SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations: BOX Exchange LLC; Notice of Filing of Proposed Rule Change To Adopt Rules Governing the Trading of Equity Securities on the Exchange Through a Facility of the Exchange Known as Boston Security Token Exchange LLC


Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),1 and Rule 19b–4 thereunder,2 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 Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 as amended (“Exchange Act”),3 BOX Exchange LLC (“BOX” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to adopt rules to govern the trading of equity securities on the Exchange through a facility of the Exchange known as Boston Security Token Exchange LLC (“BSTX”). As described more fully below, BSTX would operate a fully automated, price/time priority execution system for the trading of “Securities,” which would be equity securities that meet BSTX listing standards and for which certain information regarding orders and executions on BSTX would be recorded and disseminated on a proprietary market data feed that BSTX operates using a proprietary blockchain system (“BSTX Market Data Blockchain”). The proposed additions to the Exchange’s Rules setting forth new Rule Series 17000–29000 have been submitted with the proposal as Exhibit 5A. All text set forth in Exhibit 5A would be added to the Exchange’s rules and therefore underlining of the text is omitted to improve readability. Forms proposed to be used in connection with the proposed rule change, such as the application to become a BSTX Participant, have been submitted with the proposal as Exhibits 3A through 3L.

In addition, the Exchange proposes to make certain amendments to several existing BOX Rules to facilitate trading on BSTX. The proposed changes to the existing BOX Rules would not change the core purpose of the subject Rules or the functionality of other BOX trading systems and facilities. Specifically, the Exchange is seeking to amend BOX Rules 100, 2020, 2900, 3100, 7130, 7150, 7230, 7245, LM–8050–3, 11010, 11030 and 12140. These proposed changes are set forth in Exhibit 5B. Material proposed to be added to the Rule as currently in effect is underlined and material proposed to be deleted is bracketed.

All capitalized terms not defined herein have the same meaning as set forth in the Exchange’s Rules.4 The text of the proposed rule change is available from the principal office of the Exchange, at the Commission’s Public Reference Room and also on the Exchange’s internet website at http://boxoptions.com.

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

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

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

1. Purpose

The Exchange is proposing to adopt a series of rules to govern the trading of certain equity securities through a facility of the Exchange known as BSTX and make certain amendments to the existing BOX rules to facilitate trading on BSTX. As described more fully below, BSTX would operate a fully automated, price/time priority execution system (“BSTX System”) for the trading of certain equity securities that would be considered “Securities” under the proposed rules. The “Securities”5 under the proposed rules would be equity securities that meet BSTX listing standards and that trade on the BSTX System. The Exchange would operate the BSTX Market Data Blockchain, which would record certain information regarding orders and transactions occurring on BSTX with respect to Securities. All BOX Participants would be eligible to participate in BSTX provided that they become a BSTX Participant pursuant to the proposed rules. Under the proposed rules, BSTX would serve as the listing market for eligible companies and issuers of exchange traded products (“ETPs”) that wish to issue their registered securities as Securities. Securities would trade as NMS stock.6

The Exchange is not proposing rules that would support its extension of unlisted trading privileges (“UTP”) to other NMS stock, and accordingly the Exchange does not intend to extend any such UTP in connection with this proposal. The Exchange would therefore only trade Securities listed on BSTX unless and until it proposes and receives Commission approval for rules that would support trading in other types of securities, including through any extension of UTP to other NMS stock. A guide to the structure of the proposed rule change is described immediately below.

Guide to the Scope of the Proposed Rule Change

The proposal for trading of Securities through BSTX generally involves changes to existing BOX Rules and new BOX Rules pertaining specifically to BSTX (“BSTX Rules”). In addition, the Exchange plans to submit a separate proposed rule change pertaining to BSTX’s corporate governance documents. To support the trading of Securities through BSTX, certain conforming changes are proposed to existing BOX Rules and entirely new BSTX Rules are also proposed as Rule Series 17000 through 29000.7 Each of those new Rule Series and the provisions thereunder are described in greater detail below. Where the BSTX Rules are based on existing rules of another national securities exchange, the source rule from the relevant exchange is noted along with a

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4 The Exchange’s Rules can be found on the Exchange’s public website: https://boxoptions.com/regulatory/rulebook-filings/.
5 As discussed further below, BSTX proposes to use the term “Security” to refer to BSTX-listed securities to distinguish them from other securities issued by an issuer that the issuer does not list on BSTX.
6 17 CFR 242.600(b)(48).
7 The proposed changes to BOX Rules and the proposed BSTX Rules have been submitted with this proposal as Exhibits 5B and 5A, respectively.
Proposed rule change that the Exchange will submit to the Commission.

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

BSTX would operate as a facility of BOX, which is a national securities exchange registered with the SEC. As a facility of BOX, BSTX’s operations would be subject to applicable requirements in Sections 6 and 19 of the Exchange Act, among other applicable rules and regulations. Currently, BOX functions as an exchange only for standardized options. At the time that BSTX commences operations it would support trading in Securities that are equity securities (including certain ETPs), as described in more detail below. Accordingly, the proposal represents a new asset class for BOX, and the discussion below sets forth the changes and additions to the Exchange’s Rules to support the trading of equity securities as Securities on BSTX.

The Exchange proposes to use the term “Security” to describe a NMS stock trading on the BSTX system. The legal significance, therefore, of a “Security” is that it would be an equity security that is approved for listing on BSTX and that trades on the BSTX System. A security that is offered by an issuer with the intent of it becoming a Security under the proposed BSTX Rules unless and until it actually does become listed on BSTX and trades on the BSTX System.

Securities Would Be NMS Stocks

The Securities would qualify as NMS stocks pursuant to Regulation NMS, which defines the term “NMS security” in relevant part to mean “any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan . . . .” The Exchange plans to join existing transaction reporting plans, as discussed in Part VIII below, for the purposes of Security quotation and transaction reporting. The term “NMS stock” means “any NMS security other than an option” and therefore Securities traded on BSTX would be classified as NMS stock.

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

BSTX Would Support Trading of Registered Securities

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

Issuance and Clearance and Settlement of Securities

BSTX would maintain certain rules, as described below, to address custody, clearance and settlement in connection with Securities. All transactions in Securities would clear and settle in accordance with the rules, policies and procedures of registered clearing agencies. Specifically, BSTX anticipates that at the time it commences operations, Securities that are listed and traded on BSTX would be securities that have been made eligible for services by The Depository Trust Company (“DTC”) and that DTC would serve as the securities depository for such Securities.

**Discussion of notable differences between the source rule and the proposed BSTX Rule.** The proposed BSTX Rules are addressed in Part III below and they generally cover the following areas:

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

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

The Joint Venture and Ownership of BSTX

On June 19, 2018, tZERO Inc. (“tZERO”) and BOX Digital Markets LLC (“BOX Digital”) announced a joint venture to facilitate the trading of Securities on the Exchange. As part of the joint venture, BOX Digital, which is a subsidiary of BOX Holdings Group LLC, and tZERO each own 50% of the voting class of equity and over 45% economic interest of BSTX LLC. Pursuant to the BSTX LLC Agreement, BOX Digital and tZERO will perform certain specified functions with respect to the operation of BSTX. As noted, these details, as well as the proposed governance structure of the joint venture will be the subject of a separate
Securities. It is also expected that confirmed trades in Securities on BSTX would be transmitted to National Securities Clearing Corporation (“NSCC”) for clearing such that NSCC would clear the trades through its systems to produce settlement obligations that would be due for settlement between participants at DTC. BSTX believes that this custody, clearance and settlement structure is the same general structure that exists today for other exchange-traded equity securities. Importantly, for purposes of NSCC’s clearing activities and DTC’s settlement activities in respect of the Securities, the relevant Securities would be cleared and settled by NSCC and DTC in exactly the same manner as those activities are performed by NSCC and DTC currently regarding a class of NMS Stock.

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

Issuance of Equity Securities Eligible To Become a Security

With the exception of certain offerings under Regulation A that meet the proposed BSTX listing standards, all Securities traded on BSTX will have been offered and sold in registered offerings under the Securities Act, which means that purchasers of the Securities will benefit from all of the protections of registration. The Division of Corporation Finance will need to make a public interest finding in order to accelerate the effectiveness of the registration statements for these offerings. Because BSTX would be a facility of a national securities exchange, all Securities would be registered under Section 12(b) of the Exchange Act, thereby subjecting all of Securities traded on BSTX to accelerate the effectiveness of the SEC as a clearing agency. This is based on rules that are currently maintained by other equities exchanges.22 In practice, BSTX Rule 26137 requires the Security to have a CUSIP number that is included in a file of eligible securities that is maintained by DTC because the Exchange believes that DTC currently is the only clearing agency registered with the SEC that provides securities depository services.23

Book-Entry Settlement at a Securities Depository

BSTX would also maintain Proposed BSTX Rule 26135 regarding uniform book-entry settlement. The rule would require each BSTX Participant to use the facilities of a securities depository for the book-entry settlement of all transactions in depository eligible securities with another BSTX Participant or a member of a national securities exchange that is not BSTX or a member of a national securities association.24 Proposed BSTX Rule 26135 is based on the depository eligibility rules of other equities exchanges and Financial Industry Regulatory Authority (“FINRA”).25 Those rules were first adopted as part of a coordinated industry effort in 1995 to promote book-entry settlement for the vast majority of initial public offerings

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

21 The term “street name” refers to a securities holding structure in which DTC, through its nominee Cede & Co., would be the registered holder of the securities and, in turn, DTC would grant security entitlements in such securities to relevant accounts of its participants. Proposed BSTX Rule 26136 would also provide, with certain exceptions, that securities listed on BSTX must be eligible for a direct registration program operated by a clearing agency registered under Section 17A of the Exchange Act. DTC operates the only such program today, known as the Direct Registration System, which permits an investor to hold a security as the registered owner in electronic form on the books of the issuer.

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

23 See Exchange Act Release No. 79863 (September 28, 2016), 81 FR 70744, 70748 (October 13, 2016) (footnote 46 and the accompanying text acknowledge that DTC is the only registered clearing agency that provides securities depository services for the U.S. securities markets).

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

and “thereby reduce settlement risk” in the U.S. national market system.\textsuperscript{26}

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

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

Proposed BSTX Rule 25140 is based on a substantially identical rule of the Investor’s Exchange, LLC (“IEX”), which, in turn, is consistent with the rules of other equities exchanges.\textsuperscript{27}

BSTX believes that the operation of its depository eligibility rule and its book-entry services rule would promote a framework in which Securities that would be eligible to be listed and traded on BSTX would be equity securities that have been made eligible for services by a registered clearing agency that operates as a securities depository and that are settled through the facilities of the securities depository by book-entry.

The Exchange believes that because DTC currently is the only clearing agency registered with the SEC that provides securities depository services, at the commencement of BSTX’s operations, Securities would be securities that have been made eligible for services by DTC, including book-entry settlement services.

Settlement Cycle

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

As described in greater detail below in Part II.I, the Exchange is also proposing that BSTX Participants would be able to include parameters in orders submitted to BSTX to indicate a preference to use faster settlement cycles that are currently available through NSCC and DTC under certain circumstances. BSTX believes that allowing BSTX Participants to use these faster settlement cycles where consistent with the rules, policies and procedures of a registered clearing agency would mitigate settlement risk for transactions in such Securities due to faster settlement. BSTX believes that NSCC already has authority under its rules, policies and procedures to clear certain trades on a T+1 or T+0 basis, which are shorter settlement cycles than the longest settlement cycle of T+2 that is generally permitted under SEC Rule 15c6–1 for a security trade that involves a broker-dealer.\textsuperscript{28} Furthermore, BSTX understands that NSCC does already clear trades in accordance with this authority.

The BSTX Market Data Blockchain

BSTX will make available to BSTX Participants certain market data related to trading activity occurring on BSTX through the use of a private, permissioned blockchain maintained by the Exchange. As described further below, a BSTX Participant would have the ability to see detailed information about its trading activity on BSTX but only anonymized information with respect to the trading activity of other BSTX Participants. BSTX Participants would have no obligations with respect to providing information to, accessing, maintaining, or using the BSTX Market Data Blockchain. The Exchange believes that the information made available on the BSTX Market Data Blockchain would be generally similar to Daily Trade and Quote (“TAQ”) data made available by the New York Stock Exchange LLC except that the Exchange would provide other features, such as “blockchain” technology to record such information, a BSTX Participant would be able to see non-anonymized information about its own trading activity on BSTX, and the market data would pertain only to trading activity on BSTX and not the broader market (e.g., an over-the-counter (“OTC”) transaction in a Security reported to the consolidated tape).\textsuperscript{29}

Background on Blockchain Technology

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

There are broadly two types of blockchains: (i) Public blockchains that are decentralized, operate on a peer-to-peer network and run on the same protocol;\textsuperscript{31} and (ii) a private, permission-based blockchain where only those granted access may view or take other actions with respect to the blockchain.

BSTX Market Data Blockchain as a Private Permissioned Network

The BSTX Market Data Blockchain would operate as a private, permission-based blockchain accessible only to BSTX Participants. The Exchange would control all aspects of the BSTX Market Data Blockchain. Pursuant to proposed Rule 17020(b), each BSTX Participant would be assigned a BSTX Market Data Blockchain address that corresponds to the BSTX Participant’s trading activity.

\textsuperscript{26} These coordinated depository eligibility rules resulted from proposed listing rules amendments developed by the Legal and Regulatory Subgroup of the U.S. Working Committee, Group of Thirty

\textsuperscript{27} See IEX Rule 11.250 (Clearance and Settlement; Anonymity), which was approved by the Commission in 2016 as part of its approval of IEX’s application for registration as a national securities exchange. Exchange Act Release No. 78101 (June 17, 2016); 81 FR 41142 (June 23, 2016); see also Choe BZX Rule 11.14 (Clearance and Settlement; Anonymity).

\textsuperscript{28} 17 CFR 240.15c6–1. Under SEC Rule 15c6–1, with certain exceptions, a broker-dealer is not permitted to enter a contract for the purchase or sale of security that provides for payment of funds and delivery of securities later than the second business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

\textsuperscript{29} OTC in this context refers to trading occurring otherwise than on a national securities exchange.

\textsuperscript{30} See e.g., NYSE, Daily TAQ Fact Sheet, https://www.nyse.com/publicdocs/nyse/data/Daily_TAQ

\textsuperscript{31} A “protocol” in this context generally means a set of rules governing the format of messages that are exchanged between the participants.
on BSTX. The Exchange will also issue
login credentials to each BSTX
Participant through which the BSTX
Participant may access the BSTX Market
Data Blockchain to see its order and
transaction information on BSTX as
well as certain anonymized market data
from other BSTX Participants, as
discussed further below.

The BSTX Market Data Blockchain
would generally operate by collecting
information from two sources, which
the Exchange would then translate into
information capable of being recorded to
the BSTX Market Data Blockchain.
Specifically, the data inputs for the
BSTX Market Data Blockchain would
come from (i) the BSTX System to
capture information such as executed
transactions and (ii) each BSTX
Participant’s order/message information
passing through the financial
information exchange (“FIX”) gateway
through which all orders and messages
pass in order to connect to the BSTX
System. For example, if a BSTX
Participant sends an order to buy 100
shares of Security XYZ, when that order
is sent to the Exchange, the Exchange
would capture this information as it
passes through the FIX gateway in an
automated process that results in the
BSTX Participant being able to see that
order on the BSTX Market Data
Blockchain through its login credentials.

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

Information Available on the BSTX
Market Data Blockchain

As set forth in proposed Rule
17020(c), there are two types of
information that would be available on
the BSTX Market Data Blockchain: (i) A
BSTX Participant’s own order and
transaction information related to its
trading activity on BSTX (“Participant
Proprietary Data”); and (ii) anonymized,
general market data available to all
BSTX Participants (“General Market
Data”). With respect to Participant
Proprietary Data, a BSTX Participant
would be able to see the following
information with respect to all orders
and messages and executions submitted
to and occurring on BSTX:

(1) Symbol, side (buy/sell), limit
price, quantity, time-in-force
(2) Order type (e.g., limit order, ISO)
(3) Order capacity (principal/agent)
(4) Short/long safe order marking
(5) Message type (e.g., order,
modification, cancellation)
(6) A unique identification number
attributable to each order, execution,
or other message (e.g., cancellation or
modification)
(7) Such other information regarding
a BSTX Participant’s trading activity on
BSTX as the Exchange may determine
and set forth via Regulatory Circular.

Participant Proprietary Data would
effectively contain a record of all of a
BSTX Participant’s trading activity on
BSTX. Participant Proprietary Data
would not be available to the BSTX
Participant from which such data
derived. That is, a BSTX Participant
does not require any affirmative action
to the BSTX Market Data Blockchain
other than to access the BSTX
Market Data Blockchain on a
particular date at which time the
BSTX Participant would be able to see
the contents of that Participant’s
Participant Proprietary Data.

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

(1) All orders, modifications,
cancellations, and executions occurring
on BSTX in an anonymized format.
(2) Administrative data and other
information from the Exchange (e.g.,
trading halts, or technical messages).
(3) Such other anonymized trading
activity or general information as the
Exchange may determine and set forth
via Regulatory Circular.

General Market Data is intended to
allow BSTX Participants to be able to
observe the BSTX Order Book, changes
thereto, and executions occurring on
BSTX in generally the same manner that
a market participant can today see order
and transaction information on an
exchange by subscribing to an
exchange’s proprietary market data feed.
The Exchange notes that the General
Market Data that would be available on
the BSTX Market Data Blockchain
would be the same substantive
information that would be available through the Exchange’s proprietary
market data feeds, so access to the BSTX
Market Data Blockchain would not
provide additional information that
could not otherwise be obtained through
the Exchange’s proprietary market data
feed.33 The Exchange proposes to allow
for flexibility to provide additional,
anonymized trading activity or general
information to BSTX Participants via
Regulatory Circular in order to provide
the Exchange with the ability to
enhance the content of General Market
Data based on feedback from BSTX
Participants or in the event that new
data elements become relevant in the
future.

General Market Data would be
anonymized, meaning that a BSTX
Participant would not be able to
determine the identity of another BSTX
Participant’s orders, quotes,
cancellations, or other messages. For the
avoidance of doubt, the alphanumeric
address assigned to each BSTX
Participant to facilitate the BSTX Market
Data Blockchain would not be visible as
part of General Market Data.34 As a
result, there should not be cause for
concern regarding potential trading
information leakage or the ability to
reverse engineer another BSTX
Participant’s trading strategies given the
anonymous nature of General Market
Data. BSTX Participants would
generally have available to them via the
BSTX Market Data Blockchain the same
information they would have today with
respect to other BSTX Participants
trading activity in subscribing to an
exchange’s proprietary market data feed.

The Exchange proposes to append
timestamps to the information made
available. Timestamps related to all
information on the BSTX Market Data
Blockchain would indicate the time to
the microsecond at which an order
posted to the BSTX Book or that the
BSTX System took other action with
respect to an order (e.g., effects a
cancellation, execution, modification).
Information would be posted to the
BSTX Market Data Blockchain on a
delayed basis of at least 5 minutes. As
a result, the BSTX Market Data
Blockchain would not function as a

33 The BSTX Market Data Blockchain may include
certain non-material information, such as a unique
order identification number specific to the
blockchain that would not be available through
proprietary market data products.

34 For example, in looking at General Market Data, a
BSTX Participant X would not be able to determine
by name, address, or otherwise that a particular
order, modification to an existing order, or executed
transaction involved BSTX Participant Y or any
other BSTX Participant.
substitute for real-time market data. A BSTX Participant would have the ability to download market data from the BSTX Market Data Blockchain, which it could use to, for example, back test trading strategies or evaluate executions received on BSTX.

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

Periodic Audit of the BSTX Market Data Blockchain by the Exchange

To help ensure the proper functioning of the BSTX Market Data Blockchain and accuracy of information thereon, the Exchange proposes in Rule 17020(c)(3) to periodically audit the BSTX Market Data Blockchain. Specifically, the Exchange proposes to perform the audit at least bi-annually to ensure that the BSTX Market Data Blockchain accurately captures order and transaction data on BSTX. The Exchange expects that it will initially audit the BSTX Market Data Blockchain more frequently (e.g., monthly) during the first year of operation to make sure the BSTX Market Data Blockchain operates as intended during the period of time when the Exchange expects BSTX Participants to be familiarizing themselves with the BSTX Market Data Blockchain.

Benefits of the BSTX Market Data Blockchain

The Exchange believes that there are two primary benefits related to the BSTX Market Data Blockchain. First, the Exchange believes that a BSTX Participant may find the information useful to them for a variety of purposes such as to review the BSTX Participant’s trading activity on BSTX, determine what the market was at a particular point in time on BSTX for a given Security, evaluate execution quality on BSTX, or download the data to back-test trading strategies. As proposed, the BSTX Market Data Blockchain requires no affirmative obligation on the part of the BSTX Participant. As a result, if a BSTX Participant does not find the BSTX Market Data Blockchain to be of use to it, it could simply ignore it without cost or penalty.

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

Moreover, the Exchange believes that new technology, such as blockchain technology, may be able to help perfect the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act.

In the event of any disruption to the BSTX Market Data Blockchain or a BSTX Participant’s access to the BSTX Market Data Blockchain, there would be no impact on the ability of market participants to trade Securities, which the Exchange believes furthers the protection of investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act. There would also be no disruption in the distribution of market data related to Securities because the BSTX Market Data Blockchain operates as a separate and distinct service of the Exchange.

Trading Securities on Other National Securities Exchanges

Securities would be eligible for trading on other national securities exchanges that extend UTP to them, other than with respect to Thinly Traded Securities as discussed below in Part II.H. As described above in Part I.E, Securities would be held in “street name” at DTC, have a CUSIP number, and would clear and settle through the facilities of a clearing agency registered with the SEC (i.e., NSCC and DTC respectively). As a result, Securities would be able to trade on other exchanges and OTC in the same manner as other NMS stock. Accordingly, other exchanges would generally be able to extend UTP to Securities in accordance with Commission rules. The BSTX Market Data Blockchain would not be ruled to view the complete history of a transaction where it may not be available today and enhance existing records related to securities transactions.” Financial Industry Regulatory Authority, Distributed Ledger Technology: Implications of Blockchain for the Securities Industry (January 2017), available at: https://www.fina.org/sites/default/files/FDRA_Blockchain_Report.pdf; Further, Paxos Trust Company echoed similar themes in connection with its receipt of no-action relief from the Commission staff, and explained in its request letter certain benefits of blockchain technology including “greater data accuracy and transparency, advanced security, and increased levels of availability and operational efficiency . . .” See Letter from Jeffrey S. Money, Division of Trading and Markets, Securities and Exchange Commission to Charles Cascarilla and Daniel Burstein, Paxos Trust Company, LLC re: Clearing Agency Registration Under Section 17A(b)(1) of the Securities Exchange Act of 1934 (October 28, 2019), https://www.sec.gov/divisions/marketreg/mr-noaction/2019/paxos-trust-company-192819-17.pdf. The Exchange believes such benefits may be generally relevant to future potential applications of blockchain technology.

35 See e.g., 17 CFR 240.17a-3.
37 Id.
38 Id.
39 Report of the Senate Committee on Banking, Housing & Urban Affairs, S. Rep. No. 94–73, at 8 (1975) (expressing Congress’ finding that new data processing and communications systems create the opportunity for more efficient and effective markets). While the Exchange believes that its proposal represents an introductory step in pairing the benefits of blockchain technology with the current equity market infrastructure, other market participants and FINRA have recognized additional potential benefits to blockchain technology in various applications related to the securities markets. FINRA has stated “[o]ne of the proposed benefits of [blockchain technology] is the ability to offer a timestamped, sequential, audit trail of transaction records. This may provide regulators and other interested parties (e.g., internal audit, public auditors) with the opportunity to leverage
41 Id.
impact the ability of Securities to trade on other exchanges or OTC.

Qualifying Thinly Traded Securities Trading Only on BSTX

The Exchange proposes to suspend UTP in Securities that meet the proposed definition of a “Thinly Traded Security” in order to concentrate displayed liquidity for such Securities, make market making in such securities more attractive, and thereby improve the market quality for such Securities. As proposed, Thinly Traded Securities would still be able to trade OTC, but would not be eligible for trading on another national securities exchange for as long as the Security meets the definition of a Thinly Traded Security, described below.

The Commission, Commission staff, the U.S. Department of Treasury, academics, and a broad spectrum of market participants have recognized that “the current ‘one-size-fits-all’ equity market structure, as largely governed under Regulation NMS, may not be optimal for thinly traded securities” and that “more needs to be done to promote liquidity and to improve the listing and trading environment for thinly traded stocks.” The Commission noted that the “secondary market for thinly traded securities faces liquidity challenges that can have a negative effect on both investors and issuers traded securities faces liquidity challenges that can have a negative effect on both investors and issuer” including “wider spreads and less displayed size relative to securities that trade in greater volume, often resulting in higher transaction costs for investors.” These concerns have been echoed in statements by former Commission Chairman Jay Clayton.

Indeed, as former Chairman Jay Clayton noted, the Commission’s Statement on Market Structure Innovation for Thinly Traded Securities specifically invites “market participants to submit innovative proposals designed to improve the secondary market for thinly traded securities, including, in connection with such proposals, requests to suspend or terminate listed trading privileges, known as UTP.” In response to the Commission’s call and to improve the market quality for thinly traded securities, the Exchange proposes a suspension of UTP for qualifying “Thinly Traded Securities,” as detailed further below.

Thinly Traded Securities Defined

The Exchange proposes in Rule 25150(a) to define “Thinly Traded Securities” as a Security 53 of an operating company that meets certain market capitalization and average daily volume of trading (“ADV”) requirements. The Exchange proposes two separate, but similar sets of eligibility criteria depending on if a Security has been publicly traded for at least six months or if the Security is just beginning to trade publicly (i.e., publicly traded for less than six months). Specifically, the Exchange proposes that a Security that has been publicly traded for at least six months shall be considered a Thinly Traded Security if the Security has (i) market capitalization of less than $1 billion, and (ii) an average daily volume of trading of 100,000 shares or less during at least four (4) of the preceding six (6) calendar months (“Ongoing Eligibility Criteria”). For a Security that has not been publicly traded for at least six months, the Exchange proposes that a Security shall be considered a Thinly Traded Security if during the first three consultation with their underwriter and listing exchange, be permitted to partially or fully suspend UTP for their securities and select the exchanges and venues upon which their securities will trade.”

2019 Market Structure Remarks, at n.13 (noting that several panelists on the Roundtable on Market Structure for Thinly-Traded Securities supported the approach of limiting listed trading privileges, with some suggesting going even further and considering whether Regulation NMS rules should be eliminated in this segment of the market).

52 2020 Market Structure Remarks. See also Commission Statement on Thinly Traded Securities at 56957 (“[i]nstead, for thinly traded securities, the Commission is interested in considering proposals for market structure innovations in conjunction with the potential suspension or termination of UTP and/or the possibility of exemptive relief from Regulation NMS and other rules under the Exchange Act.”).
greater than $1 billion may be more likely to have or soon have an ADV above 100,000 shares. The OAR Report indicates that the median market capitalization for common stocks with an ADV between 50,000 to 100,000 shares is $313 million.57 This same figure for common stocks with an ADV above 100,000 shares is $1.313 billion.58 Accordingly, the Exchange believes that most, if not all, stocks that have an ADV of 100,000 shares or less will also have a market capitalization of less than $1 billion. The primary purpose of the market capitalization threshold is therefore to limit the availability of Thinly Traded Security status to smaller issuers and remove companies whose securities may soon reach an ADV of more than 100,000.

The Exchange proposes to set forth how it will calculate market capitalization in proposed Rule 25150(a)(4). For Ongoing Eligibility Criteria, market capitalization would be determined as the product of (a) the number outstanding shares of the Security as reported in the most recent quarterly or annual report of the company; and (b) the average closing price of the Security over the preceding six (6) full calendar months. For Initial Eligibility Criteria, market capitalization would be determined as the product of (a) the number of outstanding shares of the Security as reported in the most recent quarterly or annual report of the company; and (b) the average closing price of the Security over the first three months during which the Security has been publicly traded. The Exchange believes that this is a standard method for calculating the market capitalization of a security.

Average daily volume would be measured in accordance with the terms of the proposed Rules—e.g., for Ongoing Eligibility Criteria, the analysis would be the average daily share volume of trading in the Security over the preceding six months of trading to determine whether the ADV is 100,000 shares or less for four out of those six months. The Exchange believes the use of a look back of four out of the previous six months is a reasonable approach to determine whether a stock is thinly traded and is similar to other mechanisms used in Commission rules to evaluate differing regulatory treatment.59 Under this formulation, a Security could have an ADV that exceeded 100,000 shares in up to two of the previous six months, but would be required to continuously meet the requirement of an ADV at or below 100,000 shares for four of the preceding six months on a rolling basis.

Thinly Traded Exchange Traded Products

Importantly, the Exchange proposes to limit the availability of Thinly Traded Security status to operating companies. This means that an ETP that is a Security would not be eligible to be considered a Thinly Traded Security even if it otherwise meets the criteria. The Exchange proposes to exclude ETPs from eligibility because ETPs, even those with an ADV of 100,000 shares or less, do not necessarily have the same problems of a lack of liquidity as thinly traded shares of an operating company. For example, participants in the Commission’s Roundtable on Market Structure for Thinly-Traded Securities (the “Roundtable”) noted that “as opposed to a corporate stock, an ETP that is thinly traded may still be highly liquid, and that therefore the level of secondary market trading does not correlate as closely with liquidity as it does for corporate stocks.”50 Given that the purpose of the Exchange’s proposal with respect to Thinly Traded Securities is to improve liquidity and market quality for small issuers, the Exchange believes that it is appropriate to exclude ETPs that, while perhaps thinly traded, do not appear to suffer from the same liquidity issues as those faced by the securities of thinly traded operating companies.

Initial and Ongoing Criteria

As described above, the Exchange proposes different sets of criteria to become a Thinly Traded Security depending on how long a Security has been publicly traded. As proposed, the earliest in time that a Security could become eligible for status as a Thinly Traded Security (and therefore eligible for suspension of UTP, as discussed below) would be three months after the initial public offering of the Security. The Exchange believes that every Security that undergoes an initial public offering should initially be available for UTP because there is no way to determine a priori whether or not a Security will be thinly traded. Only after there is some empirical evidence based on the first three months of public trading that a Security appears to be

57 OAR Report at 4.
58 Id.
59 See e.g., 17 CFR 242.301(b)(5) (regarding the triggering of fair access requirements under Regulation ATS) and 17 CFR 242.1000 (defining a SCI ATS with reference to the volume of its trading).
The Exchange proposes in Rule 25150(a)(3) that a Security that becomes a Thinly Traded Security under the Initial Eligibility Criteria would be considered a Thinly Traded Security until it has been publicly traded for at least six months, at which time the Security would have to meet the Ongoing Eligibility Criteria. In effect, the Exchange proposes that a Security that meets the Initial Eligibility Criteria would be deemed to meet such criteria until it has been publicly traded for long enough to determine whether it meets the Ongoing Eligibility Criteria. The Exchange notes that any suspension of UTP, as discussed further below, would not be effective for at least thirty days after publication of a rule filing with the Commission in the Federal Register. As a result, a Security that meets the Initial Eligibility Criteria for the first three months that it trades publicly could only have UTP suspended at the earliest at the commencement of month four and more likely at the four and one half month mark.63 Thus, a Security that meets the Initial Eligibility Requirements and for which UTP was suspended would be deemed to be a Thinly Traded Security for 1.5 to two months before it would have to meet the Ongoing Eligibility Criteria.

The Exchange believes that this approach of initially allowing a Security to be eligible for UTP promotes consistency with Section 6(b)(5) of the Exchange Act62 by helping to perfect the mechanism of a free and open market and by promoting just and equitable principles of trade. Specifically, the Exchange believes that companies engaged in an initial public offering should not have UTP suspended until it can be determined whether those shares have an ADV of 100,000 shares or less and market capitalization of less than $1 billion, thereby ensuring that IPOs resulting in a high ADV or market capitalization are freely and openly available on all venues and equivalently available on other exchange venues. The Exchange believes that three months is a sufficient amount of time to determine whether a Security that recently underwent its IPO is thinly traded given that interest in a Security is likely to be highest around the time of its IPO in connection with underwriter’s selling efforts and the media attention that often accompanies an IPO. Thus, if a Security has an ADV of 100,000 shares or less during its first three months of trading despite this time period being among the most likely to have the highest market interest in the Security, the Security is likely to benefit from a suspension of UTP. The Exchange therefore proposes the Initial Eligibility Criteria as an early on-ramp to the suspension of UTP for a Security that has not yet traded for a full four to six months to be able to determine whether it meets the Ongoing Eligibility Criteria.

Suspension of Unlisted Trading Privileges

As noted above, the Exchange proposes that a Security that qualifies as a Thinly Traded Security would be eligible for a suspension of UTP. The Exchange proposes that an issuer of a qualifying Thinly Traded Security would have to affirmatively request in writing that UTP be suspended. The Exchange believes that issuers should be empowered to make the decision as to whether UTP should be suspended with respect to the issuer’s Thinly Traded Security.

Thereafter, in order to effectuate a suspension of UTP and to provide notice to market participants of the suspension of UTP, the Exchange would submit an immediately effective rule filing pursuant to Section 19(b)(3)(A) of the Exchange Act,63 with the effectiveness of such suspension of UTP occurring at least 30 calendar days after publication of the rule filing in the Federal Register.64 Conversely, when a Security no longer meets the definition of a Thinly Traded Security under the Exchange’s Rules, the Exchange would similarly submit a rule filing pursuant to Section 19(b)(3)(A) within 14 calendar days of the Thinly Traded Security no longer qualifying as a Thinly Traded Security (and therefore no longer eligible to have UTP suspended).65 The resumption of UTP with respect to the former Thinly Traded Security would be effective upon publication of the rule filing in the Federal Register.

The Exchange believes that these rule filings to effectuate the suspension of UTP would be appropriately filed pursuant to Section 19(b)(3)(A) and Rule 19b–4(f) thereunder as a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.66 Specifically, the proposed rule change would provide notice of the Exchange’s upcoming enforcement of proposed Rule 25150 to suspend UTP (or remove a suspension of UTP) with respect to a qualifying Thinly Traded Security.

The Exchange believes that exchanges are readily capable of suspending trading in a security that is currently traded on their exchange. Exchanges need and provide for the ability to suspend trading in securities on their exchange for regulatory halts, triggering of market wide or single stock circuit breakers, and to comply with the Commission’s authority to order a trading halt pursuant to Section 12(k) of the Exchange Act.67 Accordingly, the Exchange believes that voluntarily delaying the implementation of the suspension of UTP by 30 calendar days will provide other exchanges and market participants with adequate notice and sufficient time to prepare for a suspension of UTP in the relevant Thinly Traded Security. The Exchange also believes that exchanges are also readily capable of extending UTP to a Security that is not currently traded on the exchange.68 Accordingly, the Exchange believes that other exchanges would be able to extend UTP to a Security for which the suspension of UTP is lifted shortly after the effectiveness of the rule filing providing notice of a resumption in UTP with respect to the Security.

The Exchange recognizes that suspending UTP and making BSTX the only national securities exchange on which a Thinly Traded Security trades would increase both the relative importance of BSTX as a trading venue for such Thinly Traded Security and the disruption that might arise if access to BSTX were somehow disrupted. Accordingly, the Exchange proposes to run a live, parallel system in addition to the Exchange’s primary system supporting trading in any Thinly Traded Security.

63 After a seven business day review period during which the Commission may reject a rule filing submitted by the Exchange under certain circumstances (15 U.S.C. 78s(b)(10)), the Commission must publish a proposed rule change by the Exchange within 15 days after the initial submission by the Exchange to the Commission (15 U.S.C. 78s(b)(2)(E)). As a result, a rule filing seeking suspension of UTP for a qualifying Thinly Traded Security would likely only be published in the Federal Register at the earliest after the Security had been trading for 3.5 months and the suspension of UTP would only commence thirty days thereafter (i.e., after a Security traded for 4.5 months). Suspension of UTP would then last for a minimum of 1.5 months, at which time, the Security would need to meet the Ongoing Eligibility requirements to continue to have UTP continue to be suspended.
66 See proposed Rule 25150(b)(1).
67 See proposed Rule 25150(b)(2).
68 For example, in November 2006, the Commission adopted amendment to Rule 12f–2 lifting a limitation that previously prevented an exchange from extending UTP until the day after trading commenced on the primary listing exchange. See Exchange Act Release No. 43217, 65 FR 53560 (Sept. 5, 2000).

62 See proposed Rule 25150(b)(1).
63 See proposed Rule 25150(b)(2).
Securities for which UTP has been suspended in order to guard against a potential disruption in trading access. The Exchange would maintain the ability to automatically fail over to the other live or “hot” parallel system in the event of any disruption to the primary system.

In addition, because Thinly Traded Securities would no longer trade on other exchanges via UTP at the election of an issuer and a determination by the Exchange that the Security qualifies as a Thinly Traded Security, the Exchange plans to remove quotation and trading activity in Thinly Traded Securities from the revenue allocation formulas of the appropriate NMS plan for consolidated market data through an amendment to such plan(s).\(^69\) The Exchange believes that it would be appropriate to exclude such Thinly Traded Securities from the revenue allocation formula so that the Exchange does not receive undue compensation from the NMS plan for consolidated market data arising from the Thinly Traded Securities. The existing and proposed revenue allocation formulas apportion revenues from the NMS plan in part based on the amount of trading and quoting occurring on each exchange in “Eligible Securities” as defined under the NMS plan.\(^70\) As a result, BSTX might receive additional profits under the revenue allocation formula if Thinly Traded Securities were not excluded from “Eligible Securities” given that BSTX would be the only venue able to quote and trade Thinly Traded Securities.

Finally, the Exchange proposes to make available each month anonymized trade and quotation data relating to Thinly Traded Securities to regulators, academics, and others requesting such market data from the Exchange for the purpose of studying the effects of the suspension of UTP. The Exchange intends to additionally perform its own analysis on the impact of the suspension of UTP for Thinly Traded Securities to evaluate its efficacy. The Exchange will evaluate market quality for Thinly Traded Securities across a variety of metrics including an analysis of: (i) Relative trading volumes on BSTX versus OTC; (ii) improvements in ADV; (iii) changes in quotation size; (iv) changes in the depth of liquidity; (v) changes in spreads (quoted spread and realized spread); and (vi) changes in trade size. The Exchange will perform this analysis at least annually (provided there is sufficient sample data from the preceding year) and make public its findings with respect to how the market for Thinly Traded Securities has changed as a result of the suspension of UTP.

Request for Exemptive Relief

The Exchange believes that it is in the public interest and consistent with protection of investors, pursuant to Section 6(b)(5) of the Exchange Act,\(^71\) as well as in furtherance of the perfection of a free and open market and national market system to suspend UTP under this proposal with respect to Thinly Traded Securities to improve liquidity and overall market quality for such Securities. Consistent with the Department of the Treasury’s recommendations, the Exchange believes that “[c]onsolidating trading to fewer venues would simplify the process of making markets in those stocks and thereby encourage more market makers to provide more liquidity in those issues.”\(^72\) Also consistent with the Department of the Treasury’s recommendations, the Exchange proposes that there be no limitation on trading OTC in order “maintain a basic level of competition for execution” and that an issuer would be provided a choice as to whether its qualifying Thinly Traded Security have UTP suspended.\(^73\)

In addition, the Exchange believes that, consistent with the OAR Report which found that NMS stocks with an ADV of less than 100,000 shares experience more trading on off-exchange venues than on-exchange and have less quoted depth at the inside of the market, much of the poor market quality is attributable to deficiencies in displayed quotations of Thinly Traded Securities. As a result the Exchange believes that it is appropriate to suspend trading on other exchanges—i.e., other venues displaying liquidity—in order to concentrate displayed liquidity on a single exchange, while still allowing trading to occur in the OTC market.

The Exchange does not believe that the suspension of UTP for Thinly Traded Securities will impose a burden on competition not necessary or appropriate in furtherance of the Exchange Act\(^74\) because other exchanges could similarly be granted a suspension of UTP for qualifying thinly traded securities listed on their markets. Exchanges can compete with each other in attracting issuers of thinly traded securities to be singly-listed and traded on their respective exchanges. Exchanges would still be able to compete with one another for listings and the market for all thinly traded securities could be improved. Moreover, if the suspension of UTP has the desired effect of improving the overall liquidity of a Thinly Traded Security, such Security should hopefully exceed the 100,000 share ADV or $1 billion market capitalization thresholds and become available for UTP, thus removing any barrier to competition once the purpose for which the suspension of UTP was initiated has been fulfilled.

Similarly, consistent with Section 6(b)(5) of the Exchange Act,\(^75\) the Exchange believes that the proposed suspension of UTP for Thinly Traded Securities would not permit unfair discrimination between customers, issuers, brokers or dealers, because the suspension is for the purpose of furthering the regulatory objective of improving market quality for securities that are thinly traded. Although non-Thinly Traded Securities would not be able to have UTP suspended, this discriminatory treatment is not “unfair” given the substantial public interest, as demonstrated through the Commission’s statements and by market participants at the Roundtable, in improving market conditions for thinly traded securities. The Exchange believes that the proposed suspension of UTP would help protect investors and the public interest, consistent with Section 6(b)(5), by concentrating displayed liquidity on a single venue, thereby providing greater incentives for market makers in Thinly Traded Securities and in turn making it easier for investors to buy and sell shares of Thinly Traded Securities. The Exchange believes that there is a general consensus among members of Commission staff, former Commissioners (including former Chairman Jay Clayton), the Department of the Treasury, and market participants, as well as empirical evidence, making clear that operating company stocks with an ADV of less than 100,000 shares suffer significant liquidity and market quality challenges not faced by stocks with greater trading volume. It is for this reason, the Exchange believes, that the Commission specifically solicited requests from

\(^69\) The Exchange notes that certain exchanges have challenged the Commission’s May 6, 2020, order directing the self-regulatory organizations to develop a new NMS plan for consolidated market data. Exchange Act Release No. 88827 (May 6, 2020), 85 FR 28702 (May 13, 2020). The Exchange would seek to amend the new NMS plan or the existing NMS plans as appropriate.


\(^72\) Treasury Report at 60.

\(^73\) Id.


exchanges for innovative approaches to improve the market for thinly traded securities, including requests for suspension of UTP.76

Accordingly, the Exchange plans to submit an application for the suspension of UTP for Thinly Traded Securities, as described above, to the Commission pursuant to Rule 12f–3 of the Exchange Act, which rule allows issuers, broker-dealers who make markets in a security admitted to UTP, “or any other person having a bona fide interest in the question of termination or suspension of such unlisted trading privileges” to submit an application for the suspension of UTP consistent with certain specified requirements.77 The Exchange believes that there is good cause for the suspension of UTP to promote efficiency, competition, and capital formation78 by facilitating the trading of Thinly Traded Securities in a manner that addresses structural market quality challenges in today’s markets for such securities.

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

As described above in Section II.E.5., BSTX believes that NSCC already has authority under its rules, policies and procedures to clear certain trades on a T+1 or T+0 basis, which are shorter settlement cycles than the longest settlement cycle of T+2 that is generally permitted under SEC Rule 15c6–1 for a security trade that involves a broker-dealer.79 Furthermore, BSTX understands that NSCC does already clear trades in accordance with this authority.

The Exchange proposes that BSTX Participants would be able to include in their orders in Securities that are submitted to BSTX certain parameters to indicate a preference for settlement on a same day (T+0) or next trading day (T+1) basis when certain conditions are met.80 Any such orders would at the time of order entry represent orders that would be regular-way and would be presumed to settle on a T+2 basis just like any other order submitted by a BSTX Participant that does not include a parameter indicating a preference for faster settlement. As described in greater detail below, however, orders in a Security that include a parameter indicating a preference for settlement on a T+0 basis (“Order with a T+0 Preference”) or on a T+1 basis (“Order with a T+1 Preference”) would only result in executions that would actually settle more quickly than on a T+2 basis if, and only if, all of the conditions in Rule 25060(h) are met and the execution that is transmitted to NSCC is eligible for T+0 or T+1 settlement under the rules, policies and procedures of a registered clearing agency.81 Any such preference included by a BSTX Participant would only become operative if the order happens to execute against another order from a BSTX Participant that also includes a parameter indicating a preference for settlement on a T+0 or T+1 basis, as described in more detail below. This means that at the time of order entry all orders in Securities would be regular way orders that would be presumed to settle on a T+2 basis. Faster settlement consistent with the rules, policies and procedures of a registered clearing agency would occur if and only if two orders execute against each other in a manner that meets the conditions in Rule 25060(h).

As proposed, an Order with a T+0 Preference will execute against any order against which it is marketable with settlement occurring on a standard settlement cycle (T+2) except where: (i) The Order with a T+0 Preference executes against another Order with a T+0 Preference, in which case settlement shall occur on the trade date, or (ii) the Order with a T+0 Preference executes against an Order with a T+1 Preference, in which case settlement shall occur the next trading day after the trade date (i.e., T+1). Similarly, as proposed, an Order with a T+1 Preference will execute against any order against which it is marketable with settlement occurring on a standard settlement cycle (T+2) except where: (i) The Order with a T+1 Preference executes against another Order with a T+1 Preference or an Order with a T+0 Preference, in which case settlement occurs on the next trading day after the trade date (i.e., T+1). In all cases, an order not marked with a preference for either T+0 or T+1 settlement would be assured under the settlement timing logic in proposed Rule 25060(h) of settlement on T+2. The possibility of a shortened settlement time would have no impact on the Exchange’s proposed price time priority structure for order matching.82

As a result of this structure, all orders in Securities would be eligible to match and execute against any order against which they are marketable with settlement to occur at the later settlement date of any two matching orders. Only where an Order with a T+1 Preference or an Order with a T+0 Preference match with another Order with a T+1 Preference or Order with a T+0 Preference will those orders (or matching portions thereof) be eligible to settle more quickly than the standard settlement cycle of T+2. As previously noted in Part II.E, the Exchange believes that the clearance and settlement processes at NSCC and DTC are already capable of facilitating such shortened settlement times.

The Exchange believes that facilitating shorter settlement cycles as permitted under the rules, policies, and procedures of a registered clearing agency is consistent with Section 6(b)(5) of the Exchange Act because it is in the public interest and furthers the protection of investors as well as helps perfect the mechanism of a free and open market and the national market system. Specifically, the Exchange believes that BSTX Participants have an interest in being able to access risk-reducing market functionality that is presently available and compatible with market structure, such as shorter settlement cycles, and that this can reduce costs for market participants settling trading obligations in that Security and reduce settlement risk. For example, market participants settling trades in a Security on a T+2 basis must post margin collateral to NSCC for two trading days. The margin collateral cannot otherwise be used until settlement on T+2. In addition, by shortening the timing of settlement from T+2 to T+1 or T+0, the risk horizon for a potential default in settling the trade is correspondingly shortened as well. This means that market participants engaged in a transaction settling transactions on shorter settlement cycles than T+2 receive the benefits of not having to encumber collateral assets for as long and facing a shorter period of settlement risk. The Exchange believes that these benefits in turn free up assets to be used elsewhere in financial markets, thereby helping to promote the efficient allocation of capital and perfecting the mechanism of a free and open market and the national market system.

Order C and resting Order C (marked as an Order with a T+0 Preference but with priority second to that of Order B), Order A will interact first with Order B, notwithstanding that Order C is also marketable against Order A and is also marked as an Order with a T+0 Preference.

80 See proposed note 28.
81 See proposed Rule 25100(d).
82 For example, assume Order A is marked as an Order with a T+0 Preference and it is sent to BSTX and is marketable against both resting Order B (standard T+2 settlement, with time priority over Order C) and resting Order C (marked as an Order with a T+0 Preference but with priority second to that of Order B).
open market. All else being equal, the Exchange believes that a BSTX participant may find that between two otherwise identical stocks, one for which it may be able to settle the transaction more quickly is more attractive than one that settles over a longer duration and potentially requires collateral to be held for a longer period.

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

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

In adopting amendments to SEC Rule 15c6–1 in 2017 to shorten the standard settlement cycle for most broker-dealer transactions in securities from T+3 to T+2, the Commission stated its belief that the shorter settlement cycle would have positive effects regarding the liquidity risks and costs faced by members in a clearing agency, like NSCC, that perform central counterparty (“CCP”) services, and that it would also have positive effects for other market participants. Specifically, the Commission stated its belief that the resulting “reduction in the amount of unsettled trades and the period of time during which the CCP is exposed to risk would reduce the amount of financial resources that the CCP members may have to provide to support the CCP’s risk management process . . .” and that “[t]his reduction in the potential need for financial resources should, in turn, reduce the liquidity costs and capital demands clearing broker-dealers face . . . and allow for improved capital utilization.” The Commission went on to state its belief that shortening the settlement cycle “would also lead to benefits to other market participants, including introducing broker-dealers, institutional investors, and retail investors” such as “quicker access to funds and securities following trade execution” and “reduced margin charges and the consequences that clearing broker-dealers may pass down to other market participants[,]” The Commission also “noted that a move to a T+1 standard settlement cycle could have similar qualitative benefits of market, credit, and liquidity risk reduction for market participants[.]” BSTX agrees with these statements by the Commission and has therefore proposed BSTX Rules 25060(h) and 25100(d) in a form that would promote the benefits of available, shorter settlement cycles.

The discussion in this Part III addresses the proposed BSTX Rules that would be adopted as Rule Series 17000 through 29000. General Provisions of BSTX and Definitions (Rule 17000 Series)

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

84 17 CFR 242.611.

85 17 CFR 242.611.
as the “BSTX Market Data Blockchain.”

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

Participation on BSTX (Rule 18000 Series)

The Exchange proposes to adopt as its Rule 18000 Series (Participation on BSTX), three rules setting forth certain requirements relating to participation on BSTX. Proposed Rule 18000 (BSTX Participation) establishes “BSTX Participants” as a new category of Exchange participation for effecting transactions on the BSTX System, provided they: (i) Complete the BSTX Participant Application, Participation Agreement, and User Agreement; (ii) (ii) be an existing Options Participant or become a Participant of the Exchange pursuant to the Rule 2000 Series; and (iii) provide such other information as required by the Exchange.

Proposed Rule 18010 (Requirements for BSTX Participants) sets forth certain requirements for BSTX Participants including requirements that each BSTX Participant comply with Rule 15c3–1 under the Exchange Act, comply with applicable books and records requirements, and be a member of a registered clearing agency or clear Security transactions through another BSTX Participant that is a member/participant of a registered clearing agency. Finally, proposed Rule 18020 (Associated Persons) provides that associated persons of a BSTX Participant are bound by the Rules of the Exchange to the same extent as each BSTX Participant.

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

Business Conduct for BSTX Participants (Rule 19000 Series)

The Exchange proposes to adopt as its Rule 19000 Series (Business Conduct for BSTX Participants), twenty two rules relating to business and conduct requirements for BSTX Participants that are substantially similar to business conduct rules of other exchanges.

The proposed Rule 19000 Series would specify business conduct requirements with respect to: (i) Just and equitable principles of trade; (ii) adherence to law; (iii) use of fraudulent devices; (iv) false statements; (v) know your customer; (vi) fair dealing with customers; (vii) suitability; (viii) the prompt receipt and delivery of securities; (ix) use of information obtained in a fiduciary capacity; (x) publication of transactions and quotations; and (xii) offers at stated...
or quotation information unless the BSTX Participant believes it to be bona fide.

116 Proposed Rule 19120 (Offers at Stated Prices) generally prohibits a BSTX Participant from offering to transact in a security at a stated price unless it is in fact prepared to do so.

117 Proposed Rule 19100 (Preventing Fraudulent and Manipulative Practices) requires that BSTX Participants deal fairly with their customers and proposed Rule 19030 (False Statements or Misrepresentations) would generally prohibit BSTX Participants, or their associated persons from making false statements or misrepresentations to the Exchange. The Exchange believes that requiring that BSTX Participants comply with the proposed business conduct rules in the Rule 19000 Series would further the protection of investors and the public interest by promoting high standards of commercial honor and integrity. In addition, each of the rules in the proposed Rule 19000 Series (Business Conduct) is substantially similar to supervisory rules of other exchanges. 129

Financial and Operational Rules for BSTX Participants (Rule 20000 Series)
The Exchange proposes to adopt as its Rule 20000 Series (Financial and Operational Rules), ten rules relating to financial and operational requirements for BSTX Participants that are substantially similar to financial and operational rules of other exchanges. 130

The proposed Rule 20000 Series would specify financial and operational requirements with respect to: (i) Maintenance and furnishing of books and records; 131 (ii) financial reports; 132 (iii) net capital compliance; 133 (iv) early warning notifications pursuant to Rule 17a–11 under the Exchange Act; 134 (v) authority of the Chief Regulatory Officer to impose certain restrictions; 135 (vi) margin; 136 (vii) day-trading margin; 137 (viii) customer account information; 138 (ix) maintaining records of customer complaints; 139 and (x) disclosure of financial condition. 140

The Exchange believes that the proposed Rule 20000 Series is consistent with Section 6(b)(5) of the Exchange Act 141 because these proposed rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest by subjecting BSTX Participants to certain recordkeeping,

or other provisions that would not apply to the trading of Securities on the BSTX System. 127

The Exchange believes that the proposed Rule 19000 Series (Business Conduct) is consistent with Section 6(b)(5) of the Exchange Act 128 because these proposed rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest by setting forth appropriate standards of conduct applicable to BSTX Participants in carrying out their business activities. For example, proposed Rule 19000 (Just and Equitable Principles of Trade) and 19010 (Adherence to Law) would prohibit BSTX Participants from engaging in acts or practices inconsistent with just and equitable principles of trade or that would violate applicable laws and regulations. Similarly, proposed Rule 19050 (Fair Dealing with Customers) would require that BSTX Participants deal fairly with their customers and proposed Rule 19030 (False Statements or Misrepresentations) would generally prohibit BSTX Participants, or their associated persons from making false statements or misrepresentations to the Exchange. The Exchange believes that requiring that BSTX Participants comply with the proposed business conduct rules in the Rule 19000 Series would further the protection of investors and the public interest by promoting high standards of commercial honor and integrity. In addition, each of the rules in the proposed Rule 19000 Series (Business Conduct) is substantially similar to supervisory rules of other exchanges. 129

Financial and Operational Rules for BSTX Participants (Rule 20000 Series)
The Exchange proposes to adopt as its Rule 20000 Series (Financial and Operational Rules), ten rules relating to financial and operational requirements for BSTX Participants that are substantially similar to financial and operational rules of other exchanges. 130

The proposed Rule 20000 Series would specify financial and operational requirements with respect to: (i) Maintenance and furnishing of books and records; 131 (ii) financial reports; 132 (iii) net capital compliance; 133 (iv) early warning notifications pursuant to Rule 17a–11 under the Exchange Act; 134 (v) authority of the Chief Regulatory Officer to impose certain restrictions; 135 (vi) margin; 136 (vii) day-trading margin; 137 (viii) customer account information; 138 (ix) maintaining records of customer complaints; 139 and (x) disclosure of financial condition. 140

The Exchange believes that the proposed Rule 20000 Series is consistent with Section 6(b)(5) of the Exchange Act 141 because these proposed rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest by subjecting BSTX Participants to certain recordkeeping,

or other provisions that would not apply to the trading of Securities on the BSTX System. 127

The Exchange believes that the proposed Rule 19000 Series (Business Conduct) is consistent with Section 6(b)(5) of the Exchange Act 128 because these proposed rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest by setting forth appropriate standards of conduct applicable to BSTX Participants in carrying out their business activities. For example, proposed Rule 19000 (Just and Equitable Principles of Trade) and 19010 (Adherence to Law) would prohibit BSTX Participants from engaging in acts or practices inconsistent with just and equitable principles of trade or that would violate applicable laws and regulations. Similarly, proposed Rule 19050 (Fair Dealing with Customers) would require that BSTX Participants deal fairly with their customers and proposed Rule 19030 (False Statements or Misrepresentations) would generally prohibit BSTX Participants, or their associated persons from making false statements or misrepresentations to the Exchange. The Exchange believes that requiring that BSTX Participants comply with the proposed business conduct rules in the Rule 19000 Series would further the protection of investors and the public interest by promoting high standards of commercial honor and integrity. In addition, each of the rules in the proposed Rule 19000 Series (Business Conduct) is substantially similar to supervisory rules of other exchanges. 129

Financial and Operational Rules for BSTX Participants (Rule 20000 Series)
The Exchange proposes to adopt as its Rule 20000 Series (Financial and Operational Rules), ten rules relating to financial and operational requirements for BSTX Participants that are substantially similar to financial and operational rules of other exchanges. 130

The proposed Rule 20000 Series would specify financial and operational requirements with respect to: (i) Maintenance and furnishing of books and records; 131 (ii) financial reports; 132 (iii) net capital compliance; 133 (iv) early warning notifications pursuant to Rule 17a–11 under the Exchange Act; 134 (v) authority of the Chief Regulatory Officer to impose certain restrictions; 135 (vi) margin; 136 (vii) day-trading margin; 137 (viii) customer account information; 138 (ix) maintaining records of customer complaints; 139 and (x) disclosure of financial condition. 140

The Exchange believes that the proposed Rule 20000 Series is consistent with Section 6(b)(5) of the Exchange Act 141 because these proposed rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest by subjecting BSTX Participants to certain recordkeeping,
information; and (vi) implementation of an anti-money laundering (“AML”) compliance program. These rules are designed to ensure that BSTX Participants are able to appropriately supervise their business activities, review and maintain records with respect to such supervision, and enforce specific procedures relating insider-trading and AML.

The Exchange believes that the proposed Rule 21000 (Supervision) Series is consistent with Section 6(b)(5) of the Exchange Act because these proposed rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest by ensuring that BSTX Participants have appropriate supervisory controls in place to carry out their business activities in compliance with applicable regulatory requirements. For example, proposed Rule 21000 (Written Procedures) would require BSTX Participants to enforce written procedures which enable them to supervise the activities of their associated persons and proposed Rule 21010 (Responsibility of BSTX Participants) would require a BSTX Participant to designate a person in each office to carry out written supervisory procedures. Requiring appropriate supervision of a BSTX Participant’s business activities and associated persons would promote compliance with the federal securities laws and other applicable regulatory requirements in furtherance of the protection of investors and the public interest. In addition, each of the rules in the proposed Rule 21000 Series (Supervision) is substantially similar to supervisory rules of other exchanges.

Miscellaneous Provisions (Rule 22000 Series)

The Exchange proposes to adopt as its Rule 22000 Series (Miscellaneous Provisions), six rules relating to a variety of miscellaneous requirements applicable to BSTX Participants that are substantially similar to rules of other exchanges. These miscellaneous provisions relate to: (i) Comparison and settlement requirements; (ii) failures to deliver and failures to receive; (iii) forwarding of proxy and other issuer-related materials; (iv) commissions; (v) regulatory services agreements; and (vi) transactions involving Exchange employees.

These rules are designed to capture additional regulatory requirements applicable to BSTX Participants, such as setting forth their obligation to deliver BSTX Participants to give the request of an issuer and to incorporate by reference Rule 200–203 of Regulation SHO.

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

Trading Practice Rules (Rule 23000 Series)

The Exchange proposes to adopt as its Rule 23000 Series (Trading Practice Rules), 14 rules relating to trading practice requirements for BSTX Participants that are substantially similar to trading practice rules of other exchanges. The proposed Rule 23000 Series would specify trading practice requirements related to: (i) Market manipulation; (ii) fictitious transactions; (iii) excessive sales by a BSTX Participant; (iv) manipulative transactions; (v) dissemination of false information; (vi) prohibition against trading ahead of customer orders; (vii) joint activity; (viii) influencing data feeds; (ix) trade shredding; (x) best execution; (xi) publication of transactions and changes; (xii) trading ahead of research reports; (xiii) front running of block transactions; and (xiv) a prohibition against disruptive quoting and trading activity. The purpose of the trading practice rules is to set forth standards and rules relating to the trading on the Exchange. BSTX Participants, primarily with respect to prohibiting forms of market manipulation and specifying certain obligations broker-dealers have to their customers, such as the duty of best execution. For example, proposed Rule 23000 (Market Manipulation) sets forth a general prohibition against a BSTX Participant purchasing a security at successively lower prices or sales of a security at successively lower prices, or to otherwise engage in activity for the purpose of creating or inducing a false, misleading or artificial appearance of activity in such security. Proposed Rule 23010 (Fictitious Transactions) similarly prohibits BSTX Participants from fictitious transaction activity, such as executing a transaction which involves no beneficial change in ownership, and proposed Rule 23020 (Excessive Sales by a BSTX Participant) prohibits a BSTX Participant from executing purchases or sales in any security trading on the Exchange for any account in which it has an interest, which are excessive in view of the BSTX Participant’s financial resources or in view of the market for such security. Proposed Rule 23060 (Joint Activity) prohibits a BSTX Participant from directly or indirectly holding any interest or participation in any joint account for buying or selling a security traded on the Exchange unless reported to the Exchange with certain information provided and proposed Rule 23090 (Best Execution) reaffirms BSTX Participants best execution obligations to their customers.

Proposed Rule 23050 (Prohibition against Trading Ahead of Customer Orders) is substantially similar to FINRA Rule 5320 and rules adopted by other exchanges, and generally prohibits BSTX Participants from trading ahead of customer orders unless certain enumerated exceptions are available and requires BSTX Participants to have a written methodology in place governing execution priority to ensure compliance with the Rule. The Exchange proposes to adopt each of the exceptions to the prohibition against trading ahead of customer orders as provided in FINRA Rule 5320 other than the exception related to trading outside of normal market hours, since trading outside the Exchange will be limited to regular trading hours. The Exchange proposes to adopt the order handling procedures requirement in proposed Rule 23050(i) consistent with the rules of other exchanges. Specifically, proposed Rule 23050(i) would provide that a BSTX Participant must make every effort to execute a marketable customer order that it receives fully and promptly and must cross customer orders when they are marketable against each other consistent with the proposed Rule.

The Exchange proposes to adopt a modified version of the exception set forth in FINRA Rule 5320.06 relating to minimum price improvement standards as proposed in Rule 23050(h). Under proposed Rule 23050(h), BSTX Participants would be permitted to execute an order on a proprietary basis when holding an unexecuted limit order in that same security without being required to execute the held limit order provided that they give price improvement of $0.01 to the unexecuted held limit order. While FINRA Rule 5320.06 sets forth alternate, lower price improvement standards for securities priced below $1, the Exchange proposes to adopt a uniform price improvement requirement of $0.01 for Securities traded on the BSTX System consistent with the Exchange’s proposed uniform minimum price variant of $0.01 set forth in proposed Rule 25303.

In addition, the Exchange proposes to adopt an exception for bona fide error transactions as proposed in Rule 25303(g), which would permit a BSTX Participant to trade ahead of a customer order if the trade is to correct a bona fide error, as defined in the rule. This proposed exception is nearly identical to similar exceptions of other exchanges except that other exchange rules also provide an exception whereby firms may submit a proprietary order ahead of a customer order to offset a customer order that is...
in an amount other than a round lot (i.e., 100 shares). The Exchange is not adopting an exception for odd-lot orders under these circumstances because the minimum unit of trading for Securities pursuant to proposed Rule 25020 is one Security. The Exchange believes that there may be a notable amount of trading in amounts of less than 100 Securities (i.e., trading in odd-lot amounts), and the Exchange accordingly does not believe that it is appropriate to allow BSTX Participants to trade ahead of customer orders just to offset an odd-lot customer order.

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

Disciplinary Rules (Rule 24000 Series)

With respect to disciplinary matters, the Exchange proposes to adopt Rule 24000 (Discipline and Summary Suspension), which provides that the provisions of the Exchange Rule 11000 Series (Summary Suspension), 12000 Series (Discipline), 13000 Series (Review of Certain Exchange Actions), and 14000 Series (Arbitration) of the Exchange Rules shall be applicable to BSTX Participants and trading on the BSTX System. The Exchange already has Rules pertaining to discipline and suspension of Exchange Participants that it proposes to extend to BSTX Participants and trading on the BSTX System. The Exchange also proposes to adopt Rule 24010 a minor rule violation plan with respect to transactions on BSTX.

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

Trading Rules and the BSTX System (Rule 25000 Series)

Rule 25000—Access to and Conduct on the BSTX Marketplace

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

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

Rule 25010—Days/Hours

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

The Exchange believes that proposed Rule 25010 is designed to protect investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act, by setting forth the days and hours that trades may be effected on the BSTX System and by providing officers of the Exchange with the authority to halt or suspend trading when such officers believe that such action is necessary or appropriate to maintain fair and orderly markets or to protect investors or in the public interest.

Rule 25020—Units of Trading

Proposed Rule 25020 sets forth the minimum unit of trading on the BSTX System, which shall be one Security. The Exchange believes that proposed Rule 25020 is consistent with Section 6(b)(5) of the Exchange Act because it fosters cooperation and coordination of persons engaged in facilitating transactions in securities by specifying the minimum unit of trading on the BSTX System. In addition, other exchanges similarly provide that the minimum unit of trading is one share for their market and/or for certain securities.
Rule 25030—Minimum Price Variant

Proposed Rule 25030 provides the minimum price variant for Securities shall be $0.01. The Exchange believes that proposed Rule 25030 is consistent with Section 6(b)(5) of the Exchange Act because it fosters cooperation and coordination of persons engaged in facilitating transactions in securities by specifying the minimum price variant for Securities and promotes compliance with Rule 612 of Regulation NMS.176 Under Rule 612 of Regulation NMS, the Exchange is, among other things, prohibited from displaying, ranking or accepting from any person a bid or offer or order in an NMS stock in an increment smaller than $0.01 if that bid or offer or order is priced equal to or greater than $1.00 per share. Where a bid or offer or order is priced less than or equal to $1.00 per share, the minimum acceptable increment is $0.0001. Proposed Rule 25030 sets a uniform minimum price variant for all Securities of $0.01 irrespective of whether the Security is trading below $1.00.

Rule 25040—Opening the Marketplace

Proposed Rule 25040 sets forth the opening process for the BSTX System for BSTX-listed Securities and non-BSTX-listed Securities. For BSTX-listed Securities, the Exchange proposes to allow for order entry to commence at 8:30 a.m. ET during the Pre-Opening Phase. Proposed Rule 25040(a) provides that orders will not execute during the Pre-Opening Phase, which lasts until regular trading hours begin at 9:30 a.m. ET.177 Similar to how the Exchange’s opening process works for options trading, BSTX would disseminate a theoretical opening price (“TOP”) to BSTX Participants, which is the price at which the opening match would occur at a given moment in time.178 Under the proposed rule, the Exchange will also broadcast other information during the Pre-Opening Phase. Specifically, in addition to the TOP, the Exchange would disseminate pursuant to proposed Rule 25040(a)(3): (i) “Paired Securities,” which is the quantity of Securities that would execute at the TOP; (ii) the “Imbalance Quantity,” which is the number of Securities that may not be matched with other orders at the TOP at the time of dissemination; and (iii) the “Imbalance Side,” which is the buy/sell direction of any imbalance at the time of dissemination (collectively, with the TOP, “Broadcast Information”).179 Broadcast Information would be recast and disseminated every time a new order is received or cancelled and where such event causes the TOP or Paired Securities to change. With respect to priority during the opening match for all Securities, consistent with proposed Rule 25080 (Execution and Price/Time Priority), among multiple orders at the same price, execution priority during the opening match is determined based on the time the order was received by the BSTX System.

Consistent with the manner in which the Exchange opens options trading, the BSTX System would determine a single price at which a BSTX-listed Security would be opened by calculating the optimum number of Securities that could be matched at a price, taking into consideration all the orders on the BSTX Book.180 Proposed Rule 25040(a)(6) provides that the opening match price is the price which results in the matching of the highest number of Securities. If two or more prices would satisfy this maximum quantity criteria, the price leaving the fewest resting Securities in the BSTX Book will be selected at the opening price and where two or more prices would satisfy the maximum quantity criteria and leave the fewest Securities in the BSTX Book, the price closest to the previous day’s closing price will be selected.181 The opening price must also be within the “Collar Price Range” as set forth in proposed Rule 25040(a)(5), which is designed to ensure that a Security opens in an fair and orderly manner and under market conditions where there is sufficient quotation interest (e.g., a national best bid and offer), the market is not crossed, and where the opening price will not drastically depart from the market at the time of the auction or the preceding day’s closing price.182 Unexecuted trading interest during the opening match will move to the BSTX Book and will preserve price time.
The Exchange also proposes a process for reopening trading following a Limit Up-Limit Down Halt or trading pause ("Halt Auctions"). For Halt Auctions, the Exchange proposes that in advance of reopening, the Exchange shall announce a Quote-Only Period that shall be five (5) minutes prior to the Halt Auction. This Quote-Only Period may be extended in certain circumstances. The Exchange proposes to disseminate the same Broadcast Information as it does for an Initial Security Offering Auction and would similarly provide notification of any extension to the quote-only period as with an Initial Security Offering Auction. The transition to normal trading would also occur in the same manner as Initial Security Offering Auctions, as described above.

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

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

Consistent with Section 6(b)(5) of the Exchange Act, the Exchange believes that the proposed process for opening trading in BSTX-listed Securities and Securities listed on other exchanges will promote just and equitable principles of trade and will help perfect the mechanism of a free and open market by establishing a uniform process to determine the opening price of Securities. Proposed Rule 25040 provides a mechanism by which BSTX Participants may submit orders in advance of the start of regular trading hours, perform an opening cross, and commence regular hours trading in Securities listed on BSTX or otherwise. Where an opening cross is not possible in a BSTX-listed Security, the Exchange will proceed by opening regular hours trading in the Security anyway, which is consistent with the protection of investors and the public interest.

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

Rule 25050—Trading Halts

BSTX proposes to adopt rules relating to trading halts that are substantially

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

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

195 See proposed Rule 25040(c)(3)–(5).

196 See proposed Rule 25040(d)(1).

197 See proposed Rule 25040(d)(1)–(2).

198 See proposed Rule 25040(d)(2).

199 See proposed Rule 25040(d)(3)–(5).

200 See proposed Rule 25040(e).

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

202 See e.g., BOX Rule 7070.

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

204 The Exchange notes that rules on opening trading for non-BSTX-listed security are set forth in proposed Rule 25040(e).
similar to other exchange rules adopted in connection with the NMS Plan to Address Extraordinary Market Volatility ("LULD Plan"), with certain exceptions that reflect Exchange functionality. BSTX intends to join the LULD Plan prior to the commencement of trading Securities. Below is an explanation of BSTX’s approach to certain categories of orders during a trading halt:

• **Short Sales**—BSTX cancels all orders on the book during a halt and rejects any new orders, so rules relating to the repricing of short sale orders during a trading halt that certain other exchanges have adopted have been omitted.

• **Pegged Orders**—BSTX would not support pegged orders, at least initially, so rules relating to pegged orders during a trading halt have been omitted.

• **Routable Orders**—Pursuant to proposed Rule 25130, the BSTX System will reject any order or quotation that would lock or cross a protected quotation of another exchange (rather than routing such order or quotation), and therefore rules relating to handling of routable orders during a trading halt have been omitted.

• **Limit Orders**—Because BSTX would cancel resting order interest and reject incoming orders during a trading halt, specific rules relating to the repricing of limit-priced interest that certain other exchanges have adopted have been omitted.

• **Auction Orders, Market Orders, and FOK Orders**—BSTX would not support these order types, at least initially, so rules relating to these order types during a trading halt have been omitted.

Pursuant to proposed Rule 25060(d), the Exchange would cancel all resting orders in a non-BSTX listed security subject to a trading halt, reject any incoming orders in that Security, and will only resume accepting orders following a broadcast message to BSTX Participants indicating a forthcoming re-opening of trading.

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

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

**Rule 25060—Order Entry**

Proposed Rule 25060 sets forth the manner in which BSTX Participants may enter orders to the BSTX System. The BSTX System would initially only support limit orders. Orders that do not designate a limit price would be rejected. The BSTX System would also only support two time-in-force ("TIF") designations initially: (i) DAY; and (ii) immediate or cancel ("IOC").

**Rule 25050—Order Redirection during a Trading Halt**

Proposed Rule 25050(h) to halt or suspend trading in other circumstances where the Exchange deems it necessary to do so for the protection of investors and in the furtherance of the public interest.

The Exchange believes that creating a simplified exchange model designed to protect investors and is in the public interest because it reduces complexity, thereby helping market participants better understand how orders would operate on the BSTX System.

**Rule 25070—Audit Trail**

Proposed Rule 25070 (Audit Trail) is designed to ensure that BSTX Participants provide the Exchange with information to be able to identify the source of a particular order and other information necessary to carry out the Exchange’s oversight functions. The proposed rule is substantially similar to existing BOX Rule 7120 but eliminates certain information unique to orders for options contracts (e.g., exercise price) because Securities are equity securities. The proposed rule also provides that BSTX Participants that employ an electronic order routing or order management system that complies with Exchange requirements will be deemed to comply with the Rule if the required information is recorded in an electronic format. The proposed rule also specifies that order information must be kept for no less than three years and that where specific customer or account number information is not provided to the Exchange, BSTX Participants must maintain such information on their books and records.

The Exchange believes that proposed Rule 25070 is designed to protect

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205 See e.g., Choe BZX Rule 11.18(e)(5)(B).
206 IOC orders would be handled pursuant to proposed Rule 25050(g)(5).
207 Trading would resume pursuant to proposed Rule 25060(g)(5). See proposed Rule 25050(g)(7).
208 A free and open market by establishing the types of orders and modifiers that all BSTX Participants may use in entering orders to the BSTX System. Because these order types and TIFs are available to all BSTX Participants, the proposed rule does not unfairly discriminate among market participants, consistent with Section 6(b)(5) of the Exchange Act.
209 Proposed Rule 25060 sets forth the manner in which BSTX Participants may enter orders to the BSTX System. The BSTX System would initially only support limit orders. Orders that do not designate a limit price would be rejected.
210 Minnesota. The Exchange believes that creating a simplified exchange model designed to protect investors and is in the public interest because it reduces complexity, thereby helping market participants better understand how orders would operate on the BSTX System.
investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act,\(^{214}\) because it will provide the Exchange with information necessary to carry out its oversight role. Without being able to identify the source and terms of a particular order, the Exchange’s ability to adequately surveil its market, with or through another SRO, for trading inconsistent with applicable regulatory requirements would be impeded. In order to promote compliance with Rule 201 of Regulation SHO, proposed Rule 25080(b)(3) provides that when a short sale price test restriction is in effect, the execution price of the short sale order must be higher than (i.e., above) the best bid, unless the sell order is marked “short exempt” pursuant to Regulation SHO.

Rule 25080—Execution and Price Time Priority

Proposed Rule 25080 governs the execution of orders on the BSTX System, providing a price-time priority model. The proposed rule provides that orders of BSTX Participants shall be ranked and maintained in the BSTX Book according to price-time priority, such that within each price level, all orders shall be organized by the time of entry. The proposed rule further provides that sell orders may not execute a price below the best bid in the marketplace and buy orders cannot execute a price above the best offer in the marketplace. Further, the proposed rule ensures compliance with Regulation SHO, Regulation NMS, and the LULID Plan, in a manner consistent with the rulebooks of other national securities exchanges.\(^{215}\)

The Exchange believes that proposed Rule 25080 is consistent with Section 6(b)(5) of the Exchange Act\(^{216}\) because it is designed to promote just and equitable principles of trade and foster cooperation and coordination with persons facilitating transactions in securities by setting forth the order execution priority scheme for Security transactions. Numerous other exchanges similarly operate a price-time priority structure for effecting transactions. The proposed rule also does not permit unfair discrimination among BSTX Participants because all BSTX Participants are subject to the same price-time priority structure. In addition, the Exchange believes that specifying in proposed Rule 25080(b)(3) that execution of short sale orders when a short sale price test restriction is in effect must occur at a price above the best bid unless the order is market “short exempt,” is consistent with the Exchange Act because it is intended to promote compliance with Regulation SHO in furtherance of the protection of investors and the public interest.

Rule 25090—BSTX Risk Controls

Proposed Rule 25090 sets forth certain risk controls applicable to orders submitted to the BSTX System. The proposed risk controls are designed to prevent the submission and execution of potentially erroneous orders. Under the proposed rule, the BSTX System will reject orders that exceed a maximum order size, as designated by each BSTX Participant. The Exchange, however, may set default values for this control. The proposed rule also provides a means by which all of a BSTX Participant’s orders will be canceled in the event that the BSTX Participant loses its connection to the BSTX System. Proposed Rule 25090(c) provides a risk control that prevents incoming limit orders from being accepted by the BSTX System if the order’s price is more than a designated percentage away from the National Best Bid or Offer in the marketplace.

Proposed Rule 25090(d) provides a maximum order rate control whereby the BSTX System will reject an incoming order if the rate of orders received by the BSTX System exceeds a designated threshold. With respect to both of these risk controls (price protection for limit orders and maximum order rate), BSTX Participants may designate the appropriate thresholds, but the Exchange may also provide default values and mandatory minimum levels. The Exchange believes that the proposed risk controls are in Section 6(b)(5) of the Exchange Act\(^{217}\) because they are designed to help prevent the execution of potentially erroneous orders, which furthers the protection of investors and the public interest. Among other things, erroneous orders can be disruptive to the operation of an exchange marketplace, can lead to temporary price dislocations, and can hinder price formation. The Exchange believes that offering configurable risk controls to BSTX Participants, along with default values where a BSTX Participant has not designated its desired controls, will protect investors by reducing the number of erroneous executions on the BSTX System and will remove impediments to and perfect the mechanism of a free and open market system. The proposed risk controls are also similar to existing risk controls provided by the Exchange to Options Participants.

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

Proposed Rule 25100 provides that the Exchange shall collect and disseminate last sale information for transactions executed on the BSTX System. The proposed rule further provides that the aggregate of the best-ranked non-marketable Limit Order(s), pursuant to Rule 25080, to buy and the best-ranked non-marketable Limit Order(s) to sell in the BSTX Book shall be collected and made available to quotation vendors for dissemination. Proposed Rule 25100 further provides that the BSTX System will operate as an “automated market center” within the meaning of Regulation NMS and will display “automated quotations” at all times except in the event of a system malfunction.\(^{218}\) In addition, the proposed Rule specifies that the Exchange shall identify all trades executed pursuant to an exception or an exemption of Regulation NMS. The Exchange will disseminate last sale and quotation information pursuant to Rule 602 of Regulation NMS and will maintain connectivity to the securities information processors for dissemination of quotation information.\(^{219}\) BSTX Participants may obtain access to this information through the securities information processors.

Proposed Rule 25100(d) provides that executions that occur as a result of orders matched against the BSTX Book, pursuant to Rule 25080, shall clear and settle pursuant to the rules, policies, and procedures of a registered clearing agency. Rule 25100(e) obliges BSTX Participants, or a clearing member/participant clearing on behalf of a BSTX Participant to honor trades effected on the BSTX System on the scheduled settlement date, and the Exchange shall not be liable for the failure of BSTX System.


\(^{215}\) See e.g., Choe BZX Rule 11.1.3(a)(2)-(3) governing regular trading hours.


\(^{218}\) 17 CFR 242.600(b)(4) and (5). The general purpose of an exchange being deemed an “automated trading center” displaying “automated quotations” relates to whether or not an exchange’s quotations may be considered protected under Regulation NMS. See Exchange Act Release No. 51808, 70 FR 37495, 37520 (June 29, 2005). Other trading centers may not effect transactions that would trade through a protected quotation of another trading center. The Exchange believes that it is useful to specify that it will operate as an automated trading center at this time to make clear to market participants that it is not operating a manual market with respect to Securities.

\(^{219}\) 17 CFR 242.602.
Participants to satisfy these obligations. The Exchange believes that proposed Rule 25100 is consistent with Section 6(b)(5) of the Exchange Act because it will foster cooperation and coordination with persons processing information with respect to, and facilitating transactions in securities by requiring the Exchange to collect and disseminate quotation and last sale information to market participants. BSTX Participants will need last sale and quotation information to effectively trade on the BSTX System, and proposed Rule 25100 sets forth the requirement for the Exchange to provide this information as well as the information to be provided. The proposed rule is similar to rules of other exchanges relating to the dissemination of last sale and quotation information. The Exchange believes that requiring BSTX Participants (or firms clearing trades on behalf of other BSTX Participants) to honor their trade obligations on the settlement date is consistent with the Exchange Act and because it will foster cooperation with persons engaged in clearing and settling transactions in Securities, consistent with Section 6(b)(5) of the Exchange Act.

Rule 25110—Clearly Erroneous

Proposed Rule 25110 sets forth the manner in which BSTX will resolve clearly erroneous executions that might occur on the BSTX System and is substantially similar to comparable clearly erroneous rules on other exchanges. Under proposed Rule 25100, transactions that involve an obvious error such as price or quantity, may be canceled after review and a determination by an officer of BSTX or such other employee designee of BSTX ("Official"). BSTX Participants that believe they submitted an order erroneously to the Exchange may request a review of the transaction, and must do so within thirty (30) minutes of execution and provide certain information, including the factual basis for believing that the trade is clearly erroneous, to the Official. Under proposed Rule 25100(c), an Official may determine that a transaction is clearly erroneous if the price of the transaction to buy (sell) that is the subject of the complaint is greater than (less than) the "Reference Price" by an amount that equals or exceeds specified "Numerical Guidelines." The Official may consider additional factors in determining whether a transaction is clearly erroneous, such as whether trading in the security had recently halted or overall market conditions. Similar to other exchanges' clearly erroneous rules, the Exchange may determine that trades are clearly erroneous in certain circumstances such as during a system disruption or malfunction, on a BSTX Officer's (or senior employee designee) own motion, during a trading halt, or with respect to a series of transactions over multiple days. Under proposed Rule 25110(e)(2), BSTX Participants affected by a determination by an Official may appeal this decision to the Chief Regulatory Officer of BSTX, provided appeal is made within thirty (30) minutes after the party making the appeal is given notice of the initial determination being appealed. The Chief Regulatory Officer's determination shall constitute final action by the Exchange on the matter at issue pursuant to proposed Rule 25110(e)(2)(ii).

The Exchange believes that proposed Rule 25110 is consistent with Section 6(b)(5) of the Exchange Act because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system by setting forth the process by which clearly erroneous trades on the BSTX System may be identified and remedied. Proposed Rule 25110 would apply equally to all BSTX Participants and is therefore not designed to permit unfair discrimination among BSTX Participants, consistent with Section 6(b)(5) of the Exchange Act. The proposed rule is substantially similar to the clearly erroneous rules of other exchanges. For example, proposed Rule 25110 does not include provisions related to clearly erroneous transactions for routed orders because orders for Securities will not route to other exchanges. Securities would also only trade during regular trading hours (i.e., 9:30 a.m. ET to 4:00 p.m. ET), so provisions from comparable exchange rules relating to clearly erroneous executions occurring outside of regular trading hours have been excluded. Proposed Rule 25110 also excludes provisions from comparable clearly erroneous rules of certain other exchanges relating to clearly erroneous executions in unlisted trading privileges securities that are subject to an initial public offering.

The Exchange believes that its proposed process for BSTX Participants to appeal clearly erroneous execution determinations made by an Exchange Official pursuant to proposed Rule 25110 to the Chief Regulatory Officer of BSTX is consistent with Section 6(b)(5) of the Exchange Act because it

220 These proposed provisions are substantially similar to those of exchanges. See e.g., Nasdaq Rule 4627 and IEX Rule 10.250.
222 Proposed Rule 25110(b). The Official may also consider certain "outlier" transactions on a case by case basis where the request for review is submitted after 30 minutes but no longer than sixty (60)
223 A transaction made in clearly erroneous error and canceled by both parties or determined by the Exchange to be clearly erroneous would be removed from the Consolidated Tape. Proposed Rule 25110(a).
224 Proposed Rule 25110(b). The Official may also consider certain "outlier" transactions on a case by case basis where the request for review is submitted after 30 minutes but no longer than sixty (60)
225 Proposed Rule 25110(c). The Reference Price would be equal to the consolidated last sale immediately prior to the execution(s) under review except for in circumstances, such as, for example, relevant news impacting a security or securities, periods of extreme market volatility, sustained illiquidity, or widespread system issues, where use of a different Reference Price is necessary for the maintenance of a fair and orderly market and the protection of investors and the public interest. Proposed Rule 25110(c)(1).
226 The proposed Numerical Guidelines are 10% where the Reference Price ranges from $0.00 to $25.00, 5% where the Reference Price is greater than $25.00 up to and including $50.00, and 3% where the Reference Price ranges is greater than $50. Proposed Rule 25110(c)(1).
227 Proposed Rule 25110(c)(1). See proposed Rule 25110(b)(5). These provisions are virtually identical to similar provisions of other exchanges' clearly erroneous rules other than by making certain administrative edits (e.g., replacing the term "security" with "Security") and removing trades from the Consolidated Tape. Because Security transactions would be reported pursuant to a separate transaction reporting plan, proposed Rule 25110 eliminates references to the "Consolidated Tape" and provides that clearly erroneous Security transactions will be removed from "all relevant data feeds disseminating last sale information for Security transactions." See proposed Rule 25110(c).
228 Other exchange clearly erroneous reference removing trades from the Consolidated Tape. Because Security transactions would be reported pursuant to a separate transaction reporting plan, proposed Rule 25110 eliminates references to the "Consolidated Tape" and provides that clearly erroneous Security transactions will be removed from "all relevant data feeds disseminating last sale information for Security transactions." See proposed Rule 25110(c).
229 The Exchange notes that not all equities exchanges have a provision with respect to trade nullification for UTP securities that are the subject of an initial public offering. See IEX Rule 11.270.
promotes just and equitable principles of trade and fosters cooperation and coordination with persons regulating, settling, and facilitating transactions in securities by providing a clear and expedient process to appeal determinations made by an Official. BSTX Participants benefit from having a quick resolution to potentially clearly erroneous executions and giving the Chief Regulatory Officer discretion to decide any appeals of an Official’s determination provides an efficient means to resolve potential appeals that applies equally to all BSTX Participants and therefore does not permit unfair discrimination among BSTX Participants, consistent with Section 6(b)(5) of the Exchange Act. The Exchange notes that, with respect to options trading on the Exchange, the Exchange’s Chief Regulatory Officer similarly has sole authority to overturn or modify obvious error determinations made by an Exchange Official and that such determination constitutes final Exchange action on the matter at issue.236 In addition, proposed Rule 251100(e)(2)(iii) provides that any determination made by an Official or the Chief Regulatory Officer of BSTX under proposed Rule 25110 shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration. Accordingly, there is an additional safeguard in place for BSTX Participants to seek further review of the Exchange’s clearly erroneous determination.

To the extent Securities become tradeable on other national securities exchanges or other changes arise that may necessitate changes to proposed Rule 25110 to conform more closely with the clearly erroneous execution rules of other exchanges, the Exchange intends to implement changes as necessary through a proposed rule change filed with the Commission pursuant to Section 19 of the Exchange Act237 at such future date.

Rule 25120—Short Sales

Proposed Rule 25120 sets forth certain requirements with respect to short sale orders submitted to the BSTX System that is virtually identical to similar rules on other exchanges.238 Specifically, proposed Rule 25120 requires BSTX Participants to appropriately mark orders as long, short, or short exempt and provides that the BSTX System will not execute or display a short sale order not marked short exempt with respect to a “covered security”239 at a price that is less than or equal to the current national best bid if the price of that security decreases by 10% or more, as determined by the listing market for the covered security, from the covered security’s closing price on the listing market as of the end of Regular Trading Hours on the prior trading day (the “Trigger Price”). The proposed rule further specifies the duration of the “Short Sale Price Test” and that the BSTX System shall determine whether a transaction in a covered security has occurred at a Trigger Price and shall immediately notify the responsible single plan processor.240

The Exchange believes that proposed Rule 25120 is consistent with Section 6(b)(5) of the Exchange Act,241 because it would promote just and equitable principles of trade and further the protection of investors and the public interest by enforcing rules consistent with Regulation SHO. Pursuant to Regulation SHO, broker-dealers are required to appropriately mark orders as long, short, or short exempt,242 and trading centers are required to establish, maintain, and enforce written policies and procedures reasonably designed to, among other things, prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of that covered security decreases by 10% or more from its closing price on the primary listing market on the prior day.243 Proposed Rule 25120 is designed to promote compliance with Regulation SHO, is nearly identical to similar rules of other exchanges, and would apply equally to all BSTX Participants.

Rule 25130—Locking or Cross Quotations in NMS Stocks

Proposed Rule 25130 sets forth provisions related to locking or crossing quotations. The proposed rule is substantially similar to the rules of other national securities exchanges.244

Proposed Rule 25130 is designed to promote compliance with Regulation NMS and prohibits BSTX participants from engaging in a pattern or practice of displaying quotations that lock or cross a protected quotation unless an exception applies. The Exchange proposes in Rule 25130(d) that the BSTX System will reject any order or quotation that would lock or cross a protected quotation of another exchange at the time of entry.

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

Rule 25140—Clearance and Settlement: Anonymity

Proposed Rule 25140 provides that each BSTX Participant must either (1) be a member of a registered clearing agency that uses a CNS system, or (2) clear transactions executed on the Exchange through another Participant that is a member of such a registered clearing agency. The Exchange would maintain connectivity and access to the UTC of NSCC for transmission of executed transactions. The proposed Rule requires a Participant that clears through another participant to obtain a written agreement, in a form acceptable to the Exchange, that sets out the terms of such arrangement. The proposed Rule also provides that BSTX transaction reports shall not reveal contra party identities and that transactions would be settled and cleared anonymously. In certain circumstances, such as for regulatory purposes, the Exchange may reveal the identity of a Participant or its clearing firm such as to comply with a court order.

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

236 See BOX Rule 7170(a).
238 See e.g., IEX Rule 11.290.
239 Proposed Rule 25120(b) provides that the terms “covered security,” “listing market,” and “national best bid” shall have the same meaning as in Rule 201 of Regulation SHO. 17 CFR 242.201(a).
240 Proposed Rule 25120(d). The proposed rule further provides in paragraph (d)(1) that if a covered security did not trade on BSTX on the prior trading day, BSTX’s determination of the Trigger Price shall be based on the last sale price on the BSTX System for that Security on the most recent day on which the Security traded.
242 17 CFR 242.200(g).
243 17 CFR 242.201(b)(1).
244 See IEX Rule 11.310.
Rule 25150—Thinly Traded Securities and Suspension of Unlisted Trading Privileges

Proposed Rule 25150 would set forth the criteria for eligible Securities to be considered “Thinly Traded Securities” for which UTP may be suspended at the discretion of the Exchange. The Exchange proposes that the Designated Percentage requirement will add additional clarity to the expectations of Market Makers on the Exchange.

Proposed Rule 25210 sets forth the registration requirements for a BSTX Market Maker by noting that a Market Maker must enter a registration request to BSTX and that such registration shall become effective on the next trading day after the registration is entered, or, in the Exchange’s discretion, the registration may become effective the day that it is entered (and the Exchange will provide notice to the Market Maker in such cases). The proposed Rule further provides that a BSTX Market Maker’s registration shall be terminated by the Exchange if the Market Maker fails to enter quotations within five business days after the registration becomes effective.

Proposed Rule 25210 sets forth the obligations of Market Makers on the Exchange. The proposed Market Making Rules also provide for registration obligations of Designated Market Makers (“DMMs”) in a given Security, allocation of a DMM to a particular Security, and parameters for business combinations of DMMs.

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

Proposed Rule 25200 sets forth the basic registration requirement for a BSTX Market Maker by noting that a Market Maker must enter a registration request to BSTX and that such registration shall become effective on the next trading day after the registration is entered, or, in the Exchange’s discretion, the registration may become effective the day that it is entered (and the Exchange will provide notice to the Market Maker in such cases). The proposed Rule further provides that a BSTX Market Maker’s registration shall be terminated by the Exchange if the Market Maker fails to enter quotations within five business days after the registration becomes effective.

Proposed Rule 25210 sets forth the obligations of Market Makers, including DMMs. Under the proposed Rule, a BSTX Participant that is a Market Maker, including a DMM, is generally required to post two-sided quotes during the regular market session for each Security in which it is registered as a Market Maker. The Exchange proposes that such quotes must be entered within a certain percentage, called the “Designated Percentage,” of the National Best Bid (Offer) price in such Security (or last sale price, in the event there is no National Best Bid (Offer) on the Exchange). The Exchange proposes that the Designated Percentage would be 30%. The Exchange notes that the proposed Designated Percentage is substantially similar to the corresponding Designated Percentage for NYSE American market

Proposed Rule 25200 is substantially similar to IEX Rule 11.150.

Proposed Rule 25210(a)(1).


Proposed Rule 25210(a)(4) that, in the event that price movements cause a Market Maker or DMM’s quotations to fall outside of the National Best Bid (Offer) (or last sale price in the event there is no National Best Bid (Offer)) by a given percentage, with such percentage called the “Defined Limit,” in a Security for which they are a Market Maker, the Market Maker or DMM must enter a new bid or offer at not more than the Designated Percentage away from the National Best Bid (Offer) in that Security. The Exchange proposes that the Defined Limit shall be 31.5%. Under the proposed Rules, a Market Maker’s quotations must be firm and automatically executable for their size, and, to the extent the Exchange finds that a Market Maker has a substantial or continued failure to meet its quotation obligations, such Market Maker may face disciplinary action from the Exchange. Under the proposed Rule 25220, a DMM would be approved as a DMM in order to receive an allocation of Securities pursuant to proposed Rule 25230, which is described below. For Securities in which a Participant serves as a DMM, it must meet the same obligations as if it were a Market Maker and must also maintain a bid or offer at the National Best Bid and Offer at least 25% of the day measured across all Securities in which such Participant serves as a DMM. The proposed Rule provides, among other things, that there will be no more than one DMM per Security and that a DMM must maintain information barriers between the trading unit operating as a BSTX Market Maker in the same Security (to the extent applicable). The Rule further provides a process by which a DMM may temporarily withdraw from its DMM status, which is similar to the same process for a BSTX Market Maker in similar cases.

Proposed Rule 25220(b). DMMs would be approved by the Exchange pursuant to an application process.

Proposed Rule 25220(b). DMMs would be approved by the Exchange pursuant to an application process.

Proposed Rule 25220(c).

Proposed Rule 25220(d).
of this requirement is to acknowledge the possibility that a Security need not necessarily have a DMM provided that each Security has been assigned at least three active Market Makers at initial listing and two Market Makers for continued listing, consistent with proposed Rule 26106 (Market Maker Requirement), which is discussed further below.

In proposed Rule 25230, the Exchange proposes to set forth the process by which a DMMs are allocated and reallocated responsibility for a particular Security. Proposed Rule 25230(a) sets forth the basic eligibility criteria for when a Security may be allocated to a DMM, providing that this may occur when the Security is initially listed on BSTX, when it is reassigned pursuant to Rule 25230, or when it is currently listed without a DMM assigned to the Security. Proposed Rule 25230(a) also specifies how the Exchange will handle several situations in which the DMM does not meet its obligations, such as, for example, by issuing an initial warning advising of poor performance if the DMM fails to meet its obligations for a one-month period.

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

Proposed Rule 25230(b) further sets forth specific provisions related to a variety of different issuances and types of securities, including spin-offs or related offerings, warrants, rights, restatements, equity Security listing after preferred Security, listed company mergers, target Securities, and closed-end management investment companies. Each of these provisions is substantially similar to corresponding provisions in NYSE American Rule 7.25E(b)(4)–(11).

Proposed Rule 25230(c) sets forth the reallocation process for a DMM in a manner that is substantially similar to corresponding provisions in NYSE American Rule 7.25E(b). Generally, under the proposed Rule, an issuer may request a reallocation to a new DMM and Exchange staff will review this request, along with any DMM response letter, and eventually make a determination.

Proposed Rule 25230(d), (e), and (f), set forth provisions governing an allocation freeze, allocation sunset, and criteria for applicants that are not currently DMMs to be eligible to be allocated a Security as a DMM respectively. Each of these provisions are likewise substantially similar to corresponding provisions in NYSE American Rule 7.25E(d)–(f).

Finally, proposed Rule 25240 sets forth the DMM combination review policy. The proposed Rule, among other things, defines a proposed combination among DMMs, requires that DMMs provide a written submission to the Office of the Corporate Secretary of the Exchange and specifies, among other things, the items to be disclosed in the written submission, the criteria that the Exchange will use to evaluate a proposed combination, and the timing for a decision by the Exchange, subject to the Exchange’s right to extend such time period. The Exchange notes that proposed Rule 25240 is substantially similar to NYSE American Rule 7.26E.

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

The Exchange has also proposed that the minimum quotation size of Market Makers will be one Security. As noted above, the Exchange believes that Securities may initially trade in smaller increments relative to other listed

263As previously noted, pursuant to proposed Rule 26106, a Security may, in lieu of having a DMM assigned to it, have a minimum of three non-DMM Market Makers at initial listing and two non-DMM Market Makers for continued listing to be eligible for listing on the Exchange. Consequently, a Security might not have a DMM when it initially begins trading on BSTX, but may acquire a DMM later.

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

265See proposed Rule 25230(a)(4). The proposed handling of these scenarios where a DMM does not meet its obligations is substantially similar to parallel requirements in NYSE American Rule 7.25E(a)(4).


267See NYSE American Rule 7, Section 2.

268In this regard, the Exchange believes the proposed Market Making Rules are not designed to permit unfair discrimination between BSTX Participants, consistent with Section 6(b)(5) of the Exchange Act. 15 U.S.C. 78f(b)(5).

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

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

The BSTX Listing Rules Other than for Exchange Traded Products (the “Non-ETP Listing Rules”) in the Rule Series 26000 and the Suspension and Delisting Rules in the Rule 27000 Series have been adapted from, and are substantially similar to, Parts 1–12 of the NYSE American LLC Company Guide.270 Except as described below, each proposed Rule in the BSTX 26000 and 27000 Series is substantially similar to a Section of the NYSE American Company Guide.271 Below is further detail.

• The BSTX Rule 26100 Series are based on the NYSE American Original Listing Requirements (Sections 101–146).272
• The BSTX Original Listing Procedures (26200 Series) are based on the NYSE American Original Listing Procedures (Sections 201–222).
• The BSTX Additional Listings Rules (26300 Series) are based on the NYSE American Additional Listings Sections (Sections 301–350).

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

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

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

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


275 See NYSE American Section 101. The Exchange understands that the Commission has extended relief to NYSE American with respect to certain quantitative listing standards that do not meet the thresholds of SEC Rule 3a51–1. 17 CFR 240.3a51–1. Initial listings of securities that do not meet such thresholds and are not subject to the relief provided to NYSE American would qualify as “ penny stocks” and would be subject to additional regulation. BSTX notes that it is not seeking relief related to SEC Rule 3a51–1 and therefore has clarified proposed Rule 26101(a)(2) to ensure that issuers have at least one year of operating history. BSTX will also require new listings pursuant to proposed Rule 26102 to have a public distribution of 1 million Securities, 400 public Security holders, and a minimum market price of $4 per Security. These provisions meet the requirements in SEC Rule 3a51–1 and are consistent with the rules of other national securities exchanges. See e.g., Nasdaq Rule 5510. The quantitative thresholds specified in Rule 26102 are also reflected in the Sample Underwriter’s Letter that has been submitted as Exhibit 31, to this proposal. In addition, the Exchange notes that proposed Rule 26140, which governs the additional listing requirements of a company that is affiliated with the Exchange, is based on similar provisions in NYSE American Rule 497 and IEX 14.205. See proposed Rule 26103.


277 See proposed Rule 26103.

278 See proposed Rule 26112(b)(2). Preferred Security Distribution Standard 2 requires that a preferred Security listing satisfy the following conditions: Minimum bid price of at least $4 per Security; at least 10 Round Lot holders; At least 250 Public holders; At least 75 Round Lot holders for the last 3 days; At least 5 public Round Lot holders for the last 3 days; At least 50 Public shares traded daily. 15 U.S.C. 78f(b)(5).
proposed rule providing an additional initial listing standard for preferred Securities consistent with a similar provision of NASDAQ would expand the possible universe of issuances that would be eligible to list on the Exchange to include preferred Securities. The Exchange believes that such a rule would help remove impediments to and perfect the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act by giving issuers an additional means by which it could list a different type of security (i.e., preferred Security) and investors the opportunity to trade in such preferred Securities.279 Further, consistent with the public interest, rules that provide more opportunity for listings may promote competition among listing exchanges and capital formation for issuers.

With respect to the definitions in proposed Rule 26000, these are designed to facilitate understanding of the BSTX Non-ETP Listing Rules by market participants. The Exchange believes that allowing market participants to better understand and interpret the BSTX Non-ETP Listing Rules removes impediments to and perfects the mechanism of a free and open market and a national market system, and may also foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, consistent with Section 6(b)(5) of the Exchange Act.280

The Exchange proposes certain enhancements to the notice requirements for listed companies to communicate to BSTX related to record dates and defaults.281 The Exchange believes that these additional disclosure and communication obligations can help BSTX in monitoring for listed company compliance with applicable rules and regulations; such additional disclosure obligations are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to

and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act.282

The Exchange’s proposed Rules provide additional flexibility for listed companies in choosing how liquidity would be provided in their listings by allowing listed companies to meet either the DMM Requirement or Active Market Maker Requirement for initial listing and continued trading.283 Pursuant to proposed Rule 26205, a company may choose to be assigned a DMM by the Exchange or to select its own DMM.284 Alternatively, a company may elect, or the Exchange may determine, that, in lieu of a DMM, a minimum of three (3) market makers would be assigned to the Security at initial listing: such requirement may be reduced to two (2) market makers following the initial listing, consistent with proposed Rule 26106. The Exchange believes that such additional flexibility would promote the removal of impediments to and perfection of the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act.285 The Commission has previously approved exchange rules providing for three market makers to be assigned to a particular security upon initial listing and only two for continued listing.286 In accordance with these previously approved rules, the Exchange believes proposed Rule 26205 would ensure fair and orderly markets and would facilitate the provision of sufficient liquidity for Securities.

The Exchange also proposes a number of other non-substantive changes from the baseline NYSE American listing rules, such as to eliminate references to the concept of a “specialist,” since BSTX will not have a specialist,287 or references to certificated equities, since Securities will be certificated securities.288 As another example, NYSE American Section 623 requires that three copies of certain press releases be sent to the exchange, while the Exchange proposes only that a single copy of such press release be shared with the Exchange.289 In addition, the Exchange proposes to adopt Rule 26720 in a manner that is substantially similar to NYSE American Section 720, but proposes to modify the internal citations to ensure consistency with its proposed Rulebook.290 In its proposed Rules, the

286 See e.g., IEX Rule 14.206.
287 See e.g., NYSE American Section 513(f), noting that open orders to buy and open orders to sell on the books of a specialist on an ex rights date are reduced by the cash value of the rights. Proposed Rule 26340(f) deletes this provision because BSTX will not have specialists. Similarly, because BSTX will not have specialists, the Exchange is not proposing to adopt a parallel rule to NYSE American Section 516, which specifies that certain types of orders are to be reduced by a specialist when a security is quoted ex-dividend, ex-distribution or ex-rights are set forth in NYSE American Rule 132.
288 See e.g., NYSE American Section 117 including a clause relating to paired securities for which “the stock certificates (are) printed back-to-back on a single certificate”). Similarly, the Exchange has proposed to replace certain references to the “Office of Counsel” contained in certain NYSE American Listing Rule (see e.g., Section 1205) with references to the Exchange’s “Legal Department” to accommodate differences in BSTX’s organizational structure. See proposed Rule 27204. As another example, proposed rule 27205 refers to the Exchange’s “Hearing Committee” as defined in Section 6.06 of the Exchange’s By-Laws to similarly accommodate organizational differences between the Exchange and NYSE American.
289 See proposed Rule 26623.
290 Specifically, proposed Rule 26720 would provide that participants publish NYSE American Rules 26720 through 26725 and BSTX’s Rule 22020 (Forwarding of Proxy and Other Issuer-Related Materials; Proxy Voting). NYSE American Section 726, upon which proposed Rule 26720 is based, includes cross-references to NYSE American’s corresponding rules to proposed Rules 26720 through 26725, and also includes cross-references to NYSE American Rules 578 through 585, for which the Exchange is not proposing corresponding rules. These NYSE American rules for which the Exchange is not proposing to adopt a parallel rule relate to certain requirements specific to proxy voting (e.g., requiring that a member state the actual number of shares for which a proxy is given—NYSE American Rule 574) or, in some cases, relate to certificated securities (e.g., NYSE American Rule
Exchange has not included certain form letters related to proxy rules that are included in the NYSE American rules. Instead, these forms will be included in the BSTX Listing Supplement. The Exchange is not proposing to adopt provisions relating to future priced securities at this time. In addition, the Exchange is not proposing to allow for listing of foreign companies, other than Canadian companies, or to allow for issuers to transfer their existing securities to BSTX. Similarly, the Exchange is not proposing at this time to support debt securities (other than those that may be ETPs), so the Exchange has not proposed to adopt certain provisions from the NYSE American Listing Manual related to bonds/debt securities or the trading of units.

The Exchange believes that the departures from the NYSE American rules upon which the proposed Rules are based, as described above, are non-substantive (e.g., by not including provisions relating to instruments that will trade on the Exchange), would apply to all issuers in the same manner and are therefore not designed to permit unfair discrimination, consistent with Section 6(b)(5) of the Exchange Act.

The Exchange proposes in Rule 26507 to prohibit the issuance of fractional Securities and to provide that cash must be paid in lieu of any distribution or part of a distribution that might result in fractional interests in Securities.

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

The Exchange proposes to adopt Rule 26720, are sufficient to govern BSTX Participants’ obligations with respect to proxies. The forms found in NYSE American Section 722.20 and 722.40 would be included in the BSTX Listing Supplement.

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

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

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

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

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

The Exchange proposes to adopt additional listing rules as its Rule 26900 Series that are substantially similar to the corporate governance listing standards set forth in Parts 10, 11, and 12 of the NYSE American Listing Manual. The only significant difference from the baseline NYSE American rules is that the proposed BSTX Rules do not include provisions related to certified securities, since Securities listed on BSTX will be uncertificated.

The Exchange proposes to adopt Rule 26700, which are based on the rules of NYSE American with the differences explained above, are
designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Further, the differences in the proposals compared to the analogous NYSE American provisions appropriately reflect the differences between the two exchanges. The Exchange believes that ensuring that its systems are appropriately described in the BSTX Rules facilitates market participants' review of such Rules, which serves to remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that market participants can easily navigate, understand and comply with the Exchange’s rulebook. Therefore, the Exchange believes its proposals are consistent with Section 6(b)(5) of the Exchange Act. 305

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

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

- Proposed Rule 28000 (Investment Company Units) is based on NYSE Arca Rule 5.2–E[i][j][k][l][m]
- Proposed Rule 28001 (Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities) is based on NYSE Arca Rule 5.2–E[i][j][k][l][m]
- Proposed Rule 28002 (Exchange-Traded Fund Shares) is based on NYSE Arca Rule 5.2–E[i][j][k][l][m]
- Proposed Rule 28003 (Trust Issued Receipts) is based on NYSE Arca Rule 8.200–E
- Proposed Rule 28004 (Commodity-Based Trust Shares) is based on NYSE Arca Rule 8.201–E
- Proposed Rule 28005 (Managed Fund Shares) is based on NYSE Arca Rule 8.600–E
- Proposed Rule 28006 (Active Proxy Portfolio Shares) is based on NYSE Arca Rule 8.601–E
- Proposed Rule 28007 (Managed Portfolio Shares) is based on NYSE Arca Rule 8.900–E

For each Rule in the 28000 Series, the Exchange proposes provisions that are substantially similar to provisions in the NYSE Arca rulebook, with adjustments made to ensure appropriate reference to concepts in other parts of the BSTX Rulebook. For example, in cases where the precedent NYSE Arca rule referred to a specific provision regarding delisting procedures, the Exchange has modified the proposed Rules to reference to the proposed Rule 27000 Series, which set forth the Exchange’s proposed Rules governing suspension and delisting. 306 As another example, the proposed definition of “ETP Holder,” which closely parallels the same definition in the NYSE Arca Rulebook, but is located in a different place in the proposed BSTX Rulebook as compared to the NYSE Arca rulebook. 307 In addition, certain products or concepts that are supported by NYSE Arca but are not supported by the Exchange have not been included in the proposal. For example, the Exchange notes that the NYSE Arca rulebook provides for trading of a Nasdaq–100 Index product, Currency Trust Shares, and Commodity Index Trust Shares, whereas the Exchange will not support trading in these specific ETPs and therefore has not included provisions relating to the listing and trading of such products in its proposal. The discussion below describes other notable variations from the NYSE Arca rules set forth in the proposed Rule Series 28000.

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

Fees (Rule 29000 Series)

The Exchange proposes to set forth as its Rule 29000 Series (Fees) the Exchange’s authority to prescribe reasonable dues, fees, assessments or other charges as it may deem appropriate. As provided in proposed Rule 29000 (Authority to Prescribe Dues, Fees, Assessments and Other Charges), these fees may include membership dues, transaction fees, communication and technology fees, regulatory fees, and other fees, which will be equitably allocated among BSTX Participants, issuers, and other persons using the Exchange’s facilities. 309 Proposed Rule 29010 (Regulatory Revenues) generally provides that any revenues received by the Exchange from fees derived from its regulatory function or regulatory fines will not be used for non-regulatory purposes or distributed to the stockholder, but rather, shall be applied to fund the legal and regulatory operations of the Exchange (including surveillance and enforcement activities).

The Exchange believes that the proposed Rule 29000 Series (Fees) is consistent with Sections 6(b)(5) of the Exchange Act because these proposed rules are designed to protect investors and the public interest by setting forth the Exchange’s authority to assess fees on BSTX Participants, which would be used to operate the BSTX System and surveil BSTX for compliance with applicable laws and rules. The Exchange believes that the proposed Rule 29000 Series (Fees) is also consistent with Sections 6(b)(3) of the Exchange Act 310 because the proposed Rules specify that all fees assessed by the Exchange shall be equitably allocated among BSTX Participants, issuers and other persons using the

306 As another example, the concept of “Core Trading Hours” in the NYSE Arca Rulebook (as defined therein) has no analog in the BSTX Rulebook. The BSTX Rulebook only allows for Regular Trading Hours and thus the proposal references the concept of Regular Trading Hours.
307 See proposed IM–28000–1g. In the NYSE Arca rule book, the comparable definition is set forth in NYSE Arca Rulebook Rule 1. 308 Specifically, Section 2 of Rule 8–E in the NYSE Arca rulebook allows for trading of a Nasdaq–100 Index product, Currency Trust Shares, and Commodity Index Trust Shares.
309 Proposed Rule 29000 further provides authority for the Exchange to charge BSTX Participants a regulatory transaction fee pursuant to Section 31 of the Exchange Act (15 U.S.C. 78ee) and that the Exchange will set forth fees pursuant to publicly available schedule of fees.
Exchange’s facilities. The Exchange notes that the proposed Rule 29000 Series is substantially similar to the existing rules of another exchange. The Exchange intends to submit a proposed rule change to the Commission setting forth the proposed fees relating to trading on BSTX in advance of the launch of BSTX.

Minor Rule Violation Plan

The Exchange’s disciplinary rules, including Exchange Rules applicable to “minor rule violations,” are set forth in the Rule 12000 Series of the Exchange’s current rules. Such disciplinary rules would apply to BSTX Participants and their associated persons pursuant to proposed Rule 24000. The Exchange’s Minor Rule Violation Plan (“MRVP”) specifies those uncontested minor rule violations with sanctions not exceeding $2,500 that would not be subject to the provisions of Rule 19d–1(c)(1) under the Exchange Act requiring that an SRO promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization. The Exchange’s MRVP includes the policies and procedures set forth in Rule 12140 (Imposition of Fines for Minor Violations). The Exchange proposes to amend its MRVP and Rule 12140 to include proposed Rule 24010 (Penalty for Minor Rule Violations). The Rules included in proposed Rule 24010 as appropriate for disposition under the Exchange’s MRVP are: (a) Rule 20000 (Maintenance, Retention and Furnishing of Records); (b) Rule 25070 (Audit Trail); (c) Rule 25210(a)(1) (Two-Sided Quotation Obligation of BSTX Market Makers); and Rule 25120 (Short Sales). The rules included in proposed Rule 12140 are the same as the rules included in the MRVPs of other exchanges. Upon implementation of this proposal, the Exchange will include the enumerated trading rule violations in the Exchange’s standard quarterly report of actions taken on minor rule violations under the MRVP. The quarterly report includes: The Exchange’s internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the sanction imposed, the number of times the rule violation has occurred, and the date of disposition. The Exchange’s MRVP, as proposed to be amended, is consistent with Sections 6(b)(1), 6(b)(5) and 6(b)(6) of the Exchange Act, which require, in part, that the Exchange have the capacity to enforce compliance with, and provide appropriate discipline for, violations of the rules of the Commission and of the exchange. In addition, because amended Rule 12140 will offer procedural rights to a person sanctioned for a violation listed in proposed Rule 24010, the Exchange will provide a fair procedure for the disciplining of members and associated persons, consistent with Section 6(b)(7) of the Exchange Act. This proposal to include the rules listed in Rule 12140 in the Exchange’s MRVP is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act, as required by Rule 19d–1(c)(2) under the Exchange Act, because it should strengthen the Exchange’s ability to carry out its oversight and enforcement responsibilities as an SRO in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation. In requesting the proposed change to the MRVP, the Exchange in no way minimizes the importance of Rule 12140 to listing and delisting of securities futures, and all other rules subject to the imposition of fines under the MRVP. However, the MRVP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the MRVP or whether a violation requires a formal disciplinary action.

Amendments to Existing BOX Rules

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

- **Rule 100(a) (Definitions)** “Options Participant” or “Participant”: The Exchange proposes to change the definition of “Options Participant or Participant” to “Participant” to reflect Options Participants and BSTX Participants and to amend the definition as follows: “The term ‘Participant’ means a firm, or organization that is registered with the Exchange pursuant to the Rule 2000 Series for purposes of participating in trading on a facility of the Exchange and includes an ‘Options Participant’ and ‘BSTX Participant.’”
- **Rule 100(a) (Definitions)** “Options Participant”: The Exchange proposes to add a definition of “Options Participant” that would be defined as follows: “The term ‘Options Participant’ is a Participant registered with the Exchange for purposes of participating in options trading on the Exchange.”
- **Rule 2020(g)(2) (Participant Eligibility and Registration):** The Exchange proposes to delete subsection (g)(2) and replace it with the following: “(2) Persons associated with a Participant whose functions are related solely and exclusively to transactions in municipal securities; (3) persons associated with a Participant whose functions are related solely and exclusively to transactions in commodities; (4) persons associated with a Participant whose functions are related solely and exclusively to transactions in securities futures, provided that any such person is appropriately registered with a registered futures association; and (5) persons associated with a Participant who are restricted from accessing the Exchange and that do not engage in the securities business of the Participant relating to activity that occurs on the Exchange.”
- **Rule 2060 (Revocation of Participant Status or Association with a Participant):** The Exchange proposes to amend Rule 2060 to refer to “securities

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311 See Choe BZX Rules 15.1 and 15.2.
312 17 CFR 240.19d–1(c)(1).
313 The Commission adopted amendments to paragraph (c) of Rule 19d–1 to allow SROs to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. See Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan filed with and declared effective by the Commission will not be considered “final” for purposes of Section 19(d)(1) of the Exchange Act if the sanctions imposed consist of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.
314 See e.g., IEX Rule 9.218 and Choe BZX Rule 8.15.01.
315 17 CFR 240.19d–1(c)(2).
317 In addition, as a result of these new defined terms, the Exchange proposes to number definitions set forth in Rule 100(a) to keep the definitions in alphabetical order.
318 In addition to revising Rule 2020(g)(2) to broaden it to include securities activities beyond just options trading, the Exchange proposes to add a specific rule to define persons that are exempt from registration, consistent with the approach adopted by other exchanges. See e.g., IEX Rule 2.160(m).
transactions” rather than “options securities transactions.”

- Rule 3180(a) (Mandatory Systems Testing): The Exchange proposes to amend subsection (a)(1) of Rule 3180 to also include BSTX Participants, in addition to the categories of Market Makers and OFPs.

- Rule 7130(a)(2)(v) Execution and Price/Time Priority: The Exchange proposes to update the cross reference to Rule 100(a)(58) to refer to Rule 100(a)(59), which defines the term “Request for Quote” or “RFQ” under the Rules after the proposed renumbering.

- Rule 7150(a)(2) (Price Improvement Period): The Exchange proposes to amend Rule 7150(a)(2) to update the cross reference to the definition of a Professional in Rule 100(a)(51) to instead refer to Rule 100(a)(52), which is where that term would be defined in the Rules after the proposed renumbering.

- Rule 7230 (Limitation of Liability): The Exchange proposes to amend the references in Rule 7230 to “Options Participants” to simply “Participants.”

- Rule 7245(a)(4) (Complex Order Price Improve Period): The Exchange proposes to update the cross reference to Rule 100(a)(51) to refer to Rule 100(a)(52), which defines the term “Professional” after the proposed renumbering.

- IM–8050–3: The Exchange proposes to update the cross reference to Rule 100(a)(56) to refer to Rule 100(a)(57), which defines the term “quote” or “quotation” after the proposed renumbering.

- Rule 11010(a) “Investigation Following Suspension”: The Exchange proposes to amend subsection (a) of Rule 11010 to remove the reference to “in BOX options contracts” and to modify the word “position” with the word “security” as follows: “. . . the amount owing to each and a complete list of each open long and short security position maintained by the Participant and each of his or its Customers.”

- Rule 11030 (Failure to Obtain Reinstatement): The Exchange proposes to amend Rule 11030 to replace the reference to “Options Participant” to simply “Participant.”

- Rule 12140 (Imposition of Fines for Minor Rule Violations): The Exchange proposes to amend Rule 12140 to replace references to “Options Participant” to simply “Participant.” In addition, the Exchange proposes to add paragraph (f) to Rule 12140, to incorporate the aforementioned modifications to the Exchange’s MVP. New paragraph (f) of Rule 12140 would provide: “(f) Transactions on BSTX.

Rules and penalties relating to trading on BSTX that are set forth in Rule 24010 (Penalty for Minor Rule Violations).”

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

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

Further, the Exchange believes that by ensuring the rulebook accurately reflects the intention of the Exchange’s rules, the proposed rule change reduces potential investor or market participant confusion.

Forms To Be Used in Connection With BSTX

In connection with the operation of BSTX, the Exchange proposes to use a series of new forms to facilitate


321 Id.
persons are subject to the oversight and jurisdiction of the Exchange.

3. Participant authorizes the Exchange to make available to any governmental agency or SRO any information it may have concerning the BSTX Participant or its associated persons, and releases the Exchange from any and all liability in furnishing such information.

4. Participant acknowledges its obligation to update any and all information contained in any part of the BSTX Participant’s application, including termination of membership with another SRO.

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

BSTX User Agreement
In order to become a BSTX Participant, prospective participants must also execute a BSTX User Agreement pursuant to proposed Rule 18000(b). The BSTX User Agreement, submitted with the proposal as Exhibit 3C, includes provisions related to the terms of the agreement, compliance with exchange rules, right and obligations under the agreement, changes to BSTX proprietary rights under the agreement, use of information received under the relationship, disclaimer of warranty, limitation of liability, indemnification, termination and assignment. The information is necessary to outline the rights and obligations of the prospective Participant and the Exchange under the terms of the agreement. Both the BSTX Participant Agreement and BSTX User Agreement will be available on the Exchange’s website (boxoptions.com).

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

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

BSTX Listing Applications
The Exchange proposes to specify the required forms of listing application, listing agreement and other documentation that listing applicants and listed companies must execute or complete (as applicable) as a prerequisite for initial and ongoing listing on the Exchange, as applicable (collectively, “listing documentation”). As proposed, the listing forms are substantially similar to those currently in use by NYSE American LLC, with certain differences to account for the trading of Securities. All listing documentation will be available on the Exchange’s website (boxoptions.com). Each of the listing documents form a duly authorized representative of the company must sign an affirmation that the information provided is true and correct as of the date the form was signed. In the event that in the future the Exchange makes any substantive changes (including changes to the rights, duties, or obligations of a listed company or listing applicant or the Exchange, or that would otherwise require a rule filing) to such documents, it will submit a rule filing in accordance with Rule 19b–4.322

Pursuant to Rule 26130 and 26300 of the Exchange Rules, a company must file and execute the BSTX Original Listing Application (submitted with the proposal as Exhibit 3G) or the BSTX Additional Listing Application (submitted with the proposal as Exhibit 3H) to apply for the listing of Securities on BSTX.323 The BSTX Original Listing Application provides information necessary, and in accordance with Section 12(b) of the Exchange Act,324 for Exchange regulatory staff to conduct a due diligence review of a company to determine if it qualifies for listing on the Exchange. The BSTX Additional Listing Application requires certain further information for an additional listing of Securities. Relevant factors regarding the company and securities to be listed would determine the type of information required. The following describes each category and use of application information:

1. Corporate information regarding the issuer of the security to be listed, including company name, address, contact information, Central Index Key Code (CIK), SEC File Number, state and country of incorporation, date of incorporation, whether the company is a foreign private issuer, website address, SIC Code, CUSIP number of the security being listed and the date of fiscal year end. This information is required of all applicants and is necessary in order for the Exchange’s regulatory staff to collect basic company information for recordkeeping and due diligence purposes, including review of information contained in the company’s SEC filings.

2. For original listing applications only, corporate contact information including the company’s Chief Executive Officer, Chief Financial Officer, Corporate Secretary, General Counsel and Investor Relations Officer. This information is required of all initial applicants and is necessary in order for the Exchange’s regulatory staff to collect current company contact information for purposes of obtaining any additional due diligence information to complete a listing qualification review of the applicant.

3. For original listing applications only, offering and security information regarding an offering, including the type of offering, a description of the issue, par value, number of Securities outstanding or offered, total Securities unissued, but reserved for issuance, date authorized, purpose of Securities to be issued, number of Securities authorized, and information relating to payment of dividends. This information is required of all applicants listing Securities on the

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

Exchange, and is necessary in order for the Exchange’s regulatory staff to collect basic information about the offering.

4. For original listing applications only, information regarding the company’s transfer agent. Transfer agent information is required for all applicants. This information is necessary in order for the Exchange’s regulatory staff to collect current contact information for such company transfer agent for purposes of obtaining any additional due diligence information to complete a listing qualification review of the applicant.

5. For original listing applications only, contact information for the outside counsel with respect to the listing application, if any. This information is necessary in order for the Exchange’s regulatory staff to collect applicable contact information for purposes of obtaining any additional due diligence information to complete a listing qualification review of the applicant and assess compliance with Exchange Rule 26130.

6. For original listing applications only, a description of any security preferences. This information is necessary to determine whether the Applicant issuer has any existing class of common stock or equity securities entitling the holders to differential voting rights, dividend payments, or other preferences.

7. For original listing applications only, type of Security listing, including the type of transaction (initial public offering of a Security, merger, spin-off, follow on offering, reorganization, exchange offer or conversion) and other details related to the transaction, including the name and contact information for the investment banker/financial advisor contacts. This information is necessary in order for the Exchange’s regulatory staff to collect information for such company for purposes of obtaining any additional due diligence information to complete a listing qualification review of the applicant.

8. For original listing applications only, exchange requirements for listing consideration. This section notes that to be considered for listing, the Applicant Issuer must meet the Exchange’s minimum listing requirements, that the Exchange has broad discretion regarding the listing of any Security and may deny listing or apply additional or more stringent criteria based on any event, condition or circumstance that makes the listing of an Applicant Issuer’s Security inadvisable or unwarranted in the opinion of the Exchange. The section also notes that even if an Applicant Issuer meets the Exchange’s listing standards for listing on the BSTX Security Market, it does not necessarily mean that its application will be approved. This information is necessary in order for the Exchange’s regulatory staff to assess whether an Applicant Issuer is qualified for listing.

9. For original listing applications only, regulatory review information, including a certification that no officer, board member or non-institutional shareholder with greater than 10% ownership of the company has been convicted of a felony or misdemeanor relating to financial issues during the past ten years or a detailed description of any such matters. This section also notes that the Exchange will review background materials available to it regarding the aforementioned individuals as part of the eligibility review process. This regulatory review information is necessary in order for the Exchange’s regulatory staff to assess whether there are regulatory matters related to the company that render it unqualified for listing.

10. For original listing applications only, supporting documentation required prior to listing approval includes a listing agreement, corporate governance affirmation, listing application checklist and underwriter’s letter. This documentation is necessary in order to support the Exchange’s regulatory staff listing qualification review (corporate governance affirmation, listing application checklist underwriter’s letter) and to effectuate the listed company’s agreement to the terms of listing (listing agreement).

11. For additional listing applications only, transaction details, including the purpose of the issuance, total Securities, date of board authorization, date of shareholder authorization and anticipated date of issuance. This information is required of all applicants listing additional Securities on the Exchange, and is necessary in order for the Exchange’s regulatory staff to collect basic information about the offering.

12. For additional listing applications only, insider participation and future potential issuances, including whether any director, officer or principal shareholder of the company has a direct or indirect interest in the transaction, and if the transaction potentially requires the company to issue any Securities in the future above the amount they are currently applying for. This information is required of all applicants listing additional Securities on the Exchange, and is necessary in order for the Exchange’s regulatory staff to collect basic information about the offering.

13. For additional listing applications only, information for a technical original listing, including reverse Security splits and changes in states of incorporation. This information is required of all applicants listing additional Securities on the Exchange, and is necessary in order for the Exchange’s regulatory staff to collect basic information about the offering.

14. For additional listing applications only, information for a forward Security split or Security dividend, including forward Security split ratios and information related to Security dividends. This information is required of all applicants listing additional Securities on the Exchange, and is necessary in order to determine the rights associated with the Securities.

15. For additional listing applications only, relevant company documents. This information is required of all applicants listing additional Securities on the Exchange, and is necessary to assess to support the Exchange’s regulatory staff listing qualification review.

16. For additional listing applications only, reconciliation for technical original listing, including Securities issued and outstanding after the technical original event, listed reserves previously approved for listing, and unlisted reserves not yet approved by the Exchange. This information is required of all applicants listing additional Securities on the Exchange, and is necessary to assess to support the Exchange’s regulatory staff listing qualification review and to obtain all of the information relevant to the offering.

Checklist for Original Listing Application

In order to assist issuers seeking to list its Securities on BSTX, the Exchange has provided a checklist for issuers to seeking to file an original listing application with BSTX. The BSTX Listing Application Checklist, submitted with the proposal as Exhibit 3I, provides that issuers must provide BSTX with a listing application, listing agreement, corporate governance affirmation, underwriter’s letter (for an initial public offering of a Security only) and relevant SEC filings (e.g., 8–A, 10, 40–F, 20–F). Each of the above referenced forms are fully described herein. The checklist is necessary to assist issuers and the Exchange regulatory staff in assessing the completion of the relevant documents.

BSTX Security Market Listing Agreement

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

1. Company certifies that it will comply with all Exchange rules, policies, and procedures that apply to listed companies as they are now in effect and as they may be amended from time to time, regardless of whether the Company’s organization documents would allow for a different result.

2. Company shall notify the Exchange at least 20 days in advance of any change in the form or nature of any listed Securities or in the rights, benefits, and privileges of the holders of such Securities.

3. Company understands that the Exchange may remove its Securities from listing on the BSTX Security Market, pursuant to applicable procedures to meet one or more requirements of Paragraphs 1 and 2 of this agreement.

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

5. Company indemnifies the Exchange and holds it harmless from any third-party rights and/or claims arising out of or by the Exchange, or any affiliate or facility of the Exchange (“Corporations”) of the Company’s corporate logos, website address, trade names, trade/service marks, and/or the trading symbol used by the Company.

6. Company warrants and represents that the trading symbol to be used by the Company does not violate any trade/service mark, trade name, or other intellectual property right of any third party. The Company’s trading symbol is provided to the Company for the limited purpose of identifying the Company’s security in connection with quotation and trading systems. The Exchange reserves the right to change the Company’s trading symbol at the Exchange’s discretion at any time.

7. Company agrees to furnish to the Exchange on demand such information concerning the Company as the Exchange may reasonably request.

8. Company agrees to pay when due all fees associated with its listing of Securities on the BSTX Security Market, in accordance with the Exchange’s Rules.

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

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

BSTX Security Market Company Corporate Governance Affirmation

In accordance with the proposed Rule 26800 Series, companies listed on BSTX would be required to comply with certain corporate governance standards, relating to, for example, audit committees, director nominations, executive compensation, board composition, and executive sessions. In certain circumstances the corporate governance standards that apply vary depending on the nature of the company. In addition, there are phase-in periods and exemptions available to certain types of companies. The proposed BSTX Security Market Corporate Governance Affirmation, submitted with this proposal as Exhibit 3K, enables a company to confirm to the Exchange that it is in compliance with the applicable standards, and specify any applicable phase-ins or exemptions. Companies are required to submit a BSTX Security Market Corporate Governance Affirmation upon initial listing on the Exchange and thereafter when an event occurs that makes an existing form inaccurate. This BSTX Security Market Corporate Governance Affirmation assists the Exchange regulatory staff in monitoring listed company compliance with the corporate governance requirements.

Sample Underwriter’s Letter

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

Regulation

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

Section 17(d) of the Exchange Act 325 and the related Exchange Act rules permit SROs to allocate certain regulatory responsibilities to avoid duplicative oversight and regulation. Under Exchange Act Rule 17d–1, 327 the SEC designates one SRO to be the Designated Examining Authority, or DEA, for each broker-dealer that is a member of more than one SRO. The DEA is responsible for the financial aspects of that broker-dealer’s regulatory

oversight. Because Exchange Participants, including BSTX Participants, also must be members of at least one other SRO, the Exchange would generally not be designated as the DEA for any of its members.328

Rule 17d–2 under the Exchange Act329 permits SROs to file with the Commission plans under which the SROs allocate among each other the responsibility to receive regulatory reports from, and examine and enforce compliance with specified provisions of the Exchange Act and rules thereunder and SRO rules by, firms that are members of more than one SRO (“common members”). If such a plan is declared effective by the Commission, an SRO that is a party to the plan is relieved of regulatory responsibility as to any common member for whom responsibility is allocated under the plan to another SRO. The Exchange plans to join the Plan for the Allocation of Regulatory Responsibilities Regarding Regulation NMS.330 The Exchange may choose to join certain Rule 17d–2 agreements subjects to the agreement allocating responsibility for insider trading rules.331

For those regulatory responsibilities that fall outside the scope of any Rule 17d–2 agreements that the Exchange may join, subject to Commission approval, the Exchange will retain full regulatory responsibility under the Exchange Act. However, as noted, the Exchange will extend its existing Regulatory Services Agreement with FINRA to provide that FINRA personnel will operate as agents for the Exchange in performing certain regulatory functions with respect to BSTX. As is the case with the Exchange’s options trading platform, the Exchange will supervise FINRA and continue to bear ultimate regulatory responsibility for BSTX. Consistent with the Exchange’s existing regulatory structure, the Exchange’s Chief Regulatory Officer shall have general supervision of the regulatory operations of BSTX, including responsibility for overseeing the surveillance, examination, and enforcement functions and for administering all regulatory services agreements applicable to BSTX. Similarly, the Exchange’s existing Regulatory Oversight Committee will be responsible for overseeing the adequacy and effectiveness of Exchange’s

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


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

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

334 See e.g., NYSE, Daily TAQ Fact Sheet, (noting that TAQ data “provides users access to all trades and quotes for all issues traded on NYSE, Nasdaq and the regional exchanges for a single trading day” and is “a comprehensive history of daily activity from NYSE markets and the U.S. Consolidated Tape covering U.S. Equities instruments (CTA and UTP participating markets)” https://www.nyse.com/publicdocs/nyse/data/Daily_TAQ_Fact_Sheet.pdf
sent to the Exchange through the FIX gateway. The BSTX Market Data Blockchain, therefore, would be optional functionality available to all BSTX Participants on equal terms, and therefore is not unfairly discriminatory, consistent with Section 6(b)(5) of the Exchange Act.\footnote{15 U.S.C. 78f(b)(5).}

The Exchange has proposed to make the BSTX Market Data Blockchain available only to BSTX Participants rather than other market participants that are not BSTX Participants primarily because the Exchange believes that BSTX Participants would be the most likely to be interested in potentially using the BSTX Market Data Blockchain. The BSTX Market Data Blockchain would consist of information that pertains solely to trading activity on BSTX and not other exchanges. The Exchange believes, therefore, that most persons interested in market data relating to trading on BSTX would likely become a BSTX Participant, at which time they would have access to the BSTX Market Data Blockchain. The Exchange solicits comment from the public as to whether non-BSTX Participants would be interested in having access to the BSTX Market Data Blockchain and the anticipated uses of the BSTX Market Data Blockchain by such non-BSTX Participants.\footnote{The Exchange reiterates that non-anonymized market data available on the BSTX Market Data Blockchain would only ever be accessible by the BSTX Participant who provided such market data through its trading on BSTX.}

To the extent that non-BSTX Participants are interested in access to General Market Data (i.e., anonymized market data) available on the BSTX Market Data Blockchain, the Exchange would consider providing access to such persons on an ad hoc basis\footnote{For example, the Exchange might provide temporary access to the BSTX Market Data Blockchain to academics studying equity markets.} or may consider amendments to the subsequent rule filings) to provide regular access to General Market Data on the BSTX Market Data Blockchain if there is sufficient interest or demand from non-BSTX Participants. The Exchange notes that the anonymized data that would be available on the BSTX Market Data Blockchain would be the same information that would be available through the Exchange’s proprietary market data feeds, which any person (i.e., both BSTX Participants and non-BSTX Participants) would be able to acquire. Accordingly, under the proposal, non-BSTX Participants would still be able to access the same anonymized market data information available on the BSTX Market Data Blockchain as BSTX Participants, but through a different means (i.e., through the proprietary market data feeds rather than via the BSTX Market Data Blockchain). Because the same anonymized information would be available to non-BSTX Participants through another means, the Exchange believes that the proposed limitation of access to the BSTX Market Data Blockchain is not unfairly discriminatory and does not impose a burden on competition, consistent with Sections 6(b)(5) and 6(b)(8) of the Exchange Act.\footnote{See proposed Rule 25060(h).}

In addition, because the BSTX Market Data Blockchain only captures information with respect to trading activity on BSTX, it would have no effect or impact on other exchanges, promoting consistency with Section 6(b)(8) of the Exchange Act, which prohibits an exchange’s rules from imposing a burden on competition not necessary or appropriate in furtherance of the Exchange Act.\footnote{15 U.S.C. 78f(b)(8).} The entry of an innovative clearing mechanism such as BSTX seeking to implement a measured introduction of blockchain technology in connection with the trading of equity securities may promote competition by encouraging other market participants to find ways of using blockchain technology in connection with securities transactions. The proposed regulation of BSTX and BSTX Participants, as well as the execution of Securities using a price-time priority model and the clearance and settlement of Securities pursuant to the rules, policies and procedures of a registered clearing agency will all operate in a manner substantially similar to existing equities exchanges. In this way, the Exchange believes that BSTX provides a robust regulatory structure that protects investors and the public interest while introducing the use of blockchain technology as an additional feature in connection with Securities traded on the Exchange. In connection with the clearance and settlement of Securities pursuant to the rules, policies and procedures of a registered clearing agency, the Exchange proposes that BSTX Participants would be able to include in their orders in Securities that are submitted to BSTX certain parameters to indicate a preference for settlement on a same day (T+0) or next trading day (T+1) basis when certain conditions are met.\footnote{See supra notes 888–91 and accompanying text.} Any such orders would be at the time of order entry represent orders that would be regular-way and would be presumed to settle on a T+2 basis just like any other order submitted by a BSTX Participant that does not include a parameter indicating a preference for faster settlement. As described in greater detail above, however, an Order with a T+0 Preference or an Order with a T+1 Preference would only result in executions that would actually settle more quickly than on a T+2 basis if, and only if, all of the conditions in Rule 25060(h) are met and the execution that is transmitted to NSCC is eligible for T+0 or T+1 settlement under the rules, policies and procedures of a registered clearing agency.\footnote{15 U.S.C. 78f(b)(5).} Any such preference included by a BSTX Participant would only become operative if the order happens to execute against another order from a BSTX Participant that also includes a parameter indicating a preference for settlement on a T+0 or T+1 basis.

The Exchange believes that the proposed ability for BSTX Participants to indicate a preference for shorter settlement times as described above is consistent with the Exchange Act and in particular Section 6(b)(5) of the Exchange Act because it would help remove impediments and perfect the mechanism of a free and open market and is not designed to permit unfair discrimination between or among market participants.\footnote{15 U.S.C. 78f(b)(5).} Specifically, allowing for BSTX Participants to potentially reduce the settlement time for transactions on BSTX pursuant to the rules, policies and procedures of a registered clearing agency helps remove impediments to and perfects a free an open market by allowing greater choice for BSTX Participants who may want to avail themselves of currently available functionality at registered clearing agencies. Moreover, the Commission has previously noted a number of positive effects relating to the liquidity risks and costs faced by members in a clearing agency, and the Exchange believes that this proposed functionality on BSTX would help realize such positive effects.\footnote{See proposed Rule 25100(d).} Proposed Rule 25060(h) is not designed to permit unfair discrimination between market participants consistent with Section 6(b)(5)\footnote{15 U.S.C. 78f(b)(5).} because the Rule would allow all orders that are marketable against one another—regardless of the settlement preference of the BSTX Participant submitting the order (or their customer)—to execute against each other.
other. A BSTX Participant that would like settlement of T+2 could still interact with orders on BSTX that indicate a preference for a shorter settlement cycle and vice-versa. Only where two orders that both indicate a preference for a shorter settlement cycle match on BSTX would a shorter settlement cycle be possible.

The Exchange also proposes to suspend unlisted trading privileges for Securities that qualify as Thinly Traded Securities, which the Exchange also believes is consistent with the Exchange Act for the reasons detailed in Part II.H above.\textsuperscript{347} The Exchange proposes to suspend UTP only for Securities that qualify as Thinly Traded Securities, which are generally those with an ADV of trading of 100,000 or less and a market capitalization of less than $1 billion, and where an issuer of a Thinly Traded Security elects to have UTP suspended. The Exchange believes that the proposed suspension of UTP is consistent with Section 6(b)(5) of the Exchange Act \textsuperscript{348} because it is designed 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 by concentrating displayed liquidity on a single exchange, which many, including the Commission, have suggested could potentially improve the market quality for thinly traded securities. The Exchange believes that concentrating displayed liquidity on a single venue could make market making more attractive in Thinly Traded Securities, thereby increasing the overall amount and depth of liquidity in the market and in turn making it easier for investors to acquire and dispose of positions in Thinly Traded Securities, which furthers the protection of investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act.\textsuperscript{349} The Exchange would make available order and transaction data relating to Thinly Traded Securities to regulators, academics, and others upon request to evaluate how the suspension of UTP has impacted Thinly Traded Securities. The Exchange will also perform its own analysis across a range of market quality metrics to evaluate whether the suspension of UTP has had the intended effect of improving market quality for Thinly Traded Securities.\textsuperscript{350} The Exchange believes that by studying the effect of the suspension of UTP for Thinly Traded Securities and making available market data for others to make similar studies, the Exchange can help ensure that the suspension of UTP is in fact having the intended effect of improving market quality for Thinly Traded Securities and/or determine what else might be necessary to improve market quality, all of which the Exchange believes will help further the protection of investors and the public interest.

Similarly, consistent the Exchange believes that the proposed suspension of UTP for Thinly Traded Securities would not permit unfair discrimination between customers, issuers, brokers or dealers, because the suspension is for the purpose of furthering the regulatory objective of improving market quality for securities that are thinly traded. Although non-Thinly Traded Securities would not be able to have UTP suspended, this discriminatory treatment is not “unfair” given the substantial public interest, as demonstrated through the Commission’s statements and by market participants at the Roundtable, in improving market conditions for thinly traded securities. The Exchange believes that the proposed suspension of UTP would help protect investors and the public interest, consistent with Section 6(b)(5), by concentrating displayed liquidity on a single venue, thereby providing greater incentives for market makers in Thinly Traded Securities and in turn making it easier for investors to buy and sell shares of Thinly Traded Securities. The Exchange believes that there is a general consensus among members of Commission staff, former Commissioners (including former Chairman Jay Clayton), the Department of the Treasury, and market participants, as well as empirical evidence, making clear that operating company stocks with an ADV of less than 100,000 shares suffer significant liquidity and market quality challenges not faced by stocks with greater trading volume. It is for this reason, the Exchange believes, that the Commission specifically solicited requests from exchanges for innovative approaches to improve the market for thinly traded securities, including requests for suspension of UTP.\textsuperscript{351}

B. Self-Regulatory Organization’s Statement on Burden on Competition
The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.\textsuperscript{352} The Exchange operates in an intensely competitive global marketplace for transaction services. The Exchange competes for the privilege of providing market services to broker-dealers through the Exchange’s service offerings and associated benefits it is able to provide. The Exchange’s ability to compete in this environment is based in large part on the quality of its trading systems, the overall quality of its market and its attractiveness to market participants who evaluate the Exchange on, among other things, speed, reliability, the likelihood and costs of executions, as well as spreads, fairness, and transparency.

The Exchange believes that the primary areas where the proposed rule change could potentially result in a burden on competition are with regard to the terms on which: (1) Issuers may list their securities for trading, (2) market participants may access BSTX as a facility of the Exchange and use its services including the BSTX Market Data Blockchain; (3) Security transactions may be cleared and settled, (4) Security transactions would occur OTC; (5) Security transactions would occur on other exchanges through an extension of UTP to Securities that are not Thinly Traded Securities; and (6) there would be a suspension of UTP for Thinly Traded Securities.

Regarding considerations (1) and (2), and as described in detail in Item 3 above, the BSTX Rules are drawn substantially from the existing rules of other exchanges that the Commission has already found to be consistent with the Exchange Act, including regarding whether they impose any burden on competition that is not necessary or appropriate in furtherance of its purposes. For example, the BSTX Non-ETP Listing Rules in the 26000 Series and Suspension and Delisting Rules in the 27000 Series that affect issuers and their ability to list Securities for trading are based substantially on the current rules of NYSE American. Additionally, the BSTX Trading and Listing of ETPs Rules in the 28000 Series that concern issuers and their ability to list Securities that are exchange-traded products are based substantially on the current rules of NYSE Arca. Additionally, the BSTX Rules regarding membership and access to and use of the facilities of BSTX are also substantially based on existing exchange rules. Specifically, the relevant BSTX Rules are as follows: participation on BSTX (Rule 18000 Series); business conduct for BSTX participants (Rule 19000 Series); participation on BSTX (Rule 18000 Series).
financial and operational rules for BSTX participants (Rule 20000 Series); supervision (Rule 21000 Series); miscellaneous provisions (Rule 22000 Series); trading practices (Rule 23000 Series); discipline and summary suspension (Rule 24000 Series); trading (Rule 25000 Series); market making (Rule 25200 Series); and dues, fees, assessments, and other charges (Rule 28000 [sic] Series). As described in detail in Item 3, these rules are substantially based on analogous rules of the following exchanges, as applicable: BOX; Investors Exchange LLC; Cboe BZX Exchange, Inc.; The Nasdaq Stock Market LLC; and NYSE American LLC.

Regarding consideration (2) and use of the BSTX Market Data Blockchain, the terms on which BSTX would operate the BSTX Market Data Blockchain under Rule 17020 would apply equally to all BSTX Participants and would therefore not impose any different burden on one BSTX Participant compared to another. As described in detail in Item 3, BSTX would issue login credentials to each BSTX Participant through which the BSTX Participant may choose to access the BSTX Market Data Blockchain. Accessing the BSTX Market Data Blockchain would not be required. If a Participant chooses to do so, it would be able to see its order and transaction information on BSTX as well as certain anonymized General Market Data from other BSTX Participants. Because the General Market Data would be anonymized, the Exchange believes that there would not be cause for concern regarding potential trading information leakage or the ability for a BSTX Participant to reverse engineer another BSTX Participant’s trading strategies. Moreover, the BSTX Market Data Blockchain would not require any affirmative action on the part of a BSTX Participant for its information to be recorded to the BSTX Market Data Blockchain. Rather, the Exchange would control all aspects of the BSTX Market Data Blockchain as a private, permission-based blockchain accessible to BSTX Participants, and the BSTX Market Data Blockchain would capture order and execution activity that occurs in the normal course on BSTX and is made available to BSTX Participants as an additional resource that they may use in their discretion. The BSTX Market Data Blockchain would functionally provide market data similarly to what NYSE offers through TAQ data, but would simply provide it using distributed ledger technology. Accordingly, although capturing a different set of market data than captured by NYSE TAQ data, the BSTX Market Data Blockchain is pro-competitive by offering a similar type of market data and using an innovative technology to do so. For these reasons, the Exchange believes that the BSTX Market Data Blockchain would not impose any burden on competition.

In addition to not imposing any burden on competition, the Exchange believes that the BSTX Market Data Blockchain would provide two primary benefits to BSTX Participants. First, the Exchange believes that BSTX Participants that choose to access the BSTX Market Data Blockchain may find the information useful as a focused source of market data regarding order and transaction information on BSTX. Second, the Exchange believes that the BSTX Market Data Blockchain would help familiarize BSTX Participants that access the market data with the capabilities of blockchain technology in a manner that does not impose any burden on competition on them or others. The Commission has stated that it is “mindful of the benefits of increasing use of new technologies for investors and the markets, and has encouraged experimentation and innovation . . . ” stating further that “[i]nformation and communications technologies are critical to healthy and efficient primary and secondary markets.”354 Regarding the judgment of whether the benefits of certain technologies are meritorious, the Commission has explained its view that “[t]he market will ultimately prove the worth of technology—whether the benefits to the industry and its investors of developing and using new services are greater than the associated costs.”355 Consistent with these statements, the Exchange believes that promoting use of the functionality of blockchain technology through the BSTX Market Data Blockchain will allow BSTX Participants to observe and increase their familiarity with the capabilities and potential benefits of blockchain technology in a context that operates within the current equity market infrastructure and thereby advances and protects the public’s interest in the use and development of new data processing techniques that may create opportunities for more efficient, effective and safe securities markets.356

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

354 See supra n. 368–38 and accompanying text.

355 Id.

356 See supra n. 39 and accompanying text.

Regarding consideration (3) and the manner in which Security transactions may be cleared and settled, the Exchange proposes under BSTX Rule 25100(d) to clear and settle transactions in Securities in accordance with the rules, policies and procedures of a registered clearing agency. The Exchange believes that this is consistent with how other exchange-listed equity securities are cleared and settled today. Therefore, BSTX’s rules regarding clearance and settlement of Security transactions do not impose any relative burden on competition regarding the manner in which trades may be cleared and settled because market participants would be able to clear and settle Security transactions in the same manner as they already do in other types of NMS stock. The Exchange believes that this is equally true regarding the proposed ability of BSTX Participants to submit to BSTX orders in Securities in which they include a parameter expressing a preference for T+1 or T+0 settlement, consistent with the rules, policies and procedures of a registered clearing agency, as proposed in the operation of proposed BSTX Rules 25060(h) and 25100(d). As described in detail in Item 3 above, BSTX believes that NSCC and DTC already have authority under their rules policies and procedures to clear and settle certain trades on a T+1 or T+0 basis and that these clearing agencies do already clear and settle trades in accordance with this authority. The Exchange believes that answering the question of whether a burden on competition is imposed by the proposal to allow BSTX Participants to specify an order parameter indicating a preference for potential settlement on a T+0 or T+1 basis requires an assessment under three general circumstances for order submissions and executions. The first possible circumstance contemplates orders that BSTX Participants would submit through their BSTX System and that would result in an execution on BSTX. Here, it would be entirely the choice of any BSTX Participant regarding whether to include an order parameter indicating a preference for T+0 or T+1 settlement where possible under the settlement logic in BSTX Rule 25060(h). If no such additional parameter is included in the order, the order defaults to settle on a regular-way T+2 basis under the settlement logic in proposed BSTX Rule 25060(h). As described in Part II.I of Item 3, an order that includes a parameter indicating a preference for potential T+0 settlement will execute against any order against which it is marketable with settlement occurring on
a regular-way settlement cycle of T+2 except where: (i) The order with the parameter for potential settlement on T+0 executes against another order with a parameter for potential settlement on T+0 (in which case settlement would occur on the trade date if the transaction is also eligible for settlement on T+0 under the rules, policies and procedures of a registered clearing agency) or (ii) the order with a parameter for potential settlement on T+0 executes against an order with a parameter for potential settlement on T+1 (in which case settlement would occur T+1). Similarly, as proposed, an order that includes a parameter for potential settlement on T+1 will execute against any order against which it is marketable with settlement occurring on a regular-way settlement date of T+2 except where: (i) An order that includes a parameter for potential settlement on T+1 executes against another such order or an order that includes a parameter for potential settlement on T+0 (in which case settlement would occur T+1). In all cases under the settlement logic in proposed BSTX Rule 25060(h), an order that does not include an optional parameter indicating a preference for potential settlement on T+0 or T+1 would be a regular way order that would always receive T+2 settlement if it executes against any other order in the BSTX System. In this way, all of the orders submitted to BSTX would be regular way orders that in and of themselves would be presumed to settle on T+2. Only where a BSTX Participant includes the optional parameters to express a preference for potential T+0 or T+1 settlement (where consistent with the rules, policies and procedures of a registered clearing agency) and the order matches against another order seeking a shorter settlement time than T+2 could a transaction settle more quickly than T+2 under the settlement logic in proposed BSTX Rule 25060(h) and as described immediately above. Thus, every market participant seeking T+2 settlement for an execution on BSTX would be able to interact with any order against which it is marketable, including those marked for possible T+0 or T+1 settlement. In addition, the possibility of shortened settlement timing would have no impact on the Exchange’s price time priority.\textsuperscript{357} For these reasons, the Exchange believes that no burden on competition is imposed in this first possible circumstance.

The second possible circumstance arises when an order that would be required under Exchange Act Rule 611,\textsuperscript{358} the Commission’s “order protection rule”, to be routed to BSTX from a third party exchange that extends UTP to a Security. This required routing of the order in such a Security would occur in this setting because the NBBO existed on BSTX at the time of the entry of the order. Under proposed BSTX Rule 25060(h), the order routed to BSTX would execute against any order against which it is marketable without regard to whether a BSTX Participant may have included an optional parameter for potential T+0 or T+1 settlement where the order executes against another order that also has an optional parameter for potential T+0 or T+1 settlement under the settlement logic in BSTX Rule 25060(h). In the event the order routed to BSTX executes against another order on BSTX against which it is marketable, that executed transaction in the Security would be bound for regular way T+2 settlement under BSTX Rule 25060(h) because the Exchange believes that the routed order from a third party exchange would not include a parameter for T+0 or T+1 settlement. This is because the Exchange believes that no other exchange currently includes any such optional parameters to be able to indicate a preference for potential T+0 or T+1 settlement. This structure means that any non-BSTX Participant that sees a quote in a Security on BSTX would remain able to execute against that quote even if that quote includes an optional parameter indicating a preference for potential T+0 or T+1 settlement. This second possible circumstance means that any non-BSTX Participant that extends UTP to a Security because the Exchange believes that it is not relevant under the proposed rules of BSTX. Specifically, the Exchange believes that the proposed rules of BSTX do not have rules that similarly contemplate the inclusion of a T+0 or T+1 parameter, such routed orders would therefore result in T+2 settlement if executed against any other order on BSTX except where the order is marketable with settlement occurring on a regular-way settlement date of T+2 except where: (i) The order with a parameter for potential settlement on T+0 or T+1 parameter would be entirely optional and any BSTX Participant that includes such a parameter would do so with an ex-ante understanding of the settlement logic in BSTX Rule 25060 that could cause an executed transaction to settle more quickly than T+2. As noted, the Exchange believes that orders in a Security that would be required to be routed to BSTX, for example under the Commission’s Order Protection Rule, would also not impose any burden on competition because other exchanges do not have rules that similarly contemplate the inclusion of a T+0 or T+1 parameter, such routed orders would therefore result in T+2 settlement if executed against any other order on BSTX against which the order is marketable (regardless of whether the order against which it executes includes an optional parameter indicating a preference for T+0 or T+1 settlement). Therefore, any order routed to BSTX would be able to interact with any other order on BSTX against which it is marketable and would settle on a regular way T+2 basis just as occurs today regarding any order in an NMS stock that is routed to a national securities exchange.

The third possible circumstance contemplates an order that must be routed under the order protection rule from BSTX to a third party exchange that extends UTP for a Security because the third party exchange has the NBBO at that time. The Exchange believes that this setting is not relevant under the proposed rules of BSTX. Specifically, the Exchange believes that it is not relevant because proposed BSTX Rule 25130(d) states that the BSTX System will reject any order or quotation that would lock or cross a protected quotation of another exchange at the time of entry. Therefore, any such orders that would otherwise be required to be routed by BSTX to another exchange will instead be rejected by the BSTX System. Accordingly, any specification by a BSTX Participant of a T+0 or T+1 settlement timing parameter for an order in this setting could not cause an executed transaction to settle more quickly than T+2 because the order would never be routed to another exchange. In addition to not imposing any burden on competition, the Exchange believes that allowing BSTX Participants to use faster settlement cycles where consistent with the rules, policies and procedures of a registered clearing agency would mitigate settlement risk for transactions in such Securities, consistent with the benefits the Commission has noted in this area. Specifically, in adopting amendments to SEC Rule 15c6–1 in 2017 to shorten the standard settlement cycle for most

\textsuperscript{357} See supra n. 82 and accompanying text.

\textsuperscript{358} 17 CFR 242.611.
broker-dealer transactions in securities from T+3 to T+2, the Commission stated its belief that the shorter settlement cycle would have positive effects regarding the liquidity risks and costs faced by members in a clearing agency, like NSCC, that performs CCP services, and that it would also have positive effects for other market participants. Specifically, the Commission stated its belief that the resulting “reduction in the amount of unsettled trades and the period of time during which the CCP is exposed to risk would reduce the amount of financial resources that the CCP members may have to provide to support the CCP’s risk management process . . . and that “[t]his reduction in the potential need for financial resources should, in turn, reduce the liquidity costs and capital demands clearing broker-dealers face . . . and allow for improved capital utilization.”  

The Commission went on to state its belief that shortening the settlement cycle “would also lead to benefits to other market participants, including introducing broker-dealers, institutional investors, and retail investors” such as “quicker access to funds and securities following trade execution” and “reduced margin charges and other fees that clearing broker-dealers may pass down to other market participants[,]” and “allow for improved capital utilization.”  

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

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

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

Regarding consideration (6) and suspensions of UTP for Thinly Traded Securities, the Exchange believes that proposed BSTX Rule 25150 would impose a burden on competition as described below. However, for the reasons described below the Exchange believes that the degree of the burden on competition is justified under the Exchange Act because it is necessary and appropriate to promote other express objectives of the Exchange Act.  

If an operating company that is an issuer of a Security gives written notice to the Exchange under BSTX Rule 25150(b) that it elects a suspension of UTP and the Exchange determines that the Security qualifies as a Thinly Traded Security, the Thinly Traded Security would be eligible to trade only on BSTX and OTC while the suspension of UTP is in effect. This would burden competition regarding other national securities exchanges for the time that the suspension of UTP is in effect because it would mean that the exchanges would not be permitted to extend UTP to the Thinly Traded Security and therefore the Thinly Traded Security would only trade on BSTX and OTC. The Exchange believes, however, that this burden on other exchanges is appropriately limited to the subset of Securities that are Thinly Traded Securities because it would only apply (i) in the event that the Security meets the average daily trading volume thresholds in BSTX Rule 25150 and (ii) the issuer elects to notify the Exchange in writing that it wishes to suspend UTP. Therefore, the burden on other exchanges would never apply regarding a Security that is not a Thinly Traded Security.  

As also described in Item 3, Part II.H, the Exchange believes that this limited burden on other exchanges would be offset and necessary and appropriate under Section 6(b)(8) of the Exchange Act because the suspension of UTP has the potential to help solve market quality problems for Thinly Traded Securities that have been publicly identified by the Commission, Commission staff, the U.S. Department of Treasury, academics, and a broad spectrum of market participants. The Exchange agrees with the views expressed in the related publications that “the current ‘one-size-fits-all’ equity market structure, as largely governed under Regulation NMS, may not be optimal for thinly traded securities” and that “more needs to be done to promote liquidity and to improve the listing and trading environment for thinly traded stocks.”  

The Commission noted that the “secondary market for thinly traded securities faces liquidity challenges that can have a negative effect on both investors and issuers traded securities faces liquidity challenges that can have a negative effect on both investors and issuer” including “wider spreads and less displayed size relative to securities that trade in greater volume, often resulting in higher transaction costs for investors.”  

These concerns have been echoed in statements by former Commission Chairman Jay Clayton, former Director of the Division of Trading and Market Brett Redfearn, the Commission’s Small Business Advisory Committee and demonstrated through empirical analyses by the Division of Trading and Market’s Office of Analytics and Research (OAR) and academics. A frequently discussed potential solution to these liquidity and poor market quality issues facing thinly traded securities has been the suspension of UTP for such securities, allowing for displayed liquidity to be concentrated on a single exchange. The Exchange has thus proposed the suspension of UTP in response to these concerns. The Exchange notes that it proposes to use the same criteria as used by OAR (i.e., an ADV of less than 100,000 shares) to distinguish thinly traded securities from more actively traded securities with the additional conditions that only the Securities of an operating company and must have a market capitalization of less than $1
billion, which the Exchange believes helps ensure that the competitive burden imposed by the proposed suspension of UTP is narrowly tailored to address liquidity and market quality concerns for securities that are thinly traded.\(^\text{370}\) It is for these reasons that the Exchange believes that the burden on competition through the suspension of UTP for Thinly Traded Securities (at the election of the issuer) is justified in furtherance of goal of improving market quality for securities that are thinly traded.

In addition, the Exchange does not believe that the suspension of UTP for Thinly Traded Securities will impose a burden on competition not necessary or appropriate in furtherance of the Exchange Act \(^\text{371}\) because other exchanges could similarly be granted a suspension of UTP for qualifying thinly traded securities listed on their markets. Exchanges can compete with each other in attracting issuers of thinly traded securities to be singly-listed and traded on their respective exchanges. Exchanges would still be able to compete with one another for listings and the market for all thinly traded securities could be improved. Moreover, if the suspension of UTP has the desired effect of improving the overall liquidity of a Thinly Traded Security, such Security should hopefully exceed the 100,000 share ADV or $1 billion market capitalization thresholds and become available for UTP, thus removing any barrier to competition once the purpose for which the suspension of UTP was initiated has been fulfilled.

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\(^{370}\) In addition, the Exchange proposes to work with other SROs to amend the revenue allocation formula of the applicable NMS plan(s) for consolidated market data to exclude Thinly Traded Securities in order to prevent the Exchange from unduly profiting from the suspension of UTP under such formula. See supra notes 70–71 and accompanying text.