

- The Certification to Comply with Protective Conditions;
- The Certification of Compliance with Protective Conditions and Termination of Access; and
- The Commission's rules applicable to access to non-public materials filed in Commission proceedings (subpart C of part 3011 of the U.S. Code of Federal Regulations).

Each person (and any individual working on behalf of that person) seeking access to these materials has executed a Certification to Comply with Protective Conditions by signing in ink or by typing /s/ before his or her name in the signature block. The movant attaches the Protective Conditions Statement and the executed Certification(s) to Comply with Protective Conditions to the motion for access filed with the Commission.

The movant and each person seeking access to these materials agree to comply with the following protective conditions:

1. In accordance with 39 CFR 3011.303, the Commission may impose sanctions on any person who violates these protective conditions, the persons or entities on whose behalf the person was acting, or both.

2. In accordance with 39 CFR 3011.300(b), no person involved in competitive decision-making for any individual or entity that might gain competitive advantage from using these materials shall be granted access to these materials. Involved in competitive decision-making includes consulting on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals. It does not include rendering legal advice or performing other services that are not directly in furtherance of activities in competition with an individual or entity having a proprietary interest in the protected material.

3. In accordance with 39 CFR 3011.302(a), a person granted access to these materials may not disseminate these materials in whole or in part to any person not allowed access pursuant to 39 CFR 3011.300(a) (Commission and court personnel) or 3011.301 (other persons granted access by Commission order) except in compliance with:

- a. Specific Commission order,
- b. Subpart B of 39 CFR 3011 (procedure for filing these materials in Commission proceedings), or
- c. 39 CFR 3011.305 (production of these materials in a court or other administrative proceeding).

4. In accordance with 39 CFR 3011.302(b) and (c), all persons granted access to these materials:

- a. Must use these materials only related to this matter; and
- b. Must protect these materials from any person not authorized to obtain access under 39 CFR 3011.300 or 3011.301 by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of these materials as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially sensitive, and privileged information.

5. The duties of each person granted access to these materials apply to all:

- a. Disclosures or duplications of these materials in writing, orally, electronically, or otherwise, by any means, format, or medium;
- b. Excerpts from, parts of, or the entirety of these materials;
- c. Written materials that quote or contain these materials; and
- d. Revised, amended, or supplemental versions of these materials.

6. All copies of these materials will be clearly marked as "Confidential" and bear the name of the person granted access.

7. Immediately after access has terminated pursuant to 39 CFR 3011.304(a)(1), each person (and any individual working on behalf of that person) who has obtained a copy of these materials must execute the Certification of Compliance with Protective Conditions and Termination of Access. In compliance with 39 CFR 3011.304(a)(2), the movant will attach the executed Certification(s) of Compliance with Protective Conditions and Termination of Access to the notice of termination of access filed with the Commission.

8. Each person granted access to these materials consents to these or such other conditions as the Commission may approve.

Respectfully submitted,

/s/ \_\_\_\_\_  
 (signature of representative)  
 (print name of representative)  
 (address line 1 of representative)  
 (address line 2 of representative)  
 (telephone number of representative)  
 (email address of representative)  
 (choose the appropriate response)  
 Attorney/Non-Attorney Representative  
 for (name of the movant)

You may delete the instructional text to complete this form. This form may be filed as an attachment to the motion for

access to non-public materials under 39 CFR 3011.301(b)(5).

### Certification To Comply With Protective Conditions

The Postal Service requests confidential treatment of non-public materials identified as \_\_\_\_\_ (non-confidential description of non-public materials) (hereinafter "these materials") filed in Commission Docket No. N2022-2.

\_\_\_\_\_ (name of participant filing motion) requests that the Commission grant me access to these materials to use related to Docket No. N2022-2 (hereinafter "this matter").

I certify that:

- I have read and understand the Protective Conditions Statement and this Certification to Comply with Protective Conditions;

- I am eligible to receive access to these materials because I am not involved in competitive decision-making for any individual or entity that might gain competitive advantage from using these materials; and

- I will comply with all protective conditions established by the Commission.

/s/ \_\_\_\_\_  
 (signature of individual receiving access)  
 (print name of individual receiving access)  
 (title of individual receiving access)  
 (employer of individual receiving access)  
 (name of the participant filing the motion)  
 (date)

You may delete the instructional text to complete this form. This form may be filed as an attachment to the motion for access to non-public materials under 39 CFR 3011.301(b)(6).

[FR Doc. 2022-19635 Filed 9-9-22; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-95676; File No. SR-BX-2022-014]

### Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Enhance the BX Retail Price Improvement Program

September 6, 2022.

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 August 24, 2022, 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 Equity 4, Rule 4780 to enhance the BX Retail Price Improvement Program, 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 received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

##### 1. Purpose

The purpose of the proposed rule change is to amend Equity 4, Rule 4780<sup>3</sup> to enhance the BX Retail Price Improvement Program in a manner that will attract more liquidity providers to participate in the Program. Specifically, the Exchange proposes to amend paragraph (e) of Rule 4780 to provide Participants a choice whether to disseminate the Retail Liquidity Identifier (defined below) when submitting Retail Price Improvement interest to the Exchange.

Retail Price Improvement Program (“RPI Program”)

In June 2019, the Commission approved making permanent the Exchange’s pilot RPI Program.<sup>4</sup> The RPI Program is designed to attract retail order flow to the Exchange and allow such order flow to receive potential price improvement. The RPI Program is limited to trades occurring at prices equal to or greater than \$1.00 per share. Under the RPI Program, Retail Member Organizations are eligible to submit Retail Orders to the Exchange. BX members (“Members”) are permitted to provide potential price improvement for Retail Orders in the form of non-displayed interest that is priced more aggressively than the Protected National Best Bid or Offer (“Protected NBBO”).<sup>5</sup> The Exchange publishes a price improvement indicator notifying market participants that such price improving liquidity is available.

The SEC approved making the RPI Program permanent, in part, because it concluded, “the Exchange’s Program data and analysis about price improvement for retail investors . . . supports the Exchange’s conclusion that the program provides meaningful price improvement to retail investors on a regulated exchange venue and has not demonstrably caused harm to the broader market.”<sup>6</sup> In approving the pilot RPI Program, the Commission found that “while the Program would treat retail order flow differently from order flow submitted by other market participants, such segmentation would not be inconsistent with Section 6(b)(5) of the Act, which requires that the rules of an exchange are not designed to permit unfair discrimination.”<sup>7</sup> As the

SEC acknowledged, the retail order segmentation was designed to create greater competition for retail investor orders thereby creating more competition for these orders on transparent and well-regulated exchanges. This would help to ensure that retail investors benefit from competitive price improvement that exchange-based liquidity providers provide.

#### Retail Liquidity Identifier

Currently, the Exchange disseminates an identifier when RPI interest priced at least \$0.001 better than the Exchange’s Protected Bid or Protected Offer for a particular security is available in the System (the “Retail Liquidity Identifier”). The Retail Liquidity Identifier is disseminated through consolidated data streams (*i.e.*, pursuant to the Consolidated Tape Association Plan/Consolidated Quotation System, or CTA/CQS, for Tape A and Tape B securities, and The Nasdaq Stock Market, LLC (“Nasdaq”) UTP Plan for Tape C securities) as well as through proprietary Exchange data feeds.<sup>8</sup> The Retail Liquidity Identifier reflects the symbol and the side (buy or sell) of the RPI interest, but does not include the price or size of the RPI interest. In particular, CQS and UTP quoting outputs include a field for codes related to the Retail Liquidity Identifier. The codes indicate RPI interest that is priced better than the Exchange’s Protected Bid or Protected Offer by at least the minimum level of price improvement as required by the RPI Program.

The Exchange proposes to amend Rule 4780(e) to enable Participants that send Retail Price Improvement Orders to elect whether to disseminate the Retail Liquidity Identifier. The Exchange believes that providing Participants with the option to opt out of dissemination of the Retail Liquidity Identifier is appropriate in order to increase liquidity in the RPI Program and improve price improvement for retail investors. The Exchange believes that the mandatory use of the Retail Liquidity Identifier discourages some firms from providing liquidity to the RPI Program due to concerns around signaling to the market. The Exchange is confident that, by allowing firms to opt out of displaying the Retail Liquidity

<sup>4</sup> Securities Exchange Act Release No. 86194 (June 25, 2019), 84 FR 31385 (July 1, 2019) (SR–BX–2019–011) (“RPI Approval Order”). In addition to approving the proposal to make the RPI Program permanent, the Commission granted the Exchange’s request for limited exemptive relief from Rule 612 of Regulation NMS, 17 CFR 242.612 (“Sub-Penny Rule”), which among other things prohibits a national securities exchange from accepting or ranking orders priced greater than \$1.00 per share in an increment smaller than \$0.01. *See id.*

<sup>5</sup> The term Protected Quotation is defined in Equity 1, Section 1(a)(16) and has the same meaning as is set forth in Regulation NMS Rule 600. The Protected NBBO is the best-priced protected bid and offer. Generally, the Protected NBBO and the national best bid and offer (“NBBO”) will be the same. However, a market center is not required to route to the NBBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBBO is otherwise not available for an automatic execution. In such case, the Protected NBBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.

<sup>6</sup> *See* RPI Approval Order, *supra* note 4 at 31387.

<sup>7</sup> Securities Exchange Act Release No. 73702 (November 28, 2014), 79 FR 72049, 72051 (December 4, 2014) (SR–BX–2014–048).

<sup>8</sup> The Exchange notes that the Retail Liquidity Identifier for Tape A and Tape B securities are disseminated pursuant to the CTA/CQS Plan. The identifier is also available through the consolidated public market data stream for Tape C securities. The processor for the Nasdaq UTP quotation stream disseminates the Retail Liquidity Identifier and analogous identifiers from other market centers that operate programs similar to the RPI Program.

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> Hereinafter, references to the Rule 4000 Series shall mean the Rule Series set forth in Equity 4 of the Exchange’s Rulebook.

Identifier, the Exchange would be able to increase participation in the RPI Program and generate additional price improvement to orders of retail investors.

Although the Exchange expects that the proposed optionality relating to the Retail Liquidity Identifier would increase liquidity to the RPI Program, the Exchange also recognizes the value of the Retail Liquidity Identifier, which makes it clear that there is price improving liquidity available. Therefore, the Exchange will monitor the program in light of the change and, if necessary, propose modifications aimed at ensuring the program continues to operate consistent with its design and objectives.

#### Implementation Date

The Exchange intends to introduce this new functionality no later than the Fourth Quarter of 2022. In any event, the Exchange will issue an Equities Trader Alert not less than 7 days prior to introducing the new functionality.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by promoting competition for retail order flow among execution venues and providing the potential for meaningful price improvement to orders of retail investors. The proposal would allow Participants to choose whether to disseminate the Retail Liquidity Identifier when Participants submit Retail Price Improvement Orders to the Exchange. By providing an option to opt out of disseminating the Retail Liquidity Identifier, the Exchange could attract more liquidity providers to interact with retail order flow.

A significant percentage of retail order flow is executed off-exchanges. The Exchange believes that it is appropriate to continue to improve the RPI Program to encourage on-exchange interaction with retail investor orders. The proposed changes to the RPI Program would increase competition among execution venues, encourage additional liquidity, and offer potential price improvement to retail investors. Increased competition for retail order

flow could also lead to increased investor interest in trading securities and innovation within the market, thereby increasing the quality of the national market system.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that, by allowing Participants to choose whether to disseminate the Retail Liquidity Identifier, the proposed rule change would enhance competition for retail order flow among execution venues. This change would encourage expansion of the RPI Program, thereby creating additional price improvement opportunities for retail orders and increasing competition between execution venues. All Participants would have the option to opt out of displaying the Retail Liquidity Identifier.

The Exchange believes that the proposed rule changes would increase competitive interaction with retail investor orders which should lead to increased retail investor order activity on transparent and well-regulated exchanges. This would help to ensure that retail investors benefit from competitive price improvement that exchange-based liquidity providers provide. The Exchange operates in a highly competitive market in which market participants can easily direct their orders to competing venues, including off-exchange venues. In such an environment, the Exchange must continually review and consider adjusting the services it offers and the requirements it imposes to remain competitive with other venues. Therefore, the Exchange believes that the proposed rule change reflects this competitive environment.

#### 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>11</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>12</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-2022-014 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-2022-014. 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

<sup>11</sup> 15 U.S.C. 78b(3)(A)(iii).

<sup>12</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>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

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 offices 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-2022-014, and should be submitted on or before October 3, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**J. Matthew DeLesDernier,**  
Deputy Secretary.

[FR Doc. 2022-19580 Filed 9-9-22; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-95679; File No. SR-PEARL-2022-34]

### Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 2614, Orders and Order Instructions, To Adopt the Primary Peg Order Type

September 6, 2022.

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 August 26, 2022 MIAX PEARL, LLC ("MIAX Pearl" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a 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 is filing a proposed rule change to amend Exchange Rule 2614,

Orders and Order Instructions, to adopt the Primary Peg Order Type.

The text of the proposed rule change is available on the Exchange's website at <http://www.miaxoptions.com/rule-filings/pearl> at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

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

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

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

###### 1. Purpose

The Exchange currently offers one type of pegging order on its equity trading platform ("MIAX Pearl Equities"), the Midpoint Peg Order, which is automatically re-priced in response to changes in the Protected Best Bid or Offer ("PBBO").<sup>3</sup> Exchange Rule 2614(a)(3) sets forth the operation of the Midpoint Peg Order and, in sum, defines it as a "non-displayed Limit Order that is assigned a working price pegged to the midpoint of the PBBO."

The Exchange now proposes to adopt a second type of pegging order, the Primary Peg Order. In sum, a Primary Peg Order would be a Limit Order<sup>4</sup> that is assigned a working price pegged to the Protected Best Bid ("PBB"),<sup>5</sup> for a buy order, or the Protected Best Offer ("PBO"),<sup>6</sup> for a sell order. The proposed operation of the Primary Peg Order is well established in the equity markets and is based on similar functionality offered at other exchanges.<sup>7</sup>

<sup>3</sup> See Exchange Rule 1901 (stating "the term 'Protected NBB' or 'PBB' shall mean the national best bid that is a Protected Quotation, the term 'Protected NBO' or 'PBO' shall mean the national best offer that is a Protected Quotation, and the term 'Protected NBBO' or 'PBBO' shall mean the national best bid and offer that is a Protected Quotation.").

<sup>4</sup> See Exchange Rule 2614(a)(1) (describing the operation of a Limit Order).

<sup>5</sup> See Exchange Rule 1901, *supra* note 3.

<sup>6</sup> *Id.*

<sup>7</sup> See, e.g., Cboe BYX Exchange, Inc. ("BYX") and Cboe BZX Exchange, Inc. ("BZX") Rules 11.9(c)(8)(a), Cboe EDGA Exchange, Inc. ("EDGA") and Cboe EDGX Exchange, Inc. ("EDGX"),

Some characteristics of the Primary Peg Order would be identical to the Midpoint Peg Order, such as its operation during a locked or crossed market, and each of these identical characteristics are described below. Rather than describe identical behavior separately under different rules, and to ensure its rules are concise, thorough, and easy to understand, the Exchange proposes to amend Exchange Rule 2614(a)(3) to describe "Pegged Orders" generally as a standalone order type category and describe the operation of the existing Midpoint Peg Order and proposed Primary Peg Order. The Exchange proposes to amend certain provisions of Exchange Rule 2614(a)(3) to cover identical characteristics shared by both Primary Peg and Midpoint Peg Orders.<sup>8</sup>

Exchange Rule 2614(a)(3) would define a Pegged Order as "an order that is automatically re-priced in response to changes in the PBBO."<sup>9</sup> Both the existing Midpoint Peg Order and proposed Primary Peg Order would be described under Exchange Rule 2614(a)(3)(A), which would be titled "Types of Pegged Orders". The description of the Midpoint Peg Order under current Exchange Rule 2614(a)(3) would now be under Exchange Rule 2614(a)(3)(A)(i) with one change. Exchange Rule 2614(a)(3) currently provides that "[a] Midpoint Peg Order receives a new timestamp each time its working price changes in response to changes to the midpoint of the PBBO." A Primary Peg Order would also receive a new timestamp each time its working price changes in response to changes in the PBBO. Therefore, the Exchange proposes to replace this provision with a general provision under Exchange Rule 2614(a)(3) that would cover all Pegged Orders and would state, "[a] Pegged Order receives a new timestamp each time its working price changes in response to changes in the PBBO."<sup>10</sup>

collectively with BYX, BZX, and EDGA, the "Cboe Equity Exchanges") Rules 11.6(j)(2), New York Stock Exchange LLC ("NYSE") Rule 7.31(h), NYSE Arca, Inc. ("NYSE Arca") Rule 7.31-E(h)(1), Investors Exchange, Inc. ("IEX") Rule 11.190(a)(3), The NASDAQ Stock Market LLC ("NASDAQ") Rule 4703(d), and MEMX LLC ("MEMX") Rule 11.6(h).

<sup>8</sup> The Exchange notes that other exchanges have described pegged order functionality similarly within their rules and have combined the description of the various pegged order types they offer under the same rule. See, e.g., IEX Rule 11.190(a)(3), and NASDAQ Rule 4703(d). The Exchange also proposes to renumber certain provisions in Exchange Rule 2614(a)(3) as a result of this change.

<sup>9</sup> This is consistent with similar provisions in other exchanges' rules regarding pegged orders. See, e.g., MEMX Rule 11.6(h), EDGA and EDGX Rules 11.6(j).

<sup>10</sup> This is consistent with similar provisions in other exchanges' rules regarding pegged orders. See,

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

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