

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94092; File No. SR-BOX-2021-06)

January 27, 2022

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of Amendment Nos. 2 and 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 2 and 3, to Adopt Rules Governing the Trading of Equity Securities on the Exchange Through a Facility of the Exchange Known as BSTX LLC

I. Introduction

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 (“Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt rules governing the listing and trading of equity securities on the Exchange through a facility of the Exchange to be known as BSTX LLC (“BSTX”). The proposed rule change was published for comment in the Federal Register on June 2, 2021.³ On July 13, 2021, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to August 31, 2021.⁴ On August 18, 2021, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.⁵ On August 27, 2021, the Commission published notice

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 See Securities Exchange Act Release No. 92387 (July 13, 2021), 86 FR 38140 (July 19, 2021).

⁵ 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

of Amendment No. 1 and instituted proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act⁶ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.⁷ On November 23, 2021, the Commission designated a longer period for Commission action on the proposed rule change, as modified by Amendment No. 1.⁸ On December 20, 2021, the Exchange filed Amendment No. 2, which replaced and superseded the proposed rule change, as modified by Amendment No. 1.⁹ On January 20, 2022, the Exchange

rule text regarding the order parameter that would allow participants to indicate a preference for same day or next day 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 same-day or next-day 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>.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 92796, 86 FR 49416 (September 2, 2021) (“OIP”).

⁸ See Securities Exchange Act Release No. 93649, 86 FR 68023 (November 30, 2021).

⁹ In Amendment No. 2, the Exchange revised the proposal to: (i) provide additional information regarding the connectivity and co-location services that will be offered at the Exchange’s primary data center, including equidistant cabling arrangements; (ii) state that, pursuant to its authority under proposed BSTX Rule 26101, the Exchange would not permit an issuer to list a new class of securities on BSTX that is not distinct from an existing class of securities of the issuer; (iii) modify proposed rule text regarding the proposed market data blockchain to clarify that non-members will have access to anonymized, general market data and specify what fields are included in this data, to specify that the market data will apply to trading activity for regular trading hours, and to clarify that users will view the data through an application programming interface; (iv)

filed partial Amendment No. 3 to the proposed rule change.¹⁰ The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment Nos. 2 and

modify proposed rule text related to the proposed order parameter that would be used to preference same-day settlement to add a cut-off time by which an execution must occur to be eligible for same-day settlement; (v) modify certain proposed rules to bring them into closer alignment with the rules of other national securities exchanges on which equity securities are traded, including rules regarding securities eligible for trading, prohibitions against trading ahead of customer orders, round lots, minimum price variants, auctions used to open or reopen trading, the dissemination of market data concerning such auctions, risk controls, market maker registration process and obligations, business conduct, trading practices, maintaining books and records, off-exchange transactions, scope of the minor rule violation plan, trade reporting and the dissemination of quotations, clearly erroneous executions, and locking and crossing quotations; (vi) eliminate a proposed rule regarding an audit trail that has been superseded by rules pertaining to the Consolidated Audit Trail; (vii) modify certain proposed listing standards to comply with the thresholds in Rule 3a51-1, and bring the proposed listing standards into closer alignment with the rules of other national securities exchanges on which equities securities are traded, including with respect to the listing of secondary classes and preferred stock, the required number of market makers, requirements for securities of foreign issuers that would apply to the listing of Canadian issuers, the listing of securities that are subject to an exemption from Exchange Act registration, the method of computing the payment of cash in lieu of fractional shares, the settlement timing of securities transactions, requirements to notify the Exchange before engaging in activities relating to a proxy contest, requirements that listed companies establish and maintain an internal audit function, the calculation of regulatory transaction fees under Section 31 of the Exchange Act, and the distribution of funds in the event of liquidation of the Exchange; (viii) eliminate a proposed listing requirement that an applicant provide a legal opinion that its security qualifies as a security under applicable United States securities laws; (ix) provide additional description to clarify operation of the proposed market data blockchain and proposed order parameter that would be used to preference same-day or next-day settlement; and (x) make technical and conforming changes. Amendment No. 2 is available on the Commission's website at: <https://www.sec.gov/comments/sr-box-2021-06/srbox202106-20110109-264393.pdf> ("Amendment No. 2").

¹⁰ In Amendment No. 3, the Exchange revised the proposal to make certain changes to the proposed listing rules in proposed BSTX Rule 26000 to promote consistency with the definition of "penny stock" under Exchange Act Rule 3a51-1, including by defining "public distribution" and "public shareholder" consistently with Rule 3a51-1, changing references to "Market Value of Listed Securities" to "Total Value of Market Capitalization," and eliminating initial listing standards for preferred stock that were based on the rules of NYSE American. Amendment No. 3 is available on the

3, from interested persons and is approving the proposed rule change, as modified by Amendment Nos. 2 and 3, on an accelerated basis.

II. Description of the Proposal, as Modified by Amendment Nos. 2 and 3

As set forth in the OIP and Amendment Nos. 2 and 3,¹¹ the Exchange proposes to adopt listing standards for certain equity securities (“Securities”) along with rules governing the trading of Securities through a facility of the Exchange known as BSTX.¹² BSTX would operate a fully automated, price/time priority execution system (“BSTX System”) for the trading of Securities.¹³ Under the proposed rules, Securities would be NMS stocks, as defined in Rule 600(b)(54),¹⁴ that

Commission’s website at: <https://www.sec.gov/comments/sr-box-2021-06/srbox202106-20112225-265310.pdf> (“Amendment No. 3”).

¹¹ See OIP, supra note 7; Amendment No. 2, supra note 9; Amendment No. 3, supra note 10.

¹² See OIP, supra note 7, 86 FR at 49416. Pursuant to a separate proposed rule change, the Exchange proposes to establish BSTX as a facility of the Exchange that will operate a market for the trading of securities (“BSTX Market”) and adopt the BSTX Third Amended and Restated LLC Agreement. See Securities Exchange Act Release No. 93094 (September 21, 2021), 86 FR 53365 (September 27, 2021) (SR-BOX-2021-14) (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, in Connection with the Proposed Establishment of BSTX as a Facility of the Exchange) (“Amended BSTX Governance Proposal”); Amendment No. 2, supra note 9, at 7. Among other things, the Amended BSTX Governance Proposal sets forth the proposed ownership structure for BSTX. The Exchange states that without Commission approval of the trading rules, the Exchange would not permit BSTX to commence operations of the BSTX Market, and that the Exchange’s regulatory oversight responsibilities with respect to BSTX would not be triggered unless SR-BOX-2021-14 is approved by the Commission. See Amended BSTX Governance Proposal, 86 FR at 53366. The Exchange also states that without approved rules pertaining to the governance structure of BSTX as a facility of the Exchange, the Exchange will not commence operation of BSTX. See Amendment No. 2, supra note 9, at 9.

¹³ See OIP, supra note 7, 86 FR at 49416.

¹⁴ 17 CFR 242.600(b)(54).

meet BSTX listing standards and that trade on the BSTX System.¹⁵ BSTX would serve as the listing market for eligible companies and issuers of exchange traded products (“ETPs”).¹⁶ The Exchange states that it is not proposing rules that would support the extension of unlisted trading privileges (“UTP”) to NMS stocks listed on other national securities exchanges.¹⁷

The Exchange proposes rules for participation on BSTX, business conduct for BSTX Participants,¹⁸ financial and operational provisions for BSTX Participants, supervision, trading practices, discipline, trading on the BSTX System, market making, and listing Securities on BSTX.¹⁹ The Exchange proposes to offer several proprietary market data products that are similar to those offered by other national securities exchanges, as well as a historical market data product that utilizes blockchain technology.²⁰ Specifically, the Exchange proposes to record and disseminate certain information regarding orders and executions on BSTX on a proprietary

¹⁵ See OIP, supra note 7, 86 FR at 49417. The Exchange proposes listing standards that, according to the Exchange, are similar to the listing standards of NYSE American LLC (“NYSE American”). See id. at 49439.

¹⁶ See id. at 49417.

¹⁷ See id. The Exchange also states that, therefore, it would 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 the extension of UTP to other NMS stocks. See id.

¹⁸ “BSTX Participant” would be defined as a Participant or Options Participant that is authorized to trade securities on the Exchange. See proposed BSTX Rule 17000(a)(12). See also proposed BOX Rules 100(a)(41) (defining “Options Participant” to mean a Participant registered with the Exchange for purposes of participating in options trading on the Exchange); and 100(a)(42) (defining “Participant” to mean a firm or organization that is registered with the Exchange pursuant to BOX Rule 2000 Series for purposes of participating in trading on a facility of the Exchange, including an Options Participant and BSTX Participant).

¹⁹ See OIP, supra note 7, 86 FR at 49417.

²⁰ See proposed BSTX Rule 22060. The Exchange states that its rule concerning market data products is substantially similar to that of MEMX LLC (“MEMX”). See OIP, supra note 7, 86 FR at 49424 & n.154.

market data feed that BSTX would operate using a proprietary blockchain system (“BSTX Market Data Blockchain”).²¹ The Exchange states that the BSTX Market Data Blockchain would be accessible through an application program interface (“API”) available through the internet, and the Exchange would control all aspects of the BSTX Market Data Blockchain and the associated API.²²

The Exchange states that two types of information would be available on the BSTX Market Data Blockchain. Each BSTX Participant would be able to see its own order and transaction information related to its own trading activity on BSTX (“Participant Proprietary Data”).²³ In addition, all BSTX Participants and non-BSTX Participants with permission to view the BSTX Market Data Blockchain would be able to see anonymized, general market data related to all trading activity occurring on BSTX (“General Market Data”).²⁴ The Exchange states that information would be posted to the BSTX Market Data Blockchain on a delayed basis of at least five minutes.²⁵ The Exchange states 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.²⁶ The Exchange

²¹ See proposed BSTX Rules 17000(a)(9) and 17020.

²² See OIP, supra note 7, 86 FR at 49420. The Exchange states that only the Exchange would have direct access to the underlying data on the private blockchain. See id.

²³ See id.

²⁴ See id.

²⁵ See id. at 49421. See also infra note 156 (describing that by “five minute delay,” the Exchange means that market data would be uploaded once every five minutes).

²⁶ See OIP, supra note 7, 86 FR at 49421.

further states that the BSTX Market Data Blockchain would not impact the ability of Securities to trade on other national securities exchanges or over-the-counter (“OTC”).²⁷

According to the Exchange, all transactions in Securities would clear and settle in accordance with the rules, policies, and procedures of registered clearing agencies.²⁸ The Exchange states that BSTX anticipates that The Depository Trust Company (“DTC”) would serve as the securities depository for Securities and that confirmed trades in Securities on BSTX would be transmitted to National Securities Clearing Corporation (“NSCC”) for clearing.²⁹ The Exchange proposes to introduce an optional order parameter that would allow BSTX Participants to indicate a preference for settlement on a shorter settlement cycle than the standard two business day (“T+2”) settlement cycle. Specifically, the Exchange proposes that BSTX Participants would be able to utilize an order parameter that would indicate a preference for settlement on a same day (“T+0”) or next day (“T+1”) basis when certain conditions are met.³⁰ The Exchange states that orders in a Security that include a parameter indicating a preference for settlement on a T+0 basis or on a T+1 basis would only result in executions that would actually settle more quickly than on a T+2 basis if, and only if, all of the specified conditions are met and

²⁷ See id. at 49423. The Exchange states that it is proposing to use blockchain technology for purposes of the BSTX Market Data Blockchain and that, to the extent the Exchange proposes future applications of blockchain technology to the Exchange’s business, the Exchange would file such proposal with the Commission. See Amendment No. 2, supra note 9, at 29 n.52. The Commission notes that the Exchange’s current proposal does not involve the trading of digital tokens and such a proposal, or any other additional use of blockchain technology, would require that the Exchange file a proposed rule change pursuant to Section 19(b) and Rule 19b-4 of the Exchange Act.

²⁸ See OIP, supra note 7, 86 FR at 49418. The Exchange also states that the operation of the BSTX Market Data Blockchain would have no impact or effect on the manner in which a Security clears and settles. See id.

²⁹ See id.

³⁰ See id. at 49423; proposed BSTX Rule 25060(h).

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.³¹ The Exchange states that any such preference would only become operative if the order happened to execute against another order that also includes a parameter indicating a preference for settlement on a T+0 or T+1 basis.³² According to the Exchange, an order with a preference for faster settlement would continue to interact with any other order against which it is marketable, and a resulting execution would always settle using the latest settlement timing associated with the two matching orders.³³ The Exchange also states that the possibility of a shortened settlement time would have no impact on the Exchange’s proposed price/time priority structure for order matching.³⁴

III. Discussion and Commission Findings

After careful review of the proposed rule change, as modified by Amendment Nos. 2 and 3, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.³⁵ Specifically, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Exchange Act,³⁶ 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, and processing information

³¹ See OIP, supra note 7, 86 FR at 49424.

³² See id.

³³ See id. at 49425.

³⁴ See id. at 49424.

³⁵ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

³⁶ 15 U.S.C. 78f(b)(5).

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. Section 6(b)(5) also requires that the rules of a national securities exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers. Further, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(1) of the Exchange Act,³⁷ which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Exchange Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the exchange, and with Sections 6(b)(6) and 6(b)(7) of the Exchange Act,³⁸ which require a national securities exchange to provide fair procedures for the disciplining of members and persons associated with members. The Commission also finds that the proposed rule change, as amended, is consistent with Section 11A of the Exchange Act,³⁹ and, consistent with Section 6(b)(8) of the Exchange Act, does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.⁴⁰ The Commission further finds that the proposed rule change, as amended, is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act, as

³⁷ 15 U.S.C. 78f(b)(1).

³⁸ 15 U.S.C. 78f(b)(6) and (b)(7).

³⁹ 15 U.S.C. 78k-1.

⁴⁰ 15 U.S.C. 78f(b)(8).

required by Rule 19d-1(c)(2) under the Exchange Act,⁴¹ which governs minor rule violation plans.

The Exchange proposes to adopt rules governing the trading of Securities under the proposed rules through a facility of the Exchange known as BSTX, which will function in a manner similar to equities trading platforms that the Commission has approved for other national securities exchanges.⁴² With the exception of the proposed BSTX Market Data Blockchain and optional order parameter for preferencing settlement on a T+0 or T+1 basis, the Exchange’s proposed rules for BSTX are substantively similar to the corresponding rules of other equities exchanges. As discussed below, the Commission believes that the proposed rule change, as modified by Amendment Nos. 2 and 3, is consistent with the Exchange Act.

A. BSTX Participants

The Exchange proposes to adopt BSTX Rule 18000, which will set forth requirements for participation on BSTX. A “BSTX Participant” will be a new category of Exchange participant for effecting transactions on the BSTX System. All BOX Participants would be eligible to participate in BSTX provided that they become a BSTX Participant pursuant to the proposed rules.⁴³ A BSTX Participant must complete the BSTX Participation Application, Participation

⁴¹ 17 CFR 240.19d-1(c)(2).

⁴² BSTX’s rules, including its rules relating to participation on BSTX and business conduct, financial and operational, supervisory, and trading practice rules, and certain trading, market making, and listing rules, are similar to existing national securities exchanges’ trading and listing rules. See, e.g., Rules of the Cboe BZX Exchange, Inc. (“Cboe BZX”), Investors Exchange LLC (“IEX”), and NYSE American.

⁴³ See OIP, supra note 7, 86 FR at 49417. The Exchange proposes defined terms for use in the BSTX Rules, and states that terms defined elsewhere in the BOX Rules shall have the same meaning. See proposed BSTX Rule 17000. The Exchange also proposes to specify that the proposed BSTX Rules apply to the trading of securities by BSTX Participants approved for such trading, the listing of securities, and related matters pertaining to the trading of securities, and that unless specific BSTX Rules related to securities govern or

Agreement, and User Agreement;⁴⁴ be an existing Participant or Options Participant or become a Participant or Options Participant of the Exchange pursuant to BOX Rule 2000 Series and continue to abide by all applicable provisions in BOX Rule 2000 Series,⁴⁵ and provide such other information as required by the Exchange.⁴⁶ BSTX Participants would be required to comply with, among other things, financial responsibility requirements established by Rule 15c3-1 under the Exchange Act and applicable books and records requirements, and be a member or participant of a registered clearing agency or clear security transactions through another BSTX Participant that is a member or participant of a registered clearing agency.⁴⁷ In addition, proposed BSTX Rule 18020 would require associated persons of a BSTX Participant to be bound by the rules of the Exchange to the same extent as each BSTX Participant and allow the Exchange to discipline, suspend, or terminate the registration with the Exchange of any person associated with a BSTX Participant for violation of the Exchange rules.⁴⁸

The Exchange also proposes rules for business conduct for BSTX Participants, financial and operational provisions for BSTX Participants, and rules for supervision, trading practices,

the context otherwise requires, the provisions of the existing BOX Rules shall be applicable to BSTX Participants and the trading of securities on the BSTX System. See proposed BSTX Rule 17010. Further, the Exchange proposes to make conforming changes to certain existing BOX Rules that would apply to BSTX Participants, but currently only contemplate trading in options. See Amendment No. 2, supra note 9, at 123; proposed BOX Rules 100, 2020, 2060, 3180, 7130, 7150, 7230, 7245, IM-8050-3, 11010, 11030, and 12140.

⁴⁴ See Exhibits 3A, 3B, and 3C, respectively.

⁴⁵ The BOX Rule 2000 Series requires, among other things, that a Participant (including a BSTX Participant) remain a member of another registered national securities exchange or national securities association. See OIP, supra note 7, 86 FR at 49448 n.320.

⁴⁶ See proposed BSTX Rule 18000.

⁴⁷ See proposed BSTX Rule 18010(b). See also Exhibits 3F and 3G.

⁴⁸ See proposed BSTX Rule 18020(b).

discipline, and market making.⁴⁹ According to the Exchange, the proposed BSTX Rule 19000 Series would specify business conduct requirements that are substantially similar to those of other national securities exchanges,⁵⁰ which pertain to: just and equitable principles of trade; adherence to law; use of fraudulent devices; false statements; know your customer; fair dealing with customers; suitability; prompt receipt and delivery of securities; charges for services performed; use of information obtained in a fiduciary capacity; publication of transactions and quotations; offers at stated prices; payments involving publications that influence the market price of a security; customer confirmations; disclosure of a control relationship with an issuer of securities; discretionary accounts; improper use of customers' securities or funds and a prohibition against guarantees and sharing in accounts; the extent to which sharing in accounts is permissible; communications with customers and the public; gratuities; telemarketing; mandatory systems testing; and short interest reporting. The Exchange states that the proposed business conduct rules are 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.⁵¹

⁴⁹ See proposed BSTX Rule Series 19000, 20000, 21000, 23000, 24000, 25000, and 25200.

⁵⁰ See Amendment No. 2, supra note 9, at 48 (citing to Cboe BZX Rules Chapter III and IEX Rules Chapter 3).

⁵¹ See OIP, supra note 7, 86 FR at 49427. For example, the Exchange is not proposing to adopt a rule contained in other national securities 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 Regular Trading Hours because executions may only occur during Regular Trading Hours on the BSTX System. See id. at 49427 n.113 (citing to IEX Rule 3.290 and Cboe BZX Rule 3.21). "Regular Trading Hours" would mean the time between 9:30 a.m. and 4:00 p.m. Eastern Time ("ET"). See proposed BSTX Rule 17000(a)(29).

According to the Exchange, the proposed BSTX Rule 20000 Series would specify financial and operational rules for BSTX Participants associated with maintenance and furnishing of books and records, financial reports, net capital compliance, early warning notifications pursuant to Rule 17a-11 under the Exchange Act, authority of the Chief Regulatory Officer to impose certain restrictions, margin, day-trading margin, customer account information, maintaining records of customer complaints, and disclosure of financial condition.⁵² The Exchange represents that the financial and operational requirements are substantially similar to those of other national securities exchanges.⁵³ Further, the Exchange proposes to adopt supervisory requirements for BSTX Participants in the proposed BSTX Rule 21000 Series, which, according to the Exchange, are substantially similar to those of other national securities exchanges.⁵⁴ The proposed supervisory requirements pertain to enforcing written procedures to appropriately supervise the BSTX Participant’s conduct and compliance with applicable regulatory requirements, designation of an individual to carry out written supervisory procedures, maintenance and keeping of records carrying out the BSTX Participant’s written supervisory procedures, review of activities of each BSTX Participant’s offices, including periodic examination of customer accounts to detect and prevent irregularities or abuses, prevention of the misuse of material non-public information, and implementation of an anti-money laundering compliance program.⁵⁵

⁵² See OIP, supra note 7, 86 FR at 49428.

⁵³ See id. at 49428 & n.116 (citing to Cboe BZX Rules Chapter VI and IEX Rules Chapter 5). The Exchange states that the proposed BSTX Rule 20000 Series also incorporates existing rules of the Exchange or another self-regulatory organization (“SRO”) by reference. See id. at 49428.

⁵⁴ See id.

⁵⁵ See id. at 49428 & n.128 (citing to Cboe BZX Rules Chapter V and IEX Rule 5.150).

The proposed BSTX Rule 22000 Series would provide, among other things, that BSTX Participants must comply with requirements with respect to comparison and settlement, borrowing and deliveries in accordance with Rule 203 of Regulation SHO, forwarding of proxy and other issuer-related materials, commissions, regulatory services agreements, and conditions and limitations on transactions involving Exchange employees.⁵⁶ Proposed BSTX Rule 22070 would generally provide that the rules of the Exchange would not prohibit, condition, or limit the ability of any BSTX Participant, including a BSTX Participant acting as an agent, to effect any transaction otherwise than on the Exchange with another person in any security listed on the Exchange or to which UTP on the Exchange has been extended.⁵⁷ The Exchange represents that these miscellaneous requirements are substantially similar to rules of other national securities exchanges.⁵⁸ The Exchange also proposes to adopt the BSTX Rule 23000 Series relating to trading practice requirements for BSTX Participants, including prohibiting forms of market manipulation and specifying certain obligations broker-dealers have to their customers, such as

⁵⁶ See proposed BSTX Rule 22000 Series.

⁵⁷ See Amendment No. 2, supra note 9, at 58; proposed BSTX Rule 22070. The Exchange states that the proposed rule is consistent with the requirements of Rules 19c-1 and 19c-3 under the Exchange Act and substantially similar to rules of other national securities exchanges. See Amendment No. 2, supra note 9, at 58 (citing to, for example, Cboe BZX Rule 13.6).

⁵⁸ See OIP, supra note 7, 86 FR at 49429 & n.138 (citing to Cboe BZX Rules Chapter XIII and IEX Rule 6.180).

the duty of best execution.⁵⁹ The Exchange represents that the trading practice rules are substantially similar to those of other national securities exchanges.⁶⁰

With respect to the imposition of suspension and disciplinary actions, the Exchange states that it proposes to adopt the BSTX Rule 24000 Series, which would provide that the Exchange rules⁶¹ pertaining to discipline and suspension of Exchange Participants that have been approved by the Commission shall be applicable to BSTX Participants and trading on the BSTX System.⁶²

The Exchange proposes to allow firms to register as Market Makers and Designated Market Makers (“DMMs”)⁶³ with affirmative and negative market making obligations.⁶⁴ A

⁵⁹ According to the Exchange, the proposed BSTX 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; and (xiv) a prohibition against disruptive quoting and trading activity. See id. at 49429.

⁶⁰ See id. at 49429 & n.155 (citing to Cboe BZX Rules Chapter XII). The Exchange states that the proposed minimum price improvement standards in proposed BSTX Rule 23050(h) are consistent with those of other national securities exchanges and the Financial Industry Regulatory Authority (“FINRA”). See Amendment No. 2, supra note 9, at 62 (citing to Cboe BZX Rule 12.6.06).

⁶¹ See BOX Rule 11000 Series (Summary Suspension), 12000 Series (Discipline), 13000 Series (Review of Certain Exchange Actions), and 14000 Series (Arbitration).

⁶² See OIP, supra note 7, 86 FR at 49430–31; proposed BSTX Rule 24000. In addition, the Exchange proposes to amend its Minor Rule Violation Plan to add certain rules relating to BSTX to the list of rules eligible for minor rule violation plan treatment, by amending BOX Rule 12140 and adopting proposed BSTX Rule 24010 (Penalty for Minor Rule Violations). See Amendment No. 2, supra note 9, at 121.

⁶³ “Designated Market Maker” or “DMM” would be defined as a BSTX Participant registered as a DMM pursuant to the BSTX Rule 25200 Series. See proposed BSTX Rule 17000(a)(20).

⁶⁴ See proposed BSTX Rule 25200 Series. The Exchange states that rules relating to market makers are similar to the rules of other national securities exchanges. See Amendment No. 2, supra note 9, at 95–102 (citing to IEX Rules 11.150 and 11.151 and

BSTX Participant registered as a BSTX Market Maker, including a DMM, would be required to engage in a course of dealing for its own account in the maintenance of a fair and orderly market.⁶⁵ Among other things, each Market Maker must maintain two-sided quotes during the regular market session for each Security in which it is registered as a Market Maker.⁶⁶ A non-DMM Market Maker may temporarily withdraw its Market Maker status,⁶⁷ and any BSTX Market Maker, other than a DMM, may voluntarily terminate its registration with the

NYSE American Rules 7.20E through 7.26E). The Exchange states that proposed BSTX Rule 25200 differs from IEX Rule 11.150 in that IEX makes the registration effective on the trading day after the request is entered, whereas the Exchange would have discretion to make registration effective the day the request is entered with notice provided to the prospective BSTX Market Maker. See id. at 95 n.277.

⁶⁵ See proposed BSTX Rule 25220. The Exchange states that proposed BSTX Rule 25220 is substantially similar to NYSE American Rule 7.23E, with certain exceptions, and IEX Rule 11.151. According to the Exchange, the proposed BSTX rule differs from NYSE American Rule 7.23E in that, among other things, the proposed BSTX rule specifies the minimum quotation increment for securities priced above \$1.00 per share and below \$1.00 per share and requires Market Maker quotations to be firm for their displayed size and automatically executable. See Amendment No. 2, supra note 9, at 97–98. See also infra note 66.

⁶⁶ See proposed BSTX Rule 25220(a)(1). The Exchange proposes that the quotes must be entered within the “Designated Percentage,” which according to the Exchange would be the same as that required of market makers on other national securities exchanges. See Amendment No. 2, supra note 9, at 96 (citing to IEX Rule 11.151). The Exchange notes, however, that the Defined Percentage and “Defined Limit,” which is the percentage by which price movements cause a Market Maker or DMM’s quotations to fall outside of the national best bid and offer (“NBBO”) or last sale price, differ from NYSE American Rule 7.23E in that the Exchange specifies Defined Percentage and Defined Limit with reference to securities that are part of the S&P500 Index, Russell 1000 Index, or a pilot list of exchange traded products. The Exchange states its belief that the difference does not pose any novel requirements and is similar to the market maker requirements of IEX. See id. at 98 (citing to IEX Rules 11.151(a)(6), (7), (11), and 11.151(b)(1)).

⁶⁷ See proposed BSTX Rule 25220(d). According to the Exchange, the process by which a DMM may temporarily withdraw from its DMM status is similar to the process applicable to a non-DMM Market Maker. See proposed BSTX Rule 25240(b)(4); OIP, supra note 7, 86 FR at 49438.

Exchange.⁶⁸ If the Exchange finds any substantial or continued failure by a BSTX Market Maker to engage in a course of dealings specified in proposed BSTX Rule 25220(a),⁶⁹ the Exchange would subject the Market Maker to disciplinary action or suspension or revocation of the registration by the Exchange in one or more of the Securities in which the Market Maker is registered.⁷⁰

Proposed BSTX Rule 25230 sets forth certain requirements for Market Maker Authorized Traders (“MMATs”), which are individuals permitted to enter orders only for the account of the Market Maker or DMM for which they are registered.⁷¹ The proposed rule specifies, among other things, eligibility for registration as a MMAT, the Exchange’s ability to suspend an individual’s registration as a MMAT, and the process for voluntary withdrawal of a MMAT via written request of the BSTX Participant for which the MMAT is registered.⁷² The Exchange represents that the proposed provisions related to MMATs are substantially similar to those of other national securities exchanges.⁷³ Proposed BSTX Rule 25240 sets forth the registration and obligations of DMMs.⁷⁴ Among other things, a DMM must be registered as a Market Maker

⁶⁸ See proposed BSTX Rule 25210(d).

⁶⁹ See supra note 66; proposed BSTX Rule 25220(a).

⁷⁰ See proposed BSTX Rule 25220(c).

⁷¹ See proposed BSTX Rule 25230.

⁷² See id.

⁷³ See Amendment No. 2, supra note 9, at 98 (citing to NYSE American Rule 7.21E and Cboe BZX Rule 11.6).

⁷⁴ See proposed BSTX Rule 25240. The Exchange represents that proposed BSTX Rule 25240 is substantially similar to NYSE American Rule 7.24E, except the Exchange would not be required to assign a DMM if the Security has an adequate number of BSTX Market Makers assigned to such Security. The Exchange states that 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 four active Market Makers,

and, in addition to meeting the obligations of Market Makers set forth in proposed BSTX Rule 25220,⁷⁵ the DMM must maintain a bid or offer at the NBBO at least 25% of the day as measured across all Securities that have been assigned to the DMM.⁷⁶ Proposed BSTX Rule 25240 further provides that all BSTX-listed Securities may be assigned to a DMM and there would be no more than one DMM per BSTX-listed Security.⁷⁷ A BSTX Participant registered as a DMM in a Security may also be registered as a Market Maker in that Security only if the BSTX Participant maintains information barriers between the trading unit operating as a DMM and the trading unit operating as a non-DMM Market Maker in the same Security.⁷⁸ Proposed BSTX Rule 25250 would set forth the allocation and reallocation of Securities to DMMs.⁷⁹ Among other things, the proposed rule would set forth when a Security is eligible for allocation or reallocation, as well as the eligibility of DMMs to participate in the allocation process.⁸⁰ The proposed rule further sets forth the allocation process—whether the issuer selects the DMM

consistent with proposed the Market Maker requirement in BSTX Rule 26106. See Amendment No. 2, supra note 9, at 99–100.

⁷⁵ See supra notes 65–66.

⁷⁶ See proposed BSTX Rule 25240(c).

⁷⁷ See proposed BSTX Rule 25240(a).

⁷⁸ See proposed BSTX Rule 25240(b)(3).

⁷⁹ See proposed BSTX Rule 25250.

⁸⁰ See proposed BSTX Rule 25250(a). The Exchange states that the process by which the Exchange would handle a DMM that fails to meet its obligations, as proposed in BSTX Rule 25250(a)(4), is substantially similar to NYSE American Rule 7.25E(a)(4). See OIP, supra note 7, 86 FR at 49438 & n.254.

directly, delegates the selection to the Exchange, or opts to proceed with listing without a DMM, in which case a minimum of four non-DMM Market Makers must be assigned to its Security.⁸¹

In the event that a listed company wishes to change its DMM, proposed BSTX Rule 25250(c) sets forth the reallocation process.⁸² Should a DMM lose its registration or voluntarily withdraw its registration, the DMM would be ineligible, under the Exchange’s “Allocation Freeze Policy,” for future allocations for a six-month period.⁸³ For companies that list Securities through an initial public offering, the allocation decision would remain effective for 18 months.⁸⁴ The proposed rule also sets forth criteria the Exchange may consider for applicants that are not currently DMMs to be allocated a Security as a DMM.⁸⁵

The Exchange proposes the DMM combination review policy in BSTX Rule 25260.⁸⁶ A DMM combination would require proponents of the combination to make a written submission to the Office of the Corporate Secretary of the Exchange addressing certain enumerated factors for the Exchange to consider in reviewing the proposed combination, and as well as the

⁸¹ See proposed BSTX Rule 25250(b). See also Exhibit 3D. The Exchange states that the proposed rule is similar to NYSE American Rule 7.25E(b). See Amendment No. 2, *supra* note 9, at 101.

⁸² See proposed BSTX Rule 25250(c). The Exchange represents that the proposed reallocation policy is substantially similarly to corresponding provisions in NYSE American Rule 7.25E(c). See OIP, *supra* note 7, 86 FR at 49439.

⁸³ See proposed BSTX Rule 25250(d); OIP, *supra* note 7, 86 FR at 49439 (stating that the proposed rule is substantially similar to NYSE American Rule 7.25E(d)).

⁸⁴ See proposed BSTX Rule 25250(e); OIP, *supra* note 7, 86 FR at 49439 (stating that the proposed rule is substantially similar to NYSE American Rule 7.25E(e)).

⁸⁵ See proposed BSTX Rule 25250(f); OIP, *supra* note 7, 86 FR at 49439 (stating that the proposed rule is substantially similar to NYSE American Rule 7.25E(f)).

⁸⁶ See proposed BSTX Rule 25260.

procedures the Exchange would follow in approving or disapproving a combination.⁸⁷ The proposed rule also sets forth the timeline for the Exchange to approve or disapprove a combination, the ability of the Exchange to grant conditional approvals, and the ability to have the Exchange's board of directors to review a disapproval decision.⁸⁸

The Exchange's rules with respect to participation on BSTX, including the proposed affirmative and negative obligations for Market Makers and DMMs, and the proposed business conduct, financial and operational, supervision, and trading practice rules, raise no novel regulatory issues. The Commission finds that these proposed rules are consistent with the Exchange Act, and Section 6(b)(5) of the Exchange Act in particular,⁸⁹ because by setting forth these requirements for different types of participants, they establish a framework for what entities will participate in BSTX and how they will interact with other BSTX Participants and fulfill their obligations, which should help to promote just and equitable principles of trade, perfect the mechanism of a national market system and, in general, protect investors and the public interest. The Commission also finds that these proposed rules subject BSTX Participants, including BSTX Market Makers and DMMs, to appropriate discipline for improper conduct, consistent with Sections 6(b)(6) and 6(b)(7) of the Exchange Act.⁹⁰

⁸⁷ See id.

⁸⁸ See id. The Exchange represents that the proposed rule is substantially similar to NYSE American Rule 7.26E. See OIP, supra note 7, 86 FR at 49439.

⁸⁹ 15 U.S.C. 78f(b)(5).

⁹⁰ 15 U.S.C. 78f(b)(6) and (7).

B. BSTX System

The Exchange proposes that BSTX would operate the BSTX System as a fully automated, price-time priority execution system.⁹¹ The BSTX System would operate as an “automated trading center” under Rule 600(b)(7) of Regulation NMS and would display “automated quotations” under Rule 600(b)(6) of Regulation NMS at all times, except in the event that a system malfunction renders the BSTX System incapable of displaying automated quotations.⁹² BSTX’s best-priced quotation in an NMS stock would be a “protected quotation” under Rules 600(b)(70) and 600(b)(71) of Regulation NMS.⁹³ Only a BSTX Participant approved for trading on the BSTX System or a person associated with such a BSTX Participant would be able to effect any transactions on the BSTX System.⁹⁴

Order Types and Instructions

Proposed BSTX Rule 25060(c) provides that BSTX Participants may enter orders to the BSTX System as limit orders or Inter-Market Sweep Orders (“ISOs”).⁹⁵ The BSTX System would only support two time-in-force (“TIF”) designations: DAY and IOC.⁹⁶ Under proposed

⁹¹ See OIP, supra note 7, 86 FR at 49416.

⁹² 17 CFR 242.600(b)(6) and (b)(7). See Amendment No. 2, supra note 9, at 86; proposed BSTX Rule 25100(c).

⁹³ 17 CFR 242.600(b)(70) and (b)(71). See OIP, supra note 7, 86 FR at 49435 & n.210.

⁹⁴ See OIP, supra note 7, 86 FR at 49431; proposed BSTX Rule 25000(a). The Exchange represents that proposed BSTX Rule 25000 is substantially similar to IEX Rule 11.140. See Amendment No. 2, supra note 9, at 65 n.175.

⁹⁵ See proposed BSTX Rule 25060(c). The Exchange states that if a BSTX Participant fails to specify a limit price with respect to its limit order, such order shall be rejected. 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 immediate-or-cancel (“IOC”). See OIP, supra note 7, 86 FR at 49434 & n.202.

⁹⁶ See OIP, supra note 7, 86 FR at 49434; proposed BSTX Rule 25060(d).

BSTX Rule 25060(d), all orders would be given a default TIF of DAY.⁹⁷ DAY orders may queue during the Pre-Opening Phase⁹⁸ or before the resumption of trading following a trading halt, may trade only during Regular Market Hours, and, if unexecuted at the close of the trading day (4:00 p.m. ET), would be cancelled by the BSTX System.⁹⁹ BSTX Participants may also designate orders as IOC, which overrides the default TIF of DAY.¹⁰⁰ IOC orders are not accepted by the BSTX System during the Pre-Opening Phase, and during Regular Trading Hours, IOC orders will execute in whole or in part immediately upon receipt by the BSTX System.¹⁰¹ The BSTX System would not support modification of resting orders, and to change the price or quantity of an order resting on the BSTX Book,¹⁰² a BSTX Participant must cancel the resting order and submit a new order, which would result in a new time stamp for purposes of BSTX Book priority.¹⁰³ The Exchange states that all orders on BSTX would be displayed.¹⁰⁴ With the exception of the order parameter to preference faster settlement,¹⁰⁵ the order types and instructions the Exchange has proposed for the BSTX System are similar to those approved by

⁹⁷ See OIP, supra note 7, 86 FR at 49434; proposed BSTX Rule 25060(d)(1).

⁹⁸ “Pre-Opening Phase” would mean the time between 8:30 a.m. and 9:30 a.m. ET. See proposed BSTX Rule 17000(a)(28).

⁹⁹ See OIP, supra note 7, 86 FR at 49434; proposed BSTX Rule 25060(d)(1).

¹⁰⁰ See OIP, supra note 7, 86 FR at 49434; proposed BSTX Rule 25060(d)(2).

¹⁰¹ See id.

¹⁰² “BSTX Book” would mean the electronic book of orders on each Security maintained by the BSTX System. See proposed BSTX Rule 17000(a)(10).

¹⁰³ See OIP, supra note 7, 86 FR at 49434; proposed BSTX Rule 25060(f).

¹⁰⁴ See OIP, supra note 7, 86 FR at 49434. The Exchange states that the BSTX System will not support hidden orders, undisplayed liquidity, price sliding, pegged orders, or other order type features that add complexity upon the initial launch of BSTX. See id.

¹⁰⁵ See infra notes 190–207 and accompanying text.

the Commission and currently available on other national securities exchanges¹⁰⁶ and raise no new regulatory issues. The Commission finds these proposed rules are consistent with the Exchange Act, and Section 6(b)(5)¹⁰⁷ of the Exchange Act in particular, because they establish the types of orders and modifiers that all BSTX Participants may use and provide transparency regarding how orders would operate on the BSTX System, which should help promote just and equitable principles of trade, foster coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a national market system.

Auctions

The Exchange proposes that order entry in BSTX-listed Securities¹⁰⁸ may commence at 8:30 a.m. ET during the Pre-Opening Phase, in which orders are placed on the BSTX Book but do not generate executions until Regular Trading Hours begin at 9:30 a.m. ET.¹⁰⁹ The Exchange

¹⁰⁶ See, e.g., Cboe BZX Rule 11.9(d).

¹⁰⁷ 15 U.S.C. 78f(b)(5).

¹⁰⁸ Although the Exchange initially plans to only support trading in securities listed on BSTX, the Exchange states that it may in the future propose to trade securities listed on other national securities exchanges, subject to any necessary changes to its rules to support its trading pursuant to Section 19(b) and Rule 19b-4 of the Exchange Act. The Exchange also states that for such reason it proposes to adopt an opening process for non-BSTX-listed securities as a placeholder for potential trading of securities listed on other national securities exchanges in the future. The Exchange states that the proposed process for opening securities listed on other national securities exchanges is similar to the existing rules of another national securities exchange. See proposed BSTX Rule 25040(e); Amendment No. 2, *supra* note 9, at 74–75 (citing to Cboe BZX Rule 11.24).

¹⁰⁹ See OIP, *supra* note 7, 86 FR at 49431. During the Pre-Opening Phase, orders may not be cancelled or modified from 9:28 a.m. to 9:30 a.m. Orders received during the 10 seconds prior to the Opening Auction would be rejected. See proposed BSTX Rule 25040(a)(1). “Opening Auction” would be defined as the process of crossing orders in BSTX-listed Securities to open the market. See proposed BSTX Rule 25040(a)(6). The Exchange states that these provisions are consistent with the rules of other equities exchanges. See Amendment No. 2, *supra* note 9, at 68 n.185 (citing to IEX Rules 11.350(c)(1)(B) and (C)).

states that, similar to how its opening process works for options trading, BSTX would calculate and disseminate a theoretical opening price (“TOP”) from the time that the BSTX System commences accepting orders to BSTX Participants for the current orders resting on the BSTX Book during the Pre-Opening Phase.¹¹⁰ The Exchange proposes to disseminate the TOP and other Broadcast Information pursuant to proposed BSTX Rule 25040(a)(3) during the Pre-Opening Phase.¹¹¹ Broadcast Information would be recalculated and disseminated via electronic means (i.e., market data feeds) every five seconds.¹¹²

At the time of the opening match (i.e., 9:30 a.m. ET), the BSTX System would establish a single price at which the BSTX-listed Security would be opened (“BSTX Official Opening Price”), which would be the TOP at the moment of the Opening Auction, provided that the resulting price must be within the Collar Price Range.¹¹³ The Exchange states that the BSTX

¹¹⁰ See OIP, supra note 7, 86 FR at 49431; proposed BSTX Rule 25040(a)(2). The TOP is the price at which the Opening Auction would occur at the current time, if that time were the opening, according to the Opening Auction procedures in proposed BSTX Rule 25040(a)(6). See proposed BSTX Rule 25040(a).

¹¹¹ See OIP, supra note 7, 86 FR at 49431–32. Specifically, in addition to the TOP, “Broadcast Information” would include: (i) “Paired Orders,” which is the quantity of shares that would execute at the TOP; (ii) the “Imbalance Quantity,” which is the number of shares 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. See Amendment No. 2, supra note 9, at 68–69.

¹¹² See Amendment No. 2, supra note 9, at 69; proposed BSTX Rule 25040(a)(4). The Exchange states that Cboe BZX similarly broadcasts opening auction information every five seconds. See Amendment No. 2, supra note 9, at 69 n.189 (citing to Cboe BZX Rule 11.23(b)(2)(A)).

¹¹³ See Amendment No. 2, supra note 9, at 69–70. See proposed BSTX Rule 25040(a)(5) for a definition of the “Collar Price Range.” As the BSTX Official Opening Price is determined and the matched shares are executed in the Opening Auction, the BSTX System would proceed to move the Security from the Pre-Opening Phase to the continuous or regular trading phase and disseminate the opening trade price, if any. Any orders that remain unexecuted in the Opening Auction, including any remaining portion of a partially executed order, would be moved onto the BSTX Book for the regular

System would determine a single price at which a BSTX-listed Security would be opened by calculating the optimum number of shares that could be matched at a price, taking into consideration all the orders on the BSTX Book.¹¹⁴ The Exchange states that the requirement that the BSTX Official Opening Price must be within the Collar Price Range is designed to ensure that a Security opens in a fair and orderly manner and under market conditions where there is sufficient quotation interest (e.g., a NBBO), the market is not crossed, and where the opening price will not drastically depart from the market at the time of the auction or the preceding day's closing price.¹¹⁵ The Exchange proposes that when the BSTX System cannot determine an opening price from the Opening Auction, BSTX would nevertheless open the Security for trading and move all trading interest received during the Pre-Opening Phase to the BSTX Book, and that in such case, the BSTX Official Opening Price would be the Final Last Sale Eligible Trade.¹¹⁶

trading phase and would retain their price/time priority consistent with proposed BSTX Rule 25080. See proposed BSTX Rule 25040(a)(7).

¹¹⁴ See Amendment No. 2, supra note 9, at 69; proposed BSTX Rule 25040(a)(6)(ii). The Exchange states that the determination of the opening match price is consistent with the manner in which the Exchange opens options trading. See Amendment No. 2, supra note 9, at 69. Proposed BSTX Rule 25040(a)(6)(ii) would further provide that the BSTX Official Opening Price is the price which results in the matching of the highest number of shares. If two or more prices would satisfy this maximum quantity criteria, the price leaving the fewest resting shares in the BSTX Book would be selected as the BSTX Official Opening Price. Where two or more prices would satisfy the maximum quantity criteria and leave the fewest shares in the BSTX Book, the price closest to the previous day's last round lot trade occurring during Regular Trading Hours on the Exchange ("BSTX Official Closing Price") will be selected as the BSTX Official Opening Price. See proposed BSTX Rules 25040(a)(5)(ii) and (6)(ii).

¹¹⁵ See OIP, supra note 7, 86 FR at 49432; proposed BSTX Rule 25040(a)(5).

¹¹⁶ See Amendment No. 2, supra note 9, at 70; proposed BSTX Rule 25040(a)(7). See also proposed BSTX Rule 25040(a)(5)(ii) (defining "Final Last Sale Eligible Trade").

The Exchange states that the opening process for initial public offerings of Securities (“Initial Security Offerings”) would be generally the same as regular market openings.¹¹⁷ However, in advance of an Initial Security Offering auction (“Initial Security Offering Auction”), the Exchange would announce a “Quote-Only Period” of between 15 and 30 minutes plus a short random period prior to the Initial Security Offering Auction.¹¹⁸ Orders may not be submitted to participate in an Initial Security Offering Auction until the beginning of the Quote-Only Period.¹¹⁹ All orders associated with the Initial Security Offering Auction must be received prior to the end of the Quote-Only Period in order to participate in the auction.¹²⁰ Limit orders with TIF of DAY submitted during the Quote-Only Period would be eligible to participate in the Initial Security Offering Auction.¹²¹ According to the Exchange, it would disseminate Broadcast Information at the commencement of the Quote-Only Period as with regular market openings, and Broadcast Information would be re-calculated and disseminated via electronic means every five seconds.¹²² Orders would be matched and executed at the conclusion of the Quote-Only

¹¹⁷ See OIP, supra note 7, 86 FR at 49432.

¹¹⁸ See id.; proposed BSTX Rule 25040(b)(1). The Quote-Only Period may be extended in certain cases where (i) there is no TOP; (ii) the underwriter requests an extension; (iii) the TOP moves the greater of 10% or 50 cents in the 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 Auction or of the Exchange to complete the Initial Security Offering Auction. See proposed BSTX Rule 25040(b)(2). In the event of any extension to the Quote-Only Period or a trading pause, the Exchange proposes to notify market participants regarding the circumstances and length of the extension. See OIP, supra note 7, 86 FR at 49432; proposed BSTX Rule 25040(b)(4).

¹¹⁹ See proposed BSTX Rule 25040(b)(1).

¹²⁰ See id.

¹²¹ See id. Orders marked IOC submitted during the Quote-Only Period would be rejected. See id.

¹²² See Amendment No. 2, supra note 9, at 71; proposed BSTX Rule 25040(b)(3).

Period, rather than at 9:30 a.m. ET.¹²³ Following the initial cross at the end of the Quote-Only Period wherein orders will execute based on price/time priority, consistent with proposed BSTX Rule 25080, the Exchange would transition to normal trading pursuant to proposed BSTX Rule 25040(a)(6).¹²⁴

The Exchange also proposes a process for reopening trading following a “trading halt,” a halt or pause in trading initiated by the Exchange, or a Limit Up-Limit Down Trading Pause¹²⁵ (“Halt Auctions”).¹²⁶ For Halt Auctions, the Exchange proposes that in advance of reopening, the Exchange would announce a Quote-Only Period that would be five minutes prior to the Halt

¹²³ See OIP, *supra* note 7, 86 FR at 49432; proposed BSTX Rule 25040(b)(5).

¹²⁴ See Amendment No. 2, *supra* note 9, at 71–72; proposed BSTX Rule 25040(b)(5).

¹²⁵ See proposed BSTX Rule 25050(g). The Exchange states that proposed BSTX Rule 25050 regarding trading halts is substantially similar to other national securities exchange rules adopted in connection with the NMS Plan to Address Extraordinary Market Volatility (“LULD Plan”—for example, IEX Rule 11.280—with certain exceptions, such as excluding rules relating to order types and other aspects of the LULD Plan that would not be supported by the Exchange, including market orders and auction orders. See Amendment No. 2, *supra* note 9, at 78–79. 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. See OIP, *supra* note 7, 86 FR at 49433; proposed BSTX Rule 25050(d). In addition, the Exchange proposes to reserve the right to halt or suspend trading in other circumstances where the Exchange deems it necessary to do so for the protection of investors and the public interest, or pursuant to any other Exchange rule or policy. See OIP, *supra* note 7, 86 FR at 49434; proposed BSTX Rule 25050(f). Proposed BSTX Rule 25010(d) would allow for the CEO, President, or Chief Regulatory Officer, or such person’s designee, provided the designee is a senior officer, to halt or suspend trading in securities. The Exchange states that while comparable rules of other national securities exchanges (e.g., IEX Rule 11.110(c) and BOX Rule 7020) may not currently specify that the Chief Regulatory Officer has the authority, both of these comparable rules contemplate the CEO or President delegating the task to a senior officer, which could be the Chief Regulatory Officer. The Exchange states that it does not believe that the addition of the Chief Regulatory Officer would expand the authority of who can declare a trading halt or suspend trading. See Amendment No. 2, *supra* note 9, at 65 n.176.

¹²⁶ See Amendment No. 2, *supra* note 9, at 72; proposed BSTX Rule 25040(c).

Auction, and that all orders associated with the Halt Auction must be received prior to the end of the Quote-Only Period in order to participate in the auction.¹²⁷ According to the Exchange, it would disseminate the same Broadcast Information as it does for an Initial Security Offering Auction, except it would also disseminate to market participants the applicable Halt Auction Reference Price and the Halt Auction Collars, and would similarly provide notification of any extension to the Quote-Only Period as with an Initial Security Offering Auction.¹²⁸ The transition to normal trading would also occur in the same manner as for Initial Security Offering Auctions.¹²⁹

In the event a disruption occurs that prevents the execution of an Initial Security Offering Auction or Halt Auction, including any extensions, the Exchange proposes to apply certain

¹²⁷ See Amendment No. 2, supra note 9, at 72–73; proposed BSTX Rule 25040(c)(1). Limit orders with TIF of DAY submitted during the Quote-Only Period would be eligible to participate in the Halt Auction, whereas orders marked IOC submitted during the Quote-Only Period would be rejected. See OIP, supra note 7, 86 FR at 49432; proposed BSTX Rule 25040(c)(1). In addition, Halt Auctions would be subject to the proposed Halt Auction Collars, which the Exchange states are substantially similar to those provided by Cboe BZX, and are designed to ensure that the Exchange is able to re-open trading in a Security in a fair and orderly manner. To the extent a Halt Auction is unable to be performed due to the absence of a TOP or the TOP is outside the proposed Halt Auction Collars, the Exchange would extend the period of Halt Auction for an additional five minutes (“Initial Extension Period”). After the Initial Extension Period, the Exchange proposes that the Quote-Only Period be extended for additional five-minute periods, should a Halt Auction be unable to be performed due to absence of a TOP or because the TOP is outside the proposed Halt Auction Collars (“Additional Extension Period”), until a Halt Auction occurs. See Amendment No. 2, supra note 9, at 72 n.206 and n.207; proposed BSTX Rule 25040(c)(2).

¹²⁸ See Amendment No. 2, supra note 9, at 73; proposed BSTX Rule 25040(c)(3). In addition, the Exchange represents that if a trading halt is triggered by the Exchange or if the Exchange is unable to reopen trading at the end of the trading halt 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 Exchange Act. See proposed BSTX Rule 25040(c)(4).

¹²⁹ See OIP, supra note 7, 86 FR at 49432.

contingency procedures.¹³⁰ For a disruption in an Initial Security Offering Auction, the Exchange would publicly announce that the Quote-Only Period for the Initial Security Offering Auction will reset for the subject Security, cancel all orders on the BSTX Book, and disseminate a new scheduled time for the Quote-Only Period and opening match.¹³¹ Similarly, for a disruption in a Halt Auction, the Exchange would publicly announce that no Halt Auction will occur and all orders in the halted Security on the BSTX Book will be cancelled, after which the Exchange will open the Security for trading without an auction.¹³²

The Exchange has not proposed to operate a closing auction. Instead, the Exchange proposes that the BSTX Official Closing Price will be the last round lot trade occurring during Regular Trading Hours on BSTX.¹³³ The Exchange states that it believes this method is a simple and fair way to establish the closing price of a Security, and is consistent with the overall proposed simplified market structure for BSTX that does not include order types such as market-on-close or limit-on-close.¹³⁴

The Commission believes that the proposed opening, re-opening, and closing procedures are reasonably designed to provide for an orderly opening or re-opening of trading or close of trading on BSTX, and thus are consistent with the Exchange Act, and in particular the Section 6(b)(5) goals of removing impediments to the mechanism of a national market system and protecting investors and the public interest.¹³⁵

¹³⁰ See id. at 49432–33; proposed BSTX Rule 25040(d).

¹³¹ See OIP, supra note 7, 86 FR at 49432–33; proposed BSTX Rule 25040(d)(1).

¹³² See OIP, supra note 7, 86 FR at 49433; proposed BSTX Rule 25040(d)(2).

¹³³ See Amendment No. 2, supra note 9, at 77–78; proposed BSTX Rule 25040(a)(5)(ii).

¹³⁴ See Amendment No. 2, supra note 9, at 78.

¹³⁵ 15 U.S.C. 78f(b)(5).

Order Priority and Execution

The Exchange proposes BSTX Rule 25080 to govern the execution of orders on the BSTX System.¹³⁶ 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.¹³⁷ Further, the proposed rule provides that an order would be cancelled back to the BSTX Participant if, based on market conditions, BSTX Participant instructions, applicable Exchange Rules, and/or the Exchange Act and the rules and regulations thereunder, such order is not executable and cannot be posted to the BSTX Book.¹³⁸ Specifically, proposed BSTX Rules 25080(b)(1) through (3) provide that executions occurring on BSTX will comply with Regulation SHO, Regulation NMS, including Rule 611, and the LULD Plan.¹³⁹ In addition, proposed BSTX Rule 25130 prohibits BSTX Participants from engaging in a pattern or practice of displaying quotations that lock or cross a protected quotation, unless an exception applies, and provides that the BSTX System will reject any order or quotation that would lock or cross a protected quotation of another national securities exchange at the time of entry.¹⁴⁰

¹³⁶ See proposed BSTX Rule 25080.

¹³⁷ See OIP, *supra* note 7, 86 FR at 49434; proposed BSTX Rule 25080(a).

¹³⁸ See proposed BSTX Rule 25080(b). The Exchange states that sell orders cannot execute at a price below the best bid in the marketplace and buy orders cannot execute at a price above the best offer in the marketplace. See OIP, *supra* note 7, 86 FR at 49434.

¹³⁹ See proposed BSTX Rules 25080(b)(1)-(3).

¹⁴⁰ See OIP, *supra* note 7, 86 FR at 49437; proposed BSTX Rule 25130. The Exchange states that the proposed rule is substantially similar to the rules of other national securities exchanges. See Amendment No. 2, *supra* note 9, at 93 (citing to IEX Rule 11.310 and Cboe BZX Rule 11.20).

To meet their regulatory responsibilities under Rule 611(a) of Regulation NMS, other trading centers will be required to have sufficient notice of new protected quotations, as well as all necessary information (such as final technical specifications).¹⁴¹ The Commission believes that it would be a reasonable policy and procedure under Rule 611(a) to require that industry participants begin treating BSTX's best bid and best offer as a protected quotation as soon as possible but no later than 90 days after BOX begins operation of its equities trading platform. The Commission has taken the same position with other new equities exchanges.¹⁴²

In light of the foregoing, the Commission finds that the proposed BSTX trading rules are consistent with the Exchange Act and, in particular, Section 6(b)(5) of the Exchange Act, because they set forth a fair and transparent process for establishing order priority and are reasonably designed to ensure compliance with Commission rules concerning quoting and executions, which should promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and protect investors and the public interest.¹⁴³

¹⁴¹ See Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038, 30041 (May 24, 2006) (File No. S7-10-04) (extending the compliance dates for Rule 610 and Rule 611 of Regulation NMS under the Exchange Act).

¹⁴² See, e.g., Securities Exchange Act Release Nos. 85828 (May 10, 2019), 84 FR 21841 (May 15, 2019) (File No. 10-234) (order granting registration of Long-Term Stock Exchange, Inc.); and 88806 (May 4, 2020), 85 FR 27451 (May 8, 2020) (File No. 10-237) (order granting registration of MEMX).

¹⁴³ 15 U.S.C. 78f(b)(5).

Market Data Products

The Exchange proposes to offer proprietary market data products, including BSTX Depth-of-Book, BSTX Top-of-Book, and BSTX Last Sale.¹⁴⁴ The Exchange states that its proposed rule regarding market data product offerings is substantially similar to the rules of another national securities exchange.¹⁴⁵

In addition, the Exchange proposes to offer a historical market data product, known as the BSTX Market Data Blockchain, that would provide information about trading on the BSTX System.¹⁴⁶ The BSTX Market Data Blockchain would operate as a private, permission-based blockchain that will allow BSTX Participants to see detailed information on their own trading activity on BSTX and anonymized information with respect to the trading activity of other BSTX Participants. According to the Exchange, BSTX Participants would have no obligations with respect to providing information to, accessing, maintaining, or using the BSTX Market Data Blockchain.¹⁴⁷ Each BSTX Participant would be assigned a BSTX Market Data Blockchain

¹⁴⁴ See proposed BSTX Rule 22060. BSTX Depth-of-Book is a data feed that contains all displayed orders for securities traded on the Exchange, order executions, order cancellations, order modifications, order identification numbers, administrative messages, and auction information disseminated pursuant to proposed BSTX Rule 25040 (Auctions). See proposed BSTX Rule 22060(a). BSTX Top-of-Book is an uncompressed data feed that offers top of book quotations and execution information based on orders entered into the BSTX System, as well as auction information disseminated pursuant to proposed BSTX Rule 25040 (Auctions). See proposed BSTX Rule 22060(b). BSTX Last Sale is an uncompressed data feed that offers only execution information based on orders entered into the BSTX System. See proposed BSTX Rule 22060(c).

¹⁴⁵ See OIP, supra note 7, 86 FR at 49429 (citing to MEMX Rule 13.8).

¹⁴⁶ See proposed BSTX Rule 22060(d); OIP, supra note 7, 86 FR at 49420.

¹⁴⁷ See OIP, supra note 7, 86 FR at 49420.

address that corresponds to the BSTX Participant’s trading activity on BSTX.¹⁴⁸ The Exchange would issue login credentials to each user, including any non-BSTX Participant that chooses to subscribe.¹⁴⁹ 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.¹⁵⁰ Specifically, the data provided would be collected from (i) the BSTX System, with respect to information such as executed transactions; and (ii) each BSTX Participant’s order/message passing through the financial information exchange (“FIX”) gateway through which all orders and messages pass to connect to the BSTX System.¹⁵¹ The Exchange states that the BSTX Market Data Blockchain does not require any affirmative action on the part of the BSTX Participants in order for the information to be recorded, but rather captures trading activity that occurs on BSTX in the normal course of trading.¹⁵²

The BSTX Market Data Blockchain would provide two types of information for Regular Trading Hours: (i) Participant Proprietary Data with respect to the specific BSTX Participant;¹⁵³

¹⁴⁸ See proposed BSTX Rule 17020(b).

¹⁴⁹ See Amendment No. 2, supra note 9, at 19 & n.36; proposed BSTX Rule 17020(b).

¹⁵⁰ See OIP, supra note 7, 86 FR at 49420.

¹⁵¹ See id. The Exchange states that BSTX Participants (and non-BSTX Participants to which the BSTX 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. See id. The Exchange further states that the FIX gateway and the BSTX System are the same sources of information used to generate consolidated market data. See id. at 49420 n.39.

¹⁵² See id. at 49420.

¹⁵³ See id. Under proposed BSTX Rule 17020(c)(1), a BSTX Participant would be able to see the following information with respect to all orders and messages submitted by the BSTX Participant and any executions of such orders: (i) symbol, side (buy/sell), limit

and (ii) General Market Data made available to all BSTX Participants and non-BSTX Participants that subscribe.¹⁵⁴ The Exchange represents that no BSTX Participant, or non-BSTX Participant, would have access to the Participant Proprietary Data of another BSTX Participant.¹⁵⁵ Both types of data would be available on a delayed basis of at least five minutes, with each new block of market data showing market data for the preceding five minutes.¹⁵⁶ According to the Exchange, the BSTX Market Data Blockchain would not function as a substitute for real-time market data.¹⁵⁷

price, quantity, time-in-force; (ii) order type (e.g., limit order, ISO); (iii) order capacity (principal/agent); (iv) short/long sale order marking; and (v) message type (e.g., order, modification, cancelation).

¹⁵⁴ See *id.* Under proposed BSTX Rule 17020(c)(2), this would include, in an anonymized format, all displayed orders, modifications, cancelations, and executions occurring on BSTX (i.e., the user may see the symbol, side (buy/sell), limit price, quantity, and message type), along with administrative data and other information from the Exchange (e.g., trading halts or technical messages). See Amendment No. 2, *supra* note 9, at 22–23; proposed BSTX Rule 17020(c)(2). The Exchange states that the BSTX Market Data Blockchain would not include details regarding the T+0 or T+1 order matching preference or matched trades bound for shorter settlement. See Amendment No. 2, *supra* note 9, at 41 n.73.

¹⁵⁵ See OIP, *supra* note 7, 86 FR at 49421. The Exchange states that since no BSTX Participant, or non-BSTX Participant, would be provided with access to trading information of another BSTX Participant, it would not allow for reverse engineering of trading strategies or otherwise compromise the confidential nature of each BSTX Participant's trading information. See *id.*

¹⁵⁶ See Amendment No. 2, *supra* note 9, at 25. The Exchange specifies that the market data uploaded as part of each block would contain the most recent transactions on the Exchange, aged only a few seconds, as well as market data for the preceding five minutes, such that the oldest market data on each new block would be aged at least five minutes. See *id.* at 25 n.44.

¹⁵⁷ See OIP, *supra* note 7, 86 FR at 49421. The Exchange states that consolidated market data or proprietary market data are disseminated on a sub-second, or sub-millisecond, timescale and that even the consolidated securities information processor's 99th percentile of quote latency today is below 100 microseconds. See *id.* at 49421 n.44. The Exchange also states that, to promote clarity with respect to how a BSTX Participant may use the BSTX Market Data Blockchain, proposed BSTX Rule 17020(c)(3) would provide

A BSTX Participant, through the API, would be able to run searches of its previous orders and trading activity using the BSTX Market Data Blockchain. The Participant Proprietary Data would be visible to the specific BSTX Participant in sequential order of when each action occurred¹⁵⁸ and the General Market Data, available to both BSTX Participants and non-BSTX Participants, would allow viewers to observe the historical orders, executions, and other events (e.g., cancellations) received by and occurring on BSTX, which is generally the same information available through subscribing to proprietary data feeds of other exchanges.¹⁵⁹ The Exchange also proposes to append timestamps to the information made available through the BSTX Market Data Blockchain, which would indicate the time to the microsecond at which an order posted to the BSTX Book or that the BSTX System took other actions with respect to an order.¹⁶⁰ A BSTX Participant would have the ability to download market data from the BSTX Market Data

that information available on the BSTX Market Data Blockchain does not act as a substitute for any recordkeeping obligations of a BSTX Participant. See id. at 49422.

¹⁵⁸ The BSTX Participant would be able to filter the different information fields or run searches for a particular item (e.g., only showing cancel orders or only showing activity in a particular symbol). See id. at 49421.

¹⁵⁹ Similar to the Participant Proprietary Data, the General Market Data would generally be visible in sequential order of when each action occurred, although viewers would also have the ability to filter the different information fields or run searches for a particular symbol. The Exchange states that the General Market Data would differ from the Exchange's proprietary market data feed, which provides real-time snapshots of the order book, including depth-of-book quotations and quantity of shares available at each price point. Additionally, the General Market Data 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 orders and transaction information, rather than real-time snapshots. See id. at 49421 n.42.

¹⁶⁰ See id. at 49421.

Blockchain and could potentially use the data to back test trading strategies or evaluate executions received on BSTX.¹⁶¹

The Exchange also proposes to periodically audit, at least bi-annually, the BSTX Market Data Blockchain to help ensure the proper functioning of the BSTX Market Data Blockchain and the accuracy of the information thereon.¹⁶² The Exchange states that it expects to initially audit the BSTX Market Data Blockchain more frequently, likely monthly, during the first year of operations to ensure the BSTX Market Data Blockchain operates as intended.¹⁶³

The Exchange states 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 (“Regulation SCI”) and that the Exchange has in place, among other requirements of Regulation SCI, robust safeguards to protect against any possible system intrusion to the market data blockchain.¹⁶⁴ The Exchange states that any 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.¹⁶⁵

¹⁶¹ See id. at 49422.

¹⁶² See id.; proposed BSTX Rule 17020(d). See also proposed BSTX Rule 17020(c)(3) (stating that information available on the BSTX Market Data Blockchain does not act as a substitute for any recordkeeping obligations of a BSTX Participant).

¹⁶³ See OIP, supra note 7, 86 FR at 49422.

¹⁶⁴ See Amendment No. 2, supra note 9, at 27. The Exchange states that it has classified the BSTX Market Data Blockchain as an “SCI system” and not as an “indirect SCI system.” See id.

¹⁶⁵ See OIP, supra note 7, 86 FR at 49422.

The Exchange states that the benefits of the BSTX Market Data Blockchain are twofold:

(1) BSTX Participants 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 equation quality, help confirm the accuracy of their internal trading data, or download the data to back-test trading strategies; and (2) 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.¹⁶⁶

The Exchange also states that BSTX Securities would be eligible for trading on other national securities exchanges that extend UTP to them and that the BSTX Market Data Blockchain would not impact the ability of Securities to trade on other national securities exchanges or OTC.¹⁶⁷

One commenter states that the United States should support blockchain technologies like BSTX to be competitive globally, and that blockchain affords more efficiency and transparency.¹⁶⁸ Another commenter states that blockchain will bring the advantages of better security, higher transparency, more trust, and a fairer marketplace to the sector.¹⁶⁹ 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.¹⁷⁰

¹⁶⁶ See id.

¹⁶⁷ See id. at 49423.

¹⁶⁸ See Letter from Anonymous (June 15, 2021) ("Anonymous Letter II").

¹⁶⁹ See Letter from Anonymous (June 21, 2021) ("Anonymous Letter III").

¹⁷⁰ See id. See also Letter from Jonathan Seeley (September 20, 2021) ("Seeley Letter") (stating that the proposed BSTX facility is designed to promote just and equitable principles of trade and remove impediments to a free and open national market system in a transparent and secure manner through the proposed use of blockchain technology and would not inappropriately burden competition); Letter from Tyler Hess (June 17, 2021) (stating that the commenter would like to see the development of financial institutions and securities exchanges that allow access to financial instruments and investments

Another commenter states that the proposed five minute delay is not problematic given delays in other market data products.¹⁷¹

The Commission finds that the Exchange’s proposed market data products are consistent with the Exchange Act. The Commission believes that the proposed BSTX Depth-of-Book, BSTX Top-of-Book, and BSTX Last Sale data products do not raise any novel regulatory issues.¹⁷² The Commission also believes that the BSTX Market Data Blockchain would not result in the disclosure of novel information about trading activity on the BSTX System. A BSTX Participant viewing the Participant Proprietary Data would access the same underlying information that the BSTX Participant would already have from FIX messages sent to and received from the Exchange.¹⁷³ Further, the General Market Data would contain the same substantive information that could be found in BSTX’s proprietary market data feeds and this information would be comparable to the proprietary market data distributed by other national securities exchanges. At the same time, the Commission believes that the BSTX Market Data Blockchain is reasonably designed to prevent other market participants from learning BSTX Participants’ sensitive trading information. The BSTX Market Data Blockchain would not be a real-time market data product and would contain historical market data posted in five-minute

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).

¹⁷¹ See Letter from Anonymous (September 6, 2021) (“Anonymous Letter IV”).

¹⁷² See supra notes 144–145 and accompanying text.

¹⁷³ The Commission has previously approved proposals by national securities exchanges to offer a data product to a member of the exchange consisting of information regarding the member’s own trading activity on the exchange. See, e.g., Securities Exchange Act Release Nos. 78886 (September 20, 2016), 81 FR 66113 (September 26, 2016) (approving Nasdaq “Trading Insights” product); 91787 (May 6, 2021), 86 FR 26111 (May 12, 2021) (approving MIAX Emerald “Liquidity Taker Event Report”).

increments. In addition, the Participant Proprietary Data accessible to each BSTX Participant would be specific to that BSTX Participant’s orders and executions, and the General Market Data would be anonymized by displaying only the symbol, side (buy/sell), limit price, quantity, and message type. As an SCI system operated by an SCI entity, the BSTX Market Data Blockchain would also be subject to the requirements of Regulation SCI.¹⁷⁴

National securities exchanges are not required to offer proprietary market data, but those that do so must offer such data in a manner that is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.¹⁷⁵ The Commission believes that the proposed dissemination of the Participant Proprietary Data is not designed to permit unfair discrimination because each BSTX Participant will have access to information specific to its own orders and executions through the Participant Proprietary Data. In the OIP, the Commission states that it was not clear what conditions, if any, the Exchange may place on non-BSTX Participants before granting access to the General Market Data.¹⁷⁶ In Amendment No. 2, the Exchange states that all BSTX Participants and non-BSTX Participants will have access to the same anonymized market data on the same terms through the General Market Data.¹⁷⁷ In addition, market participants would be able to obtain the same substantive information contained in the General Market Data

¹⁷⁴ See, e.g., 17 CFR 242.1001(a)(1) (requiring each SCI entity to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its SCI systems have levels of capacity, integrity, resiliency, availability, and security adequate to maintain the SCI entity’s operational capability and promote the maintenance of fair and orderly markets).

¹⁷⁵ See 15 U.S.C. 78f(b)(5).

¹⁷⁶ See OIP, supra note 7, 86 FR at 49454.

¹⁷⁷ See Amendment No. 2, supra note 9, at 25 (stating that the Exchange would make the General Market Data available to BSTX Participants and non-BSTX Participants for the same fee and on the same subscription terms, once the Exchange establishes a fee schedule pursuant to the proposed rule change process under the Exchange Act prior to the launch of BSTX).

through access to BSTX's other proprietary market data feeds. Further, the five-minute delay for the BSTX Market Data Blockchain would be a uniform delay for all BSTX Participants and non-BSTX Participants that subscribe, and the data on the BSTX Market Data Blockchain would not be available on a faster basis than other BSTX data products (and instead would be available on a slower basis).

For these reasons, the Commission finds that the Exchange's proposed market data products are consistent with the Exchange Act, and, in particular, Section 6(b)(5) of the Exchange Act¹⁷⁸ because they would prevent fraudulent and manipulative acts and practices, 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, and, in general, protect investors and the public interest, and would not permit unfair discrimination among customers, issuers, brokers, or dealers; and with Section 6(b)(8) of the Exchange Act¹⁷⁹ because they would not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act. The Commission also finds that the proposed BSTX Market Data Blockchain is consistent with the Exchange Act, and Section 6(b)(7) of the Exchange Act¹⁸⁰ in particular, and its requirements that the rules of a national securities exchange provide a fair procedure for the prohibition or limitation by the exchange of any access to services, because the Exchange will not limit non-BSTX Participants' access to the BSTX Market Data Blockchain beyond applying the same general terms that apply to BSTX Participants.

¹⁷⁸ 15 U.S.C. 78f(b)(5).

¹⁷⁹ 15 U.S.C. 78f(b)(8).

¹⁸⁰ 15 U.S.C. 78f(b)(7).

Access to BSTX

The Commission received a comment stating 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.¹⁸¹ This commenter states that concerns regarding unfair discrimination and inappropriate burdens on competition could arise in the absence of confirmation that BOX will ensure that all co-location participants will enjoy the same opportunity for order execution regardless of their location in the data center relative to the BSTX matching engine.¹⁸² Absent such confirmation, the commenter urges the Commission to disapprove the proposal.¹⁸³ 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.¹⁸⁴ 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.¹⁸⁵

¹⁸¹ See Letter from Andrew Stevens, General Counsel, IMC Chicago, LLC and Richard McDonald, Compliance Coordinator, Susquehanna International Group, LLP (June 28, 2021), at 2.

¹⁸² See *id.*

¹⁸³ See *id.* at 3.

¹⁸⁴ See Letter from Lisa J. Fall, President, BOX Exchange LLC (July 1, 2021), at 1.

¹⁸⁵ See *id.* The Exchange also 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 2.

In further response, in Amendment No. 2, the Exchange states that it will offer connectivity services at its primary data center (Equinix NY4 in Secaucus, NJ) and that connectivity to the Exchange in the primary data center for both order entry and market data dissemination is equalized for all Participants with equipment co-located in Equinix NY4.¹⁸⁶ Specifically, the Exchange states that all BSTX Participants co-located in the same data center would connect to BSTX through an equidistant cabling cabinet, which is a separate cabinet from the cabinet hosting the BSTX System and market data distribution system. The cross connects from the equidistant cabling cabinet to the cabinet hosting BSTX's systems are equidistant.¹⁸⁷ Additionally, the Exchange states that all cross connects from the equidistant cabling cabinet to each BSTX Participant's cabinet, wherever located in the data center, provide for equidistant connectivity.¹⁸⁸ As a result, even if BSTX Participant X's cabinet is closer in physical proximity to the equidistant cabling cabinet than BSTX Participant Y's cabinet, the arrangement is such that both BSTX Participant X and BSTX Participant Y have equidistant connectivity to the equidistant cabling cabinet and in turn to BSTX's systems.¹⁸⁹

The Commission believes that Amendment No. 2 addresses the commenter's concern regarding whether all co-location participants will enjoy the same opportunity for order

¹⁸⁶ See Amendment No. 2, supra note 9, at 6.

¹⁸⁷ See id. at 6 n.6.

¹⁸⁸ See id. Specifically, the equidistant cabling cabinet contains equal length spools of fiber that connect to each external BSTX Participant cabinet in the data center, and all BSTX Participants must connect to BSTX through the equidistant cabling cabinet from their own external cabinets. See id.

¹⁸⁹ See id. The Exchange states that it believes that this structure is designed to prevent unfair discrimination between market participants, consistent with Section 6(b)(5) of the Exchange Act, by ensuring that all co-located BSTX Participants have equidistant connections to BSTX irrespective of where their equipment is located within the data center. See id.

execution regardless of their location in the data center relative to the BSTX matching engine. As described above, the Exchange states in Amendment No. 2 that all BSTX Participants co-located in the data center would access BSTX's systems through an equidistant cabling cabinet that connects to each BSTX Participant's cabinet through fiber connections of equal length and that the cross connects from the equidistant cabling cabinet to the cabinet hosting BSTX's systems are also equidistant. This arrangement would prevent BSTX Participants located in closer proximity to the cabinet hosting the BSTX System and market data distribution system from having a shorter path to connect to BSTX's systems.

Clearance and Settlement

Under the Exchange's proposal, executions occurring as a result of orders matched against the BSTX Book will be transmitted by BSTX to a registered clearing agency to clear and settle pursuant to the rules, policies, and procedures of the registered clearing agency.¹⁹⁰ The Exchange states that Securities would be cleared and settled by NSCC and DTC in the same manner as those activities are performed by NSCC and DTC currently with respect to a class of NMS stock.¹⁹¹ The Exchange also states that the operation of the BSTX Market Data Blockchain will have no impact or effect on the manner in which a Security clears and settles.¹⁹²

The Exchange proposes to allow BSTX Participants to indicate a preference for settling faster than the standard T+2 settlement cycle.¹⁹³ Specifically, BSTX Participants would be able to submit an order with a preference for settlement on a T+0 basis ("Order with a T+0

¹⁹⁰ See proposed BSTX Rule 25100(d). See also proposed BSTX Rule 25140 for additional provisions regarding clearance and settlement.

¹⁹¹ See OIP, supra note 7, 86 FR at 49418.

¹⁹² See id.

¹⁹³ See id. at 49419.

Preference”) or on a T+1 basis (“Order with a T+1 Preference”).¹⁹⁴ The Exchange states that, based on discussions with representatives from The Depository Trust & Clearing Corporation (“DTCC”), BSTX believes that NSCC already has the authority under its rules, policies, and procedures to clear certain trades on T+1 or T+0 basis.¹⁹⁵ Orders with a T+0 Preference and Orders with a T+1 Preference would result in executions that settle more quickly than on a T+2 basis if, and only if, all of the conditions in proposed BSTX 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 the registered clearing agency.¹⁹⁶ For an Order with a T+0 Preference to be eligible to be transmitted by BSTX to NSCC for same-day settlement, the resulting execution must occur on the BSTX System prior to the “T+0 Cut-Off Time,” which would be one minute before any applicable cut-off time established by NSCC for inclusion of

¹⁹⁴ See proposed BSTX Rule 25140(h). The Exchange states that T+1 and T+0 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. See OIP, *supra* note 7, 86 FR at 49419 (citing 17 CFR 240.15c6-1). The Exchange states that under SEC Rule 15c6-1, with certain exceptions, a broker-dealer is not permitted to enter a contract for the purchase or sale of a 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. See *id.* at 49419 n.33.

¹⁹⁵ See OIP, *supra* note 7, 86 FR at 49423. The Exchange states that it understands that NSCC and DTC are already using this authority for shortened settlement times, and 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. See *id.* at 49424.

¹⁹⁶ See *id.* at 49423–24; proposed BSTX Rule 25060(h). See also proposed BSTX Rule 25100(d). The Exchange states that it 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-off time of 11:30 am ET. DTCC provides on its website an overview of the cut-off times for participation in the continuous net settlement system process 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. See Amendment No. 2, *supra* note 9, at 34 n.62.

T+0 settling trades in its continuous net settlement process established pursuant to its rules, policies, and procedures.¹⁹⁷ Any preference for T+0 or T+1 settlement 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.¹⁹⁸ The Exchange states that, at the time of order entry, any orders that

¹⁹⁷ See Amendment No. 2, supra note 9, at 35; proposed BSTX Rule 25060(h)(3). The BSTX System would not accept any new Orders with a T+0 Preference after the T+0 Cut-Off Time. See Amendment No. 2, supra note 9, at 36; proposed BSTX Rule 25060(h)(3). However, an Order with a T+0 Preference resting on the BSTX Book after the T+0 Cut-Off Time would still be able to execute against orders against which it is marketable, and would remain eligible for potential T+1 settlement to the extent it executed against an Order with a T+1 Preference. See *id.* According to the Exchange, it believes that a one minute buffer between its T+0 Cut-Off Time and NSCC's cut-off time for inclusion of such same-day settling trades in NSCC's continuous net settlement process would be sufficient time to allow the Exchange to transmit the relevant execution details to NSCC and for NSCC to include such same-day settling trades in its continuous net settlement system. See Amendment No. 2, supra note 9, at 35–36. The Exchange represents that it will monitor the application of the one minute buffer and whether it provides the Exchange and NSCC with sufficient time to prevent executed trades from being transmitted by the Exchange to NSCC after NSCC's cut-off time for inclusion of same-day settling trades in NSCC's continuous net settlement system, and the Exchange will submit additional rule changes in the future as may be necessary to increase the buffer if appropriate. See *id.* at 36. The Exchange also represents that it will post the then-applicable T+0 Cut-Off Time on the BSTX website to ensure BSTX Participants are adequately informed. See *id.* at 36 n.64.

¹⁹⁸ See OIP, supra note 7, 86 FR at 49424. Under the proposal, 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) pursuant to the rules, policies, and procedures of the registered clearing agency, 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, subject to the limitations in proposed BSTX Rule 25060(h)(3); 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. See proposed BSTX Rule 25060(h)(1). An Order with a T+1 Preference will execute against any order

include a parameter indicating a preference for faster settlement would be regular way orders that would be presumed to settle on a T+2 basis, just like any orders without such a parameter.¹⁹⁹

The Exchange states that, 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 BSTX Rule 25060(h) of settlement on a T+2 basis. The Exchange also states that the possibility of a shortened settlement time would have no impact on the Exchange's proposed price/time priority structure for order matching.²⁰⁰ The Exchange states that, 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.²⁰¹ Therefore, according to the Exchange, 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+2.²⁰²

The Exchange states that it believes the proposal to allow BSTX Participants to access the shorter settlement cycles of T+1 and T+0 that are already being used by NSCC and DTC

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 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. See proposed BSTX Rule 25060(h)(2).

¹⁹⁹ See OIP, supra note 7, 86 FR at 49423.

²⁰⁰ See id. at 49424.

²⁰¹ See id.

²⁰² See id.

today represents a change that is both consistent with and in furtherance of broader industry efforts to move the standard settlement style to T+1.²⁰³ The Exchange also states that it believes that providing an optional T+0 or T+1 settlement cycle to BSTX Participants could also incrementally and immediately provide market participants with the benefits of shorter settlement cycles.²⁰⁴ The Exchange further states that it believes that BSTX Participants have an interest in being able to assess risk-reducing market functionality that is presently available and compatible with market structure and that this can reduce costs for market participants settling trading obligations in that Security and reduce settlement risk.²⁰⁵

According to the Exchange, because all orders in Securities submitted to BSTX would at the time of 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 under the Exchange Act.²⁰⁶ The Exchange states that 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) under the Exchange Act, because they will only settle more quickly than T+2 when all of the conditions in proposed BSTX Rule 25060(h) are met and

²⁰³ See id. at 49424–25.

²⁰⁴ See id.

²⁰⁵ See id. at 49425.

²⁰⁶ See id. (citing 17 CFR 242.611(b)(2)).

where faster settlement is consistent with the rules, policies, and procedures of a registered clearing agency.²⁰⁷

The Commission has received several comments expressing support for the proposal's use of a shortened settlement cycle under certain circumstances.²⁰⁸ One commenter states in support of the proposal that BSTX would provide significant advantages over existing national securities exchanges by providing fairer conditions to market participants through reduced settlement times and more transparency.²⁰⁹ 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.²¹⁰ Two commenters refer to recent problems that they characterize as arising from T+2 settlement and short selling,²¹¹ and state that the proposal for a shorter settlement cycle would level the playing field for retail investors.²¹² Another commenter states that if a particular trade does not meet the criteria or

²⁰⁷ See id.

²⁰⁸ See Letter from Meagan Darata, Utah Salt Supplements (June 21, 2021) ("Darata Letter"); Letter from Mark Nelson (June 10, 2021); Letter from Robert Shaw (June 11, 2021) ("Shaw Letter"); Letter from Neil Skinner (June 11, 2021) ("Skinner Letter").

²⁰⁹ See Skinner Letter, supra note 208.

²¹⁰ 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.

²¹¹ See Letter from Anonymous (June 15, 2021) ("Anonymous Letter I"); Skinner Letter, supra note 208. See also Shaw Letter, supra note 208 (stating that, with the current issues regarding settlement time, the proposal to offer speedy settlement is one answer to improving the system).

²¹² See Anonymous Letter I, supra note 211; Skinner Letter, supra note 208. See also Darata Letter, supra note 208 (stating that there is a wide power differential between retail and institutional traders).

conditions on T+0 or T+1, the fallback option will be the standard settlement cycle, and that because shorter settlement will depend on the NSCC clearing system, addressing any adverse market effects is NSCC's responsibility.²¹³ Another commenter states that uncertainty regarding whether an order would receive faster settlement at the time of order entry would not affect the ability of a market participants to reap the potential benefits of faster settlement.²¹⁴ This commenter also states that there has been much recent public focus on the inefficiency of the current settlement system and that there is no evidence that the proposal would have adverse market effects.²¹⁵

The Commission believes that the optional order parameter that would allow a BSTX Participant to place an Order with a T+0 Preference or Order with a T+1 Preference would permit BSTX Participants to take advantage of faster settlement timing provided by DTC and NSCC in manner that is consistent with fair and orderly markets. Use of the order parameter would be optional and would not have any effect on price/time execution priority. Therefore, any order placed by a BSTX Participant that prefers to settle on a T+2 basis (or any order routed to BSTX from another national securities exchange) would receive T+2 settlement and that order would not be disadvantaged in obtaining an execution due to the absence of a preference for faster settlement.²¹⁶ The Commission also believes that the proposal that Orders with a T+0

²¹³ See Anonymous Letter IV, supra note 171.

²¹⁴ See Seeley Letter, supra note 170 (stating also that this uncertainty would not represent any additional inconsistency with the Exchange Act compared to current settlement systems and does not provide an appropriate basis for disapproving the proposal).

²¹⁵ Id.

²¹⁶ In the OIP, the Commission raises 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 T+2 settlement, might have any adverse market effects. See OIP, supra note 7, 86 FR at 49455. The Commission notes that no commenters raised any potential adverse market effects.

Preference must be executed on the BSTX System prior to the T+0 Cut-Off Time to be eligible for same-day settlement is reasonably designed to ensure that when BSTX transmits an order to the registered clearing agency for same-day settlement, the registered clearing agency will be able to include that trade in its continuous net settlement process.

For these reasons, the Commission finds that the proposed order parameter that BSTX Participants could use to preference faster settlement is consistent with the Exchange Act and, in particular, Section 6(b)(5)'s requirement to foster cooperation and coordination with persons engaged in clearing, settling, and processing information with respect to transactions in securities; remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, protect investors and the public interest.²¹⁷ The Commission also finds that the proposed order parameter for faster settlement is consistent with Section 6(b)(8)'s requirement that the proposal not impose any burden on competition not necessary or appropriate in further of the purposes of the Exchange Act, because the operation of this order parameter will not impact the ability of a market participant that instead prefers T+2 settlement to obtain an execution.²¹⁸

C. Eligibility for Listing and Trading on BSTX

Once BSTX begins operations as a facility of the Exchange, a security would be considered for listing on BSTX only if such security is registered under both Section 12 of the Exchange Act²¹⁹ and Section 6 of the Securities Act of 1933 (“Securities Act”),²²⁰ or such

²¹⁷ 15 U.S.C. 78f(b)(5).

²¹⁸ 15 U.S.C. 78f(b)(8).

²¹⁹ 15 U.S.C. 78l; proposed BSTX Rule 26210.

²²⁰ 15 U.S.C. 78f.

security to subject to an exemption under Regulation A.²²¹ An issuer may register a security pursuant to Section 12(b) by submitting to the Exchange a listing application that provides certain required information.²²² The Exchange will review the listing application and, if the listing application is approved, will certify to the Commission that it has approved the security for listing and registration.²²³ Registration of the security will become effective thirty days after the receipt of such certification by the Commission or within a shorter period of time as the Commission may determine.²²⁴ Once registration is effective, the Security would be eligible to be admitted to dealings on BSTX.²²⁵

The Exchange proposes that the only securities that will be eligible for trading on BSTX will be BSTX-listed securities.²²⁶ The Exchange states that it is not proposing rules that would support its extension of UTP to other NMS stock.²²⁷ However, according to the Exchange,

²²¹ See Amendment No. 2, *supra* note 9, at 10–11. See also 17 CFR 230.251. The Exchange states that IEX similarly allows for securities subject to an exemption from registration under Section 12(b) of the Exchange Act to be listed on IEX. See Amendment No. 2, *supra* note 9, at 11 n.20 (citing to IEX Rule 14.203).

²²² See proposed BSTX Rules 26210–26217; 15 U.S.C. 78l(b). Prior to submitting a listing application to the Exchange, the issuer would be required to participate in a confidential pre-application eligibility review, in which the Exchange will determine whether the issuer meets its listing criteria and is eligible to submit a listing application. See proposed BSTX Rule 26201.

²²³ See proposed BSTX Rule 26210(b); 15 U.S.C. 78l(d). See Exhibits 3G, 3H, 3I, 3J, 3K, and 3L for agreements and forms related to the listing process.

²²⁴ 15 U.S.C. 78l(d).

²²⁵ See proposed BSTX Rule 26202. See also 15 U.S.C. 78l(d).

²²⁶ See proposed BSTX Rule 25020(a) (providing that any class of securities listed on the Exchange shall be eligible to become designated for trading on the Exchange in accordance with the proposed BSTX Rule 26000 and 28000 Rule Series).

²²⁷ See OIP, *supra* note 7, 86 FR at 49417. The Exchange also states that it would only trade BSTX-listed Securities on BSTX unless and until the Exchange proposes and receives

BSTX-listed Securities would be eligible for trading on other national securities exchanges that extend UTP to them and would be able to trade on other national securities exchanges and OTC in the same manner as other NMS stock.²²⁸

Classes of Securities Eligible for Listing

The Exchange states that issuers on BSTX could include both: (i) new issuers who do not currently have any class of securities registered on a national securities exchange, and (ii) issuers who currently have securities registered on a national securities exchange and who are seeking registration of a new class of equity securities for listing on BSTX as Securities.²²⁹ In the original Notice, the Exchange stated that while BSTX does not intend for Securities listed on BSTX to be fungible with any other class of securities from the same issuer, 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, the two classes of shares could be “economically fungible” with each other.²³⁰ With respect to the Notice, one commenter states that BSTX appears to be contemplating that an issuer could list shares with identical voting and economic rights on BSTX and another exchange but designate the shares listed on BSTX as a separate class of the issuer’s securities, with the only distinguishing factor between the two classes of securities being that the BSTX-listed securities would have the additional blockchain functionality.²³¹ The commenter states that, in the trading context, having two separate classes

Commission approval for rules that would support trading in other types of securities, including thorough any extension of UTP to other NMS stock. See id.

²²⁸ See id. at 49423.

²²⁹ See Amendment No. 2, supra note 9, at 13.

²³⁰ See Notice, supra note 3, 86 FR at 29636 & n.20.

²³¹ See Letter from Ellen Greene, Managing Director, Equities & Options Market Structure, Securities Industry and Financial Markets Association (September 27, 2021) (“SIFMA

of an issuer’s securities with identical economic and voting rights trading at the same time on different exchanges could result in investor and market confusion.²³² In Amendment No. 2, the Exchange states that BSTX does not intend for a Security listed on BSTX to be a unique class of security due only to the fact that certain trading activity in the Security on BSTX would be recorded on the BSTX Market Data Blockchain.²³³ The Exchange also states that if an issuer sought to list a new class of securities on BSTX that is not distinct from an existing class of securities of the issuer, the Exchange would not allow such a class to be listed pursuant to its authority under proposed BSTX Rule 26101.²³⁴ The Commission believes that Amendment No. 2 addresses the commenter’s concern that an issuer could list one class of securities on BSTX and a separate class of securities on another national securities exchange, with both classes having identical voting and economic interests. Proposed BSTX Rule 26101 provides that the approval of an application for listing of a security for trading on BSTX is a matter solely within the discretion of the Exchange.²³⁵ The Exchange’s use of this discretionary authority to prevent an issuer from listing a class of securities on BSTX that is not distinct from an existing class of securities would prevent the listing of a class of securities that has the same voting and economic rights as another listed class of securities of that same issuer.

Letter”), at 2 (stating that “the definition of ‘class’ of securities in Section 12(g)(5) of the Exchange Act contemplates that securities of an issuer that have identical economic and voting rights would be part of the same class of securities”).

²³² See id. (stating that “issuers have dually-listed securities on two exchanges to meet the different listing standards of each of the exchanges, but the issuers have done so by listing the same class of securities on both exchanges”).

²³³ See Amendment No. 2, supra note 9, at 13.

²³⁴ See id.

²³⁵ See proposed BSTX Rule 26101.

Initial and Continued Listing Standards

The Commission has consistently recognized the importance and significance of national securities exchange listing standards. Among other things, such listing standards help ensure that exchange-listed companies will have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets.²³⁶ The standards, collectively, also provide investors and market participants with some level of assurance that the listed company has the resources, policies, and procedures to comply with the requirements of the Exchange Act and Exchange rules.²³⁷

²³⁶ The Commission has stated in approving national securities exchange listing requirements that the development and enforcement of adequate standards governing the listing of securities on an exchange is an activity of critical importance to the financial markets and the investing public. In addition, once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained. See, e.g., Securities Exchange Act Release Nos. 90768 (December 22, 2020), 85 FR 85807, 85811 n.55 (December 29, 2020) (SR-NYSE-2019-67) ("NYSE 2020 Order"); 82627 (February 2, 2018), 83 FR 5650, 5653 n.53 (February 8, 2018) (SR-NYSE-2017-30) ("NYSE 2018 Order"); 81856 (October 11, 2017), 82 FR 48296, 48298 (October 17, 2017) (SR-NYSE-2017-31); 81079 (July 5, 2017), 82 FR 32022, 32023 (July 11, 2017) (SR-NYSE-2017-11). The Commission has stated that adequate listing standards, by promoting fair and orderly markets, are consistent with Section 6(b)(5) of the Exchange Act, in that they are, among other things, designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest. See, e.g., NYSE 2020 Order, 85 FR at 85811 n.55; NYSE 2018 Order, 83 FR at 5653 n.53; Securities Exchange Act Release Nos. 87648 (December 3, 2019), 84 FR 67308, 67314 n.42 (December 9, 2019) (SR-NASDAQ-2019-059); 88716 (April 21, 2020), 85 FR 23393, 23395 n.22 (April 27, 2020) (SR-NASDAQ-2020-001).

²³⁷ "Meaningful listing standards are also important given investor expectations regarding the nature of securities that have achieved a national securities exchange listing, and the role of a national securities exchange in overseeing its market and assuring compliance with its listing standards." Securities Exchange Act Release No. 65708 (November 8, 2011), 76 FR 70799, 70802 (November 15, 2011) (SR-NASDAQ-2011-073). See also, e.g., NYSE 2020 Order, supra note 236, 85 FR at 85811 n.56; Securities Exchange Act Release Nos. 65709 (November 8, 2011), 76 FR 70795 (November 15, 2011) (SR-NYSE-2011-38); 88389 (March 16, 2020), 85 FR 16163 (March 20, 2020) (SR-

The Exchange has proposed initial and continued listing standards for companies to be listed on BSTX that are substantially similar to the current rules for NYSE American.²³⁸ These proposed listing standards relate to the listing and delisting of companies, including procedures and prerequisites for initial and continued listing on BSTX, the obligations of issuers with Securities listed on BSTX, as well as rules describing the application and qualification process, the suspension and delisting process, and procedures for review of the Exchange’s listing determinations.²³⁹ The Commission has previously determined that the initial and continued listing standards of NYSE American are consistent with the Exchange Act.²⁴⁰ The Exchange states that it did not integrate certain sections of NYSE American’s listing standards that the

NASDAQ-2019-089). The Exchange, in addition to requiring companies seeking to list to meet the quantitative initial listing standards and once listed the quantitative continued listing standards, also requires listed companies to meet other qualitative requirements. See, e.g., proposed BSTX Rules 26800 Series, Corporate Governance.

²³⁸ See OIP, supra note 7, 86 FR at 49439 (citing Parts 1-12 of the NYSE American Company Guide). The Exchange states that it understands that the Commission has extended relief to NYSE American with respect to certain quantitative listing standards that do not meet the thresholds of Rule 3a51-1, and that 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. See Amendment No. 2, supra note 9, at 106 (citing 17 CFR 240.3a51-1); Amendment No. 3, supra note 10, at 4–5. The Exchange states that it is not seeking relief related to Rule 3a51-1 and describes certain adjustments made to the proposed BSTX rules to meet the requirements in Rule 3a51-1. See Amendment No. 2, supra note 9, at 106; Amendment No. 3, supra note 10, at 4–5.

²³⁹ See proposed BSTX Rules 26000 Series (BSTX Listing Rules Other Than for Exchange Traded Products), 26200 Series (Original Listing Procedures), 26300 Series (Additional Listings), 27000 Series (Suspension and Delisting), 27100 Series (Guide to Filing Requirements), and 27200 Series (Procedures for Review of Exchange Listing Determinations).

²⁴⁰ See, e.g., Securities Exchange Act Release Nos. 59050 (December 3, 2008), 73 FR 75144 (December 10, 2008) (SR-Amex-2008-70) (approving revisions to the listing process and removal of alternative listing standards for American Stock Exchange LLC (“Amex”), a predecessor to NYSE American); 53050 (January 3, 2006), 71 FR 1580 (January 10, 2006) (SR-Amex-2005-114) (approving change to initial listing standards for Amex).

Exchange deemed were inapplicable to its operations, such as with respect to types of securities that the Exchange does not propose to make eligible for listing.²⁴¹ The Exchange also proposes to include certain listing standards that are substantially similar to the rules of other national securities exchanges.²⁴²

In addition, the Exchange has proposed initial and continued listing standards for ETP-related securities to be listed on BSTX that are substantially similar to the rules of NYSE Arca, Inc. (“NYSE Arca”).²⁴³ These initial and continued listing standards relate to the specific types of ETPs that the Exchange proposes to make eligible for listing on BSTX.²⁴⁴ The Exchange states that the proposed rules do not include certain products that are supported by NYSE Arca but that the Exchange does not plan to offer.²⁴⁵ The Commission has previously determined that the ETP-related listing standards of NYSE Arca are consistent with the Exchange Act.²⁴⁶

²⁴¹ See Amendment No. 2, *supra* note 9, at 103 n.301. For example, the Exchange does not propose to list bonds, debentures, securities of foreign companies (other than Canadian companies), or investment trusts. *See id.* The Exchange also does not propose to allow the issuance of fractional shares of Securities. *See id.* at 114.

²⁴² See, e.g., Amendment No. 3, *supra* note 10, at 5–6 (stating that the Exchange is including initial listing standards for preferred securities and secondary classes based on Nasdaq Rule 5510).

²⁴³ See OIP, *supra* note 7, 86 FR at 49442 (citing to NYSE Arca Rules 5.2-E(j)(3), 5.2-E(j)(6), 5.2-E(j)(8), 8.200-E, 8.201-E, 8.600-E, 8.601-E, and 8.900-E).

²⁴⁴ See proposed BSTX Rules 28000 (Investment Company Units), 28001 (Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Listed Securities, and Multifactor Index-Linked Securities), 28002 (Exchange-Traded Fund Shares), 28003 (Trust Issued Receipts), 28004 (Commodity-Based Trust Shares), 28005 (Managed Fund Shares), 28006 (Active Proxy Portfolio Shares), and 28007 (Managed Portfolio Shares).

²⁴⁵ See OIP, *supra* note 7, 86 FR at 49443 (stating that the Exchange will not support trading in a Nasdaq-100 Index Product, Currency Trust Shares, or Commodity Index Trust Shares).

²⁴⁶ See, e.g., Securities Exchange Act Release Nos. 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (PCX-2001-14) (approving generic listing standards for investment

Accordingly, the Commission finds that the Exchange’s proposed initial and continued listing requirements, including the procedures for listing and delisting securities, are consistent with the Exchange Act, and Section 6(b)(5) of the Exchange Act²⁴⁷ in particular, and its requirements that the rules of a national securities exchange be reasonably designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and that the rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission also finds that procedures for listing and delisting securities, including the procedures for challenging the Exchange’s listing determinations, are consistent with Section 6(b)(7) of the Exchange Act,²⁴⁸ which requires, among other things, that the rules of a national securities exchange provide a fair procedure for the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange.

Corporate Governance Standards

The development and enforcement of meaningful corporate governance listing standards for a national securities exchange is of substantial importance to financial markets and the investing public, especially given investor expectations regarding the nature of companies that

company units and portfolio depository receipts for Pacific Exchange, Inc. (“PCX”), a predecessor to NYSE Arca); 52204 (August 3, 2005), 70 FR 46559 (August 10, 2005) (PCX-2005-63) (approving PCX’s generic listing standards for index-linked securities); 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (NYSEArca-2015-110) (approving NYSE Arca’s generic listing standards for managed fund shares).

²⁴⁷ 15 U.S.C. 78f(b)(5).

²⁴⁸ 15 U.S.C. 78f(b)(7).

have achieved an exchange listing for their securities.²⁴⁹ The corporate governance standards embodied in the listing standards of national securities exchanges, in particular, play an important role in assuring that exchange-listed companies observe good governance practices including safeguarding the interests of shareholders.²⁵⁰

The Exchange proposes corporate governance standards in connection with Securities to be listed and traded on BSTX that are substantially similar to the corporate governance standards for listed issuers of NYSE American.²⁵¹ These corporate governance standards for listed issuers include policies relating to disclosures, the handling of stock dividends and splits, accounting, shareholder meetings and voting, and required notifications to the Exchange, as well as standards for the issuer's corporate structure and its board of directors and committeees thereof.²⁵² Further, these standards include rules requiring a majority of directors on a listed issuer's board to be independent, rules and independence requirements relating to audit and compensation committeees and the oversight of nominations, and rules requiring listed issuers to adopt codes of conduct applicable to all their directors, officers, and employees.²⁵³ The Commission has previously determined that the corporate governance standards for listed issuers of NYSE

²⁴⁹ See, e.g., Securities Exchange Act Release Nos. 85374 (March 20, 2019), 84 FR 11354, 11356 (March 26, 2019); 91567 (April 14, 2021), 86 FR 20556, 20559 (April 20, 2021).

²⁵⁰ See, e.g., Securities Exchange Act Release Nos. 85374 (March 20, 2019), 84 FR 11354, 11356 (March 26, 2019); 91567 (April 14, 2021), 86 FR 20556, 20559 (April 20, 2021).

²⁵¹ See OIP, *supra* note 7, at 49442 (citing to NYSE American Sections 401-404, 501-522, 603-624, 701-726, 801-809, and 920-994).

²⁵² See proposed BSTX Rule 26400 Series (Disclosure Policies), 26500 Series (Dividends and Splits), 26600 Series (Accounting; Annual and Quarterly Reports), 26700 Series (Shareholders' Meetings, Approval and Voting of Proxies), 26800 Series (Corporate Governance), and 26900 Series (Additional Matters).

²⁵³ See proposed BSTX Rules 26802, 26803, and 27807.

American are consistent with the Exchange Act.²⁵⁴ The Exchange also proposes to require listed companies to maintain an internal audit function pursuant to a rule that is substantially similar to the requirements of IEX.²⁵⁵

The Commission finds that BSTX's proposed corporate governance standards for listed issuers contained in BSTX's proposed rules are consistent with the Exchange Act, and in particular Section 6(b)(5) of the Exchange Act and its requirements that the rules of a national securities exchange be reasonably designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission further finds that BSTX's proposed rules satisfy the requirements of Section 10A(m) of the Exchange Act and Rule 10A-3 thereunder and Section 10C of the Exchange Act and Rule 10C-1 thereunder, relating to audit and compensation committees, respectively.²⁵⁶ The Commission believes that BSTX's corporate governance standards for listed issuers that require a fully independent audit committee are designed to promote independent and objective review and oversight of the accounting and auditing practices of listed issuers and to enhance audit committee independence, authority, and

²⁵⁴ See, e.g., Securities Exchange Act Release Nos. 48863 (December 1, 2003), 68 FR 68432 (December 8, 2003) (SR-Amex-2003-65) (approving proposal to enhance the corporate governance requirements applicable to listed companies for Amex); 54851 (November 30, 2006), 71 FR 71201 (December 8, 2006) (SR-Amex-2006-48) (approving exchange's independent director and audit committee corporate governance standards for Amex).

²⁵⁵ See Amendment No. 2, *supra* note 9, at 115 (citing to IEX Rule 14.414). See also proposed BSTX Rule 26801(i).

²⁵⁶ See 15 U.S.C. 78j-1(m); 15 U.S.C. 78j-3; 17 CFR 240.10A-3; 17 CFR 240.10C-1.

responsibility by implementing the standards set forth in Rule 10A-3.²⁵⁷ In addition, the Commission believes that BSTX's proposed requirements relating to independent compensation committees for listed issuers would benefit investors by implementing the standards set forth in Rule 10C-1, which requires that the independent directors of a listed issuer oversee executive compensation matters, consider independence criteria before retaining compensation advisers, and have responsibility for the appointment, compensation, and oversight of these advisers.²⁵⁸ Corporate governance standards play an important role in assuring that companies listed for trading on the national securities exchanges' markets have a reasoned, fair, and impartial approach for determining the compensation of corporate executives.²⁵⁹ The Commission believes that the Exchange's rules will foster greater transparency, accountability, and objectivity in the oversight of compensation practices of listed issuers and in the decision-making processes of their compensation committees.²⁶⁰

²⁵⁷ See Securities Exchange Act Release No. 47654 (April 9, 2003), 68 FR 18788 (April 16, 2003).

²⁵⁸ See Securities Exchange Act Release No. 67220 (June 20, 2012), 77 FR 38422, 38425 (June 27, 2012).

²⁵⁹ See proposed BSTX Rule 26805. See, e.g., Securities Exchange Act Release No. 68640 (January 11, 2013), 78 FR 4554, 4563 (January 22, 2013) (SR-NASDAQ-2012-109) ("Nasdaq 2012 Order") (approving proposal relating to rules for compensation committees for listed companies).

²⁶⁰ See, e.g., Nasdaq 2012 Order, *supra* note 259 (finding Nasdaq compensation committee rules consistent with the Exchange Act). See also, e.g., Securities Exchange Act Release Nos. 68639 (January 11, 2013), 78 FR 4570 (January 22, 2013) (order approving NYSE's compensation committee rules, which was cited by Nasdaq as precedent for a subsequent amendment to its own rules that was filed on an immediately effective basis); 71037 (December 11, 2013), 78 FR 76179 (December 16, 2013) (SR-NASDAQ-2013-147).

D. Regulation

The Exchange states that in connection with the operation of BSTX, it will leverage many of the Exchange's existing regulatory structures.²⁶¹ The Exchange states that it will extend its Regulatory Services Agreement with FINRA to cover BSTX Participants and trading on the BSTX System, and this Regulatory Services Agreement will govern many aspects of the regulation and discipline of BSTX Participants.²⁶² According to the Exchange, the Exchange will regulate the listing of Securities, authorize BSTX Participants to trade on the BSTX System, and conduct surveillance of Security trading on the BSTX System.²⁶³ The Exchange states that, consistent with the Exchange's existing regulatory structure, the Exchange's Chief Regulatory Officer will 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.²⁶⁴ The Exchange states that its existing Regulatory Oversight Committee will be responsible for overseeing the adequacy and effectiveness of the Exchange's regulatory and self-regulatory organization responsibilities, including those applicable to BSTX.²⁶⁵

The Exchange proposes specific business conduct and operational rules for BSTX Participants that include rules covering similar subject matter as existing Exchange Rules

²⁶¹ See OIP, supra note 7, 86 FR at 49448.

²⁶² See id. The Exchange states that, as is the case with the Exchange's options trading platform, the Exchange will supervise FINRA and bear ultimate regulatory responsibility for BSTX. See id.

²⁶³ See id.

²⁶⁴ See id.

²⁶⁵ See id. at 49448–49.

applicable to Options Participants.²⁶⁶ The Exchange also proposes to adopt proposed BSTX Rule 24000 (Discipline and Summary Suspension), which provides that the provisions of the Exchange’s existing BOX Rule 11000 Series (Summary Suspension), 12000 Series (Discipline), 13000 Series (Review of Certain Exchange Actions), and 14000 Series (Arbitration) shall be applicable to BSTX Participants and trading on the BSTX System.²⁶⁷ According to the Exchange, the Exchange already has Rules pertaining to discipline and suspension of Exchange Participants that it proposes to extend to BSTX Participants and trading on the BSTX System.²⁶⁸

In addition to the Exchange’s other disciplinary rules, 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 Act²⁶⁹ requiring that an SRO promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.²⁷⁰ The Exchange’s MRVP includes the policies and procedures set forth in existing BOX Rule 12140 (Imposition of Fines for Minor Violations).²⁷¹ The Exchange proposes to amend its MRVP to add certain rules relating to BSTX to the list of rules eligible for MRVP treatment, by amending BOX Rule 12140

²⁶⁶ See id. at 49427–30 (discussing proposed BSTX Rules regarding Business Conduct for BSTX Participants (Rule 19000 Series), Financial and Operational Rules for BSTX Participants (Rule 20000 Series), Supervision (Rule 21000 Series) and Miscellaneous Provisions (Rule 22000 Series)).

²⁶⁷ See id. at 49430–31; proposed BSTX Rule 24000. The Exchange proposes to make conforming edits to certain existing Exchange Rules to expand their coverage to all Participants. See proposed BOX Rules 11010 and 11030.

²⁶⁸ See OIP, supra note 7, 86 FR at 49431.

²⁶⁹ 17 CFR 240.19d-1(c)(1).

²⁷⁰ See OIP, supra note 7, 86 FR at 49443.

²⁷¹ See id.

and adopting proposed BSTX Rule 24010.²⁷² Specifically, the Exchange proposes to modify BOX Rule 12140 to specify that rules and penalties relating to trading on BSTX are set forth in proposed BSTX Rule 24010.²⁷³ The Exchange also proposes to set forth a fine schedule for violations of certain rules related to activity on BSTX and provide that a subsequent violation is calculated on the basis of a rolling 12-month period.²⁷⁴ The Exchange states that the rules that it proposes to include in its MRVP are comparable to the rules included in the MRVPs of other national securities exchanges.²⁷⁵

The Exchange represents that it plans to join the multi-party Rule 17d-2 Plan for Allocation of Regulatory Responsibilities Regarding Regulation NMS and is in the process of joining certain Rule 17d-2 agreements, including those applicable to equities trading and equities market surveillance.²⁷⁶ The Exchange states that it is a participant in the NMS plan related to the

²⁷² See Amendment No. 2, supra note 9, at 121.

²⁷³ See OIP, supra note 7, 86 FR at 49443; proposed BOX Rule 12140(f). The Exchange also proposes to make conforming changes to replaced references to “Options Participant” with “Participant.” See proposed BOX Rule 12140.

²⁷⁴ See proposed BSTX Rule 24010. The Exchange proposes that violations of the following rules would be appropriate for dispositions under the MRVP: proposed BSTX Rule 19180 (Communications with the Public), proposed BSTX Rule 20000 (Maintenance, Retention and Furnishing of Records), proposed BSTX Rule 25070 (Consolidated Audit Trail), proposed BSTX Rule 25130 (Locking or Crossing Quotations in NMS Stocks), proposed BSTX Rule 25210(a)(1) (BSTX Market Maker Two-Sided Quote Obligation), and proposed BSTX Rule 25120 (Short Sales). See proposed BSTX Rule 24010(b).

²⁷⁵ See Amendment No. 2, supra note 9, at 122 (citing to IEX Rule 9.218, Cboe BZX Rule 8.15.01, and MIAX Pearl Rule 1014(d)(15)).

²⁷⁶ See id. at 143. Rule 17d-2 provides that any two or more SROs may file with the Commission a plan for allocating among such SROs the responsibility to receive regulatory reports from persons who are members or participants of more than one of such SROs to examine such persons for compliance, or to enforce compliance by such persons, with specified provisions of the Exchange Act, the rules and regulations thereunder, and the rules of such SROs, or to carry out other specified regulatory functions with respect to such persons. See 17 CFR 240.17d-2.

Consolidated Audit Trail, and that it intends to join the Order Execution Quality Disclosure Plan, the LULD Plan, and the applicable plans for the consolidation and dissemination of market data.²⁷⁷ The Exchange also states that it will ensure that its membership in the Intermarket Surveillance Group extends to the BSTX facility.²⁷⁸

According to the Exchange, the Exchange will perform automated surveillance of trading on BSTX for the purposes 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.²⁷⁹ The Exchange states that it will oversee the process for determining and implementing trading halts, identifying and responding to unusual market conditions, and administering the Exchange's process for identifying and remediating "clearly erroneous trades" pursuant to proposed BSTX Rule 25110.²⁸⁰

The Exchange has also proposed BSTX Rules 25050 and 25080(b)(3) to comply with the LULD Plan.²⁸¹ Proposed BSTX Rule 25080(b)(3) provides that, for any execution to occur during Regular Trading Hours, such executions must comply with the LULD plan, as set forth in

²⁷⁷ See Amendment No. 2, supra note 9, at 144.

²⁷⁸ See id.

²⁷⁹ See OIP, supra note 7, 86 FR at 49449. The Exchange states that it currently does this for options. See id.

²⁸⁰ See id.

²⁸¹ See id. at 49433. The Exchange represents that it intends to join the LULD Plan prior to the commencement of trading Securities. See id.

BSTX Rule 25050.²⁸² Proposed BSTX Rule 25050 describes the Exchange’s order handling procedures to comply with the LULD Plan.²⁸³

The Exchange’s proposed regulatory structure raises no new regulatory issues.

Accordingly, the Commission finds that the Exchange’s proposed regulatory structure, including the Exchange’s proposed application of its existing rules to BSTX and BSTX Participants’ conduct, the Exchange’s commitment to establish new or expand existing agreements with third-parties including FINRA for purposes such as surveillance, member discipline, and overseeing and enforcing compliance with BSTX rules, and proposed BSTX Rule 25050 requiring compliance with the LULD Plan are consistent with the Exchange Act and, in particular, the Section 6(b)(5) requirement that a national securities exchange’s rules be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and protect investors and the public interest.²⁸⁴ The Commission also finds that the Exchange’s proposed regulatory structure is consistent with the requirements of Section 6(b)(1) of the Exchange Act, which requires a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its members and persons associated with its members, with the Exchange Act and the rules and regulations thereunder, and the rules of the Exchange,²⁸⁵ and with Sections 6(b)(6) and 6(b)(7) of the

²⁸² See proposed BSTX Rule 25080(b)(3).

²⁸³ See proposed BSTX Rule 25050. See also *supra* note 125 (discussing how proposed BSTX Rule 25050 is substantially similar to the rules of other national securities exchanges adopted in connection with the LULD Plan).

²⁸⁴ See 15 U.S.C. 78f(b)(5).

²⁸⁵ 15 U.S.C. 78f(b)(1).

Exchange Act,²⁸⁶ which require an Exchange to provide fair procedures for the disciplining of members and persons associated with members.

Finally, the Commission finds that the proposed changes to the Exchange's MRVP are consistent with the public interest, the protection of investors, or otherwise in furtherance of the purpose of the Exchange Act, as required by Rule 19d-1(c)(2) under the Exchange Act,²⁸⁷ which governs minor rule violation plans. The Commission believes that BOX Rule 12140 is an effective way to discipline a member for a minor violation of a rule. The Commission believes that the Exchange's proposal to add rules related to BSTX to the list of rules that are eligible for minor rule violation plan treatment is consistent with the Exchange Act because it may help the Exchange's ability to better carry out its oversight and enforcement responsibilities.

In approving the proposed changes to the Exchange's MRVP, the Commission in no way minimizes the importance of complying with the Exchange's rules and all other rules subject to fines under BOX Rule 12140 and proposed BSTX Rule 24010. The Commission believes that a violation of any SRO's rules, as well as Commission rules, is a serious matter. However, BOX Rule 12140 and proposed BSTX Rule 24010 provide a reasonable means of addressing rule violations that may not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. Consistent with its rules and the requirements of the Exchange Act, the Commission expects that 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

²⁸⁶ 15 U.S.C. 78f(b)(6) and (b)(7).

²⁸⁷ 17 CFR 240.19d-1(c)(2).

for a violation under BOX Rule 12140 and proposed BSTX Rule 24010 or whether a violation requires formal disciplinary action.

E. Section 11(a) of the Exchange Act

Section 11(a)(1) of the Exchange Act²⁸⁸ prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises investment discretion (collectively, “covered accounts”) unless an exception applies. Rule 11a2-2(T) under the Exchange Act,²⁸⁹ known as the “effect versus execute” rule, provides exchange members with an exemption from the Section 11(a)(1) prohibition. Rule 11a2-2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute transactions on the exchange. To comply with Rule 11a2-2(T)’s conditions, a member: (i) must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;²⁹⁰ (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the member or an associated person has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule.

In a letter to the Commission, the Exchange requests that the Commission concur with the Exchange’s conclusion that Exchange members that enter orders into the BSTX System

²⁸⁸ 15 U.S.C. 78k(a)(1).

²⁸⁹ 17 CFR 240.11a2-2(T).

²⁹⁰ This prohibition also applies to associated persons. The member may, however, participate in clearing and settling the transaction.

satisfy the conditions of Rule 11a2-2(T).²⁹¹ For the reasons set forth below, the Commission believes that members entering orders into the BSTX System could satisfy the requirements of Rule 11a2-2(T).

The Rule's first condition is that orders for covered accounts be transmitted from off the exchange floor. In the context of automated trading systems, the Commission has found that the off-floor transmission condition is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.²⁹² The Exchange has represented that BSTX does not have a physical trading floor, and the BSTX System will receive orders from members electronically through remote terminals or computer-to-computer interfaces.²⁹³ The Commission believes that the BSTX System satisfies this off-floor transmission condition.

The second condition states that the member and any associated person not participate in the execution of its order after the order has been transmitted. The Exchange has represented that at no time following the submission of an order is a member or an associated person of the

²⁹¹ See Letter from Lisa Fall, President, BOX, dated December 23, 2021 (“BSTX 11(a) Letter”) available on the Commission’s website at: <https://www.sec.gov/comments/sr-box-2021-06/srbox202106-20110741-264607.pdf>.

²⁹² See, e.g., Securities Exchange Act Release Nos. 78101 (June 17, 2016), 81 FR 41141 (June 23, 2016) (order approving IEX exchange registration); 75650 (August 7, 2015), 80 FR 48600 (August 13, 2015) (order approving EDGX Options as an options trading facility of the EDGX Exchange, Inc.); 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (order approving the BATS Options as an options trading facility of the BATS Exchange, Inc.); 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (order approving the Boston Options Exchange as an options trading facility of the Boston Stock Exchange); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (order approving Archipelago Exchange as electronic trading facility of the Pacific Exchange); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (regarding NYSE’s Off-Hours Trading Facility); 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (“1979 Release”); and 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (“1978 Release”) (regarding NYSE’s Designated Order Turnaround System).

²⁹³ See BSTX 11(a) Letter, *supra* note 291, at 3.

member able to acquire control or influence over the result or timing of the order's execution.²⁹⁴

According to the Exchange, the execution of a member's order is determined solely by what quotes and orders are present in the BSTX System at the time the member submits the order, and the order priority based on the BSTX rules.²⁹⁵ Accordingly, the Commission believes that a member and its associated persons do not participate in the execution of an order submitted to the BSTX System.

The third condition states that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that this condition is satisfied when automated exchange facilities are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.²⁹⁶ The Exchange has represented that the design of the BSTX System ensures that no member has any special or unique trading advantage in the

²⁹⁴ See id. at 4.

²⁹⁵ See id. The Exchange states that a member may cancel or modify the order, or modify the instructions for executing the order, provided such cancellations or modifications are transmitted from off an exchange floor. See id. at 3 (citing the 1978 Release). The Commission has stated that the non-participation requirement is satisfied under such circumstances, so long as such modifications or cancellations are also transmitted from off the floor. See 1978 Release, supra note 292 (stating that the "non-participation requirement does not prevent initiating members from canceling or modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor").

²⁹⁶ In considering the operation of automated execution systems operated by an exchange, the Commission has stated that while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2-2(T). See 1979 Release, supra note 292.

handling of its orders after transmitting its orders to the Exchange.²⁹⁷ Based on the Exchange's representation that the design of the BSTX System ensures that no member has any special or unique trading advantage in the handling of its orders after transmitting its orders to BSTX, the Commission believes that the BSTX System satisfies this condition of Rule 11a2-2(T).

Fourth, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Exchange Act and Rule 11a2-2(T) thereunder.²⁹⁸ Members trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule's exemption.²⁹⁹

²⁹⁷ See BSTX 11(a) Letter, supra note 291, at 4. The Exchange also states that access to the BSTX Market Data Blockchain will not allow a member or an associated person of such member to acquire control or influence over the result or timing of an order's execution. See id.

²⁹⁸ 17 CFR 240.11a2-2(T)(a)(2)(iv). In addition, Rule 11a2-2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement. See 17 CFR 240.11a2-2(T)(d). See also 1978 Release, supra note 292 (stating “[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests”).

²⁹⁹ See BSTX 11(a) Letter, supra note 291, at 4-5.

IV. Solicitation of Comments on Amendment Nos. 2 and 3 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment Nos. 2 and 3 are consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an 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 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 on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 2 and 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment Nos. 2 and 3, prior to the thirtieth day after the date of publication of notice of the filing of Amendment Nos. 2 and 3 in the Federal Register. The Commission notes that the original proposal and the proposal as modified by Amendment No. 1 were published for comment in the Federal Register.³⁰⁰

In Amendment No. 2, the Exchange revised the proposal to: (i) provide additional information regarding the connectivity and co-location services that will be offered at the Exchange's primary data center, including equidistant cabling arrangements; (ii) state that, pursuant to its authority under proposed BSTX Rule 26101, the Exchange would not permit an issuer to list a new class of securities on BSTX that is not distinct from an existing class of securities of the issuer; (iii) modify proposed rule text regarding the proposed BSTX Market Data Blockchain to clarify that non-BSTX Participants will have access to anonymized, general market data and specify what fields are included in this data, to specify that the market data will apply to trading activity for regular trading hours, and to clarify that users will view the data through an application programming interface; (iv) modify proposed rule text related to the proposed order parameter that would be used to preference T+0 settlement to add the T+0 Cut-

³⁰⁰ See Notice, supra note 3; OIP, supra note 7.

Off Time by which an execution must occur to be eligible for T+0 settlement; (v) provide additional description to clarify operation of the proposed BSTX Market Data Blockchain and proposed optional order parameter for T+0 or T+1 settlement; and (vi) make technical and conforming changes. The Commission believes that these changes help to clarify the proposal and address concerns raised by commenters regarding the Exchange's equidistant cabling arrangements and the potential for listing a class of securities that has the same economic and voting rights as a class of securities listed on another national securities exchange. The Commission also believes that the changes regarding General Market Data on the BSTX Market Data Blockchain help to clarify access for non-BSTX Participants and how the Exchange will anonymize the data. The Commission further believes that the addition of the T+0 Cut-Off Time will help to ensure that trades submitted to NSCC for T+0 settlement are received by NSCC before NSCC's cut-off time and thus can be settled using the consolidated net settlement process, and that the additional explanation regarding the order parameter for T+0 and T+1 settlement helps to clarify how this functionality will operate.

In addition, the Exchange made several changes in Amendment No. 2 to bring the proposed rules into closer alignment with the rules of other national securities exchanges on which equities securities are traded, including by: (i) modifying certain trading rules regarding securities eligible for trading, prohibitions against trading ahead of customer orders, round lots, minimum price variants, auctions used to open or reopen trading, the dissemination of market data concerning such auctions, risk controls, market maker registration process and obligations, business conduct, trading practices, maintaining books and records, off-exchange transactions, scope of the MRVP, trade reporting and the dissemination of quotations, clearly erroneous executions, and locking and crossing quotations; (ii) eliminating a proposed rule regarding an

audit trail that has been superseded by rules pertaining to the Consolidated Audit Trail; (iii) modifying certain proposed listing standards regarding the listing of secondary classes and preferred stock, the required number of market makers, requirements for securities of foreign issuers that would apply to the listing of Canadian issuers, the listing of securities subject to an exemption from Exchange Act registration, the method of computing the payment of cash in lieu of fractional shares, the settlement timing of securities transactions, requirements to notify the Exchange before engaging in activities relating to a proxy contest, requirements that listed companies establish and maintain an internal audit function, the calculation of regulatory transaction fees under Section 31 of the Exchange Act, and the distribution of funds in the event of liquidation of the Exchange; and (iv) eliminating a proposed listing requirement that an applicant provide a legal opinion that its security qualifies as a security under applicable United States securities laws. The Exchange also made changes in Amendment Nos. 2 and 3 to certain quantitative listing requirements to comply with the thresholds and other terminology in Rule 3a51-1. The Commission believes that these changes help make these aspects of the proposal substantially similar to the existing rules of national securities exchanges.

Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,³⁰¹ to approve the proposed rule change, as modified by Amendment Nos. 2 and 3, on an accelerated basis.

³⁰¹ 15 U.S.C. 78f(b)(2).

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act³⁰² and Rule 19d-1(c)(2) thereunder,³⁰³ that the proposed rule change (SR-BOX-2021-06), as modified by Amendment Nos. 2 and 3 thereto, be, and it hereby is, approved on an accelerated basis.

Although the Commission's approval of the proposed rule change is final, and the proposed rules are therefore effective, it is further ordered that the operation of BSTX is conditioned on the satisfaction of the requirements below:

A. Participation in National Market System Plans Relating to Equities Trading. BOX must join all relevant national market system plans related to BSTX equities trading, including: (1) the Consolidated Tape Association Plan, the Consolidated Quotation Plan, and the Nasdaq UTP Plan (or any successors thereto); (2) the National Market System Plan to Address Extraordinary Market Volatility; and (3) the National Market System Plan Establishing Procedures Under Rule 605 of Regulation NMS.

B. Regulatory Services Agreement and Rule 17d-2 Agreements. BOX must ensure that all necessary changes are made to its Regulatory Services Agreement with FINRA and must be a party to the multi-party Rule 17d-2 agreements applicable to BSTX equities trading and equities market surveillance.

C. Intermarket Surveillance Group. BOX must ensure that its membership in the Intermarket Surveillance Group extends to the BSTX facility.

³⁰² 15 U.S.C. 78s(b)(2).

³⁰³ 17 CFR 240.19d-1(c)(2).

D. Governance Structure. BOX must ensure, consistent with the requirements of Section 19(b) and Rule 19b-4, that it has adopted a rule establishing BSTX as a facility of the Exchange.³⁰⁴

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰⁵

J. Matthew DeLesDernier
Assistant Secretary

³⁰⁴ See also supra note 12 and accompanying text.

³⁰⁵ 17 CFR 200.30-3(a)(12).