

1. Text of the Proposed Rule Change

(a) MIAX Sapphire, LLC (“MIAX Sapphire” or “Exchange”), pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² proposes to adopt Exchange Rule 2090 to establish a Virtual Trading Floor. The text of the proposed rule change is attached as Exhibit 5.

Notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and the text of the proposed rule change is attached hereto as Exhibit 5.

(b) Inapplicable.

(c) Inapplicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Chief Executive Officer of the Exchange or duly appointed designee pursuant to authority delegated by the MIAX Sapphire Board of Directors on July 23, 2024. Exchange staff will advise the Board of Directors of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the proposed rule change.

Questions and comments on the proposed rule changes may be directed to Gregory P. Ziegler, Senior Counsel, (609) 897-1483.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

The Exchange proposes to adopt Exchange Rule 2090 to establish a Virtual Trading Floor on the Exchange. The Exchange notes that other competing exchanges offer similar virtual trading environments.³

On July 15, 2024, the U.S. Securities and Exchange Commission (“Commission”) approved the Exchange’s Form 1 application to register as a national securities exchange under Section 6 of the Exchange Act.⁴ At that time, the Exchange adopted its rulebook which established rules for the physical Trading Floor.⁵ The Exchange anticipates launching its physical Trading Floor in 2025.

When the Exchange’s physical Trading Floor is operative, it will support open outcry trading. If the Exchange’s physical Trading Floor becomes inoperable in the future due to unforeseen circumstances, the Exchange will continue operate in an electronic only environment while the Trading Floor is inoperable. However, an electronic only trading environment cannot fully replicate open outcry trading. The Exchange believes that there are certain features of open

³ See e.g., Nasdaq PHLX LLC (“Phlx”) Rulebook, Options 8, Section 26, paragraph (g)(3), [available at https://listingcenter.nasdaq.com/rulebook/phlx/rules/Phlx%20Options%208](https://listingcenter.nasdaq.com/rulebook/phlx/rules/Phlx%20Options%208) (last visited November 19, 2024); see also BOX Exchange LLC (“BOX”) Rule 7670, [available at https://rules.boxexchange.com/browse/f31b2cb27d21100093f790b11c18c902020](https://rules.boxexchange.com/browse/f31b2cb27d21100093f790b11c18c902020) (last visited November 19, 2024).

⁴ See Securities Exchange Act Release No. 100539 (July 15, 2024), 89 FR 58848 (July 19, 2024) (File No. 10-240) (order approving application of MIA X Sapphire, LLC for registration as a national securities exchange). (Exhibit B) (establishing rules for the physical Trading Floor).

⁵ The term “Trading Floor” or “Floor” means the physical trading floor of the Exchange located in Miami, Florida. The Trading Floor shall consist of one “Crowd Area” or “Pit” where Floor Participants will be located and option contracts will be traded. The Crowd Area or Pit shall be marked with specific visible boundaries on the Trading Floor, as determined by the Exchange. A Floor Broker must represent all orders in an “open outcry” fashion in the Crowd Area. See Exchange Rule 100.

outcry trading that are difficult to replicate in an electronic trading environment, particularly the human interaction that permits persons to negotiate pricing and to facilitate executions of larger orders and high-risk complicated strategies. Therefore, the Exchange proposes to establish a Virtual Trading Floor in the event the physical Trading Floor is inoperable to more closely replicate the physical Trading Floor.

The Exchange believes the proposed rule change would further enhance the Exchange's trading environment when the physical Trading Floor is inoperable by permitting market participants that generally operate on the physical Trading Floor to continue to interact in a substantially similar manner as they do on the physical Trading Floor. Specifically, the Exchange proposes to adopt new Rule 2090, Virtual Trading Floor. If the Exchange Trading Floor becomes inoperable and the Exchange does not make a Virtual Trading Floor available, the Exchange will continue to operate in an electronic only environment while the Trading Floor is inoperable. Open outcry trading will not be available in the event the Trading Floor becomes inoperable except as otherwise set forth in Rule 2090 as discussed herein.⁶ The Exchange reiterates that the proposed Virtual Trading Floor will only be activated if the physical Trading Floor becomes inoperable. Further, the Exchange has the discretion to not activate the Virtual Trading Floor if the physical Trading Floor becomes inoperable. In making the determination to move to an all-electronic environment, the Exchange will evaluate the factor or factors that caused the physical Trading Floor to become inoperable to determine if it warrants activating the Virtual Trading Floor. Such factors, may include, but are not limited to, the anticipated duration,

⁶ See proposed Rule 2090(a).

cause, and nature of the condition, burden on Floor Participants,⁷ and whether the condition that caused the inoperability of the physical Trading Floor is affecting the Exchange's operations broadly in a way that makes operating the Virtual Trading Floor difficult or impossible.

The Exchange proposes to adopt Rule 2090(a)(1) which will allow the Exchange to make available an audio and video communication program to serve as a "Virtual Trading Floor" during regular trading hours. In the program, the Exchange will create a "Virtual Trading Pit." In the Virtual Trading Pit, each participant authorized to access the Virtual Trading Floor (as described below) that enters the Virtual Trading Pit will be visible to all other participants in the Virtual Trading Pit. Additionally, all participants in the Virtual Trading Pit may speak to each other through the program. This will allow the same communication capabilities participants generally have on the physical Trading Floor so that they may conduct open outcry trading on the Virtual Trading Floor in the same manner as they do on the physical Trading Floor.

All rules related to open outcry trading will apply to open outcry trading on the Virtual Trading Floor in the same manner as they currently apply to open outcry trading on the physical Trading Floor. In addition, proposed subparagraphs (a)(1)(i)-(vii) will apply to trading on the Virtual Trading Floor.

Proposed subparagraph (a)(1)(i) lists certain terms in the rules related to open outcry trading on the physical Trading Floor that will be deemed to refer to corresponding terms related to open outcry trading on the Virtual Trading Floor. Specifically:

⁷ The term "Floor Participant" means Floor Brokers as defined in Rule 2015 and Floor Market Makers as defined in Rule 2105(b). See Exchange Rule 100.

(A) References in the Rules to the “Floor,” “Trading Floor,” and “Exchange Floor” (and any other terms with the same meaning) will be deemed to refer to the “Virtual Trading Floor.”

(B) References in the Rules to “Pit” and “Crowd Area” (and any other terms with the same meaning) will be deemed to refer to the “Virtual Trading Pit” or “Virtual Trading Crowd.”

(C) The term “In-crowd Floor Participant” means a Floor Market Maker⁸ or a Floor Broker⁹ representing an order in the Virtual Trading Pit on the Virtual Trading Floor.

Access to the Virtual Trading Floor will be substantially similar to access to the physical Trading Floor. Currently, admission to the physical Trading Floor is limited to Floor Participants, Exchange employees, Clerks¹⁰ employed by Floor Participants and registered with the Exchange, Exchange visitors that receive authorized admission to the Trading Floor pursuant to Exchange policy, and any other persons that the Exchange authorizes admission to the Trading Floor. Proposed Rule 2090(a)(1)(ii) provides the same persons with access to the Virtual Trading Floor, except for visitors. While Clerks may access the Virtual Trading Floor, they may only perform the same functions for their associated organizations in connection with open outcry trading on the Virtual Trading Floor as they do for open outcry trading on the physical

⁸ A Floor Market Maker is a Floor Participant of the Exchange located on the Trading Floor who has received permission from the Exchange to trade in options for his own account. See Exchange Rule 2105(b).

⁹ A Floor Broker is an individual who is registered with the Exchange for the purpose, while on the Trading Floor, of accepting and handling options orders. A Floor Broker must be registered as a Floor Participant prior to registering as a Floor Broker. A Floor Broker may take into his own account, and subsequently liquidate, any position that results from an error made while attempting to execute, as Floor Broker, an order. See Exchange Rule 2015.

¹⁰ The term “Clerk” means any registered on-Floor person employed by or associated with a Floor Broker or Floor Market Maker and who is not eligible to effect transactions on the Trading Floor as a Floor Market Maker or Floor Broker. See Exchange Rule 2055(a).

Trading Floor. The Exchange understands permitting Clerks to access the Virtual Trading Floor will provide them with access to the information that they normally have access to on the physical Trading Floor, which will make it more efficient for them to perform their tasks. Clerks will continue to be unable to enter into transactions on the Exchange. Additionally, as there is no physical equipment that would need service on the Virtual Trading Floor, and no purpose for a visitor to observe the Virtual Trading Floor, the proposed rule change excludes visitors from accessing the Virtual Trading Floor.¹¹

As is the case with the physical Trading Floor, the Exchange will provide access to the Virtual Trading Floor to participants the Exchange has approved to perform a Trading Floor function (including Floor Brokers and Floor Market Makers). This includes participants (and individuals that represent participant organizations) that are currently authorized to perform Trading Floor functions, as well as any additional participants that receive such authorization in the future. Each authorized individual will receive one log-in to the Virtual Trading Floor. The Exchange currently requires at least one Market Maker to be present on the physical Trading Floor (prior to a Floor Broker announcing an order for execution)¹² and believes it is necessary and appropriate to impose such a requirement for the Virtual Trading Floor.¹³ Further, the

¹¹ While the Exchange does not anticipate granting any other individuals with access to the Virtual Trading Floor outside of Participants and Exchange personnel, the Exchange believes the flexibility to permit Exchange personnel to access the Virtual Trading Floor is appropriate, such as to permit access to make updates to the communication program.

¹² See Exchange Rule 2030(a).

¹³ The Exchange notes that another options exchange with a Virtual Trading Floor has a similar requirement. See Securities Exchange Release Act No. 91299 (March 11, 2021), 86 FR 14661 (March 17, 2021) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of SR-Phlx-2021-03); see also Securities Exchange Act Release No. 92555 (August 3, 2021), 86 FR 43573 (August 9, 2021) (SR-BOX-2021-07) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt BOX Rule 2090 To Establish a Virtual Trading Floor on BOX).

Exchange notes that it will track which individuals participate on the Virtual Trading Floor, including when they log-in and log-out.

Under this proposal, Floor Participants are not required to display badges on the Virtual Trading Floor, as the size of the view on the communication program may not permit badges to be visible.¹⁴ Currently, on the physical Trading Floor, a Floor Market Maker has an appointment to trade open outcry in all classes trading on the Exchange (and must be physically present in the Crowd Area to trade in open outcry). Similarly, any Floor Market Maker authorized to act on the physical Trading Floor will receive access to the Virtual Trading Pit on the Virtual Trading Floor and will have an appointment to trade all classes on the Exchange.

As set forth in Rule 2070, and subject to the requirements in that Rule, Floor Participants may use any communication device on the physical Trading Floor (which it must register with the Exchange). Pursuant to proposed Rule 2090(a)(1)(iii), participant may use any equipment to access the Virtual Trading Floor. Prior to using a communications device for business purposes on the physical Trading Floor of the Exchange, participants must register the communications device by identifying (in a form and manner prescribed by the Exchange) the hardware. Because individuals on the Virtual Trading Floor will not be on the Exchange premises (and thus will not be using Exchange provided bandwidth to be shared with all market participants and do not pose the same security risks), the proposed rule change will not require participants to register devices they use while on the Virtual Trading Floor.¹⁵ Rule 2070 will otherwise apply in the same

¹⁴ The Virtual Trading Floor program will identify the Participant organization of each Participant in the Virtual Trading Pit.

¹⁵ The Exchange notes that Floor Participants will be required to inform the Exchange of the IP address that will be used to access the Virtual Trading Floor. Market participants will likely use home networks to connect to the Virtual Trading Floor platform (which is contained in the Exchange trading environment). By requiring the submission of IP addresses to the Exchange, the Exchange is able to create a secure

manner to the Virtual Trading Floor as it does to the physical Trading Floor (to the extent the context requires). This includes requirements related to audit trail and record retention, prohibition on using any device for the purpose of recording activities in the Virtual Trading Pit or maintaining an open line of continuous communication whereby a non-associated person not located in the Virtual Trading Crowd may continuously monitor the activities in the Virtual Trading Crowd.

The Exchange will use a communication program that has audio and video capabilities, as well as “chat” functionality. Proposed Rule 2090(a)(1)(iv) states that the Exchange may determine to require any Floor Market Maker or Floor Broker in the Virtual Trading Pit that wants to trade against an order represented for execution to express its bid or offer in a chat available in the Virtual Trading Pit.¹⁶ The Exchange would require participants to utilize the chat function if the Exchange Trading Floor officials determine that increased volume or activity in the Virtual Trading Crowd warrant mandatory use of the chat feature for participants to maintain a fair and orderly market.¹⁷ Chats will be visible to all participants in the Virtual Trading Pit and will not be permitted directly between individual participants (i.e. the Exchange will disable direct messaging functionality within the communication program). Participants on

network available only to approved IP addresses. This, in turn, denies any outside (and not previously approved) connections from entering the Virtual Trading Floor and, thus secures the virtual trading environment to only those Participants approved by the Exchange. Further, the Exchange believes that requiring the submission of IP addresses connected to the Virtual Trading Floor is appropriate and will be of assistance to the Exchange employees if market participants experience any connection issues when trying to use the Virtual Trading Floor platform.

¹⁶ Before activating the Virtual Trading Floor, the Exchange will announce to all participants via Regulatory Circular that Trading Floor officials have, in their discretion, the ability to require bids and offers to be expressed in a chat within the communication program. The Exchange will provide such notice with sufficient advance notice.

¹⁷ The Exchange notes that another exchange with a Virtual Trading Floor has a similar requirement. See supra note 13.

the physical Trading Floor only verbalize their interest to trade against a represented order, so not requiring bids and offers to be included in a chat conforms to current practice on the physical Trading Floor. However, given potential limitations of communication software (such as limitations on how many people may be heard at the same time in the Virtual Trading Pit or potential buffering or echoing), the Exchange believes it may be appropriate to require market participants to use a chat tool in the communication program to indicate their interest in participating in a trade so that the representing Floor Broker is able to know the market from the Virtual Trading Crowd and fairly allocate the trade pursuant to the Rules. The Exchange believes the flexibility to impose this requirement in the Virtual Trading Pit is appropriate, as these limitations may ultimately not interfere with a Floor Broker's ability to hear all interest (particularly in a Virtual Trading Pit with few participants) and thus the additional requirement may potentially slow down executions. The Exchange notes that, regardless of whether it requires the chat function to be used, the Exchange will maintain records of all chats on the Virtual Trading Floor in accordance with its self-regulatory organization record-retention obligations.¹⁸

The program also has functionality that will permit Floor Brokers and Floor Market Makers on the Virtual Trading Floor to see an electronic blotter containing a running list of unexecuted orders that have been represented by Floor Brokers on the Virtual Trading Floor. The Exchange notes that Floor Brokers will be required to enter their orders into the electronic blotter at the same time they open outcry the order to the Virtual Trading Crowd.¹⁹ Currently,

¹⁸ The Exchange notes that the chat functionality will be available to Virtual Trading Floor Participants at all times.

¹⁹ See Proposed Rule 2090(a)(1)(v).

Floor Brokers, prior to the announcement of such an order in the trading crowd, record all options orders represented by such Floor Broker onto the Floor Broker's proprietary order entry mechanism.²⁰ The Floor Broker then verbally announces the order to the trading crowd before submitting the order to the Exchange trading system for execution.²¹ This information is generally only verbally available on the physical Trading Floor. However, similar to why the Exchange is making chat functionality available on the Virtual Trading Floor, the Exchange believes the additional information included in the blotter will benefit Virtual Trading Floor participants given potential limitations of communication software (such as limitations on how many people may be heard at the same time in the Virtual Trading Pit or potential buffering or echoing). For example, if a Floor Market Maker's personal device momentarily freezes, causing the Floor Market Maker to miss the terms of an order represented verbally by a Floor Broker, the Floor Market Maker will still be able to see the terms of the order in the blotter and determine whether it wants to seek to trade with the order.

Further, pursuant to proposed Rule 2090(a)(1)(vi), Floor Market Maker quotes will be considered firm in the event the Floor Market Maker is disconnected from the Virtual Trading Floor and the parties have a Meeting of the Minds with respect to the terms of the transaction. A "Meeting of the Minds" means the contra-side(s) verbally confirmed participation in the trade. In the event that a Floor Market Maker is disconnected from the Virtual Trading Crowd, a Floor Market Maker quote would not be considered firm if the quote were provided and the parties did not have a Meeting of the Minds with respect to the terms of the transaction.

²⁰ See Exchange Rule 2030(e)(1).

²¹ See Exchange Rule 2030(e)(2).

Today, a Floor Market Maker that experiences issues with internet connection, makes an error or otherwise is unaware of recent news in a particular option, would be held to a quote verbalized in open outcry. In the event that the negotiation continues and the terms change, the Floor Marker Maker would not be held to the new terms without additional acceptance of those terms. In the event that the transaction is not effectuated in the Exchange trading system, the trade would not stand. To that end, the Exchange believes requiring quotes to remain firm once the parties have arrived at a Meeting of the Minds with respect to the terms of the transaction creates fair and equitable expectations for participants trading in the Virtual Trading Crowd.

The Exchange notes that, regardless of whether it requires the chat function to be used, the Exchange will maintain records of all chats on the Virtual Trading Floor²² in accordance with its self-regulatory organization record retention obligations, as these are “correspondence” records subject to those obligations, as set forth in proposed subparagraph (a)(1)(vii).²³ Specifically, proposed rule 2090(a)(1)(vii) states the Exchange will retain records of the chats, participant logs, electronic blotter, and any other records related to the Virtual Trading Floor that are subject to the Exchange’s record retention obligations under the Exchange Act. The Exchange does not currently plan to record sessions of the Virtual Trading Floor.²⁴ However, if the Exchange determines to record these sessions, it would retain those video recordings in accordance with its record retention obligations.²⁵

²² The Exchange notes the information that will be displayed in the blotter is already retained as part of the Exchange order audit trail.

²³ See 15 U.S.C. 78q(a).

²⁴ The Exchange does not believe recording video and audio of a session on the Virtual Trading Floor is required under the Exchange Rules or the Exchange Act.

²⁵ Id. The Exchange notes it will disable the ability of Participants to record the Virtual Trading Floor through the communication program. The Exchange further notes that Floor Participants are not allowed to record any activities on the Trading Floor under Exchange Rule 2070(i).

Floor officials will have access to the Virtual Trading Floor. Floor officials will have the same authority to act on the Virtual Trading Floor as they do on the physical Trading Floor. Additionally, an Exchange employee will be available to provide technical and operational support (in addition to regular Exchange support staff for floor operations) if participants on the Virtual Trading Floor need assistance. If there was an issue with the communication program making the Virtual Trading Floor unavailable, the Exchange would operate in an all-electronic environment until the communication program was available again.

While open outcry trading on the Virtual Trading Floor will occur with in-crowd market participants interacting with each other remotely through a communication program, all trading that occurs on the Virtual Trading Floor will occur in the same manner as it does on the physical Trading Floor. Specifically, open outcry trading on the Virtual Trading Floor will be subject to the same priority and allocation rules as open outcry trading on the physical Trading Floor, as set forth in Rule 2040. Any risk controls and price protection mechanisms that apply to open outcry trading on the physical Trading Floor will apply in the same manner to open outcry trading on the Virtual Trading Floor. The Exchange will require the same order type and systemization requirements available on the Virtual Trading Floor as it makes available on the physical Trading Floor. Floor Brokers will continue to be subject to the responsibilities set forth in Rules 2025 and 2030 on the Virtual Trading Floor, as they are on the physical Trading Floor.

In addition, market participants participating on the Virtual Trading Floor will be subject to the same regulatory requirements on the Virtual Trading Floor as they are on the physical Trading Floor, including those set forth in Chapters III and XIII of the Rulebook. Orders must

be systematized²⁶ and represented,²⁷ and transactions reported, in connection with the Virtual Trading Floor in the same manner as they are when trading on the physical Trading Floor.

Therefore, the audit trail for open outcry trading on the Virtual Trading Floor will capture the same information that it does for open outcry trading on the physical Trading Floor. The regulatory division will be able to utilize preexisting trading surveillances and new floor specific trading surveillances to surveil for the activity occurring on the Virtual Trading Floor.

Specifically, the regulatory division monitors open outcry trading using various automated surveillances, which incorporate systematized order and trade execution information and applicable time stamps, as well as other elements of the audit trail from the Floor Broker's order entry system(s) and the Exchange's matching engine. Because Floor Brokers will use the same tools to systematize and execute orders on the Virtual Trading Floor that they would use on the physical Trading Floor, and will be subject to the same trading rules and requirements, the regulatory staff's automated surveillances applicable to open outcry trading will incorporate the same audit trail information from open outcry trading on the Virtual Trading Floor that they do from open outcry trading on the physical Trading Floor. Additionally, regulatory staff will always be present on the Virtual Trading Floor and may access any records pertaining to the Virtual Trading Floor (i.e. chats) if they deem it necessary and appropriate to ensure compliance with Exchange Rules.

²⁶ See Exchange Rule 2030(e)(1).

²⁷ See Exchange Rule 2030(e)(2).

Lastly, the Exchange plans to make the virtual trading floor available for testing and mock trading sessions prior to the launch of the physical trading floor which is currently targeted for the second quarter of 2025.²⁸

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act²⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act³⁰ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)³¹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed rule change will 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, as it will permit open outcry trading to continue in the event the Exchange's physical Trading Floor becomes inoperable. The Exchange again notes that the proposed Virtual Trading Floor will only be activated if the physical Trading Floor

²⁸ The Exchange announced that it would provide Virtual Trading Floor mock trading sessions in March or April 2025 with the exact date to be announced by the Exchange in a future alert. See "MIAX Sapphire Options Exchange - Trading Floor Update: Notification of Important Dates and Access to Resources," available at <https://www.miaxglobal.com/alert/2024/12/06/miax-sapphire-options-exchange-trading-floor-update-notification-important>

²⁹ 15 U.S.C. 78f(b).

³⁰ 15 U.S.C. 78f(b)(5).

³¹ Id.

becomes inoperable. Further, the Exchange has the discretion to not activate the Virtual Trading Floor if the physical Trading Floor becomes inoperable. The Exchange believes that these factors, taken together, limit the scope of this proposal to extenuating circumstances that the Exchange hopes to avoid. While the Exchange believes that the physical Trading Floor is an essential component of MIAX Sapphire and hopes the physical Trading Floor does not become inoperable or require any closures, the Exchange also believes it is appropriate to continue to review and enhance its rules with regard to its business continuity plans if the physical Trading Floor were to become inoperable. As such, the Exchange believes the adoption of a Virtual Trading Floor, which emulates the physical Trading Floor, is reasonable and appropriate given that the physical Trading Floor may become inoperable in the future due to unforeseen circumstances.

As discussed above, the Exchange believes that there are certain features of open outcry trading that are difficult to replicate in an all-electronic trading environment, particularly the human interaction that permits persons to negotiate pricing and to facilitate executions of larger orders and high-risk complicated strategies. The proposed rule change would provide an environment in which this interaction would be available despite the inoperability of the physical Trading Floor. The Exchange believes the proposed rule change may facilitate continued trading of these orders if the physical Trading Floor becomes inoperable. As a result, the Exchange believes providing continuous access to open outcry trading if the physical Trading Floor is inoperable will remove impediments to a free and open market and will ultimately benefit investors, particularly those desiring to execute high-risk and complex trading strategies.

The Exchange also believes the proposed rule change will promote just and equitable principles of trade, as open outcry trading on a Virtual Trading Floor would occur in accordance

with the same trading rules and be subject to the same regulatory requirements that apply to open outcry trading on the physical Trading Floor, all of which have previously been filed with the Commission. The proposed rule change will merely permit this open outcry trading to occur in a virtual setting rather than a physical setting (which may be necessary and appropriate for health and safety purposes) – in other words, open outcry trading on the Virtual Trading Floor would occur while market participants operate remotely as they do when they trade electronically. Specifically, open outcry trading on the Virtual Trading Floor would be subject to the same priority and allocation rules as open outcry trading on the physical Trading Floor, as set forth in Rule 2040. As is the case for open outcry trading on the physical Trading Floor, open outcry trading on the Virtual Trading Floor would be consistent with Section 11(a) of the Act, as Interpretation and Policies .05 of Rule 2040 (which would apply to open outcry trading on the Virtual Trading Floor) requires participants relying on Section 11(a)(1)(G) of the Act and Rule 11a1-1(T) thereunder (the so called “G exemption rule”) as an exemption must yield priority to any bid (offer) at the same price of Public Customer orders and broker-dealer orders resting in the Book, as well as any other bid (offer) that has priority over those Broker Dealer orders under this Rule. The Exchange would require the same order type and systemization requirements available on the Virtual Trading Floor as it makes available on the physical Trading Floor. Floor Brokers would be subject to the responsibilities set forth in Rules 2025 and 2030 on the Virtual Trading Floor, as they are on the physical Trading Floor.

Additionally, participants participating on the Virtual Trading Floor would be subject to the same regulatory requirements on the Virtual Trading Floor as they are on the physical Trading Floor, including those set forth in Chapters III and XIII of Exchange Rulebook. As previously noted, orders must be systematized and represented, and transactions reported, in

connection with the Virtual Trading Floor in the same manner as they are when trading on the physical Trading Floor.³² Therefore, the audit trail for open outcry trading on the Virtual Trading Floor would capture the same information that it does for open outcry trading on the physical Trading Floor. The regulatory division would be able to utilize preexisting trading surveillances and new floor specific surveillances to surveil for the activity occurring on the Virtual Trading Floor. Specifically, the regulatory division monitors open outcry trading using various automated surveillances, which incorporate systematized order and trade execution information and applicable time stamps, as well as other elements of the audit trail from the Floor Broker's order entry system(s) and the Exchange matching engine. Because Floor Brokers will use the same tools to systematize and execute orders on the Virtual Trading Floor that they would use on the physical Trading Floor, and will be subject to the same trading rules and requirements, the regulatory division's automated surveillances applicable to open outcry trading will incorporate the same audit trail information from open outcry trading on the Virtual Trading Floor that they do from open outcry trading on the physical Trading Floor. Additionally, regulatory division staff would always be present on the Virtual Trading Floor and may access any records pertaining to the Virtual Trading Floor (i.e. chats) if they deem it necessary and appropriate to ensure compliance with Exchange Rules. The Exchange believes it will promote just and equitable principles of trading for all open outcry trading to occur in substantially the

³² Pursuant to proposed Rule 2090(a)(1)(vi), Floor Market Maker quotes will be considered firm in the event the Floor Market Maker is disconnected from the Virtual Trading Crowd and the parties have a Meeting of the Minds with respect to the terms of the transaction. A "Meeting of the Minds" means the contra-side(s) verbally confirmed participation in the trade. In the event that a Floor Market Maker is disconnected from the Virtual Trading Crowd, a Floor Market Maker quote would not be considered firm if the quote were provided and the parties did not have a Meeting of the Minds with respect to the terms of the transaction.

same manner, whether it occurs while market participants are in the same physical setting or in remote settings being connected through a technological solution.

In addition, the Exchange believes the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, as all individuals authorized to act on the physical Trading Floor (both participant organizations authorized at the time the physical Trading Floor becomes inoperable and any participant organization that becomes authorized after the physical Trading Floor becomes inoperable) will be provided with access to the Virtual Trading Floor.

Lastly, the Exchange notes that other competing exchanges offer similar virtual trading environments.³³

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the proposed rule change is substantively identical to the proposal submitted by BOX that was approved by the Commission.³⁴ Further, the Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as all participants authorized by the Exchange, or that become authorized by the Exchange, to transact on the physical Trading Floor will receive access to the Virtual Trading Floor. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as it

³³ See supra note 3.

³⁴ See supra note 13.

relates solely to the location of open outcry trading on the Exchange. The proposed rule change will merely permit open outcry trading that generally occurs while market participants are located in the same physical setting to occur while market participants are in a remote setting, connected by a technological solution (as electronic trading does).

The Exchange believes that the proposed rule change will relieve any burden on, or otherwise promote, competition. The Exchange believes the proposed rule change will provide market participants with continuous access to open outcry trading in the event the physical Trading Floor becomes inoperable. The Exchange believes this may facilitate continued, competitive price negotiations and trading of orders that the Exchange believes are more difficult to execute in an all-electronic trading environment without human interaction. Additionally, the proposed rule change will provide customer orders represented for open outcry execution with access to the same pool of liquidity in the event the physical Trading Floor becomes inoperable to which those orders would have access when the physical Trading Floor is operating in its normal state. Maintenance of this level of liquidity at all times, even when the physical Trading Floor is inoperable, may promote competition by providing these customer orders with increased liquidity than may otherwise be available, and thus increased execution opportunities and price discovery.

5. **Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

No written comments were either solicited or received.

6. **Extension of Time Period for Commission Action**

Not applicable.

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

Pursuant to Section 19(b)(3)(A) of the Act³⁵ and Rule 19b-4(f)(6)³⁶ thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange believes that the proposed rule change does not significantly affect the protection of investors or the public interest but rather promotes the protection of investors and the public interest by facilitating continued trading of these orders if the physical Trading Floor becomes inoperable. The Exchange believes that market participants may have difficulty executing certain orders, such as larger orders and high-risk and complicated strategies, in an all-electronic trading environment without the element of human interaction to negotiate pricing for these orders. The proposed rule change would provide an environment in which this interaction would be available despite the inoperability of the physical Trading Floor. The Exchange believes providing continuous access to open outcry trading if the physical Trading Floor is inoperable will ultimately benefit investors, particularly those desiring to execute high-risk and complex trading strategies. Additionally, the Exchange does not believe that its proposal imposes a significant burden on competition as the proposed rule change will merely permit open outcry trading that generally occurs while market participants are located in the same physical setting to occur while market participants are in a remote setting, connected by a technological

³⁵ 15 U.S.C. 78s(b)(3)(A).

³⁶ 17 CFR 240.19b-4(f)(6).

solution (as electronic trading does). The Exchange believes that the proposal may promote competition because it may facilitate continued, competitive price negotiations and trading of orders that the Exchange believes are more difficult to execute in an all-electronic trading environment without human interaction. Additionally, the proposed rule change will provide customer orders represented for open outcry execution with access to the same pool of liquidity in the event the physical Trading Floor becomes inoperable to which those orders would have access when the physical Trading Floor is operating in its normal state. Maintenance of this level of liquidity at all times, even when the physical Trading Floor is inoperable, may promote competition by providing these customer orders with increased liquidity than may otherwise be available, and thus increased execution opportunities and price discovery.

Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement. Furthermore, a proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act³⁷ normally does not become operative for 30 days after the date of its filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

³⁷ 17 CFR 240.19b-4(f)(6).

The proposed rule change is substantially similar to a proposal by BOX that was approved by the Commission.³⁸

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of proposed rule for publication in the Federal Register.

5. Text of proposed rule change.

³⁸ See supra note 13.