POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* June 14, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 5, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 121 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–170, CP2023–174.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–12702 Filed 6–13–23; 8:45 am]

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POSTAL SERVICE

Product Change—Priority Mail, First-Class Package Service & Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* June 14, 2023.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 5, 2023, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail, First-Class Package Service & Parcel Select Contract 28 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–169, CP2023–173.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

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BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97688; File No. SR–NYSE–2023–12]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt New Section 303A.14 of the NYSE Listed Company Manual To Establish Listing Standards Related to Recovery of Erroneously Awarded Incentive-Based Executive Compensation

June 9, 2023.

I. Introduction

On February 22, 2023, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new Section 303A.14 of the NYSE Listed Company Manual (''Manual'') to require issuers to adopt and comply with a policy providing for the recovery of erroneously awarded incentive-based compensation received by current or former executive officers as required by Rule 10D–1 under the Act (''Rule 10D–1''). The proposed rule change was published for comment in the **Federal Register** on March 13, 2023.[3] On April 24, 2023, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[4] On June 5, 2023, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Background and Description of the Proposal, as Modified by Amendment No. 1

On October 26, 2022, the Commission adopted final Rule 10D–1 [6] to implement Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''), which added Section 10D to the Act. Section 10D of the Act requires the Commission to adopt rules directing the national securities exchanges to prohibit the listing of any security of an issuer that is not in compliance with the requirements of Section 10D of the Act. Rule 10D–1 requires national securities exchanges that list securities to establish listing standards that require each issuer to adopt and comply with a written executive compensation recovery policy and to provide the disclosures required by Rule 10D–1 and in the applicable Commission filings.[7] Under Rule 10D–1, listed companies must recover from current and former executive officers incentive-based compensation received

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 97055 (March 7, 2023), 88 FR 15480 (''Notice''). Comments received on the proposed rule change are available at: *https://www.sec.gov/comments/sr-nyse-2023-12/srnyse202312.htm.*

[4] *See* Securities Exchange Act Release No. 97354, 88 FR 26371 (April 28, 2023).

[5] Amendment No. 1 is available on the Commission's website at *https://www.sec.gov/comments/sr-nyse-2023-12/srnyse202312-199379-399262.pdf.* In Amendment No. 1, the Exchange (i) proposes to amend Section 303A.00 of the Manual to make it clear, consistent with the language of proposed Section 303A.14 of the Manual (''Section 303A.14''), that all listed issuers listing the following securities are required to comply with the requirements of Section 303A.14: (a) closed-end and open-end funds, (b) passive business organizations, listed derivative or special purpose securities, (c) foreign private issuers, and (d) issuers listing only preferred or debt securities on the NYSE (including securities listed under NYSE Rule 5.2(j)); (ii) amends proposed Section 303A.14(b) to provide that the effective date of Section 303A.14 would be October 2, 2023; and (iii) amends proposed Section 802.01F of the Manual (Noncompliance with Section 303A.14 (Erroneously Awarded Compensation)) (''Section 802.01F'') to provide that in the event of any failure by a listed issuer to comply with any requirement of Section 303A.14, the Exchange may at its sole discretion provide such issuer with an initial six-month cure period and an additional six-month cure period.

[6] 17 CFR 240.10D–1.

[7] *See* Securities Exchange Act Release No. 96159, 87 FR 73076 (November 28, 2022) (''Adopting Release''). Rule 10D–1 requires such exchange listing rules to be effective no later than one year after November 28, 2022. Rule 10D–1 further requires that each listed issuer: (i) adopt the required recovery policy no later than 60 days following the effective date of the listing standard; (ii) comply with the recovery policy for all incentive-based compensation received by executive officers on or after the effective date of the applicable listing standard; and (iii) provide the required disclosures on or after the effective date of the listing standard.

during the three completed fiscal years preceding the date on which the issuer is required to prepare an accounting restatement.

As required by Rule 10D–1, the Exchange proposes to adopt Section 303A.14 entitled ''Erroneously Awarded Compensation.'' Proposed Section 303A.14 (the ''Rule'') mirrors the text of Rule 10D–1. Specifically, proposed Section 303A.14 would require NYSE listed issuers to adopt a recovery policy that complies with the requirements of the Rule (''recovery policy''), comply with their recovery policy, and provide the required disclosures in the applicable Commission filing.[8] Proposed Section 303A.14 would prohibit the initial or continued listing of any security of an issuer that is not in compliance with the requirements of any portion of the rule.[9]

Specifically, proposed Section 303A.14(c)(1) would require each issuer, for initial and continued listing, to adopt and comply with a written recovery policy providing that the issuer will recover reasonably promptly the amount of erroneously awarded incentive-based compensation in the event that the issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer with any financial reporting requirement under the securities laws, including any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements, or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period.

The issuer's recovery policy must apply to all incentive-based compensation received by a person: (A) after beginning service as an executive officer; (B) who served as an executive officer at any time during the performance period for that incentive-based compensation; (C) while the issuer has a class of securities listed on a national securities exchange or a national securities association; and (D) during the three completed fiscal years immediately preceding the date that the issuer is required to prepare an accounting restatement as described in paragraph (c)(1) of the Rule.[10] An issuer's obligation to recover erroneously awarded compensation is not dependent on if or when the restated financial statements are filed.

For purposes of determining the relevant recovery period, the date that an issuer is required to prepare an accounting restatement as described in paragraph (c)(1) of the Rule is the earlier to occur of: (A) the date the issuer's board of directors, a committee of the board of directors, or the officer or officers of the issuer authorized to take such action if board action is not required, concludes, or reasonably should have concluded, that the issuer is required to prepare an accounting restatement as described in paragraph (c)(1) of the Rule; or (B) the date a court, regulator, or other legally authorized body directs the issuer to prepare an accounting restatement as described in paragraph (c)(1) of the Rule.[11]

The amount of incentive-based compensation that must be subject to the issuer's recovery policy (''erroneously awarded compensation'') is the amount of incentive-based compensation received that exceeds the amount of incentive-based compensation that otherwise would have been received had it been determined based on the restated amounts, and must be computed without regard to any taxes paid. For incentive-based compensation based on stock price or total shareholder return, where the amount of erroneously awarded compensation is not subject to mathematical recalculation directly from the information in an accounting restatement: (A) the amount must be based on a reasonable estimate of the effect of the accounting restatement on the stock price or total shareholder return upon which the incentive-based compensation was received; and (B) the issuer must maintain documentation of the determination of that reasonable estimate and provide such documentation to the Exchange.[12]

The issuer must recover erroneously awarded compensation in compliance with its recovery policy except to the extent that one of the conditions set forth below is met, and the issuer's committee of independent directors responsible for executive compensation decisions, or in the absence of such a committee, a majority of the independent directors serving on the board, has made a determination that recovery would be impracticable.

- The direct expense paid to a third party to assist in enforcing the policy would exceed the amount to be recovered. Before concluding that it would be impracticable to recover any amount of erroneously awarded compensation based on expense of enforcement, the issuer must make a reasonable attempt to recover such erroneously awarded compensation, document such reasonable attempt(s) to recover, and provide that documentation to the Exchange.
- Recovery would violate home country law where that law was adopted prior to November 28, 2022. Before concluding that it would be impracticable to recover any amount of erroneously awarded compensation based on violation of home country law, the issuer must obtain an opinion of home country counsel, acceptable to the Exchange, that recovery would result in such a violation, and must provide such opinion to the Exchange.
- Recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the registrant, to fail to meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and regulations thereunder.[13]

The issuer is prohibited from indemnifying any executive officer or former executive officer against the loss of erroneously awarded compensation.[14]

Proposed Section 303A.14(c)(2) would require that each issuer file all disclosures with respect to such recovery policy in accordance with the requirements of the federal securities laws, including the disclosure required by the applicable Commission filings.

Proposed Section 303A.14(d) would provide that the requirements of the Rule do not apply to the listing of: (1) a security futures product cleared by a clearing agency that is registered pursuant to section 17A of the Act (15 U.S.C. 78q–1) or that is exempt from the registration requirements of section 17A(b)(7)(A) (15 U.S.C. 78q–1(b)(7)(A)); (2) a standardized option, as defined in 17 CFR 240.9b–1(a)(4), issued by a clearing agency that is registered pursuant to section 17A of the Act (15 U.S.C. 78q–1); (3) any security issued by a unit investment trust, as defined in 15 U.S.C. 80a–4(2); and (4) any security issued by a management company, as defined in 15 U.S.C. 80a–4(3), that is registered under Section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), if such management company has not awarded incentive-

[8] *See* proposed Section 303A.14(b) and (c).

[9] *See* proposed Section 303A.14(a).

[10] *See* proposed Section 303A.14(c)(1)(i). In addition to these last three completed fiscal years, the recovery policy must apply to any transition period (that results from a change in the issuer's fiscal year) within or immediately following those three completed fiscal years. However, a transition period between the last day of the issuer's previous fiscal year end and the first day of its new fiscal year that comprises a period of nine to 12 months would be deemed a completed fiscal year.

[11] *See* proposed Section 303A.14(c)(1)(ii).

[12] *See* proposed Section 303A.14(c)(1)(iii).

[13] *See* proposed Section 303A.14(c)(1)(iv).

[14] *See* proposed Section 303A.14(c)(1)(v).

based compensation to any executive officer of the company in any of the last three fiscal years, or in the case of a company that has been listed for less than three fiscal years, since the listing of the company.

Proposed Section 303A.14(e) would provide that, unless the context otherwise requires, the following definitions apply for purposes of the Rule:

• *Executive Officer.* An executive officer is the issuer's president, principal financial officer, principal accounting officer (or if there is no such accounting officer, the controller), any vice-president of the issuer in charge of a principal business unit, division, or function (such as sales, administration, or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the issuer. Executive officers of the issuer's parent(s) or subsidiaries are deemed executive officers of the issuer if they perform such policy making functions for the issuer. In addition, when the issuer is a limited partnership, officers or employees of the general partner(s) who perform policy-making functions for the limited partnership are deemed officers of the limited partnership. When the issuer is a trust, officers, or employees of the trustee(s) who perform policy-making functions for the trust are deemed officers of the trust. Policy-making function is not intended to include policy-making functions that are not significant. Identification of an executive officer for purposes of the Rule would include at a minimum executive officers identified pursuant to 17 CFR 229.401(b).

• *Financial reporting measures.* Financial reporting measures are measures that are determined and presented in accordance with the accounting principles used in preparing the issuer's financial statements, and any measures that are derived wholly or in part from such measures. Stock price and total shareholder return are also financial reporting measures. A financial reporting measure need not be presented within the financial statements or included in a filing with the Commission.

• *Incentive-based compensation.* Incentive-based compensation is any compensation that is granted, earned, or vested based wholly or in part upon the attainment of a financial reporting measure.

• *Received.* Incentive-based compensation is deemed received in the issuer's fiscal period during which the financial reporting measure specified in the incentive-based compensation award is attained, even if the payment or grant of the incentive-based compensation occurs after the end of that period.

Proposed Section 303A.14(b) would provide that the effective date of the Rule (''effective date'') is October 2, 2023 and that each listed issuer must (i) adopt the recovery policy no later than 60 days following the effective date; (ii) comply with its recovery policy for all incentive-based compensation received (as such term is defined in proposed Section 303A.14(e)) by executive officers on or after the effective date; [15] and (iii) provide the required disclosures in the applicable Commission filings required on or after the effective date.[16]

The Exchange also proposes additional clarifying changes to Section 303A.00 of the Manual (Introduction; Preferred and Debt Listings) (''Section 303A.00'') to make clear, consistent with the language of proposed Section 303A.14, that all listed issuers listing the following securities are required to comply with the requirements of Section 303A.14: (i) closed-end and open-end funds; (ii) passive business organization, listed derivative or special purpose securities; (iii) foreign private issuers; and (iv) issuers listing only preferred or debt securities on the NYSE (including securities listed under NYSE Rule 5.2(j)).[17]

The Exchange states that the proposed new requirements described above are consistent with the protection of investors and the public interest because they further the goal of ensuring the accuracy of the financial disclosure of listed issuers and may improve the overall quality and reliability of financial reporting as well as provide clarification by conforming the text of Section 303A.00 to the requirements of proposed Section 303A.14.[18]

As described above, Rule 10D–1 requires national securities exchanges to prohibit the initial or continued listing of any security of an issuer not in compliance with its rules adopted to comply with Rule 10D–1. The Exchange proposes therefore to require that a listed issuer will be subject to delisting in the event of any failure by such listed issuer to comply with any requirement of Section 303A.14, including the requirement to adopt a recovery policy that complies with the applicable listing standard, disclose the policy in accordance with Commission rules or comply with its recovery policy. The Exchange states that the proposed delisting process that sets forth procedures that would apply if an issuer failed to comply with Section 303A.14 is closely modeled on the provisions with respect to late filings set forth in Section 802.01E of the Manual.[19] Specifically, the Exchange proposes to adopt proposed Section 802.01F of the Manual (Noncompliance with Section 303A.14 (Erroneously Awarded Compensation)) to provide that a listed issuer that is out of compliance with the Rule [20] and fails to regain compliance within any cure period provided by the Exchange (as further described below) would have its listed securities immediately suspended and the

[15] As described above, a NYSE listed issuer would have to comply with its recovery policy for all incentive-based compensation received by executive officers on or after the effective date of the applicable listing standard (*i.e.,* Section 303A.14). Incentive-based compensation that is the subject of a compensation contract or arrangement that existed prior to the effective date of Rule 10D–1 would still be subject to recovery under the Exchange's rule if such compensation was received on or after the effective date of Section 303A.14, as required by Rule 10D–1. *See* Adopting Release, *supra* note 7, and also definitions of ''incentive based compensation'' and ''received'' in proposed Section 303A.14(e).

[16] *See* Amendment No. 1, *supra* note 5, at 5–6. In support of proposing an effective date of October 2, 2023, the Exchange states it believes this is consistent with Section 10D ''and the goal of implementing the proposed rule promptly while also being consistent with the expectations of listed issuer that the proposed rules would take effect a year after the adoption of Rule 10D–1 based on the issuers' understanding of a statement made . . . in the Rule 10D–1 Adopting Release.'' *See id.*

[17] *See id.* at 12.

[18] *See id.* at 12–13.

[19] *See id.* at 13. NYSE's original filing included provisions establishing cure periods to be applied in the event of a listed issuer's failure to adopt a recovery policy within the required time period, but did not establish cure periods for other incidents of noncompliance with Section 303A.14. Amendment No. 1 revised these cure period provisions so that they are now applicable to all incidents of noncompliance with Section 303A.14 and not just delayed adoption of recovery policies. *See id.* at 4 n.4. The Exchange states that it believes the compliance procedures, as amended, ''are appropriately rigorous and are consistent with the public interest and the interests of investors.'' *See id.* at 13.

[20] Proposed Section 802.01F(b) provides that a listed issuer will be deemed to be below standards in the event of any failure by such listed issuer to comply with any requirement of the Rule. The listed issuer would be required to notify the Exchange in writing within five days of any type of delinquency. When the Exchange determines that a delinquency has occurred, it will promptly send written notification to a listed issuer of the procedures set forth in the rule and, within five days of the date of receipt of such notification, the listed issuer will be required to (i) contact the Exchange to discuss the status of resolution of the delinquency and (ii) issue a press release disclosing the occurrence of the delinquency, the reason for the delinquency and, if known, the anticipated date the delinquency will be cured. If the listed issuer has not issued the required press release within five days of the date of the delinquency notification, the Exchange will issue a press release stating that the issuer has incurred a delinquency and providing a description thereof. *See* proposed Section 802.01F(b).

Exchange would immediately commence delisting procedures with respect to all such listed securities.[21] Proposed Section 802.01F(c) would provide that the Exchange may afford a listed issuer that fails to comply with any of the requirements of the Rule an initial six-month period to cure the deficiency.[22] If the issuer fails to cure the delinquency within the initial cure period, the Exchange may either afford the issuer up to an additional six months to cure the deficiency or, if the Exchange determines that an additional cure period is not appropriate,[23] commence suspension and delisting procedures in accordance with Section 804.00 of the Manual.[24] Notwithstanding the foregoing, the Exchange may in its sole discretion decide (i) not to afford a listed issuer any initial cure period or additional cure period, or (ii) at any time during such cure period, to truncate the cure period and immediately commence suspension and delisting procedures if the listed issuer is subject to delisting pursuant to any other provision of the Manual, including if the Exchange believes, in the Exchange's sole discretion, that continued listing and trading of a listed issuer's securities on the Exchange is inadvisable or unwarranted.[25] In determining whether an initial or additional cure period is appropriate, or whether either such period should be truncated, the Exchange will consider the likelihood that the delinquency can be cured during such period.[26] The Exchange may also commence suspension and delisting procedures without affording any cure period at all or at any time during the initial or additional cure period if the Exchange believes, in the Exchange's sole discretion, that it is advisable to do so on the basis of an analysis of all relevant factors.[27] In no event would the Exchange continue to trade a listed issuer's securities if that listed issuer has failed to cure its delinquency with the Rule on the date that is twelve months after the date the Exchange notified the issuer of the delinquency.[28]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[29] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b) of the Act.[30] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[31] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In addition, the Commission finds that the proposed rule change is consistent with Section 6(b)(7) of the Act,[32] which requires, among other things, that the rules of a national securities exchange provide a fair procedure for the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange. The proposed rule change, as modified by Amendment No. 1, is also consistent with Section 10D of the Act[33] and Rule 10D–1 thereunder, as further described below.[34]

The development and enforcement of meaningful listing standards for a national securities exchange is of substantial importance to financial markets and the investing public. Meaningful listing standards are especially important given investor expectations regarding the nature of companies that have achieved an exchange listing for their securities, and the role of an exchange in overseeing its market and assuring compliance with its listing standards.[35] The corporate governance standards embodied in the listing rules of national securities exchanges, in particular, play an important role in assuring that companies listed for trading on the exchanges' markets observe good governance practices, including a fair approach and greater accountability for the recovery of erroneously awarded compensation.[36]

In enacting Section 10D of the Act,[37] Congress resolved to require national securities exchanges to establish listing standards to require listed issuers to develop and comply with a policy to recover incentive-based compensation erroneously awarded on the basis of financial information that requires an accounting restatement.[38] In October

[21] *See* proposed Sections 303A.14(a) and (d). Such listed issuer would not be eligible to follow the procedures outlined in Sections 802.02 and 802.03 of the Manual with respect to such a delisting determination, and any such listed issuer would be subject to delisting procedures as set forth in Section 804.00 of the Manual. Section 804.00 of the Manual (Procedure for Delisting) provides that an issuer subject to a delisting determination has a right to a review of the determination by a committee of the Board of Directors of the Exchange, provided a written request for such a review is filed with the Secretary of the Exchange within ten business days after receiving written notice of the delisting. *See* Section 804.00 of the Manual.

[22] During such six-month period, the Exchange would monitor the listed issuer and the status of resolution of the delinquency until the delinquency is cured. *See* proposed Section 802.01F(c).

[23] In determining whether an additional cure period is appropriate, the Exchange will consider the likelihood that the delinquency can be cured during the additional cure period. *See* proposed Section 802.01F(d).

[24] An issuer would not be eligible to follow the procedures outlined in Sections 802.02 and 802.03 of the Manual. *See* proposed Section 802.01F(c).

[25] *See id.*

[26] *See id.*

[27] *See id.*

[28] *See* proposed Section 802.01F(d).

[29] 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[30] 15 U.S.C. 78f(b).

[31] 15 U.S.C. 78f(b)(5).

[32] 15 U.S.C. 78(b)(7).

[33] 15 U.S.C. 78j–4.

[34] 17 CFR 240.10D–1.

[35] *See, e.g.,* Securities Exchange Release Nos. 65708 (November 8, 2011), 76 FR 70799 70802 (November 15, 2011) (SR–NASDAQ–2011–073); 63607 (December 23, 2010), 75 FR 82420, 82422 (December 30, 2010) (SR–NASDAQ–2010–137); 57785 (May 6, 2008), 73 FR 27597, 27599 (May 13, 2008) (SR–NYSE–2008–17); and 93256 (October 4, 2021), 86 FR 56338 (October 8, 2021) (SR–NASDAQ–2021–007).

[36] *See, e.g.,* Securities Exchange Release No. 68639 (January 11, 2013), 78 FR 4570, 4579 (January 22, 2013) (SR–NYSE–2012–49) (stating, in connection with the modification of exchange rules for compensation committees of listed issuers to comply with Rule 10C–1 of the Act, that corporate governance listing standards ''play an important role in assuring that companies listed for trading on the exchanges' markets observe good governance practices, including a reasoned, fair, and impartial approach for determining the compensation of corporate executives'' and stating that the proposal would foster ''greater transparency, accountability and objectivity'' in oversight of compensation practices.).

[37] Public Law 111–203, sec. 954, 124 Stat. 1376, 1904 (2010) (codified at 15 U.S.C. 78j–4).

[38] As a part of the Dodd-Frank Act legislative process, in a 2010 report, the Senate Committee on Banking, Housing and Urban Affairs stated that it is ''unfair to shareholders for corporations to allow executive officers to retain compensation that they were awarded erroneously.'' *See* Report of the Senate Committee on Banking, Housing, and Urban Affairs, S. 3217, Report No. 111–176 at 135–36 (Apr. 30, 2010) (''Senate Report'') at 135. *See also* Adopting Release, *supra* note 7, 87 FR at 73077 (citing to the Senate Report) (''The language and legislative history of the Dodd-Frank Act make clear that Section 10D is premised on the notion that an executive officer should not retain incentive-based compensation that, had the issuer's accounting been correct in the first instance, would not have been received by the executive officer, regardless of any fault of the executive officer for the accounting errors. The Senate Report also indicates that shareholders should not 'have to embark on costly

2022, as required by this legislation, the Commission adopted Rule 10D–1 under the Act, which directs the national securities exchanges to establish listing standards that require issuers to: (i) develop and comply with written policies for recovery of incentive-based compensation based on financial information required to be reported under the securities laws, applicable to the issuers' executive officers, during the three completed fiscal years immediately preceding the date that the issuer is required to prepare an accounting restatement; and (ii) disclose those compensation recovery policies in accordance with Commission rules. In response, the Exchange has filed the proposed rule change, which includes rules intended to comply with the requirements of Rule 10D–1.

The Exchange's proposed Section 303A.14 incorporates the requirements of Rule 10D–1. The Commission believes that the Exchange's proposal will foster greater fairness, accountability, and transparency to shareholders of listed issuers by advancing the recovery of incentive-based compensation that was erroneously awarded on the basis of financial information that requires an accounting restatement, consistent with Section 10D of the Act [39] and Rule 10D–1 thereunder,[40] and will therefore further the protection of investors consistent with Section 6(b)(5) of the Act.[41] In addition, as the Commission stated in the Adopting Release, the recovery requirements may provide executive officers with an increased incentive to take steps to reduce the likelihood of inadvertent misreporting and will reduce the financial benefits to executive officers who choose to pursue impermissible accounting methods, which can further discourage such behavior.[42] The Commission believes that these benefits of the Exchange's new rules on the recovery of erroneously awarded compensation will protect investors and the public interest as required under Section 6(b)(5) of the Act.

Rule 10D–1 and proposed Section 303A.14 require that a listed issuer recover the amount of erroneously awarded incentive-based compensation ''reasonably promptly.'' One commenter requested NYSE include guidance in its proposed listing standards regarding what the exchange will consider in evaluating whether an issuer is pursuing recovery ''reasonably promptly'' under its policy and provided a non-exclusive list of factors the Exchange could consider and set forth in its rules.[43] As discussed above, NYSE's proposed rule mirrors the language in Rule 10D–1 and such guidance is not included in the rule text of Rule 10D–1. The Adopting Release stated that whether an issuer is acting reasonably promptly ''will depend on the particular facts and circumstances applicable to that issuer'' and ''the final rules do not restrict exchanges from adopting more prescriptive approaches to the timing and method of recovery under their rules in compliance with Section 19(b) of the Exchange Act . . .'' [44] Rule 10D–1 also does not compel the exchanges to adopt a more prescriptive approach to the timing and method of recovery. In its proposal, NYSE stated that ''the issuer's obligation to recover erroneously awarded incentive-based compensation reasonably promptly will be assessed on a holistic basis with respect to each such accounting restatement prepared by the issuer'' and that ''[i]n evaluating whether an issuer is recovering erroneously awarded incentive-based compensation reasonably promptly, the Exchange will consider whether the issuer is pursuing an appropriate balance of cost and speed in determining the appropriate means to seek recovery, and whether the issuer is securing recovery through means that are appropriate based on the particular facts and circumstances of each executive officer that owes a recoverable amount.'' [45] The Commission believes this guidance provided by the Exchange is consistent with the Commission's statements regarding when an issuer is acting ''reasonably promptly'' as expressed in the Adopting Release, with Rule 10D–1 and with the Act.[46]

Rule 10D–1 requires issuers subject to the listing standards to adopt a recovery policy no later than 60 days following the date on which the applicable listing standards become effective and to comply with their recovery policy, and provide the required disclosures, on or after the effective date. The Commission received comment letters requesting the Commission not approve the proposal before November 28, 2023, citing burdens to issuers, including with respect to assessing the impact of the new listing standards on their existing executive compensation programs, developing and implementing compliant policies, and obtaining board (and in some cases shareholder) approval.[47] Commenters stated that listed issuers anticipated an effective date of November 28, 2023 based on the language in Rule 10D–1 requiring that the new listing standards become effective by no later than one year following the publication of the final rules in the **Federal Register**.[48] One commenter stated that the Adopting Release stated that ''issuers will have more than a year from the date the final rules are published in the **Federal Register** to prepare and adopt compliant recovery policies.'' [49] The Exchange, in Amendment No. 1, is proposing that the effective date of Section 303A.14 be October 2, 2023.[50] The Exchange believes that setting this date as the effective date will ensure that issuers have more than a year from the date Rule 10D–1 was published in the **Federal Register** to adopt recovery policies.[51] This is consistent with language in Rule 10D–1 and the Adopting Release, while also ensuring

legal expenses to recoup their losses' and that 'executives must return monies that should belong to the shareholders.' '').

[39] 15 U.S.C. 78j–4.

[40] 17 CFR 240.10D–1.

[41] 15 U.S.C. 78f(b)(5).

[42] *See* Adopting Release, *supra* note 7, 87 FR at 73077. *See also* Amendment No. 1, *supra* note 5, at 12–13, agreeing with the Commission's statement on the benefits of the recovery policy.

[43] *See* Letter to Vanessa Countryman, Secretary, Commission, from Wilson Sonsini Goodrich & Rosati, dated April 4, 2024 [sic] (''Wilson Sonsini Letter''), at 4.

[44] *See* Adopting Release, *supra* note 7, 87 FR at 73104. For example, the Commission stated that after the exchanges have observed issuer performance they can use any resulting data to assess the need for further guidelines to ensure prompt and effective recovery. *See id.*

[45] *See* Amendment No. 1, *supra* note 5, at 5.

[46] *See* Adopting Release, *supra* note 7, 87 FR 73104.

[47] *See, e.g.,* Wilson Sonsini Letter at 5; Letter to Vanessa Countryman, Secretary, Commission, from Davis Polk Wardwell LLP et al., submitted on behalf of 39 law firms, dated April 3, 2023 (''Davis Polk Letter''); Letter to Vanessa Countryman, Secretary, Commission, from C. Edward Allen, Vice President, Policy & Advocacy, and Christina Maguire, President & CEO, Society for Corporate Governance, dated April 3, 2023 (''Society Letter''); Letter to Vanessa Countryman, Secretary, Commission, from American Securities Association, Business Roundtable, Center On Executive Compensation, National Association of Manufacturers, and U.S. Chamber of Commerce, dated April 3, 2023 (''ASA Letter'').

[48] *See, e.g.,* Society Letter at 1; ASA Letter at 2.

[49] *See* Davis Polk Letter at 1 n.1 (citing to Adopting Release, *supra* note 7, 87 FR at 73111).

[50] *See* Amendment No. 1, *supra* note 5, amending proposed Section 303A.14(b).

[51] Listed issuers will need to have their recovery policy in place no later than 60 days following the effective date of October 2, 2023, which would be more than a year after publication of Rule 10D–1 in the **Federal Register**. Listed issuers will also have to comply with their recovery policy for all incentive-based compensation received by executive officers on or after the effective date of October 2, 2023, and provide the required disclosures in the applicable Commission filings on or after the effective date of October 2, 2023. *See* Adopting Release, *supra* note 7, and also definitions of ''incentive based compensation'' and ''received'' in proposed Section 303A.14(e). *See also supra* notes 15–16 and accompanying text.

prompt implementation of this proposed rule.

With respect to a listed issuer that fails to comply with proposed Section 303A.14, the Exchange has proposed delisting procedures that are closely modeled on its current procedures applicable to listed issuers subject to a filing delinquency set forth in Section 802.01E of the Manual.[52] The Commission believes that these procedures, as modified by Amendment No. 1, for listed issuers out of compliance with proposed Section 303A.14, which are consistent with the procedures for filing delinquencies, adequately meet the mandate of Rule 10D–1 and are consistent with investor protection and the public interest, since they give a listed issuer a reasonable time period to cure non-compliance with these important requirements before they will be delisted while helping to ensure that listed issuers that are non-compliant will not remain listed for an inappropriate amount of time.[53] Additionally, the proposed delisting process, including the cure period and the right to a review of a delisting determination by a committee of the Board of Directors of the Exchange, is consistent with Section 6(b)(7) of the Act in that it provides a fair procedure for the review of delisting determinations based on violations of the Exchange's rules for recovering erroneous compensation.

[52] *See supra* notes 19–28 and accompanying text.

[53] The Exchange originally proposed that if an issuer was non-compliant with any of the provisions of the Rule (except for a delayed adoption of a recovery policy), the Exchange would immediately suspend and commence delisting procedures with respect to such issuer's listed securities. *See* Notice, *supra* note 3, at 15482. One commenter stated that the Exchange's proposal should be amended to allow issuers a period of time to submit a plan of compliance and to cure any failure to comply with the listing standards before being delisted. *See* Wilson Sonsini Letter, at 2–3. Another commenter also criticized the Exchange's proposed delisting procedure and stated its concern that ''in knowing that immediate suspension will be the outcome for noncompliance under the NYSE [p]roposal, NYSE staff would be more likely to determine that the required recovery of erroneously awarded compensation was performed 'reasonably promptly' even when most investors would conclude otherwise.'' *See* Letter to Vanessa Countryman, Secretary, Commission, from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors, dated April 3, 2023, at 4. As discussed above, Amendment No. 1 amended the Exchange's proposed delisting provisions to provide to that in the event of any failure by a listed issuer to comply with any requirement of Section 303A.14, the Exchange may provide such issuer with an initial six-month cure period and an additional six-month cure period. *See* Amendment No. 1, *supra* note 5. The Commission believes that Amendment No. 1 appropriately addresses these commenters' concerns.

IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSE–2023–12 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–NYSE–2023–12. 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 (*https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSE–2023–12, and should be submitted on or before July 5, 2023.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the **Federal Register**. In Amendment No. 1, the Exchange amended the proposal to (i) add a clarifying amendment to Section 303A.00 to make it clear that, consistent with the language of proposed Section 303A.14, all listed issuers listing the following securities are required to comply with the requirements of Section 303A.14: (a) closed-end and open-end funds, (b) passive business organization, listed derivative or special purpose securities, (c) foreign private issuers, and (d) issuers listing only preferred or debt securities on the NYSE; (ii) propose that the effective date of Section 303A.14 be October 2, 2023; and (iii) allow the Exchange, in its sole discretion, to provide a listed issuer that fails to comply with any requirement of Section 303A.14 an initial six-month cure period and an additional six-month cure period.[54]

The changes in Amendment No. 1 provide greater clarity to the proposal. The changes to Section 303A.00 will ensure that the requirements of that section of the Manual conform to the requirements of proposed Section 303A.14. The change to the effective date of the listing standards is consistent with Rule 10D–1 and language in the Adopting Release and is responsive to comments stating that listed issuers anticipated an effective date of November 28, 2023. The change to the delisting procedures is responsive to comments recommending NYSE allow a listed issuer to cure any failure to comply with Section 303A.14 before being delisted, rather than only providing a cure period for non-compliance with adoption of a recovery policy, as originally proposed. The cure periods for non-compliance being proposed by NYSE are similar to those that exist under NYSE's rules for the late filing of annual and quarterly reports that the Commission has previously approved as consistent with the Act.[55] The amended proposal also provides for a cure period for any violations of Section 303A.14 similar to the approach taken by Nasdaq in its proposal to adopt rules to comply with

[54] *See* Amendment No. 1, *supra* note 5.

[55] *See* Section 804.01E of the Manual.

Rule 10D–1.[56] Nasdaq's proposal has also been approved by the Commission as consistent the Act.[57] Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,[58] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[59] that the proposed rule change (SR–NYSE–2023–12), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[60]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–12758 Filed 6–13–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97674; File No. SR–BOX–2023–13]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule for Trading on the BOX Options Market LLC Facility To Amend Certain Rebates for Qualified Contingent Cross Transactions

June 8, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 31, 2023, BOX Exchange LLC (''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,[3] and Rule 19b–4(f)(2) thereunder,[4] 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 amend the Fee Schedule [sic] for trading on BOX to amend certain rebates for Qualified Contingent Cross (''QCC'') transactions on the BOX Options 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 June 1, 2023. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxexchange.com.*

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 amend certain rebates for Qualified Contingent Cross (''QCC'') transactions. A QCC Order is defined as an originating order (Agency Order) to buy or sell at least 1,000 standard option contracts, or 10,000 mini-option contracts, that is identified as being part of a qualified contingent trade, coupled with a contra side order to buy or sell an equal number of contracts.[5]

Currently, BOX assesses $0.20 per contract to Broker Dealers and Market Makers for both the Agency Order and contra order of a QCC transaction. Public Customers and Professional Customers are not assessed a QCC Transaction Fee. Further, rebates are paid on all qualifying orders pursuant to Section IV.D.1 of the BOX Fee Schedule. Specifically, a QCC Rebate is paid to the Participant that entered the order into the BOX system when at least one party to the QCC transaction is a Broker Dealer or Market Maker. The Participant receives a per contract rebate on QCC transactions according to the tier achieved. Volume thresholds are calculated on a monthly basis by totaling the Participant's QCC Agency Order volume on BOX. The Exchange notes that the QCC Rebate is intended to incentivize the sending of more QCC Orders to BOX.

The Exchange now proposes to amend the QCC Rebate structure in Section IV.D.1 of the BOX Fee Schedule. Specifically, the Exchange proposes to amend the volume thresholds in Tiers 1, 2, and 3 and proposes to eliminate Tier 4 entirely. For Tier 1, the Exchange proposes to amend the volume threshold to 0 to 999,999 contracts. For Tier 2, the Exchange proposes to amend the volume threshold to 1,000,000 to 1,999,999 contracts. For Tier 3, the Exchange proposes to amend the volume threshold to 2,000,000+ contracts. Additionally, the Exchange proposes to amend the rebates in Tiers 2 and 3. Specifically, in Tier 2, the Exchange proposes to increase Rebate 2 to $0.25 from $0.24. In Tier 3, the Exchange proposes to increase Rebate 1 to $0.17 from $0.16 and increase Rebate 2 to $0.27 from $0.25.

The QCC Rebate tier structure will be as follows:

Tier	QCC Agency order volume on BOX (per month)	Rebate 1 (per contract)	Rebate 2 (per contract)
1	0 to 999,999 contracts	($0.14)	($0.22)
2	1,000,000 to 1,999,999 contracts	(0.16)	(0.25)
3	2,000,000+ contracts	(0.17)	(0.27)

[56] *See* Securities Exchange Act Release No. 97060 (March 7, 2023), 88 FR 15500 (March 13, 2023) (SR–Nasdaq–2023–005).

[57] *See* Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change to Establish Listing Standards Related to Recovery of Erroneously Awarded Executive Compensation (June 9, 2023) (SR–Nasdaq–2023–005).

[58] 15 U.S.C. 78s(b)(2).

[59] 15 U.S.C. 78s(b)(2).

[60] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* BOX Rule 7110(c)(6).