

Required fields are shown with yellow backgrounds and asterisks.

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SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No. \* SR 2022 - \* 017

Amendment No. (req. for Amendments \*)

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"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule		
			<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  
Section 806(e)(1) \*

Section 806(e)(2) \*

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934  
Section 3C(b)(2) \*

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

A proposal to amend the clearly erroneous rules

**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 \* Sun Last Name \* Kim

Title \* Associate General Counsel

E-mail \* Sun.Kim@nasdaq.com

Telephone \* (646) 420-7816 Fax

**Signature**

Pursuant to the requirements of the Securities Exchange of 1934, NASDAQ BX, Inc. has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 09/20/2022 (Title \*)

By John Zecca EVP and Chief Legal Officer  
(Name \*)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

 Date: 2022.09.20  
15:03:44 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

**Form 19b-4 Information \***

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SR-BX-2022-017 19b-4.doc

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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SR-BX-2022-017 Exhibit 1.doc

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 Advanced 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 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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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 Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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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 Sent As Paper Document

**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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SR-BX-2022-017 Exhibit 5.doc

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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend BX Equity 11, Rule 11890 (Clearly Erroneous Transactions).

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”). 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:

Sun Kim  
Associate General Counsel  
Nasdaq, Inc.  
(646) 420-7816

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

<sup>2</sup> 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

On September 1, 2022, the Commission approved the proposal of Cboe BZX Exchange, Inc. (“Cboe BZX”) to (1) adopt on a permanent basis the pilot program for clearly erroneous executions in Cboe BZX Rule 11.17 and (2) limit the circumstances where clearly erroneous review would continue to be available during regular trading hours (i.e., Market Hours<sup>3</sup>) when the Limit Up-Limit Down (“LULD”) Plan to Address Extraordinary Market Volatility (the “LULD Plan”)<sup>4</sup> already provides similar protections for trades occurring at prices that may be deemed erroneous.<sup>5</sup>

The Exchange now proposes to adopt the same changes in Equity 11, Rule 11890 (Clearly Erroneous Transactions). The Exchange believes that these changes are appropriate as the LULD Plan has been approved by the Commission on a permanent

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<sup>3</sup> See Securities Exchange Act Release No. 95658 (September 1, 2022) (SR-CboeBZX-2022-037).

<sup>4</sup> See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

<sup>5</sup> The term “Market Hours” means the period of time beginning at 9:30 a.m. ET and ending at 4:00 p.m. ET (or such earlier time as may be designated by the Exchange on a day when the Exchange closes early). See Equity 1, Section 1(a)(13). The Exchange will make conforming changes throughout Rule 11890 to replace references to “Regular Trading Hours” and “Regular Market Session” with “Market Hours,” which is the correct defined term.

basis,<sup>6</sup> and in light of amendments to the LULD Plan, including changes to the applicable Price Bands<sup>7</sup> around the open and close of trading.

*Proposal to Make the Clearly Erroneous Pilot Permanent*

On September 10, 2010, the Commission approved, on a pilot basis, changes to Equity 11, Rule 11890 that, among other things: (i) provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.<sup>8</sup> In 2013, the Exchange adopted a provision designed to address the operation of the LULD Plan.<sup>9</sup> Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) a series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been

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<sup>6</sup> See Securities Exchange Act Release No. 84843 (December 18, 2018), 83 FR 66464 (December 26, 2018) (“Notice”); 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (File No. 4-631) (“Amendment Eighteen”).

<sup>7</sup> “Price Bands” refers to the term provided in Section V of the LULD Plan.

<sup>8</sup> See Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR-BX-2010-040).

<sup>9</sup> See Securities Exchange Act Release No. 68818 (February 1, 2013), 78 FR 9100 (February 7, 2013) (SR-BX-2013-010).

declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.<sup>10</sup> These changes are currently scheduled to operate for a pilot period that would end at the close of business on October 20, 2022.<sup>11</sup>

When it originally approved the clearly erroneous pilot, the Commission explained that the changes were “being implemented on a pilot basis so that the Commission and the Exchanges can monitor the effects of the pilot on the markets and investors, and consider appropriate adjustments, as necessary.”<sup>12</sup> In the 12 years since that time, the Exchange and other national securities exchanges have gained considerable experience in the operation of the rule, as amended on a pilot basis. Based on that experience, the Exchange believes that the program should be allowed to continue on a permanent basis so that equities market participants and investors can benefit from the increased certainty provided by the amended rule.

The clearly erroneous pilot was implemented following a severe disruption in the U.S. equities markets on May 6, 2010 (“Flash Crash”) to “provide greater transparency and certainty to the process of breaking trades.”<sup>13</sup> Largely, the pilot reduced the discretion of the Exchange, other national securities exchanges, and Financial Industry

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<sup>10</sup> See Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR-BX-2014-021).

<sup>11</sup> See Securities Exchange Act Release No. 95332 (July 20, 2022), 87 FR 44471 (July 26, 2022) (SR-BX-2022-011).

<sup>12</sup> See Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR-BX-2010-040).

<sup>13</sup> Id.

Regulatory Authority (“FINRA”) to deviate from the objective standards in their respective rules when dealing with potentially erroneous transactions. The pilot has thus helped afford greater certainty to Members and investors about when trades will be deemed erroneous pursuant to self-regulatory organization (“SRO”) rules and has provided a more transparent process for conducting such reviews. The Exchange proposes to make the current pilot permanent so that market participants can continue to benefit from the increased certainty afforded by the current rule.

*Amendments to the Clearly Erroneous Rules*

When the Participants to the LULD Plan filed to introduce the Limit Up-Limit Down (“LULD”) mechanism, itself a response to the Flash Crash, a handful of commenters noted the potential discordance between the clearly erroneous rules and the Price Bands used to limit the price at which trades would be permitted to be executed pursuant to the LULD Plan. For example, two commenters requested that the clearly erroneous rules be amended so the presumption would be that trades executed within the Price Bands would not be subject to review.<sup>14</sup> While the Participants acknowledged that the potential to prevent clearly erroneous executions would be a “key benefit” of the LULD Plan, the Participants decided not to amend the clearly erroneous rules at that time.<sup>15</sup> In the years since, industry feedback has continued to reflect a desire to eliminate the discordance between the LULD mechanism and the clearly erroneous rules so that market participants would have more certainty that trades executed with the Price Bands

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<sup>14</sup> See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4-631) (n. 33505).

<sup>15</sup> Id.

would stand. For example, the Equity Market Structure Advisory Committee (“EMSAC”) Market Quality Subcommittee included in its April 19, 2016 status report a preliminary recommendation that clearly erroneous rules be amended to conform to the Price Bands – i.e., “any trade that takes place within the band would stand and not be broken and trades outside the LU/LD bands would be eligible for the consideration of the Clearly Erroneous rules.”<sup>16</sup>

The Exchange believes that it is important for there to be some mechanism to ensure that investors’ orders are either not executed at clearly erroneous prices or are subsequently busted as needed to maintain a fair and orderly market. At the same time, the Exchange believes that the LULD Plan, as amended, would provide sufficient protection for trades executed during Market Hours. Indeed, the LULD mechanism could be considered to offer superior protection as it prevents potentially erroneous trades from being executed in the first instance. After gaining experience with the LULD Plan, the Exchange now believes that it is appropriate to largely eliminate clearly erroneous review during Market Hours when Price Bands are in effect. Thus, as proposed, trades executed within the Price Bands would stand, barring one of a handful of identified scenarios where such review may still be necessary for the protection of investors. The Exchange believes that this change would be beneficial for the U.S. equities markets as it would ensure that trades executed within the Price Bands are subject to clearly erroneous review in only rare circumstances, resulting in greater certainty for Members and investors.

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<sup>16</sup> See EMSAC Market Quality Subcommittee, Recommendations for Rulemaking on Issues of Market Quality (November 29, 2016), available at <https://www.sec.gov/spotlight/emsac/emsac-recommendations-rulemaking-market-quality.pdf>.

The current LULD mechanism for addressing extraordinary market volatility is available solely during Market Hours. Thus, trades during the Exchange's Pre-Market<sup>17</sup> or Post-Market Hours<sup>18</sup> would not benefit from this protection and could ultimately be executed at prices that may be considered erroneous. For this reason, the Exchange proposes that transactions executed during Pre-Market or Post-Market Hours would continue to be reviewable as clearly erroneous. Continued availability of the clearly erroneous rule during Pre- and Post-Market Hours would therefore ensure that investors have appropriate recourse when erroneous trades are executed outside of the hours where similar protection can be provided by the LULD Plan. Further, the proposal is designed to eliminate the potential discordance between clearly erroneous review and LULD Price Bands, which does not exist outside of Market Hours because the LULD Plan is not in effect. Thus, the Exchange believes that it is appropriate to continue to allow transactions to be eligible for clearly erroneous review if executed outside of Market Hours.

On the other hand, there would be much more limited potential to request that a transaction be reviewed as potentially erroneous during Market Hours. With the introduction of the LULD mechanism in 2013, clearly erroneous trades are largely prevented by the requirement that trades be executed within the Price Bands. In addition,

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<sup>17</sup> The term "Pre-Market Hours" means the period of time beginning at 7:00 a.m. ET and ending immediately prior to the commencement of Market Hours. See Equity 1, Section 1(a)(13). The Exchange will make conforming changes throughout Rule 11890 to replace references to "Pre-Opening Hours" or "Pre-Opening Hours Trading Session" with "Pre-Market Hours," which is the correct defined term.

<sup>18</sup> The term "Post-Market Hours" means the period of time beginning immediately after the end of Market Hours and ending at 7:00 p.m. ET. See Equity 1, Section 1(a)(13). The Exchange will make conforming changes throughout Rule 11890 to replace references to "After Hours" or "After Hours Trading Session" with "Post-Market Hours," which is the correct defined term.

in 2019, Amendment Eighteen to the LULD Plan eliminated double-wide Price Bands: (1) at the Open, and (2) at the Close for Tier 2 NMS Stocks 2 with a Reference Price above \$3.00.<sup>19</sup> Due to these changes, the Exchange believes that the Price Bands would provide sufficient protection to investor orders such that clearly erroneous review would no longer be necessary during Market Hours. As the Participants to the LULD Plan explained in Amendment Eighteen: “Broadly, the Limit Up-Limit Down mechanism prevents trades from happening at prices where one party to the trade would be considered ‘aggrieved,’ and thus could be viewed as an appropriate mechanism to supplant clearly erroneous rules.” While the Participants also expressed concern that the Price Bands might be too wide to afford meaningful protection around the open and close of trading, amendments to the LULD Plan adopted in Amendment Eighteen narrowed Price Bands at these times in a manner that the Exchange believes is sufficient to ensure that investors’ orders would be appropriately protected in the absence of clearly erroneous review. The Exchange therefore believes that it is appropriate to rely on the LULD mechanism as the primary means of preventing clearly erroneous trades during Market Hours.

At the same time, the Exchange is cognizant that there may be limited circumstances where clearly erroneous review may continue to be appropriate, even during Market Hours. Thus, the Exchange proposes to amend its clearly erroneous rules to enumerate the specific circumstances where such review would remain available during the course of Market Hours, as follows. All transactions that fall outside of these specific enumerated exceptions would be ineligible for clearly erroneous review.

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<sup>19</sup> See Amendment Eighteen, supra note 6.

First, pursuant to proposed subparagraph (C)(1)(i) of Rule 11890(a)(2), a transaction executed during Market Hours would continue to be eligible for clearly erroneous review if the transaction is not subject to the LULD Plan. In such case, the Numerical Guidelines set forth in subparagraph (C)(2) of Rule 11890(a)(2) will be applicable to such NMS Stock. While the majority of securities traded on the Exchange would be subject to the LULD Plan, certain equity securities, such as rights and warrants, are explicitly excluded from the provisions of the LULD Plan and would therefore be eligible for clearly erroneous review instead.<sup>20</sup> Similarly, there are instances, such as the opening auction on the primary listing market,<sup>21</sup> where transactions are not ordinarily subject to the LULD Plan, or circumstances where a transaction that ordinarily would have been subject to the LULD Plan is not – due, for example, to some issue with processing the Price Bands. These transactions would continue to be eligible for clearly erroneous review, effectively ensuring that such review remains available as a backstop when the LULD Plan would not prevent executions from occurring at erroneous prices in the first instance.

Second, investors would also continue to be able to request review of transactions that resulted from certain systems issues pursuant to proposed subparagraph (C)(1)(ii). This limited exception would help to ensure that trades that should not have been executed would continue to be subject to clearly erroneous review. Specifically, as proposed, transactions executed during Market Hours would be eligible for clearly

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<sup>20</sup> See Appendix A of the LULD Plan.

<sup>21</sup> The initial Reference Price used to calculate Price Bands is typically set by the Opening Price on the primary listing market. See Section V(B) of the LULD Plan.

erroneous review pursuant to proposed subparagraph (C)(1)(ii) if the transaction is the result of an Exchange technology or systems issue that results in the transaction occurring outside of the applicable LULD Price Bands pursuant to Rule 11890(g), or is executed after the primary listing market for the security declares a regulatory trading halt, suspension, or pause pursuant to Rule 11890(i). A transaction subject to review pursuant to this paragraph shall be found to be clearly erroneous if the price of the transaction to buy (sell) that is the subject of the complaint is greater than (less than) the Reference Price, described in subparagraph (D) of this Rule, by an amount that equals or exceeds the applicable Percentage Parameter defined in Appendix A to the LULD Plan (“Percentage Parameters”).

Third, the Exchange proposes to narrowly allow for the review of transactions during Market Hours when the Reference Price, described in proposed subparagraph (D), is determined to be erroneous by an Officer of the Exchange or senior level employee designee. Specifically, a transaction executed during Market Hours would be eligible for clearly erroneous review pursuant to proposed subparagraph (C)(1)(iii) of Rule 11890(a)(2) if the transaction involved, in the case of (1) a corporate action or new issue or (2) a security that enters a Trading Pause pursuant to the LULD Plan and resumes trading without an auction,<sup>22</sup> a Reference Price that is determined to be erroneous by an Officer of the Exchange or senior level employee designee because it clearly deviated from the theoretical value of the security. In such circumstances, the Exchange may use a different Reference Price pursuant to proposed subparagraph (D)(2) of this Rule. A

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<sup>22</sup> The Exchange notes that the “resumption of trading without an auction” provision of the proposed rule text applies only to securities that enter a Trading Pause pursuant to LULD and does not apply to a corporate action or new issue.

transaction subject to review pursuant to this paragraph shall be found to be clearly erroneous if the price of the transaction to buy (sell) that is the subject of the complaint is greater than (less than) the new Reference Price, described in subparagraph (D)(2) below, by an amount that equals or exceeds the applicable Numerical Guidelines or Percentage Parameters, as applicable depending on whether the security is subject to the LULD Plan. Specifically, the Percentage Parameters would apply to all transactions except those in an NMS Stock that is not subject to the LULD Plan, as described in subparagraph (C)(1)(i).

In the context of a corporate action or a new issue, there may be instances where the security's Reference Price is later determined by the Exchange to be erroneous (e.g., because of a bad first trade for a new issue), and subsequent LULD Price Bands are calculated from that incorrect Reference Price. In determining whether the Reference Price is erroneous in such instances, the Exchange would generally look to see if such Reference Price clearly deviated from the theoretical value of the security. In such cases, the Exchange would consider a number of factors to determine a new Reference Price that is based on the theoretical value of the security, including but not limited to, the offering price of the new issue, the ratio of the stock split applied to the prior day's closing price, the theoretical price derived from the numerical terms of the corporate action transaction such as the exchange ratio and spin-off terms, and the prior day's closing price on the OTC market for an OTC up-listing.<sup>23</sup> In the foregoing instances, the theoretical value of the security would be used as the new Reference Price when applying

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<sup>23</sup> Using transaction data reported to the FINRA OTC Reporting Facility, FINRA disseminates via the Trade Data Dissemination Service a final closing report for OTC equity securities for each business day that includes, among other things, each security's closing last sale price.

the Percentage Parameters under the LULD Plan (or Numerical Guidelines if the transaction is in an NMS Stock that is not subject to the LULD Plan) to determine whether executions would be cancelled as clearly erroneous.

The following illustrate the proposed application of the rule in the context of a corporate action or new issue:

Example 1:

1. ABCD is subject to a corporate action, 1 for 10 reverse split, and the previous day close was \$5, but the new theoretical price based on the terms of the corporate action is \$50.
2. The security opens at \$5, with LULD bands at \$4.50 x \$5.50
3. The bands will be calculated correctly but the security is trading at an erroneous price based on the valuation of the remaining outstanding shares
4. The theoretical price of \$50 would be used as the new Reference Price when applying LULD bands to determine if executions would be cancelled as clearly erroneous

Example 2:

1. ABCD is subject to a corporate action, the company is doing a spin off where a new issue will be listed, BCDE. ABCD trades at \$50, and the spinoff company is worth 1/5 of ABCD
2. BCDE opens at \$50 in the belief it is the same company as ABCD
3. The theoretical values of the two companies are ABCD \$40 and BCDE \$10
4. BCDE would be deemed to have had an incorrect Reference Price and the theoretical value of \$10 would be used as the new Reference Price when applying the LULD Bands to determine if executions would be cancelled as clearly erroneous

Example 3:

1. ABCD is an uplift from the OTC market, the prior days close on the OTC market was \$20
2. ABCD opens trading on the new listing exchange at \$0.20 due to an erroneous order entry
3. The new Reference Price to determine clearly erroneous executions would be \$20, the theoretical value of the stock from where it was last traded

In the context of the rare situation in which a security that enters a LULD Trading Pause and resumes trading without an auction (i.e., reopens with quotations), the LULD

Plan requires that the new Reference Price in this instance be established by using the mid-point of the best bid and offer (“BBO”) on the primary listing exchange at the reopening time.<sup>24</sup> This can result in a Reference Price and subsequent LULD Price Band calculation that is significantly away from the security’s last traded or more relevant price, especially in less liquid names. In such rare instances, the Exchange is proposing to use a different Reference Price that is based on the prior LULD Band that triggered the Trading Pause, rather than the midpoint of the BBO.

The following example illustrates the proposed application of the rule in the context of a security that reopens without an auction:

Example 4:

1. ABCD stock is trading at \$20, with LULD Bands at \$18 x \$22
2. An incoming buy order causes the stock to enter a Limit State Trading Pause and then a Trading Pause at \$22
3. During the Trading Pause, the buy order causing the Trading Pause is cancelled
4. At the end of the 5-minute halt, there is no crossed interest for an auction to occur, thus trading would resume on a quote
5. Upon resumption, a quote that was available prior to the Trading Pause (e.g. a quote was resting on the book prior to the Trading Pause), is widely set at \$10 x \$90
6. The Reference Price upon resumption is \$50 (mid-point of BBO)
7. The SIP will use this Reference Price and publish LULD Bands of \$45 x \$55 (i.e., far away from BBO prior to the halt)
8. The bands will be calculated correctly, but the \$50 Reference Price is subsequently determined to be incorrect as the price clearly deviated from where it previously traded prior to the Trading Pause
9. The new Reference Price would be \$22 (i.e., the last effective Price Band that was in a limit state before the Trading Pause), and the LULD Bands would be applied to determine if the executions should be cancelled as clearly erroneous

In all of the foregoing situations, investors would be left with no remedy to request clearly erroneous review without the proposed carveouts in subparagraph (C)(1)(iii)

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<sup>24</sup> See LULD Plan, Section I(U) and V(C)(1).

because the trades occurred within the LULD Price Bands (albeit LULD Price Bands that were calculated from an erroneous Reference Price). The Exchange believes that removing the current ability for the Exchange to review in these narrow circumstances would lessen investor protections.

*Numerical Guidelines*

Today, subparagraph (C)(1) defines the Numerical Guidelines that are used to determine if a transaction is deemed clearly erroneous during Market Hours, or during the Pre-Market and Post-Market Hours. With respect to Market Hours, trades are generally deemed clearly erroneous if the execution price differs from the Reference Price (i.e., last sale) by 10% if the Reference Price is greater than \$0.00 up to and including \$25.00; 5% if the Reference Price is greater than \$25.00 up to and including \$50.00; and 3% if the Reference Price is greater than \$50.00. Wider parameters are also used for reviews for Multi-Stock Events, as described in subparagraph (C)(2). With respect to transactions in Leveraged ETF/ETN securities executed during Market Hours, Pre-Market and Post-Market Hours, trades are deemed clearly erroneous if the execution price exceeds the Market Hours Numerical Guidelines multiplied by the leverage multiplier.

Given the changes described in this proposed rule change, the Exchange proposes to amend the way that the Numerical Guidelines are applied during Market Hours in the handful of instances where clearly erroneous review would continue to be available. Specifically during Market Hours, the Exchange would continue to apply the Numerical Guidelines, which would be relocated from subparagraph (C)(1) to (C)(2)(i) under this proposal, to transactions eligible for review pursuant proposed subparagraph (C)(1)(i) (i.e., transactions in NMS Stocks that are not subject to the LULD Plan). In addition, as

applied to the circumstances described in proposed subparagraphs (C)(1)(ii) and (iii), the Exchange would not apply the Numerical Guidelines in proposed subparagraph (C)(2)(i) during Market Hours, and would instead apply the Percentage Parameters used to calculate Price Bands, as set forth in Appendix A to the LULD Plan. Without this change, a transaction that would otherwise stand if Price Bands were properly applied to the transaction may end up being subject to review and deemed clearly erroneous solely due to the fact that the Price Bands were not available due to a systems or other issue. The Exchange believes that it makes more sense to instead base the Price Bands on the same parameters as would otherwise determine whether the trade would have been allowed to execute within the Price Bands. The Exchange also proposes to modify the Numerical Guidelines applicable to leveraged ETF/ETN securities during Market Hours. As noted above, the Numerical Guidelines will only be applicable to transactions eligible for review pursuant subparagraph (C)(1)(i) (i.e., to NMS Stocks that are not subject to the LULD Plan). As leveraged ETF/ETN securities are subject to LULD and thus the Percentage Parameters will be applicable during Market Hours, the Exchange proposes to eliminate the Numerical Guidelines for leveraged ETF/ETN securities traded during Market Hours. However, as no Price Bands are available outside of Market Hours, the Exchange proposes to keep the existing Numerical Guidelines in place for transactions in leveraged ETF/ETN securities that occur during Pre-Market and Post-Market Hours.

The Exchange also proposes to move existing subparagraphs (C)(2) (Multi-Stock Events Involving Twenty or More Securities) and (C)(3) (Additional Factors) as proposed subparagraphs (C)(2)(ii) and (C)(2)(iii), respectively, and also proposes to make clear that Multi-Stock Events and Additional Factors will only be subject to clearly

erroneous review if those NMS Stocks are not subject to the LULD Plan or occur during the Pre-Market or Post-Market Hours. The Exchange proposes to make similar changes to existing subparagraph (A)(iii) (Outlier Transactions) to make clear that such transactions will only be subject to clearly erroneous review if those NMS Stocks are not subject to the LULD Plan or occur during Pre-Market or Post-Market Hours. Further, given the proposal to move existing subparagraphs (C)(2) and (C)(3) to subparagraphs (C)(2)(ii) and (C)(2)(iii), respectively, the Exchange also proposes to amend applicable rule references throughout subparagraph (C)(2)(i). Further, the Exchange proposes to update applicable rule references in subparagraph (A)(iii) based on the above-described structural changes to the Rule.

*Reference Price*

As proposed, the Reference Price used would continue to be based on last sale and would be memorialized in proposed subparagraph (D). Continuing to use the last sale as the Reference Price is necessary for operational efficiency as it may not be possible to perform a timely clearly erroneous review if doing so required computing the arithmetic mean price of eligible reported transactions over the past five minutes, as contemplated by the LULD Plan. While this means that there would still be some differences between the Price Bands and the clearly erroneous parameters, the Exchange believes that this difference is reasonable in light of the need to ensure timely review if clearly erroneous rules are invoked. The Exchange also proposes to allow for an alternate Reference Price to be used as prescribed in proposed subparagraphs (D)(1), (2), and (3). Specifically, the Reference Price may be a value other than the consolidated last sale immediately prior to the execution(s) under review (1) in the case of Multi-Stock

Events involving twenty or more securities, as described in subparagraph (C)(2)(ii) above, (2) in the case of an erroneous Reference Price, as described in subparagraph (C)(1)(iii) above,<sup>25</sup> or (3) in other circumstances, such as, for example, relevant news impacting a security or securities, periods of extreme market volatility, sustained illiquidity, or widespread system issues, where use of a different Reference Price is necessary for the maintenance of a fair and orderly market and the protection of investors and the public interest, provided that such circumstances occurred during Pre-Market or Post-Market Hours or are eligible for review pursuant to subparagraph (C)(1)(i).

*System Disruption or Malfunction*

To conform with the structural changes described above, the Exchange now proposes to remove paragraph (b)(i), System Disruption or Malfunctions, and renumber existing paragraph (b)(ii) as (b)(i). Additionally, the Exchange proposes to add rule text in renumbered (b)(i) (Senior Official Acting on Own Motion) to specify that a Senior Official, acting on his or her own motion, may review potentially erroneous transactions that occur only during Pre-Market or Post-Market Hours or that are eligible for review pursuant to proposed paragraph (a)(2)(C)(1).

The Exchange also proposes new subparagraph (C)(1)(ii) of Rule 11890(a)(2). Specifically, as described in subparagraph (C)(1)(ii), transactions occurring during

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<sup>25</sup> As discussed above, in the case of (C)(1)(iii)(1), the Exchange would consider a number of factors to determine a new Reference Price that is based on the theoretical value of the security, including but not limited to, the offering price of the new issue, the ratio of the stock split applied to the prior day's closing price, the theoretical price derived from the numerical terms of the corporate action transaction such as the exchange ratio and spin-off terms, and the prior day's closing price on the OTC market for an OTC up-listing. In the case of (C)(1)(iii)(2), the Reference Price will be the last effective Price Band that was in a limit state before the Trading Pause.

Market Hours that are executed outside of the LULD Price Bands due to an Exchange technology or system issue, may be subject to clearly erroneous review pursuant to proposed paragraph (g) of Rule 11890. Proposed subparagraph (C)(1)(ii) further provides that a transaction subject to review pursuant to this paragraph shall be found to be clearly erroneous if the price of the transaction to buy (sell) that is the subject of the complaint is greater than (less than) the Reference Price, described in subparagraph (D), by an amount that equals or exceeds the applicable Percentage Parameter defined in Appendix A to the LULD Plan.

*Securities Subject to Limit Up-Limit Down Plan*

The Exchange proposes to rename paragraph (g) (Securities Subject to LULD Plan) as “Transactions Occurring Outside of LULD Price Bands.” Given that proposed subparagraph (C)(1) of Rule 11890(a)(2) defines the LULD Plan, the Exchange also proposes to eliminate redundant language from paragraph (g). Finally, the Exchange also proposes to update references to the LULD Plan and Price Bands so that they are uniform throughout the Rule and to update rule references throughout the paragraph to conform to the structural changes to the Rule described above.

*Conforming Changes*

In connection with the changes proposed above, the Exchange proposes to make a conforming change in paragraph (a)(2) to replace the reference to “Numerical Guidelines” to “guidelines” as clearly erroneous review will now be based on both the existing Numerical Guidelines and the Percentage Parameters in the manner specified above. In addition, the Exchange proposes to modify the text of paragraphs (e) (Fees), (h) (Multi-Day Event), and (i) (Trading Halts) to reference the Percentage Parameters as

well as the Numerical Guidelines, and to update rule references therein to conform to the structural changes to the Rule described above. Specifically, the existing text of paragraph (e) provides that adjustments or voluntary breaks negotiated by the Exchange to trades executed at prices that meet the Numerical Guidelines set forth in (a)(2)(C)(1) count as breaks by the Exchange for purposes of this paragraph. The Exchange now proposes to amend the rule text to state that adjustments or voluntary breaks negotiated by the Exchange to trades executed at prices that meet the Percentage Parameters or Numerical Guidelines set forth in (a)(2)(C)(2) count as breaks by the Exchange for purposes of this paragraph.

In addition, the existing text of paragraphs (h) and (i) provides that any action taken in connection with this paragraph will be taken without regard to the Numerical Guidelines set forth in this Rule. The Exchange proposes to amend the rule text to provide that any action taken in connection with this paragraph will be taken without regard to the Percentage Parameters or Numerical Guidelines set forth in this Rule, with the Percentage Parameters being applicable to an NMS Stock subject to the LULD Plan and the Numerical Guidelines being applicable to an NMS Stock not subject to the LULD Plan.

b. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,<sup>26</sup> in general, and Section 6(b)(5) of the Act,<sup>27</sup> in particular, in that it is designed to remove impediments to and perfect the mechanism of a

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<sup>26</sup> 15 U.S.C. 78f(b).

<sup>27</sup> 15 U.S.C. 78f(b)(5).

free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers.

As explained in the purpose section of this proposed rule change, the current pilot was implemented following the Flash Crash to bring greater transparency to the process for conducting clearly erroneous reviews, and to help assure that the review process is based on clear, objective, and consistent rules across the U.S. equities markets. The Exchange believes that the amended clearly erroneous rules have been successful in that regard and have thus furthered fair and orderly markets. Specifically, the Exchange believes that the pilot has successfully ensured that such reviews are conducted based on objective and consistent standards across SROs and has therefore afforded greater certainty to Members and investors. The Exchange therefore believes that making the current pilot a permanent program is appropriate so that equities market participants can continue to reap the benefits of a clear, objective, and transparent process for conducting clearly erroneous reviews. In addition, the Exchange understands that the other U.S. equities exchanges and FINRA will also file largely identical proposals to make their respective clearly erroneous pilots permanent. The Exchange therefore believes that the proposed rule change would promote transparency and uniformity across markets concerning review of transactions as clearly erroneous and would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors, and the public interest.

Similarly, the Exchange believes that it is consistent with just and equitable principles of trade to limit the availability of clearly erroneous review during Market

Hours. The LULD Plan was approved by the Commission to operate on a permanent rather than pilot basis. As a number of market participants have noted, the LULD Plan provides protections that ensure that investors' orders are not executed at prices that may be considered clearly erroneous. Further, amendments to the LULD Plan approved in Amendment Eighteen serve to ensure that the Price Bands established by the LULD Plan are "appropriately tailored to prevent trades that are so far from current market prices that they would be viewed as having been executed in error."<sup>28</sup> Thus, the Exchange believes that clearly erroneous review should only be necessary in very limited circumstances during Market Hours. Specifically, such review would only be necessary in instances where a transaction was not subject to the LULD Plan, or was the result of some form of systems issue, as detailed in the purpose section of this proposed rule change.

Additionally, in narrow circumstances where the transaction was subject to the LULD Plan, a clearly erroneous review would be available in the case of (1) a corporate action or new issue or (2) a security that enters a Trading Pause pursuant to LULD and resumes trading without an auction, where the Reference Price is determined to be erroneous by an Officer of the Exchange or senior level employee designee because it clearly deviated from the theoretical value of the security. Thus, eliminating clearly erroneous review in all other instances will serve to increase certainty for Members and investors that trades executed during Market Hours would typically stand and would not be subject to review.

Given the fact that clearly erroneous review would largely be limited to transactions that were not subject to the LULD Plan, the Exchange also believes that it is necessary to change the parameters used to determine whether a trade is clearly

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<sup>28</sup> See Amendment Eighteen, supra note 6.

erroneous. Specifically, due to the different parameters currently used for clearly erroneous review and for determining Price Bands, it is possible that a trade that would have been permitted to execute within the Price Bands would later be deemed clearly erroneous, if, for example, a systems issue prevented the dissemination of the Price Bands. The Exchange believes that this result is contrary to the principle that trades within the Price Bands should stand, and has the potential to cause investor confusion if trades that are properly executed within the applicable parameters described in the LULD Plan are later deemed erroneous. By using consistent parameters for clearly erroneous reviews conducted during Market Hours and the calculation of the Price Bands, the Exchange believes that this change would also serve to promote greater certainty with regards to when trades may be deemed erroneous.

Finally, the proposed rule changes make organizational updates to Rule 11890 as well as minor updates and corrections to the Rule to improve readability and clarity.

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while also amending those rules to provide greater certainty to Members and investors that trades will stand if executed during Market Hours where the LULD Plan provides adequate protection against trading at erroneous prices. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals, the substance of which are identical to this proposal. Thus, the proposed rule change will help to ensure consistency across SROs without implicating any competitive issues.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)<sup>29</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>30</sup> 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.

The proposed rule change to make the clearly erroneous pilot a permanent program would not significantly affect the protection of investors or the public interest because the proposal will help assure greater objectivity, transparency, and clarity with respect to the clearly erroneous review process. As discussed above, the current pilot was implemented following the Flash Crash to bring greater transparency and certainty to the process for conducting clearly erroneous reviews. The Exchange believes that the pilot has successfully ensured that such reviews are conducted based on objective and consistent standards across SROs and has therefore afforded greater certainty to Members

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<sup>29</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>30</sup> 17 CFR 240.19b-4(f)(6).

and investors. The Exchange therefore believes that making the current pilot a permanent program in the manner described above is appropriate so that equities market participants can continue to reap the benefits of a clear, objective, and transparent process for conducting clearly erroneous reviews.

This proposed rule change would also not impose any significant burden on competition because the Exchange understands that the other national securities exchanges and FINRA will also file substantially similar proposals, thereby ensuring consistency across market centers without implicating any competitive issues.

Furthermore, Rule 19b-4(f)(6)(iii)<sup>31</sup> 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.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange respectfully requests that the Commission waive the 30-day operative delay so that the proposed rule change may become effective and operative on October 1, 2022. Waiver of the operative delay is consistent with the protection of investors and the public interest because it would ensure that the Exchange, other equity exchanges and FINRA are able to adopt consistent clearly erroneous rules as proposed herein and to coordinate the effectiveness of the permanent rules.

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<sup>31</sup> 17 CFR 240.19b-4(f)(6)(iii).

At any time within sixty (60) days of the filing of such proposed rule change, the Commission may summarily temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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

The proposed changes are materially identical to Cboe BZX Rule 11.17.

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-2022-017)

September \_\_, 2022

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Clearly Erroneous Rules

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 20, 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 a proposal to amend BX Equity 11, Rule 11890 (Clearly Erroneous Transactions).

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

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

<sup>2</sup> 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

On September 1, 2022, the Commission approved the proposal of Cboe BZX Exchange, Inc. ("Cboe BZX") to (1) adopt on a permanent basis the pilot program for clearly erroneous executions in Cboe BZX Rule 11.17 and (2) limit the circumstances where clearly erroneous review would continue to be available during regular trading hours (i.e., Market Hours<sup>3</sup>) when the Limit Up-Limit Down ("LULD") Plan to Address Extraordinary Market Volatility (the "LULD Plan")<sup>4</sup> already provides similar protections for trades occurring at prices that may be deemed erroneous.<sup>5</sup>

The Exchange now proposes to adopt the same changes in Equity 11, Rule 11890 (Clearly Erroneous Transactions). The Exchange believes that these changes are appropriate as the LULD Plan has been approved by the Commission on a permanent

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<sup>3</sup> See Securities Exchange Act Release No. 95658 (September 1, 2022) (SR-CboeBZX-2022-037).

<sup>4</sup> See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

<sup>5</sup> The term "Market Hours" means the period of time beginning at 9:30 a.m. ET and ending at 4:00 p.m. ET (or such earlier time as may be designated by the Exchange on a day when the Exchange closes early). See Equity 1, Section 1(a)(13). The Exchange will make conforming changes throughout Rule 11890 to replace references to "Regular Trading Hours" and "Regular Market Session" with "Market Hours," which is the correct defined term.

basis,<sup>6</sup> and in light of amendments to the LULD Plan, including changes to the applicable Price Bands<sup>7</sup> around the open and close of trading.

*Proposal to Make the Clearly Erroneous Pilot Permanent*

On September 10, 2010, the Commission approved, on a pilot basis, changes to Equity 11, Rule 11890 that, among other things: (i) provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.<sup>8</sup> In 2013, the Exchange adopted a provision designed to address the operation of the LULD Plan.<sup>9</sup> Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) a series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been

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<sup>6</sup> See Securities Exchange Act Release No. 84843 (December 18, 2018), 83 FR 66464 (December 26, 2018) (“Notice”); 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (File No. 4-631) (“Amendment Eighteen”).

<sup>7</sup> “Price Bands” refers to the term provided in Section V of the LULD Plan.

<sup>8</sup> See Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR-BX-2010-040).

<sup>9</sup> See Securities Exchange Act Release No. 68818 (February 1, 2013), 78 FR 9100 (February 7, 2013) (SR-BX-2013-010).

declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.<sup>10</sup> These changes are currently scheduled to operate for a pilot period that would end at the close of business on October 20, 2022.<sup>11</sup>

When it originally approved the clearly erroneous pilot, the Commission explained that the changes were “being implemented on a pilot basis so that the Commission and the Exchanges can monitor the effects of the pilot on the markets and investors, and consider appropriate adjustments, as necessary.”<sup>12</sup> In the 12 years since that time, the Exchange and other national securities exchanges have gained considerable experience in the operation of the rule, as amended on a pilot basis. Based on that experience, the Exchange believes that the program should be allowed to continue on a permanent basis so that equities market participants and investors can benefit from the increased certainty provided by the amended rule.

The clearly erroneous pilot was implemented following a severe disruption in the U.S. equities markets on May 6, 2010 (“Flash Crash”) to “provide greater transparency and certainty to the process of breaking trades.”<sup>13</sup> Largely, the pilot reduced the discretion of the Exchange, other national securities exchanges, and Financial Industry Regulatory Authority (“FINRA”) to deviate from the objective standards in their

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<sup>10</sup> See Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR-BX-2014-021).

<sup>11</sup> See Securities Exchange Act Release No. 95332 (July 20, 2022), 87 FR 44471 (July 26, 2022) (SR-BX-2022-011).

<sup>12</sup> See Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR-BX-2010-040).

<sup>13</sup> Id.

respective rules when dealing with potentially erroneous transactions. The pilot has thus helped afford greater certainty to Members and investors about when trades will be deemed erroneous pursuant to self-regulatory organization (“SRO”) rules and has provided a more transparent process for conducting such reviews. The Exchange proposes to make the current pilot permanent so that market participants can continue to benefit from the increased certainty afforded by the current rule.

*Amendments to the Clearly Erroneous Rules*

When the Participants to the LULD Plan filed to introduce the Limit Up-Limit Down (“LULD”) mechanism, itself a response to the Flash Crash, a handful of commenters noted the potential discordance between the clearly erroneous rules and the Price Bands used to limit the price at which trades would be permitted to be executed pursuant to the LULD Plan. For example, two commenters requested that the clearly erroneous rules be amended so the presumption would be that trades executed within the Price Bands would not be subject to review.<sup>14</sup> While the Participants acknowledged that the potential to prevent clearly erroneous executions would be a “key benefit” of the LULD Plan, the Participants decided not to amend the clearly erroneous rules at that time.<sup>15</sup> In the years since, industry feedback has continued to reflect a desire to eliminate the discordance between the LULD mechanism and the clearly erroneous rules so that market participants would have more certainty that trades executed with the Price Bands would stand. For example, the Equity Market Structure Advisory Committee (“EMSAC”) Market Quality Subcommittee included in its April 19, 2016 status report a

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<sup>14</sup> See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4-631) (n. 33505).

<sup>15</sup> Id.

preliminary recommendation that clearly erroneous rules be amended to conform to the Price Bands – i.e., “any trade that takes place within the band would stand and not be broken and trades outside the LU/LD bands would be eligible for the consideration of the Clearly Erroneous rules.”<sup>16</sup>

The Exchange believes that it is important for there to be some mechanism to ensure that investors’ orders are either not executed at clearly erroneous prices or are subsequently busted as needed to maintain a fair and orderly market. At the same time, the Exchange believes that the LULD Plan, as amended, would provide sufficient protection for trades executed during Market Hours. Indeed, the LULD mechanism could be considered to offer superior protection as it prevents potentially erroneous trades from being executed in the first instance. After gaining experience with the LULD Plan, the Exchange now believes that it is appropriate to largely eliminate clearly erroneous review during Market Hours when Price Bands are in effect. Thus, as proposed, trades executed within the Price Bands would stand, barring one of a handful of identified scenarios where such review may still be necessary for the protection of investors. The Exchange believes that this change would be beneficial for the U.S. equities markets as it would ensure that trades executed within the Price Bands are subject to clearly erroneous review in only rare circumstances, resulting in greater certainty for Members and investors.

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<sup>16</sup> See EMSAC Market Quality Subcommittee, Recommendations for Rulemaking on Issues of Market Quality (November 29, 2016), available at <https://www.sec.gov/spotlight/emsac/emsac-recommendations-rulemaking-market-quality.pdf>.

The current LULD mechanism for addressing extraordinary market volatility is available solely during Market Hours. Thus, trades during the Exchange's Pre-Market<sup>17</sup> or Post-Market Hours<sup>18</sup> would not benefit from this protection and could ultimately be executed at prices that may be considered erroneous. For this reason, the Exchange proposes that transactions executed during Pre-Market or Post-Market Hours would continue to be reviewable as clearly erroneous. Continued availability of the clearly erroneous rule during Pre- and Post-Market Hours would therefore ensure that investors have appropriate recourse when erroneous trades are executed outside of the hours where similar protection can be provided by the LULD Plan. Further, the proposal is designed to eliminate the potential discordance between clearly erroneous review and LULD Price Bands, which does not exist outside of Market Hours because the LULD Plan is not in effect. Thus, the Exchange believes that it is appropriate to continue to allow transactions to be eligible for clearly erroneous review if executed outside of Market Hours.

On the other hand, there would be much more limited potential to request that a transaction be reviewed as potentially erroneous during Market Hours. With the introduction of the LULD mechanism in 2013, clearly erroneous trades are largely prevented by the requirement that trades be executed within the Price Bands. In addition,

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<sup>17</sup> The term "Pre-Market Hours" means the period of time beginning at 7:00 a.m. ET and ending immediately prior to the commencement of Market Hours. See Equity 1, Section 1(a)(13). The Exchange will make conforming changes throughout Rule 11890 to replace references to "Pre-Opening Hours" or "Pre-Opening Hours Trading Session" with "Pre-Market Hours," which is the correct defined term.

<sup>18</sup> The term "Post-Market Hours" means the period of time beginning immediately after the end of Market Hours and ending at 7:00 p.m. ET. See Equity 1, Section 1(a)(13). The Exchange will make conforming changes throughout Rule 11890 to replace references to "After Hours" or "After Hours Trading Session" with "Post-Market Hours," which is the correct defined term.

in 2019, Amendment Eighteen to the LULD Plan eliminated double-wide Price Bands: (1) at the Open, and (2) at the Close for Tier 2 NMS Stocks 2 with a Reference Price above \$3.00.<sup>19</sup> Due to these changes, the Exchange believes that the Price Bands would provide sufficient protection to investor orders such that clearly erroneous review would no longer be necessary during Market Hours. As the Participants to the LULD Plan explained in Amendment Eighteen: “Broadly, the Limit Up-Limit Down mechanism prevents trades from happening at prices where one party to the trade would be considered ‘aggrieved,’ and thus could be viewed as an appropriate mechanism to supplant clearly erroneous rules.” While the Participants also expressed concern that the Price Bands might be too wide to afford meaningful protection around the open and close of trading, amendments to the LULD Plan adopted in Amendment Eighteen narrowed Price Bands at these times in a manner that the Exchange believes is sufficient to ensure that investors’ orders would be appropriately protected in the absence of clearly erroneous review. The Exchange therefore believes that it is appropriate to rely on the LULD mechanism as the primary means of preventing clearly erroneous trades during Market Hours.

At the same time, the Exchange is cognizant that there may be limited circumstances where clearly erroneous review may continue to be appropriate, even during Market Hours. Thus, the Exchange proposes to amend its clearly erroneous rules to enumerate the specific circumstances where such review would remain available during the course of Market Hours, as follows. All transactions that fall outside of these specific enumerated exceptions would be ineligible for clearly erroneous review.

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<sup>19</sup> See Amendment Eighteen, supra note 6.

First, pursuant to proposed subparagraph (C)(1)(i) of Rule 11890(a)(2), a transaction executed during Market Hours would continue to be eligible for clearly erroneous review if the transaction is not subject to the LULD Plan. In such case, the Numerical Guidelines set forth in subparagraph (C)(2) of Rule 11890(a)(2) will be applicable to such NMS Stock. While the majority of securities traded on the Exchange would be subject to the LULD Plan, certain equity securities, such as rights and warrants, are explicitly excluded from the provisions of the LULD Plan and would therefore be eligible for clearly erroneous review instead.<sup>20</sup> Similarly, there are instances, such as the opening auction on the primary listing market,<sup>21</sup> where transactions are not ordinarily subject to the LULD Plan, or circumstances where a transaction that ordinarily would have been subject to the LULD Plan is not – due, for example, to some issue with processing the Price Bands. These transactions would continue to be eligible for clearly erroneous review, effectively ensuring that such review remains available as a backstop when the LULD Plan would not prevent executions from occurring at erroneous prices in the first instance.

Second, investors would also continue to be able to request review of transactions that resulted from certain systems issues pursuant to proposed subparagraph (C)(1)(ii). This limited exception would help to ensure that trades that should not have been executed would continue to be subject to clearly erroneous review. Specifically, as proposed, transactions executed during Market Hours would be eligible for clearly

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<sup>20</sup> See Appendix A of the LULD Plan.

<sup>21</sup> The initial Reference Price used to calculate Price Bands is typically set by the Opening Price on the primary listing market. See Section V(B) of the LULD Plan.

erroneous review pursuant to proposed subparagraph (C)(1)(ii) if the transaction is the result of an Exchange technology or systems issue that results in the transaction occurring outside of the applicable LULD Price Bands pursuant to Rule 11890(g), or is executed after the primary listing market for the security declares a regulatory trading halt, suspension, or pause pursuant to Rule 11890(i). A transaction subject to review pursuant to this paragraph shall be found to be clearly erroneous if the price of the transaction to buy (sell) that is the subject of the complaint is greater than (less than) the Reference Price, described in subparagraph (D) of this Rule, by an amount that equals or exceeds the applicable Percentage Parameter defined in Appendix A to the LULD Plan (“Percentage Parameters”).

Third, the Exchange proposes to narrowly allow for the review of transactions during Market Hours when the Reference Price, described in proposed subparagraph (D), is determined to be erroneous by an Officer of the Exchange or senior level employee designee. Specifically, a transaction executed during Market Hours would be eligible for clearly erroneous review pursuant to proposed subparagraph (C)(1)(iii) of Rule 11890(a)(2) if the transaction involved, in the case of (1) a corporate action or new issue or (2) a security that enters a Trading Pause pursuant to the LULD Plan and resumes trading without an auction,<sup>22</sup> a Reference Price that is determined to be erroneous by an Officer of the Exchange or senior level employee designee because it clearly deviated from the theoretical value of the security. In such circumstances, the Exchange may use a different Reference Price pursuant to proposed subparagraph (D)(2) of this Rule. A

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<sup>22</sup> The Exchange notes that the “resumption of trading without an auction” provision of the proposed rule text applies only to securities that enter a Trading Pause pursuant to LULD and does not apply to a corporate action or new issue.

transaction subject to review pursuant to this paragraph shall be found to be clearly erroneous if the price of the transaction to buy (sell) that is the subject of the complaint is greater than (less than) the new Reference Price, described in subparagraph (D)(2) below, by an amount that equals or exceeds the applicable Numerical Guidelines or Percentage Parameters, as applicable depending on whether the security is subject to the LULD Plan. Specifically, the Percentage Parameters would apply to all transactions except those in an NMS Stock that is not subject to the LULD Plan, as described in subparagraph (C)(1)(i).

In the context of a corporate action or a new issue, there may be instances where the security's Reference Price is later determined by the Exchange to be erroneous (e.g., because of a bad first trade for a new issue), and subsequent LULD Price Bands are calculated from that incorrect Reference Price. In determining whether the Reference Price is erroneous in such instances, the Exchange would generally look to see if such Reference Price clearly deviated from the theoretical value of the security. In such cases, the Exchange would consider a number of factors to determine a new Reference Price that is based on the theoretical value of the security, including but not limited to, the offering price of the new issue, the ratio of the stock split applied to the prior day's closing price, the theoretical price derived from the numerical terms of the corporate action transaction such as the exchange ratio and spin-off terms, and the prior day's closing price on the OTC market for an OTC up-listing.<sup>23</sup> In the foregoing instances, the theoretical value of the security would be used as the new Reference Price when applying the Percentage Parameters under the LULD Plan (or Numerical Guidelines if the

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<sup>23</sup> Using transaction data reported to the FINRA OTC Reporting Facility, FINRA disseminates via the Trade Data Dissemination Service a final closing report for OTC equity securities for each business day that includes, among other things, each security's closing last sale price.

transaction is in an NMS Stock that is not subject to the LULD Plan) to determine whether executions would be cancelled as clearly erroneous.

The following illustrate the proposed application of the rule in the context of a corporate action or new issue:

Example 1:

1. ABCD is subject to a corporate action, 1 for 10 reverse split, and the previous day close was \$5, but the new theoretical price based on the terms of the corporate action is \$50.
2. The security opens at \$5, with LULD bands at \$4.50 x \$5.50
3. The bands will be calculated correctly but the security is trading at an erroneous price based on the valuation of the remaining outstanding shares
4. The theoretical price of \$50 would be used as the new Reference Price when applying LULD bands to determine if executions would be cancelled as clearly erroneous

Example 2:

1. ABCD is subject to a corporate action, the company is doing a spin off where a new issue will be listed, BCDE. ABCD trades at \$50, and the spinoff company is worth 1/5 of ABCD
2. BCDE opens at \$50 in the belief it is the same company as ABCD
3. The theoretical values of the two companies are ABCD \$40 and BCDE \$10
4. BCDE would be deemed to have had an incorrect Reference Price and the theoretical value of \$10 would be used as the new Reference Price when applying the LULD Bands to determine if executions would be cancelled as clearly erroneous

Example 3:

1. ABCD is an uplift from the OTC market, the prior days close on the OTC market was \$20
2. ABCD opens trading on the new listing exchange at \$0.20 due to an erroneous order entry
3. The new Reference Price to determine clearly erroneous executions would be \$20, the theoretical value of the stock from where it was last traded

In the context of the rare situation in which a security that enters a LULD Trading Pause and resumes trading without an auction (i.e., reopens with quotations), the LULD Plan requires that the new Reference Price in this instance be established by using the

mid-point of the best bid and offer (“BBO”) on the primary listing exchange at the reopening time.<sup>24</sup> This can result in a Reference Price and subsequent LULD Price Band calculation that is significantly away from the security’s last traded or more relevant price, especially in less liquid names. In such rare instances, the Exchange is proposing to use a different Reference Price that is based on the prior LULD Band that triggered the Trading Pause, rather than the midpoint of the BBO.

The following example illustrates the proposed application of the rule in the context of a security that reopens without an auction:

Example 4:

1. ABCD stock is trading at \$20, with LULD Bands at \$18 x \$22
2. An incoming buy order causes the stock to enter a Limit State Trading Pause and then a Trading Pause at \$22
3. During the Trading Pause, the buy order causing the Trading Pause is cancelled
4. At the end of the 5-minute halt, there is no crossed interest for an auction to occur, thus trading would resume on a quote
5. Upon resumption, a quote that was available prior to the Trading Pause (e.g. a quote was resting on the book prior to the Trading Pause), is widely set at \$10 x \$90
6. The Reference Price upon resumption is \$50 (mid-point of BBO)
7. The SIP will use this Reference Price and publish LULD Bands of \$45 x \$55 (i.e., far away from BBO prior to the halt)
8. The bands will be calculated correctly, but the \$50 Reference Price is subsequently determined to be incorrect as the price clearly deviated from where it previously traded prior to the Trading Pause
9. The new Reference Price would be \$22 (i.e., the last effective Price Band that was in a limit state before the Trading Pause), and the LULD Bands would be applied to determine if the executions should be cancelled as clearly erroneous

In all of the foregoing situations, investors would be left with no remedy to request clearly erroneous review without the proposed carveouts in subparagraph (C)(1)(iii) because the trades occurred within the LULD Price Bands (albeit LULD Price Bands that were calculated from an erroneous Reference Price). The Exchange believes that

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<sup>24</sup> See LULD Plan, Section I(U) and V(C)(1).

removing the current ability for the Exchange to review in these narrow circumstances would lessen investor protections.

*Numerical Guidelines*

Today, subparagraph (C)(1) defines the Numerical Guidelines that are used to determine if a transaction is deemed clearly erroneous during Market Hours, or during the Pre-Market and Post-Market Hours. With respect to Market Hours, trades are generally deemed clearly erroneous if the execution price differs from the Reference Price (i.e., last sale) by 10% if the Reference Price is greater than \$0.00 up to and including \$25.00; 5% if the Reference Price is greater than \$25.00 up to and including \$50.00; and 3% if the Reference Price is greater than \$50.00. Wider parameters are also used for reviews for Multi-Stock Events, as described in subparagraph (C)(2). With respect to transactions in Leveraged ETF/ETN securities executed during Market Hours, Pre-Market and Post-Market Hours, trades are deemed clearly erroneous if the execution price exceeds the Market Hours Numerical Guidelines multiplied by the leverage multiplier.

Given the changes described in this proposed rule change, the Exchange proposes to amend the way that the Numerical Guidelines are applied during Market Hours in the handful of instances where clearly erroneous review would continue to be available. Specifically during Market Hours, the Exchange would continue to apply the Numerical Guidelines, which would be relocated from subparagraph (C)(1) to (C)(2)(i) under this proposal, to transactions eligible for review pursuant proposed subparagraph (C)(1)(i) (i.e., transactions in NMS Stocks that are not subject to the LULD Plan). In addition, as applied to the circumstances described in proposed subparagraphs (C)(1)(ii) and (iii), the Exchange would not apply the Numerical Guidelines in proposed subparagraph (C)(2)(i)

during Market Hours, and would instead apply the Percentage Parameters used to calculate Price Bands, as set forth in Appendix A to the LULD Plan. Without this change, a transaction that would otherwise stand if Price Bands were properly applied to the transaction may end up being subject to review and deemed clearly erroneous solely due to the fact that the Price Bands were not available due to a systems or other issue. The Exchange believes that it makes more sense to instead base the Price Bands on the same parameters as would otherwise determine whether the trade would have been allowed to execute within the Price Bands. The Exchange also proposes to modify the Numerical Guidelines applicable to leveraged ETF/ETN securities during Market Hours. As noted above, the Numerical Guidelines will only be applicable to transactions eligible for review pursuant subparagraph (C)(1)(i) (i.e., to NMS Stocks that are not subject to the LULD Plan). As leveraged ETF/ETN securities are subject to LULD and thus the Percentage Parameters will be applicable during Market Hours, the Exchange proposes to eliminate the Numerical Guidelines for leveraged ETF/ETN securities traded during Market Hours. However, as no Price Bands are available outside of Market Hours, the Exchange proposes to keep the existing Numerical Guidelines in place for transactions in leveraged ETF/ETN securities that occur during Pre-Market and Post-Market Hours.

The Exchange also proposes to move existing subparagraphs (C)(2) (Multi-Stock Events Involving Twenty or More Securities) and (C)(3) (Additional Factors) as proposed subparagraphs (C)(2)(ii) and (C)(2)(iii), respectively, and also proposes to make clear that Multi-Stock Events and Additional Factors will only be subject to clearly erroneous review if those NMS Stocks are not subject to the LULD Plan or occur during the Pre-Market or Post-Market Hours. The Exchange proposes to make similar changes

to existing subparagraph (A)(iii) (Outlier Transactions) to make clear that such transactions will only be subject to clearly erroneous review if those NMS Stocks are not subject to the LULD Plan or occur during Pre-Market or Post-Market Hours. Further, given the proposal to move existing subparagraphs (C)(2) and (C)(3) to subparagraphs (C)(2)(ii) and (C)(2)(iii), respectively, the Exchange also proposes to amend applicable rule references throughout subparagraph (C)(2)(i). Further, the Exchange proposes to update applicable rule references in subparagraph (A)(iii) based on the above-described structural changes to the Rule.

*Reference Price*

As proposed, the Reference Price used would continue to be based on last sale and would be memorialized in proposed subparagraph (D). Continuing to use the last sale as the Reference Price is necessary for operational efficiency as it may not be possible to perform a timely clearly erroneous review if doing so required computing the arithmetic mean price of eligible reported transactions over the past five minutes, as contemplated by the LULD Plan. While this means that there would still be some differences between the Price Bands and the clearly erroneous parameters, the Exchange believes that this difference is reasonable in light of the need to ensure timely review if clearly erroneous rules are invoked. The Exchange also proposes to allow for an alternate Reference Price to be used as prescribed in proposed subparagraphs (D)(1), (2), and (3). Specifically, the Reference Price may be a value other than the consolidated last sale immediately prior to the execution(s) under review (1) in the case of Multi-Stock Events involving twenty or more securities, as described in subparagraph (C)(2)(ii) above, (2) in the case of an erroneous Reference Price, as described in subparagraph

(C)(1)(iii) above,<sup>25</sup> or (3) in other circumstances, such as, for example, relevant news impacting a security or securities, periods of extreme market volatility, sustained illiquidity, or widespread system issues, where use of a different Reference Price is necessary for the maintenance of a fair and orderly market and the protection of investors and the public interest, provided that such circumstances occurred during Pre-Market or Post-Market Hours or are eligible for review pursuant to subparagraph (C)(1)(i).

*System Disruption or Malfunction*

To conform with the structural changes described above, the Exchange now proposes to remove paragraph (b)(i), System Disruption or Malfunctions, and renumber existing paragraph (b)(ii) as (b)(i). Additionally, the Exchange proposes to add rule text in renumbered (b)(i) (Senior Official Acting on Own Motion) to specify that a Senior Official, acting on his or her own motion, may review potentially erroneous transactions that occur only during Pre-Market or Post-Market Hours or that are eligible for review pursuant to proposed paragraph (a)(2)(C)(1).

The Exchange also proposes new subparagraph (C)(1)(ii) of Rule 11890(a)(2). Specifically, as described in subparagraph (C)(1)(ii), transactions occurring during Market Hours that are executed outside of the LULD Price Bands due to an Exchange technology or system issue, may be subject to clearly erroneous review pursuant to

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<sup>25</sup> As discussed above, in the case of (C)(1)(iii)(1), the Exchange would consider a number of factors to determine a new Reference Price that is based on the theoretical value of the security, including but not limited to, the offering price of the new issue, the ratio of the stock split applied to the prior day's closing price, the theoretical price derived from the numerical terms of the corporate action transaction such as the exchange ratio and spin-off terms, and the prior day's closing price on the OTC market for an OTC up-listing. In the case of (C)(1)(iii)(2), the Reference Price will be the last effective Price Band that was in a limit state before the Trading Pause.

proposed paragraph (g) of Rule 11890. Proposed subparagraph (C)(1)(ii) further provides that a transaction subject to review pursuant to this paragraph shall be found to be clearly erroneous if the price of the transaction to buy (sell) that is the subject of the complaint is greater than (less than) the Reference Price, described in subparagraph (D), by an amount that equals or exceeds the applicable Percentage Parameter defined in Appendix A to the LULD Plan.

*Securities Subject to Limit Up-Limit Down Plan*

The Exchange proposes to rename paragraph (g) (Securities Subject to LULD Plan) as “Transactions Occurring Outside of LULD Price Bands.” Given that proposed subparagraph (C)(1) of Rule 11890(a)(2) defines the LULD Plan, the Exchange also proposes to eliminate redundant language from paragraph (g). Finally, the Exchange also proposes to update references to the LULD Plan and Price Bands so that they are uniform throughout the Rule and to update rule references throughout the paragraph to conform to the structural changes to the Rule described above.

*Conforming Changes*

In connection with the changes proposed above, the Exchange proposes to make a conforming change in paragraph (a)(2) to replace the reference to “Numerical Guidelines” to “guidelines” as clearly erroneous review will now be based on both the existing Numerical Guidelines and the Percentage Parameters in the manner specified above. In addition, the Exchange proposes to modify the text of paragraphs (e) (Fees), (h) (Multi-Day Event), and (i) (Trading Halts) to reference the Percentage Parameters as well as the Numerical Guidelines, and to update rule references therein to conform to the structural changes to the Rule described above. Specifically, the existing text of

paragraph (e) provides that adjustments or voluntary breaks negotiated by the Exchange to trades executed at prices that meet the Numerical Guidelines set forth in (a)(2)(C)(1) count as breaks by the Exchange for purposes of this paragraph. The Exchange now proposes to amend the rule text to state that adjustments or voluntary breaks negotiated by the Exchange to trades executed at prices that meet the Percentage Parameters or Numerical Guidelines set forth in (a)(2)(C)(2) count as breaks by the Exchange for purposes of this paragraph.

In addition, the existing text of paragraphs (h) and (i) provides that any action taken in connection with this paragraph will be taken without regard to the Numerical Guidelines set forth in this Rule. The Exchange proposes to amend the rule text to provide that any action taken in connection with this paragraph will be taken without regard to the Percentage Parameters or Numerical Guidelines set forth in this Rule, with the Percentage Parameters being applicable to an NMS Stock subject to the LULD Plan and the Numerical Guidelines being applicable to an NMS Stock not subject to the LULD Plan.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,<sup>26</sup> in general, and Section 6(b)(5) of the Act,<sup>27</sup> in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable

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<sup>26</sup> 15 U.S.C. 78f(b).

<sup>27</sup> 15 U.S.C. 78f(b)(5).

principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers.

As explained in the purpose section of this proposed rule change, the current pilot was implemented following the Flash Crash to bring greater transparency to the process for conducting clearly erroneous reviews, and to help assure that the review process is based on clear, objective, and consistent rules across the U.S. equities markets. The Exchange believes that the amended clearly erroneous rules have been successful in that regard and have thus furthered fair and orderly markets. Specifically, the Exchange believes that the pilot has successfully ensured that such reviews are conducted based on objective and consistent standards across SROs and has therefore afforded greater certainty to Members and investors. The Exchange therefore believes that making the current pilot a permanent program is appropriate so that equities market participants can continue to reap the benefits of a clear, objective, and transparent process for conducting clearly erroneous reviews. In addition, the Exchange understands that the other U.S. equities exchanges and FINRA will also file largely identical proposals to make their respective clearly erroneous pilots permanent. The Exchange therefore believes that the proposed rule change would promote transparency and uniformity across markets concerning review of transactions as clearly erroneous and would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors, and the public interest.

Similarly, the Exchange believes that it is consistent with just and equitable principles of trade to limit the availability of clearly erroneous review during Market Hours. The LULD Plan was approved by the Commission to operate on a permanent

rather than pilot basis. As a number of market participants have noted, the LULD Plan provides protections that ensure that investors' orders are not executed at prices that may be considered clearly erroneous. Further, amendments to the LULD Plan approved in Amendment Eighteen serve to ensure that the Price Bands established by the LULD Plan are "appropriately tailored to prevent trades that are so far from current market prices that they would be viewed as having been executed in error."<sup>28</sup> Thus, the Exchange believes that clearly erroneous review should only be necessary in very limited circumstances during Market Hours. Specifically, such review would only be necessary in instances where a transaction was not subject to the LULD Plan, or was the result of some form of systems issue, as detailed in the purpose section of this proposed rule change.

Additionally, in narrow circumstances where the transaction was subject to the LULD Plan, a clearly erroneous review would be available in the case of (1) a corporate action or new issue or (2) a security that enters a Trading Pause pursuant to LULD and resumes trading without an auction, where the Reference Price is determined to be erroneous by an Officer of the Exchange or senior level employee designee because it clearly deviated from the theoretical value of the security. Thus, eliminating clearly erroneous review in all other instances will serve to increase certainty for Members and investors that trades executed during Market Hours would typically stand and would not be subject to review.

Given the fact that clearly erroneous review would largely be limited to transactions that were not subject to the LULD Plan, the Exchange also believes that it is necessary to change the parameters used to determine whether a trade is clearly erroneous. Specifically, due to the different parameters currently used for clearly

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<sup>28</sup> See Amendment Eighteen, supra note 6.

erroneous review and for determining Price Bands, it is possible that a trade that would have been permitted to execute within the Price Bands would later be deemed clearly erroneous, if, for example, a systems issue prevented the dissemination of the Price Bands. The Exchange believes that this result is contrary to the principle that trades within the Price Bands should stand, and has the potential to cause investor confusion if trades that are properly executed within the applicable parameters described in the LULD Plan are later deemed erroneous. By using consistent parameters for clearly erroneous reviews conducted during Market Hours and the calculation of the Price Bands, the Exchange believes that this change would also serve to promote greater certainty with regards to when trades may be deemed erroneous.

Finally, the proposed rule changes make organizational updates to Rule 11890 as well as minor updates and corrections to the Rule to improve readability and clarity.

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while also amending those rules to provide greater certainty to Members and investors that trades will stand if executed during Market Hours where the LULD Plan provides adequate protection against trading at erroneous prices. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals, the substance of which are identical to this proposal. Thus, the proposed rule change will help to ensure consistency across SROs without implicating any competitive issues.

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>29</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>30</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.

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<sup>29</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>30</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.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2022-017 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-2022-017. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing

also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-BX-2022-017 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>31</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>31</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

Deleted text is [bracketed]. New text is underlined>.

**NASDAQ BX, INC. RULES**

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**EQUITY 11 UNIFORM PRACTICE CODE**

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**11890. Clearly Erroneous Transactions**

[The provisions of paragraphs (a)(2)(C), (c)(1), (b)(i), and (b)(ii) of this Rule, as amended on September 10, 2010, and the provisions of paragraphs (g) through (i), shall be in effect during a pilot period that expires at the close of business on October 20, 2022. If the pilot period is not either extended or approved as permanent, the prior versions of paragraphs (a)(2)(C), (c)(1), and (b) shall be in effect, and the provisions of paragraphs (g) through (i) shall be null and void.]

**(a) Authority to Review Transactions Pursuant to Complaint of Market Participant****(1) Definition.**

For purposes of this rule, the terms of a transaction executed on the Exchange are "clearly erroneous" when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security. A transaction made in clearly erroneous error and cancelled by both parties or determined by the Exchange to be clearly erroneous will be removed from the consolidated tape.

**(2) Requests and Timing of Review.**

A member that receives an execution on an order that was submitted erroneously to the Exchange for its own or customer account may request that the Exchange review the transaction under this rule. An official of the Exchange shall review the transaction under dispute and determine whether it is clearly erroneous, with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. Such requests for review shall be made in writing via electronic complaint or other means specified from time to time by the Exchange as announced in a Notice to Members or Head Trader Alert. A request for review shall include information concerning the time of the transaction(s), security symbol(s), number of shares, price(s), side (bought or sold), and factual basis for believing that the trade is clearly erroneous. Upon receipt of a timely filed request that satisfies the [Numerical G]guidelines set forth in paragraph (a)(2)(C) the counterparty to the trade shall be notified by the Exchange as soon as practicable,

but generally within 30 minutes. An Exchange official may request additional supporting written information to aid in the resolution of the matter. If requested, each party to the transaction shall provide, within 30 minutes of the request, any supporting written information. Either party to the disputed trade may request the supporting written information provided by the other party on the matter.

**(A) Filing Time Periods.**

(i) Except as provided in paragraph (a)(2)(A)(ii) and (a)(2)(A)(iii), any member or person associated with a member that seeks to have a transaction reviewed pursuant to paragraph (a) hereof shall submit a written complaint to the Exchange's MarketWatch Department within 30 minutes of the execution time.

(ii) Routed executions to other market centers will generally have an additional 30 minutes from receipt of their participant's timely filing, but no longer than 60 minutes from the time of the execution at issue, to file with the Exchange for review of transactions routed to the Exchange from that market center and executed on the Exchange.

(iii) In the case of an Outlier Transaction during Pre-Market or Post-Market Hours or eligible for review pursuant to paragraph (a)(2)(C)(1)(i), an Exchange official may at its sole discretion, and on a case-by-case basis, consider requests received pursuant to this rule after 30 minutes, but not longer than 60 minutes after the transaction in question, depending on the facts and circumstances surrounding such request. "Outlier Transaction" means a transaction where:

(A) the execution price of the security is greater than three times the current Numerical Guidelines set forth in paragraph (a)(2)(C)(2), or

(B) the execution price of the security in question is not within the Outlier Transaction parameters set forth in subparagraph (iii)(A) above, but the execution price breaches the 52-week high or 52-week low. In such cases, the Exchange may consider Additional Factors as outlined in paragraph (a)(2)(C)(2)(iii)(3), in determining if the transaction qualifies for further review or if the Exchange shall decline to act.

(B) Once a party has applied to the Exchange for review and the transaction has been determined to be eligible for review, the transaction shall be reviewed and a determination rendered, unless (i) both parties to the transaction agree to withdraw the application for review prior to the time a decision is rendered by the Exchange official, or (ii) the complainant withdraws its application for review prior to the notification of

counterparties. In the event that the Exchange official determines that the transaction in dispute is clearly erroneous, the official shall declare the transaction null and void. A determination shall be made generally within 30 minutes of receipt of the complaint, but in no case later than the start of [Regular Trading]Market Hours (9:30:00 to 4:00:00) on the following trading day. The parties shall be promptly notified of the determination.

(C) [Determinations of a clearly erroneous execution will be made as follows:]**Clearly Erroneous Review.**

(1) Review of transactions occurring during Market Hours. If the execution time of the transaction(s) under review is during Market Hours, the transaction will not be reviewable as clearly erroneous unless the transaction:

(i) is in an NMS Stock that is not subject to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the “Limit Up-Limit Down Plan” or “LULD Plan”). In such case, the Numerical Guidelines set forth in subparagraph (C)(2) of this Rule will be applicable to such NMS Stock;

(ii) was executed at a time when Price Bands under the LULD Plan were not available, or is the result of an Exchange technology or systems issue that results in the transaction occurring outside of the applicable LULD Price Bands pursuant to paragraph (g), or is executed after the primary listing market for the security declares a regulatory trading halt, suspension, or pause pursuant to paragraph (i). A transaction subject to review pursuant to this paragraph shall be found to be clearly erroneous if the price of the transaction to buy (sell) that is the subject of the complaint is greater than (less than) the Reference Price, described in subparagraph (D) below, by an amount that equals or exceeds the applicable Percentage Parameter defined in Appendix A to the LULD Plan (“Percentage Parameters”); or

(iii) involved, in the case of (1) a corporate action or new issue or (2) a security that enters a Trading Pause pursuant to the LULD Plan and resumes trading without an auction, a Reference Price that is determined to be erroneous by an Officer of the Exchange or senior level employee designee because it clearly deviated from the theoretical value of the security. In such circumstances, the Exchange may use a different Reference Price pursuant to subparagraph (D)(2) of this Rule. A transaction subject to review pursuant to this paragraph shall be found to be clearly erroneous if the price of the transaction to

buy (sell) that is the subject of the complaint is greater than (less than) the new Reference Price, described in subparagraph (D)(2) below, by an amount that equals or exceeds the Numerical Guidelines or Percentage Parameters, as applicable depending on whether the security is subject to the LULD Plan.

([1]2) Review of transactions occurring during Pre-Market and Post-Market Hours, or eligible for review pursuant to subparagraph (C)(1)(i)[Numerical Guidelines].

(i) Subject to the [provisions of] additional factors described in subparagraph (C)(2)(iii)[(3)] below, a transaction executed during Pre-Market or Post-Market Hours, or eligible for review pursuant to subparagraph (C)(1)(i), shall be found to be clearly erroneous only if the price of the transaction to buy (sell) that is the subject of the complaint is greater than (less than) the Reference Price by an amount that equals or exceeds the Numerical Guidelines set forth below. [The execution time of the transaction under review determines whether the threshold is Regular Trading Hours or Pre-Opening and After Hours Trading Hours (which occurs before and after the Regular Trading Hours). The Reference Price will be equal to the consolidated last sale immediately prior to the execution(s) under review except for: (A) Multi-Stock Events involving twenty or more securities, as described in subparagraph (C)(2) below; and (B) in other circumstances, such as, for example, relevant news impacting a security or securities, periods of extreme market volatility, sustained illiquidity, or widespread system issues, where use of a different Reference Price is necessary for the maintenance of a fair and orderly market and the protection of investors and the public interest .]

Reference Price, Circumstance or Product	[Regular Trading] <u>Market Hours Numerical Guidelines for transactions eligible for review pursuant to subparagraph (C)(1)(i) (Subject transaction's % difference from the Reference Price):</u>	Pre-Market[Opening] and [After] <u>Post-Market Hours [Trading Session] Numerical Guidelines (Subject transaction's % difference from the Reference Price):</u>
Greater than \$0.00 up to	10%	20%

and including \$25.00

Greater than \$25.00 up to 5% and including \$50.00		10%
Greater than \$50.00	3%	6%
Multi-Stock Event - Filings involving five or more, but less than twenty, securities whose executions occurred within a period of five minutes or less	10%	10%
Multi-Stock Event - Filings involving twenty or more securities whose executions occurred within a period of five minutes or less	30%, subject to the terms of <u>subparagraph (C)(2)(ii)</u> below	30%, subject to the terms of <u>subparagraph (C)(2)(ii)</u> below
Leveraged ETF/ETN securities	[Regular Trading Hours Numerical Guidelines multiplied by the leverage multiplier (ie. 2x)] <u>N/A</u>	[Regular Trading] <u>Market Hours</u> Numerical Guidelines multiplied by the leverage multiplier (ie. 2x)

([2]ii) Multi-Stock Events Involving Twenty or More Securities. [During] Multi-Stock Events involving twenty or more securities may be reviewable as clearly erroneous if they occur during Pre-Market or Post-Market Hours or are eligible for review pursuant to subparagraph (C)(1)(i). During Multi-Stock Events, the number of affected transactions is such that immediate finality may be necessary to maintain a fair and orderly market and to protect investors and the public interest. In such circumstances, the Exchange may use a Reference Price other than consolidated last sale. To ensure consistent application across market centers when this paragraph is invoked, the Exchange will promptly coordinate with the other market centers to determine the appropriate review period, which may be greater than the period of five minutes or less that triggered application of this paragraph, as well as select one or

more specific points in time prior to the transactions in question and use transaction prices at or immediately prior to the one or more specific points in time selected as the Reference Price. The Exchange will nullify as clearly erroneous all transactions that are at prices equal to or greater than 30% away from the Reference Price in each affected security during the review period selected by the Exchange and other markets consistent with this paragraph.

([3]iii) Additional Factors. Except in the context of a Multi-Stock Event involving five or more securities, an Exchange official may also consider additional factors to determine whether an execution is clearly erroneous, [including but not limited to,] provided the execution occurred during Pre-Market or Post-Market Hours or are eligible for review pursuant to subparagraph (C)(1)(i). Such additional factors include, but are not limited to, system malfunctions or disruptions, volume and volatility for the security, derivative securities products that correspond to greater than 100% in the direction of a tracking index, news released for the security, whether trading in the security was recently halted/resumed, whether the security is an IPO, whether the security was subject to a stock-split, reorganization, or other corporate action, overall market conditions, Pre-Market[Opening] and [After]Post-Market Hours [Trading Session] executions, validity of the consolidated tapes trades and quotes, consideration of primary market indications, and executions inconsistent with the trading pattern in the stock. Each additional factor shall be considered with a view toward maintaining a fair and orderly market and the protection of investors and the public interest.

(D) Reference Price. The Reference Price referred to in subparagraphs (C)(1) and (C)(2) above will be equal to the consolidated last sale immediately prior to the execution(s) under review except for:

(1) in the case of Multi-Stock Events involving twenty or more securities, as described in subparagraph (C)(2)(ii) above;

(2) in the case of an erroneous Reference Price, as described in subparagraph (C)(1)(iii) above. In the case of (C)(1)(iii)(1), the Exchange would consider a number of factors to determine a new Reference Price that is based on the theoretical value of the security, including but not limited to, the offering price of the new issue, the ratio of the stock split applied to the prior day's closing price, the theoretical price derived from the numerical terms of the corporate action transaction such as the exchange ratio and spin-off terms, and for an OTC up-listing, the price of the security as provided in the prior day's FINRA

Trade Dissemination Service final closing report. In the case of (C)(1)(iii)(2), the Reference Price will be the last effective Price Band that was in a limit state before the Trading Pause; or

(3) in other circumstances, such as, for example, relevant news impacting a security or securities, periods of extreme market volatility, sustained illiquidity, or widespread system issues, where use of a different Reference Price is necessary for the maintenance of a fair and orderly market and the protection of investors and the public interest, provided that such circumstances occurred during Pre-Market or Post-Market Hours or are eligible for review pursuant to subparagraph (C)(1)(i).

(b) Procedures for Reviewing Transactions on the Exchange's Own Motion

[(i) System Disruption or Malfunctions. In the event of any disruption or a malfunction in the operation of any electronic communications and trading facilities of the Exchange in which the nullification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest exist, the President of the Exchange or any designated officer of the Exchange or senior level employee pursuant to the Regulatory Services Agreement ("Senior Official") may, on his or her own motion, may review such transactions and declare such transactions arising out of the operation of such facilities during such period null and void. In such events, the Senior Official will rely on the provisions of paragraph (a)(2)(C)(1)-(3) of this Rule, but in extraordinary circumstances may also use a lower Numerical Guideline if necessary to maintain a fair and orderly market, protect investors and the public interest. Absent extraordinary circumstances, any such action of the Senior Official pursuant to this paragraph (i) shall be taken within thirty (30) minutes of detection of the erroneous transaction. When extraordinary circumstances exist, any such action of the Senior Official must be taken by no later than the start of Regular Trading Hours on the trading day following the date of execution(s) under review. Each Member involved in the transaction shall be notified as soon as practicable by the Exchange, and the party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (c)(1) below.]

(i[i]) Senior Official Acting on Own Motion. A Senior Official, acting on his or her own motion, may review potentially erroneous [executions] transactions occurring during Pre-Market or Post-Market Hours or that are eligible for review pursuant to paragraph (a)(2)(C)(1), and declare trades null and void or shall decline to take any action in connection with the completed trade(s). In such events, the Senior Official will rely on the provisions of paragraph (a)(2)(C)(1)-(2[3]) of this Rule. Absent extraordinary circumstances, any such action of the Senior Official shall be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction. When extraordinary circumstances exist, any such action of the Senior Official must be taken by no later than the start of [Regular

Trading]Market Hours on the trading day following the date of execution(s) under review. When such action is taken independently, each party involved in the transaction shall be notified as soon as practicable by the Exchange, and the party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (c)(1) below.

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(e) Fees

(1) Filing Fees

No fee shall be assessed to a member for filing two or fewer unsuccessful clearly erroneous complaints pursuant to paragraph (a)(2) during a calendar month. A member shall be assessed a fee of \$250.00 for each additional unsuccessful complaint filed thereafter during the calendar month. An unsuccessful complaint is one in which the Exchange does not break any of the trades included in the complaint. Each security filed on is considered a separate complaint. In cases where the member files on multiple securities at the same time, the Exchange calculates the fee separately for each security depending upon whether the Exchange breaks any trades filed on by the member in that security. Adjustments or voluntary breaks negotiated by the Exchange to trades executed at prices that meet the Percentage Parameters or Numerical Guidelines set forth in (a)(2)(C)([1]2) count as breaks by the Exchange for purposes of this paragraph. A member for purposes of this paragraph (e)(1) is defined by each unique broker Web CRD Number. All MPIDs associated with that Web CRD Number shall be included when calculating the number of unsuccessful clearly erroneous complaints for that member during the calendar month. No fee pursuant to this paragraph (e)(1) shall be assessed for a complaint that is (A) successful, where the final decision by the Exchange (including after appeal, if any) is to break at least one of the trades filed on by the member, (B) not timely filed under the parameters in paragraph (a)(2)(A), (C) withdrawn by the complainant within five (5) minutes of filing and before the Exchange has performed any substantial work on the complaint, or (D) adjudicated by the Exchange on its own motion under paragraph (b) of this Rule.

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(g) [Securities Subject to Limit Up-Limit Down Plan]Transactions Occurring Outside of LULD Plan Price Bands. [For purposes of this paragraph, the phrase "Limit Up-Limit Down Plan" or "Plan" shall mean the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act. The provisions of paragraphs (a) through (f) above and (h) through (i) below shall govern all Exchange transactions, including transactions in securities subject to the Plan, other than as set forth in this paragraph (g).] If as a result of an Exchange technology or systems issue any transaction occurs outside of the applicable [p]Price [b]Bands disseminated pursuant to the LULD

Plan, a Senior Official of the Exchange, acting on his or her own motion or at the request of a third party, shall review and declare any such trades null and void. Absent extraordinary circumstances, any such action of the Senior Official of the Exchange shall be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction. When extraordinary circumstances exist, any such action of the Senior Official of the Exchange must be taken by no later than the start of [Regular Trading]Market Hours on the trading day following the date on which the execution(s) under review occurred. Each Member involved in the transaction shall be notified as soon as practicable by the Exchange, and the party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (c) above. In the event that a single plan processor experiences a technology or systems issue that prevents the dissemination of [p]Price [b]Bands, the Exchange will make the determination of whether to nullify transactions based on paragraph (a)(2)(C)(1)(ii) above[paragraphs (a) through (f) above and (h) through (i) below].

(h) Multi-Day Event . A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions (the "Event"). An Officer of the Exchange or senior level employee designee, acting on his or her own motion, shall take action to declare all transactions that occurred during the Event null and void not later than the start of trading on the day following the last transaction in the Event. If trading in the security is halted before the valuation error is corrected, an Officer of the Exchange or senior level employee designee shall take action to declare all transactions that occurred during the Event null and void prior to the resumption of trading. Notwithstanding the foregoing, no action can be taken pursuant to this paragraph with respect to any transactions that have reached settlement date or that result from an initial public offering of a security. To the extent transactions related to an Event occur on one or more other market centers, the Exchange will promptly coordinate with such other market center(s) to ensure consistent treatment of the transactions related to the Event, if practicable. Any action taken in connection with this paragraph will be taken without regard to the Percentage Parameters or Numerical Guidelines set forth in this Rule. Each Member involved in a transaction subject to this paragraph shall be notified as soon as practicable by the Exchange, and the party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (c) above.

(i) Trading Halts . In the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a regulatory trading halt, suspension or pause, an Officer of the Exchange or senior level employee designee, acting on his or her own motion, shall nullify any transaction in a security that occurs after the primary listing market for such security declares a regulatory trading halt, suspension or pause with respect to such security and before such regulatory trading halt, suspension or pause with respect to such security has officially ended according to the primary listing market. In addition, in the event a regulatory trading halt, suspension or pause is declared, then prematurely lifted in error and is then

re-instituted, an Officer of the Exchange or senior level employee designee shall nullify transactions that occur before the official, final end of the halt, suspension or pause according to the primary listing market. Any action taken in connection with this paragraph shall be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction and in no circumstances later than the start of [the Regular] Market Hours[Session] on the trading day following the date of execution(s) under review. Any action taken in connection with this paragraph will be taken without regard to the Percentage Parameters or Numerical Guidelines set forth in this Rule. Each Member involved in a transaction subject to this paragraph shall be notified as soon as practicable by the Exchange, and the party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (c) above.

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