

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-90522; File No. SR-BOX-2020-37)

November 25, 2020

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Provisions of the Exchange's Second Amended and Restated Limited Liability Company Agreement

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on November 24, 2020, BOX Exchange LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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 provisions of its Second Amended and Restated Limited Liability Company Agreement. 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://boxoptions.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 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 these statements may be examined at the places

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

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

specified in Item IV below. The self-regulatory organization 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

**Changes to the Exchange LLC Agreement**

The Exchange is a Delaware limited liability company that, therefore, is governed by its charter in the form of a limited liability company agreement. Pursuant to the Exchange LLC Agreement, MXUS2 was designated as the party to interact with certain governmental taxing authorities on behalf of the Exchange. MXUS2 has notified the Exchange that it will no longer serve in this capacity.<sup>3</sup> The Exchange desires to substitute an officer of the Exchange to represent the Exchange when interacting with applicable taxing authorities. Accordingly, the Exchange proposes certain discrete amendments to the Exchange LLC Agreement that would replace MXUS2 with an officer of the Exchange for purposes of tax matters. In addition, the Exchange proposes to replace the defined term “Tax Matters Member” with “Tax Matters Representative” in order to accurately identify the new tax matters representative. These amendments to the Exchange LLC Agreement are proposed to become effective by the adoption of a written amendment in the form attached as Exhibit 5A.

The proposed amendment to the Exchange LLC Agreement would insert a new defined term “Tax Matters Representative” into Section 1.1 of the Exchange LLC Agreement to replace the now obsolete term “Tax Matters Member” to ease the reader’s access to the new term used in the document.

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<sup>3</sup> No other changes to the status of MXUS2 as a Member of the Exchange is being proposed at this time.

The proposed amendment to the Exchange LLC Agreement would delete the following language contained in Section 11.6 of the Exchange LLC Agreement, which currently designates MXUS2 as the tax matters member:

“11.6. Tax Matters Member. MXUS2 shall be the tax matters Member of the Exchange for purposes of the Code, and shall be entitled to take such actions on behalf of the Exchange in any and all proceedings with the Internal Revenue Service as it, in its absolute discretion, deems appropriate without regard to whether such actions result in a settlement of tax matters favorable to some Members and adverse to other Members. Notwithstanding the foregoing, MXUS2 shall (a) promptly deliver to the other Members copies of any notices, letters or other documents received by MXUS2 as the tax matters Member of the Exchange, (b) keep the other Members informed with respect to all matters involving MXUS2 as the tax matters Member of the Exchange, and (c) consult with the other Members and obtain the approval of the other Members prior to taking any actions as the tax matters Member of the Exchange. The tax matters Member shall not be entitled to be paid by the Exchange any fee for services rendered in connection with any tax proceeding, but shall be reimbursed by the Exchange for all third-party costs and expenses incurred by it in connection with any such proceeding and shall be indemnified by the Exchange with respect to any action brought against it in connection with the settlement of any such proceeding by applying, mutatis mutandis, the provisions of Article 13.”

The proposed amendment to the Exchange LLC Agreement would replace the deleted text above with the following, which designates an officer of the Exchange as its tax matters representative:

“11.6 Tax Matters Representative. The president of the Exchange, or another officer of the Exchange designated by its chief executive officer, shall be the tax matters representative of

the Exchange (the “Tax Matters Representative”) for purposes of the Code, and shall be entitled to take such actions on behalf of the Exchange in any and all proceedings with the Internal Revenue Service and any corresponding provision of state or local income tax law as such officer deems appropriate without regard to whether such actions result in a settlement of tax matters favorable to some Members and adverse to other Members. Notwithstanding the foregoing, the Exchange shall (a) promptly deliver to the Members copies of any notices, letters or other documents received by it as the Tax Matters Representative, (b) keep the Members informed with respect to all matters involving the Tax Matters Representative, and (c) consult with the Members and obtain the approval of the Members prior to taking any actions as the Tax Matters Representative. The Tax Matters Representative shall be reimbursed by the Exchange for all costs and expenses incurred by the Tax Matters Representative in connection with such role and shall be indemnified by the Exchange with respect to any action brought against the Tax Matters Representative in connection with the settlement of any proceeding by applying, mutatis mutandis, the provisions of Article 13.”

The Exchange notes, the proposal makes two substantive changes to the Exchange LLC Agreement. First, the proposed provision would provide that the president of the Exchange, or another officer of the Exchange (if designated by its chief executive officer), will be the tax matters representative of the Exchange in order to take action on behalf of the Exchange and represent the Exchange in all matters with the Internal Revenue Service or any other state or local tax officials. Second, the tax matters representative may be entitled to be paid by the Exchange a fee for services rendered in connection with representing the Exchange in any tax proceeding because officers of the Exchange are compensated for their services.

### **Changes to the Holdings LLC Agreement**

BOX Holdings is a Delaware limited liability company that, therefore, is governed by its charter in the form of a limited liability company agreement. Pursuant to the Holdings LLC Agreement, MXUS2 was designated as the party to interact with certain governmental taxing authorities on behalf of BOX Holdings. MXUS2 has notified BOX Holdings that it will no longer serve in this capacity.<sup>4</sup> BOX Holdings desires to substitute an officer of BOX Holdings to represent BOX Holdings when interacting with applicable taxing authorities. Accordingly, the Exchange proposes certain discrete amendments to the Holdings LLC Agreement that would replace MXUS2 with an officer of BOX Holdings for purposes of tax matters. In addition, the Exchange proposes to replace the defined term “Tax Matters Member” with “Tax Matters Representative” in order to accurately identify the new tax matters representative. These amendments are proposed to become effective by the adoption of a written amendment to the Holdings LLC Agreement in the form attached as Exhibit 5B.

The proposed amendment to the Holdings LLC Agreement would replace the term “Tax Matters Member” with a new term, “Tax Matters Representative” everywhere it appears in the Holdings LLC Agreement, which is two instances in Section 1.1 and one instance in Section 11.5. The first change in Section 1.1 is where the term appears as part of the defined term, “Depreciation;” the second is the current definitional cross reference for the term “Tax Matters Member” in Section 1.1 and the third is where the term appears in the discussion of tax elections in Section 11.5. The purpose of these changes is to adopt a new defined term and use it consistently throughout the document.

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<sup>4</sup> No other changes to the status of MXUS2 as a Member of BOX Holdings is being proposed at this time.

The proposed amendment to the Holdings LLC Agreement would delete the following language contained in Section 11.6 of the Holdings LLC Agreement, which currently designates MXUS2 as the tax matters member:

“11.6. Tax Matters Member. MXUS2 shall be the tax matters partner of BOX Holdings for purposes of the Code, and shall be entitled to take such actions on behalf of BOX Holdings in any and all proceedings with the Internal Revenue Service and any corresponding provision of state or local income tax law (the “Tax Matters Member”). Notwithstanding the foregoing, the Tax Matters Member shall (a) promptly deliver to the other Members copies of any notices, letters or other documents received by it as the Tax Matters Member, and (b) keep the other Members informed with respect to all matters involving it as the Tax Matters Member of BOX Holdings. Each Member shall have the right to participate in any tax audits, controversies and litigations involving BOX Holdings (“Tax Claims”) at its own expense. The Tax Matters Member shall not settle any material Tax Claim without the prior written consent of all Members that may be adversely affected by such settlement, which consent shall not be unreasonably conditioned, delayed or withheld. The Tax Matters Member shall not be entitled to be paid by BOX Holdings any fee for services rendered in connection with any tax proceeding, but shall be reimbursed by BOX Holdings for all third-party costs and expenses incurred by it in connection with any such proceeding and shall be indemnified by BOX Holdings with respect to any action brought against it in connection with the settlement of any such proceeding by applying, mutatis mutandis, the provisions of Article 13. If needed to have Subchapter C of Chapter 63 of the Code apply to BOX Holdings, the Tax Matters Member shall make an election on behalf of BOX Holdings pursuant to Code Section 6231(a)(1)(B)(ii).”

The proposed amendment to the Holdings LLC Agreement would replace the deleted text above with the following, which designates an officer of BOX Holdings as its tax matters representative:

“11.6 Tax Matters Representative. The president of BOX Holdings, or another officer of BOX Holdings designated by its senior executive officer, shall be the tax matters representative of BOX Holdings (the “Tax Matters Representative”) for purposes of the Code, and shall be entitled to take such actions on behalf of BOX Holdings in any and all proceedings with the Internal Revenue Service and any corresponding provision of state or local income tax law. Notwithstanding the foregoing, the Tax Matters Representative shall (a) promptly deliver to the Members copies of any notices, letters or other documents received by it as the Tax Matters Representative, and (b) keep the Members informed with respect to all matters involving it as the Tax Matters Representative. Each Member shall have the right to participate in any tax audits, controversies and litigations involving BOX Holdings (“Tax Claims”) at its own expense. The Tax Matters Representative shall not settle any material Tax Claim without the prior written consent of all Members that may be adversely affected by such settlement, which consent shall not be unreasonably conditioned, delayed or withheld. The Tax Matters Representative shall be reimbursed by BOX Holdings for all costs and expenses incurred by the Tax Matters Representative in connection with such role and shall be indemnified by the Exchange with respect to any action brought against the Tax Matters Representative in connection with the settlement of any proceeding by applying, mutatis mutandis, the provisions of Article 13. If needed to have Subchapter C of Chapter 63 of the Code apply to BOX Holdings, the Tax Matters Representative shall make an election on behalf of BOX Holdings pursuant to Code Section 6231(a)(1)(B)(ii).”

The Exchange notes, the proposal makes two substantive changes to the Holdings LLC Agreement. First, the Exchange notes the amended provision would provide that the president of BOX Holdings, or another officer of BOX Holdings (if designated by its senior executive officer), will be the tax matters representative of BOX Holdings in order to take action on behalf of BOX Holdings and represent BOX Holdings in all matters with the Internal Revenue Service or any other state or local tax officials. Second, the tax matters representative may be entitled to be paid by BOX Holdings a fee for services rendered in connection with representing BOX Holdings in any tax proceeding because officers of BOX Holdings are compensated for their services.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(1)<sup>5</sup> of the Act, in that it would enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. The proposed rule change would contribute to the orderly operation of the Exchange and would enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange participants and persons associated with its exchange participants, with the provisions of the Exchange Act, the rule and regulations thereunder, and the rules of the Exchange because it would allow the Exchange to designate an officer to deal with tax matters on its behalf. The Exchange believes that revising the defined terms used throughout the Exchange LLC Agreement and the Holdings LLC Agreement

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<sup>5</sup> 15 U.S.C. 78f(b)(1).



and making the terms internally consistent with the other proposed changes would promote readability and comprehension of the documents, making the language clear and concise.

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

The Exchange believes that the proposed rule change will impose no burden on competition because it is ministerial in nature and will not have any competitive impact. As described above, the Exchange is proposing certain discrete amendments to the Exchange LLC Agreement and the Holdings LLC Agreement that would (i) provide a replacement tax matters representative to replace MXUS2, which is withdrawing from service in this role, and (ii) consistently revise the defined terms in the Exchange LLC Agreement and the Holdings LLC Agreement to make them internally consistent. For these reasons, the Exchange believes that the proposed changes are consistent with the Exchange Act as there is no impact on competition.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.<sup>8</sup>

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)<sup>9</sup> of the Act to determine whether the proposed rule change 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-2020-37 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-2020-37. This file number should be

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii). Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 Commission notes that the Exchange satisfied this requirement.

<sup>9</sup> 15 U.S.C. 78s(b)(2)(B).

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, 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-BOX-2020-37 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).