(4) Files the annual report electronically with the Commission using an appropriate process.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2021–03353 Filed 2–18–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91125; File No. SR–BX–2020–032]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, To Amend Options 4, Section 5, To Limit Short Term Options Series Intervals Between Strikes That Are Available for Quoting and Trading on BX

February 12, 2021.

I. Introduction

On November 6, 2020, 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 to amend Options 4, Section 5, ''Series of Options Contracts Open for Trading'' to limit Short Term Options Series intervals between strikes which are available for quoting and trading on BX. The proposed rule change was published for comment in the **Federal Register** on November 16, 2020.[3] On December 23, 2020, pursuant to Section 19(b)(2) of the Act,[4] the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to February 14, 2021.[5] On February 10, 2021, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change in its entirety.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change

Currently, under the Short Term Options Series (''STOS'') program (also referred to as the ''weekly series'' or ''weeklies''), BX may open for trading on a Thursday or Friday (''Short Term Option Opening Date'') a series of options that expires on each of the next five Fridays that are business days and are not Fridays in which monthly options series or Quarterly Options series expire (''Short Term Option Expiration Dates'').[7] Weeklies currently may have strike price intervals of $0.50, $1, or $2.50.[8]

In the proposed rule change, as modified by Amendment No. 1, the Exchange proposes to amend its STOS Program to increase, and thereby limit, the intervals between strikes in multiply listed equity options (excluding options on Exchange Traded Funds (''ETFs'') and Exchange Traded Notes (''ETNs'')) under the STOS program for those weeklies that have an expiration date more than twenty-one days from the listing date.[9] Accordingly, the proposal seeks to reduce the number of strikes in the weeklies furthest from expiration.

Specifically, the new applicable strike intervals will be as follows: [10]

Tier	Customer-range options average daily volume	Underlying share price				
		Less than $25	$25 to less than $75	$75 to less than $150	$150 to less than $500	$500 or greater
1	greater than 5,000	$0.50	$1.00	$1.00	$5.00	$5.00
2	1,000 to 5,000	1.00	1.00	1.00	5.00	10.00
3	0 to 1,000	2.50	5.00	5.00	5.00	10.00

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 90384 (November 9, 2020), 85 FR 73113 (November 16, 2020) (''Notice''). Comments on the proposed rule change can be found at *https://www.sec.gov/comments/sr-bx-2020-032/srbx2020032.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 90796 (December 23, 2020), 85 FR 86590 (December 30, 2020).

[6] In Amendment No. 1, the Exchange: (1) Stated that the proposed changes in Supplementary Material .07 of Options 4, Section 5 supersede Supplementary Material .03(d) and that the Exchange will not be able to utilize the rule text within Supplementary Material .03(d) to permit additional series to be opened for trading on the Exchange that have an expiration date more than twenty-one days from the listing date despite the noted circumstances when such additional series could otherwise be added; (2) clarified how a Short Term Option Opening Date is calculated when the Exchange is not open for business on the applicable Thursday or Friday; (3) provided that that Short Term Options Series that are newly eligible for listing pursuant to Options 4, Section 3(a) will not be subject to proposed Supplementary Material .07 until after the end of the first full calendar quarter following the date the option class was first listed for trading on any options market; (4) discussed additional data underlying its proposal; (5) proposed to make publically available a report on a quarterly basis that indicates, for each Short Term Options Series eligible to be listed under proposed Supplementary Material .07 of Options 4, Section 5, the applicable tiering, which includes the closing price of the underlying, and the average daily Customer volume of the option; and (6) changed its implementation timeframe for the proposed rule change from prior to March 31, 2021 to prior to June 30, 2021. When the Exchange filed Amendment No. 1, it also submitted it as a comment to the filing so that the text of Amendment No. 1 promptly became available at *https://www.sec.gov/comments/sr-bx-2020-032/srbx2020032-8359799-229182.pdf.*

[7] *See* Supplementary Material .03 of Options 4, Section 5. There are limits on the number of series that can participate in STOS (*i.e.,* 30 initial series and up to 50 currently listed classes). *See* Supplementary Material .03 of Options 4, Section 5(c). In addition to the weeklies, the Exchange may list series of options for trading with monthly expirations (that expire on the third Friday of the month) or quarterly expirations. *See* Options 4, Section 5(g) and Supplementary Material .04 of Options 4, Section 5, respectively. Exchange rules set forth the intervals between strike prices of series of options on individual stocks, which generally are $2.50, $5, and $10. In addition to those intervals, the Exchange may list certain series of options in finer increments, including, *e.g.,* pursuant to the $1 Strike Price Interval Program (Supplementary Material .01 of Options 4, Section 5) and the $0.50 Strike Program (Supplementary Material .05 of Options 4, Section 5).

[8] Specifically, (i) $0.50 or greater where the strike price is less than $100, and $1 or greater where the strike price is between $100 and $150 for all option classes that participate in the Short Term Options Series Program; (ii) $0.50 for option classes that trade in one dollar increments and are in the Short Term Options Series Program; or (iii) $2.50 or greater where the strike price is above $150. *See* Amendment No. 1, *supra* note 6, at 34.

[9] The proposal does not apply to index options.

[10] The table supersedes Supplementary Material .03(d), which currently permits additional series to be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand, or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened. As a result, the Exchange will not be able to utilize the rule text within Supplementary Material .03(d) to permit additional series to be opened for trading on BX that have an expiration date more than twenty-one days from the listing date despite the noted circumstances when such additional series could otherwise be added.

As shown in the table, the proposal sets the strike increment for those weekly series with an expiration date of more than twenty-one days from the listing date (*e.g.,* weeks 4 and 5) through a matrix of 15 possible choices representing 5 different strike intervals (*i.e.,* $0.50, $1, $2.50, $5, or $10). The Exchange will determine the applicable strike interval through a combination of two factors: (1) The Customer-cleared average daily volume (''ADV'') tier for the option over the applicable quarter [11] and (2) the closing share price of the underlying stock on its primary market on the last day of the calendar quarter.

The Exchange states that STOS comprise a significant portion of listed options, as the weekly strikes increased at a 8.9% compound annual growth rate (''CAGR'') from 2015 to 2020, compared to a 4.3% CAGR for standard expirations using 3rd Friday expirations. Weeklies are available on 16% of underlying products, and weeklies with an expiration date greater than twenty-one days from the listing date account for 7.5% of the total number of strikes in the options market, equaling approximately 81,000 strikes.[12]

In its filing, the Exchange explains that it chose to use OCC Customer-cleared volume because the Exchange believes it represents a measure of customer demand, including for the weekly series.[13] Under the proposal, higher customer demand results in a tier that corresponds to a more granular strike interval (*e.g.,* $0.50 instead of $2.50).

The Exchange further explains that its proposal seeks to reduce the number of strikes in the furthest weekly options series, which the Exchange believes typically have wider markets and lower market quality.[14] The Exchange's proposal imposes more distanced strike intervals where the underlying stock has higher priced shares and where there is less customer volume as measured by the ADV tiers. Conversely, the proposal preserves finer strike intervals for options that have higher Customer ADV and lower priced underlying stocks.

BX also proposes to make publically and freely available a report on a quarterly basis that indicates, for each weekly series eligible to be listed under proposed Supplementary Material .07 of Options 4, Section 5, the applicable strike increment, the applicable closing price of the underlying stock sourced from the closing prices for Tape A, B and C securities published by the UTP and CTA/CQ Plans, and the applicable Customer ADV of the option sourced from OCC. BX will post the report by the close of business on the first trading day of the quarter.

The Exchange intends that its proposal will allow market makers to deploy capital more efficiently, while improving displayed market quality, by tailoring the granularity of strikes to correspond to the anticipated future customer demand for the option and the price of the underlying stock, thus reducing the number of listed weekly options in the later weeks of the STOS program.[15] The Exchange states that its proposal is responsive to concerns from industry members, including market makers, regarding the proliferation of strike prices.[16] The Exchange expects that its proposal will be the first step in a broader initiative to revisit the patchwork of strike listing rules.[17]

III. Discussion and Commission Findings

After careful review of the proposed rule change, as modified by Amendment No. 1, and the comment letters received on the proposal, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges.[18] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,[19] which requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and 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 Commission received several comments expressing support for the proposed rule change.[20] Another commenter expressed general support for the goals of the proposal but suggested ideas to simplify and clarify the proposal.[21] In particular, that commenter recommends that the proposal be ''simplified in its application'' because it believes the ADV and underlying share price components could be ''unduly burdensome from an exchange operational perspective.'' [22] The commenter states that the proposal could ''create significant operational overhead with respect to implementing and maintaining this proposed strike listing regime'' but would only ''result in a limited strike reduction''.[23] Further, the commenter states that the proposal's ''complexity may also cause confusion among participants regarding permissible strikes.'' [24] As an alternative, the commenter suggests ''use of a single ADV component for classes to qualify for the STOS program'' such as 2,500 ADV.[25]

In response, the Exchange states that its proposal ''was not intended to amend the current STOS program'' but rather was to ''curtail certain strike intervals within STOS to avoid operational burdens to listing exchanges.'' [26] The Exchange believes that the commenter's suggested alternative ''may have a detrimental impact on of meeting customer demand in terms of the availability of STOS which are listed today.'' [27] The Commission believes the Exchange has

[11] The Customer-cleared ADV is the total number of options contracts traded in the Customer range in a given security for the applicable calendar quarter, divided by the number of trading days in the applicable calendar quarter. Beginning on the second trading day of each calendar quarter, the ADV will be calculated by using data from the prior calendar quarter based on volume cleared in the Customer range as reported by the Options Clearing Corporation (''OCC'').

[12] *See* Amendment No. 1, *supra* note 6, at 42.

[13] *See id.* at 22.

[14] *See id.* at 40–41, for the Exchange's data on average spreads in weekly options during the month of August 2020.

[15] *See id.* at 44.

[16] *See id.* at 45.

[17] *See id.* at 45–46.

[18] In approving this 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).

[19] 17 U.S.C. 78f(b)(5).

[20] *See* Letters to Vanessa Countryman, Secretary, Commission, from Chris Halverson, Chairman of the Board, Security Traders Association and James Toes, President & CEO, Security Traders Association, dated December 9, 2020; from Joanna Mallers, Secretary, FIA Principal Traders Group, dated December 8, 2020; from Venu Palaparthi, Managing Director, Dash Financial Technologies LLC, dated December 7, 2020; from Andrew Stevens, General Counsel, IMC Chicago, LLC, dated December 7, 2020; from Joseph P. Kamnik, Chief Regulatory Counsel, Options Clearing Corporation, dated December 4, 2020; and from Ellen Greene, Managing Director, Equities & Options Market Structure, Securities Industry and Financial Markets Association, dated December 4, 2020.

[21] *See* Letter to Vanessa Countryman, Secretary, Commission, from Laura G. Dickman Vice President, Associate General Counsel, Cboe Exchange, Inc., dated February 1, 2021 (''Cboe Letter'').

[22] Cboe Letter, *supra* note 21 at 2.

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *See* Letter to Vanessa Countryman, Secretary, Commission, from Kevin Kennedy, Senior Vice President, North American Markets, Nasdaq, Inc., dated February 10, 2021 (''BX Response''), at 1.

[27] *Id.*

addressed the commenter's concern. The Exchange's proposal, though modest in scope, is an attempt to rationalize strike listing rules in the furthest-out weekly series, which may serve as a starting point to a broader initiative to revisit, harmonize, and update the panoply of strike listing rules more broadly. The Exchange's proposal is but one of many possible alternative approaches that could address the same or similar goals. Nevertheless, the Exchange's proposal reflects its preferred approach, which the Commission finds is consistent with the Act.

The commenter also suggested certain aspects of the proposal that could be further clarified, including "whether exceptions would apply to extremely active option classes or new options on equities that were subject to recent initial public offerings" as such events "often increase customer demand for more strikes, including at narrower intervals." [28] The commenter also suggested that the proposal be flexible to allow more granular strikes when "necessary to maintain an orderly market, to meet customer demand, or when the market price of the underlying security moves substantially." [29]

In response, the Exchange proposed text in Amendment No. 1 to address the initial public offering situation by adding a 3-month curtailment period by which the new rule would not take effect for such options until after the end of the first full calendar quarter following the date the options class was first listed on any options market.[30] The Exchange states that the curtailment period will "allow the initial customer demand to be met" and "price discovery to occur in the offering" before the new strike intervals would apply in the further out weeklies.[31] Further, the Exchange added text in Amendment No. 1 to clarify that the proposal would not accommodate flexibility to add more granular strikes for stocks with volatile prices or in response to customer requests.[32] The Commission believes the Exchange has addressed the commenter's concerns. While the Exchange will not permit exceptions to its new rule, weeklies in the first few weeks are not impacted by the rule change, so the Exchange will continue to be able to list more granular strikes in those weeks as appropriate to meet customer demand in active classes or classes with volatile underlying stock prices.

Finally, the commenter states that "exchanges should use quarterly ADV data from a centralized party when identifying classes subject to the strike interval limits to ensure fair and consistent application of the rule across the industry." [33] In response, the Exchange added detail in Amendment No. 1 to describe the report it will prepare and publicly post that details the applicable tier, Customer ADV, and closing price for each affected weekly series. The Exchange stated that the public availability of this report should "provide consistency and relieve administrative burdens on other options markets" who "may elect to utilize [it] to validate their own information." [34] The Commission believes the Exchange has addressed the commenter's concerns. The Exchange will use OCC data to calculate the Customer ADV, which is available to all options exchanges, and will use the publicly-reported consolidated market data to determine the underlying share price, which also is available to all. Publishing each series subject to the new rule with its applicable strike increment, along with the inputs used to determine those increments, will promote transparency and certainty among all market participants of the application and effect of the Exchange's rule.

The Commission believes that the Exchange's proposal, as amended, promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in facilitating transactions in securities, and removes impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Commission believes that the Exchange's proposal to increase, and thus limit, the intervals between strikes listed under the STOS program that have an expiration date more than twenty-one days removes impediments to and perfects the mechanism of a free and open market and a national market system by seeking to strike an efficient balance between offering customers choice of appropriately granular strikes in less liquid weekly options with higher underlying stock prices and setting rational and consistent strike intervals that do not unduly burden the market makers that quote them, the broker-dealers and customers that view and trade them, or the infrastructure and systems that handle the transmission, processing, and dissemination of quotations, orders, and trades.

More efficient and better calibrated strike increment rules can have a positive impact on the options markets, as it can provide certainty, minimize confusion, and promote more efficient use of resources including among market makers that are obligated to continuously quote such series, all while still offering customers choice to meet their investment needs. The Exchange's proposal should eliminate certain clusters of relatively granular strikes in further out weekly series, whose characteristics (*e.g.,* risk properties) may closely resemble each other as a result of their close strike prices and length to time to expiration. Such clustering may not be necessary in less liquid further out weekly series where the price of the underlying stock is higher. The Exchange's proposal seeks to focus more granular strike increments on those series where they are more relevant, applicable, and likely more in demand from customers. Accordingly, the Exchange's proposal is designed to protect investors while also supporting market quality. For these reasons, the Commission finds that the proposed rule change is consistent with the Act.

IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether the proposal, as modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2020–032 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2020–032. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent

[28] Cboe Letter, *supra* note 21, at 3.

[29] *Id.*

[30] BX Response, *supra* note 26, at 2.

[31] *Id.*

[32] *Id.*

[33] Cboe Letter, *supra* note 21, at 3.

[34] BX Response, *supra* note 26, at 2.

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 this filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2020–032 and should be submitted on or before March 12, 2021.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of Amendment No. 1 in the **Federal Register**. In Amendment No. 1, the Exchange provided additional information to clarify and support the proposal, and did not materially change the substance of the proposal over what the Commission published in the **Federal Register**. Among other things, in the Amendment the Exchange committed to freely and publicly post a ''report'' in which it will detail the weekly series that it will list under the proposal, along with information on the applicable strike interval tier and the underlying Customer ADV and underlying share price values upon which it determined the applicable strike interval. That information should be useful to market participants, as well as other options exchanges, as it will provide transparency into how BX applied its rule and should remove any potential for confusion that could be presented by a lack of transparency into the applicable strike intervals BX will apply under the new rule. Further, the Exchange added detail to address when the new rule will apply to a new option (*e.g.,* an option on a recent initial public offering), which will provide certainty as to how the new rule applies in such cases. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[35] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[36] that the proposed rule change SR–BX–2020–032, as modified by Amendment No. 1 be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2021–03342 Filed 2–18–21; 8:45 am]

BILLING CODE 8011–01–P

[35] 15 U.S.C. 78s(b)(2).

[36] 15 U.S.C. 78s(b)(2).

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91127; File No. SR–CBOE–2020–075]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 2, To Make Qualified Contingent Cross Orders Available for FLEX Option Trading

February 12, 2021.

On August 3, 2020, Cboe Exchange, Inc. 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 to make Qualified Contingent Cross Orders available for FLEX option trading. The proposed rule change was published in the **Federal Register** on August 20, 2020.[3] On October 1, 2020, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On October 23, 2020, the Exchange submitted Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[6] On November 18, 2020, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[8] On February 2, 2021, the Exchange submitted Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change, as modified by Amendment No. 1.[9]

Section 19(b)(2) of the Act[10] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on August 20, 2020.[11] The 180th day after publication of the Notice is February 16, 2021. The Commission is extending the time period for approving or disapproving the proposal for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, as modified by Amendment No. 2. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[12] designates April 17, 2021, as the date by which the Commission shall either approve or disapprove the proposed rule change (File Number SR–CBOE–2020–075), as modified by Amendment No. 2.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 89564 (August 14, 2020), 85 FR 51531 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 90062, 85 FR 63312 (October 7, 2020).

[6] Amendment No. 1 is available on the Commission's website at: *https://www.sec.gov/comments/sr-cboe-2020-075/srcboe2020075-7940531-224727.pdf.*

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 90457, 85 FR 75071 (November 24, 2020).

[9] Amendment No. 2 is available on the Commission's website at: *https://www.sec.gov/comments/sr-cboe-2020-075/srcboe2020075-8330243-228699.pdf.*

[10] 15 U.S.C. 78s(b)(2).

[11] *See supra* note 3.

[12] 15 U.S.C. 78s(b)(2).