

Required fields are shown with yellow backgrounds and asterisks.

Filing by **NASDAQ 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 type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
			<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 checked="" type="checkbox"/> 19b-4(f)(6)	

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

Proposal to adopt rules under Rule 4770 to implement the quoting and trading provisions of the Plan to Implement a Tick Size Pilot 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 * <input type="text" value="Sean"/>	Last Name * <input type="text" value="Bennett"/>
Title * <input type="text" value="Principal Associate General Counsel"/>	
E-mail * <input type="text" value="Sean.Bennett@nasdaq.com"/>	
Telephone * <input type="text" value="(301) 978-8499"/>	Fax <input type="text"/>

**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 <input type="text" value="06/24/2016"/>	Executive Vice President and General Counsel
By <input type="text" value="Edward S. Knight"/>	<input type="text"/>
(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.

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) NASDAQ BX, Inc. (“BX” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to adopt rules under Rule 4770 to implement the quoting and trading provisions of the Plan to Implement a Tick Size Pilot Program submitted to the Commission pursuant to Rule 608 of Regulation NMS<sup>3</sup> under the Act (the “Plan”).<sup>4</sup> The proposed rule change is substantially similar to proposed rule changes recently approved or published by the Commission by New York Stock Exchange LLC to adopt NYSE Rules 67(a) and 67(c)-(e), which also implemented the quoting and trading provisions of the Plan.<sup>5</sup> Therefore, the Exchange has designated this proposal as “non-controversial” and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.<sup>6</sup>

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 242.608.

<sup>4</sup> See Securities and Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (File No. 4-657) (“Tick Plan Approval Order”). See also Securities and Exchange Act Release No. 76382 (November 6, 2015) (File No. 4-657), 80 FR 70284 (File No. 4-657) (November 13, 2015), which extended the pilot period commencement date from May 6, 2015 to October 3, 2016.

<sup>5</sup> See Securities Exchange Act Release No. 76229 (October 22, 2015), 80 FR 66065 (October 28, 2015) (SR-NYSE-2015-46), as amended by Partial Amendments No. 1 and No. 2 to the Quoting & Trading Rules Proposal. See Securities Exchange Act Release No. 77703 (April 25, 2016), 81 FR 25725 (April 29, 2016) (SR-NYSE-2015-46).

<sup>6</sup> 17 CFR 240.19b-4(f)(6)(iii).

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (the “Board”) on July 1, 2015. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

T. Sean Bennett  
Principal Associate General Counsel  
Nasdaq, Inc.  
(301) 978-8499

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

a. Purpose

The Exchange proposes to establish rules to require its members to comply with the requirements of the Plan, which is designed to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small capitalization companies. The Exchange proposes changes to its rules for a two-year pilot period that coincides with the pilot period for the Plan, which is currently scheduled as a two year pilot to begin on October 3, 2016.

Background

On August 25, 2014, NYSE Group, Inc., on behalf of Bats BZX Exchange, Inc. (f/k/a BATS Exchange, Inc.), Bats BYX Exchange, Inc. (f/k/a BATS Y-Exchange, Inc.),

Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., the Exchange, Financial Industry Regulatory Authority, Inc. (“FINRA”), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, New York Stock Exchange LLC, the Exchange and NYSE Arca, Inc., and the NYSE MKT LLC, (collectively “Participants”), filed with the Commission, pursuant to Section 11A of the Act<sup>7</sup> and Rule 608 of Regulation NMS thereunder, the Plan to Implement a Tick Size Pilot Program.<sup>8</sup> The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014 (the “June 2014 Order”).<sup>9</sup> The Plan<sup>10</sup> was published for comment in the Federal Register on November 7, 2014,<sup>11</sup> and approved by the Commission, as modified, on May 6, 2015.<sup>12</sup>

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small capitalization companies. The Commission plans to use the Tick Size Pilot Program to assess whether wider tick sizes enhance the market quality of Pilot Securities for the benefit of issuers and investors. Each Participant is required to

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<sup>7</sup> 15 U.S.C. 78k-1.

<sup>8</sup> See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

<sup>9</sup> See Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

<sup>10</sup> Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

<sup>11</sup> See Securities and Exchange Act Release No. 73511 (November 3, 2014), 79 FR 66423 (File No. 4-657) (Tick Plan Filing).

<sup>12</sup> See Tick Plan Approval Order, supra note 4. See also Securities Exchange Act Release No. 77277 (March 3, 2016), 81 FR 12162 (March 8, 2016) (File No. 4-657), which amended the Plan to add National Stock Exchange, Inc. as a Participant.

comply with, and to enforce compliance by its member, as applicable, with the provisions of the Plan.

On October 9, 2015, the Operating Committee approved the Exchange's proposed rules as model Participant rules that would require compliance by a Participant's members with the provisions of the Plan, as applicable, and would establish written policies and procedures reasonably designed to comply with applicable quoting and trading requirements specified in the Plan.<sup>13</sup> As described more fully below, the proposed rules would require members to comply with the Plan and provide for the widening of quoting and trading increments for Pilot Securities, consistent with the Plan.

The Plan will include stocks of companies with \$3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least \$2.00 for every trading day. The Plan will consist of a control group of approximately 1,400 Pilot Securities and three test groups with 400 Pilot Securities in each selected by a stratified sampling.<sup>14</sup> During the pilot, Pilot Securities in the control group will be quoted at the current tick size increment of \$0.01 per share and will trade at the currently permitted increments. Pilot Securities in the first test group ("Test Group One") will be quoted in \$0.05 minimum increments but

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<sup>13</sup> The Operating Committee is required under Section III(C)(2) of the Plan to "monitor the procedures established pursuant to the Plan and advise Participants with respect to any deficiencies, problems, or recommendations as the Operating Committee may deem appropriate." The Operating Committee is also required to "establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of the Plan."

<sup>14</sup> See Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

will continue to trade at any price increment that is currently permitted.<sup>15</sup> Pilot Securities in the second test group (“Test Group Two”) will be quoted in \$0.05 minimum increments and will trade at \$0.05 minimum increments subject to a midpoint exception, a retail investor exception, and a negotiated trade exception.<sup>16</sup> Pilot Securities in the third test group (“Test Group Three”) will be subject to the same terms as Test Group Two and also will be subject to the “Trade-at” requirement to prevent price matching by a person not displaying at a price of a Trading Center’s “Best Protected Bid” or “Best Protected Offer,” unless an enumerated exception applies.<sup>17</sup> In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that closely resemble those under Rule 611 of Regulation NMS<sup>18</sup> will apply to the Trade-at requirement.

The Plan also contains requirements for the collection and transmission of data to the Commission and the public. A variety of data generated during the Plan will be released publicly on an aggregated basis to assist in analyzing the impact of wider tick sizes on smaller capitalization stocks.<sup>19</sup>

Proposed Rules 4770(a) and (c)

The Plan requires the Exchange to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting

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<sup>15</sup> See Section VI(B) of the Plan. Pilot Securities in Test Group One will be subject to a midpoint exception and a retail investor exception.

<sup>16</sup> See Section VI(C) of the Plan.

<sup>17</sup> See Section VI(D) of the Plan.

<sup>18</sup> 17 CFR 242.611.

<sup>19</sup> See Section VII of the Plan.

and trading requirements specified in the Plan.<sup>20</sup> Accordingly, the Exchange is proposing new Rule 4770(a) to require its members to comply with the quoting and trading provisions of the Plan. The proposed Rules are also designed to ensure the Exchange's compliance with the Plan.

Proposed paragraph (a)(1) of new Rule 4770 would establish the following defined terms:

- “Plan” means the Tick Size Pilot Plan submitted to the Commission pursuant to Rule 608(a)(3) of Regulation NMS under the Act.
- “Pilot Test Groups” means the three test groups established under the Plan, consisting of 400 Pilot Securities each, which satisfy the respective criteria established by the Plan for each such test group.
- “Retail Investor Order” would mean an agency order or a riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a retail member, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.

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<sup>20</sup> The Exchange was also required by the Plan to develop appropriate policies and procedures that provide for data collection and reporting to the Commission of data described in Appendixes B and C of the Plan. See Securities Exchange Act Release No. 77457 (March 28, 2016), 81 FR 18913 (April 1, 2016) (SR-BX-2016-019).



A Retail Investor Order may be an odd lot, round lot, or partial round lot.<sup>21</sup>

- Trade-at Intermarket Sweep Order<sup>22</sup> would mean a limit order for a Pilot Security that meets the following requirements:

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<sup>21</sup> This definition is the approved definition for “Retail Investor Order” as contemplated by the Plan. It is also the same definition as given to a “Retail Order” pursuant to the approved rules of the Exchange, other national securities exchanges’ retail orders. See Rule 4702(b)(6)(A). See also NYSE Rule 107C(a)(3), NYSE Arca, Inc. Rule 7.44(a)(3), NYSE MKT LLC Rule 107C(a)(3), and BATS Y-Exchange, Inc. Rule 11.24(a)(2). The Retail Investor Order definition includes any order originating from a natural person. Therefore, any member that operates a Trading Center may execute against a Retail Investor Order otherwise than on an exchange to satisfy the retail investor order exception proposed in Rule 4770.

<sup>22</sup> The Plan defines a Trade-at Intermarket Sweep Order (“ISO”) as a limit order for a Pilot Security that, when routed to a Trading Center, is identified as an ISO, and simultaneous with the routing of the limit order identified as an ISO, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid (in the case of a limit order to sell) or the full displayed size of any protected offer (in the case of a limit order to buy) for the Pilot Security with a price that is equal to the limit price of the limit order identified as an ISO. These additional routed orders also must be marked as ISOs. See Plan, Section I(MM). Since the Plan allows (i) an order that is identified as an ISO to be executed at the price of a Protected Quotation (see Plan, Section VI(D)(8) and proposed Rule 4770(c)(3)(D)(iii)i.) and (ii) an order to execute at the price of a Protected Quotation that “is executed by a trading center that simultaneously routed Trade-at ISO to execute against the full displayed size of the Protected Quotation that was trade at” (see Plan, Section VI(D)(9) and proposed Rule 4770(c)(3)(D)(iii)j.), the Exchange proposes to clarify the use of an ISO in connection with the Trade-at requirement by adopting, as part of proposed Rule 4770(a)(1), a comprehensive definition of “Trade-at ISO.” As set forth in the Plan and as noted above, the definition of a Trade-at ISO used in the Plan does not distinguish ISOs that are compliant with Rule 611 or Regulation NMS from ISOs that are compliant with Trade-at. The Exchange therefore proposes the separate definition of Trade-at ISO contained in proposed Rule 4770(a). The Exchange believes that this proposed definition will further clarify to recipients of ISOs in Test Group Three securities whether the ISO satisfies the requirements of Rule 611 of Regulation NMS or Trade-at.

- (i) When routed to a Trading Center, the limit order is identified as a Trade-at Intermarket Sweep Order; and
  - (ii) Simultaneously with the routing of the limit order identified as a Trade-at Intermarket Sweep Order, one or more additional limit orders, as necessary, are routed to execute against the full size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order. These additional routed orders also must be marked as Trade-at Intermarket Sweep Orders.
- Paragraph (a)(1)(E) would provide that all capitalized terms not otherwise defined in this rule shall have the meanings set forth in the Plan, Regulation NMS under the Act, or Exchange rules, as applicable.

Proposed Paragraph (a)(2) would state that the Exchange is a Participant in, and subject to the applicable requirements of, the Plan; proposed Paragraph (a)(3) would require members to establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the applicable requirements of the Plan, which would allow the Exchange to enforce compliance by its members with the provisions of the Plan, as required pursuant to Section II(B) of the Plan.

In addition, Paragraph (a)(4) would provide that Exchange systems would not display, quote or trade in violation of the applicable quoting and trading requirements for

a Pilot Security specified in the Plan and this proposed rule, unless such quotation or transaction is specifically exempted under the Plan.<sup>23</sup>

The Exchange also proposes to add Rule 4770(a)(5) to provide for the treatment of Pilot Securities that drop below a \$1.00 value during the Pilot Period.<sup>24</sup> The Exchange proposes that if the price of a Pilot Security drops below \$1.00 during regular trading on any given business day, such Pilot Security would continue to be subject to the Plan and the requirements described below that necessitate members to comply with the specific quoting and trading obligations for each respective Pilot Test Group under the Plan, and would continue to trade in accordance with the proposed rules below as if the price of the Pilot Security had not dropped below \$1.00. However, if the Closing Price of a Pilot Security on any given business day is below \$1.00, such Pilot Security would be moved

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<sup>23</sup> The Exchange is still evaluating its internal policies and procedures to ensure compliance with the Plan, and plans to separately propose rules that would address violations of the Plan.

<sup>24</sup> New York Stock Exchange LLC, on behalf of the Participants, submitted a letter to Commission requesting exemption from certain provisions of the Plan related to quoting and trading. See letter from Elizabeth K. King, NYSE, to Brent J. Fields, Secretary, Commission, dated October 14, 2015 (the “October Exemption Request”). FINRA, also on behalf of the Plan Participants, submitted a separate letter to Commission requesting additional exemptions from certain provisions of the Plan related to quoting and trading. See letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, to Robert W. Errett, Deputy Secretary, Commission, dated February 23, 2016 (the “February Exemption Request,” and together with the October Exemption Request, the “Exemption Request Letters”). The Commission, pursuant to its authority under Rule 608(e) of Regulation NMS, granted New York Stock Exchange LLC a limited exemption from the requirement to comply with certain provisions of the Plan as specified in the Exemption Request Letters and noted herein. See letter from David Shillman, Associate Director, Division of Trading and Markets, Commission to Sherry Sandler, Associate General Counsel, New York Stock Exchange LLC, dated April 25, 2016 (the “Exemption Letter”). The Exchange is seeking the same exemptions as requested in the Exemption Request Letters, including without limitation, an exemption relating to proposed Rule 4770(a)(5).

out of its respective Pilot Test Group into the control group (which consists of Pilot Securities not placed into a Pilot Test Group), and may then be quoted and traded at any price increment that is currently permitted by Exchange rules for the remainder of the Pilot Period. Notwithstanding anything contained herein to the contrary, the Exchange proposes that, at all times during the Pilot Period, Pilot Securities (whether in the control group or any Pilot Test Group) would continue to be subject to the data collection rules, which are enumerated in Rule 4770(b).

The Exchange proposes Rules 4770(c)(1)-(3), which would require members to comply with the specific quoting and trading obligations for each Pilot Test Group under the Plan. With regard to Pilot Securities in Test Group One, proposed Rule 4770(c)(1) would provide that no member may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in increments other than \$0.05. However, orders priced to trade at the midpoint of the National Best Bid and National Best Offer (“NBBO”) or Best Protected Bid and Best Protected Offer (“PBBO”) and orders entered in the Exchange’s Retail Price Improvement Program as Retail Price Improving Orders (as defined in Rule 4780(a)(3))<sup>25</sup> may be ranked and accepted in increments of less than \$0.05. Pilot Securities in Test Group One may continue to trade at any price increment that is currently permitted by Rule 4701(k).<sup>26</sup>

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<sup>25</sup> A Retail Price Improvement Order is an Order Type with a Non- Display Order Attribute that is held on the Exchange Book in order to provide liquidity at a price at least \$0.001 better than the NBBO through a special execution process described in Rule 4780. See Rules 4780(a)(3) and 4702(b)(5).

<sup>26</sup> Rule 4701(k) describes the minimum price variation for quoting and entry of orders in equity securities listed on the Exchange or a national securities exchange other than the Exchange.

With regard to Pilot Securities in Test Group Two, proposed Rule 4770(c)(2)(A) would provide that such Pilot Securities would be subject to all of the same quoting requirements as described above for Pilot Securities in Test Group One, along with the applicable quoting exceptions. In addition, proposed Rule 4770(c)(2)(B) would provide that, absent one of the listed exceptions in proposed 4770(c)(2)(C) enumerated below, no member may execute orders in any Pilot Security in Test Group Two in price increments other than \$0.05. The \$0.05 trading increment would apply to all trades, including Brokered Cross Trades.

Paragraph (2)(C) would set forth further requirements for Pilot Securities in Test Group Two. Specifically, members trading Pilot Securities in Test Group Two would be allowed to trade in increments less than \$0.05 under the following circumstances:

- (i) Trading may occur at the midpoint between the NBBO or PBBO;
- (ii) Retail Investor Orders may be provided with price improvement that is at least \$0.005 better than the PBBO;
- (iii) Negotiated Trades may trade in increments less than \$0.05; and
- (iv) Execution of a customer order to comply with IM-2110-2<sup>27</sup> following the execution of a proprietary trade by the member at an increment other than \$0.05,

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<sup>27</sup> Exchange IM-2110-2 “Trading Ahead of Customer Limit Order” incorporates by reference NASD IM-2110, which was replaced by FINRA Rule 5320. FINRA Rule 5320 is titled “Prohibition Against Trading Ahead of Customer Orders,” which states:

- (a) Except as provided herein, a member that accepts and holds an order in an equity security from its own customer or a customer of another broker-dealer without immediately executing the order is prohibited from trading that security on the same side of the market for its own account at a price that would satisfy the customer order, unless it immediately thereafter executes the customer order up to the size and at the same or better price at which it traded for its own account.

where such proprietary trade was permissible pursuant to an exception under the Plan.<sup>28</sup>

Paragraph (3)(A)-(3)(C) would set forth the requirements for Pilot Securities in Test Group Three. Members quoting or trading such Pilot Securities would be subject to all of the same quoting and trading requirements as described above for Pilot Securities in Test Group Two, including the quoting and trading exceptions applicable to Pilot Securities in Test Group Two. In addition, proposed Paragraph (3)(D) would provide for an additional prohibition on Pilot Securities in Test Group Three referred to as the “Trade-at Prohibition.”<sup>29</sup> Paragraph (3)(D)(ii) would provide that, absent one of the listed exceptions in proposed Rule 4770(c)(3)(D)(iii) enumerated below, no member may

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(b) A member must have a written methodology in place governing the execution and priority of all pending orders that is consistent with the requirements of this Rule and Rule 5310. A member also must ensure that this methodology is consistently applied.

<sup>28</sup> The Exchange proposes to add this exemption to permit members to fill a customer order in a Pilot Security at a non-nickel increment to comply with IM-2110-2 under limited circumstances. Specifically, the exception would allow the execution of a customer order following a proprietary trade by the member at an increment other than \$0.05 in the same security, on the same side and at the same price as (or within the prescribed amount of) a customer order owed a fill pursuant to IM-2110-2, where the triggering proprietary trade was permissible pursuant to an exception under the Plan. The Commission granted New York Stock Exchange LLC an exemption from Rule 608(c) related to this provision. See Exemption Letter, supra note 24. The Exchange is seeking the same exemptions as requested in the Exemption Request Letters. The Exchange believes such an exception best facilitates the ability of members to continue to protect customer orders while retaining the flexibility to engage in proprietary trades that comply with an exception to the Plan.

<sup>29</sup> Proposed 4770(c)(3)(D)(i) would define the “Trade-at Prohibition” to mean the prohibition against executions by a Trading Center of a sell order for a Pilot Security at the price of a Protected Bid or the execution of a buy order for a Pilot Security at the price of a Protected Offer during regular trading hours.

execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer.

Proposed Rule 4770(c)(3)(D)(iii) would allow members to execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer if any of the following circumstances exist:

- a. The order is executed as agent or riskless principal by an independent trading unit, as defined under Rule 200(f) of Regulation SHO,<sup>30</sup> of a Trading Center within a member that has a displayed quotation as agent or riskless principal, via either a processor or an SRO Quotation Feed, at a price equal to the traded-at Protected Quotation, that was displayed before

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<sup>30</sup> The Exchange is proposing that, for proposed Rules 4770(c)(3)(D)(iii)a. and b., a Trading Center operated by a broker-dealer would mean an independent trading unit, as defined under Rule 200(f) of Regulation SHO, within such broker-dealer. See 17 CFR 242.200.

Independent trading unit aggregation is available if traders in an aggregation unit pursue only the particular trading objective(s) or strategy(s) of that aggregation unit and do not coordinate that strategy with any other aggregation unit. Therefore, a Trading Center cannot rely on quotations displayed by that broker dealer from a different independent trading unit. As an example, an agency desk of a broker-dealer cannot rely on the quotation of a proprietary desk in a separate independent trading unit at that same broker-dealer.

the order was received,<sup>31</sup> but only up to the full displayed size of that independent trading unit's previously displayed quote;<sup>32</sup>

b. The order is executed by an independent trading unit, as defined under Rule 200(f) of Regulation SHO, of a Trading Center within a member that has a displayed quotation for the account of that Trading Center on a principal (excluding riskless principal<sup>33</sup>) basis, via either a processor or an SRO Quotation Feed, at a price equal to the traded-at Protected Quotation, that was displayed before the order was received, but only up to the full displayed size of that independent unit's previously displayed quote;<sup>34</sup>

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<sup>31</sup> The Exchange is proposing to adopt this limitation to ensure that a Trading Center does not display a quotation after the time of order receipt solely for the purpose of trading at the price of a protected quotation without routing to that protected quotation.

<sup>32</sup> This proposed exception to Trade-at would allow a Trading Center to execute an order at the Protected Quotation in the same capacity in which it has displayed a quotation at a price equal to the Protected Quotation and up to the displayed size of such displayed quotation.

<sup>33</sup> As described above, proposed Rule 4770(c)(3)(D)(iii)a. would establish the circumstances in which a Trading Center displaying an order as riskless principal would be permitted to Trade-at the Protected Quotation. Accordingly, the Exchange proposes that proposed Rule 4770(c)(3)(D)(iii)b. would exclude such circumstances.

<sup>34</sup> The display exceptions to Trade-at set forth in proposed Rules 4770(c)(3)(D)(iii)a. and b. would not permit a broker-dealer to trade on the basis of interest it is not responsible for displaying. In particular, a broker-dealer that matches orders in the over-the-counter market shall be deemed to have "executed" such orders as a Trading Center for purposes of proposed Rule 4770. Accordingly, if a broker-dealer is not displaying a quotation at a price equal to the Protected Quotation, it could not submit matched trades to an alternative trading center ("ATS") that was displaying on an agency basis the quotation of another ATS subscriber. However, a broker-dealer that is displaying, as principal, via either a processor or an SRO Quotation Feed, a buy order at the protected bid, could internalize a customer sell order up to its displayed size. The display exceptions would not permit a non-displayed Trading Center to submit matched



- c. The order is of Block Size<sup>35</sup> at the time of origin and may not be:
  - A. an aggregation of non-block orders;
  - B. broken into orders smaller than Block Size prior to submitting the order to a Trading Center for execution; or
  - C. executed on multiple Trading Centers;<sup>36</sup>
- d. The order is a Retail Investor Order executed with at least \$0.005 price improvement;
- e. The order is executed when the Trading Center displaying the Protected Quotation that was traded at was experiencing a failure, material delay, or malfunction of its systems or equipment;
- f. The order is executed as part of a transaction that was not a “regular way” contract;

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trades to an ATS that was displaying on an agency basis the quotation of another ATS subscriber and confirmed that a broker-dealer would not be permitted to trade on the basis of interest that it is not responsible for displaying.

<sup>35</sup> “Block Size” is defined in the Plan as an order (1) of at least 5,000 shares or (2) for a quantity of stock having a market value of at least \$100,000.

<sup>36</sup> Once a Block Size order or portion of such Block Size order is routed from one Trading Center to another Trading Center in compliance with Rule 611 of Regulation NMS, the Block Size order would not lose the Trade-at exemption provided under proposed Rule 4770(c)(3)(D)(iii)c. For example, if an exchange has a Protected Bid of 3,000 shares, with 2,000 shares in reserve, and receives a 5,000 share order to sell, the exchange would be able to execute the entire 5,000 share order without having to route to an away market at any other Protected Bid at the same price. If, however, that exchange only has 1,000 shares in reserve, the entire order would not be able to be executed on that exchange, and the exchange would only be able to execute 3,000 shares and route the rest to away markets at other Protected Bids at the same price, before executing the 1,000 shares in reserve.

- g. The order is executed as part of a single-priced opening, reopening, or closing transaction on the Exchange;
- h. The order is executed when a Protected Bid was priced higher than a Protected Offer in the Pilot Security in Test Group Three;
- i. The order is identified as a Trade-at Intermarket Sweep Order;<sup>37</sup>
- j. The order is executed by a Trading Center that simultaneously routed Trade-at Intermarket Sweep Orders to execute against the full displayed size of the Protected Quotation that was traded at;<sup>38</sup>
- k. The order is executed as part of a Negotiated Trade;

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<sup>37</sup> In connection with the definition of a Trade-at ISO proposed in Rule 4770(a)(1)(D), this exception refers to the ISO that is received by a Trading Center.

The Exchange proposed an exemption to the Trade-at Prohibition for Trade-at ISOs to clarify that an ISO that is received by a Trading Center (and which could form the basis of an execution at the price of a Protected Quotation pursuant to Section VI(D)(8) of the Plan), is identified as a Trade-at ISO. Depending on whether Rule 611 of Regulation NMS or the Trade-at requirement applies, an ISO may mean that the sender of the ISO has swept better-priced Protected Quotations, so that the recipient of that ISO may trade through the price of the Protected Quotation (Rule 611 of Regulation NMS), or it could mean that the sender of the ISO has swept Protected Quotations at the same price that it wishes to execute at (in addition to any better-priced quotations), so the recipient of that ISO may trade at the price of the Protected Quotation (Trade-at). Given that the meaning of an ISO may differ under Rule 611 of Regulation NMS and Trade-at, the Exchange proposed an exemption to the Trade-at Prohibition for Trade-at ISOs so that the recipient of an ISO in a Test Group Three security would know, upon receipt of that ISO, that the Trading Center that sent the ISO had already executed against the full size of displayed quotations at that price, e.g., the recipient of that ISO could permissibly trade at the price of the Protected Quotation.

<sup>38</sup> In connection with the definition of a Trade-at ISO proposed in Rule 4770(a)(1)(D), this exception refers to the Trading Center that routed the ISO.

l. The order is executed when the Trading Center displaying the Protected Quotation that was traded at had displayed, within one second prior to execution of the transaction that constituted the Trade-at, a Best Protected Bid or Best Protected Offer, as applicable, for the Pilot Security in Test Group Three with a price that was inferior to the price of the Trade-at transaction;

m. The order is executed by a Trading Center which, at the time of order receipt, the Trading Center had guaranteed an execution at no worse than a specified price (a “stopped order”), where:

A. The stopped order was for the account of a customer;

B. The customer agreed to the specified price on an order-by-order basis; and

C. The price of the Trade-at transaction was, for a stopped buy order, equal to or less than the National Best Bid in the Pilot Security in Test Group Three at the time of execution or, for a stopped sell order, equal to or greater than the National Best Offer in the Pilot Security in Test Group Three at the time of execution, as long as such order is priced at an acceptable increment;<sup>39</sup>

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<sup>39</sup> The stopped order exemption in Rule 611 of Regulation NMS applies where “[t]he price of the trade-through transaction was, for a stopped buy order, lower than the national best bid in the NMS stock at the time of execution or, for a stopped sell order, higher than the national best offer in the NMS stock at the time of execution” (see 17 CFR 242.611(b)(9)). The Trade-at stopped order exception applies where “the price of the Trade-at transaction was, for a stopped buy order, equal to the national best bid in the Pilot Security at the time of execution or, for a stopped sell order, equal to the national best offer in the Pilot Security at the time of execution” (see Plan, Section VI(D)(12)).

- n. The order is for a fractional share of a Pilot Security in Test Group Three, provided that such fractional share order was not the result of breaking an order for one or more whole shares of a Pilot Security in Test Group Three into orders for fractional shares or was not otherwise effected to evade the requirements of the Trade-at Prohibition or any other provisions of the Plan; or
- o. The order is to correct a bona fide error, which is recorded by the Trading Center in its error account.<sup>40</sup> A bona fide error is defined as:

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To illustrate the application of the stopped order exemption as it currently operates under Rule 611 of Regulation NMS and as it is currently proposed for Trade-at, assume the National Best Bid is \$10.00 and another protected quote is at \$9.95. Under Rule 611 of Regulation NMS, a stopped order to buy can be filled at \$9.95 and the firm does not have to send an ISO to access the protected quote at \$10.00 since the price of the stopped order must be lower than the National Best Bid. For the stopped order to also be executed at \$9.95 and satisfy the Trade-at requirements, the Trade-at exception would have to be revised to allow an order to execute at the price of a protected quote which, in this case, could be \$9.95.

Based on the fact that a stopped order would be treated differently under the Rule 611 of Regulation NMS exception than under the Trade-at exception in the Plan, the Exchange believes that it is appropriate to amend the Trade-at stopped order exception in the Plan to ensure that the application of this exception would produce a consistent result under both Regulation NMS and the Plan. Therefore, the Exchange proposes in this proposed Rule 4770(c)(3)(D)(iii)m. to allow a transaction to satisfy the Trade-at requirement if the stopped order price, for a stopped buy order, is equal to or less than the National Best Bid, and for a stopped sell order, is equal to or greater than the National Best Offer, as long as such order is priced at an acceptable increment. The Commission granted New York Stock Exchange LLC an exemption from Rule 608(c) related to this provision. See Exemption Letter, supra note 24. The Exchange is seeking the same exemptions as requested in the Exemption Request Letters.

<sup>40</sup> The exceptions to the Trade-at requirement set forth in the Plan and in the Exchange's proposed Rule 4770(c)(3)(D)(iii) are, in part, based on the exceptions to the trade-through requirement set forth in Rule 611 of Regulation NMS, including exceptions for an order that is executed as part of a transaction that was not a "regular way" contract, and an order that is executed as part of a single-priced opening, reopening, or closing transaction by the Trading Center (see 17

A. The inaccurate conveyance or execution of any term of an order including, but not limited to, price, number of shares or other unit of trading; identification of the security; identification of the account for which securities are purchased or sold; lost or otherwise misplaced order tickets; short sales that were instead sold long or vice versa; or the execution of an order on the wrong side of a market;

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CFR 242.611(b)(2) and (b)(3)). Following the adoption of Rule 611 of Regulation NMS and its exceptions, the Commission issued exemptive relief that created exceptions from Rule 611 of Regulation NMS for certain error correction transactions. See Securities Exchange Act Release No. 55884 (June 8, 2007), 72 FR 32926 (June 14, 2007); Securities Exchange Act Release No. 55883 (June 8, 2007), 72 FR 32927 (June 14, 2007). The Exchange has determined that it is appropriate to incorporate this additional exception to the Trade-at Prohibition, as this exception is equally applicable in the Trade-at context.

Accordingly, the Exchange is proposing to exempt certain transactions to correct bona fide errors in the execution of customer orders from the Trade-at Prohibition, subject to the conditions set forth by the SEC's order exempting these transactions from Rule 611 of Regulation NMS. The Commission granted New York Stock Exchange LLC an exemption from Rule 608(c) related to this provision. See Exemption Letter, supra note 24. The Exchange is seeking the same exemptions as requested in the Exemption Request Letters.

As with the corresponding exception under Rule 611 of Regulation NMS, the bona fide error would have to be evidenced by objective facts and circumstances, the Trading Center would have to maintain documentation of such facts and circumstances and record the transaction in its error account. To avail itself of the exemption, the Trading Center would have to establish, maintain, and enforce written policies and procedures reasonably designed to address the occurrence of errors and, in the event of an error, the use and terms of a transaction to correct the error in compliance with this exemption. Finally, the Trading Center would have to regularly surveil to ascertain the effectiveness of its policies and procedures to address errors and transactions to correct errors and take prompt action to remedy deficiencies in such policies and procedures. See Securities Exchange Act Release No. 55884 (June 8, 2007), 72 FR 32926 (June 14, 2007).

- B. The unauthorized or unintended purchase, sale, or allocation of securities, or the failure to follow specific client instructions;
- C. The incorrect entry of data into relevant systems, including reliance on incorrect cash positions, withdrawals, or securities positions reflected in an account; or
- D. A delay, outage, or failure of a communication system used to transmit market data prices or to facilitate the delivery or execution of an order.

Finally, Proposed Rule 4770(c)(3)(D)(iv) would prevent members from breaking an order into smaller orders or otherwise effecting or executing an order to evade the requirements of the Trade-at Prohibition or any other provisions of the Plan.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>41</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>42</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is consistent with the Act because it ensures that the Exchange and its members would be in compliance with a Plan approved by the Commission pursuant to an order

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<sup>41</sup> 15 U.S.C. 78f(b).

<sup>42</sup> 15 U.S.C. 78f(b)(5).

issued by the Commission in reliance on Section 11A of the Act.<sup>43</sup> Such approved Plan gives the Exchange authority to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The Exchange believes that the proposed rule change is consistent with the authority granted to it by the Plan to establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of the Plan. Likewise, the Exchange believes that the proposed rule change provides interpretations of the Plan that are consistent with the Act, in general, and furthers the objectives of the Act, in particular.

Furthermore, the Exchange is a Participant under the Plan and subject, itself, to the provisions of the Plan. The proposed rule change ensures that the Exchange's systems would not display or execute trading interests outside the requirements specified in such Plan. The proposal would also help allow market participants to continue to trade NMS Stocks within quoting and trading requirements that are in compliance with the Plan, with certainty on how certain orders and trading interests would be treated. This, in turn, will help encourage market participants to continue to provide liquidity in the marketplace.

Because the Plan supports further examination and analysis on the impact of tick sizes on the trading and liquidity of the securities of small capitalization companies, and the Commission believes that altering tick sizes could result in significant market-wide benefits and improvements to liquidity and capital formation, adopting rules that enforce compliance by its members with the provisions of the Plan would help promote liquidity

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<sup>43</sup> 15 U.S.C. 78k-1.

in the marketplace and perfect the mechanism of a free and open market and national market system.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes are being made to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the trading and quoting requirements specified in the Plan, of which other equities exchanges are also Participants. Other competing national securities exchanges are subject to the same trading and quoting requirements specified in the Plan. Therefore, the proposed changes would not impose any burden on competition, while providing certainty of treatment and execution of trading interests on the Exchange to market participants in NMS Stocks that are acting in compliance with the requirements specified in the Plan.

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)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)<sup>44</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>45</sup> in that it effects a change that: (i) does not

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<sup>44</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>45</sup> 17 CFR 240.19b-4(f)(6).



significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.<sup>46</sup>

The Exchange believes that the proposed rule change meets the criteria of subparagraph (f)(6) of Rule 19b-4<sup>47</sup> because it would not significantly affect the protection of investors or the public interest; rather, the proposed rule change will benefit investors because it implements, interprets, and clarifies the provisions of the Plan, and is designed to assist the Exchange and members in meeting regulatory obligations pursuant to the Plan. To the extent that this proposal implements, interprets, and clarifies the Plan and applies specific requirements to members, the Exchange believes that this proposal is in furtherance of the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act, the protection of investors and the public interest. In addition, the proposed rule change is substantially similar to a proposed rule change by New York Stock Exchange LLC that was approved by the Commission.<sup>48</sup> Therefore, the proposed rule change does not present any unique issues not previously considered by the Commission. Based on the foregoing, the Exchange has designated this rule filing as

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<sup>46</sup> 17 C.F.R. 240.19b-4(f)(6)(iii).

<sup>47</sup> 17 CFR 240.19b-4(f)(6).

<sup>48</sup> See supra note 5.

“non-controversial” under Section 19(b)(3)(A) of the Act<sup>49</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>50</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily temporarily suspend such rule change if it appears to the Commission that such action is: (1) necessary or appropriate in the public interest; (2) for the protection of investors; or (3) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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

The proposed rule change is substantially similar to a proposed rule change by New York Stock Exchange LLC that was approved by the Commission.<sup>51</sup>

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 Change for publication in the Federal Register.
5. Text of the proposed rule change.

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<sup>49</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>50</sup> 17 CFR 240.19b-4.

<sup>51</sup> See supra note 5.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-BX-2016-039)

June \_\_, 2016

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Rules to Implement the Quoting and Trading Provisions of the Plan to Implement a Tick Size Pilot Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 24, 2016, NASDAQ BX, Inc. (“BX” or “Exchange”) 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 the Exchange. 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

The Exchange proposes to adopt rules under Rule 4770 to implement the quoting and trading provisions of the Plan to Implement a Tick Size Pilot Program submitted to the Commission pursuant to Rule 608 of Regulation NMS<sup>3</sup> under the Act (the “Plan”).<sup>4</sup> The proposed rule change is substantially similar to proposed rule changes recently

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 242.608.

<sup>4</sup> See Securities and Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (File No. 4-657) (“Tick Plan Approval Order”). See also Securities and Exchange Act Release No. 76382 (November 6, 2015) (File No. 4-657), 80 FR 70284 (File No. 4-657) (November 13, 2015), which extended the pilot period commencement date from May 6, 2015 to October 3, 2016.

approved or published by the Commission by New York Stock Exchange LLC to adopt NYSE Rules 67(a) and 67(c)-(e), which also implemented the quoting and trading provisions of the Plan.<sup>5</sup>

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqomxbx.cchwallstreet.com/>, at the principal office of the Exchange, 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, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to establish rules to require its members to comply with the requirements of the Plan, which is designed to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small capitalization companies. The Exchange proposes changes to its rules for a two-year

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<sup>5</sup> See Securities Exchange Act Release No. 76229 (October 22, 2015), 80 FR 66065 (October 28, 2015) (SR-NYSE-2015-46), as amended by Partial Amendments No. 1 and No. 2 to the Quoting & Trading Rules Proposal. See Securities Exchange Act Release No. 77703 (April 25, 2016), 81 FR 25725 (April 29, 2016) (SR-NYSE-2015-46).

pilot period that coincides with the pilot period for the Plan, which is currently scheduled as a two year pilot to begin on October 3, 2016.

### Background

On August 25, 2014, NYSE Group, Inc., on behalf of Bats BZX Exchange, Inc. (f/k/a BATS Exchange, Inc.), Bats BYX Exchange, Inc. (f/k/a BATS Y-Exchange, Inc.), Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., the Exchange, Financial Industry Regulatory Authority, Inc. (“FINRA”), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, New York Stock Exchange LLC, the Exchange and NYSE Arca, Inc., and the NYSE MKT LLC, (collectively “Participants”), filed with the Commission, pursuant to Section 11A of the Act<sup>6</sup> and Rule 608 of Regulation NMS thereunder, the Plan to Implement a Tick Size Pilot Program.<sup>7</sup> The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014 (the “June 2014 Order”).<sup>8</sup> The Plan<sup>9</sup> was published for comment in the Federal Register on November 7, 2014,<sup>10</sup> and approved by the Commission, as modified, on May 6, 2015.<sup>11</sup>

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<sup>6</sup> 15 U.S.C. 78k-1.

<sup>7</sup> See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

<sup>8</sup> See Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

<sup>9</sup> Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

<sup>10</sup> See Securities and Exchange Act Release No. 73511 (November 3, 2014), 79 FR 66423 (File No. 4-657) (Tick Plan Filing).

<sup>11</sup> See Tick Plan Approval Order, supra note 4. See also Securities Exchange Act Release No. 77277 (March 3, 2016), 81 FR 12162 (March 8, 2016) (File No. 4-657), which amended the Plan to add National Stock Exchange, Inc. as a Participant.

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small capitalization companies. The Commission plans to use the Tick Size Pilot Program to assess whether wider tick sizes enhance the market quality of Pilot Securities for the benefit of issuers and investors. Each Participant is required to comply with, and to enforce compliance by its member, as applicable, with the provisions of the Plan.

On October 9, 2015, the Operating Committee approved the Exchange's proposed rules as model Participant rules that would require compliance by a Participant's members with the provisions of the Plan, as applicable, and would establish written policies and procedures reasonably designed to comply with applicable quoting and trading requirements specified in the Plan.<sup>12</sup> As described more fully below, the proposed rules would require members to comply with the Plan and provide for the widening of quoting and trading increments for Pilot Securities, consistent with the Plan.

The Plan will include stocks of companies with \$3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least \$2.00 for every trading day. The Plan will consist of a control group of approximately 1,400 Pilot Securities and three test groups

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<sup>12</sup> The Operating Committee is required under Section III(C)(2) of the Plan to “monitor the procedures established pursuant to the Plan and advise Participants with respect to any deficiencies, problems, or recommendations as the Operating Committee may deem appropriate.” The Operating Committee is also required to “establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of the Plan.”

with 400 Pilot Securities in each selected by a stratified sampling.<sup>13</sup> During the pilot, Pilot Securities in the control group will be quoted at the current tick size increment of \$0.01 per share and will trade at the currently permitted increments. Pilot Securities in the first test group (“Test Group One”) will be quoted in \$0.05 minimum increments but will continue to trade at any price increment that is currently permitted.<sup>14</sup> Pilot Securities in the second test group (“Test Group Two”) will be quoted in \$0.05 minimum increments and will trade at \$0.05 minimum increments subject to a midpoint exception, a retail investor exception, and a negotiated trade exception.<sup>15</sup> Pilot Securities in the third test group (“Test Group Three”) will be subject to the same terms as Test Group Two and also will be subject to the “Trade-at” requirement to prevent price matching by a person not displaying at a price of a Trading Center’s “Best Protected Bid” or “Best Protected Offer,” unless an enumerated exception applies.<sup>16</sup> In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that closely resemble those under Rule 611 of Regulation NMS<sup>17</sup> will apply to the Trade-at requirement.

The Plan also contains requirements for the collection and transmission of data to the Commission and the public. A variety of data generated during the Plan will be

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<sup>13</sup> See Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

<sup>14</sup> See Section VI(B) of the Plan. Pilot Securities in Test Group One will be subject to a midpoint exception and a retail investor exception.

<sup>15</sup> See Section VI(C) of the Plan.

<sup>16</sup> See Section VI(D) of the Plan.

<sup>17</sup> 17 CFR 242.611.

released publicly on an aggregated basis to assist in analyzing the impact of wider tick sizes on smaller capitalization stocks.<sup>18</sup>

Proposed Rules 4770(a) and (c)

The Plan requires the Exchange to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan.<sup>19</sup> Accordingly, the Exchange is proposing new Rule 4770(a) to require its members to comply with the quoting and trading provisions of the Plan. The proposed Rules are also designed to ensure the Exchange's compliance with the Plan.

Proposed paragraph (a)(1) of new Rule 4770 would establish the following defined terms:

- “Plan” means the Tick Size Pilot Plan submitted to the Commission pursuant to Rule 608(a)(3) of Regulation NMS under the Act.
- “Pilot Test Groups” means the three test groups established under the Plan, consisting of 400 Pilot Securities each, which satisfy the respective criteria established by the Plan for each such test group.
- “Retail Investor Order” would mean an agency order or a riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by

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<sup>18</sup> See Section VII of the Plan.

<sup>19</sup> The Exchange was also required by the Plan to develop appropriate policies and procedures that provide for data collection and reporting to the Commission of data described in Appendixes B and C of the Plan. See Securities Exchange Act Release No. 77457 (March 28, 2016), 81 FR 18913 (April 1, 2016) (SR-BX-2016-019).



a retail member, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.

A Retail Investor Order may be an odd lot, round lot, or partial round lot.<sup>20</sup>

- Trade-at Intermarket Sweep Order<sup>21</sup> would mean a limit order for a Pilot Security that meets the following requirements:

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<sup>20</sup> This definition is the approved definition for “Retail Investor Order” as contemplated by the Plan. It is also the same definition as given to a “Retail Order” pursuant to the approved rules of the Exchange, other national securities exchanges’ retail orders. See Rule 4702(b)(6)(A). See also NYSE Rule 107C(a)(3), NYSE Arca, Inc. Rule 7.44(a)(3), NYSE MKT LLC Rule 107C(a)(3), and BATS Y-Exchange, Inc. Rule 11.24(a)(2). The Retail Investor Order definition includes any order originating from a natural person. Therefore, any member that operates a Trading Center may execute against a Retail Investor Order otherwise than on an exchange to satisfy the retail investor order exception proposed in Rule 4770.

<sup>21</sup> The Plan defines a Trade-at Intermarket Sweep Order (“ISO”) as a limit order for a Pilot Security that, when routed to a Trading Center, is identified as an ISO, and simultaneous with the routing of the limit order identified as an ISO, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid (in the case of a limit order to sell) or the full displayed size of any protected offer (in the case of a limit order to buy) for the Pilot Security with a price that is equal to the limit price of the limit order identified as an ISO. These additional routed orders also must be marked as ISOs. See Plan, Section I(MM). Since the Plan allows (i) an order that is identified as an ISO to be executed at the price of a Protected Quotation (see Plan, Section VI(D)(8) and proposed Rule 4770(c)(3)(D)(iii)i.) and (ii) an order to execute at the price of a Protected Quotation that “is executed by a trading center that simultaneously routed Trade-at ISO to execute against the full displayed size of the Protected Quotation that was trade at” (see Plan, Section VI(D)(9) and proposed Rule 4770(c)(3)(D)(iii)j.), the Exchange proposes to clarify the use of an ISO in connection with the Trade-at requirement by adopting, as part of proposed Rule 4770(a)(1), a comprehensive definition of “Trade-at ISO.” As set forth in the Plan and as noted above, the definition of a Trade-at ISO used in the Plan does not distinguish ISOs that are compliant with Rule 611 or Regulation NMS from ISOs that are compliant with Trade-at. The Exchange therefore proposes the separate definition of Trade-at ISO contained in proposed Rule

- (i) When routed to a Trading Center, the limit order is identified as a Trade-at Intermarket Sweep Order; and
  - (ii) Simultaneously with the routing of the limit order identified as a Trade-at Intermarket Sweep Order, one or more additional limit orders, as necessary, are routed to execute against the full size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order. These additional routed orders also must be marked as Trade-at Intermarket Sweep Orders.
- Paragraph (a)(1)(E) would provide that all capitalized terms not otherwise defined in this rule shall have the meanings set forth in the Plan, Regulation NMS under the Act, or Exchange rules, as applicable.

Proposed Paragraph (a)(2) would state that the Exchange is a Participant in, and subject to the applicable requirements of, the Plan; proposed Paragraph (a)(3) would require members to establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the applicable requirements of the Plan, which would allow the Exchange to enforce compliance by its members with the provisions of the Plan, as required pursuant to Section II(B) of the Plan.

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4770(a). The Exchange believes that this proposed definition will further clarify to recipients of ISOs in Test Group Three securities whether the ISO satisfies the requirements of Rule 611 of Regulation NMS or Trade-at.

In addition, Paragraph (a)(4) would provide that Exchange systems would not display, quote or trade in violation of the applicable quoting and trading requirements for a Pilot Security specified in the Plan and this proposed rule, unless such quotation or transaction is specifically exempted under the Plan.<sup>22</sup>

The Exchange also proposes to add Rule 4770(a)(5) to provide for the treatment of Pilot Securities that drop below a \$1.00 value during the Pilot Period.<sup>23</sup> The Exchange proposes that if the price of a Pilot Security drops below \$1.00 during regular trading on any given business day, such Pilot Security would continue to be subject to the Plan and the requirements described below that necessitate members to comply with the specific quoting and trading obligations for each respective Pilot Test Group under the Plan, and would continue to trade in accordance with the proposed rules below as if the price of the

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<sup>22</sup> The Exchange is still evaluating its internal policies and procedures to ensure compliance with the Plan, and plans to separately propose rules that would address violations of the Plan.

<sup>23</sup> New York Stock Exchange LLC, on behalf of the Participants, submitted a letter to Commission requesting exemption from certain provisions of the Plan related to quoting and trading. See letter from Elizabeth K. King, NYSE, to Brent J. Fields, Secretary, Commission, dated October 14, 2015 (the “October Exemption Request”). FINRA, also on behalf of the Plan Participants, submitted a separate letter to Commission requesting additional exemptions from certain provisions of the Plan related to quoting and trading. See letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, to Robert W. Errett, Deputy Secretary, Commission, dated February 23, 2016 (the “February Exemption Request,” and together with the October Exemption Request, the “Exemption Request Letters”). The Commission, pursuant to its authority under Rule 608(e) of Regulation NMS, granted New York Stock Exchange LLC a limited exemption from the requirement to comply with certain provisions of the Plan as specified in the Exemption Request Letters and noted herein. See letter from David Shillman, Associate Director, Division of Trading and Markets, Commission to Sherry Sandler, Associate General Counsel, New York Stock Exchange LLC, dated April 25, 2016 (the “Exemption Letter”). The Exchange is seeking the same exemptions as requested in the Exemption Request Letters, including without limitation, an exemption relating to proposed Rule 4770(a)(5).

Pilot Security had not dropped below \$1.00. However, if the Closing Price of a Pilot Security on any given business day is below \$1.00, such Pilot Security would be moved out of its respective Pilot Test Group into the control group (which consists of Pilot Securities not placed into a Pilot Test Group), and may then be quoted and traded at any price increment that is currently permitted by Exchange rules for the remainder of the Pilot Period. Notwithstanding anything contained herein to the contrary, the Exchange proposes that, at all times during the Pilot Period, Pilot Securities (whether in the control group or any Pilot Test Group) would continue to be subject to the data collection rules, which are enumerated in Rule 4770(b).

The Exchange proposes Rules 4770(c)(1)-(3), which would require members to comply with the specific quoting and trading obligations for each Pilot Test Group under the Plan. With regard to Pilot Securities in Test Group One, proposed Rule 4770(c)(1) would provide that no member may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in increments other than \$0.05. However, orders priced to trade at the midpoint of the National Best Bid and National Best Offer (“NBBO”) or Best Protected Bid and Best Protected Offer (“PBBO”) and orders entered in the Exchange’s Retail Price Improvement Program as Retail Price Improving Orders (as defined in Rule 4780(a)(3))<sup>24</sup> may be ranked and accepted in increments of less than \$0.05. Pilot Securities in Test

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<sup>24</sup> A Retail Price Improvement Order is an Order Type with a Non- Display Order Attribute that is held on the Exchange Book in order to provide liquidity at a price at least \$0.001 better than the NBBO through a special execution process described in Rule 4780. See Rules 4780(a)(3) and 4702(b)(5).

Group One may continue to trade at any price increment that is currently permitted by Rule 4701(k).<sup>25</sup>

With regard to Pilot Securities in Test Group Two, proposed Rule 4770(c)(2)(A) would provide that such Pilot Securities would be subject to all of the same quoting requirements as described above for Pilot Securities in Test Group One, along with the applicable quoting exceptions. In addition, proposed Rule 4770(c)(2)(B) would provide that, absent one of the listed exceptions in proposed 4770(c)(2)(C) enumerated below, no member may execute orders in any Pilot Security in Test Group Two in price increments other than \$0.05. The \$0.05 trading increment would apply to all trades, including Brokered Cross Trades.

Paragraph (2)(C) would set forth further requirements for Pilot Securities in Test Group Two. Specifically, members trading Pilot Securities in Test Group Two would be allowed to trade in increments less than \$0.05 under the following circumstances:

- (i) Trading may occur at the midpoint between the NBBO or PBBO;
- (ii) Retail Investor Orders may be provided with price improvement that is at least \$0.005 better than the PBBO;
- (iii) Negotiated Trades may trade in increments less than \$0.05; and
- (iv) Execution of a customer order to comply with IM-2110-2<sup>26</sup> following the execution of a proprietary trade by the member at an increment other than \$0.05, where such proprietary trade was permissible pursuant to an exception under the Plan.<sup>27</sup>

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<sup>25</sup> Rule 4701(k) describes the minimum price variation for quoting and entry of orders in equity securities listed on the Exchange or a national securities exchange other than the Exchange.

<sup>26</sup> Exchange IM-2110-2 “Trading Ahead of Customer Limit Order” incorporates by reference NASD IM-2110, which was replaced by FINRA Rule 5320. FINRA

Paragraph (3)(A)-(3)(C) would set forth the requirements for Pilot Securities in Test Group Three. Members quoting or trading such Pilot Securities would be subject to all of the same quoting and trading requirements as described above for Pilot Securities in Test Group Two, including the quoting and trading exceptions applicable to Pilot Securities in Test Group Two. In addition, proposed Paragraph (3)(D) would provide for an additional prohibition on Pilot Securities in Test Group Three referred to as the

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Rule 5320 is titled “Prohibition Against Trading Ahead of Customer Orders,” which states:

(a) Except as provided herein, a member that accepts and holds an order in an equity security from its own customer or a customer of another broker-dealer without immediately executing the order is prohibited from trading that security on the same side of the market for its own account at a price that would satisfy the customer order, unless it immediately thereafter executes the customer order up to the size and at the same or better price at which it traded for its own account.

(b) A member must have a written methodology in place governing the execution and priority of all pending orders that is consistent with the requirements of this Rule and Rule 5310. A member also must ensure that this methodology is consistently applied.

<sup>27</sup> The Exchange proposes to add this exemption to permit members to fill a customer order in a Pilot Security at a non-nickel increment to comply with IM-2110-2 under limited circumstances. Specifically, the exception would allow the execution of a customer order following a proprietary trade by the member at an increment other than \$0.05 in the same security, on the same side and at the same price as (or within the prescribed amount of) a customer order owed a fill pursuant to IM-2110-2, where the triggering proprietary trade was permissible pursuant to an exception under the Plan. The Commission granted New York Stock Exchange LLC an exemption from Rule 608(c) related to this provision. See Exemption Letter, *supra* note 23. The Exchange is seeking the same exemptions as requested in the Exemption Request Letters. The Exchange believes such an exception best facilitates the ability of members to continue to protect customer orders while retaining the flexibility to engage in proprietary trades that comply with an exception to the Plan.

“Trade-at Prohibition.”<sup>28</sup> Paragraph (3)(D)(ii) would provide that, absent one of the listed exceptions in proposed Rule 4770(c)(3)(D)(iii) enumerated below, no member may execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer.

Proposed Rule 4770(c)(3)(D)(iii) would allow members to execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer if any of the following circumstances exist:

a. The order is executed as agent or riskless principal by an independent trading unit, as defined under Rule 200(f) of Regulation SHO,<sup>29</sup> of a Trading Center within a member that has a displayed quotation as agent or riskless principal, via either a processor or an SRO Quotation Feed, at a price equal to the traded-at Protected

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<sup>28</sup> Proposed 4770(c)(3)(D)(i) would define the “Trade-at Prohibition” to mean the prohibition against executions by a Trading Center of a sell order for a Pilot Security at the price of a Protected Bid or the execution of a buy order for a Pilot Security at the price of a Protected Offer during regular trading hours.

<sup>29</sup> The Exchange is proposing that, for proposed Rules 4770(c)(3)(D)(iii)a. and b., a Trading Center operated by a broker-dealer would mean an independent trading unit, as defined under Rule 200(f) of Regulation SHO, within such broker-dealer. See 17 CFR 242.200.

Independent trading unit aggregation is available if traders in an aggregation unit pursue only the particular trading objective(s) or strategy(s) of that aggregation unit and do not coordinate that strategy with any other aggregation unit. Therefore, a Trading Center cannot rely on quotations displayed by that broker dealer from a different independent trading unit. As an example, an agency desk of a broker-dealer cannot rely on the quotation of a proprietary desk in a separate independent trading unit at that same broker-dealer.

Quotation, that was displayed before the order was received,<sup>30</sup> but only up to the full displayed size of that independent trading unit's previously displayed quote;<sup>31</sup>

b. The order is executed by an independent trading unit, as defined under Rule 200(f) of Regulation SHO, of a Trading Center within a member that has a displayed quotation for the account of that Trading Center on a principal (excluding riskless principal<sup>32</sup>) basis, via either a processor or an SRO Quotation Feed, at a price equal to the traded-at Protected Quotation, that was displayed before the order was received, but only up to the full displayed size of that independent unit's previously displayed quote;<sup>33</sup>

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<sup>30</sup> The Exchange is proposing to adopt this limitation to ensure that a Trading Center does not display a quotation after the time of order receipt solely for the purpose of trading at the price of a protected quotation without routing to that protected quotation.

<sup>31</sup> This proposed exception to Trade-at would allow a Trading Center to execute an order at the Protected Quotation in the same capacity in which it has displayed a quotation at a price equal to the Protected Quotation and up to the displayed size of such displayed quotation.

<sup>32</sup> As described above, proposed Rule 4770(c)(3)(D)(iii)a. would establish the circumstances in which a Trading Center displaying an order as riskless principal would be permitted to Trade-at the Protected Quotation. Accordingly, the Exchange proposes that proposed Rule 4770(c)(3)(D)(iii)b. would exclude such circumstances.

<sup>33</sup> The display exceptions to Trade-at set forth in proposed Rules 4770(c)(3)(D)(iii)a. and b. would not permit a broker-dealer to trade on the basis of interest it is not responsible for displaying. In particular, a broker-dealer that matches orders in the over-the-counter market shall be deemed to have "executed" such orders as a Trading Center for purposes of proposed Rule 4770. Accordingly, if a broker-dealer is not displaying a quotation at a price equal to the Protected Quotation, it could not submit matched trades to an alternative trading center ("ATS") that was displaying on an agency basis the quotation of another ATS subscriber. However, a broker-dealer that is displaying, as principal, via either a processor or an SRO Quotation Feed, a buy order at the protected bid, could internalize a customer sell order up to its displayed size. The display exceptions would not permit a non-displayed Trading Center to submit matched trades to an ATS that was displaying on an agency basis the quotation of another



- c. The order is of Block Size<sup>34</sup> at the time of origin and may not be:
- A. an aggregation of non-block orders;
  - B. broken into orders smaller than Block Size prior to submitting the order to a Trading Center for execution; or
  - C. executed on multiple Trading Centers;<sup>35</sup>
- d. The order is a Retail Investor Order executed with at least \$0.005 price improvement;
- e. The order is executed when the Trading Center displaying the Protected Quotation that was traded at was experiencing a failure, material delay, or malfunction of its systems or equipment;
- f. The order is executed as part of a transaction that was not a “regular way” contract;
- g. The order is executed as part of a single-priced opening, reopening, or closing transaction on the Exchange;

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ATS subscriber and confirmed that a broker-dealer would not be permitted to trade on the basis of interest that it is not responsible for displaying.

<sup>34</sup> “Block Size” is defined in the Plan as an order (1) of at least 5,000 shares or (2) for a quantity of stock having a market value of at least \$100,000.

<sup>35</sup> Once a Block Size order or portion of such Block Size order is routed from one Trading Center to another Trading Center in compliance with Rule 611 of Regulation NMS, the Block Size order would not lose the Trade-at exemption provided under proposed Rule 4770(c)(3)(D)(iii)c. For example, if an exchange has a Protected Bid of 3,000 shares, with 2,000 shares in reserve, and receives a 5,000 share order to sell, the exchange would be able to execute the entire 5,000 share order without having to route to an away market at any other Protected Bid at the same price. If, however, that exchange only has 1,000 shares in reserve, the entire order would not be able to be executed on that exchange, and the exchange would only be able to execute 3,000 shares and route the rest to away markets at other Protected Bids at the same price, before executing the 1,000 shares in reserve.

h. The order is executed when a Protected Bid was priced higher than a Protected Offer in the Pilot Security in Test Group Three;

i. The order is identified as a Trade-at Intermarket Sweep Order;<sup>36</sup>

j. The order is executed by a Trading Center that simultaneously routed Trade-at Intermarket Sweep Orders to execute against the full displayed size of the Protected Quotation that was traded at;<sup>37</sup>

k. The order is executed as part of a Negotiated Trade;

l. The order is executed when the Trading Center displaying the Protected Quotation that was traded at had displayed, within one second prior to execution of the transaction that constituted the Trade-at, a Best Protected Bid or Best Protected Offer, as

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<sup>36</sup> In connection with the definition of a Trade-at ISO proposed in Rule 4770(a)(1)(D), this exception refers to the ISO that is received by a Trading Center.

The Exchange proposed an exemption to the Trade-at Prohibition for Trade-at ISOs to clarify that an ISO that is received by a Trading Center (and which could form the basis of an execution at the price of a Protected Quotation pursuant to Section VI(D)(8) of the Plan), is identified as a Trade-at ISO. Depending on whether Rule 611 of Regulation NMS or the Trade-at requirement applies, an ISO may mean that the sender of the ISO has swept better-priced Protected Quotations, so that the recipient of that ISO may trade through the price of the Protected Quotation (Rule 611 of Regulation NMS), or it could mean that the sender of the ISO has swept Protected Quotations at the same price that it wishes to execute at (in addition to any better-priced quotations), so the recipient of that ISO may trade at the price of the Protected Quotation (Trade-at). Given that the meaning of an ISO may differ under Rule 611 of Regulation NMS and Trade-at, the Exchange proposed an exemption to the Trade-at Prohibition for Trade-at ISOs so that the recipient of an ISO in a Test Group Three security would know, upon receipt of that ISO, that the Trading Center that sent the ISO had already executed against the full size of displayed quotations at that price, e.g., the recipient of that ISO could permissibly trade at the price of the Protected Quotation.

<sup>37</sup> In connection with the definition of a Trade-at ISO proposed in Rule 4770(a)(1)(D), this exception refers to the Trading Center that routed the ISO.

applicable, for the Pilot Security in Test Group Three with a price that was inferior to the price of the Trade-at transaction;

m. The order is executed by a Trading Center which, at the time of order receipt, the Trading Center had guaranteed an execution at no worse than a specified price (a “stopped order”), where:

- A. The stopped order was for the account of a customer;
- B. The customer agreed to the specified price on an order-by-order basis; and
- C. The price of the Trade-at transaction was, for a stopped buy order, equal to or less than the National Best Bid in the Pilot Security in Test Group Three at the time of execution or, for a stopped sell order, equal to or greater than the National Best Offer in the Pilot Security in Test Group Three at the time of execution, as long as such order is priced at an acceptable increment;<sup>38</sup>

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<sup>38</sup> The stopped order exemption in Rule 611 of Regulation NMS applies where “[t]he price of the trade-through transaction was, for a stopped buy order, lower than the national best bid in the NMS stock at the time of execution or, for a stopped sell order, higher than the national best offer in the NMS stock at the time of execution” (see 17 CFR 242.611(b)(9)). The Trade-at stopped order exception applies where “the price of the Trade-at transaction was, for a stopped buy order, equal to the national best bid in the Pilot Security at the time of execution or, for a stopped sell order, equal to the national best offer in the Pilot Security at the time of execution” (see Plan, Section VI(D)(12)).

To illustrate the application of the stopped order exemption as it currently operates under Rule 611 of Regulation NMS and as it is currently proposed for Trade-at, assume the National Best Bid is \$10.00 and another protected quote is at \$9.95. Under Rule 611 of Regulation NMS, a stopped order to buy can be filled at \$9.95 and the firm does not have to send an ISO to access the protected quote at \$10.00 since the price of the stopped order must be lower than the National Best Bid. For the stopped order to also be executed at \$9.95 and satisfy the Trade-at requirements, the Trade-at exception would have to be revised to allow an order to execute at the price of a protected quote which, in this case, could be \$9.95.

Based on the fact that a stopped order would be treated differently under the Rule 611 of Regulation NMS exception than under the Trade-at exception in the

n. The order is for a fractional share of a Pilot Security in Test Group Three, provided that such fractional share order was not the result of breaking an order for one or more whole shares of a Pilot Security in Test Group Three into orders for fractional shares or was not otherwise effected to evade the requirements of the Trade-at Prohibition or any other provisions of the Plan; or

o. The order is to correct a bona fide error, which is recorded by the Trading Center in its error account.<sup>39</sup> A bona fide error is defined as:

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Plan, the Exchange believes that it is appropriate to amend the Trade-at stopped order exception in the Plan to ensure that the application of this exception would produce a consistent result under both Regulation NMS and the Plan. Therefore, the Exchange proposes in this proposed Rule 4770(c)(3)(D)(iii)m. to allow a transaction to satisfy the Trade-at requirement if the stopped order price, for a stopped buy order, is equal to or less than the National Best Bid, and for a stopped sell order, is equal to or greater than the National Best Offer, as long as such order is priced at an acceptable increment. The Commission granted New York Stock Exchange LLC an exemption from Rule 608(c) related to this provision. See Exemption Letter, supra note 23. The Exchange is seeking the same exemptions as requested in the Exemption Request Letters.

<sup>39</sup> The exceptions to the Trade-at requirement set forth in the Plan and in the Exchange's proposed Rule 4770(c)(3)(D)(iii) are, in part, based on the exceptions to the trade-through requirement set forth in Rule 611 of Regulation NMS, including exceptions for an order that is executed as part of a transaction that was not a "regular way" contract, and an order that is executed as part of a single-priced opening, reopening, or closing transaction by the Trading Center (see 17 CFR 242.611(b)(2) and (b)(3)). Following the adoption of Rule 611 of Regulation NMS and its exceptions, the Commission issued exemptive relief that created exceptions from Rule 611 of Regulation NMS for certain error correction transactions. See Securities Exchange Act Release No. 55884 (June 8, 2007), 72 FR 32926 (June 14, 2007); Securities Exchange Act Release No. 55883 (June 8, 2007), 72 FR 32927 (June 14, 2007). The Exchange has determined that it is appropriate to incorporate this additional exception to the Trade-at Prohibition, as this exception is equally applicable in the Trade-at context.

Accordingly, the Exchange is proposing to exempt certain transactions to correct bona fide errors in the execution of customer orders from the Trade-at Prohibition, subject to the conditions set forth by the SEC's order exempting these transactions from Rule 611 of Regulation NMS. The Commission granted New York Stock Exchange LLC an exemption from Rule 608(c) related to this

A. The inaccurate conveyance or execution of any term of an order including, but not limited to, price, number of shares or other unit of trading; identification of the security; identification of the account for which securities are purchased or sold; lost or otherwise misplaced order tickets; short sales that were instead sold long or vice versa; or the execution of an order on the wrong side of a market;

B. The unauthorized or unintended purchase, sale, or allocation of securities, or the failure to follow specific client instructions;

C. The incorrect entry of data into relevant systems, including reliance on incorrect cash positions, withdrawals, or securities positions reflected in an account; or

D. A delay, outage, or failure of a communication system used to transmit market data prices or to facilitate the delivery or execution of an order.

Finally, Proposed Rule 4770(c)(3)(D)(iv) would prevent members from breaking an order into smaller orders or otherwise effecting or executing an order to evade the requirements of the Trade-at Prohibition or any other provisions of the Plan.

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provision. See Exemption Letter, supra note 23. The Exchange is seeking the same exemptions as requested in the Exemption Request Letters.

As with the corresponding exception under Rule 611 of Regulation NMS, the bona fide error would have to be evidenced by objective facts and circumstances, the Trading Center would have to maintain documentation of such facts and circumstances and record the transaction in its error account. To avail itself of the exemption, the Trading Center would have to establish, maintain, and enforce written policies and procedures reasonably designed to address the occurrence of errors and, in the event of an error, the use and terms of a transaction to correct the error in compliance with this exemption. Finally, the Trading Center would have to regularly surveil to ascertain the effectiveness of its policies and procedures to address errors and transactions to correct errors and take prompt action to remedy deficiencies in such policies and procedures. See Securities Exchange Act Release No. 55884 (June 8, 2007), 72 FR 32926 (June 14, 2007).

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>40</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>41</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is consistent with the Act because it ensures that the Exchange and its members would be in compliance with a Plan approved by the Commission pursuant to an order issued by the Commission in reliance on Section 11A of the Act.<sup>42</sup> Such approved Plan gives the Exchange authority to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The Exchange believes that the proposed rule change is consistent with the authority granted to it by the Plan to establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of the Plan. Likewise, the Exchange believes that the proposed rule change provides interpretations of the Plan that are consistent with the Act, in general, and furthers the objectives of the Act, in particular.

Furthermore, the Exchange is a Participant under the Plan and subject, itself, to the provisions of the Plan. The proposed rule change ensures that the Exchange's

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<sup>40</sup> 15 U.S.C. 78f(b).

<sup>41</sup> 15 U.S.C. 78f(b)(5).

<sup>42</sup> 15 U.S.C. 78k-1.

systems would not display or execute trading interests outside the requirements specified in such Plan. The proposal would also help allow market participants to continue to trade NMS Stocks within quoting and trading requirements that are in compliance with the Plan, with certainty on how certain orders and trading interests would be treated. This, in turn, will help encourage market participants to continue to provide liquidity in the marketplace.

Because the Plan supports further examination and analysis on the impact of tick sizes on the trading and liquidity of the securities of small capitalization companies, and the Commission believes that altering tick sizes could result in significant market-wide benefits and improvements to liquidity and capital formation, adopting rules that enforce compliance by its members with the provisions of the Plan would help promote liquidity in the marketplace and perfect the mechanism of a free and open market and national market system.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes are being made to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the trading and quoting requirements specified in the Plan, of which other equities exchanges are also Participants. Other competing national securities exchanges are subject to the same trading and quoting requirements specified in the Plan. Therefore, the proposed changes would not impose any burden on competition, while providing certainty of treatment and execution of trading interests on the Exchange to market participants in NMS Stocks that are acting in compliance with the requirements specified in the Plan.

C. 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.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>43</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>44</sup>

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

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<sup>43</sup> 15 U.S.C. 78s(b)(3)(a)(iii).

<sup>44</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.



#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2016-039 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-2016-039. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing

also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; 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-2016-039 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.<sup>45</sup>

Robert W. Errett  
Deputy Secretary

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<sup>45</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

*Deleted text is [bracketed]. New text is underlined.*

**NASDAQ BX Rules**

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**4770. Compliance with Regulation NMS Plan to Implement a Tick Size Pilot**

[(a) Compliance with Quoting and Trading Restrictions

(1) Reserved.]

(a) Tick Size Pilot Program

(1) Definitions.

(A) “Plan” means the Tick Size Pilot Plan Submitted to the Securities and Exchange Commission Pursuant to Rule 608(a)(3) of Regulation NMS under the Exchange Act.

(B) “Pilot Test Groups” means the three test groups established under the Plan, consisting of 400 Pilot Securities each, which satisfy the respective criteria established by the Plan for each such test group.

(C) “Retail Investor Order” means an agency order or a riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted in a Participant-operated retail liquidity program by a retail member, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. A Retail Investor Order may be an odd lot, round lot, or partial round lot.

(D) “Trade-at Intermarket Sweep Order” means a limit order for a Pilot Security that meets the following requirements:

(i) When routed to a Trading Center, the limit order is identified as a Trade-at Intermarket Sweep Order; and

(ii) Simultaneously with the routing of the limit order identified as a Trade-at Intermarket Sweep Order, one or more additional limit orders, as necessary, are routed to execute against the full size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order. These additional routed orders also must be marked as Trade-at Intermarket Sweep Orders.

(E) All capitalized terms not otherwise defined in this Rule shall have the meanings set forth in the Plan, Regulation NMS under the Exchange Act, or Exchange rules, as applicable.

(2) Exchange Participation in the Plan. The Exchange is a Participant in, and subject to the applicable requirements of, the Plan, which establishes a Tick Size Pilot Program that will allow the Securities and Exchange Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small capitalization companies.

(3) Member Compliance. Members shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the applicable requirements of the Plan.

(4) Exchange Compliance with the Plan. Exchange systems will not display, quote or trade in violation of the applicable quoting and trading requirements for a Pilot Security specified in the Plan and this Rule, unless such quotation or transaction is specifically exempted under the Plan.

(5) Pilot Securities That Drop Below \$1.00 during the Pilot Period. If the price of a Pilot Security drops below \$1.00 during regular trading on any given business day, such Pilot Security will continue to be subject to the Plan and the requirements enumerated in (c)(1)-(3) below and will continue to trade in accordance with such Rules as if the price of the Pilot Security had not dropped below \$1.00. However, if the Closing Price of a Pilot Security on any given business day is below \$1.00, such Pilot Security will be moved out of its respective Pilot Test Group into the Control Group, and may then be quoted and traded at any price increment that is currently permitted by Exchange rules for the remainder of the Pilot Period. Notwithstanding anything contained herein to the contrary, at all times during the Pilot Period, Pilot Securities (whether in the Control Group or any Pilot Test Group) will continue to be subject to the requirements contained in Paragraph (b).

(b) No change.

(c) Compliance with Quoting and Trading Restrictions

(1) Pilot Securities in Test Group One will be subject to the following requirement: No member may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in increments other than \$0.05. However, orders priced to trade at the midpoint of the national best bid and national best offer (“NBBO”) or best protected bid and best protected offer (“PBBO”) and orders entered in the Exchange’s Retail Price Improvement Program as Retail Price Improvement Orders (as defined in Rule 4780(a)(3)) may be ranked and accepted in increments of less than \$0.05. Pilot Securities in Test Group One may continue to trade at any price increment that is currently permitted by Rule 4701(k).

(2) Pilot Securities in Test Group Two shall be subject to the following requirements:

(A) No member may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in increments other than \$0.05. However, orders priced to trade at the midpoint of the NBBO or PBBO and orders entered in the Exchange's Retail Price Improvement Program as Retail Price Improvement Orders (as defined in Rule 4780(a)(3)) may be ranked and accepted in increments of less than \$0.05.

(B) Absent any of the exceptions listed in (C) below, no member may execute orders in any Pilot Security in Test Group Two in price increments other than \$0.05. The \$0.05 trading increment will apply to all trades, including Brokered Cross Trades.

(C) Pilot Securities in Test Group Two may trade in increments less than \$0.05 under the following circumstances:

(i) Trading may occur at the midpoint between the NBBO or the PBBO;

(ii) Retail Investor Orders may be provided with price improvement that is at least \$0.005 better than the PBBO;

(iii) Negotiated Trades may trade in increments less than \$0.05; and

(iv) Execution of a customer order to comply with IM-2110-2 following the execution of a proprietary trade by the member at an increment other than \$0.05, where such proprietary trade was permissible pursuant to an exception under the Plan.

(3) Pilot Securities in Test Group Three shall be subject to the following requirements:

(A) No member may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in increments other than \$0.05. However, orders priced to trade at the midpoint of the NBBO or PBBO and orders entered in the Exchange's Retail Price Improvement Program as Retail Price Improvement Orders (as defined in Rule 4780(a)(3)) may be ranked and accepted in increments of less than \$0.05.

(B) Absent any of the exceptions listed in (C) below, no member may execute orders in any Pilot Security in Test Group Three in price increments other than \$0.05. The \$0.05 trading increment will apply to all trades, including Brokered Cross Trades.

(C) Pilot Securities in Test Group Three may trade in increments less than \$0.05 under the following circumstances:

- (i) Trading may occur at the midpoint between the NBBO or PBBO;
- (ii) Retail Investor Orders may be provided with price improvement that is at least \$0.005 better than the Best Protected Bid or the Best Protected Offer;
- (iii) Negotiated Trades may trade in increments less than \$0.05; and
- (iv) Execution of a customer order to comply with IM-2110-2 following the execution of a proprietary trade by the member at an increment other than \$0.05, where such proprietary trade was permissible pursuant to an exception under the Plan.

(D) Pilot Securities in Test Group Three will be subject to the following Trade-at Prohibition:

- (i) “Trade-at Prohibition” means the prohibition against executions by a Trading Center of a sell order for a Pilot Security at the price of a Protected Bid or the execution of a buy order for a Pilot Security at the price of a Protected Offer during regular trading hours.
- (ii) Absent any of the exceptions listed in (iii) below, no member may execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer.
- (iii) Members may execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer if any of the following circumstances exist:
  - a. The order is executed as agent or riskless principal by an independent trading unit, as defined under Rule 200(f) of Regulation SHO, of a Trading Center within a member that has a displayed quotation as agent or riskless principal, via either a processor or an SRO Quotation Feed, at a price equal to the traded-at Protected Quotation, that was displayed before the order was received, but only up to the full displayed size of that independent trading unit’s previously displayed quote;
  - b. The order is executed by an independent trading unit, as defined under Rule 200(f) of Regulation SHO, of a Trading Center within a member that has a displayed quotation for the account of that Trading Center on a principal (excluding riskless principal) basis, via either a processor or an SRO Quotation Feed, at a price equal to the traded-at Protected Quotation, that was displayed before the order was received, but only up to the full displayed size of that independent trading unit’s previously displayed quote;
  - c. The order is of Block Size at the time of origin and may not be:

- A. an aggregation of non-block orders;
- B. broken into orders smaller than Block Size prior to submitting the order to a Trading Center for execution; or
- C. executed on multiple Trading Centers;
- d. The order is a Retail Investor Order executed with at least \$0.005 price improvement;
- e. The order is executed when the Trading Center displaying the Protected Quotation that was traded at was experiencing a failure, material delay, or malfunction of its systems or equipment;
- f. The order is executed as part of a transaction that was not a “regular way” contract;
- g. The order is executed as part of a single-priced opening, reopening, or closing transaction on the Exchange;
- h. The order is executed when a Protected Bid was priced higher than a Protected Offer in the Pilot Security;
- i. The order is identified as a Trade-at Intermarket Sweep Order;
- j. The order is executed by a Trading Center that simultaneously routed Trade-at Intermarket Sweep Orders to execute against the full displayed size of the Protected Quotation that was traded at;
- k. The order is executed as part of a Negotiated Trade;
- l. The order is executed when the Trading Center displaying the Protected Quotation that was traded at had displayed, within one second prior to execution of the transaction that constituted the Trade-at, a Best Protected Bid or Best Protected Offer, as applicable, for the Pilot Security with a price that was inferior to the price of the Trade-at transaction;
- m. The order is executed by a Trading Center which, at the time of order receipt, the Trading Center had guaranteed an execution at no worse than a specified price (a “stopped order”), where:
  - A. The stopped order was for the account of a customer;
  - B. The customer agreed to the specified price on an order-by-order basis; and

C. The price of the Trade-at transaction was, for a stopped buy order, equal to or less than the National Best Bid in the Pilot Security at the time of execution or, for a stopped sell order, equal to or greater than the National Best Offer in the Pilot Security at the time of execution, as long as such order is priced at an acceptable increment;

n. The order is for a fractional share of a Pilot Security, provided that such fractional share order was not the result of breaking an order for one or more whole shares of a Pilot Security into orders for fractional shares or was not otherwise effected to evade the requirements of the Trade-at Prohibition or any other provisions of the Plan; or

o. The order is to correct a bona fide error, which is recorded by the Trading Center in its error account. A bona fide error is defined as:

A. The inaccurate conveyance or execution of any term of an order including, but not limited to, price, number of shares or other unit of trading; identification of the security; identification of the account for which securities are purchased or sold; lost or otherwise misplaced order tickets; short sales that were instead sold long or vice versa; or the execution of an order on the wrong side of a market;

B. The unauthorized or unintended purchase, sale, or allocation of securities, or the failure to follow specific client instructions;

C. The incorrect entry of data into relevant systems, including reliance on incorrect cash positions, withdrawals, or securities positions reflected in an account; or

D. A delay, outage, or failure of a communication system used to transmit market data prices or to facilitate the delivery or execution of an order.

(iv) No member shall break an order into smaller orders or otherwise effect or execute an order to evade the requirements of the Trade-at Prohibition of this Rule or any other provisions of the Plan.

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