

19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁶ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange asserted that the waiver would allow the Exchange to harmonize its functionality to that of MIAX Options Exchange and thus reduce the potential for confusion among its Members. The Exchange also stated that it does not believe that removal of the FOK order type will impact users as this order type is infrequently used on the Exchange. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest, and will allow the Exchange to immediately align its functionality with MIAX Options Exchange and simplify its rulebook to remove an infrequently used order type. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.¹⁷

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

arguments concerning the foregoing, including whether the proposed rule change is consistent with the 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 email to rule-comments@sec.gov. Please include File Number SR-EMERALD-2021-14 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-EMERALD-2021-14. 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 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-EMERALD-2021-14 and should be submitted on or before May 26, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91714; File No. SR-BOX-2021-07]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of Proposed Rule Change To Adopt BOX Rule 7670 To Establish a Virtual Trading Floor on BOX

April 29, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 16, 2021, BOX Exchange LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to establish BOX Rule 7670 to adopt a Virtual Trading Floor on BOX. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at <http://boxoptions.com>.

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

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

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

1. Purpose

The Exchange proposes to establish BOX Rule 7670 to adopt a Virtual Trading Floor on BOX. This is a competitive filing that is based on a proposal submitted by Cboe Exchange, Inc. ("Cboe") and approved by the Commission.³

On March 20, 2020, as a precautionary measure to prevent the potential spread of coronavirus (COVID-19), BOX closed the Trading Floor located in Chicago, Illinois for an indefinite period of time. As a result of the closure of the Trading Floor, BOX operated in an electronic only trading mode. The Exchange continued to operate in an all-electronic capacity until May 4, 2020, when the Exchange reopened its Trading Floor with continued safety guidelines, policies and procedures in place. However, given the uncertainty related to the ongoing pandemic, which includes the possibility of the Exchange having to close its Trading Floor again, and given the possibility that the Exchange's Trading Floor may be inoperable or at capacity for other reasons in the future, the Exchange believes it is appropriate to continue to review and enhance its rules with regard to its business continuity plans. While BOX continued to operate in an all-electronic capacity while the physical Trading Floor was closed, an all-electronic trading environment cannot fully replicate open outcry trading. Therefore, the Exchange continues to evaluate potential enhancements that it believes would permit open outcry trading while the Trading Floor is inoperable to more closely replicate its trading environment that exists during normal operations.

There are certain features of open outcry trading that are difficult to replicate in an electronic trading environment, particularly the human interaction that permits persons to negotiate pricing and to facilitate executions of larger orders and high-risk complicated strategies. For example, from January 2, 2020 through March 21, 2020 (the last day on which the Trading Floor was open), Complex Orders for options with more than four legs represented approximately 11.3% of the total complex order average daily volume ("ADV") during that timeframe. However, from March 22, 2020 (the first

day on which the Trading Floor was closed) through May 1, 2020 (the last day before the Trading Floor reopened), Participants executed zero complex orders for options with more than four legs.⁴ This data, taken into consideration with feedback from Participants, demonstrates the difficulty market participants have with executing high-risk and complex strategies in an all-electronic trading capacity that does not allow for human interaction.

The Exchange believes the proposed rule change would further enhance the Exchange's trading environment when the physical Trading Floor is inoperable by permitting market participants that generally operate on the Trading Floor to continue to interact in a substantially similar manner as they do on the Trading Floor. Specifically, the Exchange proposes to adopt Rule 7670(a) which details the Loss of Trading Floor. If the Exchange Trading Floor becomes inoperable and the Exchange does not make a Virtual Trading Floor available, the Exchange will continue to operate in an electronic only environment while the Trading Floor is inoperable. Open outcry trading will not be available in the event the Trading Floor becomes inoperable except as otherwise set forth in Rule 7670 discussed herein. The Exchange reiterates that the proposed Virtual Trading Floor will only be activated if the physical Trading Floor becomes inoperable. Further, the Exchange has the discretion to not activate the Virtual Trading Floor if the physical Trading Floor becomes inoperable.

The Exchange proposes to adopt Rule 7670(a)(1) which will allow the Exchange to make available an audio and video communication program to serve as a "Virtual Trading Floor" during regular trading hours. In the program, the Exchange will create a "Virtual Trading Pit." In the Virtual Trading Pit, each Participant authorized to access the Virtual Trading Floor (as described below) that enters the Virtual Trading Pit will be visible to all other Participants in that Virtual Trading Pit. Additionally, all Participants in that Virtual Trading Pit may speak to each other through the program. This will

⁴ The Exchange notes that from May 2, 2020 through July 31, 2020, Complex Orders for options with more than four legs represented approximately 6.9% of the total Complex Order ADV during that timeframe. The Exchange believes that this trading activity further demonstrates the need to execute certain high-risk and complex strategies with the assistance of human interaction and price negotiation that a Trading Floor best facilitates. The Exchange believes that the proposed Virtual Trading Floor will be an identical venue to that of the physical Trading Floor with respect to these types of trades.

allow the same communication capabilities Participants generally have on the physical Trading Floor so that they may conduct open outcry trading on the Virtual Trading Floor in the same manner as they do on the physical Trading Floor.

All rules related to open outcry trading will apply to open outcry trading on the Virtual Trading Floor in the same manner as they apply to open outcry trading on the physical Trading Floor, except as the context otherwise requires and as set forth in proposed subparagraph (a)(1)(A). Proposed subparagraph (a)(1)(A) lists certain terms in the rules related to open outcry trading on the physical Trading Floor that will be deemed to refer to corresponding terms related to open outcry trading on the Virtual Trading Floor. Specifically:

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

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

(iii) The terms "in-crowd Floor Participant" mean a Floor Market Maker or a Floor Brooker representing an order in the Virtual Trading Pit on the Virtual Trading Floor.

Access to the Virtual Trading Floor will be substantially similar to access to the physical Trading Floor. Currently, admission to the physical Trading Floor is limited to Floor Participants, Exchange employees, Clerks employed by Floor Participants and registered with the Exchange, Exchange visitors that receive authorized admission to the Trading Floor pursuant to Exchange policy, and any other persons that the Exchange authorizes admission to the Trading Floor. Proposed Rule 7670(a)(1)(B) provides the same persons with access to the Virtual Trading Floor, except for visitors. While Clerks may access the Virtual Trading Floor, they may only perform the same functions for their associated organizations in connection with open outcry trading on the Virtual Trading Floor as they do for open outcry trading on the physical Trading Floor. The Exchange understands permitting Clerks to access the Virtual Trading Floor will provide them with access to the information that they normally have access to on the physical Trading Floor, which will make it more efficient for them to perform their tasks. Clerks will continue to be unable to enter into transactions on the Exchange. Additionally, as there is no physical equipment that would

³ See Securities Exchange Act Release No. 90658 (December 14, 2020) (Order Approving SR-CBOE-2020-055).

need service on the Virtual Trading Floor, and no purpose for a visitor to observe the Virtual Trading Floor, the proposed rule change excludes visitors from accessing the Virtual Trading Floor.⁵

As is the case with the physical Trading Floor, the Exchange will provide access to the Virtual Trading Floor to Participants the Exchange has approved to perform a Trading Floor function (including Floor Brokers and Floor Market Makers). This includes Participants (and individuals that represent Participant organizations) that are currently authorized to perform Trading Floor functions, as well as any additional Participants that receive such authorization in the future. Each authorized individual will receive one log-in to the Virtual Trading Floor. The Exchange currently requires at least one Market Maker to be present on the physical Trading Floor (prior to a Floor Broker announcing an order for execution)⁶ and believes it is necessary and appropriate to impose such requirement for the Virtual Trading Floor.⁷ Further, the Exchange notes that it will track which individuals participate in the Virtual Trading Floor, including when they log-in and log-out.

Under this proposal, Floor Participants are not required to display badges on the Virtual Trading Floor, as the size of the view on the communication program may not permit badges to be visible.⁸ Currently, on the physical Trading Floor, a Floor Market Maker has an appointment to trade open outcry in all classes trading on the Exchange (and must be physically present in the Crowd Area to trade in open outcry). Similarly, any Floor Market Maker authorized to act on the physical Trading Floor will receive access to the Virtual Trading Pit on the Virtual Trading Floor.

As set forth in Rule 7660, and subject to the requirements in that Rule, Floor Participants may use any communication device on the physical Trading Floor (which it must register

⁵ While the Exchange does not anticipate granting any other individuals with access to the Virtual Trading Floor outside of Participants and Exchange personnel, the Exchange believes the flexibility to permit Exchange personnel to access the Virtual Trading Floor is appropriate, such as to permit access to make updates to the communication program.

⁶ See BOX Rule 7580(a).

⁷ The Exchange notes that another options exchange with a Virtual Trading Floor has a similar requirement. See Securities Exchange Release Act No. 91299 (March 11, 2021), 86 FR 14661 (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of SR-Phlx-2021-03).

⁸ The Virtual Trading Floor program will identify the Participant organization of each Participant in the Virtual Trading Pit.

with the Exchange). Pursuant to proposed Rule 7670(a)(1)(C), Participants may use any equipment to access the Virtual Trading Floor. Prior to using a communications device for business purposes on the physical Trading Floor of the Exchange, Participants must register the communications device by identifying (in a form and manner prescribed by the Exchange) the hardware. Because individuals on the Virtual Trading Floor will not be on the Exchange premises (and thus will not be using Exchange provided bandwidth to be shared with all market participants and do not pose the same security risks), the proposed rule change will not require Participants to register devices they use while on the Virtual Trading Floor.⁹ Rule 7660 will otherwise apply in the same manner to the Virtual Trading Floor as it does to the physical Trading Floor (to the extent the context requires). This includes requirements related to audit trail and record retention, prohibition on using any device for the purpose of recording activities in the Virtual Trading Pit or maintaining an open line of continuous communication whereby a non-associated person not located in the trading crowd may continuously monitor the activities in the trading crowd.

The Exchange will use a communication program that has audio and video capabilities, as well as “chat” functionality. Proposed Rule 7670(a)(1)(D) states that the Exchange may determine to require any Floor Market Maker or Floor Broker in the Virtual Trading Pit that wants to trade against an order represented for execution to express its bid or offer in a chat available in the Virtual Trading Pit.¹⁰ The Exchange would require Participants to utilize the chat function

⁹ The Exchange notes that Floor Participants will be required to inform the Exchange of the IP address that will be used to access the Virtual Trading Floor. Market participants will likely use home networks to connect to the Virtual Trading Floor platform (which is contained in the BOX trading environment). By requiring the submission of IP addresses to BOX, the Exchange is able to create a secure network available only to approved IP addresses. This, in turn, denies any outside (and not previously approved) connections from entering the Virtual Trading Floor and, thus secures the Virtual Trading environment to only those Participants approved by the Exchange. Further, the Exchange believes that requiring the submission of IP addresses connected to the Virtual Trading Floor is appropriate and will be of assistance to BOX employees if market participants experience any connection issues when trying to use the Virtual Trading Floor platform.

¹⁰ The Exchange will announce to all Participants any determination to require bids and offers to be expressed in a chat within the communication program by Regulatory Circular. The Exchange will provide such notice with sufficient advance notice.

if BOX Trading Floor Officials determine that increased volume or activity in the Virtual Trading Crowd warrant mandatory use of the chat feature for Participants to maintain a fair and orderly market.¹¹ Chats will be visible to all Participants in the Virtual Trading Pit and will not be permitted directly between individual Participants (*i.e.*, the Exchange will disable direct messaging functionality within the communication program). Participants on the physical Trading Floor only verbalize their interest to trade against a represented order, so not requiring bids and offers to be included in a chat conforms to current practice on the Trading Floor. However, given potential limitations of communication software (such as limitations on how many people may be heard at the same time in the Virtual Pit or potential buffering or echoing), the Exchange believes it may be appropriate to require market participants to use a chat tool in the communication program to indicate their interest in participating in a trade so that the representing Floor Broker is able to know the market from the trading crowd and fairly allocate the trade pursuant to the Rules. The Exchange believes the flexibility to impose this requirement in the Virtual Trading Pit is appropriate, as these limitations may ultimately not interfere with a Floor Broker’s ability to hear all interest (particularly in a Virtual Trading Pit with few Participants) and thus the additional requirement may potentially slow down executions. Flexibility will permit the Exchange to balance system limitation. The Exchange notes that, regardless of whether it requires the chat function to be used, the Exchange will maintain records of all chats in the Virtual Trading Floor in accordance with its self-regulatory organization record-retention obligations.

The program also has a functionality that will permit Floor Brokers and Floor Market Makers on the Virtual Trading Floor to see an electronic blotter containing a running list of unexecuted orders that have been represented by Floor Brokers on the Virtual Trading Floor. Currently, Floor Brokers record the times at which they verbally represent orders on the Trading Floor by submitting their order to the Trading Host for execution. This information is generally only verbally available on the physical trading floor. However, similar

¹¹ The Exchange notes that another exchange with a Virtual Trading Floor has a similar requirement. See Securities Exchange Release Act No. 91299 (March 11, 2021), 86 FR 14661 (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of SR-Phlx-2021-03).

to why the Exchange is making chat functionality available in the Virtual Trading Floor, the Exchange believes the additional information included in the blotter will benefit Virtual Trading Floor Participants given potential limitations of communication software (such as limitations on how many people may be heard at the same time in a virtual pit or potential buffering or echoing). For example, if a Floor Market Maker's personal device momentarily freezes, causing the Floor Market Maker to miss the terms of an order represented by a Floor Broker, the Floor Market Maker will still be able to see the terms of the order in the blotter and determine whether it wants to seek to trade with the order.

Further, pursuant to proposed Rule 7670(a)(1)(E), Floor Market Maker quotes will be considered firm in the event the Floor Market Maker is disconnected from the Virtual Trading Crowd and the parties have a Meeting of the Minds with respect to the terms of the transaction. A "Meeting of the Minds" means the contra-side(s) verbally confirmed participation in the trade. In the event that a Floor Market Maker is disconnected from the Virtual Trading Crowd, a Floor Market Maker quote would not be considered firm if the quote were provided and the parties did not have a Meeting of the Minds with respect to the terms of the transaction.

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

The Exchange notes that, regardless of whether it requires the chat function to be used, the Exchange will maintain records of all chats in the Virtual Trading Floor¹² in accordance with its self-regulatory organization record retention obligations, as these are "correspondence" records subject to

those obligations, as set forth in proposed subparagraph (a)(1)(F).¹³ Specifically, proposed 7670(a)(1)(F) states the Exchange will retain records of the chats, Participant logs, and any other records related to the virtual trading floor that are subject to the Exchange's record retention obligations under the Exchange Act. The Exchange does not currently plan to make video recordings of the virtual trading floor because the Exchange believes video is not subject to its record retention obligations. However, if the Exchange determined to make video recordings of the virtual trading floor, it would retain those video recordings in accordance with its record retention obligations.¹⁴

Floor Officials will have access to the Virtual Trading Floor. Floor Officials will have the same authority to act in the Virtual Trading Floor as they do on the physical trading floor. Additionally, a BOX employee will be available to provide technical and operational support (in addition to regular Exchange support staff for floor operations) if Participants in the Virtual Trading Floor need assistance. If there was an issue with the communication program making the Virtual Trading Floor unavailable, the Exchange would operate in an all-electronic configuration (as it did earlier in 2020 when the physical Trading Floor was unavailable) until the communication program was available again.

While open outcry trading on the Virtual Trading Floor will occur with in-crowd market participants interacting with each other remotely through a computer communication program, all trading that occurs on the Virtual Trading Floor will occur in the same manner as it does on the physical Trading Floor. Specifically, open outcry trading on the Virtual Trading Floor will be subject to the same priority and allocation rules as open trading on the physical Trading Floor, as set forth in Rule 7600. Any risk controls and price protection mechanisms that apply to open outcry trading on the physical Trading Floor will apply in the same manner to open outcry trading on the Virtual Trading Floor. The Exchange will make the same order types and instructions available on the Virtual Trading Floor as it makes available on the physical Trading Floor. Floor Brokers will be subject to the responsibilities set forth in Rules 7570 and 7580 on the Virtual Trading Floor,

as they are on the physical Trading Floor.

In addition, marker participants participating on the Virtual Trading Floor will be subject to the same regulatory requirements on the Virtual Trading Floor as they are on the physical Trading Floor, including those set forth in Rule Series 3000 and 4000. Orders must be systematized¹⁵ and represented,¹⁶ and transactions reported, in connection with the Virtual Trading Floor in the same manner as they are when trading on the physical Trading Floor. Therefore, the audit trail for open outcry trading on the Virtual Trading Floor will capture the same information that it does for open outcry trading on the physical Trading Floor. The Regulatory Division will be able to utilize preexisting Trading Floor surveillances to surveil for the activity occurring on the Virtual Trading Floor. Specifically, the Regulatory Division monitors open outcry trading using various automated surveillances, which incorporate systematized order and trade execution information and applicable time stamps, as well as other elements of the audit trail from the Floor Broker's order entry system(s) and the BOX matching engine. Because in-crowd market participants will use the same tools to systematize and execute orders on the Virtual Trading Floor that they would use on the physical Trading Floor, and will be subject to the same trading rules and requirements, the Regulatory Staff's automated surveillances applicable to open outcry trading will incorporate the same audit trail information from open outcry trading on the Virtual Trading Floor that they do from open outcry trading on the physical Trading Floor. Additionally, Regulatory Staff will always be present on the Virtual Trading Floor and may access any records pertaining to the Virtual Trading Floor (*i.e.*, chats) if they deem it necessary and appropriate to ensure compliance with BOX Rules.

Lastly, the Exchange notes that it has conducted meetings with Floor Participants in which the Exchange presented the functionality of the Virtual Trading Floor and has made the Virtual Trading Floor available for testing so that the Exchange will be ready to implement it if necessary. The Exchange has received positive feedback from Floor Participants regarding the Virtual Trading Floor and will continue to make updates as necessary and appropriate in response to comments it receives to make the Virtual Trading Floor replicate the open outcry trading

¹³ See 15 U.S.C. 78q(a).

¹⁴ *Id.* The Exchange notes it will disable the ability of Participants to record the Virtual Trading Floor through the communication program.

¹⁵ See Rule 7580(e)(1).

¹⁶ See Rule 7580(e)(2).

¹² The Exchange notes the information that will be displayed in the blotter is already retained as part of the BOX order audit trail.

experience on the physical Trading Floor as much as possible. The Exchange believes this will provide the opportunity for as seamless a rollout as possible if circumstances cause the Exchange to make the Virtual Trading Floor available.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁸ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, as it will permit open outcry trading to continue in the event the Exchange's Trading Floor is inoperable. The Exchange again notes that the proposed Virtual Trading Floor will only be activated if the physical Trading Floor becomes inoperable. Further, the Exchange has the discretion to not activate the Virtual Trading Floor if the physical Trading Floor becomes inoperable. The Exchange believes that these factors, taken together, limit the scope of this proposal to extenuating circumstances that the Exchange hopes to avoid. While the Exchange continues to believe that the physical Trading Floor is an essential function to BOX Market and hopes the physical Trading Floor does not become inoperable or require any closures in the future, the Exchange also believes it is appropriate to continue to review and enhance its rules with regard to its business continuity plans if the physical Trading Floor were to become inoperable. As such, the Exchange believes the adoption of a Virtual Trading Floor, which emulates the physical Trading

Floor, is reasonable and appropriate given the circumstances the world faces today.

As discussed above, there are certain features of open outcry trading that are difficult to replicate in an all-electronic trading environment. The Exchange has observed, and understands from various market participants, that they have had difficulty executing certain orders, such as larger orders and high-risk and complicated strategies, in an all-electronic trading environment without the element of human interaction to negotiate pricing for these orders. The proposed rule change would provide an environment in which this interaction would be available despite the inoperability of the physical Trading Floor. The Exchange believes the proposed rule change may facilitate continued trading of these orders if and when the Trading Floor is inoperable. As a result, the Exchange believes providing continuous access to open outcry trading when the physical Trading Floor is inoperable will remove impediments to a free and open market and will ultimately benefit investors, particularly those desiring to execute high-risk and complex trading strategies.

The Exchange also believes the proposed rule change will promote just and equitable principles of trade, as open outcry trading on a Virtual Trading Floor will occur in accordance with the same trading rules and be subject to the same regulatory requirements that apply to open outcry trading on the physical Trading Floor, all of which have previously been filed with the Commission. The proposed rule change will merely permit this open outcry trading to occur in a virtual setting rather than a physical setting (which may be necessary and appropriate for health and safety purposes)—in other words, open outcry trading on a Virtual Trading Floor will occur while market participants operate remotely as they do when they trade electronically. Specifically, open outcry trading on the Virtual Trading Floor will be subject to the same priority and allocation rules as open trading on the physical Trading Floor, as set forth in Rule 7600 series. As is the case for open outcry trading on the physical Trading Floor, open outcry trading on the Virtual Trading Floor is consistent with Section 11(a) of the Act, as IM-7600-5 (which will apply to open outcry trading on the Virtual Trading Floor) requires Participants relying on Section 11(a)(1)(G) of the Act and Rule 11a1-1(T) thereunder (the so called "G exemption rule") as an exemption must yield priority to any bid (offer) at the same price of Public Customer orders

and broker-dealer orders resting in the Book, as well as any other bid (offer) that has priority over those Broker Dealer orders under this Rule. The Exchange may make the same order types and instructions available on the Virtual Trading Floor as it makes available on the physical Trading Floor. Floor Brokers will be subject to the responsibilities set forth in Rules 7570 and 7580 on the Virtual Trading Floor, as they are on the physical Trading Floor.

Additionally, Participants participating on the Virtual Trading Floor will be subject to the same regulatory requirements on the Virtual Trading Floor as they are on the physical Trading Floor, including those set forth in Rule Series 3000 and 4000. As previously noted, orders must be systematized and represented, and transactions reported, in connection with the Virtual Trading Floor in the same manner as they are when trading on the physical Trading Floor.²⁰ Therefore, the audit trail for open outcry trading on the Virtual Trading Floor will capture the same information that it does for open outcry trading on the physical Trading Floor. The Regulatory Division will be able to utilize preexisting floor surveillances to surveil for the activity occurring on the Virtual Trading Floor. Specifically, the Regulatory Division monitors open outcry trading using various automated surveillances, which incorporate systematized order and trade execution information and applicable time stamps, as well as other elements of the audit trail from the floor broker's order entry system(s) and the BOX matching engine. Because in-crowd market participants will use the same tools to systematize and execute orders on the Virtual Trading Floor that they would use on the physical Trading Floor, and will be subject to the same trading rules and requirements, the Regulatory Division's automated surveillances applicable to open outcry trading will incorporate the same audit trail information from open outcry trading on the Virtual Trading Floor that they do from open outcry trading on the physical Trading Floor. Additionally, Regulatory Division Staff

²⁰ Pursuant to proposed Rule 7670(a)(1)(E), Floor Market Maker quotes will be considered firm in the event the Floor Market Maker is disconnected from the Virtual Trading Crowd and the parties have a Meeting of the Minds with respect to the terms of the transaction. A "Meeting of the Minds" means the contra-side(s) verbally confirmed participation in the trade. In the event that a Floor Market Maker is disconnected from the Virtual Trading Crowd, a Floor Market Maker quote would not be considered firm if the quote were provided and the parties did not have a Meeting of the Minds with respect to the terms of the transaction.

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ *Id.*

will always be present on the Virtual Trading Floor and may access any records pertaining to the Virtual Trading Floor (*i.e.*, chats) if they deem it necessary and appropriate to ensure compliance with BOX Rules. The Exchange believes it will promote just and equitable principles of trading for all open outcry trading to occur in substantially the same manner, whether it occurs while market participants are in the same physical setting or in remote settings being connected through a technological solution.

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

Lastly, the Exchange notes that the proposed rule is a competitive response that is based on a proposal recently submitted by Cboe and approved by the Commission.²¹

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to a filing submitted by Cboe that was recently approved by the Commission. Further, the Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as all Participants authorized by the Exchange, or that become authorized by the Exchange, to transact on the Trading Floor will receive access to the Virtual Trading Floor. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as it relates solely to the location of open outcry trading on the Exchange. The proposed rule change will merely permit open outcry trading that generally occurs while market participants are located in the same

physical setting to occur while market participants are in a remote setting, connected by a technological solution (as electronic trading does).

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

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

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the 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 email to rule-comments@sec.gov. Please include File Number SR-BOX-2021-07 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-2021-07. 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 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 such 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-2021-07, and should be submitted on or before May 26, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

J. Matthew DeLesDernier,

Assistant Secretary.

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²¹ See *supra* note 3.

²² 17 CFR 200.30-3(a)(12).