

should be submitted on or before February 19, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90985; File No. 4-523]

Program for Allocation of Regulatory Responsibilities Pursuant To Rule 17d-2; Notice of Filing and Order Approving and Declaring Effective an Amended Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc. and NYSE Arca, Inc.

January 25, 2021.

Notice is hereby given that the Securities and Exchange Commission (“Commission”) has issued an Order, pursuant to Section 17(d) of the Securities Exchange Act of 1934 (“Act”),¹ approving and declaring effective an amendment to the plan for allocating regulatory responsibility (“Plan”) filed on December 18, 2020, pursuant to Rule 17d-2 of the Act,² by the Financial Industry Regulatory Authority, Inc. (“FINRA”) and NYSE Arca, Inc. (“NYSE Arca”) (collectively, “Participating Organizations” or “parties”). This agreement amends and restates the agreement entered into between the parties on February 9, 2007, entitled “Agreement Between the National Association of Securities Dealers, Inc. and NYSE Arca, Inc. Pursuant to SEA Rule 17d-2 Under the Securities Exchange Act of 1934,” and any subsequent amendments thereafter.

I. Introduction

Section 19(g)(1) of the Act,³ among other things, requires every self-regulatory organization (“SRO”) registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO’s own rules, unless the SRO is relieved of this responsibility pursuant to Section

17(d)⁴ or Section 19(g)(2)⁵ of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (“common members”). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act⁶ was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.⁷ With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d-1 and Rule 17d-2 under the Act.⁸ Rule 17d-1 authorizes the Commission to name a single SRO as the designated examining authority (“DEA”) to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.⁹ When an SRO has been named as a common member’s DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d-1 deals only with an SRO’s obligations to enforce member compliance with financial responsibility requirements. Rule 17d-1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d-2 under the Act.¹⁰ Rule 17d-2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect

to their common members. Under paragraph (c) of Rule 17d-2, the Commission may declare such a plan effective if, after providing for appropriate notice and opportunity for comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system, and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d-2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. The Plan

On August 31, 2006, the Commission declared effective the Plan entered into between FINRA and NYSE Arca for allocating regulatory responsibility pursuant to Rule 17d-2.¹¹ On March 22, 2007, the Commission approved an amendment to the Plan that (1) eliminated paragraph 11 of the Plan that allocated to FINRA the responsibility to receive and act upon requests for extension of time pursuant to Federal Reserve Regulation T and Rule 15c3-3 under the Act, and (2) changed from “monthly” to “upon request” the obligation of FINRA to share information with NYSE Arca regarding notice of changes in allied members, partners, officers, registered personnel and other persons, and the opening, address change, and termination of main and branch offices and the names of branch office managers.¹²

The Plan is intended to reduce regulatory duplication for firms that are common members of FINRA and NYSE Arca by allocating regulatory responsibility with respect to certain applicable laws, rules, and regulations that are common among them. Included in the Plan is an exhibit that lists every NYSE Arca rule for which FINRA bears responsibility under the Plan for overseeing and enforcing with respect to NYSE Arca members that are also members of FINRA and the associated persons therewith (“Certification”).

III. Proposed Amendment to the Plan

On December 18, 2020, the parties submitted a proposed amendment to the Plan (“Amended Plan”). The primary purpose of the Amended Plan is to

⁴ 15 U.S.C. 78q(d).

⁵ 15 U.S.C. 78s(g)(2).

⁶ 15 U.S.C. 78q(d)(1).

⁷ See Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Session 32 (1975).

⁸ 17 CFR 240.17d-1 and 17 CFR 240.17d-2, respectively.

⁹ See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

¹⁰ See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

¹¹ See Securities Exchange Act Release No. 54394 (August 31, 2006), 71 FR 52827 (September 7, 2006).

¹² See Securities Exchange Act Release No. 55505 (March 22, 2007), 72 FR 14628 (March 28, 2007).

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78q(d).

² 17 CFR 240.17d-2.

³ 15 U.S.C. 78s(g)(1).

remove Regulation SHO from the Certification. The text of the proposed Amended Plan, which replaces and supersedes the current Plan in its entirety, is as follows:

* * * * *

AGREEMENT BETWEEN FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC. AND NYSE ARCA, INC. PURSUANT TO RULE 17d-2 UNDER THE SECURITIES EXCHANGE ACT OF 1934

This Agreement, by and between Financial Industry Regulatory Authority, Inc. (“FINRA”) and the NYSE Arca, Inc. (“NYSE Arca”), is made this 17th day of December, 2020 (the “Agreement”), pursuant to Section 17(d) of the Securities Exchange Act of 1934 (the “Exchange Act” or “SEA”) and Rule 17d-2 thereunder which permits agreements between self-regulatory organizations to allocate regulatory responsibility to eliminate regulatory duplication. FINRA and NYSE Arca may be referred to individually as a “party” and together as the “parties.”

This Agreement amends and restates the agreement entered into between the parties on February 9, 2007, entitled “Agreement Between the National Association of Securities Dealers, Inc. and NYSE Arca, Inc. Pursuant to SEA Rule 17d-2 Under the Securities Exchange Act of 1934,” and any subsequent amendments thereafter.

Whereas, FINRA and NYSE Arca desire to reduce duplication in the examination of their Dual Members (as defined herein) and in the filing and processing of certain registration and membership records; and

Whereas, FINRA and NYSE Arca desire to execute an agreement covering such subjects pursuant to the provisions of Rule 17d-2 under the Exchange Act and to file such agreement with the Securities and Exchange Commission (the “SEC” or “Commission”) for its approval.

Now, therefore, in consideration of the mutual covenants contained hereinafter, FINRA and NYSE Arca hereby agree as follows:

1. *Definitions.* Unless otherwise defined in this Agreement or the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Exchange Act and the rules and regulations thereunder. As used in this Agreement, the following terms shall have the following meanings:

(a) “NYSE Arca Rules” or “FINRA Rules” shall mean: (i) The rules of the NYSE Arca, or (ii) the rules of FINRA, respectively, as the rules of an exchange

or association are defined in Exchange Act Section 3(a)(27).

(b) “Common Rules” shall mean the NYSE Arca Rules that are substantially similar to the applicable FINRA Rules and certain provisions of the Exchange Act and SEA rules set forth on *Exhibit 1* in that examination for compliance with such rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of such provisions or rule, or a Dual Member’s activity, conduct, or output in relation to such rule; provided, however, Common Rules shall not include the application of SEA, NYSE Arca or FINRA rules as they pertain to violations of insider trading activities, which is covered by a separate 17d-2 Agreement by and among the Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., NYSE Chicago, Inc., Cboe EDGA Exchange, Inc., Bats Cboe EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., MEMX, LLC, MIAA Pearl, LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, NYSE National, Inc., New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., Investors Exchange LLC and Long-Term Stock Exchange, Inc., approved by the SEC on September 23, 2020, as may be amended from time to time. Common Rules shall not include provisions regarding (i) notice, reporting or any other filings made directly to or from NYSE Arca, (ii) incorporation by reference of other NYSE Arca Rules that are not Common Rules, (iii) exercise of discretion in a manner that differs from FINRA’s exercise of discretion, including, but not limited to exercise of exemptive authority, by NYSE Arca, (iv) prior written approval of NYSE Arca, and (v) payment of fees or fines to NYSE Arca.

(c) “Dual Members” shall mean those NYSE Arca members that are also members of FINRA and the associated persons therewith.

(d) “Effective Date” shall be the date this Agreement is approved by the Commission.

(e) “Enforcement Responsibilities” shall mean the conduct of appropriate proceedings, in accordance with the FINRA Code of Procedure (the Rule 9000 Series) and other applicable FINRA procedural rules, to determine whether violations of Common Rules have occurred, and if such violations are deemed to have occurred, the imposition of appropriate sanctions as specified under the FINRA Code of Procedure and sanctions guidelines.

(f) “Regulatory Responsibilities” shall mean the examination responsibilities and Enforcement Responsibilities relating to compliance by the Dual Members with the Common Rules and the provisions of the Exchange Act and the rules and regulations thereunder, and other applicable laws, rules and regulations, each as set forth on *Exhibit 1* attached hereto.

2. *Regulatory and Enforcement Responsibilities.* FINRA shall assume Regulatory Responsibilities and Enforcement Responsibilities for Dual Members. Attached as *Exhibit 1* to this Agreement and made part hereof, NYSE Arca furnished FINRA with a current list of Common Rules and certified to FINRA that such rules are substantially similar to the corresponding FINRA Rule (the “Certification”). FINRA hereby agrees that the rules listed in the Certification are Common Rules as defined in this Agreement. Each year following the Effective Date of this Agreement, or more frequently if required by changes in either the rules of NYSE Arca or FINRA, NYSE Arca shall submit an updated list of Common Rules to FINRA for review which shall add NYSE Arca Rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete NYSE Arca Rules included in the current list of Common Rules that no longer qualify as Common Rules as defined in this Agreement; and confirm that the remaining rules on the current list of Common Rules continue to be NYSE Arca Rules that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, FINRA shall confirm in writing whether the rules listed in any updated list are Common Rules as defined in this Agreement. Notwithstanding anything herein to the contrary, it is explicitly understood that the term “Regulatory Responsibilities” does not include, and NYSE Arca shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) the following (collectively, the “Retained Responsibilities”):

(a) Surveillance, examination, investigation and enforcement with respect to trading activities or practices involving NYSE Arca’s own marketplace;

(b) registration pursuant to its applicable rules of associated persons (*i.e.*, registration rules that are not Common Rules);

(c) discharge of its duties and obligations as a Designated Examining Authority pursuant to Rule 17d-1 under the Exchange Act, if applicable; and

(d) any NYSE Arca Rules that are not Common Rules except for NYSE Arca Rules for any NYSE Arca affiliate that is a member that operates as a facility (as defined in Section 3(a)(2) of the Exchange Act), acts as a router for NYSE Arca and is a member of FINRA ("Router Member") as provided in paragraph 6. As of the date of this Agreement, Archipelago Securities LLC is the only Router Member.

3. Dual Members. Prior to the Effective Date, NYSE Arca shall furnish FINRA with a current list of Dual Members, which shall be updated no less frequently than once each quarter.

4. No Charge. There shall be no charge to NYSE Arca by FINRA for performing the Regulatory Responsibilities and Enforcement Responsibilities under this Agreement except as hereinafter provided. FINRA shall provide NYSE Arca with ninety (90) days advance written notice in the event FINRA decides to impose any charges to NYSE Arca for performing the Regulatory Responsibilities under this Agreement. If FINRA determines to impose a charge, NYSE Arca shall have the right at the time of the imposition of such charge to terminate this Agreement; provided, however, that FINRA's Regulatory Responsibilities under this Agreement shall continue until the Commission approves the termination of this Agreement.

5. Applicability of Certain Laws, Rules, Regulations or Orders.

Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the Commission. To the extent such statute, rule or order is inconsistent with one or more provisions of this Agreement, the statute, rule or order shall supersede the provision(s) hereof to the extent necessary to be properly effectuated and the provision(s) hereof in that respect shall be null and void.

6. Notification of Violations.

(a) In the event that FINRA becomes aware of apparent violations of any NYSE Arca Rules, which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, FINRA shall notify NYSE Arca of those apparent violations for such response as NYSE Arca deems appropriate. With respect to apparent violations of any NYSE Arca Rules by any Router Member, FINRA shall not make referrals to NYSE Arca pursuant to this paragraph 6. Such apparent violations shall be processed by, and enforcement proceedings in respect thereto will be conducted by, FINRA as provided in this agreement.

(b) In the event that NYSE Arca becomes aware of apparent violations of any Common Rules, discovered pursuant to the performance of the Retained Responsibilities, NYSE Arca shall notify FINRA of those apparent violations and such matters shall be handled by FINRA as provided in this Agreement.

(c) Apparent violations of Common Rules shall be processed by, and enforcement proceedings in respect thereto shall be conducted by FINRA as provided hereinbefore; provided, however, that in the event a Dual Member is the subject of an investigation relating to a transaction on the NYSE Arca, NYSE Arca may in its discretion assume concurrent jurisdiction and responsibility.

(d) Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings.

7. Continued Assistance.

(a) FINRA shall make available to NYSE Arca all information obtained by FINRA in the performance by it of the Regulatory Responsibilities hereunder with respect to the Dual Members subject to this Agreement. In particular, and not in limitation of the foregoing, FINRA shall furnish NYSE Arca any information it obtains about Dual Members which reflects adversely on their financial condition. NYSE Arca shall make available to FINRA any information coming to its attention that reflects adversely on the financial condition of Dual Members or indicates possible violations of applicable laws, rules or regulations by such firms.

(b) The parties agree that documents or information shared shall be held in confidence, and used only for the purposes of carrying out their respective regulatory obligations. Neither party shall assert regulatory or other privileges as against the other with respect to documents or information that is required to be shared pursuant to this Agreement.

(c) The sharing of documents or information between the parties pursuant to this Agreement shall not be deemed a waiver as against third parties of regulatory or other privileges relating to the discovery of documents or information.

8. Statutory Disqualifications. When FINRA becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a Dual Member, FINRA shall determine pursuant to Sections 15A(g) and/or Section 6(c) of the Exchange Act the acceptability or continued applicability of the person to whom such disqualification applies and keep NYSE

Arca advised of its actions in this regard for such subsequent proceedings as NYSE Arca may initiate.

9. Customer Complaints. NYSE Arca shall forward to FINRA copies of all customer complaints involving Dual Members received by NYSE Arca relating to FINRA's Regulatory Responsibilities under this Agreement. It shall be FINRA's responsibility to review and take appropriate action in respect to such complaints.

10. Advertising. FINRA shall assume responsibility to review the advertising of Dual Members subject to the Agreement, provided that such material is filed with FINRA in accordance with FINRA's filing procedures and is accompanied with any applicable filing fees set forth in FINRA Rules.

11. No Restrictions on Regulatory Action. Nothing contained in this Agreement shall restrict or in any way encumber the right of either party to conduct its own independent or concurrent investigation, examination or enforcement proceeding of or against Dual Members, as either party, in its sole discretion, shall deem appropriate or necessary.

12. Termination. This Agreement may be terminated by NYSE Arca or FINRA at any time upon the approval of the Commission after one (1) year's written notice to the other party, except as provided in paragraph 4.

13. Arbitration. In the event of a dispute between the parties as to the operation of this Agreement, NYSE Arca and FINRA hereby agree that any such dispute shall be settled by arbitration in Washington, DC in accordance with the rules of the American Arbitration Association then in effect, or such other procedures as the parties may mutually agree upon. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Each party acknowledges that the timely and complete performance of its obligations pursuant to this Agreement is critical to the business and operations of the other party. In the event of a dispute between the parties, the parties shall continue to perform their respective obligations under this Agreement in good faith during the resolution of such dispute unless and until this Agreement is terminated in accordance with its provisions. Nothing in this Section 13 shall interfere with a party's right to terminate this Agreement as set forth herein.

14. Notification of Members. NYSE Arca and FINRA shall notify Dual Members of this Agreement after the Effective Date by means of a uniform joint notice.

15. *Amendment.* This Agreement may be amended in writing duly approved by each party. All such amendments must be filed with and approved by the Commission before they become effective.

16. *Limitation of Liability.* Neither FINRA nor NYSE Arca nor any of their respective directors, governors, officers or employees shall be liable to the other party to this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibilities as provided hereby or for the failure to provide any such responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or the other of FINRA or NYSE Arca and caused by the willful misconduct of the other party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by FINRA or NYSE Arca with respect to any of the responsibilities to be performed by each of them hereunder.

17. *Relief from Responsibility.* Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d-2 thereunder, FINRA and NYSE Arca join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve NYSE Arca of any and all responsibilities with respect to matters allocated to FINRA pursuant to this Agreement; provided, however, that this Agreement shall not be effective until the Effective Date.

18. *Severability.* Any term or provision of this Agreement that is invalid or unenforceable in any

jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

19. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

20. *Separate Agreement.* This Agreement is wholly separate from (1) the multiparty Agreement made pursuant to Rule 17d-2 of the Securities Exchange Act of 1934 between the NYSE American LLC, Cboe BZX Exchange, Inc., the Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Nasdaq ISE, LLC, Financial Industry Regulatory Authority, Inc., NYSE Arca, Inc., The NASDAQ Stock Market LLC, BOX Exchange LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, Miami International Securities Exchange, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, MIAX PEARL, LLC, and MIAX Emerald, LLC involving the allocation of regulatory responsibilities with respect to common members for compliance with common rules relating to the conduct by broker-dealers of accounts for listed options or index warrants entered into on February 12, 2019, and as may be amended from time to time or (2) the multiparty Agreement made pursuant to Rule 17d-2 of the Exchange Act among NYSE American LLC, Cboe

BZX Exchange, Inc., the Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Nasdaq ISE, LLC, Financial Industry Regulatory Authority, Inc., NYSE Arca, Inc., The NASDAQ Stock Market LLC, BOX Exchange LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, Miami International Securities Exchange, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, MIAX PEARL, LLC, and MIAX Emerald, LLC approved by the Commission on February 11, 2019 involving options-related market surveillance matters and such agreements as may be amended from time to time.

* * * * *

Exhibit 1

NYSE ARCA Certification

NYSE Arca Rules Certification for 17d-2 Agreement With FINRA

NYSE Arca, Inc. hereby certifies that the requirements contained in the rules listed below are identical to, or substantially similar to the comparable FINRA Rules and bylaws identified (“Common Rules”).

Common Rules shall not include provisions regarding (i) notice, reporting or any other filings made directly to or from NYSE Arca, (ii) incorporation by reference of other NYSE Arca Rules that are not Common Rules (iii) exercise of discretion in a manner than differs from FINRA’s exercise of discretion including, but not limited to exercise of exemptive authority, by NYSE Arca, (iv) prior written approval of NYSE Arca, and (v) payment of fees or fines to NYSE Arca.

| NYSE Arca Rule(s) ¹ | FINRA Rule(s) |
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| 2.16 Responsibilities of Non-Resident Firms # | FINRA Rule 1021 Foreign Members. |
| 2.1210 Registration Requirements # | FINRA Rule 1210 Registration Requirements. |
| 2.1220 Registration Categories ² # | FINRA Rule 1220(a)(1)–(4), (7), (8), (10), and (b)(1), (2) and (4), SM. 01–.06 Registration Categories. |
| 2.1230 Associated Persons Exempt from Registration | FINRA Rule 1230(a) and SM. 01, Associated Persons Exempt from Registration. |
| 2.28 Books and Records # | FINRA Rule 4511 General Requirements.* |
| 11.1(b) Adherence to Law and Good Business Practice | FINRA Rule 2010 Standards of Commercial Honor and Principals of Trade.* |
| 11.2 Prohibited Acts # | FINRA Rule 2010 Standards of Commercial Honor and Principals of Trade,* FINRA Rule 1122 Filing of Misleading Information as to Membership or Registration, and FINRA By-Laws Article XIII, Section 1. |
| 11.10 Excessive Trading | FINRA Rule 6140(c) Other Trading Practices. |
| 11.13 Disciplinary Action By Other Organizations # | FINRA Rule 4530(a)(1)(A), (a)(1)(C), (a)(1)(D) & (2) Reporting Requirements and FINRA By-Laws Article V, Section 2. |
| 11.18 Supervision # ³ | FINRA Rule 3110(a), (b)(1) and (f) Supervision,* and FINRA Rule 1220(a)(1)–(4), (7), (8), (10) Registration Categories. |
| 11.19 Anti-Money Laundering Compliance Program # | FINRA Rule 3310 Anti-Money Laundering Compliance Program. |
| 11.20 Miscellaneous Provisions(a)(1) and (3) | FINRA Rule 6140 Other Trading Practices. |
| NYSE Arca Equities Rule(s) ⁴ | FINRA Rule(s) |
| 2.24 Registration-Employees of ETP Holders and Commentary .02 # ⁵ . | FINRA Rule 1210 Registration Requirements, FINRA Rule 1010(a) and (c) Electronic Filing Requirements for Uniform Forms, and FINRA By-Laws Article V, Sec. 2 Application for Registration. |

| NYSE Arca Equities Rule(s) ⁴ | FINRA Rule(s) |
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| 2.24(b), (c), and Commentary .03 and .05 Registration-Employees of ETP Holders #. | FINRA Rule 1210 and SM .03, .07 and .08 Registration Requirements, and FINRA Rule 1240 Continuing Education Requirements, and FINRA Rule 1230(a) Associated Persons Exempt from Registration. |
| 2.24(d) and Commentary .04 Continuing Education and 9.27–E(c) Continuing Education Requirements. | FINRA Rule 1240 Continuing Education Requirements. |
| 2.24(i) Registration-Employees of ETP Holders | FINRA Rule 1010(e) Electronic Filing Requirements for Uniform Forms and FINRA By-Laws Article V, Section 3 Notification by Member to the Corporation and Associated Person of Termination; Amendments to Notification. |
| 2.24(j) Registration-Employees of ETP Holders | FINRA By-Laws Article V, Section 2 Application for Registration. |
| 5.2–E(h) Unit Investment Trusts (“UITs”) Commentary .03# | FINRA Rule 3260(c) Discretionary Accounts. |
| 7.3–E(b) and (c) Commissions | FINRA Rule 2232 Customer Confirmations and SEA 10b–10. |
| 9.1–E(a) Register with the Exchange # | FINRA Rule 3110(a)(3) Supervisory System, SM .01 Registration of Main Office, and SM .02 Designation of Additional OSJs, and FINRA By-Laws Article IV, Sec. 1(c) Application for Membership. |
| 9.1–E(c) Office Supervision # | FINRA Rule 3110(a) Supervision.* |
| 9.1–E(d) ETP Holder shall at all times # | FINRA Rule 3110(a) Supervision.* |
| 9.1–E(e)(2) and (3) Guarantees | FINRA Rule 2150(b) Improper use of Customers’ Securities or Funds; Prohibitions Against Guarantees and Sharing in Accounts. |
| 9.2–E(a) Diligence As To Accounts | FINRA Rule 2090 Know Your Customer. ⁶ |
| 9.2–E(a)(2) and (3) Diligence As To Accounts | FINRA Rule 2111 Suitability. |
| 9.2–E(b)(1) and (4) Account Supervision | FINRA Rule 3110 Supervision and FINRA Rule 4511.* |
| 9.2–E(c) Customer Records | FINRA Rule 4512 Customer Account Information.* ⁷ |
| 9.3–E(a) Employee Accounts | FINRA Rule 3210 Accounts at Other Broker-Dealers and Financial Institutions. ⁸ |
| 9.3–E(b) ETP Holder Accounts | FINRA Rule 3210 Accounts at Other Broker-Dealers and Financial Institutions. |
| 9.4–E Proxies Voting | FINRA Rule 2251(b) Processing and Forwarding of Proxies and Other Issuer-Related Materials. |
| 9.5–E Solicitation Expense | FINRA Rule 2251(c) Processing and Forwarding of Proxies and Other Issuer-Related Materials. |
| 9.6–E(a) Discretion as to Customers’ Accounts and 9.6–E(b) Records of Discretionary Accounts. | FINRA Rule 3260 Discretionary Accounts and FINRA Rule 4512(a)(3) Customer Account Information.* |
| 9.6–E(c) Marking Discretionary Orders | FINRA Rule 3260 Discretionary Accounts. |
| 9.7–E(b) Use of Customer Securities | FINRA Rule 2150(a) Improper use of Customers’ Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts, and FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade. |
| 9.7–E(c) Customer Protection—Reserves and Custody of Securities. | FINRA 4330(b)(1)(A) Customer Protection—Permissible Use of Customers’ Securities and SM .01 Definitions. |
| 9.7–E(d) Agreements for Use of Customer Securities | FINRA 4330(a) Customer Protection—Permissible Use of Customers’ Securities. |
| 9.11–E Confirmations | Temporary Dual FINRA NYSE Member Rule 409T(b) Statements of Accounts to Customer. ⁹ |
| 9.12–E COD Orders—Partial Delivery | FINRA Rule 11860 COD Orders. |
| 9.14–E Account Designation | FINRA Rule 4515 Approval and Documentation of Changes in Account Name or Designation. |
| 9.15–E Statements of Account to Customers | FINRA Rule 2231 Customer Account Statements. |
| 9.16–O Statement or Notice on Interest | FINRA Rule 2360(b)(15) Options, FINRA Rule 2231(a) Customer Account Statements. |
| 9.18–E(h) Doing a Public Business in Options | FINRA Rule 2360(b)(13) Options. |
| 9.19–E Transfer of Accounts | FINRA Rule 11870 Customer Account Transfer Contracts. |
| 9.20–E(b) Telemarketing | FINRA Rule 3230 Telemarketing. |
| 9.27–E(a) and (b) Registration of Representatives # | FINRA Rule 1220 Registration Categories, FINRA Rule 1240 Continuing Education Requirements, FINRA Rule 1010(d) Electronic Filing Requirements for Uniform Forms, and FINRA By-Laws Article V Registered Representatives and Associated Persons. |
| 9.29–E Borrowing From or Lending to Customers | FINRA Rule 3240 Borrowing From or Lending to Customers. |
| 11.22 Trading Ahead of Research Reports | FINRA Rule 5280 Trading Ahead of Research Reports. |
| 9.2010–E Standards of Commercial Honor and Principles of Trade. | FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade.* |
| 9.2020–E Use of Manipulative, Deceptive or Other Fraudulent Devices. | FINRA Rule 2020 Use of Manipulative, Deceptive or Other Fraudulent Devices.* |
| 9.2150–E Improper Use of Customers’ Securities or Funds’ Prohibition Against Guarantees and Sharing in Accounts. | FINRA Rule 2150 Improper Use of Customers’ Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts. |
| 9.2262–E Disclosure of Control Relationship with Issuer | FINRA Rule 2262 Disclosure of Control Relationship with Issuer. |
| 9.2269–E Disclosure of Participation or Interest in Primary or Secondary Distribution. | FINRA Rule 2269 Disclosure of Participation or Interest in Primary or Secondary Distribution. |
| 9.3220–E Influencing or Rewarding Employees of Others | FINRA Rule 3220 Influencing or Rewarding Employees of Others. |
| 9.3270–E Outside Business Activities of Registered Persons | FINRA Rule 3270 Outside Business Activities of Registered Persons. |
| 9.5320–E Prohibition Against trading Ahead of Customer Orders. | FINRA Rule 5320 Prohibition Against Trading Ahead of Customer Orders. |
| 9.5190–E Notification Requirements for Offering Participants # .. | FINRA Rule 5190 Notification Requirements for Offering Participants. ¹⁰ |
| 9.5210–E Publication of Transactions and Quotations | FINRA Rule 5210 Publication of Transactions and Quotations. |
| 6.7410–E Definitions | FINRA Rule 7410 Definitions. |
| 6.7420–E Applicability | FINRA Rule 7420 Applicability. |
| 6.7430–E Synchronization of ETP Holder Business Clock # | FINRA Rule 4590 Synchronization of Member Business Clocks. |

| NYSE Arca Equities Rule(s) ⁴ | FINRA Rule(s) |
|---|---|
| 6.7440–E Recording of Order Information | FINRA Rule 7440 Recording of Order Information. |
| 6.7450–E Order Data Transmission Requirements | FINRA Rule 7450 Order Data Transmission Requirements. |
| 6.7460–E Violation of Order Audit Trail System Rules | FINRA Rule 7460 Violation of Order Audit Trail System Rules. |
| 6.7470–E Exemption to the Order Recording and Data Transmission Requirements #. | FINRA Rule 7470 Exemption to the Order Recording and Data Transmission Requirements. |
| NYSE Arca Options Rule(s) ¹¹ | FINRA Rule(s) |
| 2.23(a) Registration—OTPs # | FINRA Rule 1210 Registration Requirements, FINRA Rule 1010(a) and (c) Electronic Filing Requirements for Uniform Forms, and FINRA By-Laws Article V, Sec. 2 Application for Registration. |
| 2.23(b)(1) and (3) Registration # | FINRA Rule 1210 and SM .03 and .07 Registration Requirements, and FINRA Rule 1220(a)(2), (7) and (b)(2) Registration Categories. |
| 2.23(c) and .04 Registration | FINRA Rule 1210 SM .03 and .08 Registration Requirements. |
| 2.23(d) and .03 Registration and 9.27–O(c) Continuing Education Requirements. | FINRA Rule 1240 Continuing Education Requirements. |
| 2.23(j) Registration | FINRA By-Laws Article V, Section 2 Application for Registration. |
| 9.1–O(c) Office Supervision # | FINRA Rule 3110(a) Supervision.* |
| 9.1–O(d) OTP Holders # | FINRA Rule 3110(a) Supervision.* |
| 9.2–O(c) Customer Records | FINRA Rule 4512 Customer Account Information. ¹² |
| 9.3–O(a) Employee Accounts | FINRA Rule 3210 Accounts at Other Broker-Dealers and Financial Institutions. ¹⁰ |
| 9.3–O(b) OTP Firms, OTP Holder Accounts | FINRA Rule 3210 Accounts at Other Broker-Dealers and Financial Institutions. |
| 9.4–O Proxies Voting | FINRA Rule 2251(b) Forward of Proxies and Other Issuer-Related Materials. |
| 9.5–O Solicitation Expense | FINRA Rule 2251(c)(1)(b) Forward of Proxies and Other Issuer-Related Materials. |
| 9.6–O(a) Discretion as to Customers' Accounts and 9.6–O(b) Records of Discretionary Accounts. | FINRA Rule 3260 Discretionary Accounts and FINRA Rule 4512(a)(3) Customer Account Information.* |
| 9.6–O(c) Marking Discretionary Orders | FINRA Rule 3260 Discretionary Accounts. |
| 9.7–O(b) Use Customer Securities | FINRA Rule 2150(a) Improper Use of Customers' Securities or Funds Prohibition and FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade. |
| 9.7–O(c) Customer Protection—Reserves and Customer's Securities. | FINRA Rule 4330(b)(1)(A) Customer Protection—Permissible Use of Customers' Securities and SM .01 Definitions. |
| 9.7–O(d) Agreements for Use of Customer Securities | FINRA Rule 4330(a) Customer Protection—Permissible Use of Customers' Securities. |
| 9.11–O Confirmations | Temporary Dual FINRA NYSE Member Rule 409T(b) Statements of Accounts to Customers. ¹¹ |
| 9.12–O COD Orders—Partial Delivery | FINRA Rule 11860 COD Orders. |
| 9.14–O Account Designation | FINRA Rule 4515 Approval and Documentation of Changes in Account Name or Designation. |
| 9.15–O Statements of Accounts to Customers # | FINRA Rule 2231 Customer Account Statements. |
| 9.16–O Statement or Notice on Interest | FINRA Rule 2360(b)(15) Options, FINRA Rule 2231(a) Customer Account Statements. |
| 9.18–O(h) Doing a Public Business in Options | FINRA Rule 2360(b)(13) Options. |
| 9.19–O Transfer of Accounts | FINRA Rule 11870 Customer Account Transfer Contracts. |
| 9.20–O(b) Telemarketing | FINRA Rule 3230 Telemarketing. |
| 9.29–O Borrowing From or Lending to Customers | FINRA Rule 3240 Borrowing From or Lending to Customers. |

¹ The rules in this section apply to ETP Holders, OTP Holders and OTP Firms, where applicable.

² FINRA shall not have Regulatory Responsibilities for Rule 2.1220(a)(4)(B) to the extent FINRA exempts a member from the requirement to have a Financial and Operations Principal.

³ FINRA shall not have Regulatory Responsibilities regarding NYSE Arca Rule 11.18(d).

⁴ The rules in this section apply specifically to ETP Holders.

⁵ This Certification only applies to the first two sentences of Rule 2.24, which are not enumerated, and Commentary .02. Certifications to other parts of Rule 2.24 appear elsewhere in this Exhibit.

⁶ FINRA's requirements do not include an exercise of due diligence as to every order.

⁷ FINRA shall not have Regulatory Responsibilities for NYSE Arca Rule 9.2–E(c) Commentary .01–.03 as it relates to institutional accounts and responsibility for such rule shall remain with NYSE Arca.

⁸ FINRA shall not have any Regulatory Responsibilities with respect to employees of NYSE Arca.

⁹ FINRA shall only have Regulatory Responsibilities to the extent the Common Member is subject to FINRA's Temporary Dual FINRA–NYSE Member Rule.

¹⁰ FINRA shall not have Regulatory Responsibilities for NYSE Arca Rule 5190–E(e).

¹¹ The rules in this section apply specifically to OTP Holders.

¹² FINRA shall not have Regulatory Responsibilities for NYSE Arca Rule 9.2–O(c) Commentary .01–.03 as it relates to institutional accounts and responsibility for such rule shall remain with NYSE Arca.

* FINRA shall not have any Regulatory Responsibilities for these rules as they pertain to violations insider trading activities, which is covered by a separate 17d–2 Agreement by and among Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., NYSE Chicago, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., MEMX LLC, MIAX Pearl, LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, NYSE National, Inc., New York Stock Exchange LLC, NYSE American LLC, NYSE Arca Inc., Investors' Exchange LLC and Long-Term Stock Exchange, Inc. effective September 23, 2020, as may be amended from time to time.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 email to rule-comments@sec.gov. Please include File Number 4-523 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 4-523. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan that are filed with the Commission, and all written communications relating to the proposed plan 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 plan also will be available for inspection and copying at the principal offices of FINRA and NYSE Arca. 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 4-523 and should be submitted on or before February 19, 2021.

V. Discussion

The Commission finds that the proposed Amended Plan is consistent with the factors set forth in Section 17(d) of the Act¹³ and Rule 17d-2(c) thereunder¹⁴ in that the proposed Amended Plan is necessary or

appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. In particular, the Commission believes that the proposed Amended Plan should reduce unnecessary regulatory duplication by allocating to FINRA certain examination and enforcement responsibilities for Common Members that would otherwise be performed by both FINRA and NYSE Arca. Accordingly, the proposed Amended Plan promotes efficiency by reducing costs to Common Members. Furthermore, because NYSE Arca and FINRA will coordinate their regulatory functions in accordance with the Amended Plan, the Amended Plan should promote investor protection.

The Commission notes that, under the Amended Plan, NYSE Arca and FINRA have allocated regulatory responsibility for those NYSE Arca rules, set forth in the Certification, that are substantially similar to the applicable FINRA rules in that examination for compliance with such provisions and rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a Common Member's activity, conduct, or output in relation to such rule. In addition, under the Amended Plan, FINRA would assume regulatory responsibility for certain provisions of the federal securities laws and the rules and regulations thereunder that are set forth in the Certification. The Common Rules covered by the Amended Plan are specifically listed in the Certification, as may be amended by the Parties from time to time.

According to the Amended Plan, NYSE Arca will review the Certification at least annually, or more frequently if required by changes in either the rules of NYSE Arca or FINRA, and, if necessary, submit to FINRA an updated list of Common Rules to add NYSE Arca rules not included on the then-current list of Common Rules that are substantially similar to FINRA rules; delete NYSE Arca rules included in the then-current list of Common Rules that no longer qualify as common rules; and confirm that the remaining rules on the list of Common Rules continue to be NYSE Arca rules that qualify as common rules.¹⁵ FINRA will then confirm in writing whether the rules listed in any updated list are Common Rules as defined in the Amended Plan. Under the Amended Plan, NYSE Arca also will provide FINRA with a current

list of Common Members and will update the list no less frequently than once each quarter.¹⁶ The Commission believes that these provisions are designed to provide for continuing communication between the Parties to ensure the continued accuracy of the scope of the proposed allocation of regulatory responsibility.

The Commission is hereby declaring effective an Amended Plan that, among other things, allocates regulatory responsibility to FINRA for the oversight and enforcement of all NYSE Arca rules that are substantially similar to the rules of FINRA for Common Members of NYSE Arca and FINRA. Therefore, modifications to the Certification need not be filed with the Commission as an amendment to the Amended Plan, provided that the Parties are only adding to, deleting from, or confirming changes to NYSE Arca rules in the Certification in conformance with the definition of Common Rules provided in the Amended Plan. However, should the Parties decide to add a NYSE Arca rule to the Certification that is not substantially similar to a FINRA rule; delete a NYSE Arca rule from the Certification that is substantially similar to a FINRA rule; or leave on the Certification a NYSE Arca rule that is no longer substantially similar to a FINRA rule, then such a change would constitute an amendment to the Amended Plan, which must be filed with the Commission pursuant to Rule 17d-2 under the Act.¹⁷

Under paragraph (c) of Rule 17d-2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective. In this instance, the Commission believes that appropriate notice and comment can take place after the proposed amendment is effective. The primary purpose of the amendment is to remove Regulation SHO from the Certification. The Commission notes that the prior version of this plan immediately prior to this proposed amendment was published for comment and the Commission did not receive any comments thereon.¹⁸ Furthermore, the Commission does not believe that the amendment to the plan raises any new

¹⁶ See paragraph 3 of the Amended Plan.

¹⁷ The addition to or deletion from the Certification of any federal securities laws, rules, and regulations for which FINRA would bear responsibility under the Amended Plan for examining, and enforcing compliance by, Common Members, also would constitute an amendment to the Amended Plan.

¹⁸ See *supra* note 12 (citing to Securities Exchange Act Release No. 55505).

¹³ 15 U.S.C. 78q(d).

¹⁴ 17 CFR 240.17d-2(c).

¹⁵ See paragraph 2 of the Amended Plan.

regulatory issues that the Commission has not previously considered.

VI. Conclusion

This order gives effect to the Amended Plan filed with the Commission in File No. 4–523. The Parties shall notify all members affected by the Amended Plan of their rights and obligations under the Amended Plan.

It is therefore ordered, pursuant to Section 17(d) of the Act, that the Amended Plan in File No. 4–523, between the FINRA and NYSE Arca, filed pursuant to Rule 17d–2 under the Act, hereby is approved and declared effective.

It is further ordered that NYSE Arca is relieved of those responsibilities allocated to FINRA under the Amended Plan in File No. 4–523.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021–01941 Filed 1–28–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90987; File No. SR–BOX–2020–16]

Self-Regulatory Organizations; BOX Exchange LLC; Order Disapproving Proposed Rule Change, as Modified by Amendment No. 1, in Connection With the Proposed Establishment of the Boston Security Token Exchange LLC as a Facility of the Exchange

January 25, 2021.

I. Introduction

On May 12, 2020, 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 in connection with the proposed commencement of operations of the Boston Security Token Exchange LLC (“BSTX”) as a facility of the Exchange. The proposed rule change was published for comment in the **Federal Register** on June 1, 2020.³ On July 16, 2020, pursuant to Section 19(b)(2) of the Exchange Act,⁴ the Commission

designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On August 3, 2020, the Exchange filed Amendment No. 1 to the proposed rule change (“Amendment No. 1”).⁶ On August 12, 2020, the Commission published notice of filing of Amendment No. 1, for notice and comment, and instituted proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.⁷ On November 24, 2020, pursuant to Section 19(b)(2) of the Exchange Act,⁸ the Commission designated a longer period within which to approve the proposed rule change, as modified by Amendment No. 1, disapprove the proposed rule change, as modified by Amendment No. 1, or institute proceedings to determine whether to disapprove the proposed rule change, as modified by Amendment No. 1.⁹

The proposed rule change is substantially similar to a proposed rule change previously filed with the Commission by the Exchange as SR–

⁵ See Securities Exchange Act Release No. 89329 (July 16, 2020), 85 FR 44333 (July 22, 2020). The Commission designated August 30, 2020, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁶ In Amendment No. 1 the Exchange revised the proposal to: (1) Modify its description of the market that BSTX would operate, including what would be traded on that market; (2) clarify that it is proposing to establish BSTX as a facility of the Exchange, but that the Exchange would not commence operations of the “BSTX Market” (as defined below) absent trading rules approved by the Commission that are the subject of a separate filing, and that the Exchange’s regulatory oversight responsibilities with respect to BSTX would not be triggered unless SR–BOX–2020–16 is approved by the Commission; (3) update a citation to a proposed rule change filed by the Exchange to provide flexibility for the Exchange to regulate multiple facilities; and (4) include a citation to a separate proposed rule change filed by the Exchange to provide trading rules for the BSTX Market. Amendment No. 1 was filed as a partial amendment. See Form 19b–4 for Amendment No. 1 to SR–BOX–2020–16 (“Amendment No. 1 Form 19b–4”). When the Exchange filed Amendment No. 1 to SR–BOX–2020–16, it also submitted a redline, which the Exchange states reflects the text of the partial amendment compared to the original filing, as a comment letter to the filing, and which the Commission made publicly available at <https://www.sec.gov/comments/sr-box-2020-16/srbox202016-7525322-222100.pdf>.

⁷ See Securities Exchange Act Release No. 89537 (August 12, 2020), 85 FR 50850 (August 18, 2020) (Notice of Filing of Amendment No. 1 and Order Instituting Proceedings).

⁸ 15 U.S.C. 78s(b)(2).

⁹ See Securities Exchange Act Release No. 90513 (November 24, 2020), 85 FR 77334 (December 1, 2020). The Commission designated January 27, 2021, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

BOX–2019–37.¹⁰ SR–BOX–2019–37 was published for comment in the **Federal Register** on January 3, 2020.¹¹ The Commission received comments on the substance of SR–BOX–2019–37.¹² BOX withdrew proposed rule change SR–BOX–2019–37 on May 12, 2020.¹³

This order disapproves the proposed rule change, as modified by Amendment No. 1 (“BSTX Governance Proposal”). The Exchange proposes to establish BSTX as a facility of the Exchange, as that term is defined in Section 3(a)(2) of the Exchange Act, that would operate a market for the trading of securities (“BSTX Market”) and be jointly owned and controlled by BOX Digital Markets LLC (“BOX Digital”), a Delaware limited liability company and a subsidiary of BOX Holdings Group LLC (“BOX Holdings,” which is also the parent company of the Exchange’s existing facility BOX Options Market LLC, “BOX Options”) and tZERO Group, Inc. (“tZERO”), a Delaware limited liability company and a subsidiary of Overstock.com Inc. (“Overstock”). According to the Exchange, it is proposing the Boston Security Token Exchange LLC, Second Amended and Restated Limited Liability Company Agreement, dated as of December 24, 2019 (“BSTX LLC Agreement”) ¹⁴ as the

¹⁰ See Securities Exchange Act Release No. 87868 (December 30, 2019), 85 FR 345 (January 3, 2020) (Notice of Filing of Proposed Rule Change).

¹¹ See *id.* See also Securities Exchange Act Release No. 88536 (April 1, 2020), 85 FR 19537 (April 7, 2020) (Order Instituting Proceedings) (instituting proceedings to determine whether to disapprove the proposed rule change). The only differences between SR–BOX–2019–37 and SR–BOX–2020–16 relate to: (1) Reclassifying ownership interests in BSTX from a single class with voting rights into two classes—one with voting rights and one without voting rights, and related changes; (2) providing an updated Second Amended and Restated LLC Agreement, dated as of December 24, 2019; (3) removing the list of BSTX LLC Members and their initial capital contributions; and (4) modifying the Second Amended and Restated LLC Agreement to reflect that a “Membership Record” would be maintained by the Secretary of BSTX and updated from time to time as necessary and as provided in the Second Amended and Restated LLC Agreement, which shall include the name, address, and number of units of each class of ownership interests held by each BSTX LLC Member; (5) updating certain upstream ownership information; (6) updating references to other proposed rule changes of the Exchange; and (7) the modifications made by Amendment No. 1.

¹² Comments on SR–BOX–2019–37 can be found at: <https://www.sec.gov/comments/sr-box-2019-37/srbox201937.htm>. While the Commission considered the comments received on SR–BOX–2019–37, they are not germane to the basis for disapproval and are not discussed herein.

¹³ See Securities Exchange Act Release No. 89017 (June 4, 2020), 85 FR 35473 (June 10, 2020) (Notice of Withdrawal of a Proposed Rule Change).

¹⁴ The proposed BSTX LLC Agreement is attached as Exhibit 5A to the Form 19b–4 for SR–BOX–2020–16 (available on the Commission’s website at

Continued

¹⁹ 17 CFR 200.30–3(a)(34).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 88949 (May 26, 2020), 85 FR 33258 (June 1, 2020) (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).