

Investment Transaction for all purposes and subject to the other conditions set forth in the application.

9. The Non-Interested Directors of each Regulated Fund will be provided quarterly for review all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Funds or Affiliated Funds that the Regulated Fund considered but declined to participate in, so that the Non-Interested Directors may determine whether all investments made during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the conditions of the Order. In addition, the Non-Interested Directors will consider at least annually the continued appropriateness for the Regulated Fund of participating in new and existing Co-Investment Transactions.

10. Each Regulated Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these conditions were approved by the Required Majority under section 57(f) of the Act.

11. No Non-Interested Director of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise an "affiliated person" (as defined in the Act) of an Affiliated Fund.

12. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Advisers under their respective investment advisory agreements with Affiliated Funds and the Regulated Funds, be shared by the Regulated Funds and the Affiliated Funds in proportion to the relative amounts of the securities held or to be acquired or disposed of, as the case may be.

13. Any transaction fee<sup>12</sup> (including break-up or commitment fees but excluding broker's fees contemplated by section 17(e) or 57(k) of the Act, as applicable), received in connection with a Co-Investment Transaction will be distributed to the participating Regulated Funds and Affiliated Funds on a pro rata basis based on the amounts they invested or committed, as the case

may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by such Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1) of the Act, and the account will earn a competitive rate of interest that will also be divided pro rata among the participating Regulated Funds and Affiliated Funds based on the amounts they invest in such Co-Investment Transaction. None of the Affiliated Funds, the Advisers, the other Regulated Funds or any affiliated person of the Regulated Funds or Affiliated Funds will receive additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction (other than (a) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in condition 2(c)(iii)(C); and (b) in the case of an Adviser, investment advisory fees paid in accordance with the agreement between the Adviser and the Regulated Fund or Affiliated Fund).

14. If the Holders own in the aggregate more than 25% of the Shares of a Regulated Fund, then the Holders will vote such Shares as directed by an independent third party when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable State law affecting the Board's composition, size or manner of election.

For the Commission, by the Division of Investment Management, under delegated authority.

**Robert W. Errett,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79038; File No. SR-BOX-2016-47]

### Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule To Adopt Participant Fees on the BOX Market LLC ("BOX") Options Facility

October 4, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

"Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 28, 2016, BOX Options Exchange LLC (the "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,<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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 to adopt Participant Fees on the BOX Market LLC ("BOX") options facility. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on October 1, 2016. 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 Web site at <http://boxexchange.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 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 the Fee Schedule for trading on BOX to establish two Participant Fees; a

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

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

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

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

<sup>12</sup> Applicants are not requesting and the staff is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

monthly Participant Fee and a one-time Initiation Fee applicable to all BOX Participants.

First, the Exchange proposes to adopt a Participant Fee of \$1,500 per month, applicable to all BOX Participants. Currently, the Exchange does not assess BOX Participants a fee to access its options market. The Exchange believes the Participant Fee is competitive with fees at other option exchanges.<sup>5</sup>

Next, the Exchange proposes to adopt a one-time Initiation Fee of \$2,500 which will be assessed to all new BOX Participants upon their initial connection to the options market, so the Exchange can recoup some of the costs associated with processing and preparing technology in order for the new BOX Participant to be able to trade on BOX. The Exchange's proposed one-time Initiation Fee is similar to and generally lower than one time application fees in place at other options exchanges.<sup>6</sup>

## 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,<sup>7</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange's proposal to adopt a BOX Options Participant Fee of \$1,500 per month is reasonable because the Exchange is seeking to recoup costs related to membership administration.

<sup>5</sup> See The Chicago Board Options Exchange, Incorporated's Fees Schedule. Per month a Market Maker Trading Permit is \$5,500, an SPX Tier Appointment is \$3,000, a VIX Tier Appointment is \$2,000, and an Electronic Access Permit is \$1,600. See also the International Securities Exchange LLC's Schedule of Fees. Per month an Electronic Access Member is assessed \$500.00 for membership and a market maker is assessed from \$2,000 to \$4,000 per membership depending on the type of market maker. See also C2 Options Exchange, Incorporated's Fees Schedule. Per month, a market-maker is assessed a \$5,000 permit fee, an Electronic Access Permit is assessed a \$1,000 permit fee. See also NYSE Arca, Inc.'s Fee Schedule. Per month, a Clearing Firm is assessed a \$1,000 per month fee for the first Options Trading Permit ("OTP") and \$250 thereafter, and a market maker is assessed a permit based on the maximum number of OTPs held by an OTP Firm or OTP Holder during a calendar month ranging from \$1,000 to \$6,000 a month.

<sup>6</sup> The Chicago Board Options Exchange, Incorporated ("CBOE") charges \$3,000 for an individual applicant and \$5,000 for an applicant organization and at the International Securities Exchange, LLC ("ISE") charges \$7,500 for a Primary Market Maker, \$5,500 for a Competitive Market Maker and \$3,500 for an Electronic Access Member.

<sup>7</sup> 15 U.S.C. 78f(b)(4) and (5).

The proposed fee is competitive with similar fees at other options exchanges.<sup>8</sup> Lastly, the Exchange believes the Participant Fee of \$1,500 is equitable and not unfairly discriminatory because the Participant Fee will be assessed uniformly to each BOX Participant, regardless of Participant type.

The Exchange also believes that its one-time Initiation Fee of \$2,500 is reasonable, equitable and not unfairly discriminatory. As described above, the one-time Initiation Fee is comparable to other similar fees in place at other options exchanges and is designed to cover costs associated with processing and preparing technology in order for a Participant to begin trading on BOX. The Exchange believes that the Initiation Fee is equitable and not unfairly discriminatory, as it will be assessed uniformly to each new BOX Options Participant, regardless of Participant type.

## 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 terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In terms of intra-market competition, the Exchange's proposal to adopt a BOX Options Participant Fee of \$1,500 per month and a one-time Initiation Fee of \$2,500 does not impose an undue burden on competition because the Exchange would uniformly assess the same Participant Fees to each BOX Options Participant. If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose Participants.

<sup>8</sup> See *supra* note 5.

Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

## 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 Act<sup>9</sup> and Rule 19b-4(f)(2) thereunder,<sup>10</sup> 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 (<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-2016-47 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-2016-47. 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

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

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

post all comments on the Commission's Internet Web site (<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 Web site 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 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-2016-47, and should be submitted on or before November 1, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79036; File No. SR-IEX-2016-16]

### Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Rules To Implement the Quoting and Trading Provisions of the Tick Size Pilot Program and To Describe Related Changes to IEX System Functionality

October 4, 2016.

Pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 (the "Act") <sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on October 3, 2016, the Investors Exchange LLC ("IEX" 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 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

IEX is filing with the Commission a proposed rule change to adopt rules under IEX Rule 11.340 to implement the quoting and trading provisions of the Regulation NMS Plan to Implement a Tick Size Pilot Program submitted to the Commission pursuant to Rule 608 of Regulation NMS <sup>4</sup> under the Act (the "Plan"),<sup>5</sup> and to describe changes to IEX system functionality necessary to implement the Plan. The proposed rule change is substantially similar to proposed rule changes published by the Commission for the NASDAQ Stock Market LLC ("Nasdaq") to adopt NASDAQ Rule 4770, which also implemented the quoting and trading provisions of the Plan.<sup>6</sup> Accordingly, the Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act <sup>7</sup> and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.<sup>8</sup>

The text of the proposed rule change is available at the Exchange's Web site at [www.iextrading.com](http://www.iextrading.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### 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.

<sup>4</sup> 17 CFR 242.608.

<sup>5</sup> See Securities and Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (File No. 4-657) ("Tick Plan Approval Order"). See also Securities and Exchange Act Release No. 76382 (November 6, 2015) (File No. 4-657), 80 FR 70284 (File No. 4-657) (November 13, 2015), which extended the pilot period commencement date from May 6, 2015 to October 3, 2016.

<sup>6</sup> See Securities and Exchange Act Release No. 78251 (July 7, 2016); 81 FR 45315 (July 13, 2016).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(a).

<sup>8</sup> 17 CFR 240.19b-4(f)(6)(iii).

#### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to establish rules to require its members to comply with the requirements of the Plan, which is designed to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small capitalization companies. The Exchange proposes changes to its rules for a two-year pilot period that coincides with the Pilot Period for the Plan, which is currently scheduled as a two-year pilot to begin on October 3, 2016.

##### Background

On August 25, 2014, NYSE Group, Inc., on behalf of BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc. ("FINRA"), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC ("NYSE"), NYSE MKT LLC, and NYSE Arca, Inc. (collectively "Participants"), filed with the Commission, pursuant to Section 11A of the Act <sup>9</sup> and Rule 608 of Regulation NMS thereunder, the Plan to Implement a Tick Size Pilot Program ("Pilot").<sup>10</sup> The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014 (the "June 2014 Order").<sup>11</sup> The Plan <sup>12</sup> was published for comment in the **Federal Register** on November 7, 2014,<sup>13</sup> and approved by the Commission, as modified, on May 6, 2015.<sup>14</sup> An amendment to the Plan adding IEX as a Participant became effective on August 5, 2016.<sup>15</sup>

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the

<sup>9</sup> 15 U.S.C. 78k-1.

<sup>10</sup> See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

<sup>11</sup> See Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

<sup>12</sup> Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

<sup>13</sup> See Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

<sup>14</sup> See Tick Plan Approval Order, *supra* note 5. See also Securities Exchange Act Release No. 77277 (March 3, 2016), 81 FR 12162 (March 8, 2016) (File No. 4-657), which amended the Plan to add National Stock Exchange, Inc. as a Participant.

<sup>15</sup> See Securities Exchange Act Release No. 78703 (August 26, 2016; 81 FR 60397 (September 1, 2016) (File No. 4-631).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>12</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.