

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84749; File No. SR-BX-2018-060]

### Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Port Fees

December 7, 2018.

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 November 27, 2018, Nasdaq BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“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 a proposal to amend port fees within Options 7, Section 3, titled “BX Options Market—Ports and Other Services.”

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 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 proposed rule change is to define “account number” and utilize that term within Options 7,

Section 3. Each change will be described in more detail below.

###### New Defined Term “Account” [sic]

The Exchange proposes to adopt a new definition within Options 7, Section 3 and apply this definition within the rule. The purpose of this defined new term “account number” is to conform the Exchange’s use of certain terms within BX Rules. This term would be utilized in Options 7, Section 3 to describe the manner in which pricing is calculated. Recently, the Nasdaq affiliated exchanges filed rule changes to conform the usage of various terms across its 6 affiliated options markets within the various rulebooks.<sup>3</sup> The Exchange believes that utilizing the same defined terms, where possible, across its 6 affiliated options markets will avoid confusion for certain rules and pricing purposes. The term “account number” can be defined identically across Nasdaq’s 6 affiliated options markets for purposes of pricing ports. The Exchange is not amending the manner in which pricing will be applied with respect to this particular change. The Exchange proposes to utilize the defined term “account number” in place of the term “mnemonic,” which was not defined in the pricing rules. The insertion of the new defined term is intended to add more specificity and clarity to the current pricing.

At this time, the Exchange proposes to define an “account number” within Options 7, Section 3 to mean a number assigned to a Participant. Participants may have more than one account number. The term “mnemonic” has been used frequently throughout Options 7 without being defined. The Exchange proposes to remove the term “mnemonic” from Options 7, Section 3

<sup>3</sup> BX filed to define the terms “account number,” “badge” and “mnemonic” at Chapter I, Section 1(a)(70), (71) and (72) respectively. See Securities Exchange Act Release No. 84520 (November 1, 2018), 83 FR 55765 (November 7, 2018) (SR-BX-2018-050). The Nasdaq Stock Market LLC filed to amend The Nasdaq Options Market LLC rules to define the terms “account number,” “badge” and “mnemonic” at Chapter I, Section 1(a)(69), (70) and (71) respectively. See Securities Exchange Act Release No. 84571 (November 9, 2018), 83 FR 57758 (November 16, 2018) (SR-NASDAQ-2018-086). Nasdaq Phlx LLC has filed to define the terms “account number,” “badge” and “mnemonic” at Rule 1000(b)(51), (52) and (53) respectively. See Securities Exchange Act Release No. 84620 (November 19, 2018), 83 FR 60512 (November 6, 2018) (SR-Phlx-2018-71). See also ISE Rule 100(a)(1), (5) and (34) which defines the terms “account number,” “badge” and “mnemonic,” respectively. See also GEMX Rule 100(a)(1), (5) and (35) which defines the terms “account number,” “badge” and “mnemonic,” respectively. See also MRX Rule 100(a)(1), (5) and (36) which defines the terms “account number,” “badge” and “mnemonic,” respectively.

and replace the term with the defined term “account number” for the FIX protocol. The Exchange notes that the terms mnemonic and account number were being used interchangeably. The Exchange recently defined both terms in its rules.<sup>4</sup> The term account number is appropriate to describe these fees. The Exchange is not amending the manner in which it assesses the FIX port, rather the Exchange simply proposes to utilize the new term to better describe its current pricing.

Also, the Exchange proposes to remove the term “mnemonic” from the CTI Port Fee, FIX DROP Port Fee, BX Depth Port Fee and BX Top Port Fee. Today, these ports are assessed only one fee per port, per month and therefore adding the term “per account number” would be redundant and unnecessary. These ports are associated with one account number. The Exchange is not proposing to amend the manner in which these ports are assessed, rather the Exchange proposes to eliminate the “per mnemonic” description. The Exchange believes that the billing is clearly defined as “per port, per month.”

The Exchange also proposes to amend current “(c) Access and Redistribution Fee” as “v” to conform to the remainder of the rule.

###### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>6</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

###### New Defined Term “Account” [sic]

The Exchange’s proposal to define the term “account number” within Options, Section 3 and apply that term within the rule in place of the term “mnemonic” as to the manner in which FIX Port Fees are priced is reasonable because the term is defined and will be utilized consistently throughout Options 7, where applicable. The usage of the defined term “account number” will

<sup>4</sup> A “mnemonic” is defined as an acronym comprised of letters and/or numbers assigned to Participants. A Participant account may be associated with multiple mnemonics. See Securities Exchange Act Release No. 84520 (November 1, 2018), 83 FR 55765 (November 7, 2018) (SR-BX-2018-050). Mnemonics are issued to Participants to identify associated persons of Participants.

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

<sup>6</sup> 15 U.S.C. 78f(b)(4) and (5).

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

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

bring uniformity to the term and its usage across the 6 affiliated options markets. The proposed change to utilize the defined term will not amend the manner in which the ports are billed, rather it will also bring greater clarity to pricing in Options 7, Section 3.

The Exchange's proposal to define the term "account number" within Options 7, Section 3 and apply that term within Options 7, Section 3, in place of the term "mnemonic" for the FIX Port Fee is equitable and not unfairly discriminatory because the Exchange proposes to apply that term uniformly in billing Participants utilizing those ports.

The Exchange's proposal to remove the term "mnemonic" for the pricing of the CTI Port Fee, FIX DROP Port Fee, BX Depth Port Fee and BX Top Port Fee is reasonable because, today, these ports are assessed only one fee per port, per month and this change will bring greater clarity to the manner in which these services are billed. The term "mnemonic" was undefined until the Exchange filed to define that term within the BX Rules.<sup>7</sup> The manner in which the term "mnemonic" was defined for purposes of BX's Rules is not the manner that was intended for pricing these ports. To that end, the Exchange proposes to remove the term "mnemonic" and replace that term with "account number," where applicable, to convey the intended manner in which the Exchange prices ports. This proposal will conform the defined term across BX Rules.<sup>8</sup> Today, these ports are assessed only one fee per port, per month and therefore adding the term "per account number" would be redundant and unnecessary. These ports are associated with one account number. This proposal will conform the defined term across BX Rules. The Exchange is not proposing to amend the manner in which these ports are assessed, rather the Exchange proposes to eliminate the "per mnemonic" description and more clearly define the manner in which these services are billed as "per port, per month."

The Exchange's proposal to remove the term "mnemonic" for the pricing of the CTI Port Fee, FIX DROP Port Fee, BX Depth Port Fee and BX Top Port Fee is equitable and not unfairly discriminatory because the Exchange will continue to uniformly assess all market participants these services in a uniform manner. The proposed change

does not amend the manner in which these services are billed.

#### *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. In terms of inter-market competition, the Exchange notes that this proposal does not amend actual fees, rather the Exchange proposes to amend the name of a port fee and define a new term to be used more accurately to describe the manner in which certain services within Options 7, Section 3 are billed.

#### *New Defined Term "Account" [sic]*

The Exchange's proposal to define the term "account number" within Options 7, Section 3 and apply that term within that rule in place of the term "mnemonic" with respect to the manner in which FIX protocols are priced does not impose an undue burden on intra-market competition because the Exchange proposes to apply that term uniformly in billing Participants utilizing those ports. No changes are being made to the manner in which the Exchange bills these ports.

The Exchange's proposal to remove the term "mnemonic" for the pricing of the CTI Port Fee, FIX DROP Port Fee, BX Depth Port Fee and BX Top Port Fee does not impose an undue burden on intra-market competition because the Exchange will continue to uniformly assess all market participants these services in a uniform manner. The proposed change does not amend the manner in which these services are billed.

#### *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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>9</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-2018-060 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 Number SR-BX-2018-060. 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 website (<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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BX-2018-060 and should

<sup>7</sup> See Securities Exchange Act Release No. 84520 (November 1, 2018), 83 FR 55765 (November 7, 2018) (SR-BX-2018-050).

<sup>8</sup> See Chapter I, Section 1(a)(70).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

be submitted on or before January 2, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33317; File No. 812-14942]

### Symmetry Panoramic Trust and Symmetry Partners, LLC

December 6, 2018.

**AGENCY:** Securities and Exchange Commission (“Commission”).

**ACTION:** Notice.

Notice of an application for an order under section 12(d)(1)(f) of the Investment Company Act of 1940 (the “Act”) for an exemption from sections 12(d)(1)(A), (B), and (C) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act. The requested order would permit certain registered open-end investment companies to acquire shares of certain registered open-end investment companies, registered closed-end investment companies, business development companies, as defined in section 2(a)(48) of the Act, and registered unit investment trusts (collectively, “Underlying Funds”) that are within and outside the same group of investment companies as the acquiring investment companies, in excess of the limits in section 12(d)(1) of the Act.

**Applicants:** Symmetry Panoramic Trust (the “Trust”), a Delaware statutory trust that is registered under the Act as an open-end management investment company with multiple series, and Symmetry Partners, LLC (the “Applying Manager”), a Connecticut limited liability company registered as an investment adviser under the Investment Advisers Act of 1940.

**Filing Dates:** The application was filed on August 30, 2018.

**Hearing or Notification of Hearing:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission

by 5:30 p.m. on December 31, 2018, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to Rule 0-5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission’s Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

Applicants: John A. Mooney, Esq., Symmetry Partners, LLC, 151 National Drive, Glastonbury, CT 06033; Mark C. Amorosi, Esq., K&L Gates LLP, 1601 K Street NW, Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Bruce R. MacNeil, Senior Counsel, at (202) 551-6817, or Kaitlin C. Bottock, Branch Chief, at (202) 551-6825 (Division of Investment Management, Chief Counsel’s Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission’s website by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm>, or by calling (202) 551-8090.

### Summary of the Application

1. Applicants request an order to permit (a) a Fund<sup>1</sup> (each a “Fund of Funds”) to acquire shares of Underlying Funds<sup>2</sup> in excess of the limits in sections 12(d)(1)(A) and (C) of the Act and (b) the Underlying Funds that are registered open-end investment

<sup>1</sup> Applicants request that the order apply to each existing and future series of the Trust and to each existing and future registered open-end management investment company or series thereof that is advised by the Applying Manager or its successor-in-interest or by any other investment adviser controlling, controlled by or under common control with the Applying Manager or its successor-in-interest and is part of the same “group of investment companies,” as defined in section 12(d)(1)(G)(ii) of the Act, as the Trust (each, a “Fund”). For purposes of the requested order, “successor-in-interest” is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization. For purposes of the request for relief, the term “group of investment companies” means any two or more registered investment companies, including closed-end investment companies and business development companies, that hold themselves out to investors as related companies for purposes of investment and investor services.

<sup>2</sup> Certain of the Underlying Funds have obtained exemptions from the Commission necessary to permit their shares to be listed and traded on a national securities exchange at negotiated prices and, accordingly, to operate as an exchange-traded fund (“ETF”).

companies or series thereof, their principal underwriters and any broker or dealer registered under the Securities Exchange Act of 1934 to sell shares of the Underlying Fund to the Fund of Funds in excess of the limits in section 12(d)(1)(B) of the Act.<sup>3</sup> Applicants also request an order of exemption under sections 6(c) and 17(b) of the Act from the prohibition on certain affiliated transactions in section 17(a) of the Act to the extent necessary to permit the Underlying Funds to sell their shares to, and redeem their shares from, the Funds of Funds.<sup>4</sup> Applicants state that such transactions will be consistent with the policies of each Fund of Funds and each Underlying Fund and with the general purposes of the Act and will be based on the net asset values of the Underlying Funds.

2. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Such terms and conditions are designed to, among other things, help prevent any potential (a) undue influence over an Underlying Fund that is not in the same “group of investment companies” as the Fund of Funds through control or voting power, or in connection with certain services, transactions, and underwritings, (b) excessive layering of fees, and (c) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A), (B), and (C) of the Act.

3. Section 12(d)(1)(f) of the Act provides that the Commission may

<sup>3</sup> Applicants do not request relief for Funds of Funds to invest in reliance on the order in business development companies and registered closed-end investment companies that are not listed and traded on a national securities exchange.

<sup>4</sup> A Fund of Funds generally would purchase and sell shares of an Underlying Fund that operates as an ETF through secondary market transactions rather than through principal transactions with the Underlying Fund. Applicants nevertheless request relief from sections 17(a)(1) and (2) to permit each ETF that is an affiliated person, or an affiliated person of an affiliated person, as defined in section 2(a)(3) of the Act, of a Fund of Funds, to sell shares to or redeem shares from the Fund of Funds. This includes, in the case of sales and redemptions of shares of ETFs, the in-kind transactions that accompany such sales and redemptions. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where an ETF could be deemed an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds because an investment adviser to the ETF or an entity controlling, controlled by or under common control with the investment adviser to the ETF is also an investment adviser to the Fund of Funds. A Fund of Funds will purchase and sell shares of an Underlying Fund that is a closed-end fund (including a business development company) through secondary market transactions at market prices rather than through principal transactions with the closed-end fund. Accordingly, applicants are not requesting section 17(a) relief with respect to principal transactions with closed-end funds.

<sup>10</sup> 17 CFR 200.30-3(a)(12).