Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) *
Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document
Exhibit 3 Sent As Paper Document

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

A proposal to amend Rule 9400, entitled Expedited Client Suspension Proceeding to include a cross-reference for clarification.

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 * Angela  Last Name * Dunn
Title * Principal Associate General Counsel
E-mail * angela.dunn@nasdaq.com
Telephone * (215) 496-5692  Fax

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.

Date 10/25/2016  Executive Vice President and General Counsel
By Edward S. Knight

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.
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”)\(^1\) and Rule 19b-4 thereunder,\(^2\) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend Rule 9400, entitled “Expedited Client Suspension Proceeding” to include a cross-reference for clarification.

   A notice of the proposed rule change for publication in the Federal Register is at Exhibit 1. The text of the proposed rule change is at 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 (the “Board”) on August 15, 2016. 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:

   Angela Saccomandi Dunn  
   Associate General Counsel  
   Nasdaq, Inc.  
   215-496-5692.

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

   a. **Purpose**

   The Exchange is filing this proposal to amend Rule 9400, entitled “Expedited Client Suspension Proceeding” to include a cross-reference Chapter III, Section 16, entitled “Disruptive Quoting and Trading Activity Prohibited” within Rule 9400. The Exchange filed a rule change to adopt an options rule, identical to Rule 2170, which relates to disruptive quoting and trading activity.\(^3\) In that rule change, it stated that “[t]he Exchange will initiate disciplinary action for violations of Chapter III, Section 16, pursuant to Rule 9400.”\(^4\) At that time, the Exchange inadvertently did not include the cross-references to Chapter III, Section 16 within Rule 9400. The Exchange proposes to add references to Chapter III, Section 16 within Rule 9400 for clarity. This rule change is non-controversial.

   **Background**

   The Exchange filed a rule change to adopt an options rule to clearly prohibit disruptive quoting and trading activity on the Exchange and to permit the Exchange to take prompt action to suspend members or their clients that violate such rule pursuant to Rule 9400.\(^5\) The Exchange had previously adopted Rule 9400 to set forth procedures for issuing suspension orders, immediately prohibiting a member from conducting continued

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\(^5\) See note 3.
disruptive quoting and trading activity on the Exchange.\footnote{See Securities and Exchange Release No. 77914 (May 25, 2016), 81 FR 35106 (June 1, 2016) (SR-BX-2016-028).} Rule 9400 provides the Exchange the authority to order a member to cease and desist from providing access to the Exchange to a client of the member that is conducting disruptive quoting and trading activity in violation of Rule 2170. The Exchange also previously adopted Rule 2400 to specifically define and prohibit disruptive equities quoting and trading activity on the Exchange.\footnote{See note 3.} Chapter III, Section 16 is identical to Rule 2400, however applicable to options. Similarly, Chapter III, Section 16 prohibits members from engaging in or facilitating disruptive options quoting and trading activity on the Exchange.

The Exchange proposes to simply add the cross-references for the options rules alongside the equity rule for clarity. This rule change is consistent with the intent of the rule proposal which adopted Chapter III, Section 16.\footnote{See note 3.}

\textbf{b. Statutory Basis}

The Exchange believes that its proposal is consistent with Section 6(b) of the Act\footnote{15 U.S.C. 78f(b).} in general, and furthers the objectives of Section 6(b)(5) of the Act\footnote{15 U.S.C. 78f(b)(5).} in particular, in that the rules of the Exchange are designed to prevent fraudulent and manipulative acts and practices, it is designed 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 by making clear
within Rule 9400 that violations of Chapter III, Section 16 are subject to disciplinary action pursuant to Rule 9400 as stated in the Exchange’s rule filing. This cross-reference will provide clarity to members and ease of reference to the corresponding options rule. The proposed rule change is non-controversial. The addition of the cross-reference is for clarity.

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 not necessary or appropriate in furtherance of the purposes of the Act. This non-controversial rule change will merely add the reference to the options rule next to the current reference for the equity rule to make clear, as noted in the rule changes, that violations of either rule relating to disruptive quoting and trading activity, will be disciplined pursuant to Rule 9400.

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)(iii) of the Act and Rule 19b-4(f)(6) thereunder in that it effects a change

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11 See note 4.


that: (i) does not 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. The Exchange believes that this rule proposal does not significantly affect the protection of investors or the public interest because the cross-reference will include the reference to the pertinent Options Rules which will be subject to the expedited disciplinary process in Rule 9400. The proposal makes this more explicit. The Exchange believes that this rule proposal does not impose any significant burden on competition because it will merely add the reference to the options rule next to the current reference for the equity rule to make clear, as noted in the rule changes, that violations of either rule relating to disruptive quoting and trading activity, will be disciplined pursuant to Rule 9400.

Furthermore, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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.
A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) so the Exchange may add the cross-reference within Rule 9400 and provide clarity to members and ease of reference to the corresponding options rule. A rule change to permit Rule 9400 to apply to violations of Chapter III, Section 16 was previously filed with the Commission.14

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

Not applicable.

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


5. Text of the proposed rule change.

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14 See note 4 above.
SELF-REGULATORY ORGANIZATIONS; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 9400, Entitled “Expedited Client Suspension Proceeding”

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”), 1 and Rule 19b-4 thereunder, 2 notice is hereby given that on October 25, 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 amend Rule 9400, entitled “Expedited Client Suspension Proceeding” to include a cross-reference for clarification.

The text of the proposed rule change is available on the Exchange’s Website at http://nasdaqbx.chwallstreet.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

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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 is filing this proposal to amend Rule 9400, entitled “Expedited
Client Suspension Proceeding” to include a cross-reference Chapter III, Section 16,
entitled “Disruptive Quoting and Trading Activity Prohibited” within Rule 9400. The
Exchange filed a rule change to adopt an options rule, identical to Rule 2170, which
relates to disruptive quoting and trading activity. In that rule change, it stated that “[t]he
Exchange will initiate disciplinary action for violations of Chapter III, Section 16,
pursuant to Rule 9400.” At that time, the Exchange inadvertently did not include the
cross-references to Chapter III, Section 16 within Rule 9400. The Exchange proposes to
add references to Chapter III, Section 16 within Rule 9400 for clarity. This rule change is
non-controversial.

Background

The Exchange filed a rule change to adopt an options rule to clearly prohibit
disruptive quoting and trading activity on the Exchange and to permit the Exchange to
take prompt action to suspend members or their clients that violate such rule pursuant to

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3 See Securities and Exchange Release No. 78107 (June 21, 2016), 81 FR 41619
(June 27, 2016) (SR-BX -2016-036).

4 See Securities and Exchange Release No. 78107 (June 21, 2016), 81 FR 41619,
41623 (June 27, 2016) (SR-BX -2016-036). Rule 9400 is located within the Code
of Procedure rules which apply to both equities and options violations.
Rule 9400. The Exchange had previously adopted Rule 9400 to set forth procedures for issuing suspension orders, immediately prohibiting a member from conducting continued disruptive quoting and trading activity on the Exchange. Rule 9400 provides the Exchange the authority to order a member to cease and desist from providing access to the Exchange to a client of the member that is conducting disruptive quoting and trading activity in violation of Rule 2170. The Exchange also previously adopted Rule 2400 to specifically define and prohibit disruptive equities quoting and trading activity on the Exchange. Chapter III, Section 16 is identical to Rule 2400, however applicable to options. Similarly, Chapter III, Section 16 prohibits members from engaging in or facilitating disruptive options quoting and trading activity on the Exchange.

The Exchange proposes to simply add the cross-references for the options rules alongside the equity rule for clarity. This rule change is consistent with the intent of the rule proposal which adopted Chapter III, Section 16.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act in particular, in that the rules of the Exchange are designed to prevent fraudulent and manipulative acts and

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5 See note 3.


7 See note 3.

8 See note 3.


practices, it is designed 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 by making clear within Rule 9400 that violations of Chapter III, Section 16 are subject to disciplinary action pursuant to Rule 9400 as stated in the Exchange’s rule filing.11 This cross-reference will provide clarity to members and ease of reference to the corresponding options rule. The proposed rule change is non-controversial. The addition of the cross-reference is for clarity.

B. **Self-Regulatory Organization’s Statement on Burden on Competition**

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. This non-controversial rule change will merely add the reference to the options rule next to the current reference for the equity rule to make clear, as noted in the rule changes, that violations of either rule relating to disruptive quoting and trading activity, will be disciplined pursuant to Rule 9400.

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,

11 See note 4.
or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act12 and subparagraph (f)(6) of Rule 19b-4 thereunder.13

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.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission’s Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2016-056 on the subject line.

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13 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.
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-2016-056. 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-2016-056 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.\textsuperscript{14}

Robert W. Errett  
Deputy Secretary

\textsuperscript{14} 17 CFR 200.30-3(a)(12).
New text is underlined.

NASDAQ BX Rules

Equity Rules

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9400. Expedited Client Suspension Proceeding

(a) Initiation of Proceeding

(1) Scope of Authority. With the prior written authorization of the Chief Regulatory Officer ("CRO") or such other senior officers as the CRO may designate, the BX Regulatory Department may initiate an expedited suspension proceeding with respect to alleged violations of Rule 2170 or Chapter III, Section 16 (Disruptive Quoting and Trading Activity Prohibited).

(2) Service of Notice. The Exchange shall initiate the proceeding by serving a notice on a Member or associated person of a Member (hereinafter "Respondent"). The Exchange shall serve the notice by personal service or overnight commercial courier. The notice shall be effective upon service.

(3) Content of Notice. The notice shall state whether the Exchange is requesting the Respondent to be required to take action or to refrain from taking action. The notice shall be accompanied by:

(A) a declaration of facts, signed by a person with knowledge of the facts contained therein, that specifies the acts that constitute the alleged violation; and

(B) a proposed order that contains the required elements of a suspension order (except the date and hour of the order's issuance), which are set forth in subparagraph (d)(2) of this Rule.

(b) Appointment of Hearing Officers and Hearing Panel

(1) As soon as practicable after the Exchange initiates a suspension proceeding, a Hearing Panel shall be assigned in accordance with paragraph (a) of Rule 9231(b).

(2) If at any time a Hearing Officer determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, or if a Party files a motion to disqualify a Hearing Officer, the recusal and disqualification proceeding shall be conducted in accordance with Rules 9233(a), except that:

(A) a motion seeking disqualification of a Hearing Officer must be filed no later than 5 days after the announcement of the Hearing Panel; and
(B) the Exchange may file a brief in opposition to the Respondent's motion no later than 5 days after service thereof.

c) Hearing

(1) *When Held.* The hearing shall be held not later than 15 days after service of the notice initiating the suspension proceeding, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. If a Hearing Officer is recused or disqualified, the hearing shall be held not later than five days after a replacement Hearing Officer is appointed.

(2) *Service of Notice of Hearing.* A notice of date, time, and place of the hearing shall be served on the Parties not later than seven days before the hearing, unless otherwise ordered by the Chairman of the Hearing Panel. Service shall be made by personal service or overnight commercial courier. The notice shall be effective upon service.

(3) *Authority of Hearing Officers.* A Hearing Officer shall have authority to do all things necessary and appropriate to discharge his or her duties as set forth in Rule 9235.

(4) *Witnesses.* A person who is subject to the jurisdiction of the Exchange shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter or a notary public.

(5) *Additional Information.* At any time during its consideration, the Hearing Panel may direct a Party to submit additional information. Any additional information submitted shall be provided to all Parties at least one day before the Hearing Panel renders its decision.

(6) *Transcript.* The hearing shall be recorded by a court reporter and a written transcript thereof shall be prepared. A transcript of the hearing shall be available to the Parties for purchase from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Hearing Panel within a reasonable time determined by the Hearing Panel. Upon notice to all the Parties to the proceeding, the Hearing Panel may order corrections to the transcript as requested or sua sponte.

(7) *Record and Evidence Not Admitted.* The record shall consist of the notice initiating the proceeding, the declaration, and the proposed order described in subparagraph (a)(3) above; the transcript of the hearing; all evidence considered by the Hearing Panel; and any other document or item accepted into the record by the Hearing Panel. BX Regulation shall be the custodian of the record. Proffered evidence that is not accepted into the record by the Hearing Panel shall be retained by the custodian of the record until the date when the Exchange's decision becomes final or, if applicable, upon the conclusion of any review by the SEC or the federal courts.

(8) *Failure to Appear at a Hearing.* If a Respondent fails to appear at a hearing for which it
has notice, the allegations in the notice and accompanying declaration may be deemed admitted, and the Hearing Panel may issue a suspension order without further proceedings. If the Exchange fails to appear at a hearing for which it has notice, the Hearing Panel may order that the suspension proceeding be dismissed.

(d) Issuance of Suspension Order by Hearing Panel

(1) Basis for Issuance. The Hearing Panel shall issue a written decision stating whether a suspension order shall be imposed. The Hearing Panel shall issue the decision not later than ten days after receipt of the hearing transcript, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. A suspension order shall be imposed if the Hearing Panel finds:

(A) by a preponderance of the evidence that the alleged violation specified in the notice has occurred; and

(B) that the violative conduct or continuation thereof is likely to result in significant market disruption or other significant harm to investors.

(2) Content, Scope, and Form of Order. A suspension order shall:

(A) be limited to: (i) ordering a Respondent to cease and desist from violating Rule 2170 or Chapter III, Section 16, and/or (ii) ordering a Respondent to cease and desist from providing access to the Exchange to a client of Respondent that is causing violations of Rule 2170 or Chapter III, Section 16;

(B) set forth the alleged violation and the significant market disruption or other significant harm to investors that is likely to result without the issuance of an order;

(C) describe in reasonable detail the act or acts the Respondent is to take or refrain from taking and to suspend the Respondent unless and until such action is taken or refrained from; and

(D) include the date and hour of its issuance.

(3) Duration of Order. A suspension order shall remain effective and enforceable unless modified, set aside, limited, or revoked pursuant to paragraph (e), below.

(4) Service. The Hearing Panel's decision and any suspension order shall be served by personal service or overnight commercial courier. The suspension order shall be effective upon service.

(e) Review by Hearing Panel. At any time after the Respondent is served with a suspension order, a Party may apply to the Hearing Panel to have the order modified, set aside, limited, or revoked. The application shall set forth with specificity the facts that support the request. The Hearing Panel shall respond to the request in writing within ten days after receipt of the request,
unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. The Hearing Panel's response shall be served on the Respondent via personal service or overnight commercial courier. The filing of an application under this Rule shall not stay the effectiveness of the suspension order.

(f) Application to SEC for Review. Sanctions imposed pursuant to this Rule constitute final and immediately effective disciplinary sanctions imposed by the Exchange. The right to have any action under this Rule reviewed by the SEC is governed by Section 19 of the Exchange Act. The filing of an application for review shall not stay the effectiveness of a suspension order unless the SEC otherwise orders.

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