

Required fields are shown with yellow backgrounds and asterisks.

Filing by NASDAQ OMX BX, Inc.
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input checked="" type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
 Provide a brief description of the action (limit 250 characters, required when Initial is checked *).
 Proposed Rule Change to Establish the Retail Price Improvement Program

Contact Information
 Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Jonathan Last Name * Cayne
 Title * Senior Associate General Counsel
 E-mail * Jonathan.Cayne@nasdaq.com
 Telephone * (301) 978-8493 Fax (301) 978-8472

Signature
 Pursuant to the requirements of the Securities Exchange Act of 1934,
 has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.
 (Title *)
 Date 10/10/2014 Executive Vice President and General Counsel
 By Edward S. Knight
 (Name *)
 NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.
 Persona Not Validated - 1383935917270,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² NASDAQ OMX BX, Inc. (“BX” or the “Exchange”), is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change that would adopt new BX Rule 4780 to establish a Retail Price Improvement (“RPI”) Program (the “Program” or “proposed rule change”) to attract additional retail order flow to the Exchange while also providing the potential for price improvement to such order flow.

The Exchange has designated December 1, 2014 as the date the proposed rule change becomes effective.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and the text of the proposed rule is attached hereto as Exhibit

5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The Board of Directors of the Exchange approved the submission of this proposed rule change on August 9, 2014. No other action by the Exchange is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to Jonathan F. Cayne, Senior Associate General Counsel, at (301) 978-8493.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

Background

The Exchange is proposing a one-year pilot program that would add new BX Rule 4780 to establish an RPI Program to attract additional retail order flow to the Exchange while also providing the potential for price improvement to such order flow.³ Under the proposed rule change, the Exchange would create a new class of market participant called a Retail Member Organization (“RMO”), which would be eligible to submit certain retail order flow (“Retail Orders”) to the Exchange. As proposed, BX members (“Members”) will be permitted to provide potential price improvement for Retail Orders in the form of non-displayed interest that is priced more aggressively than the Protected National Best Bid or Offer (“Protected NBBO”).⁴

Definitions

The Exchange proposes to adopt the following definitions under proposed BX Rule 4780. First, the term “Retail Member Organization” (or “RMO”) would be defined

³ This filing is substantially the same to the one establishing the RPI pilot by The NASDAQ Stock Market LLC (“NASDAQ”). The NASDAQ pilot program expires on December 31, 2014. See Securities Exchange Act Release No. 68937 (February 15, 2013), 78 FR 12397 (February 22, 2013) (“RPI Approval Order”) (SR-NASDAQ-2012-129).

⁴ The term Protected Quotation is defined in Chapter XII, Sec. 1(19) and has the same meaning as is set forth in Regulation NMS Rule 600(b)(58). The Protected NBBO is the best-priced protected bid and offer. Generally, the Protected NBBO and the national best bid and offer (“NBBO”) will be the same. However, a market center is not required to route to the NBBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBBO is otherwise not available for an automatic execution. In such case, the Protected NBBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.

as a Member (or a division thereof) that has been approved by the Exchange to submit Retail Orders.

Second, the term “Retail Order” would be defined as an agency order, or riskless principal order that satisfies the criteria of FINRA Rule 5320.03, that originates from a natural person and is submitted to the Exchange by an RMO, provided that no change is made to the terms of the order with respect to price (except in the case of a market order being changed to a marketable limit order) or side of market and the order does not originate from a trading algorithm or any other computerized methodology. The criteria set forth in FINRA Rule 5320.03 adds additional precision to the definition of “Retail Order” by clarifying that an RMO may enter Retail Orders on a riskless principal basis, provided that (i) the entry of such riskless principal orders meet the requirements of FINRA Rule 5320.03, including that the RMO maintains supervisory systems to reconstruct, in a time-sequenced manner, all Retail Orders that are entered on a riskless principal basis; and (ii) the RMO submits a report, contemporaneously with the execution of the facilitated order, that identifies the trade as riskless principal.

Finally, the term “Retail Price Improvement Order” or “RPI Order” or collectively “RPI interest” would be defined as non-displayed liquidity on the Exchange that is priced more aggressively than the Protected NBBO by at least \$0.001 and that is identified as an RPI Order in a manner prescribed by the Exchange.⁵ RPI orders can be

⁵ Exchange systems would prevent Retail Orders from interacting with RPI Orders if the RPI Order is not priced at least \$0.001 better than the Protected NBBO. The Exchange notes, however, that price improvement of \$0.001 would be a minimum requirement and Members could enter RPI Orders that better the Protected NBBO by more than \$0.001. Exchange systems will accept RPI Orders without a minimum price improvement value; however, such interest will execute at its floor or ceiling price only if such floor or ceiling price is better than the

priced either as an explicitly priced limit order or implicitly priced as relative to the NBBO with an offset of at least \$0.001. The price of an RPI Order with an offset would be determined by a Member's entry of the following into the Exchange: (1) RPI buy or sell interest; (2) an offset from the Protected NBBO, if any; and (3) a ceiling or floor price. RPI Orders submitted with an offset would be similar to other peg orders available to Members in that the order is tied or "pegged" to a certain price, and would have its price automatically set and adjusted upon changes in the Protected NBBO, both upon entry and any time thereafter. The Exchange expects that RPI sell or buy interest typically would be entered to track the Protected NBBO, that is, RPI Orders typically would be submitted with an offset. The offset would be a predetermined amount by which the Member is willing to improve the Protected NBBO, subject to a ceiling or floor price. The ceiling or floor price would be the amount above or below which the Member does not wish to trade. RPI Orders in their entirety (the buy or sell interest, the offset, and the ceiling or floor) will remain non-displayed. The Exchange will also allow Members to enter RPI Orders which establish the exact limit price, which is similar to a non-displayed limit order currently accepted by the Exchange today except the Exchange will accept sub-penny limit prices on RPI Orders in increments of \$0.001. The Exchange will monitor whether RPI buy or sell interest, adjusted by any offset and subject to the

Protected NBBO by \$0.001 or more. Concurrently with this filing, the Exchange has submitted a request for an exemption under Regulation NMS Rule 612 that would permit it to accept and rank the non-displayed RPI Orders. As outlined in the request, the Exchange believes that the minimum price improvement available under the Program, which would amount to \$0.50 on a 500 share order, would be meaningful to the small retail investor. See Letter from Jeffrey S. Davis, Deputy General Counsel, The NASDAQ Stock Market LLC to Brent J. Fields, Secretary, Securities and Exchange Commission dated October 10, 2014 ("Sub-Penny Rule Exemption Request").

ceiling or floor price, is eligible to interact with incoming Retail Orders.

Members and RMOs may enter odd lots, round lots or mixed lots as RPI Orders and as Retail Orders respectively. As discussed below, RPI Orders will be ranked and allocated according to price and time of entry into the System consistent with BX Rule 4757 and therefore without regard to whether the size entered is an odd lot, round lot or mixed lot amount. Similarly, Retail Orders will interact with RPI Orders and other price-improving orders available on the Exchange (*e.g.*, non-displayed liquidity priced more aggressively than the NBBO)⁶ according to the Priority and Allocation rules of the Program and without regard to whether they are odd lots, round lots or mixed lots. Finally, Retail Orders may be designated as Type 1 or Type 2 without regard to the size of the order.

RPI Orders would interact with Retail Orders as follows. Assume a Member enters RPI sell interest with an offset of \$0.001 and a floor of \$10.10 while the Protected NBO is \$10.11. The RPI Order could interact with an incoming buy Retail Order at \$10.109. If, however, the Protected NBO was \$10.10, the RPI Order could not interact with the Retail Order because the price required to deliver the minimum \$0.001 price improvement (\$10.099) would violate the Member's floor of \$10.10. If a Member otherwise enters an offset greater than the minimum required price improvement and the offset would produce a price that would violate the Member's floor, the offset would be

⁶ Other price improving liquidity may include, but is not limited to: booked non-displayed orders with a limit price that is more aggressive than the then-current NBBO; midpoint-pegged orders (which are by definition non-displayed and priced more aggressively than the NBBO); non-displayed orders pegged to the NBBO with an aggressive offset. Orders that do not constitute other price improving liquidity include, but are not limited to: orders with a time-in-force instruction of IOC; displayed orders; limit orders priced less aggressively than the NBBO.

applied only to the extent that it respects the Member's floor. By way of illustration, assume RPI buy interest is entered with an offset of \$0.005 and a ceiling of \$10.112 while the Protected NBBO is at \$10.11. The RPI Order could interact with an incoming sell Retail Order at \$10.112, because it would produce the required price improvement without violating the Member's ceiling, but it could not interact above the \$10.112 ceiling. Finally, if a Member enters an RPI Order without an offset (*i.e.*, an explicitly priced limit order), the RPI Order will interact with Retail Orders at the level of the Member's limit price as long as the minimum required price improvement is produced. Accordingly, if RPI sell interest is entered with a limit price of \$10.098 and no offset while the Protected NBBO is \$10.11, the RPI Order could interact with the Retail Order at \$10.098, producing \$0.012 of price improvement. The System will not cancel RPI interest when it is not eligible to interact with incoming Retail Orders; such RPI interest will remain in the System and may become eligible again to interact with Retail Orders depending on the Protected NBBO. RPI Orders will not be accepted during halts.

RMO Qualifications and Approval Process

Under proposed BX Rule 4780(b), any Member could qualify as an RMO if it conducts a retail business or handles retail orders on behalf of another broker-dealer. Any Member that wishes to obtain RMO status would be required to submit: (i) an application form; (ii) supporting documentation sufficient to demonstrate the retail nature and characteristics of the applicant's order flow.⁷ and (iii) an attestation, in a form

⁷ For example, a prospective RMO could be required to provide sample marketing literature, website screenshots, other publicly disclosed materials describing the retail nature of their order flow, and such other documentation and information as the Exchange may require to obtain reasonable assurance that the applicant's order flow would meet the requirements of the Retail Order definition.

prescribed by the Exchange, that substantially all orders submitted by the Member as a Retail Order would meet the qualifications for such orders under proposed BX Rule 4780(b).

An RMO would be required to have written policies and procedures reasonably designed to assure that it will only designate orders as Retail Orders if all requirements of a Retail Order are met. Such written policies and procedures must require the Member to (i) exercise due diligence before entering a Retail Order to assure that entry as a Retail Order is in compliance with the requirements of this rule, and (ii) monitor whether orders entered as Retail Orders meet the applicable requirements. If the RMO represents Retail Orders from another broker-dealer customer, the RMO's supervisory procedures must be reasonably designed to assure that the orders it receives from such broker-dealer customer that it designates as Retail Orders meet the definition of a Retail Order. The RMO must (i) obtain an annual written representation, in a form acceptable to the Exchange, from each broker-dealer customer that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements of this rule, and (ii) monitor whether its broker-dealer customers' Retail Order flow continues to meet the applicable requirements.⁸

If the Exchange disapproves the application, the Exchange would provide a written notice to the Member. The disapproved applicant could appeal the disapproval by the Exchange as provided in proposed BX Rule 4780(d), and/or reapply for RMO status 90 days after the disapproval notice is issued by the Exchange. An RMO also could

⁸ The Exchange or another self-regulatory organization on behalf of the Exchange will review an RMO's compliance with these requirements through an exam based review of the RMO's internal controls.

voluntarily withdraw from such status at any time by giving written notice to the Exchange.

Failure of RMO to Abide by Retail Order Requirements

Proposed BX Rule 4780(c) addresses an RMO's failure to abide by Retail Order requirements. If an RMO designates orders submitted to the Exchange as Retail Orders and the Exchange determines, in its sole discretion, that those orders fail to meet any of the requirements of Retail Orders, the Exchange may disqualify a Member from its status as an RMO. When disqualification determinations are made, the Exchange would provide a written disqualification notice to the Member. A disqualified RMO could appeal the disqualification as provided in proposed BX Rule 4780(d) and/or reapply for RMO status 90 days after the disqualification notice is issued by the Exchange.

Appeal of Disapproval or Disqualification

Proposed BX Rule 4780(d) provides appeal rights to Members. If a Member disputes the Exchange's decision to disapprove it as an RMO under BX Rule 4780(b) or disqualify it under BX Rule 4780(c), such Member ("appellant") may request, within five business days after notice of the decision is issued by the Exchange, that the Retail Price Improvement Program Panel ("RPI Panel") review the decision to determine if it was correct.

The RPI Panel would consist of the Exchange's Chief Regulatory Officer ("CRO"), or a designee of the CRO, and two officers of the Exchange designated by the Chief Executive Officer of BX. The RPI Panel would review the facts and render a decision within the time frame prescribed by the Exchange. The RPI Panel could overturn or modify an action taken by the Exchange and all determinations by the RPI Panel would constitute final action by the Exchange on the matter at issue.

Retail Liquidity Identifier

Under proposed BX Rule 4780(e), the Exchange proposes to disseminate an identifier when RPI interest priced at least \$0.001 better than the Exchange's Protected Bid or Protected Offer for a particular security is available in the System ("Retail Liquidity Identifier"). The Retail Liquidity Identifier will be disseminated through consolidated data streams (*i.e.*, pursuant to the Consolidated Tape Association Plan/Consolidated Quotation System, or CTA/CQS, for Tape A and Tape B securities, and the Nasdaq UTP Plan for Tape C securities) as well as through proprietary Exchange data feeds.⁹ The Retail Liquidity Identifier will reflect the symbol and the side (buy or sell) of the RPI interest, but will not include the price or size of the RPI interest. In particular, CQS and UTP quoting outputs will include a field for codes related to the Retail Liquidity Identifier. The codes will indicate RPI interest that is priced better than the Exchange's Protected Bid or Protected Offer by at least the minimum level of price improvement as required by the Program.

Retail Order Designations

Under proposed BX Rule 4780(f), an RMO can designate how a Retail Order would interact with available contra-side interest as follows.

As proposed, a Type 1-designated Retail Order would interact with available contra-side RPI Orders and other price improving liquidity but would not interact with

⁹ The Exchange notes that the Retail Liquidity Identifier for Tape A and Tape B securities will be disseminated pursuant to the CTA/CQS Plan as soon as the Program, if approved, becomes operational. The identifier will also be available through the consolidated public market data stream for Tape C securities. The processor for the Nasdaq UTP quotation stream will disseminate the Retail Liquidity Identifier and analogous identifiers from other market centers that operate programs similar to the RPI Program.

other available contra-side interest in the System or route to other markets. The shares remaining from a Type 1-designated Retail Order that do not fully execute against contra-side RPI Orders or other price improving liquidity, if any, would be immediately and automatically cancelled.

A Type 2-designated Retail Order would also interact first with available contra-side RPI Orders and other price improving liquidity, but would also be eligible to interact with other available contra-side interest in the System or optionally route to other market centers pursuant to Rule 4758. Accordingly, the shares remaining from a Type 2-designated Retail Order that do not fully execute against contra-side RPI Orders or other price improving liquidity, if any, would execute against other liquidity available on the Exchange or be routed to other market centers for execution. The remaining unexecuted portion would then be cancelled.

Priority and Order Allocation

Under proposed BX Rule 4780(g), the Exchange proposes that competing RPI Orders in the same security would be ranked and allocated according to price then time of entry into the System. The Exchange further proposes that executions will occur in price/time priority in accordance with BX Rule 4757. Any remaining unexecuted RPI interest will remain available to interact with other incoming Retail Orders if such interest is at an eligible price. Any remaining unexecuted portion of the Retail Order will cancel or execute in accordance with proposed BX Rule 4780(f). The following example illustrates this proposed method:

Protected NBBO for security ABC is \$10.00 — \$10.05

Member 1 enters an RPI Order to buy ABC at \$10.015 for 500

Member 2 then enters an RPI Order to buy ABC at \$10.02 for 500

Member 3 then enters an RPI Order to buy ABC at \$10.035 for 500

An incoming Retail Order to sell 1,000 shares of ABC for \$10.00 executes first against Member 3's bid for 500 at \$10.035, because it is the best priced bid, then against Member 2's bid for 500 at \$10.02, because it is the next best priced bid. Member 1 is not filled because the entire size of the Retail Order to sell 1,000 is depleted. The Retail Order executes against RPI Orders in price/time priority.

However, assume the same facts above, except that Member 2's RPI Order to buy ABC at \$10.02 is for 100. The incoming Retail Order to sell 1,000 executes first against Member 3's bid for 500 at \$10.035, because it is the best priced bid, then against Member 2's bid for 100 at \$10.02, because it is the next best priced bid. Member 1 then receives an execution for 400 of its bid for 500 at \$10.015, at which point the entire size of the Retail Order to sell 1,000 is depleted.

As a final example, assume the same facts as above, except that Member 3's order was not an RPI Order to buy ABC at \$10.035, but rather, a non-displayed order to buy ABC at \$10.03. The result would be similar to the result immediately above, in that the incoming Retail Order to sell 1,000 executes first against Member 3's bid for 500 at \$10.03, because it is the best priced bid, then against Member 2's bid for 100 at \$10.02, because it is the next best priced bid. Member 1 then receives an execution for 400 of its bid for 500 at \$10.015, at which point the entire size of the Retail Order to sell 1,000 is depleted.

Implementation

The Exchange proposes that all Regulation NMS securities traded on the Exchange would be eligible for inclusion in the RPI Program. The Exchange proposes to limit the Program during the pilot period to trades occurring at prices equal to or greater than \$1.00 per share. Toward that end, Exchange trade validation systems would prevent

the interaction of RPI buy or sell interest (adjusted by any offset) and Retail Orders at a price below \$1.00 per share.¹⁰ For example, if there was RPI buy interest tracking the Protected NBB at \$0.99 with an offset of \$0.001 and a ceiling of \$1.02, Exchange trade validation systems would prevent the execution of the RPI Order at \$0.991 with a sell Retail Order with a limit of \$0.99. However, if the Retail Order was Type 2 as defined the Program,¹¹ it would be able to interact at \$0.99 with liquidity outside the Program in the Exchange's order book. In addition to facilitating an orderly¹² and operationally intuitive pilot, the Exchange believes that limiting the Program to trades equal to or greater than \$1.00 per share during the pilot will enable it better to focus its efforts to monitor price competition and to assess any indications that data disseminated under the Program is potentially disadvantaging retail orders. As part of that review, the Exchange will produce data throughout the pilot, which will include statistics about participation, the frequency and level of price improvement provided by the Program, and any effects on the broader market structure.

¹⁰ As discussed above, the price of an RPI would be determined by a Member's entry of buy or sell interest, an offset (if any) and a ceiling or floor price. The Exchange expects that RPI sell or buy interest typically would track the Protected NBBO.

¹¹ Type 2 Retail Orders are treated as IOC orders that execute against displayed and non-displayed liquidity in the Exchange's order book where there is no available liquidity in the Program. Type 2 Retail Orders can either be designated as eligible for routing or as non-routable, as described above.

¹² Given the proposed limitation, the pilot Program would have no impact on the minimum pricing increment for orders priced less than \$1.00 and therefore no effect on the potential of markets executing those orders to lock or cross. In addition, the non-displayed nature of the liquidity in the Program simply has no potential to disrupt displayed, protected quotes. In any event, the Program would do nothing to change the obligation of exchanges to avoid and reconcile locked and crossed markets under NMS Rule 610(d).

Comparison to Existing Programs

Proposed BX Rule 4780 is substantially the same to the one establishing NASDAQ Rule 4780 governing NASDAQ's "Retail Price Improvement Program", which was approved by the Commission and commenced operations on March 28, 2013.¹³ NASDAQ's program, in turn, is based on NYSE Rule 107C, governing NYSE's "Retail Liquidity Program," which was approved by the Commission and commenced operations on August 1, 2012¹⁴ and on BATS Y-Exchange, Inc. ("BATS") Rule 11.24, which was approved by the Commission and commenced operations on 12/17/12.¹⁵ Proposed BX Rule 4780 is similar to both BATS Rule 11.24 and NYSE Rule 107C with three key distinctions to the latter.¹⁶ The first distinction is that NYSE Rule 107C

¹³ Securities Exchange Act Release No. 68836 (December 3, 2012), 77 FR 73097, 73100 (December 7, 2012) (SR-NASDAQ-2012-129 Notice) and Securities Exchange Act Release No. 68937 (February 15, 2013) 77 FR 12397 (February 22, 2013) (SR-NASDAQ-2012-129 Approval Order).

¹⁴ Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (SR-NYSE-2011-55; SR-NYSEAmex-2011-84) (the "RLP Approval Order"). In conjunction with the approval of the NYSE Retail Liquidity Program, a nearly identical program was proposed and approved to operate on NYSE MKT LLC (formerly, the American Stock Exchange). For ease of reference, the comparisons made in this section only refer to NYSE Rule 107C, but apply equally to NYSE MKT Rule 107C.

¹⁵ Securities Exchange Act Release No. 68303 (November 27, 2012) 77 FR 71652 (December 3, 2012) (SR-BYX-2012-019).

¹⁶ The Exchange has proposed to accept RPIs in a manner similar to the explicitly accepted method at NYSE and NYSE MKT, specifically, with an offset as well as a ceiling or a floor (*i.e.*, the entry of an RPI bid with an offset of \$0.015 and a ceiling of \$10.04; when the NBBO is \$10.02 by \$10.04, an incoming sell order would execute against such RPI at \$10.035). The Exchange notes that like NYSE and NYSE MKT, Members will be able to submit retail price improving orders with an explicit sub-penny floor or ceiling and no offset, effectively creating a static sub-penny limit order, and the Exchange has proposed rule text to make this ability clear.

includes a class of participant that is registered as a provider of liquidity and provides specific procedures and rules related to such participants and their role in the NYSE RLP. NYSE Rule 107C does permit all participants to submit RPI Orders to NYSE, but provides the specific class of registered retail liquidity providers with execution fees that are lower than fees charged to other participants in exchange for a requirement to maintain RPI Orders on NYSE at least 5% of the trading day.¹⁷ The Exchange believes that equal treatment for all Exchange Members that enter RPI Orders will result in a higher level of competition and maximize price improvement to incoming Retail Orders. Accordingly, the Exchange has not proposed to adopt a special category of retail liquidity provider.

The second distinction between proposed BX Rule 4780 and NYSE Rule 107C is that the Exchange proposes to in all cases execute incoming Retail Orders against resting RPI Orders and other resting non-displayed liquidity to maximize the price improvement available to the incoming Retail Order. As proposed, the Exchange will maintain its strict price/time priority model and will provide all available price improvement to incoming Retail Orders, whether such price improvement is submitted pursuant to the Program or as an order type currently accepted by the Exchange, such as non-displayed orders. In contrast, pursuant to NYSE Rule 107C(k)(1), a Type 1-designated Retail Order, “will interact only with available contra-side Retail Price Improvement Orders and will not interact with other available contra-side interest in Exchange systems.”¹⁸ The

¹⁷ NYSE Rule 107C(f).

¹⁸ Moreover, although pursuant to NYSE Rules 107C(k)(2) and 107C(k)(3), a Type 2-designated Retail Order and a Type 3-designated Retail Order can interact with other non-RPI interest in the NYSE systems, such interaction only occurs after a Retail Order first executes against RPI Orders.

Exchange is proposing in all cases to provide the maximum price improvement available to incoming Retail Orders. Accordingly, Retail Orders under the Exchange's Program will always interact with available contra-side RPI Orders and any other price improving contra-side interest, in price/time priority consistent with BX Rule 4780(b). Such "other" price improving contra-side interest will of course remain available to all participants, as it is today, while RPI Orders will only be available to RMOs, as described above.

Finally, as proposed the Exchange will provide applicable price improvement to incoming Retail Orders at potentially multiple price levels. In contrast, pursuant to NYSE Rule 107C an incoming Retail Order to NYSE will execute at the single clearing price level at which the incoming order will be fully executed. To illustrate, assume the same facts set forth in the second example above, where Member 2's RPI Order to buy ABC at \$10.02 was for 100 shares. Pursuant to NYSE Rule 107C, an incoming Retail Order to sell 1,000 shares at \$10.00 would execute first against Member 3's bid for 500 shares, because it is the best priced bid, then against Member 2's bid for 100 shares, because it is the next best priced bid, then against 400 of the 500 shares bid by Member 1. However, rather than executing at each of these price levels for the number of shares available (*i.e.*, 500 shares at \$10.035, 100 shares at \$10.02 and 400 shares at \$10.015), as it would under proposed BX Rule 4780(b), the Retail Order submitted to NYSE pursuant to NYSE Rule 107C executes at the single clearing price that completes the order's execution, which is \$10.015 to complete the entire order to sell 1,000 shares. The Exchange intends to provide all of the price improvement in these examples to the incoming Retail Order, and thus has proposed to execute orders under the Program consistent with its existing price/time market model.

Fee Structure of Program

The Exchange will submit a separate proposal to amend its fee schedule in connection with the proposed RPI Program. Under that proposal, the Exchange expects to charge Members a fee for executions of their RPI Orders against Retail Orders and in turn would provide a credit or free executions to RMOs for executions of their Retail Orders against RPI Orders. The fees and credits for liquidity providers and RMOs may be adjusted from time to time as the Exchange gains experience with the Program.

As explained above, the Exchange proposes to execute incoming Retail Orders against all available contra-side interest that will provide price improvement to the Retail Order, including non-displayed orders other than RPI Orders. In the event non-displayed interest priced better than the NBBO other than an RPI Order interacts with a Retail Order, the Exchange anticipates proposing to rebate the Member that entered such non-displayed interest a credit rather than the charge which is imposed for an RPI Order execution. In such cases, the rebate credited to the Member that entered the non-displayed interest may be less than the rebate credited that same Member for an execution against a non-Retail Order.

b. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.¹⁹ In particular, the Exchange believes the proposed change furthers the objectives of Section

¹⁹ 15 U.S.C. 78f(b).

6(b)(5) of the Act,²⁰ in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change is consistent with these principles because it would increase competition among execution venues, encourage additional liquidity, and offer the potential for price improvement to retail investors. The Exchange notes that a significant percentage of the orders of individual investors are executed over-the-counter.²¹ The Exchange believes that it is appropriate to create a financial incentive to bring more retail order flow to a public market. The Exchange also notes that the Commission recently approved a similar proposal by NYSE and NYSE MKT.²² Accordingly, the proposal generally encourages competition between exchange venues. In this connection, the Exchange believes that the proposed distinctions between the Exchange's proposal and the approved programs for NYSE and NYSE MKT, as well as the similar program proposed by BATS, will both enhance

²⁰ 15 U.S.C. 78f(b)(5).

²¹ See Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (noting that dark pools and internalizing broker-dealers executed approximately 25.4% of share volume in September 2009). See also Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (available on the Commission's website). In her speech, Chairman Schapiro noted that nearly 30 percent of volume in U.S.-listed equities was executed in venues that do not display their liquidity or make it generally available to the public and the percentage was increasing nearly every month.

²² See RLP Approval Order, supra note 14.

competition amongst market participants and encourage competition amongst exchange venues.

The Exchange understands that Section 6(b)(5) of the Act²³ prohibits an exchange from establishing rules that treat market participants in an unfairly discriminatory manner. However, Section 6(b)(5) of the Act does not prohibit exchange members or other broker-dealers from making distinctions, so long as their activities are otherwise consistent with the federal securities laws and the distinctions are not unfair. Nor does Section 6(b)(5) of the Act require exchanges to preclude broker-dealers from making distinctions that are not unfair. Broker-dealers commonly differentiate between customers based on the nature and profitability of their business.

While the Exchange believes that markets and price discovery optimally function through the interactions of diverse flow types, it also believes that growth in internalization has required differentiation of retail order flow from other order flow types. The differentiation proposed herein by the Exchange is not designed to permit unfair discrimination, but instead to promote a competitive process around retail executions such that retail investors would receive better prices than they currently do through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of operating a program such as the RPI Program on an exchange market would result in better prices for retail investors. The Exchange recognizes that sub-penny trading and pricing could potentially result in undesirable market behavior. The Exchange will monitor the Program in an effort to identify and address any such behavior.

²³ 15 U.S.C. 78f(b)(5).

The Exchange will separately propose fees applicable to the Program, including fees or rebates for non-displayed orders offering price improvement other than RPI Orders that interact with Retail Orders. The Exchange believes any such proposal to treat such non-displayed orders differently depending on the parties with whom they interact is consistent with Section 6(b)(5) of the Act,²⁴ which requires that the rules of an exchange are not designed to permit unfair discrimination. The Exchange believes that such a differential pricing structure for non-displayed orders is not unfairly discriminatory. As stated in the NYSE RLP Approval Order, the “Commission has previously recognized that the markets generally distinguish between individual retail investors, whose orders are considered desirable by liquidity providers because such retail investors are presumed on average to be less informed about short-term price movements, and professional traders, whose orders are presumed on average to be more informed.”²⁵ The Exchange’s proposed differential pricing structure for non-displayed orders raises substantively identical policy considerations as the rules approved by the Commission in the NYSE RLP Approval Order, which account for the difference of assumed information and

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ See RLP Approval Order, supra note 14, at 40679-40680 (citing Concept Release on Equity Market Structure and approval of an options exchange program related to price improvement for retail orders). Certain options exchanges deploy this same rationale today through pricing structures that vary for a trading participant based on the capacity of the contra-side trading participant. See, e.g., Securities Exchange Act Release No. 67171 (June 8, 2012), 77 FR 35732 (June 14, 2012) (SR-NASDAQ-2012-068) (notice of filing and immediate effectiveness of proposal to modify fees for the NASDAQ Options Market, including certain fees and rebates that are variable depending on the capacity of the contra-party to the transaction); see also Securities Exchange Act Release No. 63632 (January 3, 2011), 76 FR 1205 (January 7, 2011) (SR-BATS-2010-038) (notice of filing and immediate effectiveness of proposal to modify fees for BATS Options, including liquidity rebates that are variable depending on the capacity of the contra-party to the transaction).

sophistication level between different trading participants by providing Retail Orders access to better execution prices as well as more favorable access fees.

Finally, the Exchange proposes that the Commission approve the proposed rule for a pilot period of twelve months from the date of implementation, which shall occur no later than 90 days after Commission approval of BX Rule 4780. The Program shall expire on [Date to be determined upon adoption of BX Rule 4780]. The Exchange believes that this pilot period is of sufficient length to permit both the Exchange and the Commission to assess the impact of the rule change described herein.

4. 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 Act.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Not applicable.

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

Proposed BX Rule 4780 is substantially the same as NASDAQ Rule 4780, which, in turn, is based on NYSE Rule 107C, which relates to the NYSE "Retail Liquidity Program" and the BATS proposed program. Proposed BX Rule 4780 is substantially the

same as NASDAQ Rule 4780 and similar to both BATS Rule 11.24 and NYSE Rule 107C with three key distinctions to the latter, described in detail above, namely the absence in BX Rule 4780 of a retail liquidity provider category, the execution of incoming Retail Orders against all available price improving liquidity, and the execution of incoming Retail Orders at multiple price levels rather than a single price level.

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

Not applicable.

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

Not applicable.

11. Exhibits

1. Notice of proposed rule for publication in the Federal Register.
5. Text of Proposed Rule Change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-BX-2014-048)

October __, 2014

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of a Proposed Rule Change to Establish the Retail Price Improvement Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on October 10, 2014, The NASDAQ Stock Market LLC (“NASDAQ”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by NASDAQ. 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

NASDAQ is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change that would adopt new BX Rule 4780 to establish a Retail Price Improvement (“RPI”) Program (the “Program” or “proposed rule change”) to attract additional retail order flow to the Exchange while also providing the potential for price improvement to such order flow.

The Exchange has designated December 1, 2014 as the date the proposed rule change becomes effective.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is available from NASDAQ's website at <http://nasdaqomxbx.cchwallstreet.com/Filings/>, at NASDAQ's principal office, and at the Commission's Public Reference Room.

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

In its filing with the Commission, NASDAQ 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. NASDAQ 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

Background

The Exchange is proposing a one-year pilot program that would add new BX Rule 4780 to establish an RPI Program to attract additional retail order flow to the Exchange while also providing the potential for price improvement to such order flow.³ Under the proposed rule change, the Exchange would create a new class of market participant called a Retail Member Organization ("RMO"), which would be eligible to submit certain retail order flow ("Retail Orders") to the Exchange. As proposed, BX members ("Members") will be permitted to provide potential price improvement for Retail Orders in the form of

³ This filing is substantially the same to the one establishing the RPI pilot by The NASDAQ Stock Market LLC ("NASDAQ"). The NASDAQ pilot program expires on December 31, 2014. See Securities Exchange Act Release No. 68937 (February 15, 2013), 78 FR 12397 (February 22, 2013) ("RPI Approval Order") (SR-NASDAQ-2012-129).

non-displayed interest that is priced more aggressively than the Protected National Best Bid or Offer (“Protected NBBO”).⁴

Definitions

The Exchange proposes to adopt the following definitions under proposed BX Rule 4780. First, the term “Retail Member Organization” (or “RMO”) would be defined as a Member (or a division thereof) that has been approved by the Exchange to submit Retail Orders.

Second, the term “Retail Order” would be defined as an agency order, or riskless principal order that satisfies the criteria of FINRA Rule 5320.03, that originates from a natural person and is submitted to the Exchange by an RMO, provided that no change is made to the terms of the order with respect to price (except in the case of a market order being changed to a marketable limit order) or side of market and the order does not originate from a trading algorithm or any other computerized methodology. The criteria set forth in FINRA Rule 5320.03 adds additional precision to the definition of “Retail Order” by clarifying that an RMO may enter Retail Orders on a riskless principal basis, provided that (i) the entry of such riskless principal orders meet the requirements of FINRA Rule 5320.03, including that the RMO maintains supervisory systems to reconstruct, in a time-sequenced manner, all Retail Orders that are entered on a riskless

⁴ The term Protected Quotation is defined in Chapter XII, Sec. 1(19) and has the same meaning as is set forth in Regulation NMS Rule 600(b)(58). The Protected NBBO is the best-priced protected bid and offer. Generally, the Protected NBBO and the national best bid and offer (“NBBO”) will be the same. However, a market center is not required to route to the NBBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBBO is otherwise not available for an automatic execution. In such case, the Protected NBBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.

principal basis; and (ii) the RMO submits a report, contemporaneously with the execution of the facilitated order, that identifies the trade as riskless principal.

Finally, the term “Retail Price Improvement Order” or “RPI Order” or collectively “RPI interest” would be defined as non-displayed liquidity on the Exchange that is priced more aggressively than the Protected NBBO by at least \$0.001 and that is identified as an RPI Order in a manner prescribed by the Exchange.⁵ RPI orders can be priced either as an explicitly priced limit order or implicitly priced as relative to the NBBO with an offset of at least \$0.001. The price of an RPI Order with an offset would be determined by a Member’s entry of the following into the Exchange: (1) RPI buy or sell interest; (2) an offset from the Protected NBBO, if any; and (3) a ceiling or floor price. RPI Orders submitted with an offset would be similar to other peg orders available to Members in that the order is tied or “pegged” to a certain price, and would have its price automatically set and adjusted upon changes in the Protected NBBO, both upon entry and any time thereafter. The Exchange expects that RPI sell or buy interest typically would be entered to track the Protected NBBO, that is, RPI Orders typically

⁵ Exchange systems would prevent Retail Orders from interacting with RPI Orders if the RPI Order is not priced at least \$0.001 better than the Protected NBBO. The Exchange notes, however, that price improvement of \$0.001 would be a minimum requirement and Members could enter RPI Orders that better the Protected NBBO by more than \$0.001. Exchange systems will accept RPI Orders without a minimum price improvement value; however, such interest will execute at its floor or ceiling price only if such floor or ceiling price is better than the Protected NBBO by \$0.001 or more. Concurrently with this filing, the Exchange has submitted a request for an exemption under Regulation NMS Rule 612 that would permit it to accept and rank the non-displayed RPI Orders. As outlined in the request, the Exchange believes that the minimum price improvement available under the Program, which would amount to \$0.50 on a 500 share order, would be meaningful to the small retail investor. See Letter from Jeffrey S. Davis, Deputy General Counsel, The NASDAQ Stock Market LLC to Brent J. Fields, Secretary, Securities and Exchange Commission dated October 10, 2014 (“Sub-Penny Rule Exemption Request”).

would be submitted with an offset. The offset would be a predetermined amount by which the Member is willing to improve the Protected NBBO, subject to a ceiling or floor price. The ceiling or floor price would be the amount above or below which the Member does not wish to trade. RPI Orders in their entirety (the buy or sell interest, the offset, and the ceiling or floor) will remain non-displayed. The Exchange will also allow Members to enter RPI Orders which establish the exact limit price, which is similar to a non-displayed limit order currently accepted by the Exchange today except the Exchange will accept sub-penny limit prices on RPI Orders in increments of \$0.001. The Exchange will monitor whether RPI buy or sell interest, adjusted by any offset and subject to the ceiling or floor price, is eligible to interact with incoming Retail Orders.

Members and RMOs may enter odd lots, round lots or mixed lots as RPI Orders and as Retail Orders respectively. As discussed below, RPI Orders will be ranked and allocated according to price and time of entry into the System consistent with BX Rule 4757 and therefore without regard to whether the size entered is an odd lot, round lot or mixed lot amount. Similarly, Retail Orders will interact with RPI Orders and other price-improving orders available on the Exchange (*e.g.*, non-displayed liquidity priced more aggressively than the NBBO)⁶ according to the Priority and Allocation rules of the Program and without regard to whether they are odd lots, round lots or mixed lots.

⁶ Other price improving liquidity may include, but is not limited to: booked non-displayed orders with a limit price that is more aggressive than the then-current NBBO; midpoint-pegged orders (which are by definition non-displayed and priced more aggressively than the NBBO); non-displayed orders pegged to the NBBO with an aggressive offset. Orders that do not constitute other price improving liquidity include, but are not limited to: orders with a time-in-force instruction of IOC; displayed orders; limit orders priced less aggressively than the NBBO.

Finally, Retail Orders may be designated as Type 1 or Type 2 without regard to the size of the order.

RPI Orders would interact with Retail Orders as follows. Assume a Member enters RPI sell interest with an offset of \$0.001 and a floor of \$10.10 while the Protected NBO is \$10.11. The RPI Order could interact with an incoming buy Retail Order at \$10.109. If, however, the Protected NBO was \$10.10, the RPI Order could not interact with the Retail Order because the price required to deliver the minimum \$0.001 price improvement (\$10.099) would violate the Member's floor of \$10.10. If a Member otherwise enters an offset greater than the minimum required price improvement and the offset would produce a price that would violate the Member's floor, the offset would be applied only to the extent that it respects the Member's floor. By way of illustration, assume RPI buy interest is entered with an offset of \$0.005 and a ceiling of \$10.112 while the Protected NBBO is at \$10.11. The RPI Order could interact with an incoming sell Retail Order at \$10.112, because it would produce the required price improvement without violating the Member's ceiling, but it could not interact above the \$10.112 ceiling. Finally, if a Member enters an RPI Order without an offset (*i.e.*, an explicitly priced limit order), the RPI Order will interact with Retail Orders at the level of the Member's limit price as long as the minimum required price improvement is produced. Accordingly, if RPI sell interest is entered with a limit price of \$10.098 and no offset while the Protected NBBO is \$10.11, the RPI Order could interact with the Retail Order at \$10.098, producing \$0.012 of price improvement. The System will not cancel RPI interest when it is not eligible to interact with incoming Retail Orders; such RPI interest

will remain in the System and may become eligible again to interact with Retail Orders depending on the Protected NBBO. RPI Orders will not be accepted during halts.

RMO Qualifications and Approval Process

Under proposed BX Rule 4780(b), any Member could qualify as an RMO if it conducts a retail business or handles retail orders on behalf of another broker-dealer. Any Member that wishes to obtain RMO status would be required to submit: (i) an application form; (ii) supporting documentation sufficient to demonstrate the retail nature and characteristics of the applicant's order flow.⁷ and (iii) an attestation, in a form prescribed by the Exchange, that substantially all orders submitted by the Member as a Retail Order would meet the qualifications for such orders under proposed BX Rule 4780(b).

An RMO would be required to have written policies and procedures reasonably designed to assure that it will only designate orders as Retail Orders if all requirements of a Retail Order are met. Such written policies and procedures must require the Member to (i) exercise due diligence before entering a Retail Order to assure that entry as a Retail Order is in compliance with the requirements of this rule, and (ii) monitor whether orders entered as Retail Orders meet the applicable requirements. If the RMO represents Retail Orders from another broker-dealer customer, the RMO's supervisory procedures must be reasonably designed to assure that the orders it receives from such broker-dealer customer that it designates as Retail Orders meet the definition of a Retail Order. The

⁷ For example, a prospective RMO could be required to provide sample marketing literature, website screenshots, other publicly disclosed materials describing the retail nature of their order flow, and such other documentation and information as the Exchange may require to obtain reasonable assurance that the applicant's order flow would meet the requirements of the Retail Order definition.

RMO must (i) obtain an annual written representation, in a form acceptable to the Exchange, from each broker-dealer customer that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements of this rule, and (ii) monitor whether its broker-dealer customers' Retail Order flow continues to meet the applicable requirements.⁸

If the Exchange disapproves the application, the Exchange would provide a written notice to the Member. The disapproved applicant could appeal the disapproval by the Exchange as provided in proposed BX Rule 4780(d), and/or reapply for RMO status 90 days after the disapproval notice is issued by the Exchange. An RMO also could voluntarily withdraw from such status at any time by giving written notice to the Exchange.

Failure of RMO to Abide by Retail Order Requirements

Proposed BX Rule 4780(c) addresses an RMO's failure to abide by Retail Order requirements. If an RMO designates orders submitted to the Exchange as Retail Orders and the Exchange determines, in its sole discretion, that those orders fail to meet any of the requirements of Retail Orders, the Exchange may disqualify a Member from its status as an RMO. When disqualification determinations are made, the Exchange would provide a written disqualification notice to the Member. A disqualified RMO could appeal the disqualification as provided in proposed BX Rule 4780(d) and/or reapply for RMO status 90 days after the disqualification notice is issued by the Exchange.

⁸ The Exchange or another self-regulatory organization on behalf of the Exchange will review an RMO's compliance with these requirements through an exam based review of the RMO's internal controls.

Appeal of Disapproval or Disqualification

Proposed BX Rule 4780(d) provides appeal rights to Members. If a Member disputes the Exchange's decision to disapprove it as an RMO under BX Rule 4780(b) or disqualify it under BX Rule 4780(c), such Member ("appellant") may request, within five business days after notice of the decision is issued by the Exchange, that the Retail Price Improvement Program Panel ("RPI Panel") review the decision to determine if it was correct.

The RPI Panel would consist of the Exchange's Chief Regulatory Officer ("CRO"), or a designee of the CRO, and two officers of the Exchange designated by the Chief Executive Officer of BX. The RPI Panel would review the facts and render a decision within the time frame prescribed by the Exchange. The RPI Panel could overturn or modify an action taken by the Exchange and all determinations by the RPI Panel would constitute final action by the Exchange on the matter at issue.

Retail Liquidity Identifier

Under proposed BX Rule 4780(e), the Exchange proposes to disseminate an identifier when RPI interest priced at least \$0.001 better than the Exchange's Protected Bid or Protected Offer for a particular security is available in the System ("Retail Liquidity Identifier"). The Retail Liquidity Identifier will be disseminated through consolidated data streams (*i.e.*, pursuant to the Consolidated Tape Association Plan/Consolidated Quotation System, or CTA/CQS, for Tape A and Tape B securities, and the Nasdaq UTP Plan for Tape C securities) as well as through proprietary Exchange

data feeds.⁹ The Retail Liquidity Identifier will reflect the symbol and the side (buy or sell) of the RPI interest, but will not include the price or size of the RPI interest. In particular, CQS and UTP quoting outputs will include a field for codes related to the Retail Liquidity Identifier. The codes will indicate RPI interest that is priced better than the Exchange's Protected Bid or Protected Offer by at least the minimum level of price improvement as required by the Program.

Retail Order Designations

Under proposed BX Rule 4780(f), an RMO can designate how a Retail Order would interact with available contra-side interest as follows.

As proposed, a Type 1-designated Retail Order would interact with available contra-side RPI Orders and other price improving liquidity but would not interact with other available contra-side interest in the System or route to other markets. The shares remaining from a Type 1-designated Retail Order that do not fully execute against contra-side RPI Orders or other price improving liquidity, if any, would be immediately and automatically cancelled.

A Type 2-designated Retail Order would also interact first with available contra-side RPI Orders and other price improving liquidity, but would also be eligible to interact with other available contra-side interest in the System or optionally route to other market centers pursuant to Rule 4758. Accordingly, the shares remaining from a Type 2-

⁹ The Exchange notes that the Retail Liquidity Identifier for Tape A and Tape B securities will be disseminated pursuant to the CTA/CQS Plan as soon as the Program, if approved, becomes operational. The identifier will also be available through the consolidated public market data stream for Tape C securities. The processor for the Nasdaq UTP quotation stream will disseminate the Retail Liquidity Identifier and analogous identifiers from other market centers that operate programs similar to the RPI Program.

designated Retail Order that do not fully execute against contra-side RPI Orders or other price improving liquidity, if any, would execute against other liquidity available on the Exchange or be routed to other market centers for execution. The remaining unexecuted portion would then be cancelled.

Priority and Order Allocation

Under proposed BX Rule 4780(g), the Exchange proposes that competing RPI Orders in the same security would be ranked and allocated according to price then time of entry into the System. The Exchange further proposes that executions will occur in price/time priority in accordance with BX Rule 4757. Any remaining unexecuted RPI interest will remain available to interact with other incoming Retail Orders if such interest is at an eligible price. Any remaining unexecuted portion of the Retail Order will cancel or execute in accordance with proposed BX Rule 4780(f). The following example illustrates this proposed method:

Protected NBBO for security ABC is \$10.00 — \$10.05

Member 1 enters an RPI Order to buy ABC at \$10.015 for 500

Member 2 then enters an RPI Order to buy ABC at \$10.02 for 500

Member 3 then enters an RPI Order to buy ABC at \$10.035 for 500

An incoming Retail Order to sell 1,000 shares of ABC for \$10.00 executes first against Member 3's bid for 500 at \$10.035, because it is the best priced bid, then against Member 2's bid for 500 at \$10.02, because it is the next best priced bid. Member 1 is not filled because the entire size of the Retail Order to sell 1,000 is depleted. The Retail Order executes against RPI Orders in price/time priority.

However, assume the same facts above, except that Member 2's RPI Order to buy ABC at \$10.02 is for 100. The incoming Retail Order to sell 1,000 executes first against

Member 3's bid for 500 at \$10.035, because it is the best priced bid, then against Member 2's bid for 100 at \$10.02, because it is the next best priced bid. Member 1 then receives an execution for 400 of its bid for 500 at \$10.015, at which point the entire size of the Retail Order to sell 1,000 is depleted.

As a final example, assume the same facts as above, except that Member 3's order was not an RPI Order to buy ABC at \$10.035, but rather, a non-displayed order to buy ABC at \$10.03. The result would be similar to the result immediately above, in that the incoming Retail Order to sell 1,000 executes first against Member 3's bid for 500 at \$10.03, because it is the best priced bid, then against Member 2's bid for 100 at \$10.02, because it is the next best priced bid. Member 1 then receives an execution for 400 of its bid for 500 at \$10.015, at which point the entire size of the Retail Order to sell 1,000 is depleted.

Implementation

The Exchange proposes that all Regulation NMS securities traded on the Exchange would be eligible for inclusion in the RPI Program. The Exchange proposes to limit the Program during the pilot period to trades occurring at prices equal to or greater than \$1.00 per share. Toward that end, Exchange trade validation systems would prevent the interaction of RPI buy or sell interest (adjusted by any offset) and Retail Orders at a price below \$1.00 per share.¹⁰ For example, if there was RPI buy interest tracking the Protected NBB at \$0.99 with an offset of \$0.001 and a ceiling of \$1.02, Exchange trade validation systems would prevent the execution of the RPI Order at \$0.991 with a sell

¹⁰ As discussed above, the price of an RPI would be determined by a Member's entry of buy or sell interest, an offset (if any) and a ceiling or floor price. The Exchange expects that RPI sell or buy interest typically would track the Protected NBBO.

Retail Order with a limit of \$0.99. However, if the Retail Order was Type 2 as defined the Program,¹¹ it would be able to interact at \$0.99 with liquidity outside the Program in the Exchange's order book. In addition to facilitating an orderly¹² and operationally intuitive pilot, the Exchange believes that limiting the Program to trades equal to or greater than \$1.00 per share during the pilot will enable it better to focus its efforts to monitor price competition and to assess any indications that data disseminated under the Program is potentially disadvantaging retail orders. As part of that review, the Exchange will produce data throughout the pilot, which will include statistics about participation, the frequency and level of price improvement provided by the Program, and any effects on the broader market structure.

Comparison to Existing Programs

Proposed BX Rule 4780 is substantially the same to the one establishing NASDAQ Rule 4780 governing NASDAQ's "Retail Price Improvement Program", which was approved by the Commission and commenced operations on March 28, 2013.¹³ NASDAQ's program, in turn, is based on NYSE Rule 107C, governing NYSE's

¹¹ Type 2 Retail Orders are treated as IOC orders that execute against displayed and non-displayed liquidity in the Exchange's order book where there is no available liquidity in the Program. Type 2 Retail Orders can either be designated as eligible for routing or as non-routable, as described above.

¹² Given the proposed limitation, the pilot Program would have no impact on the minimum pricing increment for orders priced less than \$1.00 and therefore no effect on the potential of markets executing those orders to lock or cross. In addition, the non-displayed nature of the liquidity in the Program simply has no potential to disrupt displayed, protected quotes. In any event, the Program would do nothing to change the obligation of exchanges to avoid and reconcile locked and crossed markets under NMS Rule 610(d).

¹³ Securities Exchange Act Release No. 68836 (December 3, 2012), 77 FR 73097, 73100 (December 7, 2012) (SR-NASDAQ-2012-129 Notice) and Securities

“Retail Liquidity Program,” which was approved by the Commission and commenced operations on August 1, 2012¹⁴ and on BATS Y-Exchange, Inc. (“BATS”) Rule 11.24, which was approved by the Commission and commenced operations on 12/17/12.¹⁵ Proposed BX Rule 4780 is similar to both BATS Rule 11.24 and NYSE Rule 107C with three key distinctions to the latter.¹⁶ The first distinction is that NYSE Rule 107C includes a class of participant that is registered as a provider of liquidity and provides specific procedures and rules related to such participants and their role in the NYSE RLP. NYSE Rule 107C does permit all participants to submit RPI Orders to NYSE, but provides the specific class of registered retail liquidity providers with execution fees that are lower than fees charged to other participants in exchange for a requirement to maintain RPI Orders on NYSE at least 5% of the trading day.¹⁷ The Exchange believes

Exchange Act Release No. 68937 (February 15, 2013) 77 FR 12397 (February 22, 2013) (SR-NASDAQ-2012-129 Approval Order).

¹⁴ Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (SR-NYSE-2011-55; SR-NYSEAmex-2011-84) (the “RLP Approval Order”). In conjunction with the approval of the NYSE Retail Liquidity Program, a nearly identical program was proposed and approved to operate on NYSE MKT LLC (formerly, the American Stock Exchange). For ease of reference, the comparisons made in this section only refer to NYSE Rule 107C, but apply equally to NYSE MKT Rule 107C.

¹⁵ Securities Exchange Act Release No. 68303 (November 27, 2012) 77 FR 71652 (December 3, 2012) (SR-BYX-2012-019).

¹⁶ The Exchange has proposed to accept RPIs in a manner similar to the explicitly accepted method at NYSE and NYSE MKT, specifically, with an offset as well as a ceiling or a floor (*i.e.*, the entry of an RPI bid with an offset of \$0.015 and a ceiling of \$10.04; when the NBBO is \$10.02 by \$10.04, an incoming sell order would execute against such RPI at \$10.035). The Exchange notes that like NYSE and NYSE MKT, Members will be able to submit retail price improving orders with an explicit sub-penny floor or ceiling and no offset, effectively creating a static sub-penny limit order, and the Exchange has proposed rule text to make this ability clear.

¹⁷ NYSE Rule 107C(f).

that equal treatment for all Exchange Members that enter RPI Orders will result in a higher level of competition and maximize price improvement to incoming Retail Orders. Accordingly, the Exchange has not proposed to adopt a special category of retail liquidity provider.

The second distinction between proposed BX Rule 4780 and NYSE Rule 107C is that the Exchange proposes to in all cases execute incoming Retail Orders against resting RPI Orders and other resting non-displayed liquidity to maximize the price improvement available to the incoming Retail Order. As proposed, the Exchange will maintain its strict price/time priority model and will provide all available price improvement to incoming Retail Orders, whether such price improvement is submitted pursuant to the Program or as an order type currently accepted by the Exchange, such as non-displayed orders. In contrast, pursuant to NYSE Rule 107C(k)(1), a Type 1-designated Retail Order, “will interact only with available contra-side Retail Price Improvement Orders and will not interact with other available contra-side interest in Exchange systems.”¹⁸ The Exchange is proposing in all cases to provide the maximum price improvement available to incoming Retail Orders. Accordingly, Retail Orders under the Exchange’s Program will always interact with available contra-side RPI Orders and any other price improving contra-side interest, in price/time priority consistent with BX Rule 4780(b). Such “other” price improving contra-side interest will of course remain available to all participants, as it is today, while RPI Orders will only be available to RMOs, as described above.

¹⁸ Moreover, although pursuant to NYSE Rules 107C(k)(2) and 107C(k)(3), a Type 2-designated Retail Order and a Type 3-designated Retail Order can interact with other non-RPI interest in the NYSE systems, such interaction only occurs after a Retail Order first executes against RPI Orders.

Finally, as proposed the Exchange will provide applicable price improvement to incoming Retail Orders at potentially multiple price levels. In contrast, pursuant to NYSE Rule 107C an incoming Retail Order to NYSE will execute at the single clearing price level at which the incoming order will be fully executed. To illustrate, assume the same facts set forth in the second example above, where Member 2's RPI Order to buy ABC at \$10.02 was for 100 shares. Pursuant to NYSE Rule 107C, an incoming Retail Order to sell 1,000 shares at \$10.00 would execute first against Member 3's bid for 500 shares, because it is the best priced bid, then against Member 2's bid for 100 shares, because it is the next best priced bid, then against 400 of the 500 shares bid by Member 1. However, rather than executing at each of these price levels for the number of shares available (*i.e.*, 500 shares at \$10.035, 100 shares at \$10.02 and 400 shares at \$10.015), as it would under proposed BX Rule 4780(b), the Retail Order submitted to NYSE pursuant to NYSE Rule 107C executes at the single clearing price that completes the order's execution, which is \$10.015 to complete the entire order to sell 1,000 shares. The Exchange intends to provide all of the price improvement in these examples to the incoming Retail Order, and thus has proposed to execute orders under the Program consistent with its existing price/time market model.

Fee Structure of Program

The Exchange will submit a separate proposal to amend its fee schedule in connection with the proposed RPI Program. Under that proposal, the Exchange expects to charge Members a fee for executions of their RPI Orders against Retail Orders and in turn would provide a credit or free executions to RMOs for executions of their Retail

Orders against RPI Orders. The fees and credits for liquidity providers and RMOs may be adjusted from time to time as the Exchange gains experience with the Program.

As explained above, the Exchange proposes to execute incoming Retail Orders against all available contra-side interest that will provide price improvement to the Retail Order, including non-displayed orders other than RPI Orders. In the event non-displayed interest priced better than the NBBO other than an RPI Order interacts with a Retail Order, the Exchange anticipates proposing to rebate the Member that entered such non-displayed interest a credit rather than the charge which is imposed for an RPI Order execution. In such cases, the rebate credited to the Member that entered the non-displayed interest may be less than the rebate credited that same Member for an execution against a non-Retail Order.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.¹⁹ In particular, the Exchange believes the proposed change furthers the objectives of Section 6(b)(5) of the Act,²⁰ in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change is consistent with

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(5).

these principles because it would increase competition among execution venues, encourage additional liquidity, and offer the potential for price improvement to retail investors. The Exchange notes that a significant percentage of the orders of individual investors are executed over-the-counter.²¹ The Exchange believes that it is appropriate to create a financial incentive to bring more retail order flow to a public market. The Exchange also notes that the Commission recently approved a similar proposal by NYSE and NYSE MKT.²² Accordingly, the proposal generally encourages competition between exchange venues. In this connection, the Exchange believes that the proposed distinctions between the Exchange's proposal and the approved programs for NYSE and NYSE MKT, as well as the similar program proposed by BATS, will both enhance competition amongst market participants and encourage competition amongst exchange venues.

The Exchange understands that Section 6(b)(5) of the Act²³ prohibits an exchange from establishing rules that treat market participants in an unfairly discriminatory manner. However, Section 6(b)(5) of the Act does not prohibit exchange members or other broker-dealers from making distinctions, so long as their activities are otherwise

²¹ See Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (noting that dark pools and internalizing broker-dealers executed approximately 25.4% of share volume in September 2009). See also Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (available on the Commission's website). In her speech, Chairman Schapiro noted that nearly 30 percent of volume in U.S.-listed equities was executed in venues that do not display their liquidity or make it generally available to the public and the percentage was increasing nearly every month.

²² See RLP Approval Order, supra note 14.

²³ 15 U.S.C. 78f(b)(5).

consistent with the federal securities laws and the distinctions are not unfair. Nor does Section 6(b)(5) of the Act require exchanges to preclude broker-dealers from making distinctions that are not unfair. Broker-dealers commonly differentiate between customers based on the nature and profitability of their business.

While the Exchange believes that markets and price discovery optimally function through the interactions of diverse flow types, it also believes that growth in internalization has required differentiation of retail order flow from other order flow types. The differentiation proposed herein by the Exchange is not designed to permit unfair discrimination, but instead to promote a competitive process around retail executions such that retail investors would receive better prices than they currently do through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of operating a program such as the RPI Program on an exchange market would result in better prices for retail investors. The Exchange recognizes that sub-penny trading and pricing could potentially result in undesirable market behavior. The Exchange will monitor the Program in an effort to identify and address any such behavior.

The Exchange will separately propose fees applicable to the Program, including fees or rebates for non-displayed orders offering price improvement other than RPI Orders that interact with Retail Orders. The Exchange believes any such proposal to treat such non-displayed orders differently depending on the parties with whom they interact is consistent with Section 6(b)(5) of the Act,²⁴ which requires that the rules of an exchange are not designed to permit unfair discrimination. The Exchange believes that such a

²⁴ 15 U.S.C. 78f(b)(5).

differential pricing structure for non-displayed orders is not unfairly discriminatory. As stated in the NYSE RLP Approval Order, the “Commission has previously recognized that the markets generally distinguish between individual retail investors, whose orders are considered desirable by liquidity providers because such retail investors are presumed on average to be less informed about short-term price movements, and professional traders, whose orders are presumed on average to be more informed.”²⁵ The Exchange’s proposed differential pricing structure for non-displayed orders raises substantively identical policy considerations as the rules approved by the Commission in the NYSE RLP Approval Order, which account for the difference of assumed information and sophistication level between different trading participants by providing Retail Orders access to better execution prices as well as more favorable access fees.

Finally, the Exchange proposes that the Commission approve the proposed rule for a pilot period of twelve months from the date of implementation, which shall occur no later than 90 days after Commission approval of BX Rule 4780. The Program shall expire on [Date to be determined upon adoption of BX Rule 4780]. The Exchange

²⁵ See RLP Approval Order, supra note 14, at 40679-40680 (citing Concept Release on Equity Market Structure and approval of an options exchange program related to price improvement for retail orders). Certain options exchanges deploy this same rationale today through pricing structures that vary for a trading participant based on the capacity of the contra-side trading participant. See, e.g., Securities Exchange Act Release No. 67171 (June 8, 2012), 77 FR 35732 (June 14, 2012) (SR-NASDAQ-2012-068) (notice of filing and immediate effectiveness of proposal to modify fees for the NASDAQ Options Market, including certain fees and rebates that are variable depending on the capacity of the contra-party to the transaction); see also Securities Exchange Act Release No. 63632 (January 3, 2011), 76 FR 1205 (January 7, 2011) (SR-BATS-2010-038) (notice of filing and immediate effectiveness of proposal to modify fees for BATS Options, including liquidity rebates that are variable depending on the capacity of the contra-party to the transaction).

believes that this pilot period is of sufficient length to permit both the Exchange and the Commission to assess the impact of the rule change described herein.

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

NASDAQ 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 Act.

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

Written comments were neither solicited nor received.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2014-048 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2014-048. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-BX-2014-048 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

Kevin M. O'Neill
Deputy Secretary

²⁶ 17 CFR 200.30-3(a)(12).

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

4700. The NASDAQ OMX BX Equities Market

4750. Execution Services

4780. Retail Price Improvement Program

(a) Definitions.

(1) Retail Member Organization. A “Retail Member Organization” or “RMO” is a Member (or a division thereof) that has been approved by the Exchange under this Rule to submit Retail Orders.

(2) Retail Order. A “Retail Order” is an agency order, or riskless principal order that satisfies the criteria of FINRA Rule 5320.03, that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price (except in the case that a market order is changed to a marketable limit order) or side of market and the order does not originate from a trading algorithm or any other computerized methodology. A Retail Order is an Immediate or Cancel (“IOC”) Order and shall operate in accordance with paragraph (f) below. A Retail Order may be an odd lot, round lot, or mixed lot.

(3) Retail Price Improvement Order. A “Retail Price Improvement Order”, “RPI Order”, or collectively “RPI Interest” consists of non-displayed liquidity on the Exchange that is priced better than the Protected NBBO by at least \$0.001 and that is identified as such. The System will monitor whether RPI buy or sell interest, adjusted by any offset and subject to the ceiling or floor price, is eligible to interact with incoming Retail Orders. An RPI Order remains non-displayed in its entirety (the buy or sell interest, the offset, and the ceiling or floor). An RPI Order may also be entered in increments of \$0.001 with an explicit limit price. Any Member is permitted, but not required, to submit RPI Orders. An RPI Order may be an odd lot, round lot or mixed lot.

(4) Other Price Improving Contra-Side Interest. For purposes of Rule 4780, “Other Price Improving Contra-Side Interest” shall refer to booked, non-displayed orders that are priced more aggressively than the NBBO.

(b) Retail Member Organization Qualifications and Application.

(1) To qualify as a Retail Member Organization, a Member must conduct a retail business or handle retail orders on behalf of another broker-dealer.

(2) To become a Retail Member Organization, a Member must submit:

(A) an application form;

(B) supporting documentation, which may include sample marketing literature, website screenshots, other publicly disclosed materials describing the Member's retail order flow, and any other documentation and information requested by the Exchange in order to confirm that the applicant's order flow would meet the requirements of the Retail Order definition; and

(C) an attestation, in a form prescribed by the Exchange, that substantially all orders submitted as Retail Orders will qualify as such under this Rule.

(3) After an applicant submits the application form, supporting documentation, and attestation, the Exchange shall notify the applicant of its decision in writing.

(4) A disapproved applicant may: (A) request an appeal of such disapproval by the Exchange as provided in paragraph (d) below; and/or (B) reapply for Retail Member Organization status 90 days after the disapproval notice is issued by the Exchange.

(5) A Retail Member Organization may voluntarily withdraw from such status at any time by giving written notice to the Exchange.

(6) A Retail Member Organization must have written policies and procedures reasonably designed to assure that it will only designate orders as Retail Orders if all requirements of a Retail Order are met. Such written policies and procedures must require the Member to: (i) exercise due diligence before entering a Retail Order to assure that entry as a Retail Order is in compliance with the requirements of this Rule, and (ii) monitor whether orders entered as Retail Orders meet the applicable requirements. If a Retail Member Organization represents Retail Orders from another broker-dealer customer, the Retail Member Organization's supervisory procedures must be reasonably designed to assure that the orders it receives from such broker-dealer customer that it designates as Retail Orders meet the definition of a Retail Order. The Retail Member Organization must: (i) obtain an annual written representation, in a form acceptable to the Exchange, from each broker-dealer customer that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements

of this Rule; and (ii) monitor whether its broker-dealer customer's Retail Order flow meets the applicable requirements.

(c) Failure of RMO to Abide by Retail Order Requirements.

(1) If a Retail Member Organization designates orders submitted to the Exchange as Retail Orders and the Exchange determines, in its sole discretion, that such orders fail to meet any of the requirements set forth in paragraph (a) of this Rule, the Exchange may disqualify a Member from its status as a Retail Member Organization.

(2) Disqualification Determinations. The Exchange shall determine if and when a Member is disqualified from its status as a Retail Member Organization. When disqualification determinations are made, the Exchange shall provide a written disqualification notice to the Member.

(3) Appeal and/or Reapplication for Retail Member Organization Status. A Retail Member Organization that is disqualified under this paragraph (c) may: (A) appeal such disqualification as provided in paragraph (d) below; and/or (B) reapply for Retail Organization status 90 days after the date of the disqualification notice from the Exchange.

(d) Appeal of Disapproval or Disqualification.

(1) If a Member disputes the Exchange's decision to disapprove it under paragraph (b) above or disqualify it under paragraph (c) above, the Member ("appellant") may request, within five business days after notice of the decision is issued by the Exchange, that the Retail Price Improvement Panel ("RPI Panel") review the decision to determine if it was correct.

(2) The RPI Panel shall consist of the Exchange's Chief Regulatory Officer ("CRO"), or a designee of the CRO, and two officers of the Exchange designated by the Chief Executive Officer of the Exchange.

(3) The RPI Panel shall review the facts and render a decision within the time frame prescribed by the Exchange.

(4) The RPI Panel may overturn or modify an action taken by the Exchange under this Rule. A determination by the RPI Panel shall constitute final action by the Exchange.

(e) Retail Liquidity Identifier. An identifier shall be disseminated through proprietary data feeds and through the appropriate Securities Information Processor when RPI interest priced at least \$0.001 better than the Exchange's Protected Bid or Protected Offer

for a particular security is available in the System (“Retail Liquidity Identifier”). The Retail Liquidity Identifier shall reflect the symbol for the particular security and the side (buy or sell) of the RPI interest, but shall not include the price or size of the RPI interest.

(f) Retail Order Designation. A Retail Member Organization can designate how a Retail Order will interact with available contra-side interest as follows:

(1) Type 1. A Type 1-designated Retail Order will interact with available contraside RPI Orders and Other Price Improving Contra-Side Interest but will not interact with other available contra-side interest in the System that is not offering price improvement or route to other markets. The portion of a Type 1-designated Retail Order that does not execute against contra-side RPI Orders or other price improving liquidity will be immediately and automatically cancelled.

(2) Type 2. A Type 2-designated Retail Order will interact first with available contra-side RPI Orders and other price improving liquidity and then any attempts to execute against other displayed and non-displayed interest. A Type 2-designated Retail Order can either be submitted with or without instructions to route per Rule 4780. The portion of a Type 2-designated Retail Order that does not fully execute will be immediately and automatically cancelled.

(g) Priority and Order Allocation.

RPI Orders in the same security shall be ranked and allocated according to price then time of entry into the Systems. Executions shall occur in price/time priority in accordance with Rule 4757. Any remaining unexecuted RPI interest will remain available to interact with other incoming Retail Orders. Any remaining unexecuted portion of the Retail Order will cancel or execute in accordance with paragraph (f) above.

Examples of priority and order allocation are as follows:

Protected NBBO for security ABC is \$10.00 — \$10.05

Member 1 enters a RPI Order to buy ABC at \$10.015 for 500

Member 2 then enters a RPI Order to buy ABC at \$10.02 for 500

Member 3 then enters a RPI Order to buy ABC at \$10.035 for 500

An incoming Retail Order to sell ABC for 1,000 executes first against Member 3’s bid for 500 at \$10.035, because it is the best priced bid, then against Member 2’s bid for 500 at \$10.02, because it is the next best priced bid. Member 1 is not filled because the entire size of the Retail Order to sell 1,000 is depleted. The Retail Order executes against RPI Orders in price/time priority.

However, assume the same facts above, except that Member 2's RPI Order to buy ABC at \$10.020 is for 100. The incoming Retail Order to sell 1,000 executes first against Member 3's bid for 500 at \$10.035, because it is the best priced bid, then against Member 2's bid for 100 at \$10.02, because it is the next best priced bid. Member 1 then receives an execution for 400 of its bid for 500 at \$10.015, at which point the entire size of the Retail Order to sell 1,000 is depleted.

As a final example, assume the same facts as above, except that Member 3's order was not a RPI Order to buy ABC at \$10.035, but rather, a Non-Displayed Order to buy ABC at \$10.03. The result would be similar to the result immediately above, in that the incoming Retail Order to sell 1,000 executes first against Member 3's bid for 500 at \$10.03, because it is the best priced bid, then against Member 2's bid for 100 at \$10.02, because it is the next best priced bid. Member 1 then receives an execution for 400 of its bid for 500 at \$10.015, at which point the entire size of the Retail Order to sell 1,000 is depleted.

(h) Rule Pilot Program. This rule shall operate for a pilot period of twelve months from the date of implementation, which shall occur no later than 90 days after Commission approval of Rule 4780. The Program shall expire on (Date will be determined upon adoption of Rule 4780). During the pilot period, the Program will be limited to securities whose Bid Price on the Exchange is greater than or equal to \$1.00 per share.

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