

covered clearing agency's current operating expenses, or (y) the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency, as contemplated by the plans established under Rule 17Ad-22(e)(3)(ii) under the Act,<sup>72</sup> discussed above.<sup>73</sup>

As discussed above, FICC's Capital Policy is designed to address how FICC holds LNA in compliance with these requirements,<sup>74</sup> while the Wind-down Plan would include an analysis to estimate the amount of time and cost to achieve a recovery or orderly wind-down of FICC's critical operations and services, and would provide that the Board review and approve this analysis and estimation annually. The Wind-down Plan also would provide that the estimate would be the Recovery/Wind-down Capital Requirement under the Capital Policy. Under that policy, the General Business Risk Capital Requirement, which is the amount of LNA that FICC plans to hold to cover potential general business losses so that it can continue operations and services as a going concern if those losses materialize, is calculated as the greatest of three estimated amounts, one of which is this Recovery/Wind-down Capital Requirement. Therefore, the Commission believes that the R&W Plan is consistent with Rules 17Ad-22(e)(15)(i) and (ii) under the Act.<sup>75</sup>

### III. Conclusion

*It is therefore noticed*, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,<sup>76</sup> that the Commission DOES NOT OBJECT to advance notice SR-FICC-2017-805, as modified by Amendment No. 1, and that FICC is *authorized* to implement the proposal as of the date of this notice or the date of an order by the Commission approving proposed rule change SR-FICC-2017-021, as modified by Amendment No. 1, whichever is later.

By the Commission.

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33214; File No. 812-14837]

### Innovator ETFs Trust, et al.

August 24, 2018.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice.

Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 12(d)(1)(A), (B), and (C) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act. The requested order would permit certain registered open-end investment companies to acquire shares of certain registered open-end investment companies, registered closed-end investment companies, business development companies, as defined in section 2(a)(48) of the Act ("BDCs"), and registered unit investment trusts (collectively, "Underlying Funds") that are within and outside the same group of investment companies as the acquiring investment companies, in excess of the limits in section 12(d)(1) of the Act.

**APPLICANTS:** Innovator ETFs Trust (the "Trust"), a Delaware statutory trust that is registered under the Act as an open-end management investment company with multiple series, Innovator Capital Management, LLC (the "Initial Adviser"), a limited liability company organized under the laws of the state of Delaware that is registered as an investment adviser under the Investment Advisers Act of 1940, and Foreside Fund Services, LLC (the "Distributor"), registered as a broker-dealer under the Securities Exchange Act of 1934 (the "1934 Act") and a member of the Financial Industry Regulatory Authority.

**FILING DATES:** The application was filed on October 31, 2017, and amended on May 1, 2018.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 18, 2018, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0-5 under

the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested.

Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

Applicants: Innovator ETFs Trust and Innovator Capital Management, LLC, 120 North Hale Street, Suite 200, Wheaton, IL 60187; Foreside Fund Services, LLC, Three Canal Plaza, Suite 100, Portland, ME 04101.

**FOR FURTHER INFORMATION CONTACT:** Christine Y. Greenlees, Senior Counsel, at (202) 551-6879, or Andrea Ottomanelli Magovern, Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

### Summary of the Application

1. Applicants request an order to permit (a) each Fund<sup>1</sup> (each a "Fund of Funds") to acquire shares of Underlying Funds<sup>2</sup> in excess of the limits in sections 12(d)(1)(A) and (C) of the Act and (b) each Underlying Fund that is a registered open-end management

<sup>1</sup> Applicants request that the order apply not only to the existing series of the Trust (the "Initial Funds"), but that the order also extend to any future series of the Trust and any other existing or future registered open-end management investment companies and any series thereof that are part of the same "group of investment companies," as defined in section 12(d)(1)(G)(ii) of the Act, as the Trust and are, or may in the future be, advised by the Initial Adviser or its successor or any other investment adviser controlling, controlled by, or under common control with the Initial Adviser or its successor (together with the Initial Funds, each series a "Fund," and collectively, the "Funds"). Applicants further request that the order also apply to any future principal underwriter and distributor for a Fund. For purposes of the requested order, "successor" is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization. For purposes of the request for relief, the term "group of investment companies" means any two or more registered investment companies, including closed-end investment companies, and BDCs, that hold themselves out to investors as related companies for purposes of investment and investor services.

<sup>2</sup> Certain of the Underlying Funds have obtained exemptions from the Commission necessary to permit their shares to be listed and traded on a national securities exchange at negotiated prices and, accordingly, to operate as an exchange-traded fund ("ETF").

<sup>72</sup> 17 CFR 240.17Ad-22(e)(3)(ii).

<sup>73</sup> 17 CFR 240.17Ad-22(e)(15)(ii).

<sup>74</sup> *Supra* note 14.

<sup>75</sup> 17 CFR 240.17Ad-22(e)(15)(i) and (ii).

<sup>76</sup> 12 U.S.C. 5465(e)(1)(I).

investment company or series thereof, their principal underwriters, and any broker or dealer registered under the 1934 Act to sell shares of the Underlying Funds to the Fund of Funds in excess of the limits in section 12(d)(1)(B) of the Act.<sup>3</sup> Applicants also request an order of exemption under sections 6(c) and 17(b) of the Act from the prohibition on certain affiliated transactions in section 17(a) of the Act to the extent necessary to permit the Underlying Funds to sell their shares to, and redeem their shares from, the Funds of Funds.<sup>4</sup> Applicants state that such transactions will be consistent with the policies of each Fund of Funds and each Underlying Fund and with the general purposes of the Act and will be based on the net asset values of the Underlying Funds.

2. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Such terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over an Underlying Fund that is not in the same “group of investment companies” as the Fund of Funds through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A), (B), and (C) of the Act.

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public

<sup>3</sup> Applicants are not requesting relief for a Fund of Funds to invest in BDCs and registered closed-end investment companies that are not listed and traded on a national securities exchange.

<sup>4</sup> A Fund of Funds generally would purchase and sell shares of an Underlying Fund that operates as an ETF or closed-end fund through secondary market transactions rather than through principal transactions with the Underlying Fund. Applicants nevertheless request relief from sections 17(a)(1) and (2) to permit each ETF or closed-end fund that is an affiliated person, or an affiliated person of an affiliated person, as defined in section 2(a)(3) of the Act, of a Fund of Funds, to sell shares to or redeem shares from the Fund of Funds. This includes, in the case of sales and redemptions of shares of ETFs, the in-kind transactions that accompany such sales and redemptions. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where an ETF, BDC or closed-end fund could be deemed an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds because an investment adviser to the ETF, BDC or closed-end fund or an entity controlling, controlled by or under common control with the investment adviser to the ETF, BDC or closed-end fund, is also an investment adviser to the Fund of Funds.

interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

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

**Eduardo A. Aleman,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83949; File No. SR-BOX-2018-26]

### Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Reflect a Non-Substantive Name Change in the Market's Governing Documents

August 27, 2018.

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 August 15, 2018, 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 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 reflect a non-substantive name change in the

Market's governing documents. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at <http://boxoptions.com>.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

The purpose of this filing is to reflect a non-substantive name change in the Market's governing documents. On July 13, 2018, the BOX Market LLC Board of Directors approved that the name of BOX Market LLC be changed to “BOX Options Market LLC” and that each officer of the Company be, and hereby is, authorized and directed to undertake any actions required or advisable to carry out the name change, including with respect to the SEC and any governmental or third parties. The Exchange intends for these changes to be effective upon filing.

As proposed, references to the Market's name will be deleted and revised to state the new name, as described more fully below. No other substantive changes are being proposed in this filing. The Exchange represents that these changes are concerned solely with the administration of the Market, a facility of the Exchange, and do not affect the meaning, administration, or enforcement of any rules of the Exchange or the rights, obligations, or privileges of Exchange members or their associated persons in any way. Accordingly, this filing is being submitted under Rule 19b-4(f)(3). In lieu of providing a copy of the marked name changes for all corporate documents, the Exchange represents that it will make the necessary non-substantive revisions described below to the applicable corporate governance documents and post updated versions of

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

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