

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="51"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2020"/> - * <input type="text" value="034"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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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 *).

Proposal to amend Rules 4613, 4702, and 4703 in light of planned changes to the System

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="Brett"/>	Last Name * <input type="text" value="Kitt"/>
Title * <input type="text" value="Principal Associate General Counsel"/>	
E-mail * <input type="text" value="brett.kitt@nasdaq.com"/>	
Telephone * <input type="text" value="(301) 978-8132"/>	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="11/25/2020"/>	EVP and Chief Legal Officer
By <input type="text" value="John Zecca"/> <small>(Name *)</small>	

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 EFFS 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 *

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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 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”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend Rules 4613, 4702, and 4703 in light of planned changes to the System, as described further below.

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 November 5, 2020. 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:

Brett M. Kitt
Principal Associate General Counsel
Nasdaq, Inc.
(301) 978-8132

¹ 15 U.S.C. 78s(b)(1).

² 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

Presently, the Exchange is making functional enhancements and improvements to specific Order Types³ and Order Attributes⁴ that are currently only available via the RASH Order entry protocol.⁵ Specifically, the Exchange will be upgrading the logic and implementation of these Order Types and Order Attributes so that the features are more streamlined across the Exchange's Systems and order entry protocols, and will enable the Exchange to process these Orders more quickly and efficiently. Additionally, this System upgrade will pave the way for the Exchange to enhance the OUCH Order entry protocol⁶ so that Participants may enter such Order Types and Order Attributes via

³ An "Order Type" is a standardized set of instructions associated with an Order that define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the Exchange. See Rule 4701(e).

⁴ An "Order Attribute" is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the Exchange. See id.

⁵ The RASH (Routing and Special Handling) Order entry protocol is a proprietary protocol that allows members to enter Orders, cancel existing Orders and receive executions. RASH allows participants to use advanced functionality, including discretion, random reserve, pegging and routing. See http://nasdaqtrader.com/content/technicalsupport/specifications/TradingProducts/rash_sb.pdf.

⁶ The OUCH Order entry protocol is a proprietary protocol that allows subscribers to quickly enter orders into the System and receive executions. OUCH accepts limit Orders from members, and if there are matching Orders, they will execute. Non-matching Orders are added to the Limit Order Book, a database of available limit Orders, where they are matched in price-time priority. OUCH only provides a method for members to send Orders and receive status updates on those Orders. See <https://www.nasdaqtrader.com/Trader.aspx?id=OUCH>.

OUCH, in addition to the RASH Order entry protocols.⁷ The Exchange plans to implement its enhancement of the OUCH protocol sequentially, by Order Type and Order Attribute.

To support and prepare for these upgrades and enhancements, the Exchange now proposes to amend its Rules governing Order Types and Order Attributes, at Rules 4702 and 4703, respectively. In particular, the Exchange proposes to adjust the current functionality of the Market Maker Peg Order⁸ and Reserve Size Order Attribute,⁹ as described below, so that they align with how the System, once upgraded, will handle these Orders going forward. The Exchange also proposes to make several associated clarifications and corrections to these Rules, and to Rule 4613, as it prepares to enhance its order handling processes.

The Exchange notes that the Exchange's affiliate, the Nasdaq Stock Market, LLC, recently filed a proposal for immediate effectiveness to make changes that are materially identical to those proposed herein.¹⁰

Changes to Market Maker Peg Order

⁷ The Exchange designed the OUCH protocol to enable members to enter Orders quickly into the System. As such, the Exchange developed OUCH with simplicity in mind, and it therefore lacks more complex order handling capabilities. By contrast, the Exchange specifically designed RASH to support advanced functionality, including discretion, random reserve, pegging and routing. Once the System upgrades occur, then the Exchange intends to propose further changes to its Rules to permit participants to utilize OUCH, in addition to RASH, to enter order types that require advanced functionality.

⁸ See Rule 4702(b)(7).

⁹ See Rule 4703(h).

¹⁰ See Securities Exchange Act Release No. 34-90389 (November 10, 2020), 85 FR 73304 (November 17, 2020) (SR-NASDAQ-2020-71).

A Market Maker Peg Order is an Order Type that exists to help a Market Maker to meet its obligation to maintain continuous two-sided quotations (the “Two-Sided Obligation”), as set forth in Rule 4613(a)(2).¹¹ The Exchange proposes to make four changes related to the Market Maker Peg Order.

First, the Exchange proposes to amend Rule 4702(b)(7) to correct the conditions under which a Market Maker Peg Order will be sent back to a Participant. Rule 4702(b)(7) currently states that a Market Maker Peg Order will be sent back to the Participant if: (1) upon entry of the Order, the limit price of the Order is not within the Designated Percentage¹²; or (2) after the Order has been posted to the Exchange Book, the Reference Price¹³ shifts to reach the Defined Limit,¹⁴ such that the Order is subject to

¹¹ See Rule 4613(a)(2).

¹² See Rule 4702(b)(7). The “Designated Percentage” is 8% for securities subject to Rule 4120(a)(11) and are securities included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products, 28% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price equal to or greater than \$1, and 30% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price less than \$1, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Rule 4120(a)(11) is not in effect, the Designated Percentage shall be 20% for securities included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products, 28% for all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price equal to or greater than \$1, and 30% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price less than \$1. See Rule 4613(a)(2)(D). As discussed below, the Exchange proposes to amend this definition.

¹³ The “Reference Price” for a Market Maker Peg Order to buy (sell) is the then-current National Best Bid (National Best Offer) (including the Exchange), or if no such National Best Bid or National Best Offer, the most recent reported last-sale eligible trade from the responsible single plan processor for that day, or if none,

re-pricing at the Designated Percentage away from the shifted Reference Price, but the limit price of the Order would then fall outside of the Defined Limit (which would now be measured by the difference between the re-priced Order and the shifted Reference Price).¹⁵

The Exchange proposes to correct the second of these two conditions because it inadvertently allows for a circumstance in which a Market Maker Peg Order will be automatically re-priced by the System to a limit price that is outside of the Designated Percentage but inside of the Defined Limit. Such an outcome is inconsistent with a Market Maker's obligations to price or reprice its bid (offer) quotations not more than the Designated Percentage away from the then National Best Bid (Offer), as set forth in Rule

the previous closing price of the security as adjusted to reflect any corporate actions (e.g., dividends or stock splits) in the security. See Rule 4702(b)(7).

¹⁴ The term "Defined Limit" means 9.5% for securities subject to Rule 4120(a)(11) and are securities included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products, 29.5% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price equal to or greater than \$1, and 31.5% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price less than \$1, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Rule 4120(a)(11) is not in effect, the Defined Limit shall be 21.5% for securities included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products, 29.5% for all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price equal to or greater than \$1, and 31.5% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price less than \$1. See Rule 4613(a)(2)(E).

¹⁵ See Rule 4702(b)(7).

4613(a)(2).¹⁶ In order for Rule 4702(b)(7) to be consistent with Rule 4613(a)(2), Rule 4702(b)(7) cannot permit the System to re-price a Market Maker Peg Order to a limit price that is outside of the Designated Percentage. In any circumstance in which the Order would be re-priced to a limit that is outside of the Designated Percentage, the Rule must require the System to return the Order to the Participant. The Exchange proposes to amend Rule 4702(b)(7) accordingly.¹⁷

Second, the Exchange proposes to amend Rule 4702(b)(7) to no longer allow entry of a Market Maker Peg Order entered with an offset. The Rule presently permits a Market Maker to enter a Market Maker Peg Order with a more aggressive offset than the Designated Percentage, but not a less aggressive offset. The Exchange has reviewed

¹⁶ Rule 4613(a)(2) states that for a Market Maker to satisfy its Two-Sided Obligation, the Market Maker must price bid (offer) interest not more than the Designated Percentage away from the then current National Best Bid (Offer) (or if there is no National Best Bid (Offer), not more than the Designated Percentage away from the last reported sale from the responsible single plan processor). Moreover, Rule 4613(a)(2) states that if the National Best Bid (Offer) or reported sale increases (decreases) to a level that would cause the bid (offer) interest of the Two-Sided Obligation to be more than the Defined Limit away from the National Best Bid (offer) or last reported sale, or if the bid (offer) is executed or cancelled, then the Market Maker must enter new bid (offer) interest at a price not more than the Designated Percentage away from the then current National Best Bid (Offer) or last reported sale.

¹⁷ The Exchange also proposes to amend this condition to state that repricing will occur when the difference between the displayed price of a Market Maker Peg Order and the Reference Price exceeds, rather than merely reaches, the Defined Limit. Currently, the Rule uses the term “reaches,” but this is inconsistent with the example that follows it (“In the foregoing example, if the Defined Limit is 9.5% and the National Best Bid increases to \$10.17, such that the displayed price of the Market Maker Peg Order would be more than 9.5% away, the Order will be repriced to \$9.36, or 8% away from the National Best Bid.”) (emphasis added). The Exchange proposes to reconcile this inconsistency in a manner that reflects the stated example as well as the manner in which the Exchange’s System presently applies the Rule. It would also render the Rule consistent with Market Maker obligations under Rule 4613.

usage of offsets with Market Maker Peg Orders and found that no Market Maker assigned an offset to their Market Maker Peg Orders since January 2019. The Exchange does not believe that there is value in keeping offsets as an option for Market Maker Peg Orders. Accordingly, the Exchange proposes to delete text from Rule 4702(b)(7)(A) that discusses offsets and replace it with text stating that Market Maker Peg Orders entered with pegging offsets will not be accepted. The Exchange also makes conforming changes to Rule 4702(b)(7) where the text refers to offsets.

Third, the Exchange proposes to delete “Trade Now”¹⁸ from the list of Order Attributes that may be associated with Market Maker Peg Orders under Rule 4702(b)(7). As noted above, Market Maker Peg Orders allow Market Makers to maintain continuous two-sided quotations at displayed prices that are compliant with the Market Makers’ obligations under Rule 4613. By their nature, Market Maker Peg Orders are always Displayed Orders, while Orders with Trade Now are Non-Displayed Orders.¹⁹ Consequently, there are no circumstances in which a Market Maker Peg Order could have Trade Now associated with it; the Exchange proposes to delete text from Rule

¹⁸ “Trade Now” is an Order Attribute that allows a resting Order that becomes locked by an incoming Displayed Order to execute against the available size of the contra-side locking Order as a liquidity taker, and any remaining shares of the resting Order will remain posted on the BX Book with the same priority. See Rule 4703(l).

¹⁹ “Display” is an Order Attribute that allows the price and size of an Order to be displayed to market participants via market data feeds. All Orders that are Attributable are also displayed, but an Order may be displayed without being Attributable. As discussed in Rule 4702, a Non-Displayed Order is a specific Order Type, but other Order Types may also be non-displayed if they are not assigned a Display Order Attribute; however, depending on context, all Orders that are not displayed may be referred to as “Non-Displayed Orders.” An Order with a Display Order Attribute may be referred to as a “Displayed Order.” See Rule 4703(k).

4702(b)(7)(B) that incorrectly suggests otherwise. For the same reason, the Exchange also proposes to delete Trade Now from the list of Order Attributes that may be associated with Price to Display Orders²⁰; again, Price to Display Orders are Displayed Orders, whereas Trade Now is applicable to Non-Displayed Orders.²¹

Fourth, the Exchange proposes to amend Rule 4702(b)(7) to account for a scenario where, after entry of a Market Maker Peg Order whose initial displayed price was set with reference to the National Best Bid or Offer, the National Best Bid or Offer shifts such that the displayed price of the Order to buy (sell) is equal to or greater (less) than the National Best Bid (Offer). The Exchange proposes to state that the Exchange will not reprice the Market Maker Peg Order in this scenario until a new Reference Price is established that is more aggressive than the displayed price of the Order. By specifying that the Exchange will not reprice Market Maker Peg Orders in this scenario until a new, more aggressive Reference Price is established, the Exchange will ensure that it does not engage in a potential cycle of pegging against a Reference Price established by the Order itself.

Change to Rule 4613

Next, the Exchange proposes to clarify the definitions of “Designated Percentage” in Rule 4613(a)(2)(D) and “Defined Limit” in Rule 4613(a)(2)(E), which presently are as follows:

²⁰ “Price to Display” is an Order Type designed to comply with Rule 610(d) under Regulation NMS by avoiding the display of quotations that lock or cross any Protected Quotation in a System Security during Market Hours. See Rule 4702(b)(2).

²¹ The Exchange also proposes to amend its discussion of Price to Display Orders, in Rule 4702(b)(2), to correct an erroneous reference to a “Price to Comply Order” that should read “Price to Display Order.”

(D) For purposes of this Rule, the "Designated Percentage" shall be 8% for securities subject to Rule 4120(a)(11) and are securities included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products, 28% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price equal to or greater than \$1, and 30% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price less than \$1, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Rule 4120(a)(11) is not in effect, the Designated Percentage shall be 20% for securities included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products, 28% for all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price equal to or greater than \$1, and 30% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price less than \$1.

(E) For purposes of this Rule, the "Defined Limit" shall be 9.5% for securities subject to Rule 4120(a)(11) and are securities included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products, 29.5% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price equal to or greater than \$1, and 31.5% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price less than \$1, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Rule 4120(a)(11) is not in effect, the Defined Limit shall be 21.5% for securities included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products, 29.5% for all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price equal to or greater than \$1, and 31.5% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price less than \$1.

The Exchange is concerned that these two provisions could be misinterpreted to suggest that prior to 9:30 a.m., when Rule 4120(a)(11) is not in effect, the Exchange applies a narrower Designated Percentage and Defined Limit than it does between 9:30 and 9:45 a.m., under the same conditions. In fact, the Exchange applies the same wider Designated Percentage and Defined Limit prior to 9:30 a.m. as it does between 9:30 and

9:45 a.m. To avoid confusion (and without changing existing market maker obligations), the Exchange therefore proposes to clarify both of these provisions of Rule 4613(a)(2) to read that “prior to 9:45 a.m.” and between 3:35 p.m. and the close of trading, the Designated Percentage and Defined Limit (including for Market Maker Peg Orders) shall be as stated. Furthermore, throughout Rule 4613(a)(2)(D), in defining the term “Designated Percentage,” the Exchange proposes to replace references to securities subject to Rule 4120(a)(11) with the following: (i) the Designated Percentage shall be 8% for all Tier 1 NMS Stocks under the LULD Plan,²² (ii) 28% for all Tier 2 NMS Stocks under the LULD Plan with a price equal to or greater than \$1, and (iii) 30% for all Tier 2 NMS Stocks under the LULD Plan with a price less than \$1, except that prior to 9:45 a.m. and between 3:35 p.m. and the close of trading, the Designated Percentage shall be: (i) 20% for Tier 1 NMS Stocks under the LULD Plan; (ii) 28% for all Tier 2 NMS Stocks under the LULD Plan with a price equal to or greater than \$1; and (iii) 30% for all Tier 2 NMS Stocks under the LULD Plan with a price less than \$1. Similarly, in Rule 4613(a)(2)(E), in defining the term “Defined Limit,” the Exchange proposes to replace references to securities subject to Rule 4120(a)(11)(A), (B), and (C) with the following: (i) 9.5% for all Tier 1 NMS Stocks under the LULD Plan; (ii) 29.5% for all Tier 2 NMS Stocks under the LULD Plan with a price equal to or greater than \$1; and (iii) 31.5% for all Tier 2 NMS Stocks under the LULD Plan with a price less than \$1, except that prior to 9:45 a.m. and between 3:35 p.m. and the close of trading, the Defined Limit shall be: (i)

²² Tier 1 NMS Stocks under the LULD Plan comprise all NMS Stocks included in the S&P 500® Index, Russell 1000® Index, and a list of Exchange Traded Products identified as Schedule 1 to the Plan to Address Extraordinary Market Volatility Submitted to the Securities and Exchange Commission Pursuant to Rule 608 of Regulation NMS Under the Securities Exchange Act of 1934 (the “LULD Plan”).

21.5% all Tier 1 NMS Stocks under the LULD Plan; (ii) 29.5% for all Tier 2 NMS Stocks under the LULD Plan with a price equal to or greater than \$1; and (iii) 31.5% for all Tier 2 NMS Stocks under the LULD Plan with a price less than \$1. The Exchange proposes this change because references to Rule 4120(a)(11) are obsolete.

The Exchange also proposes to add to Rule 4613(a)(2)(D) that the Designated Percentage for rights and warrants shall be 30% and to Rule 4613(a)(2)(E) that the Defined Limit for rights and warrants shall be 31.5%. The Exchange mistakenly omitted the Designated Percentage and Defined Limit for such securities from prior filings.

Changes to Reserve Size

As set forth in Rule 4703(h), “Reserve Size” is an Order Attribute that permits a Participant to stipulate that an Order Type that is Displayed may have its displayed size replenished from additional non-displayed size.²³ The Exchange proposes three changes to the rule text describing the Reserve Size Order Attribute.

First, the Exchange proposes to amend a paragraph of Rule 4703(h) which begins as follows: “Whenever a Participant enters an Order with Reserve Size, the System will process the Order as two Orders: A Displayed Order (with the characteristics of its selected Order Type) and a Non-Displayed Order. Upon entry, the full size of each such Order will be processed for potential execution in accordance with the parameters applicable to the Order Type.” The Exchange proposes to amend this language because it does not describe precisely how the Exchange processes Orders with Reserve Size. The Exchange proposes to state instead that whenever a Participant enters an Order with Reserve Size, the full size of the Order will be presented for potential execution in

²³ An Order with Reserve Size may be referred to as a “Reserve Order.”

compliance with Regulation NMS and that thereafter, unexecuted portions of the Order will be processed as two Orders: a Displayed Order (with the characteristics of its selected Order Type) and a Non-Displayed Order. The Exchange also proposes to delete the following sentence: “Upon entry, the full size of each such Order will be processed for potential execution in accordance with the parameters applicable to the Order Type.” The proposed re-formulation reflects that it is possible that the Order with Reserve Size will be executed immediately in full and without needing to place unexecuted portions of the Order in reserve. Furthermore, it clarifies that the System will present the Order for immediate execution (provided that it does not trade through a protected quotation, in accordance with Regulation NMS) without complying with underlying characteristics of the Order Type that might otherwise require an adjustment to the price of the Order before the System attempts to execute it.²⁴ The proposed language is consistent with the following example set forth in the existing rule text:

For example, a Participant might enter a Price to Display Order with 200 shares displayed and an additional 3,000 shares non-displayed. Upon entry, the Order would attempt to execute against available liquidity on the Exchange Book, up to 3,200 shares. Thereafter, unexecuted portions of the Order would post to the Exchange Book as a Displayed Price to Display Order and a Non-Displayed Order; provided, however, that if the remaining total size is less than the display size stipulated by the Participant, the Displayed Order will post without Reserve

²⁴ This clarification is needed due to the fact that pursuant to Rule 4702(b)(2)(A), a Price to Display Order would automatically reprice upon entry if its entered limit price would lock or cross a protected quotation.

Size. Thus, if 3,050 shares executed upon entry, the Price to Display Order would post with a size of 150 shares and no Reserve Size.

The proposed language eliminates confusion that might otherwise arise from perceived inconsistencies between the above example and existing rule text. Again, the existing rule text states that whenever a participant enters an Order with Reserve Size, the System will process the Reserve Order as two orders upon entry and also, upon entry, the full size of an Order with Reserve will be presented for potential execution in accordance with the parameters applicable to the Order Type.

When there is, in fact, an unexecuted portion of the Order, then the Exchange will continue to process the unexecuted portion as two Orders: a Displayed Order and a Non-Displayed Order.

Second, the Exchange proposes to delete text from Rule 4703(h) which states that “[a] Participant may stipulate that the Displayed Order should be replenished to its original size.” The Exchange proposes to delete this text because it is redundant of text elsewhere in the Rule that describes how a Displayed Order with Reserve Size replenishes.²⁵

Third, the Exchange proposes to amend text from Rule 4703(h) that allows participants to designate that the original and subsequent displayed sizes of the Displayed Order are amounts randomly determined based upon factors they select (“Random

²⁵ The Exchange proposes to clarify a portion of Rule 4703(h) which states that if an execution against a Displayed Order causes its size to decrease below a normal unit of trading, another Displayed Order will be entered at the “level” stipulated by the Participant while the size of the Non-Displayed Order will be reduced by the same amount. In describing the entry of the new Displayed Order in this instance, the Exchange proposes to replace the word “level” with “limit price and size,” which is a more precise phrase.

Reserve”). The amendments also state that when Participants stipulate use of a Random Reserve, they would select a nominal (rather than a “theoretical”) displayed size, which is a more precise term. Furthermore, the amendment adds a reminder that the actual displayed size will be randomly determined by the System from a range of “normal trading units.” Lastly, the amendments include other changes that do not change the substantive meaning of the text, but simply improve its readability.

The Exchange intends to implement the foregoing changes during the First Quarter of 2021. The Exchange will issue an Equity Trader Alert at least 30 days in advance of implementing the changes.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁷ 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 it is consistent with the Act to amend Rule 4702(b)(7), which describes the Market Maker Peg Order Type, to correct one of the stated conditions under which a Market Maker Peg Order will be sent back to a Participant. As presently stated, this condition provides for Market Maker Peg Orders to be repriced automatically at limit prices that are within the Defined Limit, but outside of the Designated Percentage, which places them in conflict with Rule 4613(a)(2), which

²⁶ 15 U.S.C. 78f(b).

²⁷ 15 U.S.C. 78f(b)(5).

requires Market Makers to price and re-price bid and offer interest at the Designated Percentage. It is just and in the interests of the investors and the public for the Exchange to correct Rule 4702(b)(7) to ensure that Market Maker Peg Orders operate in a manner that helps rather than hinders Market Makers from complying with Rule 4613.

It is also consistent with the Act for the Exchange to amend Rule 4702(b)(7) to clarify that repricing will occur when the difference between the displayed price of a Market Maker Peg Order and the Reference Price “exceeds,” rather than merely “reaches,” the Defined Limit, as the Rule states presently. The proposed change would ensure that the Rule text is internally consistent, as the example set forth in the text suggests that the Rule should be read to mean exceeds. It would also render the Rule consistent with Market Maker obligations under Rule 4613. The Exchange believes that it is in the interest of investors and the public to eliminate such inconsistencies.

Meanwhile, the Exchange believes that it is consistent with the Act to eliminate the option for Participants to enter offsets from the Market Maker Peg Orders. The proposal is consistent with the Act because Market Makers do not actively employ such offsets. As noted above, the Exchange has reviewed usage of offsets with Market Maker Peg Orders and found that no Market Maker has assigned an offset with their Market Maker Peg Orders since January 2019. Moreover, elimination of the option to enter offsets would simplify the Exchange’s efforts to improve processing.

The Exchange’s proposal to eliminate Trade Now as an Order Attribute that may be associated with the Market Maker Peg and Price to Display Order Types is consistent with the Act because there are no instances in which Trade Now actually may be associated with a Market Maker Peg Order or a Price to Display Order. Eliminating the

reference to Trade Now in 4702(b)(2) and (7) will serve to avoid market Participant confusion that may otherwise arise from associating an incompatible Order Attribute with these Order Types.

The Exchange believes that it is consistent with the Act to clarify Rule 4702(b)(7) so that it specifies how the System will react when, after entry of a Market Maker Peg Order whose initial displayed price was set with reference to the National Best Bid or Offer, the National Best Bid or Offer shifts such that the displayed price of the Order to buy (sell) is equal to or greater (less) than the National Best Bid (National Best Offer). Specifically, the Exchange believes that it is just and in the interests of investors to specify that the Exchange will not reprice Market Maker Peg Orders in this scenario until a new, more aggressive Reference Price is established, because doing so ensures that the Exchange will not engage in a potential cycle of pegging against a Reference Price established by the Order itself.

The Exchange's proposal to amend the definitions of "Designated Percentage" and "Defined Limit," as set forth in Rule 4613(a)(2)(D) and (E), is consistent with the Act because the amendment is necessary to correct obsolete cross-references and to avoid confusion about which particular percentage or limit will apply to orders prior to 9:30 a.m. The proposal clarifies the Rule by stating expressly that the same sets of bands that apply between 9:30-9:45 a.m. and between 3:35 p.m. and the close of trading also apply prior to 9:30 a.m. The proposal also specifies a Designated Percentage and a Defined Limit for rights and warrants, which were mistakenly omitted from prior filings.

It is also consistent with the Act to amend Rule 4703(h) to clarify that when a Participant enters an Order with Reserve Size, the full size of the Order will first be

presented for potential execution in compliance with Regulation NMS, and only if there is an unexecuted portion of the Order will it be processed as a Displayed Order and a Non-Displayed Order. This clarification describes the behavior of the System more precisely than the existing Rule language. It also reflects the possibility that the Order with Reserve Size will be executed immediately in full and without needing to place unexecuted portions of the Order in reserve. Furthermore, it eliminates inconsistency between rule text which presently suggests that the System will process the Order with Reserve Size for potential immediate execution consistent with the characteristics of its underlying Order Type, and an example in the rule text in which the Exchange provides that the System will process the Order for potential immediate execution regardless of the parameters applicable to the Order Type. The proposed amendment will resolve this inconsistency by making clear that the System will present an order for potential immediate execution regardless of the characteristics of the underlying Order Type, with the caveat that the Order will not trade-through a protected quotation as required by Regulation NMS.

It is consistent with the Act to amend Rule 4703(h) to state that when participants stipulate use of a Random Reserve, they would select a “nominal” – rather than a “theoretical” displayed size. The proposed term “nominal” is more precise than the existing Rule text. Improving the precision of the Exchange’s Rules improves the ability of the public and investors to comprehend them and account for and comply with them. For similar reasons, proposed non-substantive amendments to other text in Rule 4703(h) are consistent with the Act because they would improve the readability of the Rule.

Finally, the Exchange believes that various proposed non-substantive clarifications and corrections to the text of the Rule will improve its readability, which is in the interests of market participants and investors, and would promote a more orderly market.

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that its proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As a general principle, the proposed changes are reflective of the significant competition among exchanges and non-exchange venues for order flow. In this regard, proposed changes that facilitate enhancements to the Exchange's System and order entry protocols as well as those that clarify and correct the Exchange's Rules regarding its Order Types and Attributes, are pro-competitive because they bolster the efficiency, integrity, and overall attractiveness of the Exchange in an absolute sense and relative to its peers.

Moreover, none of the proposed changes will burden intra-market competition among various Exchange Participants. Proposed changes to the Market Maker Peg Order Type, at Rule 4702(b)(7), and to Rule 4613, will apply equally to all Market Makers. Market Makers will experience no competitive impact from proposals to eliminate their ability to use offsets with Market Maker Peg Orders or the Trade Now functionality for Market Maker Peg Orders and Price to Display Orders because Market Makers do not actually utilize offsets and cannot, by definition, apply Trade Now to Market Maker Peg Orders or Price to Display Orders. Likewise, Market Makers will feel no competitive effects from proposed corrections and clarifications to the manner in which the Exchange prices and re-prices their Market Maker Peg Orders, except that the changes will benefit

Market Makers by ensuring that the Exchange always processes those Orders in a manner that complies with their Market Maker pricing obligations under Rule 4613. Proposed changes to Rule 4613 are intended to update obsolete references and to correct inadvertent errors and should have no competitive impact on Market Makers. Proposed clarifications and amendments to the Reserve Order Attribute Rule, at Rule 4703(h), are intended to improve the precision and readability of the Rule text and will not have any competitive impact on participants.

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)²⁸ of the Act and Rule 19b-4(f)(6) thereunder²⁹ 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.

²⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁹ 17 CFR 240.19b-4(f)(6).

As noted above, the proposed changes do not significantly affect the protection of investors or the public interest; instead, they will further the interests of investors and the public by, among other things: (i) improving the accuracy, readability, and consistency of the rule text; (ii) by describing the operation of the Exchange's System and Order Types in more granular detail; and (iii) streamlining functionality across the Exchange Systems and order entry protocols, including eliminating unused functionality like offsets to Market Maker Peg Orders, thereby enabling the Exchange to process these Orders more quickly and efficiently. Moreover, the proposed changes do not impose any significant burden on competition for the reasons stated above, including that they improve the transparency of the Exchange, facilitate improvements to the System, and thereby may make the Exchange a more attractive venue to market participants.

Furthermore, Rule 19b-4(f)(6)(iii)³⁰ requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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.

³⁰ 17 CFR 240.19b-4(f)(6)(iii).

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

This rule filing is based upon SR-NASDAQ-2020-071, except that the rule filing proposes to define a Designated Percentage for rights and warrants – a concept which had already existed in the Nasdaq Rules and did not need to be added via SR-NASDAQ-2020-071.

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-2020-034)

November __, 2020

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rules 4613, 4702, and 4703

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 November 25, 2020, 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 amend Rules 4613, 4702, and 4703 in light of planned changes to the System, as described further below.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/bx/rules>, 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

¹ 15 U.S.C. 78s(b)(1).

² 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

Presently, the Exchange is making functional enhancements and improvements to specific Order Types³ and Order Attributes⁴ that are currently only available via the RASH Order entry protocol.⁵ Specifically, the Exchange will be upgrading the logic and implementation of these Order Types and Order Attributes so that the features are more streamlined across the Exchange's Systems and order entry protocols, and will enable the Exchange to process these Orders more quickly and efficiently. Additionally, this System upgrade will pave the way for the Exchange to enhance the OUCH Order entry protocol⁶ so that Participants may enter such Order Types and Order Attributes via

³ An "Order Type" is a standardized set of instructions associated with an Order that define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the Exchange. See Rule 4701(e).

⁴ An "Order Attribute" is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the Exchange. See id.

⁵ The RASH (Routing and Special Handling) Order entry protocol is a proprietary protocol that allows members to enter Orders, cancel existing Orders and receive executions. RASH allows participants to use advanced functionality, including discretion, random reserve, pegging and routing. See http://nasdaqtrader.com/content/technicalsupport/specifications/TradingProducts/rash_sb.pdf.

⁶ The OUCH Order entry protocol is a proprietary protocol that allows subscribers to quickly enter orders into the System and receive executions. OUCH accepts limit Orders from members, and if there are matching Orders, they will execute.

OUCH, in addition to the RASH Order entry protocols.⁷ The Exchange plans to implement its enhancement of the OUCH protocol sequentially, by Order Type and Order Attribute.

To support and prepare for these upgrades and enhancements, the Exchange now proposes to amend its Rules governing Order Types and Order Attributes, at Rules 4702 and 4703, respectively. In particular, the Exchange proposes to adjust the current functionality of the Market Maker Peg Order⁸ and Reserve Size Order Attribute,⁹ as described below, so that they align with how the System, once upgraded, will handle these Orders going forward. The Exchange also proposes to make several associated clarifications and corrections to these Rules, and to Rule 4613, as it prepares to enhance its order handling processes.

Non-matching Orders are added to the Limit Order Book, a database of available limit Orders, where they are matched in price-time priority. OUCH only provides a method for members to send Orders and receive status updates on those Orders. See <https://www.nasdaqtrader.com/Trader.aspx?id=OUCH>.

⁷ The Exchange designed the OUCH protocol to enable members to enter Orders quickly into the System. As such, the Exchange developed OUCH with simplicity in mind, and it therefore lacks more complex order handling capabilities. By contrast, the Exchange specifically designed RASH to support advanced functionality, including discretion, random reserve, pegging and routing. Once the System upgrades occur, then the Exchange intends to propose further changes to its Rules to permit participants to utilize OUCH, in addition to RASH, to enter order types that require advanced functionality.

⁸ See Rule 4702(b)(7).

⁹ See Rule 4703(h).

The Exchange notes that the Exchange's affiliate, the Nasdaq Stock Market, LLC, recently filed a proposal for immediate effectiveness to make changes that are materially identical to those proposed herein.¹⁰

Changes to Market Maker Peg Order

A Market Maker Peg Order is an Order Type that exists to help a Market Maker to meet its obligation to maintain continuous two-sided quotations (the "Two-Sided Obligation"), as set forth in Rule 4613(a)(2).¹¹ The Exchange proposes to make four changes related to the Market Maker Peg Order.

First, the Exchange proposes to amend Rule 4702(b)(7) to correct the conditions under which a Market Maker Peg Order will be sent back to a Participant. Rule 4702(b)(7) currently states that a Market Maker Peg Order will be sent back to the Participant if: (1) upon entry of the Order, the limit price of the Order is not within the Designated Percentage¹²; or (2) after the Order has been posted to the Exchange Book,

¹⁰ See Securities Exchange Act Release No. 34-90389 (November 10, 2020), 85 FR 73304 (November 17, 2020) (SR-NASDAQ-2020-71).

¹¹ See Rule 4613(a)(2).

¹² See Rule 4702(b)(7). The "Designated Percentage" is 8% for securities subject to Rule 4120(a)(11) and are securities included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products, 28% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price equal to or greater than \$1, and 30% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price less than \$1, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Rule 4120(a)(11) is not in effect, the Designated Percentage shall be 20% for securities included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products, 28% for all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price equal to or greater than \$1, and 30% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not

the Reference Price¹³ shifts to reach the Defined Limit,¹⁴ such that the Order is subject to re-pricing at the Designated Percentage away from the shifted Reference Price, but the limit price of the Order would then fall outside of the Defined Limit (which would now be measured by the difference between the re-priced Order and the shifted Reference Price).¹⁵

The Exchange proposes to correct the second of these two conditions because it inadvertently allows for a circumstance in which a Market Maker Peg Order will be automatically re-priced by the System to a limit price that is outside of the Designated

included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price less than \$1. See Rule 4613(a)(2)(D). As discussed below, the Exchange proposes to amend this definition.

¹³ The “Reference Price” for a Market Maker Peg Order to buy (sell) is the then-current National Best Bid (National Best Offer) (including the Exchange), or if no such National Best Bid or National Best Offer, the most recent reported last-sale eligible trade from the responsible single plan processor for that day, or if none, the previous closing price of the security as adjusted to reflect any corporate actions (e.g., dividends or stock splits) in the security. See Rule 4702(b)(7).

¹⁴ The term “Defined Limit” means 9.5% for securities subject to Rule 4120(a)(11) and are securities included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products, 29.5% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price equal to or greater than \$1, and 31.5% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price less than \$1, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Rule 4120(a)(11) is not in effect, the Defined Limit shall be 21.5% for securities included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products, 29.5% for all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price equal to or greater than \$1, and 31.5% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price less than \$1. See Rule 4613(a)(2)(E).

¹⁵ See Rule 4702(b)(7).

Percentage but inside of the Defined Limit. Such an outcome is inconsistent with a Market Maker's obligations to price or reprice its bid (offer) quotations not more than the Designated Percentage away from the then National Best Bid (Offer), as set forth in Rule 4613(a)(2).¹⁶ In order for Rule 4702(b)(7) to be consistent with Rule 4613(a)(2), Rule 4702(b)(7) cannot permit the System to re-price a Market Maker Peg Order to a limit price that is outside of the Designated Percentage. In any circumstance in which the Order would be re-priced to a limit that is outside of the Designated Percentage, the Rule must require the System to return the Order to the Participant. The Exchange proposes to amend Rule 4702(b)(7) accordingly.¹⁷

¹⁶ Rule 4613(a)(2) states that for a Market Maker to satisfy its Two-Sided Obligation, the Market Maker must price bid (offer) interest not more than the Designated Percentage away from the then current National Best Bid (Offer) (or if there is no National Best Bid (Offer), not more than the Designated Percentage away from the last reported sale from the responsible single plan processor). Moreover, Rule 4613(a)(2) states that if the National Best Bid (Offer) or reported sale increases (decreases) to a level that would cause the bid (offer) interest of the Two-Sided Obligation to be more than the Defined Limit away from the National Best Bid (offer) or last reported sale, or if the bid (offer) is executed or cancelled, then the Market Maker must enter new bid (offer) interest at a price not more than the Designated Percentage away from the then current National Best Bid (Offer) or last reported sale.

¹⁷ The Exchange also proposes to amend this condition to state that repricing will occur when the difference between the displayed price of a Market Maker Peg Order and the Reference Price exceeds, rather than merely reaches, the Defined Limit. Currently, the Rule uses the term "reaches," but this is inconsistent with the example that follows it ("In the foregoing example, if the Defined Limit is 9.5% and the National Best Bid increases to \$10.17, such that the displayed price of the Market Maker Peg Order would be more than 9.5% away, the Order will be repriced to \$9.36, or 8% away from the National Best Bid.") (emphasis added). The Exchange proposes to reconcile this inconsistency in a manner that reflects the stated example as well as the manner in which the Exchange's System presently applies the Rule. It would also render the Rule consistent with Market Maker obligations under Rule 4613.

Second, the Exchange proposes to amend Rule 4702(b)(7) to no longer allow entry of a Market Maker Peg Order entered with an offset. The Rule presently permits a Market Maker to enter a Market Maker Peg Order with a more aggressive offset than the Designated Percentage, but not a less aggressive offset. The Exchange has reviewed usage of offsets with Market Maker Peg Orders and found that no Market Maker assigned an offset to their Market Maker Peg Orders since January 2019. The Exchange does not believe that there is value in keeping offsets as an option for Market Maker Peg Orders. Accordingly, the Exchange proposes to delete text from Rule 4702(b)(7)(A) that discusses offsets and replace it with text stating that Market Maker Peg Orders entered with pegging offsets will not be accepted. The Exchange also makes conforming changes to Rule 4702(b)(7) where the text refers to offsets.

Third, the Exchange proposes to delete “Trade Now”¹⁸ from the list of Order Attributes that may be associated with Market Maker Peg Orders under Rule 4702(b)(7). As noted above, Market Maker Peg Orders allow Market Makers to maintain continuous two-sided quotations at displayed prices that are compliant with the Market Makers’ obligations under Rule 4613. By their nature, Market Maker Peg Orders are always Displayed Orders, while Orders with Trade Now are Non-Displayed Orders.¹⁹

¹⁸ “Trade Now” is an Order Attribute that allows a resting Order that becomes locked by an incoming Displayed Order to execute against the available size of the contra-side locking Order as a liquidity taker, and any remaining shares of the resting Order will remain posted on the BX Book with the same priority. See Rule 4703(l).

¹⁹ “Display” is an Order Attribute that allows the price and size of an Order to be displayed to market participants via market data feeds. All Orders that are Attributable are also displayed, but an Order may be displayed without being Attributable. As discussed in Rule 4702, a Non-Displayed Order is a specific Order Type, but other Order Types may also be non-displayed if they are not assigned a Display Order Attribute; however, depending on context, all Orders

Consequently, there are no circumstances in which a Market Maker Peg Order could have Trade Now associated with it; the Exchange proposes to delete text from Rule 4702(b)(7)(B) that incorrectly suggests otherwise. For the same reason, the Exchange also proposes to delete Trade Now from the list of Order Attributes that may be associated with Price to Display Orders²⁰; again, Price to Display Orders are Displayed Orders, whereas Trade Now is applicable to Non-Displayed Orders.²¹

Fourth, the Exchange proposes to amend Rule 4702(b)(7) to account for a scenario where, after entry of a Market Maker Peg Order whose initial displayed price was set with reference to the National Best Bid or Offer, the National Best Bid or Offer shifts such that the displayed price of the Order to buy (sell) is equal to or greater (less) than the National Best Bid (Offer). The Exchange proposes to state that the Exchange will not reprice the Market Maker Peg Order in this scenario until a new Reference Price is established that is more aggressive than the displayed price of the Order. By specifying that the Exchange will not reprice Market Maker Peg Orders in this scenario until a new, more aggressive Reference Price is established, the Exchange will ensure that it does not engage in a potential cycle of pegging against a Reference Price established by the Order itself.

that are not displayed may be referred to as “Non-Displayed Orders.” An Order with a Display Order Attribute may be referred to as a “Displayed Order.” See Rule 4703(k).

²⁰ “Price to Display” is an Order Type designed to comply with Rule 610(d) under Regulation NMS by avoiding the display of quotations that lock or cross any Protected Quotation in a System Security during Market Hours. See Rule 4702(b)(2).

²¹ The Exchange also proposes to amend its discussion of Price to Display Orders, in Rule 4702(b)(2), to correct an erroneous reference to a “Price to Comply Order” that should read “Price to Display Order.”

Change to Rule 4613

Next, the Exchange proposes to clarify the definitions of “Designated Percentage” in Rule 4613(a)(2)(D) and “Defined Limit” in Rule 4613(a)(2)(E), which presently are as follows:

(D) For purposes of this Rule, the "Designated Percentage" shall be 8% for securities subject to Rule 4120(a)(11) and are securities included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products, 28% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price equal to or greater than \$1, and 30% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price less than \$1, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Rule 4120(a)(11) is not in effect, the Designated Percentage shall be 20% for securities included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products, 28% for all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price equal to or greater than \$1, and 30% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price less than \$1.

(E) For purposes of this Rule, the "Defined Limit" shall be 9.5% for securities subject to Rule 4120(a)(11) and are securities included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products, 29.5% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price equal to or greater than \$1, and 31.5% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price less than \$1, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Rule 4120(a)(11) is not in effect, the Defined Limit shall be 21.5% for securities included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products, 29.5% for all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price equal to or greater than \$1, and 31.5% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price less than \$1.

The Exchange is concerned that these two provisions could be misinterpreted to suggest that prior to 9:30 a.m., when Rule 4120(a)(11) is not in effect, the Exchange applies a narrower Designated Percentage and Defined Limit than it does between 9:30 and 9:45 a.m., under the same conditions. In fact, the Exchange applies the same wider Designated Percentage and Defined Limit prior to 9:30 a.m. as it does between 9:30 and 9:45 a.m. To avoid confusion (and without changing existing market maker obligations), the Exchange therefore proposes to clarify both of these provisions of Rule 4613(a)(2) to read that “prior to 9:45 a.m.” and between 3:35 p.m. and the close of trading, the Designated Percentage and Defined Limit (including for Market Maker Peg Orders) shall be as stated. Furthermore, throughout Rule 4613(a)(2)(D), in defining the term “Designated Percentage,” the Exchange proposes to replace references to securities subject to Rule 4120(a)(11) with the following: (i) the Designated Percentage shall be 8% for all Tier 1 NMS Stocks under the LULD Plan,²² (ii) 28% for all Tier 2 NMS Stocks under the LULD Plan with a price equal to or greater than \$1, and (iii) 30% for all Tier 2 NMS Stocks under the LULD Plan with a price less than \$1, except that prior to 9:45 a.m. and between 3:35 p.m. and the close of trading, the Designated Percentage shall be: (i) 20% for Tier 1 NMS Stocks under the LULD Plan; (ii) 28% for all Tier 2 NMS Stocks under the LULD Plan with a price equal to or greater than \$1; and (iii) 30% for all Tier 2 NMS Stocks under the LULD Plan with a price less than \$1. Similarly, in Rule 4613(a)(2)(E), in defining the term “Defined Limit,” the Exchange proposes to replace

²² Tier 1 NMS Stocks under the LULD Plan comprise all NMS Stocks included in the S&P 500® Index, Russell 1000® Index, and a list of Exchange Traded Products identified as Schedule 1 to the Plan to Address Extraordinary Market Volatility Submitted to the Securities and Exchange Commission Pursuant to Rule 608 of Regulation NMS Under the Securities Exchange Act of 1934 (the “LULD Plan”).

references to securities subject to Rule 4120(a)(11)(A), (B), and (C) with the following: (i) 9.5% for all Tier 1 NMS Stocks under the LULD Plan; (ii) 29.5% for all Tier 2 NMS Stocks under the LULD Plan with a price equal to or greater than \$1; and (iii) 31.5% for all Tier 2 NMS Stocks under the LULD Plan with a price less than \$1, except that prior to 9:45 a.m. and between 3:35 p.m. and the close of trading, the Defined Limit shall be: (i) 21.5% all Tier 1 NMS Stocks under the LULD Plan; (ii) 29.5% for all Tier 2 NMS Stocks under the LULD Plan with a price equal to or greater than \$1; and (iii) 31.5% for all Tier 2 NMS Stocks under the LULD Plan with a price less than \$1. The Exchange proposes this change because references to Rule 4120(a)(11) are obsolete.

The Exchange also proposes to add to Rule 4613(a)(2)(D) that the Designated Percentage for rights and warrants shall be 30% and to Rule 4613(a)(2)(E) that the Defined Limit for rights and warrants shall be 31.5%. The Exchange mistakenly omitted the Designated Percentage and Defined Limit for such securities from prior filings.

Changes to Reserve Size

As set forth in Rule 4703(h), “Reserve Size” is an Order Attribute that permits a Participant to stipulate that an Order Type that is Displayed may have its displayed size replenished from additional non-displayed size.²³ The Exchange proposes three changes to the rule text describing the Reserve Size Order Attribute.

First, the Exchange proposes to amend a paragraph of Rule 4703(h) which begins as follows: “Whenever a Participant enters an Order with Reserve Size, the System will process the Order as two Orders: A Displayed Order (with the characteristics of its selected Order Type) and a Non-Displayed Order. Upon entry, the full size of each such

²³ An Order with Reserve Size may be referred to as a “Reserve Order.”

Order will be processed for potential execution in accordance with the parameters applicable to the Order Type.” The Exchange proposes to amend this language because it does not describe precisely how the Exchange processes Orders with Reserve Size. The Exchange proposes to state instead that whenever a Participant enters an Order with Reserve Size, the full size of the Order will be presented for potential execution in compliance with Regulation NMS and that thereafter, unexecuted portions of the Order will be processed as two Orders: a Displayed Order (with the characteristics of its selected Order Type) and a Non-Displayed Order. The Exchange also proposes to delete the following sentence: “Upon entry, the full size of each such Order will be processed for potential execution in accordance with the parameters applicable to the Order Type.” The proposed re-formulation reflects that it is possible that the Order with Reserve Size will be executed immediately in full and without needing to place unexecuted portions of the Order in reserve. Furthermore, it clarifies that the System will present the Order for immediate execution (provided that it does not trade through a protected quotation, in accordance with Regulation NMS) without complying with underlying characteristics of the Order Type that might otherwise require an adjustment to the price of the Order before the System attempts to execute it.²⁴ The proposed language is consistent with the following example set forth in the existing rule text:

For example, a Participant might enter a Price to Display Order with 200 shares displayed and an additional 3,000 shares non-displayed. Upon entry, the Order would attempt to execute against available liquidity on the Exchange Book, up to

²⁴ This clarification is needed due to the fact that pursuant to Rule 4702(b)(2)(A), a Price to Display Order would automatically reprice upon entry if its entered limit price would lock or cross a protected quotation.

3,200 shares. Thereafter, unexecuted portions of the Order would post to the Exchange Book as a Displayed Price to Display Order and a Non-Displayed Order; provided, however, that if the remaining total size is less than the display size stipulated by the Participant, the Displayed Order will post without Reserve Size. Thus, if 3,050 shares executed upon entry, the Price to Display Order would post with a size of 150 shares and no Reserve Size.

The proposed language eliminates confusion that might otherwise arise from perceived inconsistencies between the above example and existing rule text. Again, the existing rule text states that whenever a participant enters an Order with Reserve Size, the System will process the Reserve Order as two orders upon entry and also, upon entry, the full size of an Order with Reserve will be presented for potential execution in accordance with the parameters applicable to the Order Type.

When there is, in fact, an unexecuted portion of the Order, then the Exchange will continue to process the unexecuted portion as two Orders: a Displayed Order and a Non-Displayed Order.

Second, the Exchange proposes to delete text from Rule 4703(h) which states that “[a] Participant may stipulate that the Displayed Order should be replenished to its original size.” The Exchange proposes to delete this text because it is redundant of text elsewhere in the Rule that describes how a Displayed Order with Reserve Size replenishes.²⁵

²⁵ The Exchange proposes to clarify a portion of Rule 4703(h) which states that if an execution against a Displayed Order causes its size to decrease below a normal unit of trading, another Displayed Order will be entered at the “level” stipulated by the Participant while the size of the Non-Displayed Order will be reduced by the same amount. In describing the entry of the new Displayed Order in this

Third, the Exchange proposes to amend text from Rule 4703(h) that allows participants to designate that the original and subsequent displayed sizes of the Displayed Order are amounts randomly determined based upon factors they select (“Random Reserve”). The amendments also state that when Participants stipulate use of a Random Reserve, they would select a nominal (rather than a “theoretical”) displayed size, which is a more precise term. Furthermore, the amendment adds a reminder that the actual displayed size will be randomly determined by the System from a range of “normal trading units.” Lastly, the amendments include other changes that do not change the substantive meaning of the text, but simply improve its readability.

The Exchange intends to implement the foregoing changes during the First Quarter of 2021. The Exchange will issue an Equity Trader Alert at least 30 days in advance of implementing the changes.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁷ 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 it is consistent with the Act to amend Rule 4702(b)(7), which describes the Market Maker Peg Order Type, to correct one of the

instance, the Exchange proposes to replace the word “level” with “limit price and size,” which is a more precise phrase.

²⁶ 15 U.S.C. 78f(b).

²⁷ 15 U.S.C. 78f(b)(5).

stated conditions under which a Market Maker Peg Order will be sent back to a Participant. As presently stated, this condition provides for Market Maker Peg Orders to be repriced automatically at limit prices that are within the Defined Limit, but outside of the Designated Percentage, which places them in conflict with Rule 4613(a)(2), which requires Market Makers to price and re-price bid and offer interest at the Designated Percentage. It is just and in the interests of the investors and the public for the Exchange to correct Rule 4702(b)(7) to ensure that Market Maker Peg Orders operate in a manner that helps rather than hinders Market Makers from complying with Rule 4613.

It is also consistent with the Act for the Exchange to amend Rule 4702(b)(7) to clarify that repricing will occur when the difference between the displayed price of a Market Maker Peg Order and the Reference Price “exceeds,” rather than merely “reaches,” the Defined Limit, as the Rule states presently. The proposed change would ensure that the Rule text is internally consistent, as the example set forth in the text suggests that the Rule should be read to mean exceeds. It would also render the Rule consistent with Market Maker obligations under Rule 4613. The Exchange believes that it is in the interest of investors and the public to eliminate such inconsistencies.

Meanwhile, the Exchange believes that it is consistent with the Act to eliminate the option for Participants to enter offsets from the Market Maker Peg Orders. The proposal is consistent with the Act because Market Makers do not actively employ such offsets. As noted above, the Exchange has reviewed usage of offsets with Market Maker Peg Orders and found that no Market Maker has assigned an offset with their Market Maker Peg Orders since January 2019. Moreover, elimination of the option to enter offsets would simplify the Exchange’s efforts to improve processing.

The Exchange's proposal to eliminate Trade Now as an Order Attribute that may be associated with the Market Maker Peg and Price to Display Order Types is consistent with the Act because there are no instances in which Trade Now actually may be associated with a Market Maker Peg Order or a Price to Display Order. Eliminating the reference to Trade Now in 4702(b)(2) and (7) will serve to avoid market Participant confusion that may otherwise arise from associating an incompatible Order Attribute with these Order Types.

The Exchange believes that it is consistent with the Act to clarify Rule 4702(b)(7) so that it specifies how the System will react when, after entry of a Market Maker Peg Order whose initial displayed price was set with reference to the National Best Bid or Offer, the National Best Bid or Offer shifts such that the displayed price of the Order to buy (sell) is equal to or greater (less) than the National Best Bid (National Best Offer). Specifically, the Exchange believes that it is just and in the interests of investors to specify that the Exchange will not reprice Market Maker Peg Orders in this scenario until a new, more aggressive Reference Price is established, because doing so ensures that the Exchange will not engage in a potential cycle of pegging against a Reference Price established by the Order itself.

The Exchange's proposal to amend the definitions of "Designated Percentage" and "Defined Limit," as set forth in Rule 4613(a)(2)(D) and (E), is consistent with the Act because the amendment is necessary to correct obsolete cross-references and to avoid confusion about which particular percentage or limit will apply to orders prior to 9:30 a.m. The proposal clarifies the Rule by stating expressly that the same sets of bands that apply between 9:30-9:45 a.m. and between 3:35 p.m. and the close of trading also apply

prior to 9:30 a.m. The proposal also specifies a Designated Percentage and a Defined Limit for rights and warrants, which were mistakenly omitted from prior filings.

It is also consistent with the Act to amend Rule 4703(h) to clarify that when a Participant enters an Order with Reserve Size, the full size of the Order will first be presented for potential execution in compliance with Regulation NMS, and only if there is an unexecuted portion of the Order will it be processed as a Displayed Order and a Non-Displayed Order. This clarification describes the behavior of the System more precisely than the existing Rule language. It also reflects the possibility that the Order with Reserve Size will be executed immediately in full and without needing to place unexecuted portions of the Order in reserve. Furthermore, it eliminates inconsistency between rule text which presently suggests that the System will process the Order with Reserve Size for potential immediate execution consistent with the characteristics of its underlying Order Type, and an example in the rule text in which the Exchange provides that the System will process the Order for potential immediate execution regardless of the parameters applicable to the Order Type. The proposed amendment will resolve this inconsistency by making clear that the System will present an order for potential immediate execution regardless of the characteristics of the underlying Order Type, with the caveat that the Order will not trade-through a protected quotation as required by Regulation NMS.

It is consistent with the Act to amend Rule 4703(h) to state that when participants stipulate use of a Random Reserve, they would select a “nominal” – rather than a “theoretical” displayed size. The proposed term “nominal” is more precise than the existing Rule text. Improving the precision of the Exchange’s Rules improves the ability

of the public and investors to comprehend them and account for and comply with them. For similar reasons, proposed non-substantive amendments to other text in Rule 4703(h) are consistent with the Act because they would improve the readability of the Rule.

Finally, the Exchange believes that various proposed non-substantive clarifications and corrections to the text of the Rule will improve its readability, which is in the interests of market participants and investors, and would promote a more orderly market.

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

The Exchange does not believe that its proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As a general principle, the proposed changes are reflective of the significant competition among exchanges and non-exchange venues for order flow. In this regard, proposed changes that facilitate enhancements to the Exchange's System and order entry protocols as well as those that clarify and correct the Exchange's Rules regarding its Order Types and Attributes, are pro-competitive because they bolster the efficiency, integrity, and overall attractiveness of the Exchange in an absolute sense and relative to its peers.

Moreover, none of the proposed changes will burden intra-market competition among various Exchange Participants. Proposed changes to the Market Maker Peg Order Type, at Rule 4702(b)(7), and to Rule 4613, will apply equally to all Market Makers. Market Makers will experience no competitive impact from proposals to eliminate their ability to use offsets with Market Maker Peg Orders or the Trade Now functionality for Market Maker Peg Orders and Price to Display Orders because Market Makers do not actually utilize offsets and cannot, by definition, apply Trade Now to Market Maker Peg

Orders or Price to Display Orders. Likewise, Market Makers will feel no competitive effects from proposed corrections and clarifications to the manner in which the Exchange prices and re-prices their Market Maker Peg Orders, except that the changes will benefit Market Makers by ensuring that the Exchange always processes those Orders in a manner that complies with their Market Maker pricing obligations under Rule 4613. Proposed changes to Rule 4613 are intended to update obsolete references and to correct inadvertent errors and should have no competitive impact on Market Makers. Proposed clarifications and amendments to the Reserve Order Attribute Rule, at Rule 4703(h), are intended to improve the precision and readability of the Rule text and will not have any competitive impact on participants.

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 Act²⁸ and subparagraph (f)(6) of Rule 19b-4 thereunder.²⁹

²⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁹ 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

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-2020-034 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-2020-034. 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

proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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-2020-034 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.³⁰

J. Matthew DeLesDernier
Assistant Secretary

³⁰ 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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Equity Rules

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4613. Market Maker Obligations

A member registered as an Equities Market Maker shall engage in a course of dealings for its own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets in accordance with this Rule.

(a) Quotation Requirements and Obligations

(1) Two-Sided Quote Obligation. For each security in which a member is registered as a Equities Market Maker, the member shall be willing to buy and sell such security for its own account on a continuous basis during regular market hours and shall enter and maintain a two-sided trading interest ("Two-Sided Obligation") that is identified to the Exchange as the interest meeting the obligation and is displayed in the Exchange's quotation montage at all times. Interest eligible to be considered as part of an Equities Market Maker's Two-Sided Obligation shall have a displayed quotation size of at least one normal unit of trading (or a larger multiple thereof); provided, however, that an Equities Market Maker may augment its Two-Sided Obligation size to display limit orders priced at the same price as the Two-Sided Obligation. Unless otherwise designated, a "normal unit of trading" shall be 100 shares. After an execution against its Two-Sided Obligation, an Equities [a]Market Maker must ensure that additional trading interest exists in the Exchange to satisfy its Two-Sided Obligation either by immediately entering new interest to comply with this obligation to maintain continuous two-sided quotations or by identifying existing interest on the Exchange book that will satisfy this obligation.

(2) Pricing Obligations. For NMS stocks (as defined in Rule 600 under Regulation NMS) a Market Maker shall adhere to the pricing obligations established by this Rule during Regular Trading Hours; provided, however, that such pricing obligations (i) shall not commence during any trading day until after the first regular way transaction on the primary listing market in the security, as reported by the responsible single plan processor, and (ii) shall be suspended during a trading halt, suspension, or pause, and shall not re-commence until after the first regular way transaction on the primary listing market in the security following such halt, suspension, or pause, as reported by the responsible single plan processor.

(A) – (C) No change

(D) For purposes of this Rule, the "Designated Percentage" shall be 8% for [securities subject to Rule 4120(a)(11) and are securities included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products]all Tier 1 NMS Stocks under the LULD Plan, 28% for [securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price equal to or greater than \$1]all Tier 2 NMS Stocks under the LULD Plan with a price equal to or greater than \$1, and 30% for [securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price less than \$1]all Tier 2 NMS Stocks under the LULD Plan with a price less than \$1, except that [between 9:30 a.m. and]prior to 9:45 a.m. and between 3:35 p.m. and the close of trading, [when Rule 4120(a)(11) is not in effect,]the Designated Percentage shall be 20% for [securities included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products]all Tier 1 NMS Stocks under the LULD Plan, 28% for [all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price equal to or greater than \$1]all Tier 2 NMS Stocks under the LULD Plan with a price equal to or greater than \$1, and 30% for [securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price less than \$1]all Tier 2 NMS Stocks under the LULD Plan with a price less than \$1. The Designated Percentage for rights and warrants shall be 30%.

(E) For purposes of this Rule, the "Defined Limit" shall be 9.5% for [securities subject to Rule 4120(a)(11) and are securities included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products]Tier 1 NMS Stocks under the LULD Plan, 29.5% for [securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price equal to or greater than \$1]all Tier 2 NMS Stocks under the LULD Plan with a price equal to or greater than \$1, and 31.5% for [securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price less than \$1]all Tier 2 NMS Stocks under the LULD Plan with a price less than \$1, except that [between 9:30 a.m. and]prior to 9:45 a.m. and between 3:35 p.m. and the close of trading, [when Rule 4120(a)(11) is not in effect,] the Defined Limit shall be 21.5% for[securities included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products]all Tier 1 NMS Stocks under the LULD Plan, 29.5% for [all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price equal to or greater than \$1]all Tier 2 NMS Stocks under the LULD Plan with a price equal to or greater than \$1, and 31.5% for [securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500[®] Index, Russell 1000[®] Index, and a pilot list of Exchange Traded Products with a price less than \$1.]all Tier 2 NMS Stocks under the LULD Plan with a price less than \$1. The Defined Limit for rights and warrants shall be 31.5%.

* * * * *

4702. Order Types.

(a) No change.

(b) Except where stated otherwise, the following Order Types are available to all Participants:

(1) No change.

(2) (A) A "Price to Display Order" is an Order Type designed to comply with Rule 610(d) under Regulation NMS by avoiding the display of quotations that lock or cross any Protected Quotation in a System Security during Market Hours. Price to Display Orders are available solely to Participants that are Market Makers.

When a Price to Display Order is entered, if its entered limit price would lock or cross a Protected Quotation, the Price to Display Order will be repriced to one minimum price increment lower than the current Best Offer (for a Price to Display Order to buy) or higher than the current Best Bid (for a Price to Display Order to sell). For example, if a Price to Display Order to buy at \$11 would cross a Protected Offer of \$10.99, the Price to Display Order will be repriced to \$10.98. The Price to Display Order (whether repriced or not repriced) will then be executed against previously posted Orders on the Exchange Book that are priced equal to or better than the adjusted price of the Price to Display Order, up to the full amount of such previously posted Orders, unless such executions would trade through a Protected Quotation. Any portion of the Order that cannot be executed in this manner will be posted on the Exchange Book (and/or routed if it has been designated as Routable).

During Market Hours, the price at which a Price to Display Order is displayed and ranked on the Exchange Book will be its entered limit price if the Price to Display Order was not repriced upon entry, or the adjusted price if the Price to [Comply]Display Order was repriced upon entry, such that the price will not lock or cross a Protected Quotation.

During Pre-Market Hours and Post-Market Hours, a Price to Display Order will be displayed and ranked at its entered limit price without adjustment.

(B) No change.

(C) The following Order Attributes may be assigned to a Price to Display Order:

...

[• Trade Now (available through OUCH, RASH, FLITE and FIX).]

(3) – (6) No change.

(7) (A) A "Market Maker Peg Order" is an Order Type designed to allow a Market Maker to maintain a continuous two-sided quotation at a displayed price that is compliant with the quotation requirements for Market Makers set forth in Rule 4613(a)(2). The displayed price of the Market Maker Peg Order is set with reference to a "Reference Price" in order to keep the displayed price of the Market Maker Peg Order within a bounded price range. A Market Maker Peg Order may be entered through RASH or FIX only. A Market Maker Peg Order must be entered with a limit price beyond which the Order may not be priced. The Reference Price for a Market Maker Peg Order to buy (sell) is the then-current National Best Bid (National Best Offer), including BX, or if no such National Best Bid or National Best Offer, the most recent reported last-sale eligible trade from the responsible single plan processor for that day, or if none, the previous closing price of the security as adjusted to reflect any corporate actions (e.g., dividends or stock splits) in the security.

Upon entry, the displayed price of a Market Maker Peg Order to buy (sell) is automatically set by the System at the Designated Percentage (as defined in Rule 4613) away from the Reference Price in order to comply with the quotation requirements for Market Makers set forth in Rule 4613(a)(2). For example, if the National Best Bid is \$10 and the Designated Percentage for the security is 8%, the displayed price of a Market Maker Peg Order to buy would be \$9.20. If the limit price of the Order is not within the Designated Percentage, the Order will be sent back to the Participant.

Once a Market Maker Peg Order has posted to the BX Book, it is repriced if needed as the Reference Price changes. Specifically, if as a result of a change to the Reference Price, the difference between the displayed price of the Market Maker Peg Order and the Reference Price [reaches]exceeds the Defined Limit (as defined in Rule 4613), the Market Maker Peg Order to buy (sell) will be repriced to the Designated Percentage away from the Reference Price. In the foregoing example, if the Defined Limit is 9.5% and the National Best Bid increased to \$10.17, such that the displayed price of the Market Maker Peg Order would be more than 9.5% away, the Order will be repriced to \$9.3[5]6, or 8% away from the National Best Bid. Note that prices will be rounded in a manner to ensure that they are calculated and displayed at a level that is consistent with the Designated Percentage and the permissible minimum increment of \$0.01 or \$0.0001, as applicable. If the limit price of the Order is not within the Designated Percentage[outside the Defined Limit], the Order will be sent back to the Participant.

Similarly, if as a result of a change to the Reference Price, the displayed price of a Market Maker Peg Order to buy (sell) is at least one minimum price variation more than (less than) a price that is 4% less than (more than) the Reference Price, rounded up (down), then the Market Maker Peg Order to buy (sell) will be repriced to the Designated Percentage away from the Reference Price. For example, if the National Best Bid is \$10 and the Designated Percentage for the security is 8%, the displayed price of a Market Maker Peg Order to buy would initially be \$9.20. If the National

Best Bid then moved to \$9.57, such that the displayed price of the Market Maker Peg Order would be a minimum of \$0.01 more than a price that is 4% less than the National Best Bid, rounded up (i.e. $\$9.57 - (\$9.57 \times 0.04) = \$9.1872$, rounding up to \$9.19), the Order will be repriced to \$8.81, or 8% away from the National Best Bid.

Market Maker Peg Orders entered with a pegging offset will not be accepted.[A Market Maker may enter a Market Maker Peg Order with a more aggressive offset than the Designated Percentage, but may not enter a less aggressive offset. A more aggressive offset will be expressed as a price difference from the Reference Price. Such a Market Maker Peg Order will be repriced in the same manner as a Price to Display Order with Attribution and Primary Pegging. As a result, the Order will be repriced whenever the price to which the Order is pegged is changed.]

A new timestamp is created for a Market Maker Peg Order each time that it is repriced. In the absence of a Reference Price, a Market Maker Peg Order will be cancelled (if on the BX Book) or rejected (if it is an incoming Order). If, after entry, a Market Maker Peg Order has a displayed price based on a Reference Price other than the National Best Bid or National Best Offer and such Market Maker Peg Order is established as the National Best Bid or National Best Offer, the Market Maker Peg Order will not be subsequently repriced in accordance with this rule until a new Reference Price is established. Additionally, if after entry, a Market Maker Peg Order has a displayed price based on the NBBO, and the NBBO subsequently shifts such that the displayed price of the Market Maker Peg Order to buy (sell) is equal to or greater (less) than the National Best Bid (or National Best Offer), the Market Maker Peg Order will not be subsequently repriced in accordance with this Rule until a new Reference Price is established that is more aggressive than the displayed price of the Market Maker Peg Order. In such cases, the new Reference Price may be established by a change in the National Best Bid or National Best Offer based on another market center's quotation or by the entry into the System of any Displayed Order with a price better than the displayed price of the Market Maker Peg Order, whether the new Order is at a price that is lower than, higher than or equal to the prior Reference Price.

Notwithstanding the availability of Market Maker Peg Order functionality, a Market Maker remains responsible for entering, monitoring, and resubmitting, as applicable, quotations that meet the requirements of Rule 4613.

(B) The following Order Attributes may be assigned to a Market Maker Peg Order:

- Price. The displayed price of a Market Maker Peg Order is established by the BX System based on the Reference Price, the Designated Percentage[(or a narrower offset established by the Market Maker)], the Defined Limit, and the 4% minimum difference from the Reference Price.
- Size.

- A Time-in-Force other than IOC or GTC.

[• If the Market Maker designates a more aggressive offset than the Designated Percentage, Primary Pegging is required.]

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- [• Trade Now (available through OUCH, RASH, FLITE and FIX).]

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4703. Order Attributes.

As described in Rule 4702, the following Order Attributes may be assigned to those Order Types for which they are available.

(a) – (g) No change.

(h) Reserve Size. Reserve Size is an Order Attribute that permits a Participant to stipulate that an Order Type that is displayed may have its displayed size replenished from additional non-displayed size. An Order with Reserve Size may be referred to as a "Reserve Order." At the time of entry, the displayed size of such an Order selected by the Participant must be one or more normal units of trading; an Order with a displayed size of a mixed lot will be rounded down to the nearest round lot. A Reserve Order with displayed size of an odd lot will be accepted but with the full size of the Order displayed. Reserve Size is not available for Orders that are not displayed; provided, however, that if a Participant enters Reserve Size for a Non-Displayed Order with a Time-in-Force of IOC, the full size of the Order, including Reserve Size, will be processed as a Non-Displayed Order.

Whenever a Participant enters an Order with Reserve Size, the full size of the Order will be presented for potential execution in compliance with Regulation NMS; thereafter, unexecuted portions of the Order[System] will be processed [the Order]as two Orders: a Displayed Order (with the characteristics of its selected Order Type) and a Non-Displayed Order. [Upon entry, the full size of each such Order will be processed for potential execution in accordance with the parameters applicable to the Order Type.]For example, a Participant might enter a Price to Display Order with 200 shares displayed and an additional 3,000 shares non-displayed. Upon entry, the Order would attempt to execute against available liquidity on the Exchange Book, up to 3,200 shares. Thereafter, unexecuted portions of the Order would post to the Exchange Book as a Displayed Price to Display Order and a Non-Displayed Order; provided, however, that if the remaining total size is less than the display size stipulated by the Participant, the Displayed Order will post without Reserve Size. Thus, if 3,050 shares executed upon entry, the Price to Display Order would post with a size of 150 shares and no Reserve Size.

When an Order with Reserve Size is posted, if there is an execution against the Displayed Order that causes its size to decrease below a normal unit of trading,

another Displayed Order will be entered at the [level]limit price and size stipulated by the Participant while the size of the Non- Displayed Order will be reduced by the same amount. Any remaining size of the original Displayed Order will remain on the Exchange Book. The new Displayed Order will receive a new timestamp, but the Non-Displayed Order (and the original Displayed Order, if any) will not; although the new Displayed Order will be processed by the System as a new Order in most respects at that time, if it was designated as Routable, the System will not automatically route it upon reentry. For example, if a Price to Comply Order with Reserve Size posted with a Displayed Size of 200 shares, along with a Non-Displayed Order of 3,000 and the 150 shares of the Displayed Order was executed, the remaining 50 shares of the original Price to Comply Order would remain, a new Price to Comply Order would post with a size of 200 shares and a new timestamp, and the Non- Displayed Order would be decremented to 2,800 shares. Because a new Displayed Order is entered and the Non-Displayed Order is not reentered, there are circumstances in which the Displayed Order may receive a different price than the Non-Displayed Order. For example, if, upon reentry, a Price to Display Order would lock or cross a newly posted Protected Quotation, the price of the Order will be adjusted but its associated Non-Displayed Order would not be adjusted. In that circumstance, it would be possible for the better priced Non-Displayed Order to execute prior to the Price to Display Order.

[A Participant may stipulate that the Displayed Order should be replenished to its original size. Alternatively]In addition, the Participant may stipulate that the original and subsequent displayed size will be an amount randomly determined based on factors selected by the Participant (a “Random Reserve”). [Specifically]When a Participant stipulates use of a Random Reserve, the Participant would select both (i) a [theoretical]nominal displayed size and (ii) a range size, which may be any share amount less than the [theoretical]nominal displayed size. The actual displayed size will then be randomly determined by the System from [within]a range of normal trading units in which the minimum size is the [theoretical]nominal displayed size minus the range size, and the maximum size is (i) the minimum size plus (ii) an amount that is two times the range size minus one round lot. For example, if the [theoretical]nominal displayed size is 600 shares and the range size is 500, the minimum displayed size will be 100 shares (600-500), and the maximum size will be 1,000 shares ((600-500) + ((2 x 500) - 100)).

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(i) – (l) No change.

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