

how to submit comments, *available at* <https://www.sec.gov/regulatory-actions/how-to-submit-comments>. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at tradingandmarkets@sec.gov or 202-551-5777.

DTC reserves the right to not respond to any comments received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)³⁶ of the Act and paragraph (f)³⁷ of Rule 19b-4 thereunder. 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.

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-DTC-2024-008 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR-DTC-2024-008. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (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 DTC and on DTCC's website (<https://dtcc.com/legal/sec-rule-filings.aspx>). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-DTC-2024-008 and should be submitted on or before September 19, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁸

Vanessa A. Countryman,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100810; File No. SR-BX-2024-019]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Adopt an OTTO Protocol

August 23, 2024.

I. Introduction

On June 26, 2024, Nasdaq BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change (File Number SR-BX-2024-019) to adopt an OTTO protocol and associated fee. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section

19(b)(3)(A) of the Act.³ The proposed rule change was published for comment in the **Federal Register** on July 15, 2024.⁴ Pursuant to Section 19(b)(3)(C) of the Act,⁵ the Commission is hereby: (1) temporarily suspending the proposed rule change; and (2) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

II. Background and Description of the Proposed Rule Change

The Exchange states that the purpose of the proposed rule change is to adopt a new protocol, "Ouch to Trade Options" or "OTTO" and establish pricing for this new protocol.

According to the Exchange, today, BX Participants may enter orders into the Exchange through the "Financial Information eXchange" or "FIX."⁶ The Exchange states that the proposed new OTTO protocol is identical to the OTTO protocol offered today on 3 Nasdaq affiliated exchanges, Nasdaq ISE, LLC ("ISE"), Nasdaq GEMX, LLC ("GEMX") and Nasdaq MRX, LLC ("MRX").⁷

The Exchange states that the OTTO protocol is a proprietary protocol of Nasdaq, Inc and that the Exchange continues to innovate and modernize technology so that it may continue to compete among options markets.⁸ The Exchange states that the ability to continue to innovate with technology and offer new products to market participants allows BX to remain competitive in the options space which currently has seventeen options markets and potential new entrants.⁹

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

⁴ See Securities Exchange Act Release No. 99841 (July 9, 2024), 89 FR 57485 ("Notice").

⁵ 15 U.S.C. 78s(b)(3)(C).

⁶ See Notice, 89 FR at 57485. The Exchange states that FIX is an interface that allows Participants and their Sponsored Customers to connect, send, and receive messages related to orders and auction orders and responses to and from the Exchange. *Id.* at n.3. The Exchange states that features include the following: (1) execution messages; (2) order messages; and (3) risk protection triggers and cancel notifications. *Id.* The Exchange states that, in addition, a BX Participant may elect to utilize FIX to send a message and PRISM Order, as defined within Options 3, Section 13, to all BX Participants that opt in to receive Requests for PRISM requesting that it submit the sender's PRISM Order with responder's Initiating Order, as defined within Options 3, Section 13, into the Price Improvement Auction ("PRISM") mechanism, pursuant to Options 3, Section 13 ("Request for PRISM"). *Id.* (citing Exchange Rule Options 3, Section 7(e)(1)(A)).

⁷ See Notice, 89 FR at 57485-86.

⁸ See Notice, 89 FR at 57486.

⁹ See Notice, 89 FR at 57486.

³⁶ 15 U.S.C. 78s(b)(3)(A).

³⁷ 17 CFR 240.19b-4(f).

³⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

OTTO Protocol

The Exchange states that as proposed, OTTO would allow Participants and their Sponsored Customers¹⁰ to connect, send, and receive messages related to orders, auction orders, and auction responses to the Exchange.¹¹ The Exchange states that OTTO features would include the following: (1) options symbol directory messages (*e.g.*, underlying and complex instruments); (2) System¹² event messages (*e.g.*, start of trading hours messages and start of opening); (3) trading action messages (*e.g.*, halts and resumes); (4) execution messages; (5) order messages; (6) risk protection triggers and cancel notifications; (7) auction notifications; (8) auction responses; and (9) post trade allocation messages.¹³ The Exchange notes that unlike FIX, which offers routing capability, OTTO does not permit routing.¹⁴ The Exchange states that it proposes to include this description of OTTO in new Options 3, Section 7(e)(1)(B) and re-letter current “B” as “C”.¹⁵

The Exchange states that while the Exchange has no way of predicting with certainty the amount or type of OTTO Ports market participants will in fact purchase, the Exchange anticipates that some Participants will subscribe to multiple OTTO Ports in combination with FIX Ports.¹⁶ The Exchange notes that Options Participants may use varying number of OTTO ports based on their business needs.¹⁷

Other Amendments

In connection with offering OTTO, the Exchange proposes to amend other

rules within Options 3.¹⁸ Each amendment is described below.

Options 3, Section 7

The Exchange states that it proposes to amend Options 3, Section 7, Types of Orders and Quote Protocols.¹⁹ The Exchange states that specifically, BX proposes to amend Options 3, Section 7(b)(2) that describes the Immediate-or-Cancel” or “IOC” order.²⁰ The Exchange states that today, Options 3, Section 7(b)(2)(B) notes that an IOC order may be entered through FIX or SQF, provided that an IOC Order entered by a Market Maker through SQF is not subject to the Order Price Protection, the Market Order Spread Protection, or Size Limitation in Options 3, Section 15(a)(1), (a)(2), and (b)(2), respectively.²¹ The Exchange states that it proposes to add “OTTO” to the list of protocols to note that an IOC order may also be entered through OTTO.²²

BX also states that it proposes to amend the “DAY” order in Options 3, Section 7(b)(3) that currently provides that a Day order may be entered through FIX.²³ The Exchange states that with the addition of OTTO, a Day order may also be entered through OTTO.²⁴

BX states that it also proposes to amend the “Good Til Cancelled” or “GTC” order which currently does not specify that a GTC order may be entered through FIX.²⁵ The Exchange states that GTC orders would only be able to be entered through FIX and not OTTO.²⁶ The Exchange states that it proposes to amend Options 3, Section 7(b)(4) to add a sentence to note that GTC orders may be entered through FIX.²⁷

Options 3, Section 8

The Exchange states that BX proposes to amend Options 3, Section 8, Options Opening Process.²⁸ The Exchange states that BX proposes to amend Options 3, Section 8(l) that describes the Opening Process Cancel Timer.²⁹ The Exchange states that the Opening Process Cancel Timer represents a period of time since the underlying market has opened, and that if an option series has not opened before the conclusion of the Opening Process Cancel Timer, a Participant may elect to have orders returned by

providing written notification to the Exchange.³⁰ The Exchange states that today, these orders include all non-Good Til Cancelled Orders received over the FIX protocol.³¹ The Exchange states that it proposes to add the OTTO protocol as well to the rule text language in that paragraph.³²

Options 3, Section 12

The Exchange states that it proposes to amend the Options 3, Section 12, Crossing Orders.³³ Specifically, the Exchange states that it proposes to amend Customer Crossing Orders in Options 3, Section 12(a) that currently provides Public Customer-to-Public Customer Cross Orders are automatically executed upon entry provided that the execution is at or between the best bid and offer on the Exchange and (i) is not at the same price as a Public Customer Order on the Exchange’s limit order book and (ii) will not trade through the NBBO.³⁴ The Exchange states that Public Customer-to-Public Customer Cross Orders must be entered through FIX.³⁵ The Exchange states that it proposes to remove the sentence that provides that Public Customer-to-Public Customer Cross Orders must be entered through FIX because they will be able to be entered through both FIX and OTTO.³⁶

Options 3, Section 17

The Exchange states that it proposes to amend the Kill Switch at Options 3, Section 17.³⁷ The Exchange states that the Kill Switch provides Participants with an optional risk management tool to promptly cancel and restrict orders.³⁸ The Exchange states that with the introduction of OTTO, the Exchange proposes to align its Kill Switch rule text with MRX’s Kill Switch.³⁹ The Exchange states that it proposes to note in Options 3, Section 17(a) that BX Participants may initiate a message(s) to the System to promptly cancel and restrict their order activity on the Exchange, as is the case today, as described in section (a)(1).⁴⁰ The Exchange states that this amendment simply rewords the rule text without a

¹⁰ The Exchange states that General 2, Section 22 describes Sponsored Access arrangements. *See* Notice, 89 FR at 57486 n.4.

¹¹ *See* Notice, 89 FR at 57486.

¹² The Exchange states that the term “System” or “Trading System” means the automated system for order execution and trade reporting owned and operated by BX as the BX Options market. *See* Notice, 89 FR at 57486 n.5. The Exchange states that BX Options market comprises: (A) an order execution service that enables Participants to automatically execute transactions in option series; and provides Participants with sufficient monitoring and updating capability to participate in an automated execution environment; (B) a trade reporting service that submits “locked-in” trades for clearing to a registered clearing agency for clearance and settlement; transmits last-sale reports of transactions automatically to the Options Price Reporting Authority for dissemination to the public and industry; and provides participants with monitoring and risk management capabilities to facilitate participation in a “locked-in” trading environment; and (C) the data feeds described in Options 3, Section 23. *See id.* (citing BX Options 1, Section 1(a)(59)).

¹³ *See* Notice, 89 FR at 57486.

¹⁴ *See* Notice, 89 FR at 57486.

¹⁵ *See* Notice, 89 FR at 57486.

¹⁶ *See* Notice, 89 FR at 57486.

¹⁷ *See* Notice, 89 FR at 57486.

¹⁸ *See* Notice, 89 FR at 57486.

¹⁹ *See* Notice, 89 FR at 57486.

²⁰ *See* Notice, 89 FR at 57486.

²¹ *See* Notice, 89 FR at 57486.

²² *See* Notice, 89 FR at 57486.

²³ *See* Notice, 89 FR at 57486.

²⁴ *See* Notice, 89 FR at 57486.

²⁵ *See* Notice, 89 FR at 57486.

²⁶ *See* Notice, 89 FR at 57486.

²⁷ *See* Notice, 89 FR at 57486.

²⁸ *See* Notice, 89 FR at 57486.

²⁹ *See* Notice, 89 FR at 57486.

³⁰ *See* Notice, 89 FR at 57486.

³¹ *See* Notice, 89 FR at 57486.

³² *See* Notice, 89 FR at 57486.

³³ *See* Notice, 89 FR at 57486.

³⁴ *See* Notice, 89 FR at 57486.

³⁵ *See* Notice, 89 FR at 57486.

³⁶ *See* Notice, 89 FR at 57486.

³⁷ *See* Notice, 89 FR at 57486.

³⁸ *See* Notice, 89 FR at 57486.

³⁹ *See* Notice, 89 FR at 57487 (citing MRX Options 3, Section 17).

⁴⁰ *See* Notice, 89 FR at 57487.

substantive amendment to the rule text.⁴¹

The Exchange states that it proposes to renumber Options 3, Section 17(a)(i) and (ii) as (a)(1) and (2).⁴² The Exchange states that current Options 3, Section 17(a)(i) states, “If orders are cancelled by the BX Participant utilizing the Kill Switch, it will result in the cancellation of all orders requested for the Identifier(s). The BX Participant will be unable to enter additional orders for the affected Identifier(s) until re-entry has been enabled pursuant to section (a)(ii).”⁴³ The Exchange states that it proposes to instead provide, “A BX Participant may submit a request to the System through FIX or OTTO to cancel all existing orders and restrict entry of additional orders for the requested Identifier(s) on a user level on the Exchange.”⁴⁴ The Exchange states that with the addition of OTTO, the Exchange notes that both FIX and OTTO orders may be cancelled.⁴⁵ The Exchange states that further, today, BX Participants utilize an interface to send a message to the Exchange to initiate a Kill Switch.⁴⁶ The Exchange notes that in lieu of the interface, BX Participants will only be able to initiate a cancellation of their orders by sending a mass purge request through FIX or OTTO.⁴⁷ The Exchange states that this change will align the Kill Switch functionality to that of ISE, GEMX and MRX Options 3, Section 17 and will enable BX Participants to initiate the Kill Switch more seamlessly without the need to utilize a separate interface.⁴⁸ The Exchange states that when initiating a cancellation of their orders by sending a mass purge request through FIX or OTTO, Participants will be able to submit a Kill Switch request on a user level only.⁴⁹ The Exchange states that this is a change from the ability to cancel orders on either a user or group level⁵⁰ with the interface.⁵¹ The

Exchange states that it proposes to amend Options 3, Section 17(a) to note this change by removing the words “or group” and the following sentence that applies to a group.⁵²

The Exchange states that finally, the Exchange proposes to amend proposed Options 3, Section 17(a)(2) to align to MRX’s rule text by providing “Once a BX Participant initiates a Kill Switch pursuant to (a)(1) above. . .” in the first sentence.⁵³ The Exchange states that this amendment simply rewords the rule text without a substantive amendment to the rule text.⁵⁴

Options 3, Section 18

The Exchange states that it proposes to amend Options 3, Section 18, Detection of Loss of Communication.⁵⁵ The Exchange states that it proposes to add OTTO to Options 3, Section 18 as OTTO would also be subject to this rule.⁵⁶ The Exchange states that today, when the SQF Port or the FIX Port detects the loss of communication with a Participant’s Client Application because the Exchange’s server does not receive a Heartbeat message for a certain time period, the Exchange will automatically logoff the Participant’s affected Client Application and automatically cancel all of the Participant’s open quotes through SQF and open orders through FIX.⁵⁷ The Exchange states that quotes and orders are cancelled across all Client Applications that are associated with the same BX Options Market Maker ID and underlying issues.⁵⁸

The Exchange states that at this time, the Exchange proposes to permit orders entered through OTTO to be cancelled similar to FIX orders when the Exchange’s server does not receive a Heartbeat message for a certain time period.⁵⁹ The Exchange states that it is proposing to amend Options 3, Section 18 to also rearrange the rule text to add the word “Definitions” next to “a” and move the rule text in current “a” to “b” and re-letter the other paragraphs accordingly.⁶⁰ Also, the Exchange states that it proposes to define “Session of Connectivity” for purposes of this rule to mean each time the Participant

connects to the Exchange’s System.⁶¹ The Exchange states that further, each new connection, intra-day or otherwise, is a new Session of Connectivity.⁶² The Exchange states that it proposes to use the new definition throughout Options 3, Section 18.⁶³

The Exchange states that similar to FIX, when the OTTO Port detects the loss of communication with a Participant’s Client Application because the Exchange’s server does not receive a Heartbeat message for a certain time period, the Exchange will automatically logoff the Participant’s affected Client Application and automatically cancel all of the Participant’s open orders through OTTO.⁶⁴ The Exchange states that orders would be cancelled across all Client Applications that are associated with the same BX Options Market Maker ID and underlying issues.⁶⁵ The Exchange states that it proposes to update Options 3, Section 18 to provide in proposed Options 3, Section 18(a)(3) that the OTTO Port is the Exchange’s proprietary System component through which Participants communicate their orders from the Client Application.⁶⁶ The Exchange states that further, the Exchange would note in proposed Options 3, Section 18(c) that when the OTTO Port detects the loss of communication with a Participant’s Client Application because the Exchange’s server does not receive a Heartbeat message for a certain time period (“nn” seconds), the Exchange will automatically logoff the Participant’s affected Client Application and if the Participant has elected to have its orders cancelled pursuant to proposed Section 18(f), automatically cancel all orders.⁶⁷ The Exchange states that proposed Options 3, Section 18(f) would provide that the default period of “nn” seconds for OTTO Ports would be fifteen (15) seconds for the disconnect and, if elected, the removal of orders.⁶⁸ The Exchange states that a Participant may determine another time period of “nn” seconds of no technical connectivity, as required in proposed paragraph (c), to trigger the disconnect and, if so elected, the removal of orders and communicate that time to the Exchange.⁶⁹ The Exchange states the period of “nn” seconds may be modified to a number between one

⁴¹ See Notice, 89 FR at 57487.

⁴² See Notice, 89 FR at 57487.

⁴³ See Notice, 89 FR at 57487.

⁴⁴ See Notice, 89 FR at 57487.

⁴⁵ See Notice, 89 FR at 57487.

⁴⁶ See Notice, 89 FR at 57487 (citing Securities Exchange Act Release No. 76116 (October 8, 2015), 80 FR 62147 (October 15, 2015) (SR–BX–2015–050) (Order Approving Proposed Rule Change To Adopt a Kill Switch)).

⁴⁷ See Notice, 89 FR at 57487.

⁴⁸ See Notice, 89 FR at 57487.

⁴⁹ See Notice, 89 FR at 57487.

⁵⁰ The Exchange states that a permissible group could include all badges associated with a Market Maker. See Notice, 89 FR at 57487 n.9. The Exchange states that today, a Participant is able to set up these groups in the interface to include all or some of the Identifiers associated with the Participant firm so that a GUI Kill Switch request could apply to this pre-defined group. *Id.*

⁵¹ See Notice, 89 FR at 57487.

⁵² See Notice, 89 FR at 57487. The Exchange also states that it proposes to remove this sentence, “Permissible groups must reside within a single broker-dealer” as the group option would no longer exist. *Id.* at n.10.

⁵³ See Notice, 89 FR at 57487.

⁵⁴ See Notice, 89 FR at 57487.

⁵⁵ See Notice, 89 FR at 57487.

⁵⁶ See Notice, 89 FR at 57487.

⁵⁷ See Notice, 89 FR at 57487.

⁵⁸ See Notice, 89 FR at 57487.

⁵⁹ See Notice, 89 FR at 57487.

⁶⁰ See Notice, 89 FR at 57487.

⁶¹ See Notice, 89 FR at 57487.

⁶² See Notice, 89 FR at 57487.

⁶³ See Notice, 89 FR at 57487.

⁶⁴ See Notice, 89 FR at 57487.

⁶⁵ See Notice, 89 FR at 57487.

⁶⁶ See Notice, 89 FR at 57487.

⁶⁷ See Notice, 89 FR at 57487.

⁶⁸ See Notice, 89 FR at 57487.

⁶⁹ See Notice, 89 FR at 57487.

hundred (100) milliseconds and 99,999 milliseconds for OTTO Ports prior to each Session of Connectivity to the Exchange.⁷⁰ The Exchange states that this feature may be disabled for the removal of orders, however the Participant will be disconnected.⁷¹

The Exchange states that proposed Options 3, Section 18(f)(1) would provide that if the Participant changes the default number of “nn” seconds, that new setting shall be in effect throughout the current Session of Connectivity and will then default back to fifteen seconds.⁷² The Exchange states that a Participant may change the default setting prior to each Session of Connectivity.⁷³ The Exchange states that finally, as proposed in Options 3, Section 18(f)(2), if the time period is communicated to the Exchange by calling Exchange operations, the number of “nn” seconds selected by the Participant will persist for each subsequent Session of Connectivity until the Participant either contacts Exchange operations by phone and changes the setting or the Participant selects another time period through the Client Application prior to the next Session of Connectivity.⁷⁴ The Exchange states that the trigger for OTTO Ports is event and Client Application specific.⁷⁵ The Exchange states that automatic cancellation of the BX Options Market Maker’s open orders for OTTO Ports entered into the respective OTTO Ports via a particular Client Application will neither impact nor determine the treatment of orders of the same or other Participants entered into the OTTO Ports via a separate and distinct Client Application.⁷⁶ The Exchange states that the proposed amendments for OTTO mirror the manner in which FIX Ports are treated when the Exchange’s server does not receive a Heartbeat message for a certain time period for a FIX Port.⁷⁷

Pricing

The Exchange states that it proposes to amend its Pricing Schedule at Options 7, Section 3, BX Options Market—Ports and other Services, to assess a port fee for the new OTTO protocol.⁷⁸

The Exchange states that it proposes to assess an OTTO Port Fee of \$650 per port, per month, per account number.⁷⁹

The Exchange states that it also proposes to add OTTO and Disaster Recovery Ports to the list of ports that are capped at \$7,500 on BX.⁸⁰ The Exchange states that today, the maximum monthly fees in the aggregate for FIX Port, CTI Port, FIX DROP Port, BX Depth Port and BX TOP Port Fees on BX is \$7,500.⁸¹ The Exchange states that these ports are available to all BX Participants.⁸² The Exchange states that, for example, to the extent that a Participant expended more than \$7,500 for FIX or OTTO Ports, BX would not charge a Participant for additional FIX or OTTO Ports, respectively, beyond the cap.⁸³ The Exchange also states that it will provide each Participant the first FIX Port at no cost to submit orders into BX.⁸⁴

Implementation

The Exchange states that it will implement this rule change on or before December 20, 2025, and that it will announce the operative date to Participants in an Options Trader Alert.⁸⁵

III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,⁸⁶ at any time within 60 days of the date of filing of an immediately effective proposed rule change pursuant to Section 19(b)(1) of the Act,⁸⁷ the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (“SRO”) 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. A temporary suspension of the proposed rule changes is necessary and appropriate to allow for additional

analysis of the proposed rule change’s consistency with the Act and the rules thereunder.

A. Exchange Statements In Support of the Proposal

Exchange Arguments Concerning Sections 6(b)(4) and 6(b)(5) of the Act

The Exchange states that the Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁸⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸⁹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange states that, additionally, the Exchange believes that its proposal furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁹⁰ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.⁹¹

OTTO Protocol

The Exchange states that the Exchange’s proposal to adopt OTTO is consistent with the Act because OTTO would provide BX Participants with an alternative protocol to submit orders to the Exchange.⁹² The Exchange states that as proposed, BX would offer the first OTTO Port at no cost to submit orders into BX, which would remove impediments to and perfect the mechanism of a free and open market.⁹³ The Exchange states that while BX Participants may elect to obtain multiple ports to organize their business,⁹⁴ only one order port is necessary for a Participant to enter orders on BX.⁹⁵ The Exchange states

⁷⁰ See Notice, 89 FR at 57487.

⁷¹ See Notice, 89 FR at 57487.

⁷² See Notice, 89 FR at 57487.

⁷³ See Notice, 89 FR at 57487.

⁷⁴ See Notice, 89 FR at 57487.

⁷⁵ See Notice, 89 FR at 57487.

⁷⁶ See Notice, 89 FR at 57487–88.

⁷⁷ See Notice, 89 FR at 57488. The Exchange states that it proposes to update internal cross-references to accommodate relocated text. *Id.*

⁷⁸ See Notice, 89 FR at 57488.

⁷⁹ See Notice, 89 FR at 57488. The Exchange states that the term “account number” means a number assigned to a Participant. The Exchange states that only one account number is necessary to transact an options business of BX and that Participants may have more than one account number. See Notice, 89 FR at 57488 n.12 (citing Options 1, Section 1(a)(2)). The Exchange states that account numbers are free on BX. *Id.*

⁸⁰ See Notice, 89 FR at 57488. The Exchange notes that BX currently does not assess BX Participants for Disaster Recovery Ports. See Notice, 89 FR at 57488 (citing BX Options 7, Section 3).

⁸¹ See Notice, 89 FR at 57488 (BX Options 7, Section 3(i)).

⁸² See Notice, 89 FR at 57488.

⁸³ See Notice, 89 FR at 57488.

⁸⁴ See Notice, 89 FR at 57488.

⁸⁵ See Notice, 89 FR at 57488.

⁸⁶ 15 U.S.C. 78s(b)(3)(C).

⁸⁷ 15 U.S.C. 78s(b)(1).

⁸⁸ See Notice, 89 FR at 57488 (citing 15 U.S.C. 78f(b)).

⁸⁹ See Notice, 89 FR at 57488 (citing 15 U.S.C. 78f(b)(5)).

⁹⁰ See Notice, 89 FR at 57488 (citing 15 U.S.C. 78f(b)(4) and (5)).

⁹¹ See Notice, 89 FR at 57488.

⁹² See Notice, 89 FR at 57488.

⁹³ See Notice, 89 FR at 57488.

⁹⁴ The Exchange states that, for example, a Participant may desire to utilize multiple FIX or OTTO Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Participant. See Notice, 89 FR at 57488 n.14 and 57489 n.27.

⁹⁵ See Notice, 89 FR at 57489. The Exchange states that only BX Participants may utilize ports on BX and that any market participant that sends orders to a BX Participant would not need to utilize a port. See Notice, 89 FR at 57486.

⁷⁰ See Notice, 89 FR at 57487.

⁷¹ See Notice, 89 FR at 57487.

⁷² See Notice, 89 FR at 57487.

⁷³ See Notice, 89 FR at 57487.

⁷⁴ See Notice, 89 FR at 57487.

⁷⁵ See Notice, 89 FR at 57487.

⁷⁶ See Notice, 89 FR at 57487–88.

⁷⁷ See Notice, 89 FR at 57488. The Exchange states that it proposes to update internal cross-references to accommodate relocated text. *Id.*

⁷⁸ See Notice, 89 FR at 57488.

⁷⁹ See Notice, 89 FR at 57488. The Exchange states that the term “account number” means a number assigned to a Participant. The Exchange states that only one account number is necessary to transact an options business of BX and that Participants may have more than one account number. See Notice, 89 FR at 57488 n.12 (citing Options 1, Section 1(a)(2)). The Exchange states that account numbers are free on BX. *Id.*

⁸⁰ See Notice, 89 FR at 57488. The Exchange notes that BX currently does not assess BX Participants for Disaster Recovery Ports. See Notice, 89 FR at 57488 (citing BX Options 7, Section 3).

⁸¹ See Notice, 89 FR at 57488 (BX Options 7, Section 3(i)).

⁸² See Notice, 89 FR at 57488.

⁸³ See Notice, 89 FR at 57488.

⁸⁴ See Notice, 89 FR at 57488.

⁸⁵ See Notice, 89 FR at 57488.

⁸⁶ 15 U.S.C. 78s(b)(3)(C).

⁸⁷ 15 U.S.C. 78s(b)(1).

⁸⁸ See Notice, 89 FR at 57488 (citing 15 U.S.C. 78f(b)).

⁸⁹ See Notice, 89 FR at 57488 (citing 15 U.S.C. 78f(b)(5)).

⁹⁰ See Notice, 89 FR at 57488 (citing 15 U.S.C. 78f(b)(4) and (5)).

⁹¹ See Notice, 89 FR at 57488.

⁹² See Notice, 89 FR at 57488.

⁹³ See Notice, 89 FR at 57488.

⁹⁴ The Exchange states that, for example, a Participant may desire to utilize multiple FIX or OTTO Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Participant. See Notice, 89 FR at 57488 n.14 and 57489 n.27.

⁹⁵ See Notice, 89 FR at 57489. The Exchange states that only BX Participants may utilize ports on BX and that any market participant that sends orders to a BX Participant would not need to utilize a port. See Notice, 89 FR at 57486.

that a BX Participant may send all orders, proprietary and agency, through one port to BX without incurring any cost with this proposal.⁹⁶ The Exchange states that in the alternative, BX Participants may elect to obtain multiple ports to organize their business.⁹⁷

The Exchange states that with the addition of OTTO, a BX Participant may elect to enter their orders through FIX, OTTO, or both protocols, although both protocols are not necessary.⁹⁸ The Exchange states that each BX Participant would receive one OTTO Port at no cost, thereby promoting just and equitable principles of trade.⁹⁹ The Exchange notes that Participants may prefer one order protocol as compared to another order protocol, for example, the ability to route an order may cause a Participant to utilize FIX and a Participant that desires to execute an order locally may utilize OTTO.¹⁰⁰ The Exchange states that also, the OTTO Port offers lower latency as compared to the FIX Port, which may be attractive to Participants depending on their trading behavior.¹⁰¹ The Exchange states that with this proposal, BX Participant may organize their business as they chose with the ability to send orders to BX at no cost.¹⁰² The Exchange states that the proposed new OTTO protocol is identical to the OTTO protocol offered today on ISE, GEMX, MRX.¹⁰³

Other Amendments

The Exchange that in connection with offering OTTO, the Exchange proposes to amend other rules within Options 3 to make clear where the FIX and OTTO protocols may be utilized.¹⁰⁴ The Exchange states that IOC Orders may be entered through FIX, OTTO or SQF, a Day order may be entered through FIX or OTTO, a GTC order may only be entered through FIX, and a Public Customer-to-Public Customer Cross Order may be entered through FIX or OTTO.¹⁰⁵ The Exchange states that other processes such the Opening Cancel Timer would impact FIX and OTTO equally.¹⁰⁶

The Exchange states that the Exchange's proposal to amend the Kill Switch at Options 3, Section 17 to align its rule text in proposed Options 3,

Section 17(a) and (a)(2) with MRX's Options 3, Section 17 is consistent with the Act because it does not substantively amend the functionality beyond removing the group level cancel capability.¹⁰⁷ The Exchange states that the Exchange's proposal to amend proposed Options 3, Section 17(a)(2) to specify that FIX and OTTO orders may be cancelled is consistent with the Act as it will make clear that all orders entered on BX may be purged through the Kill Switch.¹⁰⁸ The Exchange states that finally, allowing BX Participants to send a mass purge request through FIX or OTTO, in lieu of an interface, is consistent with Act and the protection of investors and the general public because it will enable BX Participants to initiate the Kill Switch more seamlessly without the need to utilize a separate interface.¹⁰⁹ The Exchange states that further, utilizing the order protocols directly, in lieu of the interface, will align the Kill Switch functionality to that of ISE, GEMX and MRX.¹¹⁰ The Exchange states that when initiating a cancellation of their orders by sending a mass purge request through FIX or OTTO, Participants will be able to submit a Kill Switch request on a user level only because the purge will be specific to a FIX or OTTO user for these ports.¹¹¹

The Exchange states that finally, the Detection of Loss of Communication would apply equally to FIX and OTTO.¹¹² The Exchange believes that its proposal is consistent with the Act and protects investors as the Exchange is making clear what types of order types and other mechanisms may utilize OTTO.¹¹³ The Exchange states that today, BX Participants utilize FIX to enter their orders.¹¹⁴ The Exchange states that despite the fact that OTTO would not be available for the GTC Time-In-Force modifier, the Exchange notes that one OTTO Port is being provided to Participants at no cost.¹¹⁵ The Exchange states that today, FIX is the only manner in which to enter orders into BX.¹¹⁶

Pricing

Proposed Port Fees Are Reasonable, Equitable and Not Unfairly Discriminatory

The Exchange states that only one FIX order protocol is required for a BX Participant to submit orders into BX and to meet its regulatory requirements¹¹⁷ at no cost while meeting its regulatory requirements.¹¹⁸ The Exchange states that the Exchange will provide each Participant the first FIX Port at no cost to submit orders into BX.¹¹⁹ The Exchange states that only one account number is necessary to transact an options business on BX and account numbers are available to Participants at no cost.¹²⁰

The Exchange states that the Exchange proposes to offer each Participant the first FIX Port at no cost to meet their regulatory requirements.¹²¹ The Exchange states as noted above, Participants may freely choose to rely on one or many ports, depending on their business model.¹²²

The Exchange states that the Exchange's proposal is reasonable, equitable and not unfairly discriminatory as BX is providing BX Participants the first FIX Port to submit orders at no cost.¹²³ The Exchange states that these ports, which are offered at no cost, would allow a BX Participant to meet its regulatory requirements.¹²⁴ The Exchange states that all other ports offered by BX are not required for a BX Participant to meet its regulatory obligations.¹²⁵ The Exchange states that therefore, for the foregoing reasons, it is reasonable to assess no fee for the first FIX Port obtained by a Participant as a BX Participant is able to meet its regulatory requirements with these ports.¹²⁶ The Exchange states that additionally, the proposal offers a free FIX Port to BX Participants that already subscribe to FIX, thereby reducing fees for these market participants.¹²⁷

The Exchange states that further, it is equitable and not unfairly discriminatory to assess no fee for the first FIX Port to Participants as all BX

¹¹⁷ The Exchange states that BX Participants have trade-through requirements under Regulation NMS as well as broker-dealers' best execution obligations. See Notice, 89 FR at 57489 n.20 (citing Rule 611 of Regulation NMS; 17 CFR 242.611 and FINRA Rule 5310).

¹¹⁸ See Notice, 89 FR at 57489.

¹¹⁹ See Notice, 89 FR at 57489.

¹²⁰ See Notice, 89 FR at 57489.

¹²¹ See Notice, 89 FR at 57489.

¹²² See Notice, 89 FR at 57489.

¹²³ See Notice, 89 FR at 57489.

¹²⁴ See Notice, 89 FR at 57489.

¹²⁵ See Notice, 89 FR at 57489.

¹²⁶ See Notice, 89 FR at 57489.

¹²⁷ See Notice, 89 FR at 57489.

⁹⁶ See Notice, 89 FR at 57489.

⁹⁷ See Notice, 89 FR at 57489.

⁹⁸ See Notice, 89 FR at 57489.

⁹⁹ See Notice, 89 FR at 57489.

¹⁰⁰ See Notice, 89 FR at 57489.

¹⁰¹ See Notice, 89 FR at 57489.

¹⁰² See Notice, 89 FR at 57489.

¹⁰³ See Notice, 89 FR at 57489.

¹⁰⁴ See Notice, 89 FR at 57489.

¹⁰⁵ See Notice, 89 FR at 57489.

¹⁰⁶ See Notice, 89 FR at 57489.

¹⁰⁷ See Notice, 89 FR at 57489.

¹⁰⁸ See Notice, 89 FR at 57489.

¹⁰⁹ See Notice, 89 FR at 57489.

¹¹⁰ See Notice, 89 FR at 57489.

¹¹¹ See Notice, 89 FR at 57489.

¹¹² See Notice, 89 FR at 57489.

¹¹³ See Notice, 89 FR at 57489.

¹¹⁴ See Notice, 89 FR at 57489.

¹¹⁵ See Notice, 89 FR at 57489.

¹¹⁶ See Notice, 89 FR at 57489.

Participants would be entitled to the first FIX Port at no cost.¹²⁸ The Exchange states that with this proposal, BX Participants may organize their business in such a way as to submit orders to BX at no cost.¹²⁹

The Exchange states that the Exchange's proposal to assess \$650 per port, per month, per account number for an OTTO Port is reasonable because OTTO is not required for a Participant to meet its regulatory requirements.¹³⁰ The Exchange states that it is offering the first FIX Port at no cost to submit orders to BX.¹³¹ The Exchange states that in addition to the FIX Port, all Participants may elect to purchase OTTO to submit orders to BX.¹³² The Exchange states that BX Participants utilizing the FIX Port, which is offered at no cost, do not need to utilize OTTO.¹³³

The Exchange states that finally, in the event that a BX Participant elects to subscribe to multiple ports, the Exchange offers a monthly cap beyond which a Participant would be assessed no additional fees for the month and proposes to add OTTO to the monthly cap.¹³⁴ The Exchange states that BX proposes to cap FIX Port, OTTO Port, CTI Port, FIX Drop Port, BX Depth Port, BX TOP Port Fees, and all Disaster Recovery Port Fees¹³⁵ at a monthly cap of \$7,500.¹³⁶ The Exchange states that these caps are reasonable because they allow Participants to limit their fees beyond a certain level if they elect to purchase multiple ports in a given month.¹³⁷ The Exchange states that the caps are also equitable and not unfairly discriminatory because any Participant will be subject to the cap, provided they exceeded the appropriate dollar amount in a given month.¹³⁸ The Exchange states that these ports are available to all BX Participants.¹³⁹

The Exchange states that the proposed BX OTTO fee is the same as the OTTO Port fee on MRX, for the identical port.¹⁴⁰ The Exchange states that additionally, MRX offers one free FIX Port to its Members and assesses the same FIX Port fee of \$650 per port, per

month, per account number as BX assesses today for a FIX Port. The Exchange states that MRX offers its Members a free FIX Disaster Recovery Port.¹⁴¹ The Exchange states that today, BX does not assess Disaster Recovery Port fees.¹⁴² The Exchange states that finally, today, MRX offers a \$7,500 monthly cap for OTTO Ports, CTI Ports, FIX Ports, FIX Drop Ports and all Disaster Recovery Ports.¹⁴³ The Exchange states that BX's proposed monthly cap includes BX Depth Ports and BX Top Ports, which are currently assessed fees of \$650 per port, per month, in addition to the same ports that are capped on MRX (FIX Ports, OTTO Ports, CTI Ports, FIX DROP Ports, and all Disaster Recovery Ports).¹⁴⁴

Exchange Arguments Concerning Competition and Section 6(b)(8)

The Exchange states that the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.¹⁴⁵

The Exchange states that the OTTO protocol is a proprietary protocol of Nasdaq, Inc.¹⁴⁶ The Exchange states that the Exchange continues to innovate and modernize technology so that it may continue to compete among options markets.¹⁴⁷ The Exchange states that the ability to continue to innovate with technology and offer new products to market participants allows BX to remain competitive in the options space which currently has seventeen options markets and potential new entrants.¹⁴⁸ The Exchange states that if BX were unable to offer and price new protocols, it would result in an undue burden on competition as BX would not have the ability to innovate and modernize its technology to compete effectively in the options space.¹⁴⁹ The Exchange states that BX's ability to offer OTTO will enable it to compete with other options markets that provide its market participants a choice as to the type of order entry protocols that may be

utilized.¹⁵⁰ The Exchange states that BX's ability to offer and price new and innovative products and continue to modernize its technology, similar to other options markets, supports intermarket competition.¹⁵¹

OTTO Protocol

The Exchange states that the Exchange's proposal to adopt an OTTO Protocol does not impose an undue burden on intramarket competition.¹⁵² The Exchange states that today, all BX Participants utilize FIX to send orders to BX.¹⁵³ The Exchange states that the Exchange would offer each BX Participant the first FIX Port at no cost with this proposal.¹⁵⁴ The Exchange states that with the addition of OTTO Ports, a BX Participant may elect to enter their orders through FIX, OTTO, or both protocols, although both protocols are not necessary.¹⁵⁵ The Exchange states that the Exchange's proposal to adopt an OTTO Protocol does not impose an undue burden on intermarket competition as other options exchanges offer multiple protocols today such as ISE, GEMX and MRX.¹⁵⁶

Other Amendments

The Exchange states that the Exchange's proposal to amend other rules within Options 3 to make clear where the FIX and OTTO protocols may be utilized does not impose an undue burden on intramarket competition as these rules will apply in the same manner to all Participants.¹⁵⁷ The Exchange states that the Exchange's proposal to amend other rules within Options 3 to make clear where the FIX and OTTO protocols may be utilized does not impose an undue burden on intermarket competition as other options exchanges may elect to utilize their order entry protocols in different ways.¹⁵⁸

Pricing

The Exchange states that nothing in the proposal burdens inter-market competition because BX's proposal to offer the first FIX Port for free is similar to MRX's FIX Port offering and allows BX Participants to meet their regulatory obligations.¹⁵⁹ The Exchange states that

¹²⁸ See Notice, 89 FR at 57489.

¹²⁹ See Notice, 89 FR at 57489.

¹³⁰ See Notice, 89 FR at 57489.

¹³¹ See Notice, 89 FR at 57489.

¹³² See Notice, 89 FR at 57489.

¹³³ See Notice, 89 FR at 57489.

¹³⁴ See Notice, 89 FR at 57489.

¹³⁵ The Exchange states that BX does not assess fees for Disaster Recovery Ports. See Notice, 89 FR at 57489 n.30.

¹³⁶ See Notice, 89 FR at 57489.

¹³⁷ See Notice, 89 FR at 57489.

¹³⁸ See Notice, 89 FR at 57489.

¹³⁹ See Notice, 89 FR at 57489.

¹⁴⁰ See Notice, 89 FR at 57490.

¹⁴¹ See Notice, 89 FR at 57490 (citing MRX Options 7, Section 6).

¹⁴² See Notice, 89 FR at 57490 (citing BX Options 7, Section 3).

¹⁴³ See Notice, 89 FR at 57490 (citing MRX Options 7, Section 6).

¹⁴⁴ See Notice, 89 FR at 57490. The Exchange states that, therefore, BX's proposed cap can also be obtained utilizing BX Depth Port and BX Top Port in addition to the same ports that MRX aggregates for purposes of the monthly cap. See Notice, 89 FR at 57488.

¹⁴⁵ See Notice, 89 FR at 57490.

¹⁴⁶ See Notice, 89 FR at 57490.

¹⁴⁷ See Notice, 89 FR at 57490.

¹⁴⁸ See Notice, 89 FR at 57490.

¹⁴⁹ See Notice, 89 FR at 57490.

¹⁵⁰ See Notice, 89 FR at 57490.

¹⁵¹ See Notice, 89 FR at 57490.

¹⁵² See Notice, 89 FR at 57490.

¹⁵³ See Notice, 89 FR at 57490.

¹⁵⁴ See Notice, 89 FR at 57490.

¹⁵⁵ See Notice, 89 FR at 57490.

¹⁵⁶ See Notice, 89 FR at 57490.

¹⁵⁷ See Notice, 89 FR at 57490.

¹⁵⁸ See Notice, 89 FR at 57490.

¹⁵⁹ See Notice, 89 FR at 57490.

BX's offering would permit Participants the ability to submit orders to BX at no cost.¹⁶⁰ The Exchange states that OTTO Ports are not required for BX Participants to meet their regulatory obligations.¹⁶¹

The Exchange states that nothing in the proposal burdens intra-market competition because the Exchange would uniformly assess the port fees to all Participants, as applicable, and would uniformly apply monthly caps.¹⁶² The Exchange states that the proposed fees are identical to fees recently approved on MRX.¹⁶³ The Exchange states that the proposed BX OTTO fee is the same as the OTTO Port fee on MRX, for the identical port.¹⁶⁴ The Exchange states that additionally, MRX offers one free FIX Port to its Members and assesses the same FIX Port fee of \$650 per port, per month, per account number as BX assessed today for FIX.¹⁶⁵ The Exchange states that MRX also offers a free FIX Disaster Recovery Port.¹⁶⁶ The Exchange states that today, BX does not assess Disaster Recovery Port fees.¹⁶⁷ The Exchange states that finally, today, MRX offers a \$7,500 monthly cap for OTTO Ports, CTI Ports, FIX Ports, FIX Drop Ports and all Disaster Recovery Ports.¹⁶⁸ The Exchange states that BX's proposed monthly cap includes BX Depth Ports and BX Top Ports, which are assessed fees of \$650 per port, per month, in addition to the same ports that are capped on MRX (FIX Ports, OTTO Ports, CTI Ports, FIX DROP Ports, and all Disaster Recovery Ports).¹⁶⁹

The Exchange states that to the extent that the Commission does not permit BX to assess the same identical fees for the same identical products on its market, the Commission is creating a burden on competition by allowing MRX to assess fees and offer a product that would otherwise be unavailable on BX.¹⁷⁰ The Exchange states that additionally, the proposal offers a free FIX Port to BX Participants that already subscribe to FIX, the only order port currently offered on BX, thereby reducing fees for these market participants.¹⁷¹ The Exchange states that each SRO should

be permitted to mirror fees assessed by another SRO to further competition among the exchanges.¹⁷²

B. Suspension

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.¹⁷³ The instructions to Form 19b-4, on which exchanges file their proposed rule changes, specify that such statement "should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements."¹⁷⁴

Section 6 of the Act, including Sections 6(b)(4), (5), and (8), require the rules of an exchange to: (1) provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities;¹⁷⁵ (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers;¹⁷⁶ and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.¹⁷⁷

In temporarily suspending the Exchange's proposed rule change, the Commission intends to further consider whether the Proposal is consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.¹⁷⁸

Therefore, the Commission finds that it is appropriate in the public interest,

for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.¹⁷⁹

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Changes

In addition to temporarily suspending the Proposal, the Commission also hereby institutes proceedings pursuant to Sections 19(b)(3)(C)¹⁸⁰ and 19(b)(2)(B) of the Act¹⁸¹ to determine whether the Exchange's proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,¹⁸² the Commission is providing notice of the grounds for possible disapproval under consideration:

- Whether the Exchange has demonstrated how the proposed fees are consistent with Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange "provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities";¹⁸³
- Whether the Exchange has demonstrated how the proposed fees are consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange not be "designed to permit unfair discrimination between

¹⁷⁹ For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁸⁰ 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

¹⁸¹ 15 U.S.C. 78s(b)(2)(B).

¹⁸² *Id.* Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. See *id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. See *id.*

¹⁸³ 15 U.S.C. 78f(b)(4).

¹⁶⁰ See Notice, 89 FR at 57490.

¹⁶¹ See Notice, 89 FR at 57490.

¹⁶² See Notice, 89 FR at 57490.

¹⁶³ See Securities Exchange Commission Release No. 96824 (February 7, 2023), 88 FR 8975 (February 10, 2023) (SR-MRX-2023-05).

¹⁶⁴ See Notice, 89 FR at 57490.

¹⁶⁵ See MRX Options 7, Section 6.

¹⁶⁶ *Id.*

¹⁶⁷ See BX Options 7, Section 3. BX is adding Disaster Recovery Ports to its monthly cap.

¹⁶⁸ See MRX Options 7, Section 6.

¹⁶⁹ See Notice, 89 FR at 57490.

¹⁷⁰ See Notice, 89 FR at 57490.

¹⁷¹ See Notice, 89 FR at 57490.

¹⁷² See Notice, 89 FR at 57490.

¹⁷³ See 17 CFR 240.19b-4 (Item 3 entitled "Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change").

¹⁷⁴ See *id.*

¹⁷⁵ 15 U.S.C. 78f(b)(4).

¹⁷⁶ 15 U.S.C. 78f(b)(5).

¹⁷⁷ 15 U.S.C. 78f(b)(8).

¹⁷⁸ See 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

customers, issuers, brokers, or dealers”;¹⁸⁴ and

- Whether the Exchange has demonstrated how the proposed fees are consistent with Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange “not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].”¹⁸⁵

As discussed in Section III above, the Exchange made various arguments in support of the Proposal. There are questions as to whether the Exchange has provided sufficient information to demonstrate that the proposed fees are consistent with the Act and the rules thereunder. The Commission will specifically consider, among other things, whether the Exchange has provided sufficient evidence to demonstrate that the proposed fees are reasonable and equitably allocated, are not unfairly discriminatory, and do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Under the Commission’s Rules of Practice, the “burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.”¹⁸⁶ The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,¹⁸⁷ and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.¹⁸⁸

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fees are consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and equitably allocated, not be unfairly discriminatory, and not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.¹⁸⁹

V. Commission’s Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by September 19, 2024. Rebuttal comments should be submitted by October 3, 2024. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.¹⁹⁰

The Commission asks that commenters address the sufficiency and merit of the Exchange’s statements in support of the Proposal, in addition to any other comments they may wish to submit about the proposed rule changes.

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR–BX–2024–019 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–2024–019. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–BX–2024–019 and should be submitted on or before September 19, 2024. Rebuttal comments should be submitted by October 3, 2024.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,¹⁹¹ that File No. SR–BX–2024–019, be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹²

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–19394 Filed 8–28–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100811; File No. SR–NYSEARCA–2024–67]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges

August 23, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on August 14, 2024, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission

¹⁹⁰ 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

¹⁹¹ 15 U.S.C. 78s(b)(3)(C).

¹⁹² 17 CFR 200.30–3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

¹⁸⁴ 15 U.S.C. 78f(b)(5).

¹⁸⁵ 15 U.S.C. 78f(b)(8).

¹⁸⁶ 17 CFR 201.700(b)(3).

¹⁸⁷ See *id.*

¹⁸⁸ See *id.*

¹⁸⁹ See 15 U.S.C. 78f(b)(4), (5), and (8).