

(“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt new Exchange Rule 6.91P-O to reflect the implementation of the Exchange’s Pillar trading technology on its options market and to make conforming amendments to Exchange Rule 6.47A-O. The proposed rule change was published for comment in the **Federal Register** on August 4, 2021.<sup>3</sup> The Commission has received no comment letters regarding the proposed rule change.

Section 19(b)(2) of the Act<sup>4</sup> provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for the proposed rule change is September 24, 2021.

The Commission is extending the 45-day period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider and act on the Proposed Rule Change. Accordingly, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> the Commission designates November 8, 2021, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change (File No. SR-NYSEARCA-2021-68).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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

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

<sup>3</sup> Securities Exchange Act Release No. 92563 (August 4, 2021), 86 FR 43704 (August 10, 2021) (SR-NYSEARCA-2021-68) (“Notice”).

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> *Id.*

<sup>6</sup> 17 CFR 200.30-3(a)(31).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93066; File No. SR-NYSEArca-2021-52]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Withdrawal of a Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges

September 20, 2021.

#### I. Introduction

On June 14, 2021, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change (File No. SR-NYSEArca-2021-52) to amend the NYSE Arca Equities Fees and Charges (“Fee Schedule”).<sup>3</sup> The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.<sup>4</sup> The proposed rule change was published for comment in the **Federal Register** on July 6, 2021.<sup>5</sup> The Commission received no comment letters regarding the proposed rule change. On August 5, 2021, the Commission, pursuant to Section 19(b)(3)(C) of the Act,<sup>6</sup> temporarily suspended and instituted proceedings to determine whether to approve or disapprove the proposal.<sup>7</sup> On September 14, 2021, the Exchange withdrew the proposed rule change (SR-NYSEArca-2021-52).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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

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

<sup>3</sup> See Securities Exchange Act Release No. 92291 (June 29, 2021), 86 FR 35551 (July 6, 2021) (“Notice”).

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as “establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.” 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>5</sup> See Notice, *supra* note 3.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>7</sup> See Securities Exchange Act Release No. 92583 (August 5, 2021), 86 FR 44116 (August 11, 2021).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93067; File No. SR-BX-2021-041]

### Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 3, Section 26, Message Traffic Mitigation

September 20, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 14, 2021, 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 and II, 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 BX Rules at Options 2, Section 10, Directed Market Makers, Options 3, Section 26, Message Traffic Mitigation, and Options 3, Section 27 Limitation of Liability.

The Exchange also proposes to amend Options 10, Doing Business With The Public: Section 5, Branch Offices, Section 6, Opening of Accounts, and Section 9, Discretionary Accounts.

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 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.

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

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

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

1. Purpose

The Exchange proposes to amend Options 2, Section 10, Directed Market Makers, Options 3, Section 26, Message Traffic Mitigation, and Options 3, Section 27 Limitation of Liability. The Exchange also proposes to amend Options 10, Doing Business With The Public: Section 5, Branch Offices, Section 6, Opening of Accounts, and Section 9, Discretionary Accounts. Each change shall be described below.

Options 2, Section 10

The Exchange proposes to amend Options 2, Section 10, Directed Market Makers, to more explicitly describe, within subparagraph (a)(1) of that rule, the price at which a Directed Market Maker must be quoting at to execute against the Directed Order. Today, the rule provides, "When the Exchange's disseminated price is the NBBO at the time of receipt of the Directed Order, and the Directed Market Maker is quoting at or improving the Exchange's disseminated price, the Directed Order shall be automatically executed and allocated in accordance with Options 3, Section 10 such that the Directed Market Maker shall receive a Directed Market Maker participation entitlement provided for therein." The Exchange proposes to more explicitly provide, "When the Exchange's disseminated price is the NBBO at the time of receipt of the Directed Order, and the Directed Market Maker is quoting at the better of the internal BBO or the NBBO, the Directed Order shall be automatically executed and allocated in accordance with Options 3, Section 10 such that the Directed Market Maker shall receive a Directed Market Maker participation entitlement provided for therein."

Pursuant to Options 3, Section 4(b)(6), "A quote will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. If, at the time of entry, a quote would cause a locked or crossed market violation or would cause a trade-through violation, it will be re-priced to the current national best offer (for bids) or the current national best bid (for offers) and displayed at one minimum price variance above (for offers) or below (for bids) the national best price." The re-priced quote may be better than the NBBO, but non-displayed on BX.<sup>3</sup> Therefore, the

<sup>3</sup> Because the Exchange re-prices its quotes to avoid locking or crossing an away market, it may

Exchange proposes to make clear that "quoting at the Exchange's best price" means "quoting at the better of the internal BBO or the NBBO." The Exchange believes this amendment will bring greater clarity to the Directed Market Maker rule.

Options 3, Section 26

The Exchange proposes to amend Options 3, Section 26, Message Traffic Mitigation, to replace its current rule with a rule identical to Nasdaq Phlx LLC ("Phlx") Options 3, Section 26.

Currently, BX Options 3, Section 26 provides,

For the purpose of message traffic mitigation, based on BX Options's traffic with respect to target traffic levels and in accordance with BX Options's overall objective of reducing both peak and overall traffic:

(a) BX Options will periodically delist options with an average daily volume ("ADV") of less than 100 contracts. BX will, on a monthly basis, determine the ADV for each series listed on BX Options and delist the current series and not list the next series after expiration where the ADV is less than 100 contracts. For options series traded solely on BX Options, BX will delay delisting until there is no open interest in that options series.

(b) BX Options will implement a process by which an outbound quote message that has not been sent, but is about to be sent, will not be sent if a more current quote message for the same series is available for sending. This replace on queue functionality will be applied to all options series listed on the BX Options Market in real time and will not delay the sending of any messages.

(c) When the size associated with a bid or offer increases by an amount less than or equal to a percentage (never to exceed 20%) of the size associated with the previously disseminated bid or offer, BX Options will not disseminate the new bid or offer.

(d) All message traffic mitigation mechanisms which are used on BX Options will be identical for the OPRA "top of the book" broadcast.

With this proposal, the Exchange proposes to provide:

(a) The Exchange shall disseminate an updated bid and offer price, together with the size associated with such bid and offer, when:

- (1) the Exchange's disseminated bid or offer price increases or decreases;
- (2) the size associated with the Exchange's disseminated bid or offer decreases; or
- (3) the size associated with the Exchange's bid (offer) increases by an amount greater than or equal to a percentage (never to exceed 20%) of the size associated with previously

be the case that the Exchange's non-displayed order book has a quote that is priced better than the NBBO. Therefore, the internal BBO would be the best price available on the Exchange at that time and would enable a Directed Market Maker's quote to be automatically executed and allocated in accordance with Options 3, Section 10.

disseminated bid (offer). Such percentage, which shall never exceed 20%, will be determined by the Exchange on an issue-by-issue basis and posted on the Exchange's website.

Current BX Options 3, Section 26(a) describes how BX would periodically delist options with an average daily volume of less than 100 contracts. Further, pursuant to Options 3, Section 26(a), BX would determine the ADV for each series listed on BX and monthly, delist the current series, and not list the next series after expiration where the ADV is less than 100 contracts.<sup>4</sup> Options 3, Section 26(a) was intended to mitigate message traffic by requiring the Exchange to delist certain options. While, today, BX does not delist options in accordance with Options 3, Section 26(a), BX does delist options pursuant to Options 4, Section 5.<sup>5</sup> Specifically, BX periodically delists options across its various listing programs pursuant to Options 4, Section 5 at Supplementary Material .01(d), Supplementary Material .03(d), and Supplementary Material .04(f). In addition, BX recently filed to delist additional intervals across its weekly programs to further reduce message traffic.<sup>6</sup> The Exchange notes that other Nasdaq affiliated markets also delist according to similar listing rules.<sup>7</sup> The Exchange's process for delisting options pursuant to Options 4, Section 5 accomplishes the same objectives as originally intended for delisting pursuant to subparagraph (a). The current delisting process utilized by BX ensures mitigation of message traffic. At this time, the Exchange proposes to remove the rule text within Options 3, Section 26(a), as BX does not delist in that manner today, and, instead, BX proposes to continue to delist pursuant to Options 4, Section 5. BX's message traffic mitigation would not be impacted by the removal of Options 3, Section 26(a) because, today, BX is not delisting in that manner, rather it delists

<sup>4</sup> For options series traded solely on BX, the Exchange will delay delisting until there is no open interest in that options series. See BX Options 3, Section 26(a)

<sup>5</sup> BX currently delists options pursuant to Options 4, Section 5 at Supplementary Material .01(d), Supplementary Material .03(d), Supplementary Material .04(f), and Supplementary Material .07.

<sup>6</sup> See Securities Exchange Act Release No. 91125 (February 12, 2021), 86 FR 10375 (February 19, 2021) (SR-BX-2020-032) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, To Amend Options 4, Section 5, To Limit Short Term Options Series Intervals Between Strikes That Are Available for Quoting and Trading on BX).

<sup>7</sup> See Phlx, Nasdaq ISE, LLC ("ISE"), Nasdaq GEMX, LLC ("GEMX") and Nasdaq MRX, LLC ("MRX") Options 4, Section 5.

according to Options 4, Section 5 and will continue to delist in that manner.

Current BX Options 3, Section 26(b) provides that BX will implement a replace on queue functionality whereby an outbound quote message that has not been sent, but is about to be sent, will not be sent if a more current quote message for the same series is available for sending. Further, the rule provides that this replace on queue functionality will be applied to all options series listed on BX in real time and will not delay the sending of any messages. Options 3, Section 26(b) was intended to mitigate message traffic by implementing the replace on queue functionality to reduce the message traffic by disseminating only the most current quote in certain instances where a quote was recently updated. The Exchange did not implement the replace on queue functionality, so it is unavailable and has never been utilized on BX. To date, BX has been mitigating quotations by delisting pursuant to Options 4, Section 5 and mitigating pursuant to Options 3, Section 26(c) as described below in greater detail. BX's quote mitigation process would remain unchanged with this proposal. Also, BX's quote mitigation process is consistent with Phlx's current process for mitigating quotes. The Exchange believes that despite not implementing the replace on queue functionality, it continues to mitigate quotes in a fair and equitable manner consistent with Phlx's process for mitigating quotes. At this time, the Exchange proposes to delete Options 3, Section 26(b). BX's message traffic mitigation would not be impacted by the removal of Options 3, Section 26(b) because, today, BX does not have the functionality described within Options 3, Section 26(b) and would not be changing its quote mitigation practice as a result of deleting the rule text.

Current Options 3, Section 26(c) provides that when the size associated with a bid or offer increases by an amount less than or equal to a percentage (never to exceed 20%) of the size associated with the previously disseminated bid or offer, BX will not disseminate the new bid or offer. Options 3, Section 26(c) was intended to mitigate message traffic by disseminating quotes only when the size associated with a bid or offer increases by an amount greater than or equal to a certain percentage established by the Exchange. Today, the Exchange's System is not disseminating quotes as specified within Options 3, Section 26(c), rather BX is disseminating quotes as specified in Phlx Options 3, Section

26.<sup>8</sup> The Exchange's current practice is aligned with the original intent. Today, BX mitigates quotes by disseminating them only when the size associated with a bid or offer increases by an amount greater than or equal to a certain percentage established by the Exchange. At this time, the Exchange proposes to update BX Options 3, Section 26 to reflect BX's current practice, which is identical to Phlx's practice, and adopt rule text identical to Phlx Options 3, Section 26. Because BX is not amending its practice with respect to the dissemination of quotes, the Exchange notes that there would be no change in the number of quotes that will be disseminated by the Exchange and the proposed change aligns with the original intent of the rule.

BX's rule also proposes to adopt rule text identical to Phlx to permit it to determine the percentage by which it will disseminate an updated bid or offer price based on the size on an issue-by-issue basis.<sup>9</sup> Phlx Options 3, Section 26(a)(3) permits it to determine the percentage in this matter. BX proposes to amend its rule to provide for the same flexibility as Phlx to permit it to determine the way it will mitigate quotes among options. Also, with this proposed change, BX would commence posting the percentage specified within proposed Options 3, Section 26(a)(3) on the Exchange's website. The Exchange believes that posting the percentage will provide transparency to Participants.

Finally, Options 3, Section 26(d) provides that all message traffic mitigation mechanisms which are used on BX will be identical for the OPRA "top of the book" broadcast. The text of Options 3, Section 26(d) is unnecessary as OPRA publishes messages disseminated by each options exchange in a similar fashion. Further, BX Options 5, Section 1(17) describes the type of information disseminated by OPRA.

Today, and over the years, Phlx's number of listed underlyings exceeds the underlyings listed on BX and, therefore, utilizing a message traffic

<sup>8</sup> Current Options 3, Section 26(c) refers to an amount "less than or equal to a percentage." The phrase "equal to" is incorrect. Today, when the size associated with a bid or offer increases by an amount less [sic] than a percentage (never to exceed 20%) of the size associated with the previously disseminated bid or offer, BX does not and will not disseminate the new bid or offer. This substantive change also adopts rule text identical to Phlx Options 3, Section 26.

<sup>9</sup> BX's current rule is silent regarding the Exchange's ability to set the percentage on an issue-by-issue basis and post the percentage to its website. Today, Phlx and BX both specify the percentage on the Exchange's website. Today, the Exchange has set the same percentage for all options listed on BX.

protocol identical to Phlx Options 3, Section 26(c) would permit BX to sufficiently mitigate quotes.

Options 3, Section 27

The Exchange proposes to update a citation to Rule 4626 within Options 3, Section 27, Limitation of Liability. The Exchange relocated Rule 4626 to Equity 2, Section 17 in a prior rule change.<sup>10</sup> The Exchange proposes to update the erroneous citation. The proposed amendment is non-substantive.

Options 10, Sections 5, 6 and 9

In 2018, BX's registration requirements<sup>11</sup> were updated to mirror changes made by FINRA to its qualification rules.<sup>12</sup> At that time, BX Options 10, Sections 5, 6 and 9 should have been amended to update certain terminology to align with General 4 terminology.<sup>13</sup> At this time, the

<sup>10</sup> See Securities Exchange Act Release No. 91830 (May 10, 2021), 86 FR 26567 (May 14, 2021) (SR-BX-2021-012) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Its Equity and General Rules From Its Current Rulebook Into Its New Rulebook Shell).

<sup>11</sup> See Securities Exchange Act No. 84353 (October 3, 2018), 83 FR 50999 (October 10, 2018) (SR-BX-2018-047) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend, Reorganize and Enhance Membership, Registration and Qualification Rules, and To Make Conforming Changes to Certain Other Rules).

<sup>12</sup> See Securities Exchange Act Release No. 81098 (July 7, 2017), 82 FR 32419 (July 13, 2017) (SR-FINRA-2017-007) (Order Approving Proposed Rule Change To Adopt Consolidated Registration Rules, Restructure the Representative-Level Qualification Examination Program, Allow Permissive Registration, Establish Exam Waiver Process for Persons Working for Financial Services Affiliate of Member, and Amend the Continuing Education Requirements).

<sup>13</sup> Specifically, in 2018, BX amended then Chapter II, Section (2)(g) as Rule 1220(a)(8) (current General 4, Section 1220) to rename the registration category from "Registered Options and Security Futures Principal" to "Registered Options Principal." Further, Rule 1220(b), Supplementary Material .02 was amended to provide that each person who is registered with the Exchange as a Registered Options Principal (or as a General Securities Representative, Options Representative, or General Securities Sales Supervisor) shall be eligible to engage in security futures activities as a principal, as applicable, provided that such individual completes a Firm Element program as set forth in proposed Rule 1240 that addresses security futures products before such person engages in security futures activities. All references to a revised examination that includes security futures products were removed and FINRA shortened references to "Registered Options and Security Futures Principal" in its rulebook to "Registered Options Principal". See Securities Exchange Act Release No. 58932 (November 12, 2008), 73 FR 69696 (November 19, 2008) (SR-FINRA-2008-032).

Rule 1220(b), Supplementary Material .02 was amended to provide that each person who is registered with the Exchange as a Registered Options Principal (or as a General Securities Representative, Options Representative, or General Securities Sales Supervisor) shall be eligible to engage in security futures activities as a principal,

Exchange proposes to update the terminology within Options 10, Sections 5, 6 and 9 so that it is consistent with General 4 terminology. The proposed amendments are non-substantive. Specifically, with respect to Options 10, Section 5, Branch Offices, the manager must be registered as an Options Principal or General Securities Sales Supervisor in accordance with Nasdaq General 4, Section 1220(a)(8)<sup>14</sup> and Supplementary Material .04 of that rule.<sup>15</sup> The Exchange proposes to replace the qualification “Registered Options and Security Futures Principal” with “Registered Options Principal or General Securities Sales Supervisor.” With respect to Options 10, Section 6, Opening of Accounts, and Options 10, Section 9, Discretionary Accounts, the Exchange proposes to replace the qualification “Registered Options and Security Futures Principal” with “Registered Options Principal” to align with the current terminology with General 4, Rule 1220.<sup>16</sup>

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>17</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>18</sup> in particular, in that it is designed to promote just and equitable principles of

as applicable, provided that such individual completes a Firm Element program as set forth in proposed Rule 1240 that addresses security futures products before such person engages in security futures activities.

<sup>14</sup> General 4, Rule 1220(a)(8) provides, in part, “Each member that is engaged in transactions in options with the public shall have at least one Registered Options Principal. In addition, each principal as defined in paragraph (a)(1) of this Rule who is responsible for supervising a member’s options sales practices with the public shall be required to register with the Exchange as a Registered Options Principal, subject to the following exception. If a principal’s options activities are limited solely to those activities that may be supervised by a General Securities Sales Supervisor, then such person may register as a General Securities Sales Supervisor pursuant to paragraph (a)(10) of this Rule in lieu of registering as a Registered Options Principal.”

<sup>15</sup> Supplementary Material .04 to General 4, Rule 1220 provides, in part, “Any person required to be registered as a principal who supervises sales activities in corporate, municipal and option securities, investment company products, variable contracts, direct participation program securities and security futures may be registered solely as a General Securities Sales Supervisor. In addition to branch office managers, other persons such as regional and national sales managers may also be registered solely as General Securities Sales Supervisors as long as they supervise only sales activities.” BX General 4 is incorporated by reference to Nasdaq General 4.

<sup>16</sup> The Exchange also proposes to renumber a paragraph within Options 10, Section 9(a) from “2” to “3” as there are currently two sections numbered as “2.”

<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

trade and to protect investors and the public interest.

## Options 2, Section 10

The Exchange’s proposal to amend Options 2, Section 10, Directed Market Makers, to more explicitly describe, within subparagraph (a)(1) of that rule, the price at which a Directed Market Maker must be quoting at to execute against the Directed Order is consistent with the Act. Pursuant to Options 3, Section 4(b)(6), “A quote will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. If, at the time of entry, a quote would cause a locked or crossed market violation or would cause a trade-through violation, it will be re-priced to the current national best offer (for bids) or the current national best bid (for offers) and displayed at one minimum price variance above (for offers) or below (for bids) the national best price.” The re-priced quote may be better than the NBBO but non-displayed on BX.<sup>19</sup> Making clear that “quoting at the Exchange’s best price” means “quoting at the better of the internal BBO or the NBBO” will bring greater clarity to the Directed Market Maker rule.

## Options 3, Section 26

The Exchange’s proposal to amend Options 3, Section 26, Message Traffic Mitigation, to replace its current rule with a rule identical to Phlx Options 3, Section 26 is consistent with the Act. The proposal will harmonize BX’s Options 3, Section 26 with Phlx’s Options 3, Section 26 without an impact to the way BX mitigates message traffic today.

Removing current Options 3, Section 26(a), which describes how BX would periodically delist options with an average daily volume of less than 100 contracts and determine the ADV for each series listed on BX and monthly, delist the current series and not list the next series after expiration where the ADV is less than 100 contracts, is consistent with the Act. Options 3, Section 26(a) was intended to mitigate message traffic by requiring the Exchange to delist certain options. While, today, BX does not delist options in accordance with Options 3, Section 26(a), BX does delist options pursuant to Options 4, Section 5.<sup>20</sup> In addition, BX recently filed to delist additional intervals across its weekly programs to

<sup>19</sup> See *supra* note 3.

<sup>20</sup> BX currently delists options pursuant to Options 4, Section 5 at Supplementary Material .01(d), Supplementary Material .03(d), Supplementary Material .04(f), and Supplementary Material .07.

further reduce message traffic.<sup>21</sup> The Exchange notes that other Nasdaq affiliated markets also delist according to similar rules.<sup>22</sup> The Exchange’s process for delisting options pursuant to Options 4, Section 5 protects investors and the public interest because it accomplishes the same objectives as originally intended for delisting pursuant to subparagraph (a) and ensures mitigation of message traffic by delisting according to Options 4, Section 5.

Removing current BX Options 3, Section 26(b), which describes how BX will implement a replace on queue functionality whereby an outbound quote message that has not been sent, but is about to be sent, will not be sent if a more current quote message for the same series is available for sending is consistent with the Act. Options 3, Section 26(b) was intended to mitigate message traffic by implementing the replace on queue functionality to reduce the message traffic by disseminating only the most current quote in certain instances where a quote was recently updated. While the Exchange did not implement the replace on queue functionality, BX has been mitigating quotations by delisting pursuant to Options 4, Section 5 and mitigating pursuant to Options 3, Section 26(c). The proposal would protect investors and the public interest because BX’s quote mitigation process would remain unchanged with this proposal. Also, BX’s quote mitigation process is consistent with Phlx’s current process for mitigating quotes. The Exchange believes that despite not implementing the replace on queue functionality, it continues to mitigate quotes in a fair and equitable manner consistent with Phlx’s process for mitigating quotes.

Amending current Options 3, Section 26(c), as described above, is consistent with the Act because Options 3, Section 26(c) was intended to mitigate message traffic by disseminating quotes only when the size associated with a bid or offer increases by an amount greater than or equal to a certain percentage established by the Exchange. While, today, the Exchange’s System is not disseminating quotes as specified within Options 3, Section 26(c), it is

<sup>21</sup> See Securities Exchange Act Release No. 91125 (February 12, 2021), 86 FR 10375 (February 19, 2021) (SR-BX-2020-032) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, To Amend Options 4, Section 5, To Limit Short Term Options Series Intervals Between Strikes That Are Available for Quoting and Trading on BX).

<sup>22</sup> See Phlx, Nasdaq ISE, LLC (“ISE”), Nasdaq GEMX, LLC (“GEMX”) and Nasdaq MRX, LLC (“MRX”) Options 4, Section 5.

disseminating quotes as specified in Phlx Options 3, Section 26. The Exchange's current practice is aligned with the original intent. Today, BX mitigates quotes by disseminating them only when the size associated with a bid or offer increases by an amount greater than or equal to a certain percentage established by the Exchange. Because BX is not amending its practice with respect to the dissemination of quotes, the Exchange notes that there would be no change in the number of quotes that will be disseminated by the Exchange and the proposed change aligns with the original intent of the rule.

BX's proposal to amend its rule text identical to Phlx to permit it to determine the percentage by which it will disseminate an updated bid or offer price based on the size on an issue-by-issue basis is consistent with the Act. This proposal would provide BX the same flexibility as Phlx to permit it to determine the way it will mitigate quotes among options. BX's proposal to commence posting the percentage specified within proposed Options 3, Section 26(a)(3) on the Exchange's website will continue to provide transparency to Participants.

Finally, removing current Options 3, Section 26(d) which provides that all message traffic mitigation mechanisms which are used on BX will be identical for the OPRA "top of the book" broadcast, is consistent with the Act. The Exchange will mitigate quotes pursuant to its rules for all quotes on the Exchange, including those that constitute the Exchange's best bid and offer. The text of Options 3, Section 26(d) is unnecessary as OPRA publishes messages disseminated by each options exchange in a similar fashion. Further, BX Options 5, Section 1(17) describes the type of information disseminated by OPRA.

Today, and over the years, Phlx's number of listed underlyings exceeds the underlyings listed on BX and, therefore, utilizing a message traffic protocol identical to Phlx Options 3, Section 26(c) would permit BX to sufficiently mitigate quotes.

Options 3, Section 27

The Exchange's proposal to update a citation to Rule 4626 within Options 3, Section 27, Limitation of Liability, from Rule 4626 to Equity 2, Section 17 will bring greater clarity to the rule and is therefore consistent with the Act. The proposed amendment is non-substantive.

Options 10, Sections 5, 6, and 9

The Exchange's proposal to amend Options 10, Sections 5, 6, and 9 to

amend the certain terminology in those rules to align with General 4 terminology is consistent with the Act. These non-substantive amendments will bring greater clarity to the current registration requirements.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Options 2, Section 10

The Exchange's proposal to amend Options 2, Section 10, Directed Market Makers, to more explicitly describe, within subparagraph (a)(2) of that rule, the price at which a Directed Market Maker must be quoting at to execute against the Directed Order does not impose an undue burden on competition. Every Directed Market Maker must be quoting at the better of the internal BBO or the NBBO to execute against a Directed Order. This amendment will bring greater clarity to the Directed Market Maker rule.

Options 3, Section 26

The Exchange's proposal to amend Options 3, Section 26, Message Traffic Mitigation, to replace its current rule with a rule identical to Phlx Options 3, Section 26 does not create an undue burden on competition. Specifically, removing the rule text within Options 3, Section 26(a), (b) and (d) and amending the rule text within (c) aligns with BX's current practice for mitigating message traffic. BX's current practice will remain unchanged with this proposal. BX would continue to utilize its current quote mitigation strategies without amending the quantity of messages disseminated.

Amending BX's rule text identical to Phlx to permit it to determine the percentage by which it will disseminate an updated bid or offer price based on the size on an issue-by-issue basis does not impose an undue burden on competition, rather the amendment would provide BX the same flexibility as Phlx to permit it to determine the way it will mitigate quotes among options. Posting the percentage specified within proposed Options 3, Section 26(a)(3) on the Exchange's website, does not impose an undue burden on competition, rather the proposal will continue to provide transparency to Participants.

Options 3, Section 27

The Exchange's proposal to update a citation to Rule 4626 within Options 3,

Section 27, Limitation of Liability, from Rule 4626 to Equity 2, Section 17 does not impose an undue burden on competition. The proposal will bring greater clarity to the rule. This amendment is non-substantive.

Options 10, Sections 5, 6 and 9

The Exchange's proposal to amend Options 10, Sections 5, 6, and 9 to conform the terminology to General 4 terminology does not impose an undue burden on competition, rather it will bring greater clarity to the current registration requirements. These amendments are non-substantive.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>23</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>24</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>25</sup> normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)<sup>26</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the operative delay to permit the Exchange to immediately amend Options 3, Section 26 to adopt a rule identical to Phlx's current rule, which would reflect BX's current quote mitigation practice. According to the Exchange, current Options 3, Section 26 does not correctly explain the way BX mitigates quote messages and the Exchange believes its proposal will provide clarity regarding

<sup>23</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>24</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>25</sup> 17 CFR 240.19b-4(f)(6).

<sup>26</sup> 17 CFR 240.19b-4(f)(6)(iii).

how BX currently mitigates quote messages.

Further, the Exchange believes that amending Options 2, Section 10 to better describe the price at which a Directed Market Maker must be quoting to execute against the Directed Order will bring greater transparency to the rule. Finally, the Exchange believes that updating the citations and terminology within Options 3, Section 27, and Options 10, Sections 5, 6 and 9 will clarify its Rulebook.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to immediately implement changes to its Rulebook that are designed to reflect the Exchange's current practice with respect to quote mitigation. According to the Exchange, the proposal will not impact BX's current quote mitigation practice and therefore will neither alter the quantity of quotes the Exchanges disseminates, nor the manner in which the Exchange disseminates quote messages. In addition, the Commission believes the proposed changes to Options 2, Section 10, Options 3, Section 27, and Options 10, Sections 5, 6, and 9 are designed to bring greater clarity to the Exchange's Rulebook. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.<sup>27</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2021-041 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-2021-041. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-BX-2021-041 and should be submitted on or before October 15, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-20658 Filed 9-23-21; 8:45 am]

**BILLING CODE 8011-01-P**

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

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93059; File No. SR-CBOE-2021-054]

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Make Certain Corrections and Other Clarifying Changes to the Rules

September 20, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 16, 2021, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to make certain corrections and other clarifying changes to the Rules. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

<sup>27</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

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

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

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