Proposition to extend the current pilot program related to BX Rule 11890

Proposal to extend the current pilot program related to BX Rule 11890
If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.
1. **Text of the Proposed Rule Change**

   (a) Nasdaq BX, Inc. (“BX” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)\(^1\) and Rule 19b-4 thereunder,\(^2\) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to extend the current pilot program related to BX Rule 11890, Clearly Erroneous Transactions six months, to the close of business on April 20, 2020.

   The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).\(^3\)

   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 25, 2019. 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:

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

   a. **Purpose**

   The purpose of the proposed rule change is to extend the current pilot program related to Rule 11890, Clearly Erroneous Transactions, to the close of business on April 20, 2020. This change is being proposed to allow the Exchange to further consider a permanent proposal for clearly erroneous execution reviews.

   On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 11890 that, among other things: (i) provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.\(^4\) In 2013, the Exchange adopted a provision designed to address the operation of the Plan.\(^5\) Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) a series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an


Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market. 6 These changes are currently scheduled to operate for a pilot period that concludes on October 18, 2019.7

If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (a)(2)(C), (c)(1), (b)(i), and (b)(ii) shall be in effect, and the provisions of paragraphs (g) through (i) shall be null and void.8 In such an event, the remaining sections of Rule 11890 would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (“FINRA”) will also file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to Rule 11890.

The Exchange does not propose any additional changes to Rule 11890. The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a limited six month pilot basis after the current expiration date to allow the Exchange to continue to assess whether additional

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8 See notes 4 – 7, supra. The prior versions of paragraphs (a)(2)(C), (c)(1), (b)(i), and (b)(ii) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.
changes should also be made to the operation of the clearly erroneous execution rules. Extending the effectiveness of Rule 11890 for an additional six months should provide the Exchange, other national securities exchanges and FINRA additional time to consider further amendments to the clearly erroneous execution rules.

b. **Statutory Basis**

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(5) of the Act, in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Rule 11890 for an additional six months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended Clearly

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Erroneous Transactions rule should continue to be in effect on a pilot basis while the Exchange, other national securities exchanges and FINRA consider a permanent proposal for clearly erroneous execution reviews.

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while the Exchange, other national securities exchanges and FINRA consider further amendments to these rules. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

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)\(^{11}\) of the Act and Rule 19b-4(f)(6) thereunder\(^{12}\) in that it effects a change

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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 proposed rule change would not significantly affect the protection of investors or the public interest because it seeks to extend the protections provided by the clearly erroneous executions pilot program, without any changes, while the Exchange, other national securities exchanges and FINRA consider a permanent proposal for clearly erroneous execution reviews. This proposed rule change would also not impose any significant burden on competition because the Exchange understands that the other national securities exchanges and FINRA will also file similar proposals with the Commission to extend their respective clearly erroneous execution pilot programs so that those rules may continue uninterrupted. Accordingly, the Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act13 and paragraph (f)(6) of Rule 19b-4 thereunder.14

The Exchange respectfully requests that the Commission waive the 30-day operative delay so that the proposed rule change may become effective and operative upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act15 and

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14  See note 12, supra.
15  See note 13, supra.
paragraph (f)(6) of Rule 19b-4 thereunder.\textsuperscript{16} Waiver of the operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange to immediately extend the current clearly erroneous execution pilot program to the close of business on April 20, 2020, thereby extending the protections provided by this pilot program without interruption while the Exchange, the other national securities exchanges and FINRA continue to consider a permanent proposal for clearly erroneous execution reviews.

At any time within sixty (60) days of the filing of such proposed rule change, the Commission may summarily 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.

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

   Not applicable.

9. **Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

   Not applicable.

10. **Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

    Not applicable.

11. **Exhibits**


    5. Text of the proposed rule change.

\textsuperscript{16} See note 12, supra.
Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Current Pilot Program Related to BX Rule 11890

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),1 and Rule 19b-4 thereunder,2 notice is hereby given that on October 15, 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 extend the current pilot program related to BX Rule 11890, Clearly Erroneous Transactions six months, to the close of business on April 20, 2020.

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.

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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 extend the current pilot program related to Rule 11890, Clearly Erroneous Transactions, to the close of business on April 20, 2020. This change is being proposed to allow the Exchange to further consider a permanent proposal for clearly erroneous execution reviews.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 11890 that, among other things: (i) provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.3 In 2013, the Exchange adopted a provision designed to address the operation of the Plan.4 Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) a series of transactions in a particular security on one or more trading

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days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.\(^5\) These changes are currently scheduled to operate for a pilot period that concludes on October 18, 2019.\(^6\)

If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (a)(2)(C), (c)(1), (b)(i), and (b)(ii) shall be in effect, and the provisions of paragraphs (g) through (i) shall be null and void.\(^7\) In such an event, the remaining sections of Rule 11890 would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (“FINRA”) will also file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to Rule 11890.


\(^7\) See notes 3 – 6, supra. The prior versions of paragraphs (a)(2)(C), (c)(1), (b)(i), and (b)(ii) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.
The Exchange does not propose any additional changes to Rule 11890. The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a limited six month pilot basis after the current expiration date to allow the Exchange to continue to assess whether additional changes should also be made to the operation of the clearly erroneous execution rules. Extending the effectiveness of Rule 11890 for an additional six months should provide the Exchange, other national securities exchanges and FINRA additional time to consider further amendments to the clearly erroneous execution rules.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(5) of the Act, in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Rule 11890 for an additional six months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the

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incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended Clearly Erroneous Transactions rule should continue to be in effect on a pilot basis while the Exchange, other national securities exchanges and FINRA consider a permanent proposal for clearly erroneous execution reviews.

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while the Exchange, other national securities exchanges and FINRA consider further amendments to these rules. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

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\textsuperscript{10} and subparagraph (f)(6) of Rule 19b-4 thereunder.\textsuperscript{11}

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:

Electronic comments:

- Use the Commission’s Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR- BX-2019-037 on the subject line.


\textsuperscript{11} 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-2019-037. 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-2019-037 and should be submitted on or before [insert date 21 days from publication in the Federal Register].
For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.\textsuperscript{12}

Jill M. Peterson  
Assistant Secretary

\textsuperscript{12} 17 CFR 200.30-3(a)(12).
Rules of Nasdaq BX

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11890. Clearly Erroneous Transactions

The provisions of paragraphs (a)(2)(C), (c)(1), (b)(i), and (b)(ii) of this Rule, as amended on September 10, 2010, and the provisions of paragraphs (g) through (i), shall be in effect during a pilot period that expires at the close of business on April 20, 2020[October 18, 2019]. If the pilot period is not either extended or approved as permanent, the prior versions of paragraphs (a)(2)(C), (c)(1), and (b) shall be in effect, and the provisions of paragraphs (g) through (i) shall be null and void.

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