

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92796; File No. SR-BOX-2021-06)

August 27, 2021

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, to Adopt Rules Governing the Trading of Equity Securities on the Exchange Through a Facility of the Exchange Known as the Boston Security Token Exchange LLC

On May 12, 2021, BOX Exchange LLC (“Exchange” or “BOX”) 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 rules governing the listing and trading of equity securities that would be NMS stocks on the Exchange through a facility of the Exchange known as the Boston Security Token Exchange LLC (“BSTX”). The proposed rule change was published for comment in the Federal Register on June 2, 2021.³ On July 13, 2021, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On August 18, 2021, the Exchange filed Amendment No. 1 to the proposed rule

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 92017 (May 25, 2021), 86 FR 29634 (“Notice”). Comments on the proposed rule change can be found at: <https://www.sec.gov/comments/sr-box-2021-06/srbox202106.htm>.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 92387 (July 13, 2021), 86 FR 38140 (July 19, 2021). The Commission designated August 31, 2021 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

change, which replaced and superseded the proposed rule change as originally filed.⁶ The Commission is publishing this notice and order to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons, and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

I. The Exchange’s Description of the Proposed Rule Change, as Modified by Amendment No. 1

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 as amended (“Exchange Act”),⁸ BOX Exchange LLC (“BOX” or the “Exchange”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to adopt rules to govern the trading of equity securities on the Exchange through a facility of the

⁶ In Amendment No. 1, the Exchange revised the proposal to: (i) eliminate the proposed suspension of unlisted trading privileges for thinly traded securities; (ii) modify proposed rule text regarding the order parameter that would allow participants to indicate a preference for same day (“T+0”) or next day (“T+1”) settlement to clarify that, based on how the preferences of the two sides of an executed trade compare, the Exchange will transmit matched order information to a registered clearing agency for settlement as indicated to the extent that such settlement timing may be permitted under the rules, policies, and procedures of the registered clearing agency; (iii) modify aspects of the proposed market data blockchain to remove the Exchange’s ability to change the content of the market data blockchain through a regulatory circular, remove the unique identification number from the types of member-specific market data, specify that anonymized, general market data will pertain to displayed orders, and add that the Exchange may provide permission for non-members to view the anonymized, general market data; (iv) add rule text regarding the Exchange’s proposed market data products; (v) eliminate a proposed rule regarding issuer conversion of a security to listing on BSTX; (vi) provide additional description of several aspects of the proposal, including the market data blockchain and the possibility to settle on a T+0 or T+1 basis; and (vii) make technical and conforming changes. Amendment No. 1 is available on the Commission’s website at: <https://www.sec.gov/comments/sr-box-2021-06/srbox202106-9159349-247726.pdf>.

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ 15 U.S.C. 78s(b)(1).

Exchange known as Boston Security Token Exchange LLC (“BSTX”). As described more fully below, BSTX would operate a fully automated, price/time priority execution system for the trading of “Securities,” which would be equity securities that meet BSTX listing standards and for which certain information regarding orders and executions on BSTX would be recorded and disseminated on a proprietary market data feed that BSTX operates using a proprietary blockchain system (“BSTX Market Data Blockchain”). The proposed additions to the Exchange’s Rules setting forth new Rule Series 17000 – 29000 have been submitted with the proposal as Exhibit 5A. All text set forth in Exhibit 5A would be added to the Exchange’s rules and therefore underlining of the text is omitted to improve readability. Forms proposed to be used in connection with the proposed rule change, such as the application to become a BSTX Participant, have been submitted with the proposal as Exhibits 3A through 3L.

In addition, the Exchange proposes to make certain amendments to several existing BOX Rules to facilitate trading on BSTX. The proposed changes to the existing BOX Rules would not change the core purpose of the subject Rules or the functionality of other BOX trading systems and facilities. Specifically, the Exchange is seeking to amend BOX Rules 100, 2020, 2060, 3180, 7130, 7150, 7230, 7245, IM-8050-3, 11010, 11030 and 12140. These proposed changes are set forth in Exhibit 5B. Material proposed to be added to the Rule as currently in effect is underlined and material proposed to be deleted is bracketed.

All capitalized terms not defined herein have the same meaning as set forth in the Exchange’s Rules.⁹

⁹ The Exchange’s Rules can be found on the Exchange’s public website: <https://boxoptions.com/regulatory/rulebook-filings/>.

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

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

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

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

1. Purpose

The Exchange is proposing to adopt a series of rules to govern the trading of certain equity securities through a facility of the Exchange known as BSTX and make certain amendments to the existing BOX rules to facilitate trading on BSTX. As described more fully below, BSTX would operate a fully automated, price/time priority execution system ("BSTX System") for the trading of certain equity securities that would be considered "Securities" under the proposed rules. The "Securities"¹⁰ under the proposed rules would be equity securities that meet BSTX listing standards and that trade on the BSTX System. The Exchange would operate the BSTX Market Data Blockchain, which would record certain information regarding orders and transactions occurring on BSTX with respect to Securities. All BOX Participants would be

¹⁰ As discussed further below, BSTX proposes to use the term "Security" to refer to BSTX-listed securities to distinguish them from other securities issued by an issuer that the issuer does not list on BSTX.

eligible to participate in BSTX provided that they become a BSTX Participant pursuant to the proposed rules. Under the proposed rules, BSTX would serve as the listing market for eligible companies and issuers of exchange traded products (“ETPs”) that wish to issue their registered securities as Securities. Securities would trade as NMS stock.¹¹ The Exchange is not proposing rules that would support its extension of unlisted trading privileges (“UTP”) to other NMS stock, and accordingly the Exchange does not intend to extend any such UTP in connection with this proposal. The Exchange would therefore only trade Securities listed on BSTX unless and until it proposes and receives Commission approval for rules that would support trading in other types of securities, including through any extension of UTP to other NMS stock. A guide to the structure of the proposed rule change is described immediately below.

Guide to the Scope of the Proposed Rule Change

The proposal for trading of Securities through BSTX generally involves changes to existing BOX Rules and new BOX Rules pertaining specifically to BSTX (“BSTX Rules”). In addition, the Exchange plans to submit a separate proposed rule change pertaining to BSTX’s corporate governance documents. To support the trading of Securities through BSTX, certain conforming changes are proposed to existing BOX Rules and entirely new BSTX Rules are also proposed as Rule Series 17000 through 29000.¹² Each of those new Rule Series and the provisions thereunder are described in greater detail below. Where the BSTX Rules are based on existing rules of another national securities exchange, the source rule from the relevant exchange is noted along with a discussion of notable differences between the source rule and the proposed

¹¹ 17 CFR 242.600(b)(48).

¹² The proposed changes to BOX Rules and the proposed BSTX Rules have been submitted with this proposal as Exhibits 5B and 5A, respectively.

BSTX Rule. The proposed BSTX Rules are addressed in Part III below and they generally cover the following areas:

- Section 17000 – General Provisions of BSTX;
- Section 18000 – Participation on BSTX;
- Section 19000 – Business Conduct for BSTX Participants;
- Section 20000 – Financial and Operational Rules for BSTX Participants;
- Section 21000 – Supervision;
- Section 22000 – Miscellaneous Provisions;
- Section 23000 – Trading Practice Rules;
- Section 24000 – Discipline and Summary Suspension;
- Section 25000 – Trading Rules;
- Section 25200 – Market Making on BSTX;
- Section 26000 – BSTX Listing Rules Other Than for Exchange Traded Products;
- Section 27000 – Suspension and Delisting;
- Section 27100 – Guide to Filing Requirements;
- Section 27200 – Procedures for Review of Exchange Listing Determinations; and
- Section 28000 – Trading and Listing of Exchange Traded Products;
- Section 29000 – Dues, Fees, Assessments and Other Charges.

Overview of BSTX and Considerations Related to the Listing, Trading and Clearance and Settlement of Securities

The Joint Venture and Ownership of BSTX

On June 19, 2018, t0.com Inc. (“tZERO”) and BOX Digital Markets LLC (“BOX Digital”) announced a joint venture to facilitate the trading of Securities on the Exchange.¹³ As part of the joint venture, BOX Digital, which is a subsidiary of BOX Holdings Group LLC, and tZERO each own 50% of the voting class of equity and over 45% economic interest of BSTX LLC. Pursuant to the BSTX LLC Agreement, BOX Digital and tZERO will perform certain specified functions with respect to the operation of BSTX. As noted, these details, as well as the proposed governance structure of the joint venture will be the subject of a separate proposed rule change that the Exchange will submit to the Commission.

BSTX Would Be a Facility of BOX That Would Support Trading in the New Asset Class of Securities for BOX

BSTX would operate as a facility¹⁴ of BOX, which is a national securities exchange registered with the SEC. As a facility of BOX, BSTX’s operations would be subject to applicable requirements in Sections 6 and 19 of the Exchange Act, among other applicable rules

¹³ See tZERO and BOX Digital Markets Sign Deal to Create Joint Venture, Business Wire (June 19, 2018), <https://www.businesswire.com/news/home/20180619005897/en/tZERO-and-BOX-Digital-Markets-Sign-Deal-to-Create-Joint-Venture>.

¹⁴ 15 U.S.C. 78c(a)(2). Section 3(a)(2) of the Exchange Act, provides that “the term ‘facility’ when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.” Because BSTX will share certain systems of the Exchange, BSTX would be a facility of the Exchange.

and regulations.¹⁵ Currently, BOX functions as an exchange only for standardized options. At the time that BSTX commences operations it would support trading in Securities that are equity securities (including certain ETPs), as described in more detail below. Accordingly, the proposal represents a new asset class for BOX, and the discussion below sets forth the changes and additions to the Exchange's Rules to support the trading of equity securities as Securities on BSTX.

The Exchange proposes to use the term "Security"¹⁶ to describe a NMS stock trading on the BSTX system. The legal significance, therefore, of a "Security" is that it would be an equity security that is approved for listing on BSTX and that trades on the BSTX System. A security that is offered by an issuer with the intent of it becoming listed on BSTX would therefore not become a "Security" under the proposed BSTX Rules unless and until it actually does become listed on BSTX and trades on the BSTX System.¹⁷

Securities Would Be NMS Stocks

The Securities would qualify as NMS stocks pursuant to Regulation NMS,¹⁸ which defines the term "NMS security" in relevant part to mean "any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan"¹⁹ The Exchange plans to join existing transaction reporting

¹⁵ 15 U.S.C. 78f; 15 U.S.C. 78s.

¹⁶ The Exchange proposes to define the term "Security" to mean a NMS stock, as defined in Rule 600(b)(47) of the Exchange Act, trading on the BSTX System. See proposed Rule 17000(a)(31).

¹⁷ Id.

¹⁸ 17 CFR 242.600 through 613.

¹⁹ 17 CFR 242.600(b)(47).

plans, as discussed in Part VIII below, for the purposes of Security quotation and transaction reporting.²⁰ The term “NMS stock” means “any NMS security other than an option”²¹ and therefore Securities traded on BSTX would be classified as NMS stock.

Securities would meet the definition of NMS stock and would trade, clear, and settle in the same manner as all other NMS stocks traded today. As described in further detail below, the operation of the BSTX Market Data Blockchain would in no way modify or alter market participants’ obligations under Regulation NMS.

BSTX Would Support Trading of Registered Securities

All Securities traded on BSTX would generally be required to be registered with the Commission under both Section 12 of the Exchange Act²² and Section 6 of the Securities Act of 1933 (“Securities Act”).²³ BSTX would not support trading of Securities offered under an exemption from registration for public offerings, with the exception of certain offerings under Regulation A that meet the proposed BSTX listing standards.

Issuance and Clearance and Settlement of Securities

BSTX would maintain certain rules, as described below, to address custody, clearance and settlement in connection with Securities. All transactions in Securities would clear and settle in accordance with the rules, policies and procedures of registered clearing agencies.

Specifically, BSTX anticipates that at the time it commences operations, Securities that are listed

²⁰ 17 CFR 242.601(a)(1). The Rule states in relevant part that “every national securities exchange shall file [with the SEC] a transaction reporting plan regarding transactions in listed equity and Nasdaq securities executed through its facilities”

²¹ 17 CFR 242.600(b)(47).

²² 15 U.S.C. 78l.

²³ 15 U.S.C. 77f.

and traded on BSTX would be securities that have been made eligible for services by The Depository Trust Company (“DTC”) and that DTC would serve as the securities depository²⁴ for such Securities. It is also expected that confirmed trades in Securities on BSTX would be transmitted to National Securities Clearing Corporation (“NSCC”) for clearing such that NSCC would clear the trades through its systems to produce settlement obligations that would be due for settlement between participants at DTC. BSTX believes that this custody, clearance and settlement structure is the same general structure that exists today for other exchange-traded equity securities. Importantly, for purposes of NSCC’s clearing activities and DTC’s settlement activities in respect of the Securities, the relevant Securities would be cleared and settled by NSCC and DTC in exactly the same manner as those activities are performed by NSCC and DTC currently regarding a class of NMS Stock.

The operation of the BSTX Market Data Blockchain will have no impact or effect on the manner in which a Security clears and settles. The BSTX Market Data Blockchain would be implemented through the operation of the proposed BSTX Rules and would occur separate and apart from the clearance and settlement process. The Security would be an ordinary equity security for NSCC’s and DTC’s purposes. The BSTX Market Data Blockchain would be a separate set of market data that uses distributed ledger technology to record certain order and transaction information regarding orders and transactions in Securities on BSTX.

²⁴ 15 U.S.C. 78c(a)(23)(A). Section 3(a)(23)(A) of the Exchange Act defines the term “clearing agency” to include “any person, such as a securities depository, who (i) acts as a custodian of securities in connection with a system for the handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry without physical delivery of securities certificates, or (ii) otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates.”

Issuance of Equity Securities Eligible to Become a Security

With the exception of certain offerings under Regulation A that meet the proposed BSTX listing standards, all Securities traded on BSTX will have been offered and sold in registered offerings under the Securities Act, which means that purchasers of the Securities will benefit from all of the protections of registration. The Division of Corporation Finance will need to make a public interest finding in order to accelerate the effectiveness of the registration statements for these offerings. Because BSTX would be a facility of a national securities exchange, all Securities would be registered under Section 12(b) of the Exchange Act, thereby subjecting all of these issuers to the reporting regime in Section 13(a) of the Exchange Act.

All offerings of securities that are intended to be listed as Securities on BSTX would be conducted in the same general manner in which offerings of exchange-listed equity securities are conducted today under the federal securities laws. An issuer will enter into a firm commitment or best efforts underwriting agreement with a sole underwriter or underwriting syndicate; the underwriter(s) will market the securities and distribute them to purchasers; and secondary trading in the securities (that are intended to trade on BSTX as Securities) will thereafter commence on BSTX.

Issuers on BSTX could include both (1) new issuers who do not currently have any class of securities registered on a national securities exchange, and (2) issuers who currently have securities registered on a national securities exchange and who are seeking registration of a separate class of equity securities for listing on BSTX as Securities.

BSTX does not intend for Securities listed, or intended to be listed, on BSTX to be fungible with any other class of securities from the same issuer.²⁵ If an issuer sought to list securities on BSTX that are not a separate class of an issuer's securities, BSTX does not intend to approve such a class of security for listing on BSTX as a Security, pursuant to BSTX's authority under BSTX Rule 26101. However, an issuer would be free to pursue listing of the same class of the Security on another national securities exchange if it so chose, just as the Exchange understands issuers are able to do in respect of their securities today. At the commencement of BSTX's operations, certain equities (including ETPs) would be eligible for listing as Securities. This would be addressed by BSTX Rules 26102 (Equity Issues), 26103 (Preferred Securities), 26105 (Warrant Securities) and the Rule 28000 Series (Trading and Listing of Exchange Traded Products), which would be part of BSTX's listing rules and would contemplate that only those specified types of equity securities would be eligible for listing.

Securities Depository Eligibility

BSTX would maintain rules that would promote a structure in which Securities would be held in "street name" with DTC.²⁶ BSTX Rule 26137 would require that for an issuer's security

²⁵ The Exchange notes that distinct classes of securities issued by an issuer that are Securities would not be fungible with another class of securities of the same issuer because no class of an issuer's securities is fungible with a separate class of its securities – otherwise they would be the same class of security. To the extent that two classes of an issuer's shares had identical voting and economic rights but were registered with the Commission as separate classes (e.g., Class A shares and Class B shares), the two classes of shares could be economically fungible with one another insofar as they convey the same economic and beneficial rights and interests to investors, but this would not mean that ownership of a Class A share is the same as ownership of a Class B share notwithstanding that each class provides the same economic benefits. In any case, nothing herein proposes any change to the existing framework for different classes of securities.

²⁶ The term "street name" refers to a securities holding structure in which DTC, through its nominee Cede & Co., would be the registered holder of the securities and, in turn, DTC

to be eligible to be a Security, BSTX must have received a representation from the issuer that a CUSIP number that identifies the security is included in a file of eligible issues maintained by a securities depository that is registered with the SEC as a clearing agency. This is based on rules that are currently maintained by other equities exchanges.²⁷ In practice, BSTX Rule 26137 requires the Security to have a CUSIP number that is included in a file of eligible securities that is maintained by DTC because the Exchange believes that DTC currently is the only clearing agency registered with the SEC that provides securities depository services.²⁸

Book-Entry Settlement at a Securities Depository

BSTX would also maintain Proposed BSTX Rule 26135 regarding uniform book-entry settlement. The rule would require each BSTX Participant to use the facilities of a securities depository for the book-entry settlement of all transactions in depository eligible securities with another BSTX Participant or a member of a national securities exchange that is not BSTX or a member of a national securities association.²⁹ Proposed BSTX Rule 26135 is based on the depository eligibility rules of other equities exchanges and Financial Industry Regulatory

would grant security entitlements in such securities to relevant accounts of its participants. Proposed BSTX Rule 26136 would also provide, with certain exceptions, that securities listed on BSTX must be eligible for a direct registration program operated by a clearing agency registered under Section 17A of the Exchange Act. DTC operates the only such program today, known as the Direct Registration System, which permits an investor to hold a security as the registered owner in electronic form on the books of the issuer.

²⁷ Proposed BSTX Rule 26137 is based on current NYSE Rule 777.

²⁸ See Exchange Act Release No. 78963 (September 28, 2016), 81 FR 70744, 70748 (October 13, 2016) (footnote 46 and the accompanying text acknowledge that DTC is the only registered clearing agency that provides securities depository services for the U.S. securities markets).

²⁹ FINRA is currently the only national securities association registered with the SEC.

Authority (“FINRA”).³⁰ Those rules were first adopted as part of a coordinated industry effort in 1995 to promote book-entry settlement for the vast majority of initial public offerings and “thereby reduce settlement risk” in the U.S. national market system.³¹

Participation in a Registered Clearing Agency That Uses a Continuous Net Settlement System

Under proposed BSTX Rule 25140, each BSTX Participant would be required to either (i) be a member of a registered clearing agency that uses a continuous net settlement (“CNS”) system, or (ii) clear transactions executed on BSTX through a member of such a registered clearing agency. The Exchange believes that today NSCC is the only registered clearing agency that uses a CNS system to clear equity securities, and proposed BSTX Rule 25140 further specifies that BSTX will maintain connectivity and access to the Universal Trade Capture system of NSCC to transmit confirmed trade details to NSCC regarding trades executed on BSTX. The proposed rule would also address the following: (i) a requirement that each Security transaction executed through BSTX must be executed on a locked-in basis for automatic clearance and settlement processing; (ii) the circumstances under which the identity of contra parties to a Security transaction that is executed through BSTX would be required to remain anonymous or may be revealed; and (iii) certain circumstances under which a Security transaction may be cleared through arrangements with a member of a foreign clearing agency. Proposed BSTX

³⁰ See e.g., FINRA Rule 11310. Book-Entry Settlement and NYSE Rule 776. Book-Entry Settlement of Transactions.

³¹ These coordinated depository eligibility rules resulted from proposed listing rules amendments developed by the Legal and Regulatory Subgroup of the U.S. Working Committee, Group of Thirty Clearance and Settlement Project. See Securities Exchange Act Release Nos 35774 (May 26, 1995) (SR-NASD-95-24), 60 FR 28813 (June 2, 1995); 35773 (May 26, 1995), 60 FR 28817 (June 2, 1995) (SR-NYSE-95-19).

Rule 25140 is based on a substantially identical rule of the Investor's Exchange, LLC ("IEX"), which, in turn, is consistent with the rules of other equities exchanges.³²

BSTX believes that the operation of its depository eligibility rule and its book-entry services rule would promote a framework in which Securities that would be eligible to be listed and traded on BSTX would be equity securities that have been made eligible for services by a registered clearing agency that operates as a securities depository and that are settled through the facilities of the securities depository by book-entry. The Exchange believes that because DTC currently is the only clearing agency registered with the SEC that provides securities depository services, at the commencement of BSTX's operations, Securities would be securities that have been made eligible for services by DTC, including book-entry settlement services.

Settlement Cycle

Proposed BSTX Rule 25100(d) would address settlement cycle considerations regarding trades in Securities. Security trades that result from orders matched against the electronic order book of BSTX would be required to clear and settle pursuant to the rules, policies and procedures of a registered clearing agency. As noted above in connection with the description of proposed BSTX Rule 25140, the Exchange expects that at the commencement of operations by BSTX it would transmit confirmed trade details to NSCC regarding Security trades that occur on BSTX and that NSCC would be the registered clearing agency that clears Security trades for settlement at DTC.

³² See IEX Rule 11.250 (Clearance and Settlement; Anonymity), which was approved by the Commission in 2016 as part of its approval of IEX's application for registration as a national securities exchange. Exchange Act Release No. 78101 (June 17, 2016); 81 FR 41142 (June 23, 2016); see also Cboe BZX Rule 11.14 (Clearance and Settlement; Anonymity).

As described in greater detail below in Part II.H, the Exchange is also proposing that BSTX Participants would be able to include parameters in orders submitted to BSTX to indicate a preference to use faster settlement cycles that are currently available through NSCC and DTC under certain circumstances. BSTX believes that allowing BSTX Participants to use these faster settlement cycles where consistent with the rules, policies and procedures of a registered clearing agency would mitigate settlement risk for transactions in such Securities due to faster settlement. BSTX believes that NSCC already has authority under its rules, policies and procedures to clear certain trades on a T+1 or T+0 basis, which are shorter settlement cycles than the longest settlement cycle of T+2 that is generally permitted under SEC Rule 15c6-1 for a security trade that involves a broker-dealer.³³ Furthermore, BSTX understands that NSCC does already clear trades in accordance with this authority, and supporting data from The Depository Trust & Clearing Corporation (“DTCC”) regarding clearance and settlement activity on such shorter settlement cycles is provided in Section II.H. below.

The BSTX Market Data Blockchain

BSTX will make available to BSTX Participants certain market data related to trading activity occurring on BSTX through the use of a private, permissioned blockchain maintained by the Exchange. As described further below, a BSTX Participant would have the ability to see through an online portal provided by the Exchange the market data information on the private blockchain consisting of detailed information about its trading activity on BSTX and

³³ 17 CFR 240.15c6-1. Under SEC Rule 15c6-1, with certain exceptions, a broker-dealer is not permitted to enter a contract for the purchase or sale of security that provides for payment of funds and delivery of securities later than the second business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

anonymized information with respect to the trading activity of other BSTX Participants.³⁴ BSTX Participants would have no obligations with respect to providing information to, accessing, maintaining, or using the BSTX Market Data Blockchain. The Exchange believes that the information made available on the BSTX Market Data Blockchain would be generally similar to Daily Trade and Quote (“TAQ”) data made available by New York Stock Exchange LLC except that the Exchange would use distributed ledger or “blockchain” technology to record such information, a BSTX Participant would be able to see non-anonymized information about its own trading activity on BSTX, and the market data would pertain only to trading activity on BSTX and not the broader market (e.g., an over-the-counter (“OTC”)³⁵ transaction in a Security reported to the consolidated tape).³⁶

Background on Blockchain Technology

In general, a blockchain is essentially a ledger that can maintain digital records of assets, transactions, or other information. A blockchain’s central function is to encode transitions or changes to the ledger. Whenever one change to the blockchain ledger occurs to record a state transition, the entire blockchain is immutably changed to reflect the state transition.

There are broadly two types of blockchains: (i) public blockchains that are decentralized, open to anyone running the same protocol;³⁷ and (ii) a private, permission-based blockchains where only those granted access may view or take other actions with respect to the blockchain.

³⁴ Additionally, as also explained below, non-BSTX Participants would have the ability to see the anonymized market data relating to trading on BSTX.

³⁵ OTC in this context refers to trading occurring otherwise than on a national securities exchange.

³⁶ See e.g., NYSE, Daily TAQ Fact Sheet, https://www.nyse.com/publicdocs/nyse/data/Daily_TAQ_Fact_Sheet.pdf.

³⁷ A “protocol” in this context generally means a set of rules governing the format of messages that are exchanged between the participants.

BSTX Market Data Blockchain As a Private Permissioned Network

The BSTX Market Data Blockchain would operate as a private, permission-based blockchain that would be accessible through an application program interface (“API”) available through the internet. The Exchange would control all aspects of the BSTX Market Data Blockchain and the associated API. Pursuant to proposed Rule 17020(b), each BSTX Participant would be assigned a BSTX Market Data Blockchain address that corresponds to the BSTX Participant’s trading activity on BSTX. The Exchange will also issue login credentials to each BSTX Participant through which the BSTX Participant may access the BSTX Market Data Blockchain through the API to see its order and transaction information on BSTX as well as certain anonymized market data from other BSTX Participants, as discussed further below. Similarly, the Exchange has the ability to issue login credentials to any non-BSTX Participant to allow access to the BSTX Market Data Blockchain through the API, but a non-BSTX Participant accessing the Market Data Blockchain would be limited to viewing only anonymized market data, as also explained below. BSTX Participants (and any non-BSTX Participants to which the Market Data Blockchain is made available by the Exchange) would only be able to access the information contained on the BSTX Market Data Blockchain through the API, and only the Exchange would have direct access to the underlying data on the private blockchain.

The BSTX Market Data Blockchain would generally operate by collecting information from two sources, which the Exchange would then translate into information capable of being recorded to the BSTX Market Data Blockchain. Specifically, the data inputs for the BSTX Market Data Blockchain would come from (i) the BSTX System³⁸ to capture information such as

³⁸ The “BSTX System” refers to the automated trading system used by BSTX for the trading of Securities. See proposed Rule 17000(a)(15).

executed transactions and (ii) each BSTX Participant's order/message information passing through the financial information exchange ("FIX") gateway through which all orders and messages pass in order to connect to the BSTX System.³⁹ For example, if a BSTX Participant sends an order to buy 100 shares of Security XYZ, when that order is sent to the Exchange, the Exchange would capture this information as it passes through the FIX gateway in an automated process that results in the BSTX Participant being able to see that order on the BSTX Market Data Blockchain through its login credentials once the information is recorded on the BSTX Market Data Blockchain.

The BSTX Market Data Blockchain does not require any affirmative action on the part of a BSTX Participant in order for its information to be recorded to the BSTX Market Data Blockchain. Rather, the BSTX Market Data Blockchain captures trading activity that occurs on BSTX in the normal course and is made available to BSTX Participants as an additional resource that they may choose to use in their discretion in the same general manner that a market participant might use TAQ data.

Information Available on the BSTX Market Data Blockchain

As set forth in proposed Rule 17020(c), there are two types of information that would be available on the BSTX Market Data Blockchain: (i) a BSTX Participant's own order and transaction information related to its trading activity on BSTX ("Participant Proprietary Data"); and (ii) anonymized, general market data available to all BSTX Participants and non-BSTX

³⁹ The Exchange notes that the FIX Gateway and the BSTX System are the same sources of information from which information is taken to be provided as part of consolidated market data.

Participants permissioned by the Exchange (“General Market Data”).⁴⁰ With respect to Participant Proprietary Data, a BSTX Participant would be able to see the following information with respect to all orders and messages and executions submitted to and occurring on BSTX:

- (1) Symbol, side (buy/sell), limit price, quantity, time-in-force
- (2) Order type (e.g., limit order, ISO)
- (3) Order capacity (principal/agent)
- (4) Short/long sale order marking
- (5) Message type (e.g., order, modification, cancellation)

Participant Proprietary Data would effectively contain a record of all of a BSTX’s Participant’s trading activity on BSTX. Participant Proprietary Data would only be available to the BSTX Participant from which such data derived. That is, a BSTX Participant would not have access to the Participant Proprietary Data of another BSTX Participant, nor would any non-BSTX Participant provided access to the Market Data Blockchain have access to Participant Proprietary Data. As a result, no BSTX Participant (or non-BSTX Participant) would be provided with access to trading information of another BSTX Participant in a manner that would allow for reverse engineering of trading strategies or otherwise compromise the confidential nature of each BSTX Participant’s trading information. Through the API, a BSTX Participant can run searches of its previous order and trading activity. The Participant Proprietary Data would be visible to the BSTX Participant to which it corresponds in sequential order of when each action occurred, though the BSTX Participant would have the ability to filter the different

⁴⁰ The Exchange notes that the BSTX Market Data Blockchain is effectively just the repository for these two categories of information (i.e., Participant Proprietary Data and General Market Data), and it is through the Exchange-provided API that this information is able to be viewed and searched.

information fields or run searches for particular items (e.g., only showing cancel orders or only showing activity in a particular symbol).

General Market Data is the second type of information that would be available on the BSTX Market Data Blockchain, which would consist of:

- (1) All displayed orders,⁴¹ modifications, cancellations, and executions occurring on BSTX in an anonymized format.
- (2) Administrative data and other information from the Exchange (e.g., trading halts, or technical messages).

General Market Data would allow viewers to be able to observe the historical orders, executions, and other events (e.g., cancellations) received by and occurring on BSTX. Similar to the format and presentation of Participant Proprietary Data, the General Market Data would generally be visible in sequential order of when each action occurred, though viewers would have the ability to filter the different information fields or run searches for particular items (e.g., only showing cancel orders or only showing activity in a particular symbol). The Exchange notes that the General Market Data that would be available on the BSTX Market Data Blockchain would contain substantively similar information as would be available through the Exchange's proprietary market data feeds, so access to the BSTX Market Data Blockchain would not provide substantive information that is not otherwise available through the Exchange's proprietary market data feeds.⁴² In other words, accessing General Market Data on the BSTX Market Data

⁴¹ The Exchange notes that it is not proposing any non-displayed or hidden order functionality for BSTX.

⁴² General Market Data would differ from the Exchange's proprietary market data feed in that the proprietary market data feed provides real time snapshots of the order book, including depth of book quotations and the quantity of shares available at each price point. In contrast, General Market Data would generally show sequential events

Blockchain would not provide any informational advantage over proprietary market data that could be used to make trading decisions in real time. The Exchange believes that this is particularly true given that market data (both Participant Proprietary Data and General Market Data) will be posted to the BSTX Market Data Blockchain on a delay of at least five minutes, as discussed further below. Similar to Participant Proprietary Data, persons accessing the General Market Data through the Exchange-provided API could run configurable searches of the available information.

General Market Data would be anonymized, meaning that a BSTX Participant would not be able to determine the identity of another BSTX Participant's orders, quotes, cancellations, or other messages. For the avoidance of doubt, the alphanumeric address assigned to each BSTX Participant to facilitate the BSTX Market Data Blockchain would not be visible as part of General Market Data.⁴³ As a result, there should not be cause for concern regarding potential trading information leakage or the ability to reverse engineer another BSTX Participant's trading strategies given the anonymous nature of General Market Data. BSTX Participants (and any

occurring on the Exchange for each symbol (e.g., order posted to order book, then the order is executed in part, then the remaining amount of the order executed, then a new order posts to the order book etc.). In addition, proprietary market data generally does not show each individual newly posted order or cancellation of a resting order, but rather shows subscribers an updated snapshot that increases or decreases the available quantity at a given price point as new orders come in and modifications or executions of existing orders occur. In contrast, General Market Data available on the Market Data Blockchain would show viewers, in an anonymized format, the sequential entry of each order, modification, or cancellation in the order book in each symbol as historical order and transaction information rather than real time snapshots. In this respect, General Market Data is more akin to a historical market data product like TAQ data, except that it pertains only to activity occurring on BSTX rather than the entire market.

⁴³ For example, in looking at General Market Data, BSTX Participant X would not be able to determine by name, address, or otherwise that a particular order, modification to an existing order, or executed transaction involved BSTX Participant Y or any other BSTX Participant.

non-BSTX Participant provided access to General Market Data by the Exchange) would generally have available to them via the BSTX Market Data Blockchain the same information they would have today with respect to other BSTX Participants' trading activity in subscribing to proprietary data feeds of other exchanges.

The Exchange proposes to append timestamps to the information made available. Timestamps related to all information on the BSTX Market Data Blockchain would indicate the time to the microsecond at which an order posted to the BSTX Book or that the BSTX System took other action with respect to an order (e.g., effects a cancellation, execution, modification). As noted above, information would be posted to the BSTX Market Data Blockchain on a delayed basis of at least five minutes.⁴⁴ As a result, the BSTX Market Data Blockchain would not function as a substitute for real-time market data, and, accordingly the Exchange does not believe

⁴⁴ The practical purpose behind this five minute delay is for the Exchange to accrue sufficient data and information to record to the BSTX Market Data Blockchain. As the name "blockchain" suggests, data is recorded onto a ledger in discrete blocks that are chained together at different intervals. The Exchange could record information to the BSTX Market Data Blockchain over a shorter time interval in much smaller blocks, each of which would contain less data than a longer interval and a larger block. However, as proposed, the Exchange would only record information to the BSTX Market Data Blockchain after at least five minutes, and each block would contain the market data and information that had accrued over the preceding five minutes on a rolling basis. Accordingly, a viewer of the BSTX Market Data Blockchain would be able to see the preceding five minutes of market data (as detailed above) after each five-minute interval. The Exchange believes that a five minute interval is appropriate to allow the Exchange to operate the BSTX Market Data Blockchain efficiently (i.e., sufficient market data will have accrued over five minutes to publish an update to the blockchain) and to ensure that the BSTX Market Data Blockchain does not provide a real-time trading advantage over consumers of consolidated market data or proprietary market data—both of which are disseminated on sub-second, or sub-millisecond, timescales. See e.g., Exchange Act Release No. 90610, 86 FR 18596, 18603 (Apr. 9, 2021) ("Today, markets rely on highly sophisticated electronic trading systems that can consume many points of data at speeds measured in sub-second increments."); see also id. at n.679 (noting that even the consolidated securities information processors 99th percentile of quote latency are today below 100 microseconds).

that market participants with access to the delayed market data available on the BSTX Market Data Blockchain would have any real time trading advantage over participants that continue to use real-time market data to make trading decisions.⁴⁵ A BSTX Participant would have the ability to download market data from the BSTX Market Data Blockchain, which it could use to, for example, back test trading strategies or evaluate executions received on BSTX.

Finally, in order to promote clarity with respect to how a BSTX Participant may use the BSTX Market Data Blockchain, the Exchange proposes to provide in Rule 17020(c)(3) that the information available on the BSTX Market Data Blockchain does not act as a substitute for any recordkeeping obligations of a BSTX Participant. The Exchange notes that broker-dealers recordkeeping obligations generally require a much broader set of records covering the entirety of a broker-dealers trading activity across all trading centers.⁴⁶ As a result, the Exchange would not expect that a BSTX Participant would ever rely on the BSTX Market Data Blockchain,

⁴⁵ According to data available on the Commission's market structure website, even small capitalization stocks and exchange traded products generally have quote lifetimes of much shorter durations than five minutes. For example, 71.32% of executions and 78.7% of cancellations occurred in small capitalization stocks during Q1 2021 within 100 seconds (1.67 minutes) of being received by a market center. See Commission, Market Structure Data Visualizations, Conditional Frequency: Small Stocks (Q1 2021), https://www.sec.gov/marketstructure/datavis/quotelife_stocks_sm.html#.YP8Q245KhPY. Given that over two-thirds of orders are executed or canceled within 1.67 minutes (approximately one-third of the five minutes the Exchange proposes to delay publication of information to the BSTX Market Data Blockchain), the Exchange does not believe that there would be any real time trading advantage provided to those who use the BSTX Market Data Blockchain over subscribers to the Exchange's proprietary feeds or subscribers to consolidated market data. The data metrics also reveal that over 11% of executions and nearly 12% of cancellations occurred in small capitalization stocks during Q1 2021 within 1 second (1/300th of the duration of the proposed five minute delay). This data makes clear that the speed of markets is such that using the BSTX Market Data Blockchain to gain a real time trading advantage would not be possible as over 10% of trades and cancels occur within one second.

⁴⁶ See e.g., 17 CFR 240.17a-3.

which would contain only its trading activity on BSTX, as a substitute for its independent recordkeeping obligations.

With respect to information security considerations, the Exchange notes that as a system of the Exchange, the BSTX Market Data Blockchain will be subject to the requirements of the Exchange Act, including Regulation Systems Compliance and Integrity (“Reg. SCI”)⁴⁷ and that the Exchange has in place robust safeguards to protect against any possible systems intrusion to the market data blockchain. To the extent a BSTX Participant were to share its credentials for accessing the API with third parties deliberately or inadvertently, it is possible that those third parties could gain access to its Participant Proprietary Data.⁴⁸ The Exchange would be able to issue new credentials upon request from a BSTX Participant (or non-BSTX Participant) that believes their credentials may have been compromised and implement additional security controls. In any case, however, unauthorized access to the API through which data on the BSTX Market Data Blockchain may be accessed would not allow for any intruder to modify, delete, or otherwise change any data on the BSTX Market Data Blockchain. As a result, the Exchange does not believe that the BSTX Market Data Blockchain presents information security risks and that the Exchange has appropriate safeguards in place to mitigate any such risks.

Periodic Audit of the BSTX Market Data Blockchain by the Exchange

To help ensure the proper functioning of the BSTX Market Data Blockchain and accuracy of information thereon, the Exchange proposes in Rule 17020(c)(3) to periodically audit the BSTX Market Data Blockchain. Specifically, the Exchange proposes to perform the

⁴⁷ 17 CFR 240.1000 – 1007.

⁴⁸ The Exchange notes that any such unauthorized access would not provide any real time order and transaction information of the BSTX Participant because of the five minute delay in publishing information to the BSTX Market Data Blockchain.

audit at least bi-annually to ensure that the BSTX Market Data Blockchain accurately captures order and transaction data on BSTX. The Exchange expects that it will initially audit the BSTX Market Data Blockchain more frequently (e.g., monthly) during the first year of operation to make sure the BSTX Market Data Blockchain operates as intended during the period of time when the Exchange expects BSTX Participants to be familiarizing themselves with the BSTX Market Data Blockchain. In particular, the Exchange plans to evaluate whether the information recorded to the BSTX Market Data Blockchain is accurate (i.e., that it corresponds to the Exchange's FIX trading logs of the relevant market data) and captures all of the elements of market data specified in proposed Rule 17020(c). To the extent any issues or discrepancies are identified in the course of the audit, the Exchange will promptly remediate such issues and provide notice, as may be required, to impacted users of the BSTX Market Data Blockchain and the Commission.⁴⁹

Benefits of the BSTX Market Data Blockchain

The Exchange believes that there are two primary benefits related to the BSTX Market Data Blockchain. First, the Exchange believes that a BSTX Participant may find the information useful to them for a variety of purposes such as to review the BSTX Participant's trading activity on BSTX, determine what the market was at a particular point in time on BSTX for a given Security, evaluate execution quality on BSTX, help confirm the accuracy of their internal trading data,⁵⁰ or download the data to back-test trading strategies. As proposed, the BSTX Market Data

⁴⁹ See generally Rule 1002 of Regulation SCI (describing notification requirements related to "SCI events" and "de minimis SCI events" – i.e., those that would have no or a de minimis impact on the Exchange's operations or market participants). 17 CFR 242.1002.

⁵⁰ As previously discussed, however, the BSTX Market Data Blockchain could not be used as a substitute for a BSTX Participant's recordkeeping obligations. See supra note 46 and proposed Rule 17020(c)(3).

Blockchain requires no affirmative obligation on the part of the BSTX Participant. As a result, if a BSTX Participant does not find the BSTX Market Data Blockchain to be of use to it, it could simply ignore it without cost or penalty. In addition, non-BSTX Participants granted access to General Market Data may find the data useful for academic studies. The Commission could also be granted access by the Exchange, which would allow the Commission to examine how and when orders arrived at the Exchange, how and when they were modified, and how and when they were executed.⁵¹

Second, the Exchange believes that the BSTX Market Data Blockchain will help familiarize BSTX Participants with the use and capabilities of blockchain technology in a manner that does not impose any burden on them or other market participants. The Commission has stated that it is “mindful of the benefits of increasing use of new technologies for investors and the markets, and has encouraged experimentation and innovation . . .”⁵² stating further that “[i]nformation and communications technologies are critical to healthy and efficient primary and secondary markets.”⁵³ Regarding the judgment of whether the benefits of certain technologies are meritorious, the Commission has explained its view that “[t]he market will ultimately prove the worth of technology – whether the benefits to the industry and its investors of developing and

⁵¹ The Exchange notes that it is initially proposing a relatively simple exchange model without hidden orders or the numerous other types of complex orders available on certain other exchanges (e.g., peg orders, hide-not-slide, discretionary peg orders etc.). Consequently, BSTX presents an opportunity to study, using the data available on the BSTX Market Data Blockchain, how a more simplified market structure operates as well as the evolution of this model over time as additional features might be added (or removed).

⁵² Securities and Exchange Commission, The Impact of Recent Technological Advances on the Securities Markets (Sep. 1997), <https://www.sec.gov/news/studies/techrp97.htm>.

⁵³ Id.

using new services are greater than the associated costs.”⁵⁴ Consistent with these statements, the Exchange believes that promoting use of blockchain technology through the BSTX Market Data Blockchain, accessed through an exchange-provided API, will allow BSTX Participants to observe and increase their familiarity with the capabilities and potential benefits of blockchain technology in a context that operates within the current equity market infrastructure and that the proposal will thereby advance and protect the public’s interest in the use and development of new data processing techniques that may create opportunities for more efficient, effective and safe securities markets.⁵⁵ Moreover, the Exchange believes that new technology, such as

54

Id.

55

Report of the Senate Committee on Banking, Housing & Urban Affairs, S. Rep. No. 94-75, at 8 (1975) (expressing Congress’ finding that new data processing and communications systems create the opportunity for more efficient and effective markets). While the Exchange believes that its proposal represents an introductory step in pairing the benefits of blockchain technology with the current equity market infrastructure, other market participants and FINRA have recognized additional potential benefits to blockchain technology in various applications related to the securities markets. FINRA has stated “[o]ne of the proposed benefits of [blockchain technology] is the ability to offer a timestamped, sequential, audit trail of transaction records. This may provide regulators and other interested parties (e.g., internal audit, public auditors) with the opportunity to leverage the technology to view the complete history of a transaction where it may not be available today and enhance existing records related to securities transactions.” Financial Industry Regulatory Authority, Distributed Ledger Technology: Implications of Blockchain for the Securities Industry (January 2017), available at: https://www.finra.org/sites/default/files/FINRA_Blockchain_Report.pdf. Further, Paxos Trust Company echoed similar themes in connection with its receipt of no-action relief from the Commission staff, and explained in its request letter certain benefits of blockchain technology including “greater data accuracy and transparency, advanced security, and increased levels of availability and operational efficiency ...” See Letter from Jeffrey S. Mooney, Division of Trading and Markets, Securities and Exchange Commission to Charles Cascarilla and Daniel Burstein, Paxos Trust Company, LLC re: Clearing Agency Registration Under Section 17A(b)(1) of the Securities Exchange Act of 1934 (October 28, 2019), <https://www.sec.gov/divisions/marketreg/mr-noaction/2019/paxos-trust-company-102819-17a.pdf>. The Exchange believes such benefits may be generally relevant to future potential applications of blockchain technology.

blockchain technology, may be able to help perfect the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act.⁵⁶ At a minimum, the Exchange believes that the use of blockchain technology to store historical market data, accessible through an API, may be a more efficient and effective mechanism for consuming historical market data. Rather than having to download a file of historical market data as is typically the case today, users of the BSTX Market Data Blockchain would be able to query and search the blockchain for particular information of interest to them through the API. The Exchange notes that it is not proposing to offer a separate historical market data feed other than the BSTX Market Data Blockchain, so the BSTX Market Data Blockchain would be the Exchange's historical market data product offering.⁵⁷

Currently, the Exchange believes that market participants, such as prospective BSTX Participants, are able to obtain and review their own order and trade information as well as historical market data on one or more exchanges through a combination of using their own books and records and through acquiring historical market data products (e.g., TAQ data). Depending on how a market participant might organize these sources of data or use historical market data, they may be able to run searches or filters to examine the market data in a manner similar to what will be available using the BSTX Market Data Blockchain. The BSTX Market Data Blockchain is essentially an Exchange-offered tool accessible through an API that provides the features of searching and filtering of BSTX market data to a BSTX Participant (and non-BSTX Participants with respect to anonymized data only). In other words, market participants have available to them today through other resources (i.e., their books and records and historical data

⁵⁶ 15 U.S.C. 78f(b)(5).

⁵⁷ See infra notes 147-152 and accompanying text, describing the Exchange's proposed market data offerings.

products where available) the same data elements that the Exchange proposes to make available through the BSTX Market Data Blockchain, but they may not have the information readily accessible or searchable in the same manner that it would be available using the BSTX Market Data Blockchain. In the event of any disruption to the BSTX Market Data Blockchain or a BSTX Participant's access to the BSTX Market Data Blockchain, there would be no impact on the ability of market participants to trade Securities, which the Exchange believes furthers the protection of investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act.⁵⁸ There would also no be disruption in the distribution of market data related to Securities because the BSTX Market Data Blockchain operates as a separate and distinct service of the Exchange independently of the Exchange's other market data products.

Trading Securities on Other National Securities Exchanges

Securities would be eligible for trading on other national securities exchanges that extend UTP to them. As described above in Part II.E, Securities would be held in "street name" at DTC, have a CUSIP number, and would clear and settle through the facilities of a clearing agency registered with the SEC (i.e., NSCC and DTC respectively). As a result, Securities would be able to trade on other exchanges and OTC in the same manner as other NMS stock. Accordingly, other exchanges would generally be able to extend UTP to Securities in accordance with Commission rules. The BSTX Market Data Blockchain would not impact the ability of Securities to trade on other exchanges or OTC.

⁵⁸ Id.

Ability for BSTX Participants to Include a Parameter for a Preference for Settlement of Transactions in Securities Faster Than T+2

As described above in Section II.E.5., and based on discussions with representatives from DTCC, BSTX believes that NSCC already has authority under its rules, policies and procedures to clear certain trades on a T+1 or T+0 basis, which are shorter settlement cycles than the longest settlement cycle of T+2 that is generally permitted under SEC Rule 15c6-1 for a security trade that involves a broker-dealer.⁵⁹ Furthermore, BSTX understands from representatives of DTCC that NSCC does already clear trades in accordance with this authority.

The Exchange proposes that BSTX Participants would be able to include in their orders in Securities that are submitted to BSTX certain parameters to indicate a preference for settlement on a same day (T+0) or next trading day (T+1) basis when certain conditions are met.⁶⁰ Any such orders would at the time of order entry represent orders that would be regular-way and would be presumed to settle on a T+2 basis just like any other order submitted by a BSTX Participant that does not include a parameter indicating a preference for faster settlement. As described in greater detail below, however, orders in a Security that include a parameter indicating a preference for settlement on a T+0 basis (“Order with a T+0 Preference”) or on a T+1 basis (“Order with a T+1 Preference”) would only result in executions that would actually settle more quickly than on a T+2 basis if, and only if, all of the conditions in Rule 25060(h) are met and the execution that is transmitted by BSTX to NSCC is eligible for T+0 or T+1 settlement under the rules, policies and procedures of a registered clearing agency.⁶¹ Any such

⁵⁹ See supra note 33.

⁶⁰ See proposed Rule 25060(h).

⁶¹ See proposed Rule 25100(d). For example, the Exchange understands that under its current rules, policies and procedures NSCC accepts trades for T+0 settlement through its continuous net settlement system provided that they are received by NSCC before a cut-

preference included by a BSTX Participant would only become operative if the order happens to execute against another order from a BSTX Participant that also includes a parameter indicating a preference for settlement on a T+0 or T+1 basis, as described in more detail below. This means that at the time of order entry all orders in Securities would be regular-way orders that would be presumed to settle on a T+2 basis. Faster settlement consistent with the rules, policies and procedures of a registered clearing agency would occur if and only if two orders execute against each other in a manner that meets the conditions in Rule 25060(h).

As proposed, an Order with a T+0 Preference will execute against any order against which it is marketable and BSTX will transmit the matched order information to a registered clearing agency for settlement on a standard settlement cycle (T+2) except where: (i) the Order with a T+0 Preference executes against another Order with a T+0 Preference, in which case BSTX will transmit the matched order information to a registered clearing agency for settlement on the trade date as may be permitted by the rules, policies and procedures of the registered clearing agency, or (ii) the Order with a T+0 Preference executes against an Order with a T+1 Preference, in which case BSTX will transmit the matched order information to a registered clearing agency for settlement on the next trading day after the trade date (i.e., T+1) as may be permitted by the rules, policies and procedures of the registered clearing agency. Similarly, as proposed, an Order with a T+1 Preference will execute against any order against which it is marketable and BSTX will transmit the matched order information to a registered clearing

off time of 11:30 am ET. Matched T+0 trades on BSTX that are not received by NSCC prior to that cut-off time would not be eligible for T+0 clearance and settlement through NSCC's continuous net settlement system. DTCC provides on its website an overview of the cut-off times and other procedural considerations under its rules, policies and procedures that are associated with processing trades for accelerated settlement on a T+0 or T+1 basis. The overview can be accessed here: <https://www.dtcc.com/sds>.

agency for settlement on a standard settlement cycle (T+2) except where: (i) the Order with a T+1 Preference executes against another Order with a T+1 Preference or an Order with a T+0 Preference, in which case BSTX will transmit the matched order information to a registered clearing agency for settlement on the next trading day after the trade date (i.e., T+1) as may be permitted by the rules, policies and procedures of the registered clearing agency. In all cases, an order not marked with a preference for either T+0 or T+1 settlement would be assured under the settlement timing logic in proposed Rule 25060(h) of settlement on T+2. The possibility of a shortened settlement time would have no impact on the Exchange's proposed price time priority structure for order matching.⁶²

As a result of this structure, all orders in Securities would be eligible to match and execute against any order against which they are marketable with settlement to occur at the later settlement date of any two matching orders. Only where an Order with a T+1 Preference or an Order with a T+0 Preference match with another Order with a T+1 Preference or Order with a T+0 Preference will those orders (or matching portions thereof) be eligible to settle more quickly than the standard settlement cycle of T+2.

As previously noted in Part II.E above, the Exchange expects at the commencement of its operations that it would transmit confirmed trade details to NSCC regarding trades in Securities that occur on BSTX and that NSCC would be the registered clearing agency that clears trades in Securities and produces related settlement obligations for settlement at DTC. The Exchange

⁶² For example, assume Order A is marked as an Order with a T+0 Preference and it is sent to BSTX and is marketable against both resting Order B (standard T+2 settlement, with time priority over Order C) and resting Order C (marked as an Order with a T+0 Preference but with priority second to that of Order B). Order A will interact first with Order B, notwithstanding that Order C is also marketable against Order A and is also marked as an Order with a T+0 Preference.

believes that NSCC and DTC already have appropriate approvals from the SEC for authority in their rules, policies and procedures to be able to clear and settle settlement obligations using such shortened settlement times. Furthermore, the Exchange understands that NSCC and DTC in fact already are using this authority for shortened settlement times. For example, based on information provided by representatives of DTCC to outside counsel for BSTX, the Exchange understands that on average for each business day for the months of November and December 2019, NSCC cleared over 19,000 trades designated for T+1 settlement and over 2,000 trades designated for T+0 settlement.⁶³ In addition, the Exchange understands that DTCC makes data regarding T+0 and T+1 clearance and settlement through NSCC and DTC available on the DTCC website for review by the public.⁶⁴ As provided in proposed Rules 26136 and 26137, all trades in Securities occurring on BSTX that are cleared by NSCC, including those that BSTX transmits to NSCC for T+0 or T+1 settlement as may be permitted pursuant to NSCC's rules, policies and procedures, will be settled through book-entry settlement at DTC pursuant to its rules, policies and procedures.

The Exchange is also aware of the recent announcement by DTCC, the Securities Industry and Financial Markets Association ("SIFMA") and the Investment Company Institute ("ICI") that they plan to collaborate to help the industry reduce the standard settlement cycle from T+2 to T+1, identify a target timeframe for that transition (e.g., by 2023 as recently

⁶³ Mike McClain, Managing Director and General Manager of Equity Clearing and DTC Settlement Services at DTCC provided this information to BSTX's outside counsel, Andrew Blake, Partner, Sidley Austin LLP during a telephone conference on February 13, 2020.

⁶⁴ See DTCC website, Settlement by the Numbers, <https://www.dtcc.com/ust1/by-the-numbers>.

suggested by DTCC),⁶⁵ and support market participants in their efforts to obtain requisite regulatory approvals for such a reduction in the standard settlement cycle, including from the SEC.⁶⁶ The Exchange fully supports this collaboration by SIFMA, DTCC and ICI and efforts by market participants and regulators, including the SEC, to move the standard settlement cycle to T+1. The time frame for the transition, however, remains uncertain and is likely to take years, as suggested by DTCC. The Exchange strongly believes that this proposal to allow BSTX Participants for trades in Securities on BSTX to access the shorter settlement cycles of T+1 and T+0 that are already being used by NSCC and DTC today represents a change that is both entirely consistent with and in furtherance of broader industry efforts to move the standard settlement cycle to T+1 and that could also incrementally and immediately provide market participants with the benefit of shorter settlement cycles that T+2 where BSTX Participants seek those benefits as provided in proposed Rule 25060(h). The Exchange agrees with DTCC representatives who have recently stated that “[t]he time to settlement equals counterparty risk which can become elevated during market shocks. It can also lead to the need for higher margin requirements, which are critical to protecting the financial system and investors against a firm default.”⁶⁷ The Exchange believes that BSTX Participants should be permitted to manage these

⁶⁵ DTCC White Paper, Advancing Together: Leading the Industry to Accelerated Settlement (February 2021) (“DTCC Accelerated Settlement White Paper”), <https://www.dtcc.com/-/media/Files/PDFs/White%20Paper/DTCC-Accelerated-Settle-WP-2021.pdf>.

⁶⁶ Sifma Press Release, Sifma, ICI and DTCC Leading Effort to Shorten U.S. Securities Settlement Cycle to T+1, Collaborating with the Industry on Next Steps (April 28, 2021), <https://www.sifma.org/resources/news/sifma-ici-and-dtcc-leading-effort-to-shorten-u-s-securities-settlement-cycle-to-t1-collaborating-with-the-industry-on-next-steps/>.

⁶⁷ DTCC Press Release, DTCC Proposes Approach to Shortening U.S. Settlement Cycle to T+1 Within 2 Years, (February 24, 2021) (quoting Murray Pozmanter, Head of Clearing Agency Services and Global Business Operations at DTCC),

settlement and margin risks through the structure that is provided in proposed Rule 25060(h). The Exchange also believes, as described in more detail below, that the structure in proposed Rule 25060(h) would allow them to do so in a manner that is consistent with Section 6(b)(5) of the Exchange Act and the requirement for the rules of the Exchange to be designed to perfect the mechanism of a free and open market⁶⁸ because under proposed Rule 25060(h), any Order with a T+1 Preference or Order with a T+0 Preference will continue to interact with any other order in the Security against which it is marketable (including any order in the Security that does not include a parameter indicating a preference for settlement faster than T+2) and a resulting execution will always settle using the latest settlement timing associated with two matching orders.

The Exchange believes that facilitating shorter settlement cycles as permitted under the rules, policies, and procedures of a registered clearing agency is consistent with Section 6(b)(5) of the Exchange Act⁶⁹ because it is in the public interest and furthers the protection of investors as well as helps perfect the mechanism of a free and open market and the national market system. Specifically, the Exchange believes that BSTX Participants have an interest in being able to access risk-reducing market functionality that is presently available and compatible with market structure, such as shorter settlement cycles, and that this can reduce costs for market participants settling trading obligations in that Security and reduce settlement risk. For example, market participants settling trades in a Security on a T+2 basis must post margin collateral to NSCC for two trading days. The margin collateral cannot otherwise be used until settlement on T+2. In

<https://www.dtcc.com/news/2021/february/24/dtcc-proposes-approach-to-shortening-us-settlement-cycle-to-t1-within-two-years>.

⁶⁸ 15 U.S.C. 78(f)(b)(5).

⁶⁹ Id.

addition, and as reflected in statements by DTCC described above, by shortening the timing of settlement from T+2 to T+1 or T+0, the risk horizon for a potential default in settling the trade is correspondingly shortened as well. This means that market participants engaged in a transaction settling transactions on shorter settlement cycles than T+2 receive the benefits of not having to encumber collateral assets for as long and facing a shorter period of settlement risk. The Exchange believes that these benefits in turn free up assets to be used elsewhere in financial markets, thereby helping to promote the efficient allocation of capital and perfecting the mechanism of a free and open market.⁷⁰ All else being equal, the Exchange believes that a BSTX Participant may find that between two otherwise identical stocks, one for which it may be able to settle the transaction more quickly is more attractive than one that settles over a longer duration and potentially requires collateral to be held for a longer period.

The Exchange notes that the proposed potential for shortened settlement timing for an Order with a T+0 Preference or an Order with a T+1 Preference will in no way impact or prevent any market participant that desires to effect a trade in a Security on BSTX from doing so. This is because under proposed Rule 25060(h), any Order with a T+1 Preference or Order with a T+0 Preference will continue to interact with any other order in the Security against which it is marketable (including any order in the Security that does not include a parameter indicating a preference for settlement faster than T+2) and a resulting execution will always settle using the latest settlement timing associated with two matching orders. Accordingly, non-BSTX Participants seeing a quote in a Security on BSTX will remain able to execute against that quote posted on BSTX even if that quote includes a latent parameter for a preference for T+0 or T+1 settlement where consistent with the rules, policies and procedures of a registered clearing

⁷⁰ Id.

agency. In this way, the Exchange believes that the proposal is fully compatible with the current market structure and would help perfect the mechanism of a free and open market consistent with the requirement in Section 6(b)(5) of the Exchange Act⁷¹ by allowing for shorter settlement times than T+2 where consistent with the rules, policies and procedures of a registered clearing agency and where both parties to a transaction in a Security indicate a preference for faster settlement than T+2.

Finally, because all orders in Securities submitted to BSTX would at the time of the order entry be presumed to settle on a regular way T+2 basis and would interact with any other order against which the order is marketable, the Exchange believes that Orders with a T+0 Preference and Orders with a T+1 Preference would be considered “protected” within the meaning of Rule 611 of the Exchange Act.⁷² Orders with a T+0 Preference and Orders with a T+1 Preference would not fall within the exception for protected quotation status set forth in Rule 611(b)(2) of the Exchange Act because they will only settle more quickly than T+2 where all of the conditions in Rule 25060(h) are met, as described above, where settlement faster than T+2 is consistent with the rules, policies and procedures of a registered clearing agency.⁷³

In adopting amendments to SEC Rule 15c6-1 in 2017 to shorten the standard settlement cycle for most broker-dealer transactions in securities from T+3 to T+2, the Commission stated its belief that the shorter settlement cycle would have positive effects regarding the liquidity risks and costs faced by members in a clearing agency, like NSCC, that performs central

⁷¹ Id.

⁷² 17 CFR 242.611.

⁷³ 17 CFR 242.611(b)(2).

counterparty⁷⁴ (“CCP”) services, and that it would also have positive effects for other market participants. Specifically, the Commission stated its belief that the resulting “reduction in the amount of unsettled trades and the period of time during which the CCP is exposed to risk would reduce the amount of financial resources that the CCP members may have to provide to support the CCP’s risk management process . . .” and that “[t]his reduction in the potential need for financial resources should, in turn, reduce the liquidity costs and capital demands clearing broker-dealers face . . . and allow for improved capital utilization.”⁷⁵ The Commission went on to state its belief that shortening the settlement cycle “would also lead to benefits to other market participants, including introducing broker-dealers, institutional investors, and retail investors” such as “quicker access to funds and securities following trade execution” and “reduced margin charges and other fees that clearing broker-dealers may pass down to other market participants[.]”⁷⁶ The Commission also “noted that a move to a T+1 standard settlement cycle could have similar qualitative benefits of market, credit, and liquidity risk reduction for market participants[.]”⁷⁷ BSTX agrees with these statements by the Commission and has therefore proposed BSTX Rules 25060(h) and 25100(d) in a form that would promote the benefits of available, shorter settlement cycles.⁷⁸

⁷⁴ See 17 CFR 240.17Ad-22(a)(2) (defining the term “central counterparty” to mean “a clearing agency that interposes itself between the counterparties to securities transactions, acting functionally as the buyer to every seller and the seller to every buyer”).

⁷⁵ Exchange Act Release No. 80295 (March 22, 2017), 82 FR 15564, 15570-71 (March 29, 2017).

⁷⁶ Id. at 15571.

⁷⁷ Id. at 15582.

⁷⁸ As described in this Part II.I, an order for a Security marked for T+0 or T+1 could still interact with any other order, including an order with the default T+2 settlement, with settlement to occur at the later of any two matched orders (e.g., if a T+1 order matches with a T+2 order, the orders would settle T+2). Only where an order marked for a shorter

Proposed BSTX Rules

The discussion in this Part III addresses the proposed BSTX Rules that would be adopted as Rule Series 17000 through 29000.

General Provisions of BSTX and Definitions (Rule 17000 Series)

The Exchange proposes to adopt as its Rule 17000 Series (General Provisions of BSTX) a set of general provisions relating to the trading of Securities and other rules governing participation on BSTX. Proposed Rule 17000 sets forth the defined terms used throughout the BSTX Rules. The majority of the proposed definitions are substantially similar to defined terms used in other equities exchange rulebooks, such as with respect to the term “customer.”⁷⁹ The Exchange proposes to set forth new definitions for certain terms to specifically identify systems, agreements, or persons as they relate to BSTX and as distinct from other Exchange systems, agreements, or persons that may be used in connection with the trading of other options on the Exchange.⁸⁰ The Exchange also proposes to define certain unique terms relating to the trading of

settlement time matches with another order similarly marked would a shorter settlement time occur. Consequently, the proposed use of shorter settlement times would not adversely impact any market participant seeking T+2 settlement in a transaction for a Security.

⁷⁹ Proposed Rule 17000(a)(17) defines the term “customer” to not include a broker or dealer, which parallels the same definition in other exchange rulebooks. See e.g., IEX Rule 1.160(j). Similarly, the Exchange proposes to define the term “Regular Trading Hours” as the time between 9:30 a.m. and 4:00 p.m. Eastern Time. See proposed Rule 17000(a)(29) cf. IEX Rule 1.160(gg) (defining “Regular Market Hours” in the same manner).

⁸⁰ For example, the Exchange proposes to define the term “BSTX” to mean the facility of the Exchange for executing transaction in Securities, the term “BSTX Participant” to mean a Participant or Options Participant (as those terms are defined in the Exchange’s Rule 100 Series) that is authorized to trade Securities, and the term “BSTX System” to mean the automated trading system used by BSTX for the trading of Securities. See proposed Rule 17000(a)(8), (11), and (15).

Securities, including the term “Security” itself,⁸¹ as well as for other features of BSTX such as the “BSTX Market Data Blockchain.”⁸²

In addition to setting forth proposed definitions used throughout the proposed Rules, the Exchange proposes to specify in proposed Rule 17010 (Applicability) that the Rules set forth in the Rule 17000 Series to Rule 29000 Series apply to the trading, listing, and related matters pertaining to the trading of Securities. Proposed Rule 17010(b) provides that, unless specific Rules relating to Securities govern or unless the context otherwise requires, the provisions of any Exchange Rule (i.e., including Exchange Rules in the Rule 100 through 16000 Series) shall be applicable to BSTX Participants.⁸³ This is intended to make clear that BSTX Participants are subject to all of the Exchange’s Rules that may be applicable to them, notwithstanding that their trading activity may be limited solely to trading Securities. The Exchange believes that the proposed definitions set forth in Rule 17000 are consistent with Section 6(b)(5) of the Exchange Act⁸⁴ because they protect investors and the public interest by setting forth clear definitions that help BSTX Participants understand and apply Exchange Rules. Without clearly defining terms used in the Exchanges Rules and providing clarity as to the Exchange Rules that may apply,

⁸¹ Proposed Rule 17000(a)(31) provides that the term “Security” means a NMS stock, as defined in Rule 600(b)(47) of the Exchange Act, trading on the BSTX System. The proposed definition further specifies that references to a “security” or “securities” in the Rules may include Securities.

⁸² Proposed Rule 17000(a)(9) provides that the term “BSTX Market Data Blockchain” means the private, permissioned blockchain network through which a BSTX Participant may access certain order and transaction data related to trading activity on BSTX. See Part II.F for further discussion of the BSTX Market Data Blockchain.

⁸³ Proposed Rule 17010 further specifies that to the extent the provisions of the Rules relating to the trading of Securities contained in Rule 17000 Series to Rule 29000 Series are inconsistent with any other provisions of the Exchange Rules, the Rules relating to Security trading shall control.

⁸⁴ 15 U.S.C. 78f(b)(5).

market participants could be confused as to the application of certain rules, which could cause harm to investors.

Participation on BSTX (Rule 18000 Series)

The Exchange proposes to adopt as its Rule 18000 Series (Participation on BSTX), three rules setting forth certain requirements relating to participation on BSTX. Proposed Rule 18000 (BSTX Participation) establishes “BSTX Participants” as a new category of Exchange participation for effecting transactions on the BSTX System, provided they: (i) complete the BSTX Participant Application, Participation Agreement, and User Agreement;⁸⁵ (ii) be an existing Options Participant or become a Participant of the Exchange pursuant to the Rule 2000 Series; and (iii) provide such other information as required by the Exchange.⁸⁶ Proposed Rule 18010 (Requirements for BSTX Participants) sets forth certain requirements for BSTX Participants including requirements that each BSTX Participant comply with Rule 15c3-1 under the Exchange Act, comply with applicable books and records requirements, and be a member of a registered clearing agency or clear Security transactions through another BSTX Participant that is a member/participant of a registered clearing agency.⁸⁷ Finally, proposed Rule 18020

⁸⁵ The BSTX Participant Application, Participation Agreement, and User Agreement have been submitted as Exhibits 3A, 3B, and 3C to the proposal respectively.

⁸⁶ Proposed Rule 18000 also sets forth the Exchange’s review process regarding BSTX Participation Agreements and certain limitations on the ability to transfer BSTX Participant status (e.g., in the case of a change of control). In addition proposed Rule 18000(b)(2) provides that a BSTX Participant shall continue to abide by all applicable requirements of the Rule 2000 Series, which would include, for example, IM-2040-5, which specifies continuing education requirements of Exchange Participants and their associated persons.

⁸⁷ Proposed Rule 18010(b) is similar to the rules of existing exchanges. See e.g., IEX Rule 2.160(c). Proposed Rule 18010(a) is also similar to the rules of existing exchanges. See e.g., IEX Rule 1.160(s) and Cboe BZX Rule 17.2(a).

(Associated Persons) provides that associated persons of a BSTX Participant are bound by the Rules of the Exchange to the same extent as each BSTX Participant.

The Exchange believes that the proposed Rule 18000 Series (Participation on BSTX) is consistent with Section 6(b)(5) of the Exchange Act⁸⁸ because these proposed rules are designed to promote just and equitable principles of trade, and protect investors and the public interest by setting forth the requirements to become a BSTX Participant and specifying that associated persons of a BSTX Participant are bound by Exchange Rules. Under proposed Rule 18000, a BSTX Participant must first become an Exchange Participant pursuant to the Exchange Rule 2000 Series which the Exchange believes would help assure that BSTX Participants meet the appropriate standards for trading on BSTX in furtherance of the protection of investors.⁸⁹

Business Conduct for BSTX Participants (Rule 19000 Series)

The Exchange proposes to adopt as its Rule 19000 Series (Business Conduct for BSTX Participants), twenty two rules relating to business conduct requirements for BSTX Participants that are substantially similar to business conduct rules of other exchanges.⁹⁰ The proposed Rule 19000 Series would specify business conduct requirements with respect to: (i) just and equitable

⁸⁸ 15 U.S.C. 78f(b)(5).

⁸⁹ The Exchange notes that the approach of requiring members of a facility of an exchange to first become members of the exchange is consistent with the approach used by another national securities exchange. See Cboe BZX Rule 17.1(b)(3) (requiring that a Cboe BZX options member be an existing member or become a member of the Cboe BZX equities exchange pursuant to the Cboe BZX Chapter II Series).

⁹⁰ See Cboe BZX Chapter 5 rules. See also IEX Rule 5.150 with respect to proposed Rule 21040 (Prevention of the Misuse of Material, Non-Public Information).

principles of trade;⁹¹ (ii) adherence to law;⁹² (iii) use of fraudulent devices;⁹³ (iv) false statements;⁹⁴ (v) know your customer;⁹⁵ (vi) fair dealing with customers;⁹⁶ (vii) suitability;⁹⁷ (viii) the prompt receipt and delivery of securities;⁹⁸ (ix) charges for services performed;⁹⁹ (x) use of information obtained in a fiduciary capacity;¹⁰⁰ (xi) publication of transactions and

⁹¹ Proposed Rule 19000 (Just and Equitable Principles of Trade) provides that no BSTX Participant, including its associated persons, shall engage in acts or practices inconsistent with just and equitable principles of trade.

⁹² Proposed Rule 19010 (Adherence to Law) generally requires BSTX Participants to adhere to applicable laws and regulatory requirements.

⁹³ Proposed Rule 19020 (Use of Fraudulent Devices) generally prohibits BSTX Participants from effecting a transaction in any security by means of a manipulative, deceptive or other fraudulent device or contrivance.

⁹⁴ Proposed Rule 19030 (False Statements) generally prohibits BSTX Participants and their associated persons from making false statements or misrepresentations in communications with the Exchange.

⁹⁵ Proposed Rule 19040 (Know Your Customer) requires BSTX Participants to comply with FINRA Rule 2090 as if such rule were part of the Exchange Rules.

⁹⁶ Proposed Rule 19050 (Fair Dealing with Customers) generally requires BSTX Participants to deal fairly with customers and specifies certain activities that would violate the duty of fair dealing (e.g., churning or overtrading in relation to the objectives and financial situation of a customer).

⁹⁷ Proposed Rule 19060 (Suitability) provides that BSTX Participants and their associated persons shall comply with FINRA Rule 2111 as if such rule were part of the Exchange Rules.

⁹⁸ Proposed Rule 19070 (Prompt Receipt and Delivery of Securities) would generally prohibit a BSTX Participant from accepting a customer's purchase order for a security until it can determine that the customer agrees to receive the securities against payment.

⁹⁹ Proposed Rule 19080 (Charges for Services Performed) generally requires that charges imposed on customers by broker-dealers shall be reasonable and not unfairly discriminatory.

¹⁰⁰ Proposed Rule 19090 (Use of Information Obtained in a Fiduciary Capacity) generally restricts the use of information as to the ownership of securities when acting in certain capacities (e.g., as a trustee).

quotations;¹⁰¹ (xii) offers at stated prices;¹⁰² (xiii) payments involving publications that influence the market price of a security;¹⁰³ (xiv) customer confirmations;¹⁰⁴ (xv) disclosure of a control relationship with an issuer of Securities;¹⁰⁵ (xvi) discretionary accounts;¹⁰⁶ (xvii) improper use of customers' securities or funds and a prohibition against guarantees and sharing in accounts;¹⁰⁷ (xviii) the extent to which sharing in accounts is permissible;¹⁰⁸ (xix) communications with

¹⁰¹ Proposed Rule 19100 (Publication of Transactions and Quotations) generally prohibits a BSTX Participant from disseminating a transaction or quotation information unless the BSTX Participant believes it to be bona fide.

¹⁰² Proposed Rule 19110 (Offers at Stated Prices) generally prohibits a BSTX Participant from offering to transact in a security at a stated price unless it is in fact prepared to do so.

¹⁰³ Proposed Rule 19120 (Payments Involving Publications that Influence the Market Price of a Security) generally prohibits direct or indirect payments with the aim of disseminating information that is intended to effect the price of a security.

¹⁰⁴ Proposed Rule 19130 (Customer Confirmations) requires that BSTX Participants comply with Rule 10b-10 of the Exchange Act. 17 CFR 240.10b-10.

¹⁰⁵ Proposed Rule 19140 (Disclosure of Control Relationship with Issuer) generally requires BSTX Participants to disclose any control relationship with an issuer of a security before effecting a transaction in that security for the customer.

¹⁰⁶ Proposed Rule 19150 (Discretionary Accounts) generally provides certain restrictions on BSTX Participants handling of discretionary accounts, such as by effecting excessive transactions or obtained authorization to exercise discretionary powers.

¹⁰⁷ Proposed Rule 19160 (Improper Use of Customers' Securities or Funds and Prohibition against Guarantees and Sharing in Accounts) generally prohibits BSTX Participants from making improper use of customers securities or funds and prohibits guarantees to customers against losses.

¹⁰⁸ Proposed Rule 19170 (Sharing in Accounts; Extent Permissible) generally prohibits BSTX Participants and their associated persons from sharing directly or indirectly in the profit or losses of the account of a customer unless certain exceptions apply such as where an associated person receives prior written authorization from the BSTX Participant with which he or she is associated.

customers and the public;¹⁰⁹ (xx) gratuities;¹¹⁰ (xxi) telemarketing;¹¹¹ and (xxii) mandatory systems testing.¹¹² The Exchange notes that the proposed financial responsibility rules are virtually identical to those of other national securities exchanges other than changes to defined terms and certain other provisions that would not apply to the trading of Securities on the BSTX System.¹¹³

The Exchange believes that the proposed Rule 19000 Series (Business Conduct) is consistent with Section 6(b)(5) of the Exchange Act¹¹⁴ because these proposed rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest by setting forth appropriate standards of conduct applicable to BSTX Participants in carrying out their business activities. For example, proposed Rule 19000 (Just and Equitable Principles of Trade) and 19010 (Adherence to Law) would prohibit BSTX Participants from engaging in acts or practices inconsistent with just and

¹⁰⁹ Proposed Rule 19180 (Communications with Customers and the Public) generally provides that BSTX Participants and their associated persons shall comply with FINRA Rule 2210 as if such rule were part of the Exchange Rules.

¹¹⁰ Proposed Rule 19190 (Gratuities) requires BSTX Participants to comply with the requirements set forth in BOX Exchange Rule 3060 (Gratuities).

¹¹¹ Proposed Rule 19200 (Telemarketing) requires that BSTX Participants and their associated persons comply with FINRA Rule 3230 as if such rule were part of the Exchange's Rules.

¹¹² Proposed Rule 19210 (Mandatory Systems Testing) requires that BSTX Participants comply with Exchange Rule 3180 (Mandatory Systems Testing).

¹¹³ For example, the Exchange is not proposing to adopt a rule contained in other exchanges' business conduct rules relating to disclosures that broker-dealers give to their customers regarding the risks of effecting securities transactions during times other than during regular trading hours (e.g., higher volatility, possibly lower liquidity) because executions may only occur during regular trading hours on the BSTX System. See e.g., IEX Rule 3.290, Cboe BZX Rule 3.21.

¹¹⁴ 15 U.S.C. 78f(b)(5).

equitable principles of trade or that would violate applicable laws and regulations. Similarly, proposed Rule 19050 (Fair Dealing with Customers) would require that BSTX Participants deal fairly with their customers and proposed Rule 19030 (False Statements) would generally prohibit BSTX Participants, or their associated persons from making false statements or misrepresentations to the Exchange. The Exchange believes that requiring that BSTX Participants comply with the proposed business conduct rules in the Rule 19000 Series would further the protection of investors and the public interest by promoting high standards of commercial honor and integrity. In addition, each of the rules in the proposed Rule 19000 Series (Business Conduct) is substantially similar to supervisory rules of other exchanges.¹¹⁵

Financial and Operational Rules for BSTX Participants (Rule 20000 Series)

The Exchange proposes to adopt as its Rule 20000 Series (Financial and Operational Rules), ten rules relating to financial and operational requirements for BSTX Participants that are substantially similar to financial and operational rules of other exchanges.¹¹⁶ The proposed Rule 20000 Series would specify financial and operational requirements with respect to: (i) maintenance and furnishing of books and records;¹¹⁷ (ii) financial reports;¹¹⁸ (iii) net capital

¹¹⁵ See supra note 90.

¹¹⁶ See Cboe BZX Chapter 6 rules and IEX Chapter 5 rules.

¹¹⁷ Proposed Rule 20000 (Maintenance, Retention and Furnishing of Books, Records and Other Information) requires that BSTX Participants comply with current Exchange Rule 1000 (Maintenance, Retention and Furnishing of Books, Records and Other Information) and that BSTX Participants shall submit to the Exchange order, market and transaction data as the Exchange may specify by Information Circular.

¹¹⁸ Proposed Rule 20010 (Financial Reports) provides that BSTX Participants shall comply with the requirements of current Exchange Rule 10020 (Financial Reports).

compliance;¹¹⁹ (iv) early warning notifications pursuant to Rule 17a-11 under the Exchange Act;¹²⁰ (v) authority of the Chief Regulatory Officer to impose certain restrictions;¹²¹ (vi) margin;¹²² (vii) day-trading margin;¹²³ (viii) customer account information;¹²⁴ (ix) maintaining records of customer complaints;¹²⁵ and (x) disclosure of financial condition.¹²⁶

The Exchange believes that the proposed Rule 20000 (Financial and Operational Rules) Series is consistent with Section 6(b)(5) of the Exchange Act¹²⁷ because these proposed rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest by subjecting BSTX Participants

¹¹⁹ Proposed Rule 20020 (Capital Compliance) provides that each BSTX Participant subject to Rule 15c3-1 under the Exchange Act (17 CFR 240.15c3-1) shall comply with such rule and other financial and operational rules contained in the proposed Rule 20000 series.

¹²⁰ 17 CFR 240.17a-11. Proposed Rule 20030 (“Early Warning” Notification) provides that BSTX Participants subject to the reporting or notifications requirements of Rule 17a-11 under the Exchange Act (17 CFR 240.17a-11) or similar “early warning” requirements imposed by other regulators shall provide the Exchange with certain reports and financial statements.

¹²¹ Proposed Rule 20040 (Power of CRO to Impose Restrictions) generally provides that the Exchange’s Chief Regulatory Officer may impose restrictions and conditions on a BSTX Participant subject to the early warning notification requirements under certain circumstances.

¹²² Proposed Rule 20050 (Margin) sets forth the required margin amounts for certain securities held in a customer’s margin account.

¹²³ Proposed Rule 20060 (Day Trading Margin) sets forth additional requirements with respect to customers that engage in day trading.

¹²⁴ Proposed Rule 20070 (Customer Account Information) requires that BSTX Participants comply with FINRA Rule 4512 as if such rule were part of the Exchange Rules and further clarifies certain cross-references within FINRA Rule 4512.

¹²⁵ Proposed Rule 20080 (Record of Written Customer Complaints) requires that BSTX Participants comply with FINRA Rule 4513 as if such rule were part of the Exchange Rules.

¹²⁶ Proposed Rule 20090 (Disclosure of Financial Condition) generally requires that BSTX Participants make available certain information regarding the BSTX Participant’s financial condition upon request of a customer.

¹²⁷ 15 U.S.C. 78f(b)(5).

to certain recordkeeping, disclosure, and related requirements designed to ensure that BSTX Participants conduct themselves in a financially responsible manner. For example, proposed Rule 20000 would require BSTX Participants to comply with existing Exchange Rule 1000, which sets forth certain recordkeeping responsibilities and the obligation to furnish these to the Exchange upon request so that the Exchange can appropriately monitor the financial condition of a BSTX Participant and its compliance with applicable regulatory requirements. Similarly, proposed Rule 20050 would set forth the margin requirements that BSTX Participants must retain with respect to customers trading in a margin account to ensure that BSTX Participants are not extending credit to customers in a manner that might put the financial condition of the BSTX Participant in jeopardy. Each of the proposed rules in the Rule 20000 Series (Financial and Operational Rules) is substantially similar to existing rules of other exchanges or incorporates an existing rule of the Exchange or another self-regulatory organization (“SRO”) by reference.

Supervision (Rule 21000 Series)

The Exchange proposes to adopt as its Rule 21000 Series (Supervision), six rules relating to certain supervisory requirements for BSTX Participants that are substantially similar to supervisory rules of other exchanges.¹²⁸ The Proposed Rule 21000 Series would specify supervisory requirements with respect to: (i) enforcing written procedures to appropriately supervise the BSTX Participant’s conduct and compliance with applicable regulatory

¹²⁸ See Cboe BZX Chapter 5 rules. See also IEX Rule 5.150 with respect to proposed Rule 21040 (Prevention of the Misuse of Material, Non-Public Information).

requirements;¹²⁹ (ii) designation of an individual to carry out written supervisory procedures;¹³⁰ (iii) maintenance and keeping of records carrying out the BSTX Participant's written supervisory procedures;¹³¹ (iv) review of activities of each of a BSTX Participant's offices, including periodic examination of customer accounts to detect and prevent irregularities or abuses;¹³² (v) the prevention of the misuse of material non-public information;¹³³ and (vi) implementation of an anti-money laundering ("AML") compliance program.¹³⁴ These rules are designed to ensure that BSTX Participants are able to appropriately supervise their business activities, review and maintain records with respect to such supervision, and enforce specific procedures relating to insider-trading and AML.

The Exchange believes that the proposed Rule 21000 (Supervision) Series is consistent with Section 6(b)(5) of the Exchange Act¹³⁵ because these proposed rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade,

¹²⁹ Proposed Rule 21000 (Written Procedures).

¹³⁰ Proposed Rule 21010 (Responsibility of BSTX Participants) would also require that a copy of a BSTX's written supervisory procedures be kept in each office and makes clear that final responsibility for proper supervision rests with the BSTX Participant.

¹³¹ Proposed Rule 21020 (Records).

¹³² Proposed Rule 21030 (Review of Activities).

¹³³ Proposed Rule 21040 (Prevention of the Misuse of Material, Non-Public Information) generally requires BSTX Participants to enforce written procedures designed to prevent misuse of material non-public information and sets forth examples of conduct that would constitute a misuse of material, non-public information.

¹³⁴ Proposed Rule 21050 (Anti-Money Laundering Compliance Program). The Exchange already has rules with respect to Exchange Participants enforcing an AML compliance program set forth in Exchange Rule 10070 (Anti-Money Laundering Compliance Program), so proposed Rule 21050 specifies that BSTX Participants shall comply with the requirements of that pre-existing rule.

¹³⁵ 15 U.S.C. 78f(b)(5).

and protect investors and the public interest by ensuring that BSTX Participants have appropriate supervisory controls in place to carry out their business activities in compliance with applicable regulatory requirements. For example, proposed Rule 21000 (Written Procedures) would require BSTX Participants to enforce written procedures which enable them to supervise the activities of their associated persons and proposed Rule 21010 (Responsibility of BSTX Participants) would require a BSTX Participant to designate a person in each office to carry out written supervisory procedures. Requiring appropriate supervision of a BSTX Participant's business activities and associated persons would promote compliance with the federal securities laws and other applicable regulatory requirements in furtherance of the protection of investors and the public interest.¹³⁶ In addition, each of the rules in the proposed Rule 21000 Series (Supervision) is substantially similar to supervisory rules of other exchanges.¹³⁷

Miscellaneous Provisions (Rule 22000 Series)

The Exchange proposes to adopt as its Rule 22000 Series (Miscellaneous Provisions), six rules relating to a variety of miscellaneous requirements applicable to BSTX Participants that are substantially similar to rules of other exchanges.¹³⁸ These miscellaneous provisions relate to: (i)

¹³⁶ Id.

¹³⁷ See supra note 128.

¹³⁸ See Cboe BZX Chapter 13 rules. See also IEX Rule 6.180 with respect to proposed Rule 22050 (Transactions Involving BOX Employees).

comparison and settlement requirements;¹³⁹ (ii) failures to deliver and failures to receive;¹⁴⁰ (iii) forwarding of proxy and other issuer-related materials;¹⁴¹ (iv) commissions;¹⁴² (v) regulatory services agreements;¹⁴³ and (vi) transactions involving Exchange employees.¹⁴⁴ These rules are designed to capture additional regulatory requirements applicable to BSTX Participants, such as setting forth their obligation to deliver proxy materials at the request of an issuer and to

¹³⁹ Proposed Rule 22000 (Comparison and Settlement Requirements) provides that a BSTX Participant that is a member of a registered clearing agency shall implement comparison and settlement procedures as may be required under the rules of such entity. The proposed rule would further provide that, notwithstanding this general provision, the Board may extend or postpone the time of delivery of a BSTX transaction whenever the Board determines that it is called for by the public interest, just and equitable principles of trade or to address unusual conditions. In such a case, delivery will occur as directed by the Board.

¹⁴⁰ Proposed Rule 22010 (Failure to Deliver and Failure to Receive) provides that borrowing and deliveries must be effected in accordance with Rule 203 of Regulation SHO (17 CFR 242.203) and incorporates Rules 200 – 203 of Regulation SHO by reference into the rule (17 CFR §§ 242.200 – 203).

¹⁴¹ Proposed Rule 22020 (Forwarding of Proxy and Other Information; Proxy Voting) generally provides that BSTX Participants shall forward proxy materials when requested by an issuer and sets forth certain conditions and limitations for BSTX Participants to give a proxy to vote stock that is registered in its name.

¹⁴² Proposed Rule 22030 (Commissions) provides that the Exchange Rules or practices shall not be construed to allow a BSTX Participant or its associated persons to agree or arrange for the charging of fixed rates commissions for transactions on the Exchange.

¹⁴³ Proposed Rule 22040 (Regulatory Service Agreement) provides that the Exchange may enter into regulatory services agreements with other SROs to assist in carrying out regulatory functions, but the Exchange shall retain ultimate legal responsibility for, and control of, its SRO responsibilities.

¹⁴⁴ Proposed Rule 22040 (Transactions Involving Exchange Employees) sets forth conditions and limitations on a BSTX Participant providing loans or supporting the account of an Exchange employee (e.g., promptly obtaining and implementing an instruction from the employee to provide duplicate account statement to the Exchange) in order to mitigate any potential conflicts of interest that might arise from such a relationship.

incorporate by reference Rule 200 – 203 of Regulation SHO.¹⁴⁵ The Exchange believes that the proposed Rule 22000 (Miscellaneous Provisions) Series is consistent with Section 6(b)(5) of the Exchange Act¹⁴⁶ because these proposed rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest by ensuring that BSTX Participants comply with additional regulatory requirements, such as Rule 203 of Regulation SHO¹⁴⁷ as provided in proposed Rule 22010 (Failure to Deliver and Failure to Receive), in connection with their participation on BSTX. For example, proposed Rule 22030 (Commissions) prohibits BSTX Participants from charging fixed rates of commissions for transactions on the Exchange consistent with Section 6(e)(1) of the Exchange Act.¹⁴⁸ Similarly, proposed Rule 22050 (Transactions involving Exchange Employees) sets forth certain requirements and prohibitions relating to a BSTX Participant providing certain financial services to an Exchange employee, which the Exchange believes helps prevent potentially fraudulent and manipulative acts and practices and furthers the protection of investors and the public interest.

In addition, the Exchange proposes to adopt Rule 22060 to provide a high-level description of the market data products that the Exchange will offer. Specifically, proposed Rule 22060 sets forth a brief description of: (i) BSTX Depth-of Book data,¹⁴⁹ (ii) BSTX Top-of-

¹⁴⁵ 17 CFR §§ 242.200 – 203.

¹⁴⁶ 15 U.S.C. 78f(b)(5).

¹⁴⁷ 17 CFR 242.203.

¹⁴⁸ 15 U.S.C. 78f(e)(1).

¹⁴⁹ BSTX Depth-of-Book would be a data feed that contains all displayed orders for Securities trading on the Exchange, order executions, order cancellations, order modifications, and administrative messages.

Book,¹⁵⁰ (iii) BSTX Last Sale,¹⁵¹ and (iv) the BSTX Market Data Blockchain.¹⁵² The Exchange believes that providing a brief description of the market data product offerings by the Exchange in the rulebook promotes clarity to market participants with respect to the Exchange's different market data product offerings, which the Exchange believes helps may serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act,¹⁵³ by ensuring market participants are adequately informed of the Exchange's offerings. The Exchange notes that proposed Rule 22060 is substantially similar to a rule of another national securities exchange.¹⁵⁴

Trading Practice Rules (Rule 23000 Series)

The Exchange proposes to adopt as its Rule 23000 Series (Trading Practice Rules), 14 rules relating to trading practice requirements for BSTX Participants that are substantially similar to trading practice rules of other exchanges.¹⁵⁵ The proposed Rule 23000 Series would specify trading practice requirements related to: (i) market manipulation; (ii) fictitious transactions; (iii) excessive sales by a BSTX Participant; (iv) manipulative transactions; (v) dissemination of false information; (vi) prohibition against trading ahead of customer orders; (vii) joint activity; (viii) influencing data feeds; (ix) trade shredding; (x) best execution; (xi) publication of transactions and changes; (xii) trading ahead of research reports; (xiii) front running of block transactions;

¹⁵⁰ BSTX Top-of-Book would be an uncompressed data feed that offers top of book quotations and execution information based on orders entered into the BSTX System.

¹⁵¹ BSTX Last Sale would be an uncompressed data feed that offers only execution information based on orders entered into the BSTX System.

¹⁵² The BSTX Market Data Blockchain is described in proposed Rule 22060(d) as historical market data with respect to trading on the BSTX System, as set forth in Rule 17020.

¹⁵³ 15 U.S.C. 78f(b)(5).

¹⁵⁴ See MEMX LLC Rule 13.8.

¹⁵⁵ See Cboe BZX Chapter 12 rules.

and (xiv) a prohibition against disruptive quoting and trading activity. The purpose of the trading practice rules is to set forth standards and rules relating to the trading conduct of BSTX Participants, primarily with respect to prohibiting forms of market manipulation and specifying certain obligations broker-dealers have to their customers, such as the duty of best execution. For example, proposed Rule 23000 (Market Manipulation) sets forth a general prohibition against a BSTX Participant purchasing a security at successively higher prices or sales of a security at successively lower prices, or to otherwise engage in activity for the purpose of creating or inducing a false, misleading or artificial appearance of activity in such security.¹⁵⁶ Proposed Rule 23010 (Fictitious Transactions) similarly prohibits BSTX Participants from fictitious transaction activity, such as executing a transaction which involves no beneficial change in ownership, and proposed Rule 23020 (Excessive Sales by a BSTX Participant) prohibits a BSTX Participant from executing purchases or sales in any security trading on the Exchange for any account in which it has an interest, which are excessive in view of the BSTX Participant's financial resources or in view of the market for such security.¹⁵⁷ Proposed Rule

¹⁵⁶ Proposed Rule 23030 (Manipulative Transactions) specifies further prohibitions relating to potential manipulation by prohibiting BSTX Participants from, among other things, participating or having any direct or indirect interest in the profits of a manipulative operation or knowingly managing or financing a manipulative operation.

¹⁵⁷ Other proposed rules relating to potential manipulation include: (i) Rule 23040 (Dissemination of False Information), which generally prohibits, consistent with Exchange Rule 3080, BSTX Participants from spreading information that is false or misleading; (ii) Rule 23070 (Influencing Data Feeds), which generally prohibits transactions to influence data feeds; (iii) Rule 23080 (Trade Shredding), which generally prohibits conduct that has the intent or effect of splitting any order into multiple smaller orders for the primary purpose of maximizing remuneration to the BSTX Participant; (iv) Rule 23110 (Trading Ahead of Research Reports), which generally prohibits BSTX Participants from trading based on non-public advance knowledge of a research report and requires BSTX Participants to enforce policies and procedures to limit information flow from research personnel to trading personnel that might trade on such information; (v) Rule 23120 (Front Running Block Transactions), which incorporates FINRA Rule

23060 (Joint Activity) prohibits a BSTX Participant from directly or indirectly holding any interest or participation in any joint account for buying or selling a security traded on the Exchange unless reported to the Exchange with certain information provided and proposed Rule 23090 (Best Execution) reaffirms BSTX Participants best execution obligations to their customers.¹⁵⁸

Proposed Rule 23050 (Prohibition against Trading Ahead of Customer Orders) is substantially similar to FINRA 5320 and rules adopted by other exchanges,¹⁵⁹ and generally prohibits BSTX Participants from trading ahead of customer orders unless certain enumerated exceptions are available and requires BSTX Participants to have a written methodology in place governing execution priority to ensure compliance with the Rule. The Exchange proposes to adopt each of the exceptions to the prohibition against trading ahead of customer orders as provided in FINRA Rule 5320 other than the exception related to trading outside of normal market hours, since trading on the Exchange would be limited to regular trading hours.

The Exchange proposes to adopt the order handling procedures requirement in proposed Rule 23050(i) consistent with the rules of other exchanges.¹⁶⁰ Specifically, proposed Rule 23050(i) would provide that a BSTX Participant must make every effort to execute a marketable

5270 as though it were part of the Exchange's Rules; and (vi) Rule 23130 (Disruptive Quoting and Trading Activity Prohibited), which incorporates Exchange Rule 3220 by reference.

¹⁵⁸ In addition, proposed Rule 23100 (Publication of Transactions and Changes) provides that the Exchange will disseminate transaction information to appropriate data feeds, BSTX Participants must provide information necessary to facilitate the dissemination of such information, and that an Exchange official shall be responsible for approving corrections to any reports transmitted over data feeds.

¹⁵⁹ See e.g., Cboe BZX Rule 12.6.

¹⁶⁰ See e.g., Cboe BZX Rule 12.6.07.

customer order that it receives fully and promptly and must cross customer orders when they are marketable against each other consistent with the proposed Rule.

The Exchange proposes to adopt a modified version of the exception set forth in FINRA Rule 5320.06 relating to minimum price improvement standards as proposed in Rule 23050(h). Under proposed Rule 23050(h), BSTX Participants would be permitted to execute an order on a proprietary basis when holding an unexecuted limit order in that same security without being required to execute the held limit order provided that they give price improvement of \$0.01 to the unexecuted held limit order. While FINRA Rule 5320.06 sets forth alternate, lower price improvement standards for securities priced below \$1, the Exchange proposes to adopt a uniform price improvement requirement of \$0.01 for Securities traded on the BSTX System consistent with the Exchange's proposed uniform minimum price variant of \$0.01 set forth in proposed Rule 25030.

In addition, the Exchange proposes to adopt an exception for bona fide error transactions as proposed in Rule 25030(g) which would allow a BSTX Participant to trade ahead of a customer order if the trade is to correct a bona fide error, as defined in the rule. This proposed exception is nearly identical to similar exceptions of other exchanges¹⁶¹ except that other exchange rules also provide an exception whereby firms may submit a proprietary order ahead of a customer order to offset a customer order that is in an amount other than a round lot (i.e., 100 shares). The Exchange is not adopting an exception for odd-lot orders under these circumstances because the minimum unit of trading for Securities pursuant to proposed Rule 25020 is one Security. The Exchange believes that there may be a notable amount of trading in amounts of less than 100 Securities (i.e., trading in odd-lot amounts), and the Exchange accordingly does not

¹⁶¹ See e.g., Cboe BZX Rule 12.5.05.

believe that it is appropriate to allow BSTX Participants to trade ahead of customer orders just to offset an odd-lot customer order.

The Exchange believes that the proposed Rule 23000 Series relating to trading practice rules is consistent with Section 6(b)(5) of the Exchange Act¹⁶² because these proposed rules are designed to prevent fraudulent and manipulative acts and practices that could harm investors and to promote just and equitable principles of trade. The proposed rules in the Rule 23000 Series are substantially similar to the rules of other exchanges and generally include a variety of prohibitions against types of trading activity or other conduct that could potentially be manipulative, such as prohibitions against market manipulation, fictitious transactions, and the dissemination of false information. The Exchange has proposed to exclude certain provisions from, or make certain modifications to, comparable rules of other SROs, as detailed above, in order to account for certain unique aspects related to the proposed trading of Securities. The Exchange believes that it is consistent with applicable requirements under the Exchange Act to exclude these provisions and exceptions because they set forth requirements that would not apply to BSTX Participants trading in Securities and are not necessary for the Exchange to carry out its functions of facilitating Security transactions and regulating BSTX Participants.

Disciplinary Rules (Rule 24000 Series)

With respect to disciplinary matters, the Exchange proposes to adopt Rule 24000 (Discipline and Summary Suspension), which provides that the provisions of the Exchange Rule 11000 Series (Summary Suspension), 12000 Series (Discipline), 13000 Series (Review of Certain Exchange Actions), and 14000 Series (Arbitration) of the Exchange Rules shall be applicable to BSTX Participants and trading on the BSTX System. The Exchange already has

¹⁶² 15 U.S.C. 78f(b)(5).

Rules pertaining to discipline and suspension of Exchange Participants that it proposes to extend to BSTX Participants and trading on the BSTX System. The Exchange also proposes to adopt as Rule 24010 a minor rule violation plan with respect to transactions on BSTX.¹⁶³

Proposed Rule 24000 incorporates by reference existing rules that have already been approved by the Commission.

Trading Rules and the BSTX System (Rule 25000 Series)

Rule 25000 – Access to and Conduct on the BSTX Marketplace

The Exchange proposes to adopt Rule 25000 (Access to and Conduct on the BSTX Marketplace) to set forth rules relating to access to the BSTX System and certain conduct requirements applicable to BSTX Participants. Specifically, proposed Rule 25000 provides that only BSTX Participants, including their associated persons, that are approved for trading on the BSTX System shall effect any transaction on the BSTX System. Proposed Rule 25000(b) generally requires that a BSTX Participant maintain a list of authorized traders that may obtain access to the BSTX System on behalf of the BSTX Participant, have procedures in place reasonably designed to ensure that all authorized traders comply with Exchange Rules and to prevent unauthorized access to the BSTX System, and to provide the list of authorized traders to the Exchange upon request. Proposed Rule 25000(c) and (d) restate provisions that are already set forth in Exchange Rule 7000, generally providing that BSTX Participants shall not engage in conduct that is inconsistent with the maintenance of a fair and orderly market or the ordinary and efficient conduct of business, as well as conduct that is likely to impair public confidence in the operations of the Exchange. Examples of such prohibited conduct include failure to abide by a

¹⁶³ The proposed additions to the Exchange's minor rule violation plan pursuant to proposed Rule 24010 are discussed below in Part IV.

determination of the Exchange, refusal to provide information requested by the Exchange, and failure to adequately supervise employees. Proposed Rule 25000(f) provides the Exchange with authority to suspend or terminate access to the BSTX System under certain circumstances.

The Exchange believes that proposed Rule 25000 is consistent with Section 6(b)(5) of the Exchange Act¹⁶⁴ because it is designed to protect investors and the public interest and promote just and equitable principles of trade by ensuring that BSTX Participants would not allow for unauthorized access to the BSTX System and would not engage in conduct detrimental to the maintenance of fair and orderly markets.

Rule 25010 – Days/Hours

Proposed Rule 25010 sets forth the days and hours during which BSTX would be open for business and during which transactions may be effected on the BSTX System. Under the proposed rule, transactions may be executed on the BSTX System between 9:30 a.m. and 4:00 p.m. Eastern Time. The proposed rule also specifies certain holidays BSTX would be not be open (e.g., New Year's Day) and provides that the Chief Executive Officer, President, or Chief Regulatory Officer of the Exchange, or such person's designee who is a senior officer of the Exchange, shall have the power to halt or suspend trading in any Securities, close some or all of BSTX's facilities, and determine the duration of any such halt, suspension, or closing, when such person deems the action necessary for the maintenance of fair and orderly markets, the protection of investors, or otherwise in the public interest.

The Exchange believes that proposed Rule 25010 is designed to protect investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act,¹⁶⁵ by setting forth the days

¹⁶⁴ 15 U.S.C. 78f(b)(5).

¹⁶⁵ 15 U.S.C. 78f(b)(5).

and hours that trades may be effected on the BSTX System and by providing officers of the Exchange with the authority to halt or suspend trading when such officers believe that such action is necessary or appropriate to maintain fair and orderly markets or to protect investors or in the public interest.

Rule 25020 – Units of Trading

Proposed Rule 25020 sets forth the minimum unit of trading on the BSTX System, which shall be one Security. The Exchange believes that proposed Rule 25020 is consistent with Section 6(b)(5) of the Exchange Act¹⁶⁶ because it fosters cooperation and coordination of persons engaged in facilitating transactions in securities by specifying the minimum unit of trading of Securities on the BSTX System. In addition, other exchanges similarly provide that the minimum unit of trading is one share for their market and/or for certain securities.¹⁶⁷

Rule 25030 – Minimum Price Variant

Proposed Rule 25030 provides the minimum price variant for Securities shall be \$0.01. The Exchange believes that proposed Rule 25030 is consistent with Section 6(b)(5) of the Exchange Act because it fosters cooperation and coordination of persons engaged in facilitating transactions in securities by specifying the minimum price variant for Securities and promotes compliance with Rule 612 of Regulation NMS.¹⁶⁸ Under Rule 612 of Regulation NMS, the Exchange is, among other things, prohibited from displaying, ranking or accepting from any person a bid or offer or order in an NMS stock in an increment smaller than \$0.01 if that bid or offer or order is priced equal to or greater than \$1.00 per share. Where a bid or offer or order is

¹⁶⁶ 15 U.S.C. 78f(b)(5).

¹⁶⁷ See e.g., IEX Rule 11.180.

¹⁶⁸ 17 CFR 242.611.

priced less than or equal to \$1.00 per share, the minimum acceptable increment is \$0.0001.

Proposed Rule 25030 sets a uniform minimum price variant for all Securities of \$0.01 irrespective of whether the Security is trading below \$1.00.

Rule 25040 – Opening the Marketplace

Proposed Rule 25040 sets forth the opening process for the BSTX System for BSTX-listed Securities and non-BSTX-listed securities. For BSTX-listed Securities, the Exchange proposes to allow for order entry to commence at 8:30 a.m. ET during the Pre-Opening Phase. Proposed Rule 25040(a) provides that orders will not execute during the Pre-Opening Phase, which lasts until regular trading hours begin at 9:30 a.m. ET.¹⁶⁹ Similar to how the Exchange's opening process works for options trading, BSTX would disseminate a theoretical opening price ("TOP") to BSTX Participants, which is the price at which the opening match would occur at a given moment in time.¹⁷⁰ Under the proposed rule, the Exchange will also broadcast other information during the Pre-Opening Phase. Specifically, in addition to the TOP, the Exchange would disseminate pursuant to proposed Rule 25040(a)(3): (i) "Paired Securities," which is the quantity of Securities that would execute at the TOP; (ii) the "Imbalance Quantity," which is the number of Securities that may not be matched with other orders at the TOP at the time of dissemination; and (iii) the "Imbalance Side," which is the buy/sell direction of any imbalance at the time of dissemination (collectively, with the TOP, "Broadcast Information").¹⁷¹ Broadcast

¹⁶⁹ As a result, orders marked IOC submitted during the Pre-Opening Phase would be rejected by the BSTX System. See proposed Rule 25040(a)(7).

¹⁷⁰ The TOP can only be calculated where the BSTX Book is crossed during the Pre-Opening Phase. See proposed Rule 25040(a)(2).

¹⁷¹ Pursuant to proposed Rule 25040(a)(3), any orders which are at a better price (i.e., bid higher or offer lower) than the TOP would be shown only as a total quantity on the BSTX Book at a price equal to the TOP.

Information would be recalculated and disseminated every time a new order is received or cancelled and where such event causes the TOP or Paired Securities to change. With respect to priority during the opening match for all Securities, consistent with proposed Rule 25080 (Execution and Price/Time Priority), among multiple orders at the same price, execution priority during the opening match is determined based on the time the order was received by the BSTX System.

Consistent with the manner in which the Exchange opens options trading, the BSTX System would determine a single price at which a BSTX-listed Security would be opened by calculating the optimum number of Securities that could be matched at a price, taking into consideration all the orders on the BSTX Book.¹⁷² Proposed Rule 25040(a)(6) provides that the opening match price is the price which results in the matching of the highest number of Securities. If two or more prices would satisfy this maximum quantity criteria, the price leaving the fewest resting Securities in the BSTX Book will be selected at the opening price and where two or more prices would satisfy the maximum quantity criteria and leave the fewest Securities in the BSTX Book, the price closest to the previous day's closing price will be selected.¹⁷³ The opening price must also be within the "Collar Price Range" as set forth in proposed Rule 25040(a)(5), which is designed to ensure that a Security opens in an fair and orderly manner and under market conditions where there is sufficient quotation interest (e.g., a national best bid and offer), the market is not crossed, and where the opening price will not drastically depart from the

¹⁷² See proposed Rule 25040(a)(4)(ii).

¹⁷³ With respect to an initial public offering of a Security where there is no previous day's closing price, the opening price would be the price assigned to the Security by the underwriter for the offering, referred to as the "Initial Security Offering Reference Price." See Proposed Rule 25040(a)(5)(ii)(3).

market at the time of the auction or the preceding day's closing price.¹⁷⁴ Unexecuted trading interest during the opening match will move to the BSTX Book and will preserve price time priority.¹⁷⁵ When the BSTX System cannot determine an opening price of a BSTX-listed Security at the start of regular trading hours, BSTX would nevertheless open the Security for trading and move all trading interest received during the Pre-Opening Phase to the BSTX Book.¹⁷⁶

For initial public offerings of Securities ("Initial Security Offerings"), the process would be generally the same as regular market openings. However, in advance of an Initial Security Offering auction ("Initial Security Offering Auction"), the Exchange shall announce a "Quote-Only Period" that shall be between fifteen (15) and thirty (30) minutes plus a short random period prior to the Initial Security Offering Auction.¹⁷⁷ The Quote-Only Period may be extended in certain cases.¹⁷⁸ As with regular market openings the Exchange would disseminate Broadcast Information at the commencement of the Quote Only Period, and Broadcast Information would be re-calculated and disseminated every time a new order is received or cancelled and where

¹⁷⁴ See proposed Rule 25040(a)(5). The Exchange notes that the auction collars proposed in Rule 25040(a)(5) are substantially similar to those of Cboe BZX. See Cboe BZX Rule 11.23.

¹⁷⁵ See proposed Rule 25040(a)(7).

¹⁷⁶ Id.

¹⁷⁷ See proposed Rule 25040(b)(1).

¹⁷⁸ Such cases are when: (i) there is no TOP; (ii) the underwriter requests an extension; (iii) the TOP moves the greater of 10% or fifty (50) cents in the fifteen (15) seconds prior to the initial cross; or (iv) in the event of a technical or systems issue at the Exchange that may impair the ability of BSTX Participants to participate in the Initial Security Offering or of the Exchange to complete the Initial Security Offering. See proposed Rule 25040(b)(2).

such event causes the TOP price or Paired Securities to change.¹⁷⁹ In the event of any extension to the Quote-Only Period or a trading pause, the Exchange will notify market participants regarding the circumstances and length of the extension.¹⁸⁰ Orders will be matched and executed at the conclusion of the Quote-Only Period, rather than at 9:30 a.m. Eastern Time.¹⁸¹ Following the initial cross at the end of the Quote-Only Period wherein orders will execute based on price/time priority consistent with proposed Rule 25080, the Exchange will transition to normal trading pursuant to proposed Rule 25040(a)(6).¹⁸²

The Exchange also proposes a process for reopening trading following a Limit Up-Limit Down Halt or trading pause (“Halt Auctions”). For Halt Auctions, the Exchange proposes that in advance of reopening, the Exchange shall announce a Quote-Only Period that shall be five (5) minutes prior to the Halt Auction.¹⁸³ This Quote-Only Period may be extended in certain

¹⁷⁹ See proposed Rule 25040(b)(3).

¹⁸⁰ See proposed Rule 25040(b)(4). The Exchange also proposes that if a trading pause is triggered by the Exchange or if the Exchange is unable to reopen trading at the end of the trading pause due to a systems or technology issue, the Exchange will immediately notify the single plan processor responsible for consolidation of information for the security pursuant to Rule 603 of Regulation NMS under the Securities Exchange Act of 1934. Id.

¹⁸¹ See proposed Rule 25040(b)(5).

¹⁸² As with the regular opening process, orders marked IOC submitted during the Pre-Opening Phase of an Initial Security Offering Auction would be rejected. See proposed Rule 25040(b)(6).

¹⁸³ See proposed Rule 25040(c)(1). Orders marked IOC submitted during the Quote-Only Period would be rejected. In addition, Halt Auctions would be subject to the proposed Halt Auction Collar, as set forth in proposed Rule 25040(c)(2)(i) and (ii). These proposed collars for Halt Auctions are substantially similar to those provided by Cboe BZX, and are designed to make sure that the Exchange is able to reopen trading in a Security in a fair and orderly manner. See Cboe BZX Rule 11.23(d). To the extent an Halt Auction would occur at an “Impermissible Price” (i.e., a price outside of the proposed Halt Auction collars), the Exchange would extend the period of Halt Auction and gradually expand the scope of the collar price range over time until it is able to reopen trading in the Security in a manner consistent with proposed Rule 25040(c)(2).

circumstances.¹⁸⁴ The Exchange proposes to disseminate the same Broadcast Information as it does for an Initial Security Offering Auction and would similarly provide notification of any extension to the quote-only period as with an Initial Security Offering Auction.¹⁸⁵ The transition to normal trading would also occur in the same manner as Initial Security Offering Auctions, as described above.¹⁸⁶

The Exchange also proposes to adopt certain contingency procedures in proposed Rule 25040(d) that would provide that when a disruption occurs that prevents the execution of an Initial Security Offering Auction the Exchange will publicly announce the Quote-Only Period for the Initial Security Offering Auction, and the Exchange will then cancel all orders on the BSTX Book and disseminate a new scheduled time for the Quote-Only Period and opening match.¹⁸⁷ Similarly, when a disruption occurs that prevents the execution of a Halt Auction, the Exchange will publicly announce that no Halt Auction will occur, and all orders in the halted Security on the BSTX Book will be canceled after which the Exchange will open the Security for trading without an auction.¹⁸⁸

¹⁸⁴ See proposed Rule 25040(c)(2). The Quote-Only Period shall be extended for an additional five (5) minutes should a Halt Auction be unable to be performed due to the absence of a TOP (“Initial Extension Period”). After the Initial Extension Period, the Exchange proposes that the Quote-Only Period shall be extended for additional five (5) minute periods should a Halt Auction be unable to be performed due to absence of a TOP (“Additional Extension Period”) until a Halt Auction occurs. Under the proposed Rule, the Exchange shall attempt to conduct a Halt Auction during the course of each Additional Extension Period. Id.

¹⁸⁵ See proposed Rule 25040(c)(3)-(5).

¹⁸⁶ Id.

¹⁸⁷ See proposed Rule 25040(d)(1).

¹⁸⁸ See proposed Rule 25040(d)(2). The Exchange notes that these contingency procedures are substantially similar to those of another exchange (see e.g., IEX Rule 11.350(c)(4)) and are designed to ensure that the Exchange has appropriate mechanisms in place to address possible disruptions that may arise in an Initial Security Offering Auction or Halt

The opening process with respect to non-BSTX-listed securities is set forth in proposed Rule 25040(e). Pursuant to that Rule, BSTX Participants who wish to participate in the opening process may submit orders and quotes for inclusion in the BSTX Book, but such orders and quotes cannot execute until the termination of the Pre-Opening Phase (“Opening Process”). Orders that are canceled before the Opening Process will not participate in the Opening Process. The Exchange will attempt to perform the Opening Process and will match buy and sell orders that are executable at the midpoint of the NBBO.¹⁸⁹ Generally, the price of the Opening Process will be at the midpoint of the first NBBO subsequent to the first two-sided quotation published by the listing exchange after 9:30:00 a.m. Eastern Time. Pursuant to proposed Rule 25040(e)(4), if the conditions to establish the price of the Opening Process set forth above do not occur by 9:45:00 a.m. Eastern Time, orders will be handled in time sequence, beginning with the order with the oldest time stamp, and will be placed on the BSTX Book cancelled, or executed in accordance with the terms of the order. A similar process will occur for re-opening a non-BSTX-listed security subject to a halt.¹⁹⁰ The proposed opening process for Securities listed on another exchange serves as a placeholder in anticipation of other exchanges eventually listing and trading Securities, or the equivalent thereof, given that there are no other exchanges currently trading Securities. The proposed process for opening Securities listed on another exchange is similar to existing exchange rules governing the opening of trading of a security listed on another exchange.¹⁹¹

Auction, consistent with the protection of investors and the public interest pursuant to Section 6(b)(5) of the Exchange Act. 15 U.S.C. 78f(b)(5).

¹⁸⁹ See proposed Rule 25040(e)(2).

¹⁹⁰ See proposed Rule 25040(e)(5).

¹⁹¹ See e.g., Cboe BZX Rule 11.24.

Consistent with Section 6(b)(5) of the Exchange Act,¹⁹² the Exchange believes that the proposed process for opening trading in BSTX-listed Securities and Securities listed on other exchanges will promote just and equitable principles of trade and will help perfect the mechanism of a free and open market by establishing a uniform process to determine the opening price of Securities.¹⁹³ Proposed Rule 25040 provides a mechanism by which BSTX Participants may submit orders in advance of the start of regular trading hours, perform an opening cross, and commence regular hours trading in Securities listed on BSTX or otherwise. Where an opening cross is not possible in a BSTX-listed Security, the Exchange will proceed by opening regular hours trading in the Security anyway, which is consistent with the manner in which other exchanges open trading in securities.¹⁹⁴ With respect to initial public offerings of Securities and openings after a Limit Up-Limit Down halt or trading pause, BSTX proposes to use a process with features similar to its normal opening process. There are a variety of different ways in which an exchange can open trading in securities, including with respect to an initial public offering of a Security, and the Exchange believes that proposed Rule 25040 provides a simple and clear method for opening transactions that is consistent with the protection of investors and

¹⁹² 15 U.S.C. 78f(b)(5).

¹⁹³ The Exchange has not proposed to operate a closing auction at this time. As a result, the closing price of a Security on BSTX would be the last regular way transaction occurring on BSTX, which the Exchange believes is a simple and fair way to establish the closing price of a Security that does not permit unfair discrimination among customers, issuers, or broker-dealers consistent with Section 6(b)(5) of the Exchange Act. Id. This proposed process is consistent with the overall proposed simplified market structure for BSTX, which does not include a variety of order types offered by other exchanges such as market-on-close and limit-on-close orders. The Exchange believes that a simplified market structure, including the proposed manner in which a closing price would be determined, promotes the public interest and the protection of investors consistent with Section 6(b)(5) of the Exchange Act through reduced complexity. Id.

¹⁹⁴ See e.g., BOX Rule 7070.

the public interest.¹⁹⁵ Additionally, proposed Rule 25040 applies to all BSTX Participants in the same manner and is therefore not designed to permit unfair discrimination among BSTX Participants.

Rule 25050 – Trading Halts

BSTX proposes to adopt rules relating to trading halts¹⁹⁶ that are substantially similar to other exchange rules adopted in connection with the NMS Plan to Address Extraordinary Market Volatility (“LULD Plan”), with certain exceptions that reflect Exchange functionality. BSTX intends to join the LULD Plan prior to the commencement of trading Securities. Below is an explanation of BSTX’s approach to certain categories of orders during a trading halt:

- Short Sales – BSTX cancels all orders on the book during a halt and rejects any new orders, so rules relating to the repricing of short sale orders during a trading halt that certain other exchanges have adopted have been omitted.
- Pegged Orders – BSTX would not support pegged orders, at least initially, so rules relating to pegged orders during a trading halt have been omitted.
- Routable Orders – Pursuant to proposed Rule 25130, the BSTX System will reject any order or quotation that would lock or cross a protected quotation of another exchange (rather than routing such order or quotation), and therefore rules relating to handling of routable orders during a trading halt have been omitted.

¹⁹⁵ The Exchange notes that its proposed opening, Initial Security Offering Auction, and Halt Auction processes are substantially similar to those of another exchange. See Cboe BZX Rule 11.23. The key differences between the Exchange’s proposed processes and those of the Cboe BZX exchange are that the Exchange has substantially fewer order types, which make its opening process less complex.

¹⁹⁶ The Exchange notes that rules on opening trading for non-BSTX-listed security are set forth in proposed Rule 25040(e).

- Limit Orders – Because BSTX would cancel resting order interest and reject incoming orders during a trading halt, specific rules relating to the repricing of limit-priced interest that certain other exchanges have adopted have been omitted.¹⁹⁷
- Auction Orders, Market Orders, and FOK Orders – BSTX would not support these order types, at least initially, so rules relating to these order types during a trading halt have been omitted.¹⁹⁸

Pursuant to proposed Rule 25050(d), the Exchange would cancel all resting orders in a non-BSTX listed security subject to a trading halt, reject any incoming orders in that Security, and will only resume accepting orders following a broadcast message to BSTX Participants indicating a forthcoming re-opening of trading.¹⁹⁹

BSTX believes that it is in the public interest and furthers the protection of investors, consistent with Section 6(b)(5) of the Exchange Act²⁰⁰ to provide for a mechanism to halt trading in Securities during periods of extraordinary market volatility consistent with the LULD Plan. However, the Exchange has excluded rules relating to order types and other aspects of the LULD Plan that would not be supported by the Exchange, such as market orders and auction orders. The Exchange has also reserved the right in proposed Rule 25050(f) to halt or suspend trading in other circumstances where the Exchange deems it necessary to do so for the protection of investors and in the furtherance of the public interest.

¹⁹⁷ See e.g., Cboe BZX 11.18(e)(5)(B).

¹⁹⁸ IOC orders would be handled pursuant to proposed Rule 25050(g)(5).

¹⁹⁹ Trading would resume pursuant to proposed Rule 25040(e)(5). See proposed Rule 25050(g)(7).

²⁰⁰ 15 U.S.C. 78f(b)(5).

The Exchange believes that canceling resting order interest during a trading halt and rejecting incoming orders received during the trading halt is consistent with Section 6(b)(5) of the Exchange Act²⁰¹ because it is not designed to permit unfair discrimination among BSTX Participants. The orders and trading interest of all BSTX Participants would be canceled in the event of a trading halt and each BSTX Participant would be required to resubmit any orders they had resting on the order book.

Rule 25060 – Order Entry

Proposed Rule 25060 sets forth the manner in which BSTX Participants may enter orders to the BSTX System. The BSTX System would initially only support limit orders.²⁰² Orders that do not designate a limit price would be rejected.²⁰³ The BSTX System would also only support two time-in-force (“TIF”) designations initially: (i) DAY; and (ii) immediate or cancel (“IOC”). DAY orders will queue during the Pre-Opening Phase, may trade during regular market hours, and, if unexecuted at the close of the trading day (4:00 p.m. ET), are canceled by the BSTX System.²⁰⁴ All orders are given a default TIF of DAY. BSTX Participants may also designate orders as IOC, which designation overrides the default TIF of DAY. IOC orders are not accepted by the BSTX System during the Pre-Opening Phase. During regular trading hours, IOC orders will execute in whole or in part immediately upon receipt by the BSTX System. The BSTX System will not support modification of resting orders. To change the price or quantity of

²⁰¹ Id.

²⁰² The BSTX System will also accept incoming Intermarket Sweep Orders (“ISO”) pursuant to proposed Rule 25060(c)(2). ISOs must be limit orders, are ineligible for routing, may be submitted with a limit price during Regular Trading Hours, and must have a time-in-force of IOC. Proposed Rule 25060(c)(2) is substantially similar to rules of other national securities exchanges. See e.g., Cboe BZX Rule 11.9(d).

²⁰³ Proposed Rule 25060(c)(1).

²⁰⁴ Proposed Rule 25060(d)(1).

an order resting on the BSTX Book, a BSTX Participant must cancel the resting order and submit a new order, which will result in a new time stamp for purposes of BSTX Book priority. In addition, all orders on BSTX will be displayed, and the BSTX System will not support hidden orders or undisplayed liquidity, as set forth in proposed Rule 25100. The Exchange has also proposed an additional order parameter for BSTX Participants to indicate a preference for T+0 or T+1 settlement, as previously described in Item 3, Part II.I.

Consistent with Section 6(b)(5) of the Exchange Act,²⁰⁵ the Exchange believes that the proposed order entry rules will promote just and equitable principles of trade and help perfect the mechanism of a free and open market by establishing the types of orders and modifiers that all BSTX Participants may use in entering orders to the BSTX System. Because these order types and TIFs are available to all BSTX Participants, the proposed rule does not unfairly discriminate among market participants, consistent with Section 6(b)(5) of the Exchange Act. The proposed rule sets forth a very simple exchange model whereby there is only one order type—limit orders—and two TIFs. Upon the initial launch of BSTX, there will be no hidden orders, price sliding, pegged orders, or other order type features that add complexity. The Exchange believes that creating a simplified exchange model is designed to protect investors and is in the public interest because it reduces complexity, thereby helping market participants better understand how orders would operate on the BSTX System.

Rule 25070 – Audit Trail

Proposed Rule 25070 (Audit Trail) is designed to ensure that BSTX Participants provide the Exchange with information to be able to identify the source of a particular order and other information necessary to carry out the Exchange's oversight functions. The proposed rule is

²⁰⁵ 15 U.S.C. 78f(b)(5).

substantially similar to existing BOX Rule 7120 but eliminates certain information unique to orders for options contracts (e.g., exercise price) because Securities are equity securities. The proposed rule also provides that BSTX Participants that employ an electronic order routing or order management system that complies with Exchange requirements will be deemed to comply with the Rule if the required information is recorded in an electronic format. The proposed rule also specifies that order information must be kept for no less than three years and that where specific customer or account number information is not provided to the Exchange, BSTX Participants must maintain such information on their books and records.

The Exchange believes that proposed Rule 25070 is designed to protect investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act,²⁰⁶ because it will provide the Exchange with information necessary to carry out its oversight role. Without being able to identify the source and terms of a particular order, the Exchange's ability to adequately surveil its market, with or through another SRO, for trading inconsistent with applicable regulatory requirements would be impeded. In order to promote compliance with Rule 201 of Regulation SHO, proposed Rule 25080(b)(3) provides that when a short sale price test restriction is in effect, the execution price of the short sale order must be higher than (i.e., above) the best bid, unless the sell order is marked "short exempt" pursuant to Regulation SHO.

Rule 25080 – Execution and Price Time Priority

Proposed Rule 25080 governs the execution of orders on the BSTX System, providing a price-time priority model. The proposed rule provides that orders of BSTX Participants shall be ranked and maintained in the BSTX Book according to price-time priority, such that within each price level, all orders shall be organized by the time of entry. The proposed rule further provides

²⁰⁶ 15 U.S.C. 78f(b)(5).

that sell orders may not execute a price below the best bid in the marketplace and buy orders cannot execute at a price above the best offer in the marketplace. Further, the proposed rule ensures compliance with Regulation SHO, Regulation NMS, and the LULD Plan, in a manner consistent with the rulebooks of other national securities exchanges.²⁰⁷

The Exchange believes that proposed Rule 25080 is consistent with Section 6(b)(5) of the Exchange Act²⁰⁸ because it is designed to promote just and equitable principles of trade and foster cooperation and coordination with persons facilitating transactions in securities by setting forth the order execution priority scheme for Security transactions. Numerous other exchanges similarly operate a price-time priority structure for effecting transactions. The proposed rule also does not permit unfair discrimination among BSTX Participants because all BSTX Participants are subject to the same price-time priority structure. In addition, the Exchange believes that specifying in proposed Rule 25080(b)(3) that execution of short sale orders when a short sale price test restriction is in effect must occur at a price above the best bid unless the order is market “short exempt,” is consistent with the Exchange Act because it is intended promote compliance with Regulation SHO in furtherance of the protection of investors and the public interest.

Rule 25090 – BSTX Risk Controls

Proposed Rule 25090 sets forth certain risk controls applicable to orders submitted to the BSTX System. The proposed risk controls are designed to prevent the submission and execution of potentially erroneous orders. Under the proposed rule, the BSTX System will reject orders that exceed a maximum order size, as designated by each BSTX Participant. The Exchange,

²⁰⁷ See e.g., Cboe BZX Rule 11.13(a)(2)-(3) governing regular trading hours.

²⁰⁸ 15 U.S.C. 78f(b)(5).

however may set default values for this control. The proposed rule also provides a means by which all of a BSTX Participant's orders will be canceled in the event that the BSTX Participant loses its connection to the BSTX System. Proposed Rule 25090(c) provides a risk control that prevents incoming limit orders from being accepted by the BSTX System if the order's price is more than a designated percentage away from the National Best Bid or Offer in the marketplace. Proposed Rule 25090(d) provides a maximum order rate control whereby the BSTX System will reject an incoming order if the rate of orders received by the BSTX System exceeds a designated threshold. With respect to both of these risk controls (price protection for limit orders and maximum order rate), BSTX Participants may designate the appropriate thresholds, but the Exchange may also provide default values and mandatory minimum levels.

The Exchange believes the proposed risk controls in Rule 25090 are consistent with Section 6(b)(5) of the Exchange Act²⁰⁹ because they are designed to help prevent the execution of potentially erroneous orders, which furthers the protection of investors and the public interest. Among other things, erroneous orders can be disruptive to the operation of an exchange marketplace, can lead to temporary price dislocations, and can hinder price formation. The Exchange believes that offering configurable risk controls to BSTX Participants, along with default values where a BSTX Participant has not designated its desired controls, will protect investors by reducing the number of erroneous executions on the BSTX System and will remove impediments to and perfect the mechanism of a free and open market system. The proposed risk controls are also similar to existing risk controls provided by the Exchange to Options Participants.

²⁰⁹ 15 U.S.C. 78f(b)(5).

Rule 25100 – Trade Execution, Reporting, and Dissemination of Quotations

Proposed Rule 25100 provides that the Exchange shall collect and disseminate last sale information for transactions executed on the BSTX system. The proposed rule further provides that the aggregate of the best-ranked non-marketable Limit Order(s), pursuant to Rule 25080, to buy and the best-ranked non-marketable Limit Order(s) to sell in the BSTX Book shall be collected and made available to quotation vendors for dissemination. Proposed Rule 25100 further provides that the BSTX System will operate as an “automated market center” within the meaning of Regulation NMS and will display “automated quotations” at all times except in the event of a system malfunction.²¹⁰ In addition, the proposed Rule specifies that the Exchange shall identify all trades executed pursuant to an exception or an exemption of Regulation NMS. The Exchange will disseminate last sale and quotation information pursuant to Rule 602 of Regulation NMS and will maintain connectivity to the securities information processors for dissemination of quotation information.²¹¹ BSTX Participants may obtain access to this information through the securities information processors.

Proposed Rule 25100(d) provides that executions that occur as a result of orders matched against the BSTX Book, pursuant to Rule 25080, shall clear and settle pursuant to the rules, policies, and procedures of a registered clearing agency. Rule 25100(e) obliges BSTX

²¹⁰ 17 CFR 242.600(b)(4) and (5). The general purpose of an exchange being deemed an “automated trading center” displaying “automated quotations” relates to whether or not an exchange’s quotations may be considered protected under Regulation NMS. See Exchange Act Release No. 51808, 70 FR 37495, 37520 (June 29, 2005). Other trading centers may not effect transactions that would trade through a protected quotation of another trading center. The Exchange believes that it is useful to specify that it will operate as an automated trading center at this time to make clear to market participants that it is not operating a manual market with respect to Securities.

²¹¹ 17 CFR 242.602.

Participants, or a clearing member/participant clearing on behalf of a BSTX Participant to honor trades effected on the BSTX System on the scheduled settlement date, and the Exchange shall not be liable for the failure of BSTX Participants to satisfy these obligations.²¹²

The Exchange believes that proposed Rule 25100 is consistent with Section 6(b)(5) of the Exchange Act²¹³ because it will foster cooperation and coordination with persons processing information with respect to, and facilitating transactions in securities by requiring the Exchange to collect and disseminate quotation and last sale transaction information to market participants. BSTX Participants will need last sale and quotation information to effectively trade on the BSTX System, and proposed Rule 25100 sets forth the requirement for the Exchange to provide this information as well as the information to be provided. The proposed rule is similar to rules of other exchanges relating to the dissemination of last sale and quotation information. The Exchange believes that requiring BSTX Participants (or firms clearing trades on behalf of other BSTX Participants) to honor their trade obligations on the settlement date is consistent with the Exchange Act because it will foster cooperation with persons engaged in clearing and settling transactions in Securities, consistent with Section 6(b)(5) of the Exchange Act.²¹⁴

Rule 25110 – Clearly Erroneous

Proposed Rule 25110 sets forth the manner in which BSTX will resolve clearly erroneous executions that might occur on the BSTX System and is substantially similar to comparable clearly erroneous rules on other exchanges. Under proposed Rule 25100, transactions that

²¹² These proposed provisions are substantially similar to those of exchanges. See e.g., Nasdaq Rule 4627 and IEX Rule 10.250.

²¹³ 15 U.S.C. 78f(b)(5).

²¹⁴ Id.

involve an obvious error such as price or quantity, may be canceled after review and a determination by an officer of BSTX or such other employee designee of BSTX (“Official”).²¹⁵ BSTX Participants that believe they submitted an order erroneously to the Exchange may request a review of the transaction, and must do so within thirty (30) minutes of execution and provide certain information, including the factual basis for believing that the trade is clearly erroneous, to the Official.²¹⁶ Under proposed Rule 25100(c), an Official may determine that a transaction is clearly erroneous if the price of the transaction to buy (sell) that is the subject of the complaint is greater than (less than) the “Reference Price”²¹⁷ by an amount that equals or exceeds specified “Numerical Guidelines.”²¹⁸ The Official may consider additional factors in determining whether a transaction is clearly erroneous, such as whether trading in the security had recently halted or overall market conditions.²¹⁹ Similar to other exchanges’ clearly erroneous rules, the Exchange may determine that trades are clearly erroneous in certain circumstances such as during a system

²¹⁵ A transaction made in clearly erroneous error and canceled by both parties or determined by the Exchange to be clearly erroneous would be removed from the Consolidated Tape. Proposed Rule 25110(a).

²¹⁶ Proposed Rule 25110(b). The Official may also consider certain “outlier” transactions on a case by case basis where the request for review is submitted after 30 minutes but no longer than sixty (60) minutes after the transaction. Proposed Rule 2511(d).

²¹⁷ The Reference Price would be equal to the consolidated last sale immediately prior to the execution(s) under review except for in circumstances, such as, for example, relevant news impacting a security or securities, periods of extreme market volatility, sustained illiquidity, or widespread system issues, where use of a different Reference Price is necessary for the maintenance of a fair and orderly market and the protection of investors and the public interest. Proposed Rule 25110(c)(1).

²¹⁸ The proposed Numerical Guidelines are 10% where the Reference Price ranges from \$0.00 to \$25.00, 5% where the Reference Price is greater than \$25.00 up to and including \$50.00, and 3% where the Reference Price ranges is greater than \$50. Proposed Rule 25110(c)(1).

²¹⁹ Proposed Rule 25110(c)(1).

disruption or malfunction, on a BSTX Officer's (or senior employee designee) own motion, during a trading halt, or with respect to a series of transactions over multiple days.²²⁰ Under proposed Rule 25110(e)(2), BSTX Participants affected by a determination by an Official may appeal this decision to the Chief Regulatory Officer of BSTX, provided such appeal is made within thirty (30) minutes after the party making the appeal is given notice of the initial determination being appealed.²²¹ The Chief Regulatory Officer's determination shall constitute final action by the Exchange on the matter at issue pursuant to proposed Rule 25110(e)(2)(ii).

The Exchange believes that proposed Rule 25110 is consistent with Section 6(b)(5) of the Exchange Act,²²² because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system by setting forth the process by which clearly erroneous trades on the BSTX System may be identified and remedied. Proposed Rule 25110 would apply equally to all BSTX Participants and is therefore not designed to permit unfair discrimination among BSTX Participants, consistent with Section 6(b)(5) of the Exchange Act.²²³ The proposed rule is substantially similar to the clearly erroneous rules of other exchanges.²²⁴ For example, proposed Rule 25110

²²⁰ See proposed Rule 25110(f) – (j). These provisions are virtually identical to similar provisions of other exchanges' clearly erroneous rules other than by making certain administrative edits (e.g., replacing the term "security" with "Security").

²²¹ Determinations by an Official pursuant to proposed Rule 25110(f) relating to system disruptions or malfunctions may not be appealed if the Official made a determination that the nullification of transactions was necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest. Proposed Rule 25110(d)(2).

²²² 15 U.S.C. 78f(b)(5).

²²³ Id.

²²⁴ See e.g., Cboe BZX Rule 11.17. Similar to other exchanges' comparable rules, proposed Rule 25110 provides BSTX with the ability to determine clearly erroneous trades that result from a system disruption or malfunction, a BSTX Official acting on his or her own motion, trading halts, multi-day trading events, multi-stock events involving five or more

does not include provisions related to clearly erroneous transactions for routed orders because orders for Securities will not route to other exchanges.²²⁵ Securities would also only trade during regular trading hours (i.e., 9:30 a.m. ET to 4:00 p.m. ET), so provisions from comparable exchange rules relating to clearly erroneous executions occurring outside of regular trading hours have been excluded. Proposed Rule 25110 also excludes provisions from comparable clearly erroneous rules of certain other exchanges relating to clearly erroneous executions in unlisted trading privileges securities that are subject to an initial public offering.²²⁶

The Exchange believes that its proposed process for BSTX Participants to appeal clearly erroneous execution determinations made by an Exchange Official pursuant to proposed Rule 25110 to the Chief Regulatory Officer of BSTX is consistent with Section 6(b)(5) of the Exchange Act²²⁷ because it promotes just and equitable principles of trade and fosters cooperation and coordination with persons regulating, settling, and facilitating transactions in securities by providing a clear and expedient process to appeal determinations made by an Official. BSTX Participants benefit from having a quick resolution to potentially clearly

(but less than twenty) securities whose executions occurred within a period of five minutes or less, multi-stock events involving twenty or more securities whose executions occurred within a period of five minutes or less, securities subject to the LULD Plan, and for leveraged ETP Securities.

²²⁵ Other exchange clearly erroneous rules reference removing trades from the Consolidated Tape. Because Security transactions would be reported pursuant to a separate transaction reporting plan, proposed Rule 25110 eliminates references to the “Consolidated Tape” and provides that clearly erroneous Security transactions will be removed from “all relevant data feeds disseminating last sale information for Security transactions.” See proposed Rule 25110(a).

²²⁶ The Exchange notes that not all equities exchanges have a provision with respect to trade nullification for UTP securities that are the subject of an initial public offering. See IEX Rule 11.270.

²²⁷ 15 U.S.C. 78f(b)(5).

erroneous executions and giving the Chief Regulatory Officer discretion to decide any appeals of an Official's determination provides an efficient means to resolve potential appeals that applies equally to all BSTX Participants and therefore does not permit unfair discrimination among BSTX Participants, consistent with Section 6(b)(5) of the Exchange Act. The Exchange notes that, with respect to options trading on the Exchange, the Exchange's Chief Regulatory Officer similarly has sole authority to overturn or modify obvious error determinations made by an Exchange Official and that such determination constitutes final Exchange action on the matter at issue.²²⁸ In addition, proposed Rule 25110(e)(2)(iii) provides that any determination made by an Official or the Chief Regulatory Officer of BSTX under proposed Rule 25110 shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration. Accordingly, there is an additional safeguard in place for BSTX Participants to seek further review of the Exchange's clearly erroneous determination.

To the extent Securities become tradeable on other national securities exchanges or other changes arise that may necessitate changes to proposed Rule 25110 to conform more closely with the clearly erroneous execution rules of other exchanges, the Exchange intends to implement changes as necessary through a proposed rule change filed with the Commission pursuant to Section 19 of the Exchange Act²²⁹ at such future date.

Rule 25120 – Short Sales

Proposed Rule 25120 sets forth certain requirements with respect to short sale orders submitted to the BSTX System that is virtually identical to similar rules on other exchanges.²³⁰

²²⁸ See BOX Rule 7170(n).

²²⁹ 15 U.S.C. 78s.

²³⁰ See e.g., IEX Rule 11.290.

Specifically, proposed Rule 25120 requires BSTX Participants to appropriately mark orders as long, short, or short exempt and provides that the BSTX System will not execute or display a short sale order not marked short exempt with respect to a “covered security”²³¹ at a price that is less than or equal to the current national best bid if the price of that security decreases by 10% or more, as determined by the listing market for the covered security, from the covered security’s closing price on the listing market as of the end of Regular Trading Hours on the prior day (the “Trigger Price”). The proposed rule further specifies the duration of the “Short Sale Price Test” and that the BSTX System shall determine whether a transaction in a covered security has occurred at a Trigger Price and shall immediately notify the responsible single plan processor.²³²

The Exchange believes that proposed Rule 25120 is consistent with Section 6(b)(5) of the Exchange Act,²³³ because it would promote just and equitable principles of trade and further the protection of investors and the public interest by enforcing rules consistent with Regulation SHO. Pursuant to Regulation SHO, broker-dealers are required to appropriately mark orders as long, short, or short exempt,²³⁴ and trading centers are required to establish, maintain, and enforce written policies and procedures reasonably designed to, among other things, prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of that covered security decreases by 10% or more

²³¹ Proposed Rule 25120(b) provides that the terms “covered security,” “listing market,” and “national best bid” shall have the same meaning as in Rule 201 of Regulation SHO. 17 CFR 242.201(a).

²³² Proposed Rule 25120(d). The proposed rule further provides in paragraph (d)(1) that if a covered security did not trade on BSTX on the prior trading day, BSTX’s determination of the Trigger Price shall be based on the last sale price on the BSTX System for that Security on the most recent day on which the Security traded.

²³³ 15 U.S.C. 78f(b)(5).

²³⁴ 17 CFR 242.200(g).

from its closing price on the primary listing market on the prior day.²³⁵ Proposed Rule 25120 is designed to promote compliance with Regulation SHO, is nearly identical to similar rules of other exchanges, and would apply equally to all BSTX Participants.

Rule 25130 – Locking or Crossing Quotations in NMS Stocks

Proposed Rule 25130 sets forth provisions related to locking or crossing quotations. The proposed rule is substantially similar to the rules of other national securities exchanges.²³⁶ Proposed Rule 25130 is designed to promote compliance with Regulation NMS and prohibits BSTX Participants from engaging in a pattern or practice of displaying quotations that lock or cross a protected quotation unless an exception applies. The Exchange proposes in Rule 25130(d) that the BSTX System will reject any order or quotation that would lock or cross a protected quotation of another exchange at the time of entry.

The Exchange believes proposed Rule 25130 is consistent with Section 6(b)(5) of the Exchange Act²³⁷ because it is designed to promote just and equitable principles of trade and foster cooperation and coordination with persons facilitating transactions in securities by ensuring that the Exchange prevents display of quotations that lock or cross any protected quotation in an NMS stock, in compliance with applicable provisions of Regulation NMS.

Rule 25140 – Clearance and Settlement: Anonymity

Proposed Rule 25140 provides that each BSTX Participant must either (1) be a member of a registered clearing agency that uses a CNS system, or (2) clear transactions executed on the Exchange through another Participant that is a member of such a registered clearing agency. The

²³⁵ 17 CFR 242.201(b)(1).

²³⁶ See IEX Rule 11.310.

²³⁷ 15 U.S.C. 78f(b)(5).

Exchange would maintain connectivity and access to the UTC of NSCC for transmission of executed transactions. The proposed Rule requires a Participant that clears through another participant to obtain a written agreement, in a form acceptable to the Exchange, that sets out the terms of such arrangement. The proposed Rule also provides that BSTX transaction reports shall not reveal contra party identities and that transactions would be settled and cleared anonymously. In certain circumstances, such as for regulatory purposes, the Exchange may reveal the identity of a Participant or its clearing firm such as to comply with a court order.

The Exchange believes that proposed Rule 25140 is consistent with Section 6(b)(5) of the Exchange Act²³⁸ because it would foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. Proposed Rule 25140 is similar to rules of other exchanges relating to clearance and settlement.²³⁹

Market Making on BSTX (Rule 25200 Series)

The BSTX Market Making Rules (Rules 25200 – 25240) provide for registration and describe the obligations of Market Makers on the Exchange. The proposed Market Making Rules also provide for registration and obligations of Designated Market Makers (“DMMs”) in a given Security, allocation of a DMM to a particular Security, and parameters for business combinations of DMMs.

Proposed Rule 25200 sets forth the basic registration requirement for a BSTX Market Maker by noting that a Market Maker must enter a registration request to BSTX and that such registration shall become effective on the next trading day after the registration is entered, or, in

²³⁸ 15 U.S.C. 78f(b)(5).

²³⁹ See e.g. IEX Rule 11.250.

the Exchange’s discretion, the registration may become effective the day that it is entered (and the Exchange will provide notice to the Market Maker in such cases). The proposed Rule further provides that a BSTX Market Maker’s registration shall be terminated by the Exchange if the Market Maker fails to enter quotations within five business days after the registration becomes effective.²⁴⁰

Proposed Rule 25210 sets forth the obligations of Market Makers, including DMMs. Under the proposed Rule, a BSTX Participant that is a Market Maker, including a DMM, is generally required to post two-sided quotes during the regular market session for each Security in which it is registered as a Market Maker.²⁴¹ The Exchange proposes that such quotes must be entered within a certain percentage, called the “Designated Percentage,” of the National Best Bid (Offer) price in such Security (or last sale price, in the event there is no National Best Bid (Offer)) on the Exchange.²⁴² The Exchange proposes that the Designated Percentage would be 30%.²⁴³ The Exchange notes that the proposed Designated Percentage is substantially similar to the corresponding Designated Percentage for NYSE American market makers with respect to Tier 2 NMS stocks (as defined under the LULD plan).²⁴⁴ The Exchange believes that the proposed Designated Percentage for quotation obligations of Market Makers would be sufficient to ensure that there is adequate liquidity sufficiently close to the National Best Bid or Offer

²⁴⁰ Proposed Rule 25200 is substantially similar to IEX Rule 11.150.

²⁴¹ See proposed Rule 25210(a)(1).

²⁴² See proposed Rule 25210(a)(1)(ii)(A).

²⁴³ See proposed Rule 25210(a)(1)(ii)(B).

²⁴⁴ See NYSE American Rule 7.23E(a)(1)(B)(iii) (providing that, other than during certain time periods around the market open and close, the Designated Percentage for Tier 2 NMS stocks priced below \$1.00 is 30% and for Tier 2 NMS stocks priced above \$1.00 is 28%).

(“NBBO”) in Securities and to ensure fair and orderly markets. The Exchange notes that pursuant to proposed Rule 25210(a)(1)(iii), there is nothing to preclude a Market Maker from entering trading interest at price levels that are closer to the NBBO, so Market Makers have the ability to quote must closer to the NBBO than required by the Designated Percentage requirement if they so choose.

The Exchange proposes in Rule 25210(a)(4) that, in the event that price movements cause a Market Maker or DMM’s quotations to fall outside of the National Best Bid (Offer) (or last sale price in the event there is no National Best Bid (Offer)) by a given percentage, with such percentage called the “Defined Limit,” in a Security for which they are a Market Maker, the Market Maker or DMM must enter a new bid or offer at not more than the Designated Percentage away from the National Best Bid (Offer) in that Security. The Exchange proposes that the Defined Limit shall be 31.5%.²⁴⁵ Under the proposed Rules, a Market Maker’s quotations must be firm and automatically executable for their size, and, to the extent the Exchange finds that a Market Maker has a substantial or continued failure to meet its quotation obligations, such Market Maker may face disciplinary action from the Exchange.²⁴⁶ Under the proposed Market Maker and DMM Rules, Market Makers and DMMs’ two-sided quotation obligations must be maintained for a quantity of a “normal unit of trading” which is defined as one Security.²⁴⁷ The Exchange believes that Securities may initially trade in smaller increments relative to other listed equities and that reducing the two-sided quoting increment from one round

²⁴⁵ See proposed Rule 25210(a)(1)(ii)(3).

²⁴⁶ See proposed Rule 25210(b) and (c). Pursuant to proposed Rule 25310(d), a BSTX Market Maker, other than a DMM, may apply for a temporary withdrawal from its Market Maker status provided it meets certain conditions such as demonstrating legal or regulatory requirements that necessitate its temporary withdrawal.

²⁴⁷ See proposed Rule 25210(a)(1).

lot (i.e., 100 shares) to one Security will be sufficient to meet liquidity demands and would make it easier for Market Makers and DMMs to meet their quotation obligations, which in turn incentivize more Market Maker participation.

The Exchange notes that proposed Rule 25210 is substantially similar to NYSE American Rule 7.23E, with the exceptions of: (i) the modified normal unit of trading, Designated Percentage, and Defined Limit (as discussed above); (ii) specifying that the minimum quotation increment shall be \$0.01; and (iii) specifying that Market Maker quotations must be firm for their displayed size and automatically executable. The Exchange believes that the additional specifications with respect to the minimum quotation increment and firm quotation requirement will add additional clarity to the expectations of Market Makers on the Exchange.

Proposed Rule 25220 sets forth the registration requirements for a DMM. Under proposed Rule 25220, a DMM must be a registered Market Maker and be approved as a DMM in order to receive an allocation of Securities pursuant to proposed Rule 25230, which is described below.²⁴⁸ For Securities in which a Participant serves as a DMM, it must meet the same obligations as if it were a Market Maker and must also maintain a bid or offer at the National Best Bid and Offer at least 25% of the day measured across all Securities in which such Participant serves as DMM.²⁴⁹ The proposed Rule provides, among other things, that there will be no more than one DMM per Security and that a DMM must maintain information barriers between the trading unit operating as a DMM and the trading unit operating as a BSTX Market

²⁴⁸ See proposed 25220(b). DMMs would be approved by the Exchange pursuant to an application process an [sic]

²⁴⁹ See proposed Rule 25220(c).

Maker in the same Security (to the extent applicable).²⁵⁰ The Rule further provides a process by which a DMM may temporarily withdraw from its DMM status, which is similar to the same process for a BSTX Market Maker²⁵¹ and similar to the same process for DMMs on other exchanges.²⁵² The Exchange notes that proposed Rule 25220 is substantially similar to NYSE American Rule 7.24E with the exception that the Exchange proposes to add a provision stating that the Exchange is not required to assign a DMM if the Security has an adequate number of BSTX Market Makers assigned to such Security. The purpose of this requirement is to acknowledge the possibility that a Security need not necessarily have a DMM provided that each Security has been assigned at least three active Market Makers at initial listing and two Market Makers for continued listing, consistent with proposed Rule 26106 (Market Maker Requirement), which is discussed further below.

In proposed Rule 25230, the Exchange proposes to set forth the process by which a DMMs are allocated and reallocated responsibility for a particular Security. Proposed Rule 25230(a) sets forth the basic eligibility criteria for a when a Security may be allocated to a DMM, providing that this may occur when the Security is initially listed on BSTX, when it is reassigned pursuant to Rule 25230, or when it is currently listed without a DMM assigned to the Security.²⁵³ Proposed Rule 2530(a) also specifies that a DMM's eligibility to participate in the

²⁵⁰ See proposed Rule 25220(b).

²⁵¹ See proposed Rule 25210(d).

²⁵² See e.g., NYSE American Rule 7.24E(b)(4).

²⁵³ As previously noted, pursuant to proposed Rule 26106, a Security may, in lieu of having a DMM assigned to it, have a minimum of three non-DMM Market Makers at initial listing and two non-DMM Market Makers for continued listing to be eligible for listing on the Exchange. Consequently, a Security might not have a DMM when it initially begins trading on BSTX, but may acquire a DMM later.

allocation process is determined at the time the interview is scheduled by the Exchange and specifies that a DMM must meet with the quotation requirements set forth in proposed Rule 25220(c) (DMM obligations). The proposed Rule further specifies how the Exchange will handle several situations in which the DMM does not meet its obligations, such as, for example, by issuing an initial warning advising of poor performance if the DMM fails to meet its obligations for a one-month period.²⁵⁴

Proposed Rule 25230(b) sets forth the manner in which a DMM may be selected and allocated a Security. Under proposed Rule 25230(b), an issuer may select its DMM directly, delegate the authority to the Exchange to select its DMM, or may opt to proceed with listing without a DMM, in which case a minimum of three non-DMM Market Makers at initial listing and two non-DMM Market Makers for continued listing must be assigned to its Security consistent with proposed Rule 26106. Proposed Rule 25230(b) further sets forth provisions relating to the interview between the issuer and DMMs, the Exchange selection by delegation, and a requirement that a DMM serve as a DMM for a Security for at least one year unless compelling circumstances exist for which the Exchange may consider a shorter time period. Each of these provisions is substantially similar to corresponding provisions in NYSE American Rule 7.25E(b)(1)-(3), with the exception that the Exchange may shorten the one year DMM commitment period in compelling circumstances.²⁵⁵ Proposed Rule 25230(b) further sets forth

²⁵⁴ See proposed Rule 25230(a)(4). The proposed handling of these scenarios where a DMM does not meet its obligations is substantially similar to parallel requirements in NYSE American Rule 7.25E(a)(4).

²⁵⁵ The Exchange believes that providing the Exchange with flexibility to shorten the one year commitment period is appropriate to accommodate unforeseen events or circumstances that might arise with respect to a DMM, such as a force majeure event, preventing a DMM from being able to carry out its functions.

specific provisions related to a variety of different issuances and types of securities, including spin-offs or related companies, warrants, rights, relistings, equity Security listing after preferred Security, listed company mergers, target Securities, and closed-end management investment companies.²⁵⁶ Each of these provisions is substantially similar to corresponding provisions in NYSE American Rule 7.25E(b)(4)-(11).

Proposed Rule 25230(c) sets forth the reallocation process for a DMM in a manner that is substantially similar to corresponding provisions in NYSE American Rule 7.25E(c).

Generally, under the proposed Rule, an issuer may request a reallocation to a new DMM and Exchange staff will review this request, along with any DMM response letter, and eventually make a determination.²⁵⁷ Proposed Rule 25230(d), (e), and (f), set forth provisions governing an allocation freeze, allocation sunset, and criteria for applicants that are not currently DMMs to be eligible to be allocated a Security as a DMM respectively. Each of these provisions are likewise substantially similar to corresponding provisions in NYSE American Rule 7.25E(d)-(f).

Finally, proposed Rule 25240 sets forth the DMM combination review policy. The proposed Rule, among other things, defines a proposed combination among DMMs, requires that DMMs provide a written submission to the Office of the Corporate Secretary of the Exchange and specifies, among other things, the items to be disclosed in the written submission, the criteria that the Exchange will use to evaluate a proposed combination, and the timing for a decision by

²⁵⁶ See proposed Rule 25230(b)(4)-(11).

²⁵⁷ In addition, proposed Rule 25230(c)(2) sets forth provisions that allow for the Exchange's CEO to immediately initiate a reallocation proceeding upon written notice to the DMM and the issuer when the DMM's performance in a particular market situation was, in the judgment of the Exchange, so egregiously deficient as to call into question the Exchange's integrity or impair the Exchange's reputation for maintaining an efficient, fair, and orderly market.

the Exchange, subject to the Exchange's right to extend such time period. The Exchange notes that proposed Rule 25240 is substantially similar to NYSE American Rule 7.26E.

The Exchange believes that the proposed Market Making Rules set forth in the Rule 25200 Series are consistent with Section 6(b)(5) of the Exchange Act²⁵⁸ because they are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange notes that the proposed Rules are substantially similar to the market making rules of other exchanges, as detailed above,²⁵⁹ and that all BSTX Participants are eligible to become a Market Maker or DMM provided they comply with the proposed requirements.²⁶⁰ The proposed Market Maker Rules set forth the quotation and related expectations of BSTX Market Makers which the Exchange believes will help ensure that there is sufficient liquidity in Securities. Although the corresponding NYSE American rules upon which the proposed Rules are based provide for multiple tiers and classes of stocks that were each associated with a different Designated Percentage and Defined Limit, the Exchange has collapsed all such classes in to one category and provided a single Designated Percentage of 30% and Defined Limit of 31.5% for all Security trading on BSTX. The Exchange believes that simplifying the Rules in this manner can reduce the potential for confusion and allows for easier compliance and will still adequately serve the liquidity needs of investors of Security investors, which the Exchange believes promotes the

²⁵⁸ 15 U.S.C. 78f(b)(5).

²⁵⁹ See NYSE American Rule 7, Section 2.

²⁶⁰ In this regard, the Exchange believes the proposed Market Making Rules are not designed to permit unfair discrimination between BSTX Participants, consistent with Section 6(b)(5) of the Exchange Act. 15 U.S.C. 78f(b)(5).

removal of impediments to and perfection of the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act.²⁶¹

The Exchange has also proposed that the minimum quotation size of Market Makers will be one Security. As noted above, the Exchange believes that Securities may initially trade in smaller increments relative to other listed equities and that reducing the two-sided quoting increment from one round lot (i.e., 100 shares) to one Security would be sufficient to meet liquidity demands and would make it easier for Market Makers and DMMs to meet their quotation obligations, which in turn incentivize more Market Maker participation. The Exchange believes that adopting quotation requirements and parameters that are appropriate for the nature and types of securities that will trade on the Exchange will promote the protection of investors and the public interest by assuring that the Exchange Rules are appropriately tailored to its market.

BSTX Listing Rules Other than for Exchange Traded Products and Suspension and Delisting Rules (Rule 26000 and 27000 Series)

The BSTX Listing Rules Other than for Exchange Traded Products (the “Non-ETP Listing Rules”) in the Rule Series 26000 and the Suspension and Delisting Rules in the Rule 27000 Series have been adapted from, and are substantially similar to, Parts 1 – 12 of the NYSE American LLC Company Guide.²⁶² Except as described below, each proposed Rule in the BSTX 26000 and 27000 Series is substantially similar to a Section of the NYSE American Company Guide.²⁶³ Below is further detail.

²⁶¹ 15 U.S.C. 78f(b)(5).

²⁶² All references to various “Sections” in the discussion of these Listing Rules refer to the various Sections of the NYSE American Company Guide.

²⁶³ The Exchange notes that while the numbering of BSTX’s Listing Rules generally corresponds to a Section of the NYSE American LLC Company Guide, BSTX did not

- The BSTX Rule 26100 Series are based on the NYSE American Original Listing Requirements (Sections 101-146).²⁶⁴
- The BSTX Original Listing Procedures (26200 Series) are based on the NYSE American Original Listing Procedures (Sections 201 – 222).
- The BSTX Additional Listings Rules (26300 Series) are based on the NYSE American Additional Listings Sections (Sections 301- 350).
- The BSTX Disclosure Policies (26400 Series) are based on the NYSE American Disclosure Policies (Sections 401-404).
- The BSTX Dividends and Splits Rules (26500 Series) are based on the NYSE American Dividends and Stock Splits Sections (Sections 501-522).
- The BSTX Accounting; Annual and Quarterly Reports Rules (26600 Series) are based on the NYSE American Accounting; Annual and Quarterly Reports Sections (Sections 603-624).

integrate certain Sections of the NYSE American Company Guide that the Exchange deemed inapplicable to its operations, such as with respect to types of securities which the Exchange is not proposing to make eligible for listing (i.e., bonds, debentures, securities of foreign companies (other than Canadian companies), investment trusts, and securities such as equity-linked term notes). The Exchange also proposes to modify cross-references in the proposed Non-ETP Listing Rules to accord with its Rules.

²⁶⁴ Pursuant to proposed Rule 26136, all securities initially listing on BSTX, except securities which are book-entry only, must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Exchange Act. 15 U.S.C. 78q-1.

- The BSTX Shareholders' Meetings, Approval and Voting of Proxies Rules (26700 Series) are based on the NYSE American Shareholders' Meetings, Approval and Voting of Proxies Sections (Sections 701-726).²⁶⁵
- The BSTX Corporate Governance Rules (26800 Series) are based on the NYSE American Corporate Governance Sections (Sections 801-809).
- The BSTX Additional Matters Rules (26900 Series) are based on the NYSE American Additional Matters Sections (Sections 920-994).
- The BSTX Suspension and Delisting Rules (27000 Series) are based on the NYSE American Suspension and Delisting Sections (Sections 1001-1011).
- The BSTX Guide to Filing Requirements (27100 Series) are based on the NYSE American Guide to Filing Requirements (Section 1101).
- The BSTX Procedures for Review of Exchange Listing Determinations (27200 Series) are based on the NYSE American Procedures for Review of Exchange Listing Determinations (Sections 1201-1211).

Notwithstanding that the proposed Rule 26000 and 27000 Series are substantially similar to those of other exchanges, BSTX proposes certain additions or modifications to these rules specific to its market. For example, BSTX proposes to add definitions that apply to the proposed BSTX Rule 26000 and 27000 Series. The definitions set forth in proposed Rule 26000 are designed to facilitate understanding of these Rule Series by market participants. Increased clarity may serve to remove impediments to and perfect the mechanism of a free and open

²⁶⁵ The Exchange notes that the proposed fees for certain items in the proposed Listing Rules (e.g., proxy follow-up mailings) are the same as those charged by NYSE American. See e.g., proposed IM-26722-8 cf. NYSE American Section 722.80.

market and a national market system and may also foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, consistent with Section 6(b)(5) of the Exchange Act.²⁶⁶

With respect to initial listing standards for non-ETP Securities, which begin at proposed Rule 26101, the Exchange proposes to adopt listing standards that are substantially similar to the NYSE American listing rules.²⁶⁷ The Exchange believes that adopting listing rules similar to those in place on other national securities exchanges will facilitate more uniform standards across exchanges, which helps foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, consistent with Section 6(b)(5) of the Exchange Act.²⁶⁸ Market participants that are already familiar with NYSE American's listing standards will already be familiar with most of the substance of the proposed listing rules. The Exchange also believes that adopting proposed

²⁶⁶ 15 U.S.C. 78f(b)(5).

²⁶⁷ See NYSE American Section 101. The Exchange understands that the Commission has extended relief to NYSE American with respect to certain quantitative listing standards that do not meet the thresholds of SEC Rule 3a51-1. 17 CFR 240.3a51-1. Initial listings of securities that do not meet such thresholds and are not subject to the relief provided to NYSE American would qualify as "penny stocks" and would be subject to additional regulation. BSTX notes that it is not seeking relief related to SEC Rule 3a51-1 and therefore has clarified proposed Rule 26101(a)(2) to ensure that issuers have at least one year of operating history. BSTX will also require new listings pursuant to proposed Rule 26102 to have a public distribution of 1 million Securities, 400 public Security holders, and a minimum market price of \$4 per Security. These provisions meet the requirements in SEC Rule 3a51-1 and are consistent with the rules of other national securities exchanges. See e.g., Nasdaq Rule 5510. The quantitative thresholds specified in Rule 26102 are also reflected in the Sample Underwriter's Letter that has been submitted as Exhibit 3L to this proposal. In addition, the Exchange notes that proposed Rule 26140, which governs the additional listing requirements of a company that is affiliated with the Exchange, is based on similar provisions in NYSE American Rule 497 and IEX 14.205.

²⁶⁸ 15 U.S.C. 78f(b)(5).

listing standards that closely resemble those of NYSE American may also foster competition among listing exchanges for companies seeking to publicly list their securities. The Exchange is proposing an addition (relative to the NYSE American listing rules) to the initial listing standards for preferred Securities.²⁶⁹ Specifically, the Exchange proposes an additional standard for preferred Securities to list on the Exchange based on NASDAQ Rule 5510.²⁷⁰ The Exchange believes a proposed rule providing an additional initial listing standard for preferred Securities consistent with a similar provision of NASDAQ would expand the possible universe of issuances that would be eligible to list on the Exchange to include preferred Securities. The Exchange believes that such a rule would help remove impediments to and perfect the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act by giving issuers an additional means by which it could list a different type of security (i.e., a preferred Security) and investors the opportunity to trade in such preferred Securities.²⁷¹ Further, consistent with the public interest, rules that provide more opportunity for listings may promote competition among listing exchanges and capital formation for issuers.

With respect to the definitions in proposed Rule 26000, these are designed to facilitate understanding of the BSTX Non-ETP Listing Rules by market participants. The Exchange believes that allowing market participants to better understand and interpret the BSTX Non-ETP Listing Rules removes impediments to and perfects the mechanism of a free and open market

²⁶⁹ See proposed Rule 26103.

²⁷⁰ See proposed Rule 26103(b)(2). Preferred Security Distribution Standard 2 requires that a preferred Security listing satisfy the following conditions: minimum bid price of at least \$4 per Security; at least 10 Round Lot holders; at least 200,000 Publicly Held Securities; and Market Value of Publicly Held Securities of at least \$3.5 million.

²⁷¹ 15 U.S.C. 78f(b)(5).

and a national market system, and may also foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, consistent with Section 6(b)(5) of the Exchange Act.²⁷²

The Exchange also proposes certain enhancements to the notice requirements for listed companies to communicate to BSTX related to record dates and defaults.²⁷³ The Exchange believes that these additional disclosure and communication obligations can help BSTX in monitoring for listed company compliance with applicable rules and regulations; such additional disclosure obligations are 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 regulating, clearing, settling, processing information with respect to, and 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, consistent with Section 6(b)(5) of the Exchange Act.²⁷⁴

The Exchange's proposed Rules provide additional flexibility for listed companies in choosing how liquidity would be provided in their listings by allowing listed companies to meet either the DMM Requirement or Active Market Maker Requirement for initial listing and continued trading.²⁷⁵ Pursuant to proposed Rule 26205, a company may choose to be assigned a

²⁷² Id.

²⁷³ See Proposed Rule 26502, which requires, among other things, a listing company to give the Exchange at least ten days' notice in advance of a record date established for any other purpose, including meetings of shareholders.

²⁷⁴ 15 U.S.C. 78f(b)(5).

²⁷⁵ See proposed Rule 26205. BSTX-listed Securities must meet the criteria specified in proposed Rule 26106, which provides that unless otherwise provided, all Securities listed pursuant to the BSTX Listing Standards must meet one of the following requirements: (1) the DMM Requirement whereby a DMM must be assigned to a given Security; or (2) the

DMM by the Exchange or to select its own DMM.²⁷⁶ Alternatively, a company may elect, or the Exchange may determine, that, in lieu of a DMM, a minimum of three (3) market makers would be assigned to the Security at initial listing; such requirement may be reduced to two (2) market makers following the initial listing, consistent with proposed Rule 26106. The Exchange believes that such additional flexibility would promote the removal of impediments to and perfection of the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act.²⁷⁷ The Commission has previously approved exchange rules providing for three market makers to be assigned to a particular security upon initial listing and only two for continued listing.²⁷⁸ In accordance with these previously approved rules, the Exchange believes proposed Rule 26205 would ensure fair and orderly markets and would facilitate the provision of sufficient liquidity for Securities.

Active Market Maker Requirement which states that (i) for initial inclusion the Security must have at least three registered and active Market Makers, and (ii) for continued listing, a Security must have at least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid.

²⁷⁶ Exchange personnel responsible for managing the listing and onboarding process would be responsible for determining to which DMM a Security would be assigned. As provided in proposed Rule 26205, the Exchange makes every effort to see that each Security is allocated in the best interests of the company and its shareholders, as well as that of the public and the Exchange. Similarly, the Exchange anticipates that these same personnel would be responsible for answering questions relating to the Exchange's listing rules pursuant to proposed Rule 26994 (New Policies). The Exchange notes that certain provisions in the NYSE American Listing Manual contemplate a "Listing Qualifications Analyst" that would perform a number of these functions. The Exchange is not proposing to adopt provisions that specifically contemplate a "Listing Qualifications Analyst," but expects to have personnel that will perform the same basic functions, such as advising issuers and prospective issuers with respect to relevant rules related to listing.

²⁷⁷ 15 U.S.C. 78f(b)(5).

²⁷⁸ See e.g., IEX Rule 14.206.

The Exchange also proposes a number of other non-substantive changes from the baseline NYSE American listing rules, such as to eliminate references to the concept of a “specialist,” since BSTX will not have a specialist,²⁷⁹ or references to certificated equities, since Securities will be uncertificated equities.²⁸⁰ As another example, NYSE American Section 623 requires that three copies of certain press releases be sent to the exchange, while the Exchange proposes only that a single copy of such press release be shared with the Exchange.²⁸¹ In addition, the Exchange proposes to adopt Rule 26720 in a manner that is substantially similar to NYSE American Section 720, but proposes to modify the internal citations to ensure consistency with its proposed Rulebook.²⁸² In its proposed Rules, the Exchange has not included certain

²⁷⁹ See e.g., NYSE American Section 513(f), noting that open orders to buy and open orders to sell on the books of a specialist on an ex rights date are reduced by the cash value of the rights. Proposed Rule 26340(f) deletes this provision because BSTX will not have specialists. Similarly, because BSTX will not have specialists, the Exchange is not proposing to adopt a parallel rule to NYSE American Section 516, which specifies that certain types of orders are to be reduced by a specialist when a security is quoted ex-dividend, ex-distribution or ex-rights are set forth in NYSE American Rule 132.

²⁸⁰ See e.g., NYSE American Section 117 including a clause relating to paired securities for which “the stock certificates of which are printed back-to-back on a single certificate”). Similarly, the Exchange has proposed to replace certain references to the “Office of General Counsel” contained in certain NYSE American Listing Rule (see e.g., Section 1205) with references to the Exchange’s “Legal Department” to accommodate differences in BSTX’s organizational structure. See proposed Rule 27204. As another example, proposed Rule 27205 refers to the Exchange’s “Hearing Committee” as defined in Section 6.08 of the Exchange’s By-Laws to similarly accommodate organizational differences between the Exchange and NYSE American.

²⁸¹ See proposed Rule 26623.

²⁸² Specifically, proposed Rule 26720 would provide that participants must comply with Rules 26720 through 26725 and BSTX’s Rule 22020 (Forwarding of Proxy and Other Issuer-Related Materials; Proxy Voting). NYSE American Section 726, upon which proposed Rule 26720 is based, includes cross-references to NYSE American’s corresponding rules to proposed Rules 26720 through 26725, and also includes cross-references to NYSE American Rules 578 through 585, for which the Exchange is not proposing corresponding rules. These NYSE American rules for which the Exchange is not proposing to adopt a parallel rule relate to certain requirements specific to proxy

form letters related to proxy rules that are included in the NYSE American rules;²⁸³ instead, these forms will be included in the BSTX Listing Supplement.²⁸⁴ The Exchange is not proposing to adopt provisions relating to future priced securities at this time.²⁸⁵ In addition, the Exchange is

voting (e.g., requiring that a member state the actual number of shares for which a proxy is given – NYSE American Rule 578) or, in some cases, relate to certificated securities (e.g., NYSE American Rule 579), which would be inapplicable to the Exchange since it proposes to only list uncertificated securities. The Exchange believes that it does not need to propose to adopt parallel rules corresponding to NYSE American Rules 578-585 at this time and notes that other listing exchanges do not appear have corresponding versions of these NYSE American Rules. See e.g., Cboe BZX Rules. The Exchange believes that proposed Rule 26720 and the Exchange’s other proposed Rules governing proxies, including those referenced in proposed Rule 26720, are sufficient to govern BSTX Participants’ obligations with respect to proxies.

²⁸³ The forms found in NYSE American Section 722.20 and 722.40 would be included in the BSTX Listing Supplement.

²⁸⁴ The BSTX Listing Supplement would contain samples of letters containing the information and instructions required pursuant to the proxy rules to be given to clients in the circumstances indicated in the appropriate heading. These are intended to serve as examples and not as prescribed forms. Participants would be permitted to adapt the form of these letters for their own purposes provided all of the required information and instructions are clearly enumerated in letters to clients. Pursuant to proposed Rule 26212, the BSTX Listing Supplement would also include a sample application for original listing, which the Exchange has submitted as Exhibit 3G. In addition, proposed Rule 26350 states that the BSTX Listing Supplement will include a sample cancellation notice; the Exchange expects such notice to be substantially in the same form as NYSE American’s sample notice in NYSE American Section 350. Other examples of items that would appear in the BSTX Listing Supplement include certain certifications to be completed by the CEO of listed companies pursuant to proposed Rule 26810(a) and (c), and forms of letters to be sent to clients requesting voting instructions and other letters relating to proxy votes pursuant to proposed IM-26722-2 and IM-26722-4. The Exchange expects that these proposed materials in the BSTX Listing Supplement would be substantially similar to the corresponding versions of such samples used by NYSE American. The purpose of putting these sample letters and other information into the BSTX Listing Supplement rather than directly in the rules is to improve the readability of the Rules.

²⁸⁵ See e.g., NYSE American Section 101, Commentary .02. The Exchange is also not proposing to adopt a parallel provision to NYSE American Section 950 (Explanation of Difference between Listed and Unlisted Trading Privileges) because the Exchange believes that such provision is not necessary and contains extraneous historical details that are not particularly relevant to the trading of Securities. The Exchange notes that

not proposing to allow for listing of foreign companies, other than Canadian companies,²⁸⁶ or to allow for issuers to transfer their existing securities to BSTX.²⁸⁷ Similarly, the Exchange is not proposing at this time to support debt securities (other than those that may be ETPs), so the Exchange has not proposed to adopt certain provisions from the NYSE American Listing Manual related to bonds/debt securities²⁸⁸ or the trading of units.²⁸⁹ The Exchange believes that the departures from the NYSE American rules upon which the proposed Rules are based, as described above, are non-substantive (e.g., by not including provisions relating to instruments that will not trade on the Exchange), would apply to all issuers in the same manner and are therefore not designed to permit unfair discrimination, consistent with Section 6(b)(5) of the Exchange Act.²⁹⁰

The Exchange proposes in Rule 26507 to prohibit the issuance of fractional Securities and to provide that cash must be paid in lieu of any distribution or part of a distribution that might result in fractional interests in Securities.²⁹¹ The Exchange believes that disallowing fractional shares reduces complexity. By extension, the requirement to provide cash in lieu of

numerous other listing exchanges do not have a similar provision to NYSE American Section 950. See e.g., IEX Listing Rules.

²⁸⁶ See proposed Rule 26109. Because the Exchange does not propose to allow foreign issuers of Securities, it does not propose to adopt a parallel provision to NYSE American Section 110 and other similar provisions relating to foreign issuers – e.g., NYSE American Section 801(f).

²⁸⁷ Consequently, the Exchange does not propose to adopt a parallel provision to NYSE American Section 113 at this time.

²⁸⁸ See e.g., NYSE American Sections 1003(b)(iv) and (e).

²⁸⁹ See e.g., NYSE American Sections 106(f), 401(i), and 1003(g).

²⁹⁰ 15 U.S.C. 78f(b)(5).

²⁹¹ The Exchange also proposes certain conforming changes in Rule 26503 (Form of Notice) to reiterate that fractional interests in Securities are not permitted by the Exchange.

fractional shares simplifies the process related to share transfer and tracking of share ownership. The Exchange believes that this simplification promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, removes impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act.²⁹²

Proposed BSTX Rule 26130 (Original Listing Applications) would require listing applicants to furnish a legal opinion that the applicant's Security is a security under applicable United States securities laws. Such a requirement provides assurance to the Exchange that Security trading relates to appropriate asset classes. The Exchange believes that this Rule promotes just and equitable principles of trade and, in general, protects investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act.²⁹³

The Exchange proposes to adopt corporate governance listing standards as its Rule 26800 Series that are substantially similar to the corporate governance listing standards set forth in Part 8 of the NYSE American Listing Manual. However, it includes certain clarifications, most notably that certain proposed provisions are not intended to restrict the number of terms that a director may serve²⁹⁴ and that, if a limited partnership is managed by a general partner rather than a board of directors, the audit committee requirements applicable to the listed entity should be satisfied by the general partner.²⁹⁵ The Exchange also notes that, unlike the current NYSE

²⁹² 15 U.S.C. 78f(b)(5).

²⁹³ Id.

²⁹⁴ See proposed Rule 26802(d).

²⁹⁵ See proposed Rule 26801(b).

American rules upon which the proposed Rules are based, the proposed Rules on corporate governance do not include provisions on asset-backed securities and foreign issues (other than those from Canada), since the Exchange does not proposed to allow for such foreign issuers to list on BSTX at this time.

The Exchange proposes to adopt additional listing rules as its Rule 26900 Series that are substantially similar to the corporate governance listing standards set forth in Part 9 of the NYSE American Listing Manual. The only significant difference from the baseline NYSE American rules is that the proposed BSTX Rules do not include provisions related to certificated securities, since Securities listed on BSTX will be uncertificated.

The Exchange proposes to adopt suspension and delisting rules as its Rule 27000 Series that are substantially similar to the corporate governance listing standards set forth in Parts 10, 11, and 12 of the NYSE American Listing Manual. The proposed rules do not include concepts from the baseline NYSE American rules regarding foreign, fixed income securities, or other non-equity securities because the Exchange is not proposing to allow for listing of such securities at this time.²⁹⁶

The Exchange believes that the proposals in the Rule 26800 to Rule 27000 Series, which are based on the rules of NYSE American with the differences explained above, are designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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. Further, the

²⁹⁶ As with all sections of the proposed rules, references to “securities” have been changed to “Securities” where appropriate and, in the Rule 27000 Series, certain references have been conformed from the baseline NYSE American provisions to account for the differences in governance structure and naming conventions of BSTX.

differences in the proposals compared to the analogous NYSE American provisions appropriately reflect the differences between the two exchanges. The Exchange believes that ensuring that its systems are appropriately described in the BSTX Rules facilitates market participants' review of such Rules, which serves to remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that market participants can easily navigate, understand and comply with the Exchange's rulebook. Therefore, the Exchange believes its proposals are consistent with Section 6(b)(5) of the Exchange Act.²⁹⁷

Trading and Listing Rules for Exchange-Trade Products (Rule 28000 Series)

The Exchange proposes as the Rule 28000 Series rules related to trading and listing ETPs. These proposed Rules allow for an array of different types of ETPs to be traded and listed on the Exchange and would provide individuals and institutions with diverse range of products in which to invest. The proposed Rules would set forth requirements and initial as well as continued listing standards for a variety of ETPs noted in the bulleted list below. The proposed Rules have been adapted from, and are substantially similar to, rules found in the NYSE Arca Inc. ("NYSE Arca") rulebook. Below is a list of the proposed Rules in the 28000 Series and the NYSE Arca rules on which it is based:

- Proposed Rule 28000 (Investment Company Units) is based on NYSE Arca Rule 5.2-E(j)(3)
- Proposed Rule 28001 (Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities) is based on

²⁹⁷ 15 U.S.C. 78f(b)(5).

NYSE Arca Rule 5.2-E(j)(6)

- Proposed Rule 28002 (Exchange-Traded Fund Shares) is based on NYSE Arca Rule 5.2-E(j)(8)
- Proposed Rule 28003 (Trust Issued Receipts) is based on NYSE Arca Rule 8.200-E
- Proposed Rule 28004 (Commodity-Based Trust Shares) is based on NYSE Arca Rule 8.201-E
- Proposed Rule 28005 (Managed Fund Shares) is based on NYSE Arca Rule 8.600-E
- Proposed Rule 28006 (Active Proxy Portfolio Shares) is based on NYSE Arca Rule 8.601-E
- Proposed Rule 28007 (Managed Portfolio Shares) is based on NYSE Arca Rule 8.900-E

For each Rule in the 28000 Series, the Exchange proposes provisions that are substantially similar to provisions in the NYSE Arca rulebook, with adjustments made to ensure appropriate reference to concepts in other parts of the BSTX Rulebook. For example, in cases where the precedent NYSE Arca rule referred to a specific provision regarding delisting procedures, the Exchange has modified the proposed Rules to reference to the proposed Rule 27000 Series, which set forth the Exchange's proposed Rules governing suspension and delisting.²⁹⁸ As another example, the proposed definition of "ETP Holder," which closely parallels the same definition in the NYSE Arca Rulebook, but is located in a different place in

²⁹⁸ As another example, the concept of "Core Trading Hours" in the NYSE Arca Rulebook (as defined therein) has no analog in the BSTX Rulebook. The BSTX Rulebook only allows for Regular Trading Hours and thus the proposal references the concept of Regular Trading Hours.

the proposed BSTX Rulebook as compared to the NYSE Arca rulebook.²⁹⁹ In addition, certain products or concepts that are supported by NYSE Arca but are not supported by the Exchange have not been included in the proposal. For example, the Exchange notes that the NYSE Arca rulebook provides for trading of a Nasdaq-100 Index product, Currency Trust Shares, and Commodity Index Trust Shares,³⁰⁰ whereas the Exchange will not support trading in these specific ETPs and therefore has not included provisions relating to the listing and trading of such products in its proposal. The discussion below describes other notable variations from the NYSE Arca rules set forth in the proposed Rule Series 28000.

The Exchange believes that the proposals in the Rule 28000 Series help remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general promote the protecting of investors and the public interest because they will facilitate an additional exchange on which ETPs can be listed and traded. This adds competition to the marketplace for the listing of ETPs, providing greater choice for issuers of ETPs and an additional trading venue on which market participants can trade such products. As noted, the proposed Rule 28000 Series is substantially similar to the rules of NYSE Arca relating to ETPs, with only non-substantive differences, which differences appropriately reflect the differences between the two exchanges (e.g., internal cross-references within each rule book or excluding provisions related to products that the Exchange will not support).

²⁹⁹ See proposed IM-28000-1g. In the NYSE Arca rule book, the comparable definition is set forth in NYSE Arca Rulebook Rule 1.

³⁰⁰ Specifically, Section 2 of Rule 8-E in the NYSE Arca rulebook allows for trading of a Nasdaq-100 Index product, Currency Trust Shares, and Commodity Index Trust Shares.

Fees (Rule 29000 Series)

The Exchange proposes to set forth as its Rule 29000 Series (Fees) the Exchange's authority to prescribe reasonable dues, fees, assessments or other charges as it may deem appropriate. As provided in proposed Rule 29000 (Authority to Prescribe Dues, Fees, Assessments and Other Charges), these fees may include membership dues, transaction fees, communication and technology fees, regulatory fees, and other fees, which will be equitably allocated among BSTX Participants, issuers, and other persons using the Exchange's facilities.³⁰¹ Proposed Rule 29010 (Regulatory Revenues) generally provides that any revenues received by the Exchange from fees derived from its regulatory function or regulatory fines will not be used for non-regulatory purposes or distributed to the stockholder, but rather, shall be applied to fund the legal and regulatory operations of the Exchange (including surveillance and enforcement activities).

The Exchange believes that the proposed Rule 29000 Series (Fees) is consistent with Sections 6(b)(5) of the Exchange Act because these proposed rules are designed to protect investors and the public interest by setting forth the Exchange's authority to assess fees on BSTX Participants, which would be used to operate the BSTX System and surveil BSTX for compliance with applicable laws and rules. The Exchange believes that the proposed Rule 29000 Series (Fees) is also consistent with Sections 6(b)(3) of the Exchange Act³⁰² because the proposed Rules specify that all fees assessed by the Exchange shall be equitably allocated among

³⁰¹ Proposed Rule 29000 further provides authority for the Exchange to charge BSTX Participants a regulatory transaction fee pursuant to Section 31 of the Exchange Act (15 U.S.C. 78ee) and that the Exchange will set forth fees pursuant to publicly available schedule of fees.

³⁰² 15 U.S.C. 78f(b)(5).

BSTX Participants, issuers and other persons using the Exchange’s facilities. The Exchange notes that the proposed Rule 29000 Series is substantially similar to the existing rules of another exchange.³⁰³ The Exchange intends to submit a proposed rule change to the Commission setting forth the proposed fees relating to trading on BSTX and market data products in advance of the launch of BSTX.

Minor Rule Violation Plan

The Exchange’s disciplinary rules, including Exchange Rules applicable to “minor rule violations,” are set forth in the Rule 12000 Series of the Exchange’s current Rules. Such disciplinary rules would apply to BSTX Participants and their associated persons pursuant to proposed Rule 24000. The Exchange’s Minor Rule Violation Plan (“MRVP”) specifies those uncontested minor rule violations with sanctions not exceeding \$2,500 that would not be subject to the provisions of Rule 19d-1(c)(1) under the Exchange Act³⁰⁴ requiring that an SRO promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.³⁰⁵ The Exchange’s MRVP includes the policies and procedures set forth in Exchange Rule 12140 (Imposition of Fines for Minor Violations).

³⁰³ See Cboe BZX Rules 15.1 and 15.2.

³⁰⁴ 17 CFR 240.19d-1(c)(1).

³⁰⁵ The Commission adopted amendments to paragraph (c) of Rule 19d-1 to allow SROs to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. See Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan filed with and declared effective by the Commission will not be considered “final” for purposes of Section 19(d)(1) of the Exchange Act if the sanction imposed consists of a fine not exceeding \$2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

The Exchange proposes to amend its MRVP and Rule 12140 to include proposed Rule 24010 (Penalty for Minor Rule Violations). The Rules included in proposed Rule 24010 as appropriate for disposition under the Exchange's MRVP are: (a) Rule 20000 (Maintenance, Retention and Furnishing of Records); (b) Rule 25070 (Audit Trail); (c) Rule 25210(a)(1) (Two-Sided Quotation Obligations of BSTX Market Makers); and Rule 25120 (Short Sales). The rules included in proposed Rule 12140 are the same as the rules included in the MRVPs of other exchanges.³⁰⁶ Upon implementation of this proposal, the Exchange will include the enumerated trading rule violations in the Exchange's standard quarterly report of actions taken on minor rule violations under the MRVP. The quarterly report includes: the Exchange's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the sanction imposed, the number of times the rule violation has occurred, and the date of disposition. The Exchange's MRVP, as proposed to be amended, is consistent with Sections 6(b)(1), 6(b)(5) and 6(b)(6) of the Exchange Act,³⁰⁷ which require, in part, that an exchange have the capacity to enforce compliance with, and provide appropriate discipline for, violations of the rules of the Commission and of the exchange. In addition, because amended Rule 12140 will offer procedural rights to a person sanctioned for a violation listed in proposed Rule 24010, the Exchange will provide a fair procedure for the disciplining of members and associated persons, consistent with Section 6(b)(7) of the Exchange Act.³⁰⁸

This proposal to include the rules listed in Rule 24010 in the Exchange's MRVP is consistent with the public interest, the protection of investors, or otherwise in furtherance of the

³⁰⁶ See e.g., IEX Rule 9.218 and Cboe BZX Rule 8.15.01.

³⁰⁷ 15 U.S.C. 78f(b)(1), 78f(b)(5) and 78f(b)(6).

³⁰⁸ 15 U.S.C. 78f(b)(7).

purposes of the Exchange Act, as required by Rule 19d-1(c)(2) under the Exchange Act,³⁰⁹ because it should strengthen the Exchange’s ability to carry out its oversight and enforcement responsibilities as an SRO in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation. In requesting the proposed change to the MRVP, the Exchange in no way minimizes the importance of compliance with Exchange Rules and all other rules subject to the imposition of fines under the MRVP. However, the MRVP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the MRVP or whether a violation requires a formal disciplinary action.

Amendments to Existing BOX Rules

Due to the new BSTX trading facility and the introduction of trading in Securities= [sic] on the Exchange, the Exchange proposes to amend those Exchange Rules that would apply to BSTX Participants, but that currently only contemplate trading in options. Therefore, the Exchange is seeking to amend the following Exchange Rules, each of which is set forth in Exhibit 5B submitted with the proposal:

- Rule 100(a) (Definitions) “Options Participant” or “Participant”: The Exchange proposes to change the definition of “Options Participant or Participant” to “Participant” to reflect Options Participants and BSTX Participants and to amend the definition as follows: “The term ‘Participant’ means a firm, or organization that is

³⁰⁹ 17 CFR 240.19d-1(c)(2).

registered with the Exchange pursuant to the Rule 2000 Series for purposes of participating in trading on a facility of the Exchange and includes an ‘Options Participant’ and ‘BSTX Participant.’”

- Rule 100(a) (Definitions) “Options Participant”: The Exchange proposes to add a definition of “Options Participant” that would be defined as follows: “The term ‘Options Participant’ is a Participant registered with the Exchange for purposes of participating in options trading on the Exchange.”³¹⁰
- Rule 2020(g)(2) (Participant Eligibility and Registration): The Exchange proposes to delete subsection (g)(2) and replace it with the following: “(2) persons associated with a Participant whose functions are related solely and exclusively to transactions in municipal securities; (3) persons associated with a Participant whose functions are related solely and exclusively to transactions in commodities; (4) persons associated with a Participant whose functions are related solely and exclusively to transactions in securities futures, provided that any such person is appropriately registered with a registered futures association; and (5) persons associated with a Participant who are restricted from accessing the Exchange and that do not engage in the securities business of the Participant relating to activity that occurs on the Exchange.”³¹¹

³¹⁰ In addition, as a result of these new defined terms, the Exchange proposes to renumber definitions set forth in Rule 100(a) to keep the definitions in alphabetical order.

³¹¹ In addition to revising Rule 2020(g)(2) to broaden it to include securities activities beyond just options trading, the Exchange proposes to add greater specificity to define persons that are exempt from registration, consistent with the approach adopted by other exchanges. See e.g., IEX Rule 2.160(m).

- Rule 2060 (Revocation of Participant Status or Association with a Participant): The Exchange proposes to amend Rule 2060 to refer to “securities transactions” rather than “options securities transactions.”
- Rule 3180(a) (Mandatory Systems Testing): The Exchange proposes to amend subsection (a)(1) of Rule 3180 to also include BSTX Participants, in addition to the categories of Market Makers and OFPs.
- Rule 7130(a)(2)(v) Execution and Price/Time Priority: The Exchange proposes to update the cross reference to Rule 100(a)(58) to refer to Rule 100(a)(59), which defines the term “Request for Quote” or “RFQ” under the Rules after the proposed renumbering.
- Rule 7150(a)(2) (Price Improvement Period): The Exchange proposes to amend Rule 7150(a)(2) to update the cross reference to the definition of a Professional in Rule 100(a)(51) to instead refer to Rule 100(a)(52), which is where that term would be defined in the Rules after the proposed renumbering.
- Rule 7230 (Limitation of Liability): The Exchange proposes to amend the references in Rule 7230 to “Options Participants” to simply “Participants.”
- Rule 7245(a)(4) (Complex Order Price Improve Period): The Exchange proposes to update the cross reference to Rule 100(a)(51) to refer to Rule 100(a)(52), which defines the term “Professional” after the proposed renumbering.
- IM-8050-3: The Exchange proposes to update the cross reference to Rule 100(a)(56) to refer to Rule 100(a)(57), which defines the term “quote” or “quotation” after the proposed renumbering.

- Rule 11010(a) “Investigation Following Suspension”: The Exchange proposes to amend subsection (a) of Rule 11010 to remove the reference to “in BOX options contracts” and to modify the word “position” with the word “security” as follows: “. . . the amount owing to each and a complete list of each open long and short security position maintained by the Participant and each of his or its Customers.”
- Rule 11030 (Failure to Obtain Reinstatement): The Exchange proposes to amend Rule 11030 to replace the reference to “Options Participant” to simply “Participant.”
- Rule 12140 (Imposition of Fines for Minor Rule Violations): The Exchange proposes to amend Rule 12140 to replace references to “Options Participant” to simply “Participant.” In addition, the Exchange proposes to add paragraph (f) to Rule 12140, to incorporate the aforementioned modifications to the Exchange’s MRVP. New paragraph (f) of Rule 12140 would provide: “(f) Transactions on BSTX. Rules and penalties relating to trading on BSTX that are set forth in Rule 24010 (Penalty for Minor Rule Violations).”

The Exchange believes that the proposed amendments to the definitions set forth in Rule 100 are consistent with Section 6(b)(5) of the Exchange Act³¹² because they protect investors and the public interest by setting forth clear definitions that help BOX and BSTX Participants understand and apply Exchange Rules. Without defining terms used in the Exchange Rules clearly, market participants could be confused as to the application of certain rules, which could cause harm to investors.

³¹² 15 U.S.C. 78f(b)(5).

The Exchange believes that the proposed amendments to the other Exchange Rules detailed above are consistent with Section 6(b)(5) of the Exchange Act³¹³ because the proposed rule change is designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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. The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that market participants can easily navigate, understand and comply with the Exchange's rulebook. The Exchange believes that the proposed rule change enables the Exchange to continue to enforce the Exchange's rules. The Exchange notes that none of the proposed changes to the current Exchange rulebook would materially alter the application of any of those Rules, other than by extending them to apply to BSTX Participants and trading on the BSTX System. As such, the proposed amendments would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national exchange system. Further, the Exchange believes that, by ensuring the rulebook accurately reflects the intention of the Exchange's rules, the proposed rule change reduces potential investor or market participant confusion.

Forms to Be Used in Connection with BSTX

In connection with the operation of BSTX, the Exchange proposes to use a series of new forms to facilitate becoming a BSTX Participant and for issuers to list their Securities. These forms have been submitted with the proposal as Exhibits 3A – 3L. Each are described below.

³¹³ Id.

BSTX Participant Application

Pursuant to proposed Rule 18000(b), in order to become a BSTX Participant, an applicant must complete a BSTX Participant Application, which has been submitted with the proposal as Exhibit 3A. The proposed BSTX Participant Application requires the applicant to provide certain basic information such as identifying the applicants name and contact information, Designated Examining Authority, organizational structure, and Central Registration Depository (“CRD”) number. The BSTX Participant Application also requires applicants to provide additional information including certain beneficial ownership information, the applicant’s current Form BD, an organization chart, a description of how the applicant receives orders from customers, how it will send orders to BSTX, and a copy of written supervisory procedures and information barrier procedures.

In addition, the BSTX Participant Application allows applicants to indicate whether they are applying to be a BSTX Market Maker or a Designated Market Maker. Applicants wishing to become a BSTX Market Maker or Designated Market Maker must provide certain additional information including a list of each of the applicant’s trading representatives (including a copy of each representative’s Form U4), a copy of the applicant’s written supervisory procedures relating to market making, a description of the source and amount of the applicant’s capital, and information regarding the applicant’s other business activities and information barrier procedures.

BSTX Participant Agreement

Pursuant to Exchange Rule 18000(b), to transact business on BSTX, prospective BSTX Participants must complete a BSTX Participant Agreement. The BSTX Participant Agreement

has been submitted with the proposal as Exhibit 3B. The BSTX Participant Agreement provides that a BSTX Participant must agree with the Exchange as follows:

1. Participant agrees to abide by the Rules of the Exchange and applicable bylaws, as amended from time to time, and all circulars, notices, interpretations, directives and/or decisions adopted by the Exchange.
2. Participant acknowledges that BSTX Participant and its associated persons are subject to the oversight and jurisdiction of the Exchange.
3. Participant authorizes the Exchange to make available to any governmental agency or SRO any information it may have concerning the BSTX Participant or its associated persons, and releases the Exchange from any and all liability in furnishing such information.
4. Participant acknowledges its obligation to update any and all information contained in any part of the BSTX Participant's application, including termination of membership with another SRO.

These provisions of the BSTX Participant Agreement and others therein are generally designed to reflect the Exchange's SRO obligations to regulate BSTX Participants. Accordingly, these provisions contractually bind a BSTX Participant to comply with Exchange rules, acknowledge the Exchange's oversight and jurisdiction, authorize the Exchange to disclose information regarding the Participant to any governmental agency or SRO and acknowledge the obligation to update any and all Application contained in the Participant's application.

BSTX User Agreement

In order to become a BSTX Participant, prospective participants must also execute a BSTX User Agreement pursuant to proposed Rule 18000(b). The BSTX User Agreement,

submitted with the proposal as Exhibit 3C, includes provisions related to the term of the agreement, compliance with exchange rules, right and obligations under the agreement, changes to BSTX, proprietary rights under the agreement, use of information received under the relationship, disclaimer of warranty, limitation of liability, indemnification, termination and assignment. The information is necessary to outline the rights and obligations of the prospective Participant and the Exchange under the terms of the agreement. Both the BSTX Participant Agreement and BSTX User Agreement will be available on the Exchange's website (boxoptions.com).

BSTX Security Market Designated Market Maker Selection Form

In accordance with proposed Rule 25230(b)(1), BSTX will maintain the BSTX Security Designated Market Maker Selection Form, which has been submitted with the proposal as Exhibit 3D. The issuer may select its DMM from among a pool of DMMs eligible to participate in the process. Within two business days of the issuer selecting its DMM, it will use the BSTX Security Market Designated Market Maker Selection form to notify BSTX of the selection. The form must be signed by a duly authorized officer as specified in proposed Rule 25230(b)(1).

Clearing Authorization Forms

In accordance with proposed Rule 18010, BSTX Participants that are not members/participants of a registered clearing agency must clear their transactions through a BSTX Participant that is a member of a registered clearing agency. A BSTX Participant clearing through another BSTX Participant would do so using, as applicable, either the BSTX Clearing Authorization (non-Market Maker) form (submitted with the proposal as Exhibit 3E) or the BSTX Participant Clearing Authorization (Market Maker) form (submitted with the proposal as Exhibit 3F). Each form would be maintained by BSTX and each form specifies that the BSTX

Participant clearing on behalf of the other BSTX Participant accepts financial responsibility for all transactions on BSTX that are made by the BSTX Participant designated on the form.

BSTX Listing Applications

The Exchange proposes to specify the required forms of listing application, listing agreement and other documentation that listing applicants and listed companies must execute or complete (as applicable) as a prerequisite for initial and ongoing listing on the Exchange, as applicable (collectively, “listing documentation”). As proposed, the listing forms are substantially similar to those currently in use by NYSE American LLC, with certain differences to account for the trading of Securities. All listing documentation will be available on the Exchange’s website (boxoptions.com). Each of the listing documents form a duly authorized representative of the company must sign an affirmation that the information provided is true and correct as of the date the form was signed. In the event that in the future the Exchange makes any substantive changes (including changes to the rights, duties, or obligations of a listed company or listing applicant or the Exchange, or that would otherwise require a rule filing) to such documents, it will submit a rule filing in accordance with Rule 19b-4.³¹⁴

Pursuant to Rule 26130 and 26300 of the Exchange Rules, a company must file and execute the BSTX Original Listing Application (submitted with the proposal as Exhibit 3G) or the BSTX Additional Listing Application (submitted with the proposal as Exhibit 3H) to apply for the listing of Securities on BSTX.³¹⁵ The BSTX Original Listing Application provides

³¹⁴ The Exchange will not submit a rule filing if the changes made to a document are solely typographical or stylistic in nature.

³¹⁵ Pursuant to proposed Exchange Rule 26130, an applicant seeking the initial listing of its Security must also provide a legal opinion that the applicant’s Security is a security under applicable United States securities laws.

information necessary, and in accordance with Section 12(b) of the Exchange Act,³¹⁶ for Exchange regulatory staff to conduct a due diligence review of a company to determine if it qualifies for listing on the Exchange. The BSTX Additional Listing Application requires certain further information for an additional listing of Securities. Relevant factors regarding the company and securities to be listed would determine the type of information required. The following describes each category and use of application information:

1. Corporate information regarding the issuer of the security to be listed, including company name, address, contact information, Central Index Key Code (CIK), SEC File Number, state and country of incorporation, date of incorporation, whether the company is a foreign private issuer, website address, SIC Code, CUSIP number of the security being listed and the date of fiscal year end. This information is required of all applicants and is necessary in order for the Exchange's regulatory staff to collect basic company information for recordkeeping and due diligence purposes, including review of information contained in the company's SEC filings.
2. For original listing applications only, corporate contact information including the company's Chief Executive Officer, Chief Financial Officer, Corporate Secretary, General Counsel and Investor Relations Officer. This information is required of all initial applicants and is necessary in order for the Exchange's regulatory staff to collect current company contact information for purposes of obtaining any additional due diligence information to complete a listing qualification review of the applicant.
3. For original listing applications only, offering and security information regarding an offering, including the type of offering, a description of the issue, par value, number

³¹⁶ 15 U.S.C. 78l(b).

- of Securities outstanding or offered, total Securities unissued, but reserved for issuance, date authorized, purpose of Securities to be issued, number of Securities authorized, and information relating to payment of dividends. This information is required of all applicants listing Securities on the Exchange, and is necessary in order for the Exchange's regulatory staff to collect basic information about the offering.
4. For original listing applications only, information regarding the company's transfer agent. Transfer agent information is required for all applicants. This information is necessary in order for the Exchange's regulatory staff to collect current contact information for such company transfer agent for purposes of obtaining any additional due diligence information to complete a listing qualification review of the applicant.
 5. For original listing applications only, contact information for the outside counsel with respect to the listing application, if any. This information is necessary in order for the Exchange's regulatory staff to collect applicable contact information for purposes of obtaining any additional due diligence information to complete a listing qualification review of the applicant and assess compliance with Exchange Rule 26130.
 6. For original listing applications only, a description of any security preferences. This information is necessary to determine whether the Applicant issuer has any existing class of common stock or equity securities entitling the holders to differential voting rights, dividend payments, or other preferences.
 7. For original listing applications only, type of Security listing, including the type of transaction (initial public offering of a Security, merger, spin-off, follow on offering, reorganization, exchange offer or conversion) and other details related to the transaction, including the name and contact information for the investment

banker/financial advisor contacts. This information is necessary in order for the Exchange's regulatory staff to collect information for such company for purposes of obtaining any additional due diligence information to complete a listing qualification review of the applicant.

8. For original listing applications only, exchange requirements for listing consideration. This section notes that to be considered for listing, the Applicant Issuer must meet the Exchange's minimum listing requirements, that the Exchange has broad discretion regarding the listing of any Security and may deny listing or apply additional or more stringent criteria based on any event, condition or circumstance that makes the listing of an Applicant Issuer's Security inadvisable or unwarranted in the opinion of the Exchange. The section also notes that even if an Applicant Issuer meets the Exchange's listing standards for listing on the BSTX Security Market, it does not necessarily mean that its application will be approved. This information is necessary in order for the Exchange's regulatory staff to assess whether an Applicant Issuer is qualified for listing.
9. For original listing applications only, regulatory review information, including a certification that no officer, board member or non-institutional shareholder with greater than 10% ownership of the company has been convicted of a felony or misdemeanor relating to financial issues during the past ten years or a detailed description of any such matters. This section also notes that the Exchange will review background materials available to it regarding the aforementioned individuals as part of the eligibility review process. This regulatory review information is

necessary in order for the Exchange's regulatory staff to assess whether there are regulatory matters related to the company that render it unqualified for listing.

10. For original listing applications only, supporting documentation required prior to listing approval includes a listing agreement, corporate governance affirmation, listing application checklist and underwriter's letter. This documentation is necessary in order to support the Exchange's regulatory staff listing qualification review (corporate governance affirmation, listing application checklist and underwriter's letter) and to effectuate the listed company's agreement to the terms of listing (listing agreement).
11. For additional listing applications only, transaction details, including the purpose of the issuance, total Securities, date of board authorization, date of shareholder authorization and anticipated date of issuance. This information is required of all applicants listing additional Securities on the Exchange, and is necessary in order for the Exchange's regulatory staff to collect basic information about the offering.
12. For additional listing applications only, insider participation and future potential issuances, including whether any director, officer or principal shareholder of the company has a direct or indirect interest in the transaction, and if the transaction potentially requires the company to issue any Securities in the future above the amount they are currently applying for. This information is required of all applicants listing additional Securities on the Exchange, and is necessary in order for the Exchange's regulatory staff to collect basic information about the offering.
13. For additional listing applications only, information for a technical original listing, including reverse Security splits and changes in states of incorporation. This

information is required of all applicants listing additional Securities on the Exchange, and is necessary in order for the Exchange's regulatory staff to collect basic information about the offering.

14. For additional listing applications only, information for a forward Security split or Security dividend, including forward Security split ratios and information related to Security dividends. This information is required of all applicants listing additional Securities on the Exchange, and is necessary in order to determine the rights associated with the Securities.
15. For additional listing applications only, relevant company documents. This information is required of all applicants listing additional Securities on the Exchange, and is necessary to assess to support the Exchange's regulatory staff listing qualification review.
16. For additional listing applications only, reconciliation for technical original listing, including Securities issued and outstanding after the technical original event, listed reserves previously approved for listing, and unlisted reserves not yet approved by the Exchange. This information is required of all applicants listing additional Securities on the Exchange, and is necessary to assess to support the Exchange's regulatory staff listing qualification review and to obtain all of the information relevant to the offering.

Checklist for Original Listing Application

In order to assist issuers seeking to list its Securities on BSTX, the Exchange has provided a checklist for issuers to seeking to file an original listing application with BSTX. The BSTX Listing Application Checklist, submitted with the proposal as Exhibit 3I, provides that

issuers must provide BSTX with a listing application, listing agreement, corporate governance affirmation, underwriter's letter (for an initial public offering of a Security only) and relevant SEC filings (e.g., 8-A, 10, 40-F, 20-F). Each of the above referenced forms are fully described herein. The checklist is necessary to assist issuers and the Exchange regulatory staff in assessing the completion of the relevant documents.

BSTX Security Market Listing Agreement

Pursuant to proposed Exchange Rule 26132, to apply for listing on the Exchange, a company must execute the BSTX Security Market Listing Agreement (the "Listing Agreement"), which has been submitted with this proposal as Exhibit 3J. Pursuant to the proposed Listing Agreement, a company agrees with the Exchange as follows:

1. Company certifies that it will comply with all Exchange rules, policies, and procedures that apply to listed companies as they are now in effect and as they may be amended from time to time, regardless of whether the Company's organization documents would allow for a different result.
2. Company shall notify the Exchange at least 20 days in advance of any change in the form or nature of any listed Securities or in the rights, benefits, and privileges of the holders of such Securities.
3. Company understands that the Exchange may remove its Securities from listing on the BSTX Security Market, pursuant to applicable procedures, if it fails to meet one or more requirements of Paragraphs 1 and 2 of this agreement.
4. In order to publicize the Company's listing on the BSTX Security Market, the Company authorizes the Exchange to use the Company's corporate logos, website address, trade names, and trade/service marks in order to convey quotation

information, transactional reporting information, and other information regarding the Company in connection with the Exchange. In order to ensure the accuracy of the information, the Company agrees to provide the Exchange with the Company's current corporate logos, website address, trade names, and trade/service marks and with any subsequent changes to those logos, trade names and marks. The Listing Agreement further requires that the Company specify a telephone number to which questions regarding logo usage should be directed.

5. Company indemnifies the Exchange and holds it harmless from any third-party rights and/or claims arising out of use by the Exchange or, any affiliate or facility of the Exchange ("Corporations") of the Company's corporate logos, website address, trade names, trade/service marks, and/or the trading symbol used by the Company.
6. Company warrants and represents that the trading symbol to be used by the Company does not violate any trade/service mark, trade name, or other intellectual property right of any third party. The Company's trading symbol is provided to the Company for the limited purpose of identifying the Company's security in authorized quotation and trading systems. The Exchange reserves the right to change the Company's trading symbol at the Exchange's discretion at any time.
7. Company agrees to furnish to the Exchange on demand such information concerning the Company as the Exchange may reasonably request.
8. Company agrees to pay when due all fees associated with its listing of Securities on the BSTX Security Market, in accordance with the Exchange's Rules.

9. Company agrees to file all required periodic financial reports with the SEC, including annual reports and, where applicable, quarterly or semi-annual reports, by the due dates established by the SEC.

The various provisions of the Listing Agreement are designed to accomplish several objectives. First, clauses 1-3 and 6-8 reflect the Exchange's SRO obligations to assure that only listed companies that are compliant with applicable Exchange rules may remain listed. Thus, these provisions contractually bind a listed company to comply with Exchange rules, provide notification of any corporate action or other event that will cause the company to cease to be in compliance with Exchange listing requirements, evidence the company's understanding that it may be removed from listing (subject to applicable procedures) if it fails to be in compliance or notify the Exchange of any event of noncompliance, furnish the Exchange with requested information on demand, pay all fees due and file all required periodic reports with the SEC. Clauses four and five contain standard legal representations and agreements from the listed company to the Exchange regarding use of its logo, trade names, trade/service markets, and trading symbols as well as potential legal claims against the Exchange in connection thereto.

BSTX Security Market Company Corporate Governance Affirmation

In accordance with the proposed Rule 26800 Series, companies listed on BSTX would be required to comply with certain corporate governance standards, relating to, for example, audit committees, director nominations, executive compensation, board composition, and executive sessions. In certain circumstances the corporate governance standards that apply vary depending on the nature of the company. In addition, there are phase-in periods and exemptions available to certain types of companies. The proposed BSTX Security Market Corporate Governance Affirmation, submitted with this proposal as Exhibit 3K, enables a company to confirm to the

Exchange that it is in compliance with the applicable standards, and specify any applicable phase-ins or exemptions. Companies are required to submit a BSTX Security Market Corporate Governance Affirmation upon initial listing on the Exchange and thereafter when an event occurs that makes an existing form inaccurate. This BSTX Security Market Corporate Governance Affirmation assists the Exchange regulatory staff in monitoring listed company compliance with the corporate governance requirements.

Sample Underwriter's Letter

In accordance with proposed Rule 26101, an initial public offering of a Security must meet certain listing requirements. The Exchange seeks to require the issuer's underwriter to execute a letter setting forth the details of the offering, including the name of the offering and why the offering meets the criteria of the BSTX rules. This information, set forth in the proposed Sample Underwriter's Letter and submitted with this proposal as Exhibit 3L, is necessary to assist the Exchange's regulatory staff in assessing the offering's compliance with BSTX listing standards for an initial public offering of a Security.

Regulation

In connection with the operation of BSTX, the Exchange will leverage many of the structures it established to operate a national securities exchange in compliance with Section 6 of the Exchange Act.³¹⁷ Specifically, the Exchange will extend its Regulatory Services Agreement with FINRA to cover BSTX Participants and trading on the BSTX System. This Regulatory Services Agreement will govern many aspects of the regulation and discipline of BSTX Participants, just as it does for options regulation. The Exchange will perform Security listing

³¹⁷ 15 U.S.C. 78f.

regulation, authorize BSTX Participants to trade on the BSTX System, and conduct surveillance of Security trading on the BSTX System.

Section 17(d) of the Exchange Act³¹⁸ and the related Exchange Act rules permit SROs to allocate certain regulatory responsibilities to avoid duplicative oversight and regulation. Under Exchange Act Rule 17d-1,³¹⁹ the SEC designates one SRO to be the Designated Examining Authority, or DEA, for each broker-dealer that is a member of more than one SRO. The DEA is responsible for the financial aspects of that broker-dealer's regulatory oversight. Because Exchange Participants, including BSTX Participants, also must be members of at least one other SRO, the Exchange would generally not be designated as the DEA for any of its members.³²⁰

Rule 17d-2 under the Exchange Act³²¹ permits SROs to file with the Commission plans under which the SROs allocate among each other the responsibility to receive regulatory reports from, and examine and enforce compliance with specified provisions of the Exchange Act and rules thereunder and SRO rules by, firms that are members of more than one SRO ("common members"). If such a plan is declared effective by the Commission, an SRO that is a party to the plan is relieved of regulatory responsibility as to any common member for whom responsibility is allocated under the plan to another SRO. The Exchange plans to join the Plan for the Allocation of Regulatory Responsibilities Regarding Regulation NMS.³²² The Exchange may

³¹⁸ 15 U.S.C. 78q(d).

³¹⁹ 17 CFR 240.17d-1.

³²⁰ See Exchange Rule 2020(a) (requiring that a Participant be a member of another registered national securities exchange or association).

³²¹ 17 CFR 240.17d-2.

³²² Exchange Act Release No. 85046 (February 4, 2019), 84 FR 2643 (February 7, 2019).

choose to join certain Rule 17d-2 agreements such as the agreement allocating responsibility for insider trading rules.³²³

For those regulatory responsibilities that fall outside the scope of any Rule 17d-2 agreements that the Exchange may join, subject to Commission approval, the Exchange will retain full regulatory responsibility under the Exchange Act. However, as noted, the Exchange will extend its existing Regulatory Services Agreement with FINRA to provide that FINRA personnel will operate as agents for the Exchange in performing certain regulatory functions with respect to BSTX. As is the case with the Exchange's options trading platform, the Exchange will supervise FINRA and continue to bear ultimate regulatory responsibility for BSTX. Consistent with the Exchange's existing regulatory structure, the Exchange's Chief Regulatory Officer shall have general supervision of the regulatory operations of BSTX, including responsibility for overseeing the surveillance, examination, and enforcement functions and for administering all regulatory services agreements applicable to BSTX. Similarly, the Exchange's existing Regulatory Oversight Committee will be responsible for overseeing the adequacy and effectiveness of Exchange's regulatory and self-regulatory organization responsibilities, including those applicable to BSTX. Finally, as it does with options, the Exchange will perform automated surveillance of trading on BSTX for the purpose of maintaining a fair and orderly market at all times and monitor BSTX to identify unusual trading patterns and determine whether particular trading activity requires further regulatory investigation by FINRA.

In addition, the Exchange will oversee the process for determining and implementing trade halts, identifying and responding to unusual market conditions, and administering the

³²³ Exchange Act Release No. 84392 (October 10, 2018), 83 FR 52243 (October 16, 2018).

Exchange’s process for identifying and remediating “clearly erroneous trades” pursuant to proposed Rule 25110.

NMS Plans

The Exchange intends to join the Order Execution Quality Disclosure Plan, the Plan to Address Extraordinary Market Volatility, the Plan Governing the Process of Selecting a Plan Processor, and the applicable plan(s) for consolidation and dissemination of market data. The Exchange is already a participant in the NMS plan related to the Consolidated Audit Trail. Consistent with Section 6(b)(5) of the Exchange Act,³²⁴ the Exchange believes that joining the same set of NMS plans that all other national securities exchanges that trade equities must join fosters cooperation and coordination with other national securities exchanges and other market participants engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

2. **Statutory Basis**

The Exchange believes that the proposed rule change is consistent with the provisions of the Exchange Act,³²⁵ in general and with Section 6(b)(5) of the Exchange Act,³²⁶ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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; and it is not designed to permit unfair discrimination between

³²⁴ 15 U.S.C. 78f(b)(5).

³²⁵ 15 U.S.C. 78a et seq.

³²⁶ 15 U.S.C. 78f(b)(5).

customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the Exchange.

The Exchange believes that BSTX will benefit individual investors, other market participants, and the equities market generally. The Exchange proposes to establish BSTX as a facility of the Exchange that would trade equities in a similar manner to how equities presently trade on other exchanges. BSTX would also make available to BSTX Participants the BSTX Market Data Blockchain, which provides certain order and transaction information with respect to a BSTX Participant's trading activity on BSTX, as well as anonymized order and transaction data with respect to all trading activity occurring on BSTX. The Exchange believes that the content of information available on the BSTX Market Data Blockchain would generally be similar to TAQ data made available by NYSE today, except that (i) the BSTX Market Data Blockchain would use a private, permissioned network controlled by the Exchange to make the market data available to BSTX Participants; (ii) a BSTX Participant would be able to certain see non-anonymized information about its own trading activity on BSTX;³²⁷ and (iii) the BSTX Market Data Blockchain would include market data only with respect to trading activity occurring on BSTX, while the Exchange understands that TAQ data includes certain trading and quotation data that may occur on other markets.³²⁸ The Exchange believes that the use of blockchain technology, through a private permissioned network accessible through an API that

³²⁷ All non-anonymized information would be available only to the BSTX Participant who provided such information to the Exchange through its trading activity on BSTX.

³²⁸ See e.g., NYSE, Daily TAQ Fact Sheet, (noting that TAQ data “provides users access to all trades and quotes for all issues traded on NYSE, Nasdaq and the regional exchanges for a single trading day” and is “a comprehensive history of daily activity from NYSE markets and the U.S. Consolidated Tape covering U.S. Equities instruments (CTA and UTP participating markets”) https://www.nyse.com/publicdocs/nyse/data/Daily_TAQ_Fact_Sheet.pdf.

operates in manner that is fully compatible with the existing regulatory structures for trading, recordkeeping, and clearance and settlement that market participants are familiar with is an appropriate way to introduce blockchain to the current market structure. BSTX Participants would not have affirmative obligations to provide information to the blockchain nor would they be required to access or use it. The data inputs to the BSTX Market Data Blockchain would be captured in the ordinary course as BSTX Participants' orders and messages are sent to the Exchange through the FIX gateway. The BSTX Market Data Blockchain, therefore, would be optional functionality available to all BSTX Participants on equal terms, and therefore is not unfairly discriminatory, consistent with Section 6(b)(5) of the Exchange Act.³²⁹

The Exchange has proposed to make anonymized General Market Data on the BSTX Market Data Blockchain available to both BSTX Participants and non-BSTX Participants through the same means of an API. Accordingly, the Exchange believes that because General Market Data available on the BSTX Market Data Blockchain would be available to both BSTX and non-BSTX Participants, the BSTX Market Data Blockchain is not unfairly discriminatory and does not impose a burden on competition, consistent with Sections 6(b)(5) and 6(b)(8) of the Exchange Act.³³⁰ Non-BSTX Participants would not be provided access to any Participant Proprietary Data to protect the private trading information of each BSTX Participant (and each BSTX Participant would only have access to its own Participant Proprietary Data), which the Exchange believes is consistent with Sections 6(b)(5) and 6(b)(8) of the Exchange Act because providing the Participant Proprietary Data of a given BSTX Participant to non-BSTX Participants (or other BSTX Participants) would unfairly discriminate against the BSTX

³²⁹ 15 U.S.C. 78f(b)(5).

³³⁰ 15 U.S.C. 78f(b)(5) and (8).

Participant whose information is being shared and could place that BSTX Participant at an unfair competitive disadvantage if its order and trading information were shared with other market participants.

In addition, because the BSTX Market Data Blockchain only captures information with respect to trading activity on BSTX, it would have no effect or impact on other exchanges, promoting consistency with Section 6(b)(8) of the Exchange Act, which prohibits an exchange's rules from imposing a burden on competition not necessary or appropriate in furtherance of the Exchange Act.³³¹ The entry of an innovative competitor such as BSTX seeking to implement a measured introduction of blockchain technology in connection with the trading of equity securities may promote competition by encouraging other market participants to find ways of using blockchain technology in connection with securities transactions. The proposed regulation of BSTX and BSTX Participants, as well as the execution of Securities using a price-time priority model and the clearance and settlement of Securities pursuant to the rules, policies and procedures of a registered clearing agency will all operate in a manner substantially similar to existing equities exchanges. In this way, the Exchange believes that BSTX provides a robust regulatory structure that protects investors and the public interest while introducing the use of blockchain technology as an additional feature in connection with Securities traded on the Exchange.

In connection with the clearance and settlement of Securities pursuant to the rules, policies and procedures of a registered clearing agency, the Exchange proposes that BSTX Participants would be able to include in their orders in Securities that are submitted to BSTX

³³¹ 15 U.S.C. 78f(b)(8).

certain parameters to indicate a preference for settlement on a same day (T+0) or next trading day (T+1) basis when certain conditions are met.³³² Any such orders would at the time of order entry represent orders that would be regular-way and would be presumed to settle on a T+2 basis just like any other order submitted by a BSTX Participant that does not include a parameter indicating a preference for faster settlement. As described in greater detail above, however, an Order with a T+0 Preference or an Order with a T+1 Preference would only result in executions that would actually settle more quickly than on a T+2 basis if, and only if, all of the conditions in Rule 25060(h) are met and the execution that is transmitted to NSCC is eligible for T+0 or T+1 settlement under the rules, policies and procedures of a registered clearing agency.³³³ Any such preference included by a BSTX Participant would only become operative if the order happens to execute against another order from a BSTX Participant that also includes a parameter indicating a preference for settlement on a T+0 or T+1 basis.

The Exchange believes that the proposed ability for BSTX Participants to indicate a preference for shorter settlement times as described above is consistent with the Exchange Act and in particular Section 6(b)(5) of the Exchange Act because it would help remove impediments to and perfect the mechanism of a free and open market and is not designed to permit unfair discrimination between or among market participants.³³⁴ Specifically, allowing for BSTX Participants to potentially reduce the settlement time for transactions on BSTX pursuant to the rules, policies and procedures of a registered clearing agency helps remove impediments to and perfects a free an open market by allowing greater choice for BSTX Participants who may want

³³² See proposed Rule 25060(h).

³³³ See proposed Rule 25100(d).

³³⁴ 15 U.S.C. 78f(b)(5).

to avail themselves of currently available functionality at registered clearing agencies. Moreover, the Commission has previously noted a number of positive effects relating to the liquidity risks and costs faced by members in a clearing agency, and the Exchange believes that this proposed functionality on BSTX would help realize such positive effects.³³⁵ Proposed Rule 25060(h) is not designed to permit unfair discrimination between market participants consistent with Section 6(b)(5)³³⁶ because the Rule would allow all orders that are marketable against one another—regardless of the settlement preference of the BSTX Participant submitting the order (or their customer)—to execute against each other. A BSTX Participant that would like settlement of T+2 could still interact with orders on BSTX that indicate a preference for a shorter settlement cycle and vice-versa and, in all cases, the trade would settle pursuant to the rules, policies and procedures of a registered clearing agency. Only where two orders that both indicate a preference for a shorter settlement cycle match on BSTX would a shorter settlement cycle be possible pursuant to the rules, policies and procedures of a registered clearing agency.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.³³⁷ The Exchange operates in an intensely competitive global marketplace for transaction services. The Exchange competes for the privilege of providing market services to broker-dealers through the Exchange's service offerings and associated benefits it is able to provide. The Exchange's ability to compete in this environment is based in large part on the quality of its

³³⁵ See supra notes 75-78 and accompanying text.

³³⁶ 15 U.S.C. 78f(b)(5).

³³⁷ 15 U.S.C. 78f(b)(8).

trading systems, the overall quality of its market and its attractiveness to market participants who evaluate the Exchange on, among other things, speed, reliability, the likelihood and costs of executions, as well as spreads, fairness, and transparency.

The Exchange believes that the primary areas where the proposed rule change could potentially result in a burden on competition are with regard to the terms on which: (1) issuers may list their securities for trading, (2) market participants may access BSTX as a facility of the Exchange and use its services including the BSTX Market Data Blockchain, (3) Security transactions may be cleared and settled, (4) Security transactions would occur OTC (5) Security transactions would occur on other exchanges through an extension of UTP to Securities.

Regarding considerations (1) and (2), and as described in detail in Item 3 above, the BSTX Rules are drawn substantially from the existing rules of other exchanges that the Commission has already found to be consistent with the Exchange Act, including regarding whether they impose any burden on competition that is not necessary or appropriate in furtherance of its purposes. For example, the BSTX Non-ETP Listing Rules in the 26000 Series and Suspension and Delisting Rules in the 27000 Series that affect issuers and their ability to list Securities for trading are based substantially on the current rules of NYSE American. Additionally, the BSTX Trading and Listing of ETPs Rules in the 28000 Series that concern issuers and their ability to list Securities that are exchange-traded products are based substantially on the current rules of NYSE Arca. Additionally, the BSTX Rules regarding membership and access to and use of the facilities of BSTX are also substantially based on existing exchange rules. Specifically, the relevant BSTX Rules are as follows: participation on BSTX (Rule 18000 Series); business conduct for BSTX Participants (Rule 19000 Series); financial and operational rules for BSTX Participants (Rule 20000 Series); supervision (Rule

21000 Series); miscellaneous provisions (Rule 22000 Series); trading practices (Rule 23000 Series); discipline and summary suspension (Rule 24000 Series); trading (Rule 25000 Series); market making (Rule 25200 Series); and dues, fees, assessments, and other charges (Rule 28000 [sic] Series). As described in detail in Item 3, these rules are substantially based on analogous rules of the following exchanges, as applicable: BOX; Investors Exchange LLC; Cboe BZX Exchange, Inc.; The Nasdaq Stock Market LLC; and NYSE American LLC.

Regarding consideration (2) and use of the BSTX Market Data Blockchain, the terms on which BSTX would operate the BSTX Market Data Blockchain under Rule 17020 would apply equally to all BSTX Participants (and non-BSTX Participants accessing anonymized General Market Data) and would therefore not impose any different burden on one BSTX Participant compared to another (or between and among non-BSTX Participants). As described in detail in Item 3, BSTX would issue login credentials to each BSTX Participant or non-BSTX Participant through which users may access the BSTX Market Data Blockchain. Accessing the BSTX Market Data Blockchain would not be required. If a BSTX Participant chooses to access the BSTX Market Data Blockchain, it would be able to see its order and transaction information on BSTX as well as anonymized General Market Data from other BSTX Participants and a non-BSTX Participant would only be able to see the anonymized General Market Data. Because the General Market Data would be anonymized, the Exchange believes that there would not be cause for concern regarding potential trading information leakage or the ability for a BSTX Participant to reverse engineer another BSTX Participant's trading strategies.³³⁸ Moreover, the BSTX

³³⁸ Non-BSTX Participants accessing the BSTX Market Data Blockchain would have access to the same anonymized General Market Data as BSTX Participants. While a non-BSTX Participant would be treated differently than a BSTX Participant in that they would not be able to access any proprietary market data of a BSTX Participant, the reason for this

Market Data Blockchain would not require any affirmative action on the part of a BSTX Participant for its information to be recorded to the BSTX Market Data Blockchain. Rather the Exchange would control all aspects of the BSTX Market Data Blockchain as a private, permission-based blockchain accessible to BSTX Participants, and the BSTX Market Data Blockchain would capture order and execution activity that occurs in the normal course on BSTX and is made available to BSTX Participants (and non-BSTX Participants with respect to anonymized General Market Data) as an additional resource that they may use in their discretion. The BSTX Market Data Blockchain would functionally provide market data similarly to what NYSE offers through TAQ data, but would simply provide it using distributed ledger technology. Accordingly, although capturing a different set of market data than captured by NYSE TAQ data, the BSTX Market Data Blockchain is pro-competitive by offering a similar type of market data and using an innovative technology to do so. For these reasons, the Exchange believes that the BSTX Market Data Blockchain would not impose any burden on competition.

In addition to not imposing any burden on competition, the Exchange believes that the BSTX Market Data Blockchain would provide two primary benefits to BSTX Participants. First, the Exchange believes that BSTX Participants that choose to access the BSTX Market Data Blockchain may find the information useful as a focused source of market data regarding order

difference is to prevent a non-BSTX Participant from being able to see the confidential trading information of a BSTX Participant. If the Exchange were to provide non-BSTX Participants with access to one or more BSTX Participants' proprietary market data, the Exchange would impose an undue burden on competition against BSTX Participants whose confidential trading information would be shared. Accordingly, non-BSTX Participants may only access anonymized, General Market Data.

and transaction information on BSTX.³³⁹ Second, the Exchange believes that the BSTX Market Data Blockchain would help familiarize BSTX Participants that access the market data with the capabilities of blockchain technology in a manner that does not impose any burden on competition on them or others. The Commission has stated that it is “mindful of the benefits of increasing use of new technologies for investors and the markets, and has encouraged experimentation and innovation . . .” stating further that “[i]nformation and communications technologies are critical to healthy and efficient primary and secondary markets.”³⁴⁰ Regarding the judgment of whether the benefits of certain technologies are meritorious, the Commission has explained its view that “[t]he market will ultimately prove the worth of technology – whether the benefits to the industry and its investors of developing and using new services are greater than the associated costs.”³⁴¹ Consistent with these statements, the Exchange believes that promoting use of the functionality of blockchain technology through the BSTX Market Data Blockchain will allow BSTX Participants to observe and increase their familiarity with the capabilities and potential benefits of blockchain technology in a context that operates within the current equity market infrastructure and thereby advances and protects the public’s interest in the use and development of new data processing techniques that may create opportunities for more efficient, effective and safe securities markets.³⁴²

Regarding consideration (3) and the manner in which Security transactions may be cleared and settled, the Exchange proposes under BSTX Rule 25100(d) to clear and settle

³³⁹ For example, a BSTX Participant may wish to use the market data to review its trading activity on BSTX, determine what the market quality was at a particular time for a given Security or to evaluate execution quality on BSTX.

³⁴⁰ See supra n. 52-54 and accompanying text.

³⁴¹ Id.

³⁴² See supra n.55 and accompanying text.

transactions in Securities in accordance with the rules, policies and procedures of a registered clearing agency. The Exchange believes that this is consistent with how other exchange-listed equity securities are cleared and settled today. Therefore, BSTX's rules regarding clearance and settlement of Security transactions do not impose any relative burden on competition regarding the manner in which trades may be cleared and settled because market participants would be able to clear and settle Security transactions in the same manner as they already do in other types of NMS stock. The Exchange believes that this is equally true regarding the proposed ability of BSTX Participants to submit to BSTX orders in Securities in which they include a parameter expressing a preference for T+1 or T+0 settlement, consistent with the rules, policies and procedures of a registered clearing agency, as proposed in the operation of proposed BSTX Rules 25060(h) and 25100(d). As described in detail in Item 3 above, BSTX believes that NSCC and DTC already have authority under their rules policies and procedures to clear and settle certain trades on a T+1 or T+0 basis and that these clearing agencies do already clear and settle trades in accordance with this authority.

The Exchange believes that answering the question of whether a burden on competition is imposed by the proposal to allow BSTX Participants to specify an order parameter indicating a preference for potential settlement on a T+0 or T+1 basis requires an assessment under three general circumstances for order submissions and executions. The first possible circumstance contemplates orders that BSTX Participants would submit to the BSTX System and that would result in an execution on BSTX. Here, it would be entirely the choice of any BSTX Participant regarding whether to include an order parameter indicating a preference for T+0 or T+1 settlement where possible under the settlement logic in BSTX Rule 25060(h) and subject to functionality permitted by the rules, policies and procedures of a registered clearing agency. If

no such additional parameter is included in the order or the matched orders are not eligible for shortened settlement pursuant to the rules, policies and procedures of a registered clearing agency (e.g., the trade is not received by NSCC for T+0 clearance and settlement through NSCC's continuous net settlement system in advance of the applicable cut-off time), the order defaults to settle on a regular-way T+2 basis under the settlement logic in proposed BSTX Rule 25060(h). As described in Part II.H of Item 3, an order that includes a parameter indicating a preference for potential T+0 settlement will execute against any order against which it is marketable and BSTX will transmit the matched order information to a registered clearing agency for settlement on a standard settlement cycle of T+2 except where: (i) the order with the parameter for potential settlement on T+0 executes against another order with a parameter for potential settlement on T+0 (in which case BSTX will transmit the matched order information to a registered clearing agency for settlement on the trade date if the transaction is also eligible for settlement on T+0 under the rules, policies and procedures of a registered clearing agency) or (ii) the order with a parameter for potential settlement on T+0 executes against an order with a parameter for potential settlement on T+1 (in which case BSTX will transmit the matched order information to a registered clearing agency for settlement on T+1 if the transaction is also eligible for settlement on T+1 under the rules, policies and procedures of a registered clearing agency). Similarly, as proposed, an order that includes a parameter for potential settlement on T+1 will execute against any order against which it is marketable and BSTX will transmit the matched order information to a registered clearing agency for settlement on standard settlement cycle of T+2 except where an order that includes a parameter for potential settlement on T+1 executes against another such order or an order that includes a parameter for potential settlement on T+0 (in which case BSTX will transmit the matched order information to a registered clearing

agency for settlement on T+1 if the transaction is also eligible for settlement on T+1 under the rules, policies and procedures of a registered clearing agency). In all cases under the settlement logic in proposed BSTX Rule 25060(h), an order that does not include an optional parameter indicating a preference for potential settlement on T+0 or T+1 would be a regular way order that would always receive T+2 settlement if it executes against any other order in the BSTX System. In this way, all of the orders submitted to BSTX would be regular way orders that in and of themselves would be presumed to settle on T+2. Only where a BSTX Participant includes the optional parameters to express a preference for potential T+0 or T+1 settlement (where consistent with and eligible for shortened settlement under the rules, policies and procedures of a registered clearing agency) and the order matches against another order seeking a shorter settlement time than T+2 could a transaction settle more quickly than T+2 under the settlement logic in proposed BSTX Rule 25060(h) and as described immediately above. Thus, every market participant seeking T+2 settlement for an execution on BSTX would be able to interact with any order against which their order is marketable, including those marked for possible T+0 or T+1 settlement. In addition, the possibility of shortened settlement timing would have no impact on the Exchange's price time priority.³⁴³ For these reasons, the Exchange believes that no burden on competition is imposed in this first possible circumstance.

The second possible circumstance arises when an order that would be required under Exchange Act Rule 611,³⁴⁴ the Commission's "order protection rule", to be routed to BSTX from a third party exchange that extends UTP to a Security. This required routing of the order in such a Security would occur in this setting because the NBBO existed on BSTX at the time of the

³⁴³ See supra n.62 and accompanying text.

³⁴⁴ 17 CFR 242.611.

entry of the order. Under proposed BSTX Rule 25060(h), the order routed to BSTX would execute against any order against which it is marketable without regard to whether a BSTX Participant may have included an optional parameter for potential T+0 or T+1 settlement where the order executes against another order that also has an optional parameter for potential T+0 or T+1 settlement under the settlement logic in BSTX Rule 25060(h). In the event the order routed to BSTX executes against another order on BSTX against which it is marketable, that executed transaction in the Security would be bound for regular way T+2 settlement under BSTX Rule 25060(h) because the Exchange believes that the routed order from a third party exchange would not include a parameter for T+0 or T+1 settlement. This is because the Exchange believes that no other exchange currently includes any such optional parameters to be able to indicate a preference for potential T+0 or T+1 settlement. This structure means that any non-BSTX Participant that sees a quote in a Security on BSTX would remain able to execute against that quote even if that quote includes an optional parameter indicating a preference for T+0 or T+1 settlement where an executed order becomes eligible for any such settlement on a basis that is faster than T+2 under the settlement logic in BSTX Rule 25060(h). The Exchange believes that no burden on competition results in this second possible circumstance because an order routed to BSTX would interact against any order on BSTX against which it is marketable. All orders in a Security that are submitted directly to BSTX by BSTX Participants or that may be routed to BSTX would be regular way orders that when viewed in isolation would be presumed to settle on a T+2 basis at the time of order entry. It would only be upon execution against another order that also includes an order parameter expressing a preference for settlement on a T+0 or T+1 basis that the executed transaction (i.e., not the initial orders) would become eligible for settlement faster than T+2 under the settlement logic in Rule 25060(h) pursuant to the rules, policies and

procedures of a registered clearing agency. The Exchange believes this imposes no burden on competition on BSTX Participants because inclusion of any T+0 or T+1 parameter would be entirely optional and any BSTX Participant that includes such a parameter would do so with an ex-ante understanding of the settlement logic in BSTX Rule 25060 that could cause an executed transaction to settle more quickly than T+2. As noted, the Exchange believes that orders in a Security that would be required to be routed to BSTX, for example under the Commission's Order Protection Rule, would also not impose any burden on competition because other exchanges do not have rules that similarly contemplate the inclusion of a T+0 or T+1 parameter, such routed orders would therefore result in T+2 settlement if executed against any other order on BSTX against which the order is marketable (regardless of whether the order against which it executes includes an optional parameter indicating a preference for T+0 or T+1 settlement). Therefore, any order routed to BSTX would be able to interact with any other order on BSTX against which it is marketable and would settle on a regular way T+2 basis just as occurs today regarding any order in an NMS stock that is routed to a national securities exchange.

The third possible circumstance contemplates an order that must be routed under the order protection rule from BSTX to a third party exchange that extends UTP for a Security because the third party exchange has the NBBO at that time. The Exchange believes that this setting is not relevant under the proposed rules of BSTX. Specifically, the Exchange believes that it is not relevant because proposed BSTX Rule 25130(d) states that the BSTX System will reject any order or quotation that would lock or cross a protected quotation of another exchange at the time of entry. Therefore, any such orders that would otherwise be required to be routed by BSTX to another exchange will instead be rejected by the BSTX System. Accordingly, any specification by a BSTX Participant of a T+0 or T+1 settlement timing parameter for an order in

this setting could not create any burden on competition because the order will be rejected and would never lead to an execution.

In addition to not imposing any burden on competition, the Exchange believes that allowing BSTX Participants to use faster settlement cycles where consistent with the rules, policies and procedures of a registered clearing agency would mitigate settlement risk for transactions in such Securities, consistent with the benefits the Commission has noted in this area. Namely, in adopting amendments to SEC Rule 15c6-1 in 2017 to shorten the standard settlement cycle for most broker-dealer transactions in securities from T+3 to T+2, the Commission stated its belief that the shorter settlement cycle would have positive effects regarding the liquidity risks and costs faced by members in a clearing agency, like NSCC, that performs CCP services, and that it would also have positive effects for other market participants. Specifically, the Commission stated its belief that the resulting “reduction in the amount of unsettled trades and the period of time during which the CCP is exposed to risk would reduce the amount of financial resources that the CCP members may have to provide to support the CCP’s risk management process . . .” and that “[t]his reduction in the potential need for financial resources should, in turn, reduce the liquidity costs and capital demands clearing broker-dealers face . . . and allow for improved capital utilization.”³⁴⁵ The Commission went on to state its belief that shortening the settlement cycle “would also lead to benefits to other market participants, including introducing broker-dealers, institutional investors, and retail investors” such as “quicker access to funds and securities following trade execution” and “reduced margin charges and other fees that clearing broker-dealers may pass down to other market

³⁴⁵ See supra n.75-78 and accompanying text.

participants[.]”³⁴⁶ The Commission also “noted that a move to a T+1 standard settlement cycle could have similar qualitative benefits of market, credit, and liquidity risk reduction for market participants[.]”³⁴⁷ The Exchange agrees with these statements by the Commission and has therefore proposed BSTX Rule 25100(d) in a form that would promote the benefits of shorter settlement cycles for Securities without imposing burdens on other national securities exchanges or market participants that are not BSTX Participants.

With respect to consideration (4) above, as previously noted, market participants would not be limited in their ability to trade Securities OTC because Securities could be traded OTC and would be cleared and settled in the same manner as other NMS stocks through the facilities of a registered clearing agency. Thus, the Exchange does not believe that its proposal will place any new burden on competition with respect to OTC trading, given that trading, clearance and settlement will take place in the same manner as for other NMS stocks.

With respect to consideration (5) noted above regarding other exchanges extending UTP to Securities, the Exchange does not believe that the proposed Rules would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. This is because other national securities exchanges would be able to extend UTP to Securities in accordance with Commission rules just as they can regarding any other NMS stock.

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.

³⁴⁶ Id.

³⁴⁷ Id.

III. Summary of the Comment Letters Received

Several commenters express support for the proposal's proposed use of a shortened settlement cycle under certain circumstances.³⁴⁸ One commenter states in support of the proposal that the proposed BSTX exchange would provide significant advantages over existing exchanges by providing fairer conditions to market participants through reduced settlement times and more transparency.³⁴⁹ This commenter states that T+0 settlement would improve market conditions for retail investors by reducing risk of failure to deliver on highly shorted stocks, and would reduce actual and opportunity costs by eliminating margin lending for the period before settlement and lost opportunities to reinvest.³⁵⁰ Two commenters refer to recent problems that they characterize as arising from T+2 settlement and short selling,³⁵¹ and state that the proposal for a shorter settlement cycle would level the playing field for retail investors.³⁵²

One commenter states that the United States should support blockchain technologies like BSTX to be competitive globally, and that blockchain affords more efficiency and

³⁴⁸ See Letter from Meagan Darata, Utah Salt Supplements (June 21, 2021) (“Darata Letter”); Letter from Mark Nelson (June 10, 2021) (“Nelson Letter”); Letter from Robert Shaw (June 11, 2021) (“Shaw Letter”); Letter from Neil Skinner (June 11, 2021) (“Skinner Letter”).

³⁴⁹ See Nelson Letter, supra note 348.

³⁵⁰ See id. This commenter also states that the commenter expects the reduced costs of operating the exchange to be passed on to prospective companies and issuers, thereby creating more opportunities for companies and asset holders to offer securities, and resulting in a market boom as new market participants join the exchange. See id.

³⁵¹ See Letter from Anonymous (June 15, 2021) (“Anonymous Letter I”); Skinner Letter, supra note 348. See also Shaw Letter, supra note 348 (stating that, with the current issues regarding settlement time, the proposal to offer speedy settlement is one answer to improving the system).

³⁵² See Anonymous Letter I, supra note 351; Skinner Letter, supra note 348. See also Darata Letter, supra note 348 (stating that there is a wide power differential between retail and institutional traders).

transparency.³⁵³ Another commenter states that blockchain will bring the advantages of better security, higher transparency, more trust, and a fairer marketplace to the sector.³⁵⁴ This commenter also states that blockchain would afford savings in time and money, make the market safer against fraud, and help United States markets keep up with other global systems.³⁵⁵ Another commenter states that it would like to see the development of financial institutions and securities exchanges that allow access to financial instruments and investments without the burdens and controls placed by traditional exchanges, and that the proposal represents the first steps in a free and equitable publicly auditable financial system.³⁵⁶

Finally, one commenter states that the proposal does not specifically address how participants shall access BSTX and that, by comparison, with respect to the trading of options, the Exchange does not currently enforce equidistant cabling among and between participants and its matching engine located in the same data center.³⁵⁷ This commenter states that, absent confirmation that access to BSTX will be offered on an equal and non-discriminatory basis, the commenter urges the Commission to disapprove the proposal.³⁵⁸ In response, the Exchange states that BSTX will provide for equidistant cabling arrangements to ensure that all co-located BSTX Participants are on a level playing field in connecting to the BSTX matching engine.³⁵⁹

³⁵³ See Letter from Anonymous (June 15, 2021) (“Anonymous Letter II”).

³⁵⁴ See Letter from Anonymous (June 21, 2021).

³⁵⁵ See id.

³⁵⁶ See Letter from Tyler Hess (June 17, 2021).

³⁵⁷ See Letter from Andrew Stevens, General Counsel, IMC Chicago, LLC and Richard McDonald, Compliance Coordinator, Susquehanna International Group, LLP (June 28, 2021), at 2.

³⁵⁸ See id. at 3.

³⁵⁹ See Letter from Lisa J. Fall, President, BOX Exchange LLC (July 1, 2021), at 1.

The Exchange also states that BSTX plans to have equidistant cabling arrangements within the area of the data center that it controls, and that it will make technical details regarding those arrangements available to prospective BSTX Participants in certain specification documents after approval of BSTX as a new facility of the Exchange.³⁶⁰

IV. Proceedings to Determine Whether to Approve or Disapprove SR-BOX-2021-06, as Modified by Amendment No. 1, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act³⁶¹ to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

Pursuant to Section 19(b)(2)(B) of the Act,³⁶² the Commission is providing notice of the grounds for disapproval under consideration. As described above, the Exchange proposes to adopt rules to govern the trading of equity securities on the Exchange through the BSTX facility. Among other things, the Exchange proposes to operate the BSTX Market Data Blockchain and to submit trades to NSCC for settlement on a T+0 or T+1 basis under certain conditions. As

³⁶⁰ See id. at 2. The Exchange states that its options trading platform is an entirely separate facility of the Exchange with a separate ownership structure from BSTX, and BSTX will use separate data center operations and a different technology provider. See id. at 3.

³⁶¹ 15 U.S.C. 78s(b)(2)(B).

³⁶² Id.

stated above, the Commission has received comment letters on the proposal and a response letter from the Exchange. Moreover, on August 18, 2021, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the consistency of the proposed rule change, as modified by Amendment No. 1, with the Act and, in particular, with Section 6(b)(5) of the Act, 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 foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers;³⁶³ Section 6(b)(7) of the Act, which requires 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;³⁶⁴ and Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.³⁶⁵

The Exchange proposes to make available the BSTX Market Data Blockchain, which would operate as a private, permission-based blockchain that would be accessible through an API available through the internet. Through use of the API, BSTX Participants would be able to

³⁶³ 15 U.S.C. 78f(b)(5).

³⁶⁴ 15 U.S.C. 78f(b)(7).

³⁶⁵ 15 U.S.C. 78f(b)(8).

see detailed information about their own trading activity on BSTX and anonymized, general information with respect to the trading activity of other BSTX Participants.³⁶⁶ Non-BSTX Participants permissioned by the Exchange would be able to view only the anonymized, general market data through login credentials provided by the Exchange, although it is not clear what conditions, if any, the Exchange may place on non-BSTX Participants before granting this access.³⁶⁷ The Exchange proposes to post information to the BSTX Market Data Blockchain on a delayed basis of at least five minutes. This five minute delay distinguishes the BSTX Market Data Blockchain from sources of real-time market data, but is much shorter than the delay used by other historical market data products, such as the New York Stock Exchange's TAQ data, to which the Exchange draws a comparison.³⁶⁸ The Exchange states that posting five minute blocks of data would allow the Exchange to accrue sufficient information to record to the BSTX Market Data Blockchain.³⁶⁹ The Commission believes there are questions as to whether the Exchange's proposed use of the BSTX Market Data Blockchain is consistent with Sections 6(b)(5), 6(b)(7), and 6(b)(8) of the Act, and, in particular, the requirements that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect

³⁶⁶ The Exchange states that BSTX Participants may find the BSTX Market Data Blockchain useful to review their trading activity on BSTX, determine what the market for a given Security was at a particular time, evaluate execution quality on BSTX, help confirm the accrual of internal trading data, or back test trading strategies. See Amendment No. 1, supra note 6, at 27.

³⁶⁷ See id. at 18-20. The Exchange states that non-BSTX Participants may find the data useful for academic study. See id. at 27.

³⁶⁸ See id. at 17, 22 n.35, 128. The New York Stock Exchange's TAQ data is produced as a daily file that becomes available after the close of U.S. equities markets on the same day. See New York Stock Exchange, Daily TAQ Client Specifications (August 31, 2020), available at https://www.nyse.com/publicdocs/nyse/data/Daily_TAQ_Client_Spec_v3.3a.pdf.

³⁶⁹ See Amendment No. 1, supra note 6, at 23 n.37.

the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; 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; and not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

In addition, the Exchange proposes to allow BSTX Participants to utilize an order parameter to indicate a preference for settlement on a T+0 or T+1 basis. An executed trade would settle more quickly than on a T+2 basis if certain conditions are met and the execution is eligible for T+0 or T+1 settlement under the rules, policies, and procedures of a registered clearing agency. According to the Exchange, NSCC has authority under its rules, policies, and procedures to clear certain trades on a T+0 or T+1 basis, and NSCC does clear trades in accordance with this authority.³⁷⁰ The Exchange also states that certain industry participants have announced plans to collaborate to help the industry to reduce the standard settlement cycle from T+2 to T+1.³⁷¹ The Exchange states that it believes that no other national securities exchange currently includes in its rules optional parameters that allow market participants to indicate a preference for potential T+0 or T+1 settlement.³⁷² The Exchange has provided information regarding trades that NSCC clears on a T+0 or T+1 basis, but has not indicated whether these trades involved exchange-traded NMS stocks.³⁷³ It is also unclear whether not having certainty that an order would receive faster settlement at the time of order entry would

³⁷⁰ See id. at 31.

³⁷¹ See id. at 34-35.

³⁷² See id. at 140.

³⁷³ See id. at 34.

reduce the ability of a market participant to reap the potential benefits of faster settlement. Further, the Exchange has not addressed whether introducing the possibility for T+0 or T+1 settlement for on-exchange trades in NMS stocks pursuant to the rules of a single national securities exchange, at a time when the industry standard is still T+2 settlement, might have any adverse market effects. Accordingly, the Commission believes that there are questions as to whether the Exchange's proposal to provide BSTX Participants with the ability to preference T+0 or T+1 settlement is consistent with Sections 6(b)(5) and 6(b)(8) of the Act, including the requirements that the rules of the Exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest; and not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change."³⁷⁴ The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,³⁷⁵ and any failure of an SRO to provide this information may result in the

³⁷⁴ 17 CFR 201.700(b)(3).

³⁷⁵ See id.

Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.³⁷⁶

For these reasons, the Commission believes it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposal, as modified by Amendment No. 1, should be approved or disapproved.

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal, as modified by Amendment No. 1, is consistent with Sections 6(b)(5),³⁷⁷ 6(b)(7),³⁷⁸ and 6(b)(8)³⁷⁹ of the Act or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act,³⁸⁰ any request for an opportunity to make an oral presentation.³⁸¹

³⁷⁶ See id.

³⁷⁷ 15 U.S.C. 78f(b)(5).

³⁷⁸ 15 U.S.C. 78f(b)(7).

³⁷⁹ 15 U.S.C. 78f(b)(8).

³⁸⁰ 17 CFR 240.19b-4.

³⁸¹ Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal, as modified by Amendment No. 1, should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register].

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in Amendment No. 1,³⁸² in addition to any other comments they may wish to submit about the proposed rule change.

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 e-mail to rule-comments@sec.gov. Please include File Number SR-BOX-2021-06 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-2021-06. This file number should be included on the subject line if e-mail 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

³⁸² See Amendment No. 1, supra note 6.

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-2021-06 and should be submitted by [insert date 21 days from publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁸³

Vanessa A. Countryman
Secretary

³⁸³ 17 CFR 200.30-3(a)(57).