

that sub-penny cabinet orders are already allowed on other exchanges and that waiver of the operative delay would permit the Exchange to compete for sub-penny cabinet order flow. As the proposal raises no novel issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.<sup>17</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 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BOX-2019-33 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-2019-33. 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 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-2019-33 and should be submitted on or before December 24, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Jill M. Peterson,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87632; File No. SR-BOX-2019-34]

### Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 7260 by Extending the Penny Pilot Program Through June 30, 2020

November 26, 2019.

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 19, 2019, BOX Exchange LLC (the "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 from interested persons.

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

The Exchange proposes to extend the effective time period of the Penny Pilot Program until June 30, 2020. 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 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 Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to extend the effective time period of the Penny Pilot Program that is currently scheduled to expire on December 31, 2019, until June 30, 2020.<sup>3</sup> The Penny Pilot Program permits certain classes to be quoted in

<sup>3</sup> The Penny Pilot Program has been in effect on the Exchange since its inception in May 2012. See Securities Exchange Act Release Nos. 66871 (April 27, 2012), 77 FR 26323 (May 3, 2012) (File No. 10-206, In the Matter of the Application of BOX Options Exchange LLC for Registration as a National Securities Exchange Findings, Opinion, and Order of the Commission), 67328 (June 29, 2012), 77 FR 40123 (July 6, 2012) (SR-BOX-2012-007), 68425 (December 13, 2012), 77 FR 75234 (December 19, 2013) (SR-BOX-2012-021), 69789 (June 18, 2013), 78 FR 37854 (June 24, 2013) (SR-BOX-2013-31), 71056 (December 12, 2013), 78 FR 76691 (December 18, 2013) (SR-BOX-2013-56), 72348 (June 9, 2014), 79 FR 33976 (June 13, 2014) (SR-BOX-2014-17), 73822 (December 11, 2014), 79 FR 75606 (December 18, 2014) (SR-BOX-2014-29), 75295 (June 25, 2015), 80 FR 37690 (July 1, 2015) (SR-BOX-2015-23), 78172 (June 28, 2016), 81 FR 43325 (July 1, 2016) (SR-BOX-2016-24), 79429 (November 30, 2016), 81 FR 87991 (December 6, 2016) (SR-BOX-2016-55), 80828 (May 31, 2017), 82 FR 26175 (June 6, 2017) (SR-BOX-2017-18), 82353 (December 19, 2017) 82 FR 61087 (December 26, 2017) (SR-BOX-2017-37), 83500 (June 22, 2018), 83 FR 30471 (June 28, 2018) (SR-BOX-2018-23), 84869 (December 19, 2018), 83 FR 66806 (December 27, 2018) (SR-BOX-2018-38), and 86053 (June 6, 2019), 84 FR 27388 (June 12, 2019) (SR-BOX-2019-20). The extension of the effective date is the only change to the Penny Pilot Program being proposed at this time.

<sup>17</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

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

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

penny increments. The minimum price variation for all classes included in the Penny Pilot program, except for PowerShares QQQ Trust ("QQQQ")<sup>6</sup>, SPDR S&P 500 Exchange Traded Funds ("SPY"), and iShares Russell 2000 Index Funds ("IWM"), will continue to be \$0.01 for all quotations in options series that are quoted at less than \$3 per contract and \$0.05 for all quotations in options series that are quoted at \$3 per contract or greater. QQQQ, SPY, and IWM will continue to be quoted in \$0.01 increments for all options series.

The Exchange may replace any Pilot Program classes that have been delisted on the second trading day in the first month of each quarter. The Exchange notes that the replacement classes will be selected based on trading activity in the previous six months. The Exchange will employ the same parameters to prospective replacement classes as approved and applicable under the Pilot Program, including excluding high-priced underlying securities. The Exchange will distribute a Regulatory Circular notifying Participants which replacement classes shall be included in the Penny Pilot Program.

BOX is specifically authorized to act jointly with the other options exchanges participating in the Pilot Program in identifying any replacement class.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>4</sup> in general, and Section 6(b)(5) of the Act,<sup>5</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 in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest.

In particular, the proposed rule change, which extends the Penny Pilot until June 30, 2020, will enable public customers and other market participants to express their true prices to buy and sell options for the benefit of all market participants. This is consistent with the Act.

### 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. To the contrary, this proposal is pro-competitive because it allows Penny Pilot issues to continue trading on the Exchange. Moreover, the Exchange believes that the proposed rule change will allow for further analysis of the Pilot and a determination of how the Pilot should be structured in the future; and will serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Pilot is an industry wide initiative supported by all other option exchanges. The Exchange believes that extending the Pilot will allow for continued competition between market participants on the Exchange trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot.

As such, 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.

### 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) of the Act<sup>6</sup> and Rule 19b-4(f)(6)<sup>7</sup> thereunder. Because the foregoing 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 after the date of the filing, 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 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6)<sup>9</sup> thereunder.

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

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

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) 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

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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BOX-2019-34 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-2019-34. 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, 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

Commission. The Exchange has satisfied this requirement.

<sup>4</sup> 15 U.S.C. 78f(b).

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

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–2019–34 and should be submitted on or before December 24, 2019.

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

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87634; File No. SR–CboeEDGA–2019–015]

### Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Introduce a Small Retail Broker Distribution Program

November 26, 2019.

#### I. Introduction

On October 1, 2019, Cboe EDGA Exchange, Inc. (the “Exchange” or “EDGA”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to amend the EDGA fee schedule to introduce a Small Retail Broker Distribution Program (the “Program”). The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on October 17, 2019.<sup>4</sup> The Commission received no comment letters regarding the proposed rule change. Under Section 19(b)(3)(C) of the Act,<sup>5</sup> the Commission is hereby: (i) Temporarily suspending the proposed rule change; and (ii) instituting proceedings to

determine whether to approve or disapprove the proposed rule change.

#### II. Description of the Proposed Rule Change

The Exchange proposes to amend its fee schedule to introduce a pricing program that would allow certain Distributors<sup>6</sup> to purchase the Cboe One Summary Feed<sup>7</sup> from the Exchange at discounted fees. Currently, the Exchange charges \$5,000 per month for external distribution of Cboe One Summary Feed, and a Data Consolidation Fee of \$1,000 per month. The Exchange also charges a fee \$10 per month for each Professional User and \$0.25 for each Non-Professional User.<sup>8</sup>

Under the Exchange’s proposal, Distributors that qualify for the Program would be charged a discounted fee of \$3,500 per month for the distribution of Cboe One Summary Feed. Distributors that qualify for the Program would also be charged a discounted Data Consolidation Fee of \$350 for Cboe One Summary Feed. The Exchange would continue to charge the current Professional and Non-Professional User fees for Cboe One Summary Feed.

In order to qualify for the Program, a Distributor must meet the following criteria: (i) Distributor is a broker-dealer distributing Cboe One Summary Feed Data to Non-Professional Data Users with whom the broker-dealer has a

brokerage relationship; (ii) more than 50% of the Distributor’s total subscriber population must consist of Non-Professional subscribers, inclusive of any subscribers not receiving Cboe One Summary Feed; and (iii) Distributor distributes Cboe One Summary Feed to no more than 5,000 Non-Professional Data Users.

#### III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,<sup>9</sup> at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act,<sup>10</sup> the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (“SRO”) 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. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change’s consistency with the Act and the rules thereunder.

A fee change to introduce the Program was originally filed on August 1, 2019. That proposal, CboeEDGA–2019–013, was published for comment in the **Federal Register** on August 20, 2019.<sup>11</sup> The Commission received no comment letters regarding the proposed rule change. On September 30, 2019, the Division of Trading and Markets (the “Division”), acting on behalf of the Commission by delegated authority, issued an order temporarily suspending CboeEDGA–2019–013 pursuant to Section 19(b)(3)(C) of the Act<sup>12</sup> and simultaneously instituting proceedings under Section 19(b)(2)(B) of the Act<sup>13</sup> to determine whether to approve or disapprove that proposal.<sup>14</sup>

The Exchange continues to assert that the proposed fees for the Program “are reasonable as they represent a significant cost reduction for smaller, primarily regional, retail brokers that provide top of book data from EDGA and its affiliated exchanges to their retail investor clients.”<sup>15</sup> The Exchange also asserts that the “proposed fees are equitable and not unfairly discriminatory as the proposed fee

<sup>6</sup> A Distributor of an Exchange market data product is any entity that receives the Exchange market data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party. See EDGA Fee Schedule.

<sup>7</sup> Cboe One Summary Feed is a data feed that offers top of book quotations and execution information based on equity orders submitted to the Exchange and its affiliated equities exchanges, i.e., Cboe EDGX Exchange, Inc., Cboe BZX Exchange, Inc., and Cboe BYX Exchange, Inc. See Notice, *supra* note 4, 84 FR at 55638.

<sup>8</sup> A “Professional User” of an Exchange market data product is any user other than a Non-Professional User. See EDGA Fee Schedule. A “Non-Professional User” of an Exchange market data product is a natural person or qualifying trust that uses data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) Registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an “investment adviser” as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States. *Id.*

<sup>9</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>10</sup> 15 U.S.C. 78s(b)(1).

<sup>11</sup> See Securities Exchange Act Release No. 86678 (August 14, 2019), 84 FR 43218.

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

<sup>13</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>14</sup> See Securities Exchange Act Release No. 87163 (September 30, 2019), 84 FR 53203.

<sup>15</sup> See Notice, *supra* note 4, 84 FR at 55641.

<sup>10</sup> 17 CFR 200.30–3(a)(12).

<sup>11</sup> 15 U.S.C. 78s(b)(1).

<sup>12</sup> 17 CFR 240.19b–4.

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> See Securities Exchange Act Release No. 87294 (October 11, 2019), 84 FR 55638 (“Notice”).

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