed rule change (i.e., all Directors, regardless of type, would be divided into one of three classes, each serving three-year terms). The Commission also notes that the proposed staggered Board structure is substantially similar to the staggered board structures of at least two exchanges²¹ and therefore poses no novel regulatory issues. Finally, the Commission believes that the proposed conforming changes to the Bylaws are consistent with the Act because they serve to clarify the responsibilities of the Board’s Nominating Committee and to address Director vacancies that may arise.

²¹ See Amended and Restated By-Laws of Miami International Securities Exchange LLC (“MIAX”), Section 2.3(b) and First Amended and Restated Bylaws of Long-Term Stock Exchange, Inc. (“LTSE”), Section 3.3(b). The bylaws of The Options Clearing Corporation (“OCC”), another self-regulatory organization, also provide for a similar staggered board consisting of three classes. See OCC By-Laws, Article III, Section 3.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²² that the proposed rule change (SR-BOX-2022-19), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

J. Matthew DeLesDernier,
Deputy Secretary.

²² 15 U.S.C. 78s(b)(2).

²³ 17 CFR 200.30-3(a)(12).