

market makers that meet heightened quoting obligations.<sup>59</sup>

Finally, a commenter asserts that due to the implementation of the LTAD through software, rather than hardware, the indeterminacy of the delay may result in the LTAD producing delays inconsistent with the Commission's "speed bump guidelines."<sup>60</sup> In response, the Exchange states that system messaging delays and variable message queuing are irrelevant, stating that they exist today in every market that utilizes a continuous limit order book to rank and match orders and are a function of finite network and processing resources.<sup>61</sup> The commenter responds in turn that implementing the LTAD through software could create opportunities for delays and queuing, and that the Exchange should outline how it plans to surveil for and remediate any implementation issues.<sup>62</sup>

#### IV. Proceedings To Determine Whether To Approve or Disapprove SR-CHX-2016-16 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act<sup>63</sup> to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as stated below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,<sup>64</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Exchange Act, which requires, among other things, that the rules of a national securities exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers<sup>65</sup> and Section 6(b)(8) of the Exchange Act, which requires that the rules of a national securities exchange not impose

any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

#### IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(5), 6(b)(8), or any other provision of the Exchange Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>66</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by January 17, 2017. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by January 31, 2017. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.

Comments may be submitted by any of the following methods:

##### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CHX-2016-16 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Numbers SR-CHX-2016-16. This file

<sup>66</sup> Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Public Law 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet 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 Web site 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 these filings 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-CHX-2016-16 and should be submitted on or before January 17, 2017]. Rebuttal comments should be submitted by January 31, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>67</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

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BILLING CODE 8011-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79609; File No. SR-BX-2016-072]

#### Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Implementation of the Limit Order Protection

December 20, 2016.

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>

<sup>67</sup> 17 CFR 200.30-3(a)(57).

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

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

<sup>59</sup> See CTC Letter, *supra* note 6, at 6.

<sup>60</sup> See Leuchtkafer Letter 1, *supra* note 6, at 1.

<sup>61</sup> See CHX Response, *supra* note 6, at 15.

<sup>62</sup> See Leuchtkafer Letter 2, *supra* note 6, at 2.

<sup>63</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>64</sup> *Id.*

<sup>65</sup> 15 U.S.C. 78f(b)(5).

notice is hereby given that on December 16, 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 delay the implementation of the Limit Order Protection or “LOP” for members accessing the BX Market Center.

### **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 purpose of the proposal is to delay the implementation of the Exchange’s mechanism to protect against erroneous Limit Orders, which are entered into BX Market Center, at Rule 4757(d).<sup>3</sup> The Exchange received approval to implement this mechanism on August 24, 2016.<sup>4</sup> Within that rule change, the Exchanges proposed to implement LOP within ninety days of the approval of the proposal, which was November 22, 2016.<sup>5</sup> The Exchange subsequently filed a modification to the original proposal and delayed the implementation an additional sixty (60)

days from the original timeframe in order to implement the LOP, which was January 21, 2017.<sup>6</sup>

At this time the Exchange proposes to delay the implementation from January 21, 2017 until a date no later than March 31, 2017 in order to allow additional time to complete testing. The Exchange will announce the specific date in advance through an Equities Trader Alert. For more information regarding LOP see the previous LOP rule changes.<sup>7</sup>

##### **2. Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>9</sup> in particular, in that 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 permitting the Exchange additional time to implement the LOP in accordance with the Exchange’s processes. The Exchange’s proposal does not significantly affect the protection of investors or the public interest because this proposal does not modify the manner in which LOP operates, only the implementation date is impacted. The Exchange will provide advance notice to members with respect to the new date.

#### *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. The Exchange’s proposal does not impose any significant burden on competition because LOP will apply to all BX market participants in a uniform manner once implemented.

#### *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>10</sup> and subparagraph (f)(6) of Rule 19b–4 thereunder.<sup>11</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.

### **IV. Solicitation of Comments**

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

#### *Electronic Comments*

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–BX–2016–072 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–2016–072. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (<http://www.sec.gov/>

<sup>3</sup> See Securities Exchange Act Release No. 78246 (August 24, 2016), 81 FR 59672 (August 30, 2016) (SR–BX–2016–037). See also Securities Exchange Act Release No. 79329 (November 16, 2016), 81 FR 83902 (November 22, 2016) (SR–BX–2016–058).

<sup>4</sup> See Securities Exchange Act Release No. 78246 (August 24, 2016), 81 FR 59672 (August 30, 2016) (SR–BX–2016–037) (Notice of Filing of Amendments No. 1 and Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments No. 1, To Adopt Limit Order Protections).

<sup>5</sup> *Id.* at 45321.

<sup>6</sup> See Securities Exchange Act Release No. 79329 (November 16, 2016), 81 FR 83902 (November 22, 2016) (SR–BX–2016–058) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Limit Order Protection).

<sup>7</sup> See note 3 above.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>11</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.

*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 Web site 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-2016-072 and should be submitted on or before January 17, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79616; File No. SR-NASDAQ-2016-171]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 4770 (Compliance With Regulation NMS Plan To Implement a Tick Size Pilot)

December 20, 2016.

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 December 13, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II 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 4770 (Compliance with Regulation NMS Plan to Implement a Tick Size Pilot) relating to the handling to certain Order Types in Test Group Three Pilot Securities in connection with the Regulation NMS Plan to Implement a Tick Size Pilot Program ("Plan" or "Pilot").<sup>3</sup> Relatedly, Nasdaq also proposes to delete Commentary .14, which addresses the current handling of those Order Types. Finally, Nasdaq proposes to add language to Rule 4770(d)(1) to clarify the treatment of orders in a Test Group Three Security entered through the RASH, QIX or FIX protocols.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaq.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

On September 7, 2016, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change ("Proposal") to adopt paragraph (d) and Commentary .12 to Exchange Rule 4770 to describe changes to system functionality necessary to implement the Plan. The Exchange also proposed amendments to Rule 4770(a) and (c) to clarify how the Trade-at exception may

be satisfied. The SEC published the Proposal in the **Federal Register** for notice and comment on September 20, 2016.<sup>4</sup> Nasdaq subsequently filed three Partial Amendments to clarify aspects of the Proposal. The Commission approved the Proposal, as amended, on October 7, 2016.<sup>5</sup>

In SR-NASDAQ-2016-126, Nasdaq had initially proposed a re-pricing functionality for Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through the OUCH and FLITE protocols in Test Group Three Pilot securities.<sup>6</sup> Nasdaq subsequently determined that it would not offer this re-pricing functionality for Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through the OUCH and FLITE protocols in Test Group Three Pilot securities. As part of Partial Amendment No. 2 to SR-NASDAQ-2016-126, Nasdaq proposed to delete the relevant language from Rule 4770 related to this re-pricing functionality.

In that amendment, Nasdaq noted that this change would only impact the treatment of Price to Comply Orders, Non-Displayed Orders, and Post-Only orders that are submitted through the OUCH and FLITE protocols in Test Group Three Pilot Securities, as these types of Orders that are currently submitted to Nasdaq through the RASH, QIX or FIX protocols are already subject to this re-pricing functionality and will remain subject to this functionality under the Pilot.

In the Amendment, Nasdaq further noted that its systems are currently programmed so that Price to Comply Orders, Non-Displayed Orders and Post-Only Orders entered through the OUCH and FLITE protocols in Test Group Three Pilot Securities may be adjusted repeatedly to reflect changes to the NBBO and/or the best price on the

<sup>4</sup> See Securities Exchange Act Release No. 78837 (September 14, 2016), 81 FR 64544 (September 20, 2016) (Notice of filing of SR-NASDAQ-2016-126).

<sup>5</sup> See Securities Exchange Act Release No. 79075 (October 7, 2016) (Order approving SR-NASDAQ-2016-126).

<sup>6</sup> As originally proposed, Rule 4770(d)(2) stated that Price to Comply Orders in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO until such time as the Price to Comply Order is able to be ranked and displayed at its original entered limit price. Rule 4770(d)(3) stated that, if market conditions allow, a Non-Displayed Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO up (down) to the Order's limit price. Rule 4770(d)(4) stated that, if market conditions allow, the Post-Only Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO or the best price on the Nasdaq Book, as applicable until such time as the Post-Only Order is able to be ranked and displayed at its original entered limit price.

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

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

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

<sup>3</sup> See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) ("Approval Order").