

SECURITIES AND EXCHANGE COMMISSION

Release No. [34-70070]; File No. SR-BOX-2013-037

July 30, 2013

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend BOX Rule 4170 (Options Communications)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 15, 2013, BOX Options Exchange LLC (“BOX” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BOX Rule 4170 (Options Communications) to conform the rule to changes recently made by the Financial Industry Regulatory Authority, Inc. (“FINRA”) to its corresponding rule.<sup>3</sup> 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>.

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

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

<sup>3</sup> See Exchange Act Release No. 68650 (Jan. 14, 2013), 78 FR 4182 (Jan. 18, 2013) (Notice of Immediate Effectiveness of SR-FINRA-2013-001).

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 proposed to update Exchange Rule 4170 (Options Communications) to conform the rule to changes recently made by FINRA to its corresponding rule.<sup>4</sup> This filing is also based on a proposal recently submitted by Chicago Board Options Exchange, Inc. (“CBOE”) and approved by the Commission.<sup>5</sup>

The proposed changes to BOX Rule 4170 (Options Communications) are designed to alert Participants to their requirements with respect to Options Communications while further regulating all communications for compliance with BOX Rules and the Act.

First, the proposed rule change would amend BOX Rule 4170(a) to reduce the number of defined categories of communication from six (in the current rule) to three. The proposed three categories of communications are: retail communications, correspondence, and

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<sup>4</sup> See Exchange Act Release No. 68650 (Jan. 14, 2013), 78 FR 4182 (Jan. 18, 2013) (Notice of Immediate Effectiveness of SR-FINRA-2013-001). The Exchange also proposes certain changes in Rule 4170 to conform with aspects of the FINRA rule that predated the recent FINRA amendment and were not changed by that amendment.

<sup>5</sup> See Exchange Act Release No. 69807 (June 20, 2013), 78 FR 38423 (June 26, 2013) (Order Approving of SR-CBOE-2013-043).

institutional communications. Current definitions of “sales literature,” “advertisement,” and “independently prepared reprint” are combined into a single category of “retail communications.” Thus, the Exchange proposes to define “retail communication” as “any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30-calendar-day period.” The Exchange also proposes to update the definition of “correspondence” to “any written (including electronic) communication distributed or made available by a Participant to 25 or fewer retail customers within any 30-calendar-day period.” Finally, the Exchange proposes to define, “institutional communication” to include written (including electronic) communications that are distributed or made available only to institutional investors.

Second, the Exchange proposes to amend Rule 4170(b), “Approval by Registered Options Principal” to replace the phrase “advertisements, sales literature, and independently prepared reprints” in Rule 4170(b)(i) with the new proposed term, “retail communications.”

Under proposed Rule 4170(b)(ii), correspondence would “need not be approved by a Registered Options Principal prior to use” but would be subject to the supervision and review requirements of BOX Rule 4030. The current rule requires principal approval of correspondence that is distributed to 25 or more existing retail customers within a 30-calendar-day period that makes any financial or investment recommendation or otherwise promotes the product or service of a Participant. Under proposed Rule 4170(b), such communications would be considered retail communications and therefore would be subject to the principal approval requirement. As such, the proposed change would not substantively change the scope of options communications that would require principal approval.

Third, the Exchange proposes to modify the required approvals of “Institutional communications” by adding that a Participant shall “establish written procedures that are appropriate to its business, size, structure, and customers for review by a Registered Options Principal of institutional communications used by the Participant.”

Fourth, the Exchange proposes to amend Rule 4170(c) to replace the phrase “advertisements, sales literature, and independently prepared reprints” with the new proposed term, “retail communications.” The Exchange also proposes to further exempt options disclosure documents and prospectuses from Exchange review as other requirements apply to these documents under the Securities Act of 1933 (the “Securities Act”).

Fifth, the Exchange proposes to specify in Rule 4170(d) that Order Flow Providers (“OFP”) or associated persons may not use any options communications that “constitute a prospectus” unless the communications meet the requirements of the Securities Act. Finally, the Exchange proposes to move and slightly modify Rule 4170(d) to state that any statement made referring to “potential opportunities or advantages presented by options” must also be accompanied by a statement identifying the potential risks posed.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>6</sup> in general, and Section 6(b)(5) of the Act,<sup>7</sup> in particular, in that it is designed 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 facilitating transactions

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5). Form 19b-4 as filed by BOX inadvertently referred to Section 6(b)(4). This change was approved per email by Lisa Fall of BOX, in an email from Kristen Tierney (BOX) to Alicia Goldin (SEC) on July 29, 2013 (“July 29 email”).

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.

In particular, the Exchange believes the proposed rule changes will help Participants that are also members of FINRA and/or CBOE to comply with their obligations regarding options communications by better aligning the Exchange's requirements with those of FINRA and CBOE.<sup>8</sup> In addition, the Exchange believes that the proposed rule change will help ensure that investors are protected from potentially false or misleading communications with the public distributed by Participants.

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. In this regard and as indicated above, the Exchange notes that the rule change being proposed is substantially similar to a filing submitted by the CBOE and recently approved by the Commission.<sup>9</sup> The Exchange believes that establishing uniform rules regarding Options Communications will enable Participants to more efficiently carry out their supervisory and other compliance obligations.<sup>10</sup>

Specifically, the proposed rule change will merely bring clarity and consistency to Exchange Rules. The Exchange does not believe the proposed rule change will impose any burden on any intra-market competition as it applies to all Participants. In addition, the

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<sup>8</sup> This statement was modified from the Form 19b-4 filed by BOX, per the July 29 email, supra note 7.

<sup>9</sup> See supra, note 5.

<sup>10</sup> This statement was modified from the Form 19b-4 filed by BOX, per the July 29 email, supra note 7.

Exchange does not believe the proposed rule filing will bring any unnecessary burden on inter-market competition as it is consistent with the FINRA “Options Communications” rule.<sup>11</sup>

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

BOX has filed the proposed rule change pursuant to Section 19(b)(3)(A)<sup>12</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>13</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>14</sup> normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii)<sup>15</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. BOX has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

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<sup>11</sup> See *supra*, note 3.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will ensure fair competition among the exchanges by allowing the Exchange to conform with changes recently made by FINRA. For these reasons, the Commission designates the proposed rule change to be operative upon filing.<sup>16</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BOX-2013-037 on the subject line.

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<sup>16</sup> For purposes of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

## Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BOX-2013-037. This file number should be included on the subject line if e-mail 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, on official business days between the hours of 10:00 a.m. and 3:00 p.m., located at 100 F Street, NE, Washington, DC 20549. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.



All submissions should refer to File Number SR-BOX-2013-037 and should be submitted on or before [date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

Kevin M. O'Neill  
Deputy Secretary

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