

SECURITIES AND EXCHANGE COMMISSION  
(Release No 34-86221; File No. SR-BX-2019-023)

June 27, 2019

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Relocate the BX Options Rules at Chapter IV, Securities Traded on BX

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 19, 2019, 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 relocate the BX Options Rules (“BX Options”) at Chapter IV (Securities Traded on BX Options) under the Options 4 title in the Exchange’s rulebook’s (“Rulebook”) shell structure.<sup>3</sup>

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

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

<sup>3</sup> In 2017, the Exchange added a shell structure to its Rulebook with the purpose of improving efficiency and readability and to align its rules closer to those of its five sister exchanges, The Nasdaq Stock Market LLC (“Nasdaq”); Nasdaq PHLX LLC; Nasdaq ISE, LLC; Nasdaq GEMX, LLC; and Nasdaq MRX, LLC (“Affiliated Exchanges”). The shell structure currently contains eight (8) General sections which, once complete, will apply a common set of rules to the Affiliated Exchanges. See Securities Exchange Act Release No. 82174 (November 29, 2017), 82 FR 57492 (December 5, 2017) (SR-BX-2017-054).

The proposal also amends the rules as relocated to conform primarily to the equivalent options rules in the Nasdaq ISE, LLC (“ISE”) rulebook, as well as in one instance to the equivalent options rule in the Nasdaq PHLX LLC (“Phlx”) rulebook.

The proposal also amends Section 1 of Chapter I of the BX Options Rules to add several definitions.

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 Exchange proposes to relocate the rule text in Chapter IV (Securities Traded on BX Options) to the Options 4 title in the Rulebook’s shell structure. For ease of reference and the purposes of this filing, the relocated rules are herein described as the “Options Listing Rules.”

The relocation of the Options Listing Rules is part of the Exchange's continued effort to promote efficiency and the conformity of its processes with those of the Affiliated Exchanges,<sup>4</sup> and its goal of harmonizing and uniformizing its rules.<sup>5</sup>

This proposed change is of a non-substantive nature. Moreover, the relocation of the Options Listing Rules will facilitate the use of the Rulebook by Members<sup>6</sup> of the Exchange, who are members of other Affiliated Exchanges; other market participants; and the public in general. The relocated rules will be amended to reflect the equivalent options rules in the ISE rulebook, but the changes are of a non-substantive nature.

The overarching goal is to align BX Options rules with those of the ISE. The Exchange is proposing to amend the rules for BX Options, most notably the rule text in the Options Listing Rules concerning securities traded on BX Options, but also adding several definitions to Section 1 of Chapter I.

The vast majority of the changes are technical changes and made throughout the Options Listing Rules. These minor changes are designed to conform the BX Options rules to the equivalent ISE rules, as well as to increase the clarity of the rules. This includes some reorganization and renumbering within the Options Listing Rules' subsections to ensure they remain consistent.

The proposed changes that do not fit within the description above are listed below, beginning with changes to Chapter I General Provisions and followed by global changes to the

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<sup>4</sup> Id.

<sup>5</sup> This proposal is similar to the recent relocation of options rules at Chapter IV (Securities Traded on NOM) under the Options 4 title in the Nasdaq rulebook. See Securities Exchange Act Release No. 86022 (June 4, 2019), 84 FR 26912 (June 10, 2019) (SR-NASDAQ-2019-047).

<sup>6</sup> As defined by Exchange Rule 0120(i).

Options Listing Rules. The changes are then broken down by section within the Options Listing Rules.

#### Proposed Changes to Chapter I

The Exchange is proposing to add definitions to “Section 1 Definitions”. Specifically, the terms “class” “series” and “underlying security” will be added to Section 1(a) as (73), (74), and (75), respectively.<sup>7</sup> The Exchange believes that using the definitions for these terms as defined in the By-Laws of The Options Clearing Corporation (“OCC”) uniformly across Nasdaq, Inc.’s exchanges will help to align them. Providing uniform, clear and precise definitions for these terms will provide consistency, lessen potential confusion and add clarity for market participants.

#### Proposed Changes to the Options Listing Rules

##### Global Changes

As described above, the current Options Listing Rules will be amended throughout to change “BX Options” to “the Exchange”. This proposed change will add consistency throughout the chapter. “BX Regulation” also will be changed to “the Exchange” throughout the Options Listing Rules to update the appropriate references. Additionally, there are a number of minor changes made throughout the chapter to increase the clarity of the language, as well as renumbering within the section to ensure it remains consistent.

##### Proposed Changes to Section 1 Designation of Securities

This section will be amended to clarify that the options contracts that are designated by reference to the issuer of the underlying security can also be designated by reference to the name of the underlying foreign currency. Additionally, it can be referenced by not only the expiration month, but also by the expiration date.

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<sup>7</sup> See OCC By-Laws Article I – Definitions C.(11); S.(12); and U.(3), respectively.

### Proposed Changes to Section 2 Rights and Obligations of Holders and Writers

This section will be amended to clarify that option contracts of any class of options dealt in on the Exchange are subject to the provisions of Options 4 and as set forth in the rules of the Clearing Corporation. This change clarifies the rights and obligations of holders and writers of option contracts.

### Proposed Changes to Section 3 Criteria for Underlying Securities

Section 3(i) of the Options Listing Rules is being replaced and updated by incorporating the ISE version of the Exchange-Traded Fund (“ETF”) option listing rule.<sup>8</sup> Most of the changes in Section 3 of the Options Listing Rules simply result from reorganization within the section done to mirror the ISE rule and for greater clarity.

Section 3(k)(ii) of the Options Listing Rules will be amended to delete the language stating that the Exchange will “employ the same procedures to qualify underlying securities pursuant to this subsection (k) as it employs in qualifying underlying securities pursuant to other subsections of this Section 3.” This deleted language is unnecessary since it is redundant given that each of the other subsections in Section 3 have procedures to qualify underlying securities plus it is also not reflected in the ISE rule version being adopted for this section.

Section 3(m) will be deleted since the definition of “Partnership Unit” is a remnant from the legacy Exchange ETF listing rule and is unnecessary since it has never been used. It also is not reflected in the ISE rule version being adopted for this section.

### Proposed Changes to Section 4 Withdrawal of Approval of Underlying Securities

Section 4(a) of the Options Listing Rules will be amended to add flexibility for the Exchange to choose whether to decline new additional series of options on the underlying

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<sup>8</sup> See ISE Rule 502(h).

security previously approved.<sup>9</sup> Currently, this section restricts this, but flexibility is being added to give greater discretion about adding series and an exception also will be added that opening transactions by market makers executed to accommodate closing transactions of other market participants may be permitted. This will provide the public with greater protection since it will allow the Exchange to now decline new additional series of options on the underlying security previously approved that may not be in the best interests of the public.

Section 4(h)(ii) of the Options Listing Rules will be amended to change for options covering Exchange-Traded Fund Shares approved pursuant to Section 3(i)(iv)(2) of Options 4, following the initial twelve-month period beginning upon the commencement of trading in the Exchange-Traded Fund Shares on a national securities exchange and are defined as NMS stock under Rule 600 of Regulation NMS, that there were fewer than 50 record and/or beneficial holders of such Exchange-Traded Fund Shares for 30 or more consecutive trading days rather than as it is currently stated for 30 consecutive days. It is only on trading days that the information regarding 50 record and/or beneficial holders can be ascertained. Also, the change is consistent with the ISE rule.<sup>10</sup>

#### Proposed Changes to Section 6 Series of Options Contracts Open for Trading

Section 6(a) of the Options Listing Rules will be amended to add to note that exercise-price setting parameters adopted as part of the Options Listing Procedures Plan will be included in Supplementary Material .02 Select Provisions of Options Listing Procedures Plan.

In order to mirror the equivalent ISE rules,<sup>11</sup> Section 6(d)iv of the Options Listing Rules will be amended to incorporate, in large part, former Supplementary Material .03 within Section

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<sup>9</sup> See ISE Rule 503(a).

<sup>10</sup> See ISE Rule 503(h)(2).

<sup>11</sup> See ISE Rule 504(g).

6 itself. Also, Section 6(d)v of the Options Listing Rules will be relocated to .10 of the Supplementary Material to Section 6 of the Options Listing Rules.<sup>12</sup>

Supplementary Material .01(a) and (b) to Section 6 will detail the \$1 Strike Price Interval Program and will replace .01 and .02 of the Supplementary Material to Section 6. Select Provisions of Options Listing Procedures Plan (“OLPP”) will be added as Supplementary Material .02 to Section 6.

Supplementary Material .03 and .04 will detail the Short Term Option Series Program<sup>13</sup> and the Quarterly Options Series Program,<sup>14</sup> respectively, and each will be consistent with the equivalent ISE rule.

.05 of the Supplementary Material to Section 6 will be amended to cover the intervals between strike prices for Mini-Nasdaq 100 Index options series and will be consistent with the equivalent ISE rule.<sup>15</sup>

The first sentence of .06 Range Limitations for New Option Series of the Options Listing Rules has been deleted since it is covered in .02 of the Supplementary Material to Section 6, but the definition of OLPP has been moved to Section 6(a).

The introductory paragraph to .02 of the Supplementary Material to Section 6 of the Options Listing Rules details that the quote mitigation strategy and is codified in the OLPP. Subsection (a) states that the exercise price of each options series listed by the Exchange is fixed at a price per share that is reasonably close to the price of the underlying equity security, ETF or Trust Issued Receipt at or about the time the Exchange determines to list such series. Subsection

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<sup>12</sup> See ISE Supplementary Material .09 to Rule 504.

<sup>13</sup> See ISE Supplementary Material .02 to Rule 504.

<sup>14</sup> See ISE Supplementary Material .03 to Rule 504.

<sup>15</sup> See ISE Supplementary Material .04 to Rule 504.

(a)(ii) says that for new expiration months, the daily high and low of all prices reported by all national securities exchanges on the day the Exchange determines its preliminary notification of a new series. The amended language will say that the price of the underlying security is measured by, for new expiration months, the daily high and low of all prices reported by all national securities exchanges on the day the Exchange determines its preliminary notification of a new series rather than on the day the Exchange determines to list a new series. This change also mirrors the language in the ISE rules.<sup>16</sup>

Subsection (c) will be added to the Supplementary Material to Section 6 of the Options Listing Rules to make clear that subsection (a) of the Supplementary Material to Section 6 of the Options Listing Rules will not permit the listing of series that are otherwise prohibited by the rules of the Exchange or the OLPP. Additionally, to the extent the rules of the Exchange permit the listing of new series that are otherwise prohibited by the provisions of the OLPP, the provisions of the OLPP will govern. These changes are consistent with the ISE rules.<sup>17</sup>

Supplementary Material .16 U.S. Dollar-Settled Foreign Currency Options (formerly Supplementary Material .09) will be amended to reflect the language of the equivalent Phlx Rule since ISE does not have U.S. Dollar-Settled Foreign Currency Options.<sup>18</sup> Also, the references to the continuity rules here (formerly Supplementary Material .09(C)) and in Section 8. Long-Term Options Contracts have been deleted since quoting obligations for long term options has recently been updated and addressed in Phlx Rule 1081 and in BX Options Chapter VII Section 6.

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<sup>16</sup> See ISE Rule 504A(b)(i)(2).

<sup>17</sup> See ISE Rule 504A(b)(v) and (vi).

<sup>18</sup> See Phlx Rule 1012(a)(iii).

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>19</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>20</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that the relocation of its Options Listing Rules is a non-substantive change and is consistent with similar filings by the Exchange for the relocation of its rules.<sup>21</sup> As noted above, the relocation of the Options Listing Rules is part of the Exchange's continued effort to promote efficiency and the structural conformity of its processes with those of the Affiliated Exchanges,<sup>22</sup> and its goal of harmonizing and uniformizing its rules.<sup>23</sup> Additionally, the relocation of the Options Listing Rules will facilitate the use of the Rulebook by Members<sup>24</sup> of the Exchange, who are members of other Affiliated Exchanges; other market participants; and the public in general.

The majority of the changes are also consistent with the ISE rulebook and the overarching goal is to align the BX Options rules with those of the ISE. These changes include the change to subsection (a)(ii) of the Supplementary Material to Section 6 to say that the price of the underlying security is measured by, for new expiration months, the daily high and low of all prices reported by all national securities exchanges on the day the Exchange determines its

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<sup>19</sup> 15 U.S.C. 78f(b).

<sup>20</sup> 15 U.S.C. 78f(b)(5).

<sup>21</sup> See footnote 3.

<sup>22</sup> Id.

<sup>23</sup> See footnote 5.

<sup>24</sup> As defined by Exchange Rule 0120(i).

preliminary notification of a new series rather than on the day the Exchange determines to list a new series.

Another such change is amending the Options Listing Rules to change for options covering Exchange-Traded Fund Shares approved pursuant to Section 3(i)(iv)(2) of Options 4, following the initial twelve-month period beginning upon the commencement of trading in the Exchange-Traded Fund Shares on a national securities exchange and are defined as NMS stock under Rule 600 of Regulation NMS, that there were fewer than 50 record and/or beneficial holders of such Exchange-Traded Fund Shares for 30 or more consecutive trading days rather than as it is currently stated for 30 consecutive days. It is only on trading days that the information regarding 50 record and/or beneficial holders can be ascertained. This change serves to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that amending Section 4(a) of the Options Listing Rules to add flexibility for the Exchange to choose whether to decline new additional series of options on the underlying security previously approved will serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest since it will allow the Exchange to now decline new additional series of options on the underlying security previously approved that may not be in the best interests of the public.

The Exchange believe that adding definitions for the terms “class”, “series”, and “underlying security” to the BX Options rulebook from the OCC By-Laws will help remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest through providing uniform,

clear and precise definitions for these terms and increase consistency, lessen potential confusion and add clarity for market participants.<sup>25</sup>

As a result, the Exchange believes that the changes included in this filing serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest since the changes are intended to organize the Rulebook in a way that it will ease the Members', market participants', and the general public's navigation and reading of the rules.

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 and defunct rule text.

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 change does not impose a burden on competition because, as previously stated, it (i) is of a non-substantive nature, (ii) is intended to harmonize the structure of the Exchange's rules with those of its Affiliated Exchanges, and (iii) is intended to organize the Rulebook in a way that it will ease the Members', market participants', and the general public's navigation and reading of the rules.

Consequently, the Exchange does not believe that the proposed changes implicate competition at all.

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<sup>25</sup> See footnote 7.

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>26</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>27</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 necessary or appropriate in the public interest, for the protection of investors, or 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:

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<sup>26</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>27</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, along with a brief description and text of 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.

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-2019-023 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-2019-023. 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 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-2019-023, 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>28</sup>

Eduardo A. Aleman  
Deputy Secretary

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<sup>28</sup> 17 CFR 200.30-3(a)(12).