

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

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

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

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

Proposed Rule Change to Amend the Equity Rule 6950 Series Concerning the Order Audit Trail System to Make Conforming and Technical Changes

**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="09/12/2018"/>	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 \***

Add Remove View

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 amend the Equity Rule 6950 Series concerning the Order Audit Trail System to make conforming and technical changes.

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 September 19, 2017. 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

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

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

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

a. Purpose

The Exchange is proposing to amend the Equity Rule 6950 Series<sup>3</sup> concerning the Order Audit Trail System to: (1) renumber the whole Equity Rule 6950 Series to conform it to the numbering convention used by the Nasdaq Stock Market LLC ("Nasdaq") and FINRA; (2) amend Equity Rule 7410A to expand two exemptions and to make technical changes to text under the Rule; (3) delete inapplicable text from Equity Rules 7430A, 7440A and 7450A and make other conforming changes to these Rules; (4) reorganize rule text under Equity Rule 7450A; (5) delete current Equity Rules 6957 and 6958.

The Exchange's Equity Rule 6950 Series imposes an obligation on Exchange members to record in electronic form and report to FINRA on a daily basis certain information with respect to orders originated, received, transmitted, modified, canceled, or executed by members in Nasdaq- and Exchange-listed stocks. FINRA's Order Audit Trail System ("OATS") captures this order information and integrates it with quote and transaction information to create a time-sequenced record of orders, quotes, and transactions. This information is used by FINRA staff to conduct surveillance and investigations of members for potential violation of Exchange rules and federal securities laws.

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<sup>3</sup> The term "Equity Rules" means the numbered rules set forth in the Exchange Manual denominated as the 0100, 1000, 2000, 3000, 4000, 5000, 6000, 7000, 8000, 9000, 10000, and 11000 Series Rules. See Equity Rule 0120(p). The Exchange is proposing to make it clear in the proposed rules that references to rules of the Exchange are "Equity Rules."

The Exchange adopted the Equity Rule 6950 Series to copy Nasdaq and FINRA OATS rules, where appropriate. As a general principle, the Exchange endeavors to keep its rules worded and structured as closely as possible to the FINRA rules on which they are based, including FINRA's OATS rules under its Rule 7000 Series. In instances where the FINRA rules are inapplicable to the Exchange, such as FINRA Rule 7410(o)(2), which concerns an exception to the definition of a Reporting Member relating to members operating on equities floors, the Exchange has not copied those FINRA rules. Generally, the Exchange also seeks to keep the Equity Rule 6950 Series consistent with Nasdaq's Rule 7400A Series, which should also be materially identical to the related rules of the Exchange. The proposed changes will harmonize Exchange rules with analogous Nasdaq and FINRA rules, which have been amended since the Exchange first adopted its rules.

#### First Change

The Exchange is proposing to renumber the Equity Rule 6950 Series to a new Equity Rule 7000A Series, which is identical to how Nasdaq presents its OATS rules. This will allow the Exchange's OATS rules to follow the numbering convention used by Nasdaq and FINRA. Like Nasdaq, the Exchange is proposing to add an "A" to each of the rules so that they do not conflict with the existing Equity Rule 7000 Series within the Exchange's rule book yet also follow FINRA's numbering convention. FINRA's OATS rules are under the FINRA Rule 7400 Series and individual rule numbers align with those of Nasdaq's OATS rules and those proposed by the Exchange. As part of this change, the Exchange is also updating references to rules in the Equity Rule 6950 Series to the renumbered rules in the Equity Rule 7000A Series. Relatedly, the Exchange is correcting

citations in Equity Rules 7430A, 7440A, and 7450A that currently reference NASD rule that have been renumbered as FINRA rules.

### Second Change

The Exchange is amending Equity Rule 7410A to conform it to the rules of Nasdaq. The Exchange is proposing to add new text as paragraph (a) noting that terms used in the Rule have the same meanings as are ascribed to those terms in the Exchange's By-Laws and in its other rules, unless otherwise noted, which is identical to Nasdaq's Rule 7410A. Consequently, the Exchange is renumbering current paragraphs (a) – (n) as paragraphs (b) – (o). The Exchange is also amending Equity Rule 7410A to make technical changes that harmonize the definitions of “Electronic Communication Network,” “Index Arbitrage Trade,” “Intermarket Sweep Order,” and “Program Trade” with the definitions of those terms in the Nasdaq Rules.<sup>4</sup>

The Exchange is also proposing to adopt the same limited exemption from OATS order data recordation requirements provided under Nasdaq Rule 7410A(k) for BX members that are registered market makers in standardized options on any market. Equity Rule 7410A(j) defines the term “Order” and provides a limited exemption from the definition for a proprietary transaction originated by a trading desk in the ordinary course of a member's market making activities. The Exchange is proposing to adopt a second limited exemption currently available under Nasdaq's analogous definition of

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<sup>4</sup> The Exchange is not adopting the definition of “NMS Stock” found under Nasdaq Rule 7410A(j). The term is not used in the BX OATS rules. In addition, the term is not used in the Nasdaq OATS rules. The term is used in FINRA Rule 7410(k) defining “Order Audit Trail System,” whereas BX and Nasdaq instead reference Exchange and Nasdaq listed securities under Equity Rule 7410A(k) and Nasdaq listed securities under Nasdaq Rule 7410A(l).

“Order.”<sup>5</sup> That limited exemption excludes from the definition of an “Order” a bona fide hedge transaction involving a Nasdaq-listed equity security originated by a trading desk in the ordinary course of the member’s options market making activities.<sup>6</sup> As noted by Nasdaq in adopting the exemption, OATS was designed to provide an accurate, time-sequenced record of orders and transactions, beginning with the receipt of an equity order at the first point of contact between the broker-dealer and the customer or counterparty and further documenting the life of the equity order through the process of execution.<sup>7</sup> The proposed rule change does not impact the customer protection orientation of OATS since, by definition, bona fide hedging transactions in equity securities that are undertaken by options market makers do not involve customer orders in those equity securities. Rather, bona fide hedging transactions in equity securities are undertaken by an options market maker to hedge against the firm risk that it creates through its conduct as a registered options market maker. Accordingly, submitting bona fide hedging transactions to OATS recording requirements provides no customer protection or equivalent regulatory benefit. It is also very expensive for firms that are not currently FINRA members or that do not currently trade Exchange or Nasdaq equities to develop and maintain the compliance systems and compliance staff required to continuously

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<sup>5</sup> See Nasdaq Rule 7410A(k).

<sup>6</sup> The Exchange notes that Nasdaq capitalizes the term “Bona Fide Hedge Transaction” in Nasdaq Rule 7410A(k), although the term is not defined in Nasdaq’s rules. The Exchange believes that capitalizing the term was an error and is therefore not capitalizing the term in Equity Rule 7410A(k).

<sup>7</sup> See Securities Exchange Act Release No. 59369 (February 6, 2009), 74 FR 7278 (February 13, 2009) (SR-NASDAQ-2008-097).

monitor the daily transmission of OATS data. For these reasons, the Exchange is proposing to adopt such an exemption, available to its options market makers.

The Exchange is proposing to amend Equity Rule 7410A(n)(1) to harmonize the rule with FINRA Rule 7410(o)(1)(A) and Nasdaq Rule 7410A(o)(1)(A). Equity Rule 7410A(n) defines a “Reporting Member” as a member that receives or originates an order and has an obligation to record and report information under Equity Rules 7440A and 7450A. The Rule also provides an exception to the general definition of a “Reporting Member” if the member meets four conditions.<sup>8</sup> The first condition in subparagraph (n)(1), which is the only condition at issue in this proposal, is that currently the member engages in a non-discretionary order routing process, pursuant to which it immediately routes, by electronic or other means, all of its orders to a single receiving Reporting Member. On May 12, 2014, FINRA amended FINRA Rule 7410(o)(1)(A) to allow a member to satisfy this condition by permitting a member to alternatively route its orders to two receiving Reporting Members, if two related requirements were met.<sup>9</sup> First, the orders must be routed by the member to each receiving Reporting Member on a pre-determined schedule approved by FINRA. Second, the FINRA member’s orders must be routed to two receiving Reporting Members pursuant to the schedule for a time period not to exceed one year. Under FINRA’s rule as amended, FINRA members may continue to rely on the exception from the definition of Reporting Member if it routes all of its orders to a single Reporting Member, provided the other conditions of the exception are met. Consequently, BX is also keeping its existing single receiving Reporting Member

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<sup>8</sup> The four conditions are provided under Equity Rules 7410A(n)(1)-(4).

<sup>9</sup> See Securities Exchange Act Release No. 72191 (May 20, 2014), 79 FR 30219 (May 27, 2014) (SR-FINRA-2014-024).



exception and adding a second exception for two receiving Reporting Members. FINRA noted in adopting the change that the rule was intended to accommodate introducing firms that transition to a different clearing firm over time and, during the transition, route their orders to two different clearing firms, both of which report the introducing firm's information to OATS during the transition time. Nasdaq recently amended its rule to incorporate this change.<sup>10</sup> The Exchange believes that this additional limited exception is appropriate for its members, which likewise may encounter a transition to a different clearing firm whereby a member would no longer be eligible for the exception to the definition of Reporting Member. Accordingly, the Exchange is proposing to adopt the FINRA rule text under Equity Rule 7410A(n)(1)(B).

#### Third Change

The Exchange is proposing to amend Equity Rules 7430A(a), 7440A(a) and 7450A(a) to delete text concerning FINRA's process of transitioning certain NASD rules into a new FINRA rulebook because this transition period has ended and the text is obsolete. The Exchange is also proposing to make technical changes that update citations to the appropriate FINRA rules under Equity Rules 7430A(a), 7440A(a) and 7450A(a).<sup>11</sup> Consistent with Nasdaq Rule 7440A(d)(2), the Exchange is proposing to add new Equity Rule 7440A(d)(2), which provides that references to FINRA Rules 5320, 7440, and 7450 shall be construed as references to Equity Rules IM-2110-2, 7440A, and 7450A,

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<sup>10</sup> See Securities Exchange Act Release No. 83115 (April 26, 2018), 83 FR 19384 (May 2, 2018) (SR-NASDAQ-2018-030).

<sup>11</sup> The Exchange notes that Rule 7450A(b) requires both Proprietary Trading Firms as well as their associated persons to comply with FINRA Rule 7450 in limited circumstances, whereas Nasdaq's Rule 7450A only requires compliance by Proprietary Trading Firms. The Exchange believes that this is an omission in the Nasdaq rule and is accordingly not adjusting the Exchange rule.

respectively. Last, the Exchange is making minor clarifying changes under Equity Rules 7440A(d)(1) and (2) to make it clear that certain rules noted thereunder are references to FINRA rules.

#### Fourth Change

The Exchange is proposing to delete paragraph (c) from current Equity Rule 6954 (which will be renumbered Equity Rule 7440A and paragraph (d) from current Equity Rule 6955 (which will be renumbered Equity Rule 7450A), and move the text to Equity Rules 7440A(a) and 7450A(a), respectively, with minor technical differences to correct citations.<sup>12</sup> The Rules explain that the Exchange and FINRA are parties to the FINRA Regulatory Contract, pursuant to which FINRA has agreed to perform certain functions on behalf of the Exchange. The Rules also note that members are complying with current Equity Rules 6954 and 6955 by complying with NASD Rules 6954 and 6955, respectively. Nasdaq places the same text as current Equity Rules 6954(d) and 6955(d) under Nasdaq Rules 7440A(a) and 7450A(a), respectively. Thus, the Exchange is moving the text, as amended, under Equity Rules 7440A(a) and 7450A(a). As a consequence, the Exchange is changing the lettering of paragraphs (d) and (e) of current Equity Rule 6954 to paragraphs (c) and (d), respectively, of Equity Rule 7440A, and the lettering of paragraph (e) of current Equity Rule 6955 to paragraph (d) of Equity Rule 7450A.

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<sup>12</sup> The Exchange is not including text from current Equity Rules 6954(c) and 6955(d), which notes that members are complying with these rules by complying with the related FINRA rules, in Equity Rules 7440A(a) and 7450A(a). The Exchange believes these sentences are duplicative of the first sentence of Equity Rules 7440A(a) and 7450A(a). The Exchange notes that Nasdaq's Rules 7440A(a) and 7450A(a) include this duplicative text.

### Fifth Change

The Exchange is proposing to delete current Equity Rules 6957 and 6958. Equity Rule 6957 concerns compliance with NASD Rule 6954. NASD Rule 6954 provided the effective dates of requirements of the Order Audit Trail System, all of which have passed. FINRA has deleted NASD Rule 6954 and consequently, the Exchange is proposing to delete Equity Rule 6957.

The Exchange is proposing to delete current Equity Rule 6958, which will be renumbered Equity Rule 7470A and held in reserve. Current Equity Rule 6958 provided an exemption from the order recording and data transmission requirements of current Equity Rules 6954 and 6955, which are OATS rules applicable to manual orders. The exemption has not been requested by any Exchange member to date and the Exchange does not believe that Exchange members are likely to need the exemption, since the vast majority of such members to which the rule applies are electronic proprietary trading firms that would not qualify for the exemption.<sup>13</sup> Thus, the Exchange is proposing to eliminate the rule text under Equity Rule 6958 from its rule book, renumber the rule to Equity Rule 7470A, and hold the rule in reserve.

#### b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>15</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove

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<sup>13</sup> The Exchange notes that Nasdaq does not have an analogous rule, having eliminated similar text recently for the same reasons. See note 10, supra.

<sup>14</sup> 15 U.S.C. 78f(b).

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

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 harmonizing the Exchange's OATS rules with those of FINRA, on which they are based, and with those of Nasdaq, which they should largely match. Consequently, the proposed change will conform Exchange Rules to changes made to corresponding FINRA and Nasdaq rules, thus promoting consistent regulatory standards with respect to rules that FINRA enforces pursuant to its Regulatory Services Agreements with the Exchange and Nasdaq. With respect to the proposed amendment to Equity Rule 7410A(n)(1), the exemption will provide Exchange members with the same flexibility to transition to a new clearing firm that both Nasdaq and FINRA members currently enjoy. The rule is intended to accommodate introducing firms that transition to a different clearing firm over time and, during the transition, route their orders to two different clearing firms, both of which report the introducing firm's information to OATS during the transition time. Adopting the new and amended rule text under Equity Rule 7410A will also align the Exchange rulebook with Nasdaq's and FINRA's, thereby reducing complexity from FINRA's work under a regulatory services agreement with the Exchange.

The Exchange believes that adopting the new limited exception to the definition of "Order" is consistent with the Act because it provides a very narrow exemption from reporting transactions that are done to manage risk and facilitate options market making. Bona fide hedging transactions in equity securities that are undertaken by options market makers do not involve customer orders in those equity securities and thus do not implicate customer protection issues. Moreover, information regarding bona fide hedging transactions retained by a registered BX Options Market market maker is

otherwise available to FINRA and BX Regulation through the Exchange's electronic delivery systems, upon request. This information includes trade reporting data, including order time and sales data captured by the Exchange system.

With respect to the proposed technical corrections to the rules, the Exchange believes that these changes are consistent with the Act because they will prevent investor confusion that may be caused by including in the Rules incorrect rule citations, defunct rule text and expired exemptions.

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. The proposed rule change align the Exchange's rules with those of Nasdaq and FINRA, which will assist FINRA in its oversight work done pursuant to a regulatory services agreement. The proposed changes also provide uniform standards with which market participants must comply. Consequently, the Exchange does not believe that the proposed changes implicate competition at all.

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)<sup>16</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>17</sup> in that it effects a change 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 the proposal promotes the protection of investors as it will harmonize the Exchange's rules concerning OATS with those of Nasdaq and FINRA, which will simplify the oversight process conducted by FINRA pursuant to a Regulatory Services Agreement with the Exchange. Moreover, because the proposed changes make technical corrections to the Rules and align the Exchange's rules with those of Nasdaq and FINRA, which will assist FINRA in its oversight work done pursuant to a regulatory services agreement with the Exchange, the Exchange does not believe that the proposed changes implicate competition at all.

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>16</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

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

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

Based on the Nasdaq Rule 7000A Series and FINRA Rule 7000 Series, as described above.

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.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-BX-2018-045)

September \_\_, 2018

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Equity Rule 6950 Series Concerning the Order Audit Trail System to Make Conforming and Technical Changes

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 September 12, 2018, 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 the Rule 6950 Series concerning the Order Audit Trail System to make conforming and technical changes.

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

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

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



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 proposing to amend the Equity Rule 6950 Series<sup>3</sup> concerning the Order Audit Trail System to: (1) renumber the whole Equity Rule 6950 Series to conform it to the numbering convention used by the Nasdaq Stock Market LLC (“Nasdaq”) and FINRA; (2) amend Equity Rule 7410A to expand two exemptions and to make technical changes to text under the Rule; (3) delete inapplicable text from Equity Rules 7430A, 7440A and 7450A and make other conforming changes to these Rules; (4) reorganize rule text under Equity Rule 7450A; (5) delete current Equity Rules 6957 and 6958.

The Exchange's Equity Rule 6950 Series imposes an obligation on Exchange members to record in electronic form and report to FINRA on a daily basis certain information with respect to orders originated, received, transmitted, modified, canceled, or executed by members in Nasdaq- and Exchange-listed stocks. FINRA's Order Audit Trail System (“OATS”) captures this order information and integrates it with quote and transaction information to create a time-sequenced record of orders, quotes, and transactions. This information is used by FINRA staff to conduct surveillance and

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<sup>3</sup> The term “Equity Rules” means the numbered rules set forth in the Exchange Manual denominated as the 0100, 1000, 2000, 3000, 4000, 5000, 6000, 7000, 8000, 9000, 10000, and 11000 Series Rules. See Equity Rule 0120(p). The Exchange is proposing to make it clear in the proposed rules that references to rules of the Exchange are “Equity Rules.”

investigations of members for potential violation of Exchange rules and federal securities laws.

The Exchange adopted the Equity Rule 6950 Series to copy Nasdaq and FINRA OATS rules, where appropriate. As a general principle, the Exchange endeavors to keep its rules worded and structured as closely as possible to the FINRA rules on which they are based, including FINRA's OATS rules under its Rule 7000 Series. In instances where the FINRA rules are inapplicable to the Exchange, such as FINRA Rule 7410(o)(2), which concerns an exception to the definition of a Reporting Member relating to members operating on equities floors, the Exchange has not copied those FINRA rules. Generally, the Exchange also seeks to keep the Equity Rule 6950 Series consistent with Nasdaq's Rule 7400A Series, which should also be materially identical to the related rules of the Exchange. The proposed changes will harmonize Exchange rules with analogous Nasdaq and FINRA rules, which have been amended since the Exchange first adopted its rules.

#### First Change

The Exchange is proposing to renumber the Equity Rule 6950 Series to a new Equity Rule 7000A Series, which is identical to how Nasdaq presents its OATS rules. This will allow the Exchange's OATS rules to follow the numbering convention used by Nasdaq and FINRA. Like Nasdaq, the Exchange is proposing to add an "A" to each of the rules so that they do not conflict with the existing Equity Rule 7000 Series within the Exchange's rule book yet also follow FINRA's numbering convention. FINRA's OATS rules are under the FINRA Rule 7400 Series and individual rule numbers align with those of Nasdaq's OATS rules and those proposed by the Exchange. As part of this change, the Exchange is also updating references to rules in the Equity Rule 6950 Series to the

renumbered rules in the Equity Rule 7000A Series. Relatedly, the Exchange is correcting citations in Equity Rules 7430A, 7440A, and 7450A that currently reference NASD rule that have been renumbered as FINRA rules.

### Second Change

The Exchange is amending Equity Rule 7410A to conform it to the rules of Nasdaq. The Exchange is proposing to add new text as paragraph (a) noting that terms used in the Rule have the same meanings as are ascribed to those terms in the Exchange's By-Laws and in its other rules, unless otherwise noted, which is identical to Nasdaq's Rule 7410A. Consequently, the Exchange is renumbering current paragraphs (a) – (n) as paragraphs (b) – (o). The Exchange is also amending Equity Rule 7410A to make technical changes that harmonize the definitions of “Electronic Communication Network,” “Index Arbitrage Trade,” “Intermarket Sweep Order,” and “Program Trade” with the definitions of those terms in the Nasdaq Rules.<sup>4</sup>

The Exchange is also proposing to adopt the same limited exemption from OATS order data recordation requirements provided under Nasdaq Rule 7410A(k) for BX members that are registered market makers in standardized options on any market. Equity Rule 7410A(j) defines the term “Order” and provides a limited exemption from the definition for a proprietary transaction originated by a trading desk in the ordinary course of a member's market making activities. The Exchange is proposing to adopt a second limited exemption currently available under Nasdaq's analogous definition of

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<sup>4</sup> The Exchange is not adopting the definition of “NMS Stock” found under Nasdaq Rule 7410A(j). The term is not used in the BX OATS rules. In addition, the term is not used in the Nasdaq OATS rules. The term is used in FINRA Rule 7410(k) defining “Order Audit Trail System,” whereas BX and Nasdaq instead reference Exchange and Nasdaq listed securities under Equity Rule 7410A(k) and Nasdaq listed securities under Nasdaq Rule 7410A(l).

“Order.”<sup>5</sup> That limited exemption excludes from the definition of an “Order” a bona fide hedge transaction involving a Nasdaq-listed equity security originated by a trading desk in the ordinary course of the member’s options market making activities.<sup>6</sup> As noted by Nasdaq in adopting the exemption, OATS was designed to provide an accurate, time-sequenced record of orders and transactions, beginning with the receipt of an equity order at the first point of contact between the broker-dealer and the customer or counterparty and further documenting the life of the equity order through the process of execution.<sup>7</sup> The proposed rule change does not impact the customer protection orientation of OATS since, by definition, bona fide hedging transactions in equity securities that are undertaken by options market makers do not involve customer orders in those equity securities. Rather, bona fide hedging transactions in equity securities are undertaken by an options market maker to hedge against the firm risk that it creates through its conduct as a registered options market maker. Accordingly, submitting bona fide hedging transactions to OATS recording requirements provides no customer protection or equivalent regulatory benefit. It is also very expensive for firms that are not currently FINRA members or that do not currently trade Exchange or Nasdaq equities to develop and maintain the compliance systems and compliance staff required to continuously

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<sup>5</sup> See Nasdaq Rule 7410A(k).

<sup>6</sup> The Exchange notes that Nasdaq capitalizes the term “Bona Fide Hedge Transaction” in Nasdaq Rule 7410A(k), although the term is not defined in Nasdaq’s rules. The Exchange believes that capitalizing the term was an error and is therefore not capitalizing the term in Equity Rule 7410A(k).

<sup>7</sup> See Securities Exchange Act Release No. 59369 (February 6, 2009), 74 FR 7278 (February 13, 2009) (SR-NASDAQ-2008-097).

monitor the daily transmission of OATS data. For these reasons, the Exchange is proposing to adopt such an exemption, available to its options market makers.

The Exchange is proposing to amend Equity Rule 7410A(n)(1) to harmonize the rule with FINRA Rule 7410(o)(1)(A) and Nasdaq Rule 7410A(o)(1)(A). Equity Rule 7410A(n) defines a “Reporting Member” as a member that receives or originates an order and has an obligation to record and report information under Equity Rules 7440A and 7450A. The Rule also provides an exception to the general definition of a “Reporting Member” if the member meets four conditions.<sup>8</sup> The first condition in subparagraph (n)(1), which is the only condition at issue in this proposal, is that currently the member engages in a non-discretionary order routing process, pursuant to which it immediately routes, by electronic or other means, all of its orders to a single receiving Reporting Member. On May 12, 2014, FINRA amended FINRA Rule 7410(o)(1)(A) to allow a member to satisfy this condition by permitting a member to alternatively route its orders to two receiving Reporting Members, if two related requirements were met.<sup>9</sup> First, the orders must be routed by the member to each receiving Reporting Member on a pre-determined schedule approved by FINRA. Second, the FINRA member’s orders must be routed to two receiving Reporting Members pursuant to the schedule for a time period not to exceed one year. Under FINRA’s rule as amended, FINRA members may continue to rely on the exception from the definition of Reporting Member if it routes all of its orders to a single Reporting Member, provided the other conditions of the exception are met. Consequently, BX is also keeping its existing single receiving Reporting Member

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<sup>8</sup> The four conditions are provided under Equity Rules 7410A(n)(1)-(4).

<sup>9</sup> See Securities Exchange Act Release No. 72191 (May 20, 2014), 79 FR 30219 (May 27, 2014) (SR-FINRA-2014-024).

exception and adding a second exception for two receiving Reporting Members. FINRA noted in adopting the change that the rule was intended to accommodate introducing firms that transition to a different clearing firm over time and, during the transition, route their orders to two different clearing firms, both of which report the introducing firm's information to OATS during the transition time. Nasdaq recently amended its rule to incorporate this change.<sup>10</sup> The Exchange believes that this additional limited exception is appropriate for its members, which likewise may encounter a transition to a different clearing firm whereby a member would no longer be eligible for the exception to the definition of Reporting Member. Accordingly, the Exchange is proposing to adopt the FINRA rule text under Equity Rule 7410A(n)(1)(B).

#### Third Change

The Exchange is proposing to amend Equity Rules 7430A(a), 7440A(a) and 7450A(a) to delete text concerning FINRA's process of transitioning certain NASD rules into a new FINRA rulebook because this transition period has ended and the text is obsolete. The Exchange is also proposing to make technical changes that update citations to the appropriate FINRA rules under Equity Rules 7430A(a), 7440A(a) and 7450A(a).<sup>11</sup> Consistent with Nasdaq Rule 7440A(d)(2), the Exchange is proposing to add new Equity Rule 7440A(d)(2), which provides that references to FINRA Rules 5320, 7440, and 7450 shall be construed as references to Equity Rules IM-2110-2, 7440A, and 7450A,

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<sup>10</sup> See Securities Exchange Act Release No. 83115 (April 26, 2018), 83 FR 19384 (May 2, 2018) (SR-NASDAQ-2018-030).

<sup>11</sup> The Exchange notes that Rule 7450A(b) requires both Proprietary Trading Firms as well as their associated persons to comply with FINRA Rule 7450 in limited circumstances, whereas Nasdaq's Rule 7450A only requires compliance by Proprietary Trading Firms. The Exchange believes that this is an omission in the Nasdaq rule and is accordingly not adjusting the Exchange rule.

respectively. Last, the Exchange is making minor clarifying changes under Equity Rules 7440A(d)(1) and (2) to make it clear that certain rules noted thereunder are references to FINRA rules.

#### Fourth Change

The Exchange is proposing to delete paragraph (c) from current Equity Rule 6954 (which will be renumbered Equity Rule 7440A and paragraph (d) from current Equity Rule 6955 (which will be renumbered Equity Rule 7450A), and move the text to Equity Rules 7440A(a) and 7450A(a), respectively, with minor technical differences to correct citations.<sup>12</sup> The Rules explain that the Exchange and FINRA are parties to the FINRA Regulatory Contract, pursuant to which FINRA has agreed to perform certain functions on behalf of the Exchange. The Rules also note that members are complying with current Equity Rules 6954 and 6955 by complying with NASD Rules 6954 and 6955, respectively. Nasdaq places the same text as current Equity Rules 6954(d) and 6955(d) under Nasdaq Rules 7440A(a) and 7450A(a), respectively. Thus, the Exchange is moving the text, as amended, under Equity Rules 7440A(a) and 7450A(a). As a consequence, the Exchange is changing the lettering of paragraphs (d) and (e) of current Equity Rule 6954 to paragraphs (c) and (d), respectively, of Equity Rule 7440A, and the lettering of paragraph (e) of current Equity Rule 6955 to paragraph (d) of Equity Rule 7450A.

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<sup>12</sup> The Exchange is not including text from current Equity Rules 6954(c) and 6955(d), which notes that members are complying with these rules by complying with the related FINRA rules, in Equity Rules 7440A(a) and 7450A(a). The Exchange believes these sentences are duplicative of the first sentence of Equity Rules 7440A(a) and 7450A(a). The Exchange notes that Nasdaq's Rules 7440A(a) and 7450A(a) include this duplicative text.

### Fifth Change

The Exchange is proposing to delete current Equity Rules 6957 and 6958. Equity Rule 6957 concerns compliance with NASD Rule 6954. NASD Rule 6954 provided the effective dates of requirements of the Order Audit Trail System, all of which have passed. FINRA has deleted NASD Rule 6954 and consequently, the Exchange is proposing to delete Equity Rule 6957.

The Exchange is proposing to delete current Equity Rule 6958, which will be renumbered Equity Rule 7470A and held in reserve. Current Equity Rule 6958 provided an exemption from the order recording and data transmission requirements of current Equity Rules 6954 and 6955, which are OATS rules applicable to manual orders. The exemption has not been requested by any Exchange member to date and the Exchange does not believe that Exchange members are likely to need the exemption, since the vast majority of such members to which the rule applies are electronic proprietary trading firms that would not qualify for the exemption.<sup>13</sup> Thus, the Exchange is proposing to eliminate the rule text under Equity Rule 6958 from its rule book, renumber the rule to Equity Rule 7470A, and hold the rule in reserve.

### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>15</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove

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<sup>13</sup> The Exchange notes that Nasdaq does not have an analogous rule, having eliminated similar text recently for the same reasons. See note 10, supra.

<sup>14</sup> 15 U.S.C. 78f(b).

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



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 harmonizing the Exchange's OATS rules with those of FINRA, on which they are based, and with those of Nasdaq, which they should largely match. Consequently, the proposed change will conform Exchange Rules to changes made to corresponding FINRA and Nasdaq rules, thus promoting consistent regulatory standards with respect to rules that FINRA enforces pursuant to its Regulatory Services Agreements with the Exchange and Nasdaq. With respect to the proposed amendment to Equity Rule 7410A(n)(1), the exemption will provide Exchange members with the same flexibility to transition to a new clearing firm that both Nasdaq and FINRA members currently enjoy. The rule is intended to accommodate introducing firms that transition to a different clearing firm over time and, during the transition, route their orders to two different clearing firms, both of which report the introducing firm's information to OATS during the transition time. Adopting the new and amended rule text under Equity Rule 7410A will also align the Exchange rulebook with Nasdaq's and FINRA's, thereby reducing complexity from FINRA's work under a regulatory services agreement with the Exchange.

The Exchange believes that adopting the new limited exception to the definition of "Order" is consistent with the Act because it provides a very narrow exemption from reporting transactions that are done to manage risk and facilitate options market making. Bona fide hedging transactions in equity securities that are undertaken by options market makers do not involve customer orders in those equity securities and thus do not implicate customer protection issues. Moreover, information regarding bona fide hedging transactions retained by a registered BX Options Market market maker is

otherwise available to FINRA and BX Regulation through the Exchange's electronic delivery systems, upon request. This information includes trade reporting data, including order time and sales data captured by the Exchange system.

With respect to the proposed technical corrections to the rules, the Exchange believes that these changes are consistent with the Act because they will prevent investor confusion that may be caused by including in the Rules incorrect rule citations, defunct rule text and expired exemptions.

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 proposed rule change align the Exchange's rules with those of Nasdaq and FINRA, which will assist FINRA in its oversight work done pursuant to a regulatory services agreement. The proposed changes also provide uniform standards with which market participants must comply. Consequently, the Exchange does not believe that the proposed changes implicate competition at all.

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>16</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>17</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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2018-045 on the subject line.

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>17</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.

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 Number SR-BX-2018-045. 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-2018-045 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>18</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

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

**Rules of Nasdaq BX**

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**7000A. Order Audit Trail Series****7400A[6950]. Order Audit Trail System****7410A[6951]. Definitions**

For purposes of the Rule 7000A[6950] Series:

**(a)** Terms shall have the same meaning as those defined in the Exchange By-Laws and rules, unless otherwise specified.

**(b)** “Bunched Order” shall mean two or more orders that are aggregated prior to execution.

**(c)[b]** “Customer” shall mean a person other than a broker or dealer.

**(d)[c]** “Nasdaq BX Equities Market” shall mean the service provided by the Exchange that provides for the automated execution and reporting of transactions in securities listed on the Exchange and other exchanges.

**(e)[d]** “Electronic Communication Network” shall mean any electronic system that widely disseminates to third parties orders entered therein by an exchange market maker or over-the-counter market maker, and permits such orders to be executed in whole or in part, and as further defined in [Securities Exchange Act ]Rule 600 of SEC Regulation NMS.

**(f)[e]** “Electronic Order” shall mean an order captured by a member in an electronic order-routing or execution system.

**(g)[f]** “Index Arbitrage Trade” shall have the same meaning as the term “Index Arbitrage”[mean an arbitrage trading strategy involving the purchase or sale of a “basket” or group of securities in conjunction with the purchase or sale, or intended purchase or sale, of one or more cash-settled options or futures contracts on index stock groups, or options on any such futures contracts in an attempt to profit by the price difference, as further defined] in New York Stock Exchange Rule 7410[132B].

**(h)[g]** “Intermarket sweep order” shall have the same meaning as contained in [SEC ]Rule 600 of SEC Regulation NMS[adopted pursuant to the Act].

**(i)[h]** “Manual Order” shall mean an order that is captured by a member other than in an electronic order-routing or execution system.

**(j[i])** “Order” shall mean any oral, written, or electronic instruction to effect a transaction in an equity security listed on the Exchange or Nasdaq that is received by a member from another person for handling or execution, or that is originated by a department of a member for execution by the same or another member, other than any such instruction to effect (1) a proprietary transaction originated by a trading desk in the ordinary course of a member’s market making activities in an Exchange- or Nasdaq-listed equity security or (2) effect a bona fide hedge transaction involving an Exchange- or Nasdaq-listed equity security originated by a trading desk in the ordinary course of the member’s options market making activities.

**(k[j])** “Order Audit Trail System” shall mean the automated system owned and operated by FINRA that is designed to capture order information in equity securities listed on the Exchange and Nasdaq reported by members for integration with trade and quotation information to provide FINRA with an accurate time sequenced record of orders and transactions.

**(l[k])** “Program Trade” shall have the same meaning as the term “Program Trading” in New York Stock Exchange Rule 7410[mean a trading strategy involving the related purchase or sale of a group of 15 or more securities having a total market value of \$1 million or more, as further defined in New York Stock Exchange Rule 132B].

**(m[l])** “Reporting Agent” shall mean a third party that enters into any agreement with a member pursuant to which the Reporting Agent agrees to fulfill such member’s obligations under Equity Rule 7450A[6955].

**(n[m])** “Reporting Member” shall mean a member that receives or originates an order and has an obligation to record and report information under Equity Rules 7440A[6954] and 7450A[6955]. A member shall not be considered a Reporting Member in connection with an order, if the following conditions are met:

**(1)** the member engages in a non-discretionary order routing process, pursuant to which it immediately routes, by electronic or other means, all of its orders to[ a single receiving Reporting Member;]:

(A) a single receiving Reporting Member; or

(B) two receiving Reporting Members, provided:

(i) orders are routed by the member to each receiving Reporting Member on a pre-determined schedule approved by FINRA; and

(ii) orders are routed to two receiving Reporting Members pursuant to the schedule for a time period not to exceed one year; and

**(2)** the member does not direct and does not maintain control over subsequent routing or execution by the receiving Reporting Member;

(3) the receiving Reporting Member records and reports all information required under Equity Rules 7440A[6954] and 7450A[6955] with respect to the order; and

(4) the member has a written agreement with the receiving Reporting Member specifying the respective functions and responsibilities of each party to effect full compliance with the requirements of Equity Rules 7440A[6954] and 7450A[6955].

(q[n]) “Proprietary Trading Firm” shall mean an Exchange member that trades its own capital and that does not have “customers,” as that term is defined in Equity Rule 0210(g), and that is not a FINRA member. The funds used by a Proprietary Trading firm must be exclusively firm funds and all trading must be in the firm’s accounts. Traders must be owners of, employees of, or contractors to the firm.

#### **7420A[6952]. Applicability**

(a) Unless otherwise indicated, the requirements of the Equity Rule 7400A[6950] Series are in addition to the requirements contained elsewhere in the Rules of the Exchange.

(b) Unless otherwise indicated, the requirements of the Equity Rule 7400A[6950] Series shall apply to all Exchange Members and to their associated persons.

(c) Unless otherwise indicated, the requirements of the Equity Rule 7400A[6950] Series shall apply to all executed or unexecuted orders for equity securities listed on the Exchange or on Nasdaq.

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#### **7430A[6953]. Synchronization of Member Business Clocks**

(a) Exchange members shall comply with [NASD]FINRA Rule 4590[6953] as if such Rule were part of the Exchange’s rules.

[FINRA is in the process of consolidating certain NASD rules into a new FINRA rulebook. If the provisions of NASD Rule 6953 are transferred into the FINRA rulebook, then Equity Rule 6953 shall be construed to require Exchange members to comply with the FINRA rule corresponding to NASD Rule 6953 (regardless of whether such rule is renumbered or amended) as if such rule were part of the Rules of the Exchange.]

(b) For purposes of this Rule, references to “the FINRA By-Laws or other FINRA rules” [“the By-Laws or other rules of the Association”] shall be construed as references to “[the Rules of ]the Exchange Rules.”

#### **7440A[6954]. Recording of Order Information**

(a) With respect to orders for securities listed on Nasdaq, Exchange members and persons associated with a member shall comply with [NASD]FINRA Rule 7440[6954] as if such Rule were part of the Rules of the Exchange. The Exchange and FINRA are parties to the FINRA Regulatory Contract pursuant to which FINRA has agreed to perform certain functions on behalf of the Exchange. In addition, functions performed by FINRA, FINRA



departments, and FINRA staff under Equity Rule 7440A are being performed by FINRA on behalf of the Exchange.

[FINRA is in the process of consolidating certain NASD rules into a new FINRA rulebook. If the provisions of NASD Rule 6954 are transferred into the FINRA rulebook, then Equity Rule 6954 shall be construed to require Exchange members and persons associated with a member to comply with the FINRA rule corresponding to NASD Rule 6954 (regardless of whether such rule is renumbered or amended) as if such rule were part of the Rules of the Exchange.]

(b) With respect to orders for securities listed on the Exchange, Exchange members and persons associated with a member shall comply with [NASD]FINRA Rule 7440[6954] as if such Rule applied to orders for securities listed on the Exchange and such Rule were part of the Rules of the Exchange.

[(c) The Exchange and FINRA are parties to the FINRA Regulatory Contract pursuant to which FINRA has agreed to perform certain functions on behalf of the Exchange. Therefore, Exchange members are complying with Equity Rule 6954 by complying with NASD Rule 6954 as written and as applied to securities listed on the Exchange by Equity Rule 6954, including, for example, filing requirements and notifications. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Equity Rule 6954 are being performed by FINRA on behalf of the Exchange.]

(c[d]) For purposes of this Rule[,];

(1) references to FINRA Rules 7420[6952] through 7460[6957] shall be construed as references to Equity Rules 7420A[6952] through 7460A[6957].;

(2) references to FINRA Rules 5320, 7440, and 7450 shall be construed as references to Equity Rules IM-2110-2, 7440A, and 7450A, respectively.

(d[e]) Exchange members shall assign and enter a unique order identifier, in the form prescribed by the Exchange, to all orders that are electronically transmitted to Nasdaq BX Equities Market. An order identifier shall not be required for orders that are manually transmitted.

#### **7450A[6955]. Order Data Transmission Requirements**

(a) Except as provided in paragraph (b), with respect to orders for securities listed on Nasdaq, Exchange members and persons associated with a member shall comply with [NASD]FINRA Rule 7450[6955] as if such Rule were part of the Rules of the Exchange. The Exchange and FINRA are parties to the FINRA Regulatory Contract pursuant to which FINRA has agreed to perform certain functions on behalf of the Exchange. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Equity Rule 7450A are being performed by FINRA on behalf of the Exchange.

[FINRA is in the process of consolidating certain NASD rules into a new FINRA rulebook. If the provisions of NASD Rule 6955 are transferred into the FINRA rulebook,

then Equity Rule 6955 shall be construed to require Exchange members and persons associated with a member to comply with the FINRA rule corresponding to NASD Rule 6955 (regardless of whether such rule is renumbered or amended) as if such rule were part of the Rules of the Exchange.]

(b) Proprietary Trading Firms and their associated persons shall be required to comply with [NASD]FINRA Rule 7450[6955] as if such Rule were part of the Exchange's rules only when they receive a request from the Exchange's Regulation Department to submit order information with respect to specific time periods identified in such request. Nothing in this Rule shall be construed to limit the obligations of Proprietary Trading Firms and their associated persons under any other Equity Rule of the [6950]7400A Series, including but not limited to, Equity Rule 7440A[6954].

(c) With respect to orders for securities listed on the Exchange, Exchange members and their associated persons shall be required to comply with [NASD]FINRA Rule 7450[6955] as if such Rule applied to orders for securities listed on the Exchange and such Rule were part of the Rules of the Exchange, but only when they receive a request from the Exchange's Regulation Department to submit order information with respect to specific time periods identified in such request. Nothing in this Rule shall be construed to limit the obligations of Exchange members and their associated persons under any other Equity Rule of the [6950]7400A Series, including but not limited to, Equity Rule 7440A[6954].

[(d) The Exchange and FINRA are parties to the FINRA Regulatory Contract pursuant to which FINRA has agreed to perform certain functions on behalf of the Exchange. Therefore, Exchange members are complying with Equity Rule 6955 by complying with NASD Rule 6955 as written and as applied to securities listed on the Exchange by Equity Rule 6955, including, for example, filing requirements and notifications. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Equity Rule 6955 are being performed by FINRA on behalf of the Exchange.]

(d[e]) For purposes of this Rule, references to FINRA Rule[s] 7440[6954] shall be construed as references to Equity Rule 7440A[6954].

#### **7460A[6956]. Violation of Order Audit Trail System Rules**

Failure of a member or person associated with a member to comply with any of the requirements of Equity Rule 7410A[6951] through Equity Rule 7460A[6957] may be considered conduct that is inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Equity Rule 2110.

#### **[6957. Effective Date**

(a) Exchange members and persons associated with a member shall comply with NASD Rule 6957 as if such Rule were part of the Rules of the Exchange.

FINRA is in the process of consolidating certain NASD rules into a new FINRA rulebook. If the provisions of NASD Rule 6957 are transferred into the FINRA rulebook, then Equity Rule 6957 shall be construed to require Exchange members and persons associated with a member to comply with the FINRA rule corresponding to NASD Rule 6957 (regardless of whether such rule is renumbered or amended) as if such rule were part of the Rules of the Exchange.

(b) For purposes of this Rule, references to Rule 6953, Rule 6954, and Rule 3110 shall be construed as references to Equity Rule 6953, Equity Rule 6954, and Equity Rule 3110.]

**7470A. Reserved[6958. Exemption to the Order Recording and Data Transmission Requirements**

(a) Pursuant to the Rule 9600 Series, the Exchange, for good cause shown after taking into consideration all relevant factors, may exempt subject to specified terms and conditions, a member from the recording and order data transmission requirements of Rules 6954 and 6955, respectively, for manual orders, if such exemption is consistent with the protection of investors and the public interest, and the member meets the following criteria:

(1) the member and current control affiliates and associated persons of the member have not been subject within the last five years to any final disciplinary action, and within the last ten years to any disciplinary action involving fraud;

(2) the member has annual revenues of less than \$2 million;

(3) the member does not conduct any market making activities in equity securities listed on the Exchange;

(4) the member does not execute principal transactions with its customers (with limited exception for principal transactions executed pursuant to error corrections); and

(5) the member does not conduct clearing or carrying activities for other firms.

(b) An exemption provided pursuant to this Rule shall not exceed a period of two years. At or prior to the expiration of a grant of exemptive relief under this Rule, a member meeting the criteria set forth in paragraph (a) above may request, pursuant to the 9600 Series, a subsequent exemption, which will be considered at the time of the request consistent with the protection of investors and the public interest.

(c) This Rule shall be in effect until July 10, 2011.]

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