

Priorities Act of 1976, 42 U.S.C. 6601, Public Law 94–282.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86145; File No. SR–BOX–2019–21]

### Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules Regarding the Give-Up and Clearance of Exchange Transactions

June 19, 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 June 5, 2019, BOX 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 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 amend BOX Rule 7190 (Clearing Participant Give-Up), and BOX Rule 7200 (Submission for Clearance), in order to codify that for each transaction in which an Options Participant<sup>3</sup> participates, the Options Participant may indicate, at the time of the trade or through post trade allocation, any OCC number of a Clearing Participant<sup>4</sup> through which the transaction will be cleared (“Give Up”), and to establish a new “Opt In” process by which a Clearing Participant can restrict one or more of its OCC numbers and thereafter designate certain Options Participants as authorized to Give Up a restricted clearing number. 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend its requirements in BOX Rule 7190 and Rule 7200, related to the give up of a Clearing Participant by an Options Participant on Exchange transactions. This proposed rule change is submitted in order to follow an industry-wide initiative and align the Exchange with other exchanges in the industry. The proposed rule change is based on several recently-approved rule changes submitted by other options exchanges.<sup>5</sup>

By way of background, to enter transactions on the Exchange, an Options Participant must either be a Clearing Participant or must have a Clearing Participant agree to accept financial responsibility for all of its transactions. Additionally, Rule 7190 currently provides that when an Options Participant executes a transaction on the Exchange, it must give up the name of a Clearing Participant (the “Give Up”) through which the transaction will be cleared (*i.e.* “give up”).

Recently, certain Clearing Participants, in conjunction with the Securities Industry and Financial Markets Association (“SIFMA”), expressed concerns related to the process by which executing brokers on U.S. options exchanges (“Exchanges”) are allowed to designate or ‘give up’ a clearing firm for the purposes of clearing particular transactions. The SIFMA-affiliated Clearing Participants have recently identified the current give up process as a significant source of risk for clearing firms, and subsequently requested that the Exchanges alleviate this risk by amending exchange rules governing the give up process.<sup>6</sup>

##### Proposed Rule Change

Based on the above, the Exchange now seeks to amend its rules regarding the current give up process in order to allow a Clearing Participant to opt in, at the Options Clearing Corporation (“OCC”) clearing number level, to a feature that, if enabled by the Clearing Participant, will allow the Clearing Participant to specify which Options Participants are authorized to give up that OCC clearing number. As proposed, Rule 7190 will be amended to provide that for each transaction in which an Options Participant participates, the Options Participant may indicate, at the time of the trade or through post trade allocation, any OCC number of a Clearing Participant through which the transaction will be cleared (“Give Up”), provided the Clearing Participant has not elected to “Opt In”, as defined in paragraph (b) of the proposed Rule, and restrict one or more of its OCC number(s) (“Restricted OCC Number”). An Options Participant may Give Up a Restricted OCC Number provided the Options Participant has written authorization as described in proposed paragraph (b)(2) (“Authorized Participant”). The Exchange believes that this proposal would result in the fair and reasonable use of resources by both the Exchange and the Options Participant. In addition, the proposed change would align the Exchange with competing options exchanges that have proposed rules consistent with this proposal.<sup>7</sup>

Proposed Rule 7190 provides that Clearing Participants may request the Exchange restrict one or more of their OCC clearing numbers (“Opt In”) as described in subparagraph (b)(1) of proposed Rule 7190. If a Clearing Participant Opts In, the Exchange will require written authorization from the Clearing Participant permitting an

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> The term “Options Participant” means a firm, or organization that is registered with the Exchange pursuant to the Rule 2000 Series for purposes of participating in trading on a facility of the Exchange. See Exchange Rule 100(41).

<sup>4</sup> The term “Clearing Participant” means an Options Participant that is self-clearing or an Options Participant that clears BOX Transactions for other Options Participants of BOX. See Exchange Rule 100(13).

<sup>5</sup> See Securities Exchange Act Release No. 34–85883 (May 17, 2019) (Order Approving SR–ISE–2019–14); See also Securities Exchange Act Release No. 34–84981 (February 14, 2019) (Order Approving SR–Phlx–2018–72), Securities Exchange Act Release No. 34–85871 (May 16, 2019) (Order Approving SR–NYSEArca–2019–32), Securities Exchange Act Release No. 34–85392 (March 21, 2019) (Order Approving SR–MIAX–2019–05), Securities Exchange Act Release No. 34–85397 (March 22, 2019) (Order Approving SR–PEARL–2019–04), Securities Exchange Act Release No. 34–85875 (May 16, 2019) (Order Approving SR–NYSEAMER–2019–17).

<sup>6</sup> See *id.*

<sup>7</sup> See *supra*, note 5.

Options Participant to Give Up a Clearing Participant's Restricted OCC Number. An Opt In would remain in effect until the Clearing Participant terminates the Opt In as described in subparagraph (3). If a Clearing Participant does not Opt In, that Clearing Participant's OCC number may be subject to Give Up by any Options Participant.

Proposed Rule 7190(b)(1) will set forth the process by which a Clearing Participant may Opt In. Specifically, a Clearing Participant may Opt In by sending a completed "Clearing Participant Restriction Form" listing all Restricted OCC Numbers and Authorized Participants.<sup>8</sup> A copy of the proposed form is attached in Exhibit 3. A Clearing Participant may elect to restrict one or more OCC clearing numbers that are registered in its name at OCC. The Clearing Participant would be required to submit the Clearing Participant Restriction Form to the Exchange's Membership Department as described on the form. Once submitted, the Exchange requires ninety days before a Restricted OCC Number is effective within the Trading Host. This time period is to provide adequate time for the Options Participant users of that Restricted OCC Number who are not initially specified by the Clearing Participant as Authorized Participants to obtain the required authorization from the Clearing Participant for that Restricted OCC Number. Such Options Participant users would still be able to Give Up that Restricted OCC Number during the ninety day period (*i.e.*, until the number becomes restricted within the Trading Host).

Proposed Rule 7190(b)(2) will set forth the process for Options Participants to Give Up a Clearing Participant's Restricted OCC Number. Specifically, an Options Participant desiring to Give Up a Restricted OCC Number must become an Authorized Participant.<sup>9</sup> The Clearing Participant will be required to authorize an Options Participant as described in subparagraph (1) or (3) of Rule 7190(b) (*i.e.*, through a Clearing Participant

Restriction Form), unless the Restricted OCC Number is already subject to a Letter of Guarantee that the Options Participant is a party to, as set forth in Rule 7190(d).

Pursuant to proposed Rule 7190(b)(3), a Clearing Participant may amend the list of its Authorized Participants or Restricted OCC Numbers by submitting a new Clearing Participant Restriction Form to the Exchange's Membership Department indicating the amendment as described on the form. Once a Restricted OCC Number is effective within the Trading Host pursuant to Rule 7190(b)(1), the Exchange may permit the Clearing Participant to authorize, or remove from authorization for, an Options Participant to Give Up the Restricted OCC Number intra-day only in unusual circumstances, and on the next business day in all regular circumstances. The Exchange will promptly notify the Options Participant if they are no longer authorized to Give Up a Clearing Participant's Restricted OCC Number. If a Clearing Participant removes a Restricted OCC Number, any Options Participant may Give Up that OCC clearing number once the removal has become effective on or before the next business day.

Proposed Rule 7190(c) will provide that the Trading Host will not allow an unauthorized Options Participant to Give Up a Restricted OCC Number. Specifically, if an unauthorized Give Up with a Restricted OCC Number is submitted to the System, the System will process that transaction using the Options Participant's default OCC clearing number.

Furthermore, the Exchange proposes to adopt paragraph (d) to Rule 7190 to provide, as is the case today, that a clearing arrangement subject to a Letter of Guarantee would immediately permit the Give Up of a Restricted OCC Number by the Options Participant that is party to the arrangement. Since there is an OCC clearing arrangement already established in this case, no further action is needed on the part of the Clearing Participant or the Options Participant.

The Exchange also proposes to adopt paragraph (e) to Rule 7190 to provide that an intentional misuse of this Rule is impermissible, and may be treated as a violation of Rule 3000, titled "Just and Equitable Principles of Trade." This language will make clear that the Exchange will regulate an intentional misuse of this Rule (*e.g.*, sending orders to a Clearing Participant's OCC account without the Clearing Participant's consent), and such behavior would be a violation of Exchange rules.

Furthermore, the Exchange proposes to adopt paragraph (f) to Rule 7190 to codify that notwithstanding anything to the contrary in the proposed rule, if a Clearing Participant that an Options Participant has indicated as the Give Up rejects a trade, the Clearing Participant that has issued a Letter of Guarantee pursuant to Rule 7200(b), for such executing Options Participant, shall be responsible for the clearance of the subject trade.

Finally, the Exchange proposes to amend Rule 7200(b), which addresses the financial responsibility of Exchange options transactions clearing through Clearing Participants, to clarify that this Rule will apply to all Clearing Participants, regardless of whether or not they elect to Opt In, pursuant to proposed Rule 7190. Specifically, the Exchange proposes to add that Rule 7200(b) will apply to all Clearing Participants who either (i) have Restricted OCC Numbers with Authorized Participants pursuant to Rule 7190, or (ii) have non-Restricted OCC Numbers.

## Implementation

The Exchange proposes to implement the proposed rule change no later than by the end of Q3 2019. The Exchange will announce the implementation date to BOX Participants in a Regulatory Circular.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>10</sup> in general, and Section 6(b)(5) of the Act,<sup>11</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, 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, as discussed above, several clearing firms affiliated with SIFMA have recently expressed concerns relating to the current give up process, which permits Options Participants to identify any Clearing Participants as a designated give up for purposes of clearing particular transactions, and have identified the current give up process (*i.e.*, a process that lacks authorization)

<sup>8</sup> This form will be available on the Exchange's website. The Exchange will also maintain, on its website, a list of the Restricted OCC Numbers, which will be updated on a regular basis, and the Clearing Participant's contact information to assist Options Participants (to the extent they are not already Authorized Participants) with requesting authorization for a Restricted OCC Number. The Exchange may utilize additional means to inform its Options Participants of such updates on a periodic basis.

<sup>9</sup> The Exchange will develop procedures for notifying Options Participants that they are authorized or unauthorized by Clearing Participants.

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

<sup>11</sup> 15 U.S.C. 78f(b)(5).

as a significant source of risk for clearing firms.

The Exchange believes that the proposed changes to Rule 7190 help alleviate this risk by enabling Clearing Participants to 'Opt In' to restrict one or more of its OCC clearing numbers (*i.e.*, Restricted OCC Numbers), and to specify which Authorized Participant may Give Up those Restricted OCC Numbers. As described above, all other Options Participants would be required to receive written authorization from the Clearing Participant before they can Give Up that Clearing Participant's Restricted OCC Number. The Exchange believes that this authorization provides proper safeguards and protections for Clearing Participants as it provides controls for Clearing Participants to restrict access to their OCC clearing numbers, allowing access only to those Authorized Participants upon their request. The Exchange also believes that its proposed Clearing Participant Restriction Form allows the Exchange to receive in a uniform fashion, written and transparent authorization from Clearing Participants, which ensures seamless administration of the Rule.

The Exchange believes that the proposed Opt In process strikes the right balance between the various views and interests across the industry. For example, although the proposed rule would require Options Participants (other than Authorized Participants) to seek authorization from Clearing Participants in order to have the ability to give them up, each Options Participant will still have the ability to Give Up a Restricted OCC Number that is subject to a Letter of Guarantee without obtaining any further authorization if that Options Participant is party to that arrangement. The Exchange also notes that to the extent that the executing Options Participant has a clearing arrangement with a Clearing Participant (*i.e.*, through a Letter of Guarantee), a trade can be assigned to the executing Options Participant guarantor.<sup>12</sup> Accordingly, the Exchange believes that the proposed rule change is reasonable and continues to provide certainty that a Clearing Participant would be responsible for a trade, which protects investors and the public interest. Additionally, the Exchange believes that adopting paragraph (e) of Rule 7190 will make clear that an intentional misuse of this Rule (*e.g.*, sending orders to a Clearing Participant's OCC account without the

Clearing Participant's consent) will be a violation of the Exchange's rules, and that such behavior would subject an Options Participant to disciplinary action. For these reasons, the Exchange believes that its proposed changes to Rule 7190 and Rule 7200, is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act 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, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, by codifying that for each transaction in which an Options Participant participates, the Options Participant may indicate any OCC number of a Clearing Participant through which the transaction will be cleared, provided the Clearing Participant has not elected to Opt In.

#### *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 is being proposed to align the Exchange with other options exchanges.<sup>13</sup> The Exchange does not believe that the proposed rule change will impose an unnecessary burden on intra-market competition because it will apply equally to all similarly situated Options Participants. The Exchange also notes that, should the proposed changes make BOX more attractive for trading, market participants trading on other exchanges can always elect to become Options Participants on BOX to take advantage of the trading opportunities.

Furthermore, the proposed rule change does not address any competitive issues and ultimately, the target of the Exchange's proposal is to reduce risk for Clearing Participants under the current give up model. Clearing firms make financial decisions based on risk and reward, and while it is generally in their beneficial interest to clear transactions for market participants in order to generate profit, it is the Exchange's understanding from SIFMA and clearing firms that the current process can create significant risk when the clearing firm can be given

up on any market participant's transaction, even where there is no prior customer relationship or authorization for that designated transaction.

In the absence of a mechanism that governs a market participant's use of a Clearing Participant's services, the Exchange's proposal may indirectly facilitate the ability of a Clearing Participant to manage their existing relationships while continuing to allow market participant choice in broker execution services. While Clearing Participants may compete with executing brokers for order flow, the Exchange does not believe this proposal imposes an undue burden on competition. Rather, the Exchange believes that the proposed rule change balances the need for Clearing Participants to manage risks and allows them to address outlier behavior from executing brokers while still allowing freedom of choice to select an executing broker.

#### *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**

Pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6)<sup>15</sup> thereunder, the Exchange has designated this proposal as one that effects a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not 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.

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.

<sup>12</sup> See Rule 7200 (providing that each Options Participant shall submit a letter of guarantee or other authorization given by a Clearing Participant, to the Exchange). See also proposed Rule 7190(f).

<sup>13</sup> See *supra*, note 5.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

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

#### 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-2019-21 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-2019-21. 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-2019-21 and should be submitted on or before July 16, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Vanessa A. Countryman,**

*Acting Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86157; File No. SR-CboeBZX-2019-047]

#### **Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Adopt BZX Rule 14.11(k) To Permit the Listing and Trading of Managed Portfolio Shares**

June 19, 2019.

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 June 6, 2019, Cboe BZX Exchange, Inc. ("Exchange" or "BZX") 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 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 a rule change to adopt BZX Rule 14.11(k) to permit the listing and trading of Managed Portfolio Shares, which are shares of actively managed exchange-traded funds for which the portfolio is disclosed in accordance with standard mutual fund disclosure rules.

The text of the proposed rule change is also available on the Exchange's website ([http://markets.cboe.com/us/equities/regulation/rule\\_filings/bzx/](http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/)), at the Exchange's Office of the Secretary, 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 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 add new Rule 14.11(k) for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges, of Managed Portfolio Shares, which are securities issued by an actively managed open-end investment management company.<sup>3</sup>

##### **Proposed Listing Rules**

Proposed Rule 14.11(k)(1) provides that the Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Managed Portfolio Shares that meet the criteria of Rule 14.11(k).

Proposed Rule 14.11(k)(2) provides that Rule 14.11(k) is applicable only to Managed Portfolio Shares and that, except to the extent inconsistent with Rule 14.11(k), or unless the context otherwise requires, the rules and procedures of the Exchange's Board of Directors shall be applicable to the trading on the Exchange of such securities. Proposed Rule 14.11(k)(2) provides further that Managed Portfolio Shares are included within the definition of "security" or "securities"

<sup>3</sup> A Managed Portfolio Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C.80a-1) ("1940 Act") organized as an open-end management investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. The basis of this proposal is an application for exemptive relief that was filed on April 4, 2019 (the "Application") and for which public notice was issued on April 8, 2019 (the "Notice") (File No. 812-14405) and subsequent order granting certain exemptive relief to Precidian Funds LLC ("Precidian"); Precidian ETFs Trust and Precidian ETF Trust II; and Foreside Fund Services, LLC issued on May 20, 2019 (the "Order" and, collectively, with the Application and the Notice, the "Exemptive Order"). The Order specifically notes that "granting the requested exemptions is appropriate in and consistent with the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. It is further found that the terms of the proposed transactions, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transactions are consistent with the policy of each registered investment company concerned and with the general purposes of the Act." See Investment Company Act Release Nos. 33440 and 33477.

<sup>16</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.