

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

Written comments were neither solicited nor 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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act<sup>28</sup> and Rule 19b-4(f)(6)<sup>29</sup> thereunder.

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>30</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>31</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing with the Commission, the Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Exchange notes that the Exchange and MIAX PEARL have common Members and the proposal will provide, where feasible, consistent functionality between the Exchange and MIAX PEARL, and thus reduce complexity and avoid potential confusion among Members. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.<sup>32</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

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

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2017-12 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-MIAX-2017-12. 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 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 Web site 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-MIAX-

2017-12 and should be submitted on or before April 7, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>33</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-80228; File No. SR-BX-2017-016]

**Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Data Reporting Requirements of Rule 4770**

March 13, 2017.

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 February 28, 2017, NASDAQ BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend Rule 4770 to modify the date of Appendix B Web site data publication pursuant to the Regulation NMS Plan to Implement a Tick Size Pilot Program ("Plan").

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqbx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

<sup>33</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>28</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>29</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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

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

<sup>32</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 the Statutory Basis for, the Proposed Rule Change*

1. Purpose

Rule 4770(b) (Compliance with Data Collection Requirements)<sup>3</sup> implements the data collection and Web site publication requirements of the Plan.<sup>4</sup> Commentary .08 to Rule 4770 provides, among other things, that the requirement that the Exchange make certain data publicly available on the Exchange Web site pursuant to Appendix B and C to the Plan shall commence at the beginning of the Pilot Period,<sup>5</sup> and that BX shall make data for the Pre-Pilot Period publicly available on the Exchange Web site pursuant to Appendix B and C to the Plan by February 28, 2017.<sup>6</sup>

BX is proposing amendments to Commentary .08 to Rule 4770 to delay the date by which Pre-Pilot and Pilot Appendix B data is to be made publicly available on the Exchange's Web site from February 28, 2017, until April 28, 2017. Appendix C data for the Pre-Pilot Period through the month of January 2017 will be published on the Exchange Web site on February 28, 2017, and, thereafter, on the original 30-day schedule.<sup>7</sup> As some of the data reporting

<sup>3</sup> See Rule 4770(b). See also Securities Exchange Act Release No. 77457 (March 28, 2016), 81 FR 18913 (April 1, 2016) (SR-BX-2016-019).

<sup>4</sup> The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014. See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014 ("SRO Tick Size Plan Proposal"). See Securities Exchange Act Release No 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014); see also Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015).

<sup>5</sup> Unless otherwise defined herein, capitalized terms have the meaning ascribed to them in Rule 4770.

<sup>6</sup> On November 30, 2016, the SEC granted exemptive relief to the Participants to, among other things, delay the publication of Web site data pursuant to Appendices B and C to the Plan until February 28, 2017, and to delay the ongoing Web site publication by ninety days such that data would be published within 120 calendar days following the end of the month. See Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, dated November 30, 2016; see also Securities Exchange Act Release No. 79549 (December 14, 2016), 81 FR 92886 (December 30, 2016) (SR-BX-2017-067).

<sup>7</sup> Since, under Rule 4770(b)(4), BX is not independently publishing Market Maker profitability data collected pursuant to Item I of Appendix C of the Plan, no corresponding change

requirements set forth in Rule 4770 require members to report data to their Designated Examining Authority ("DEA"), which may not be BX, the Exchange is also proposing to add references in Commentary .08 to reflect the fact that the Exchange or the DEA may be publishing such data.

In the SRO Tick Size Plan Proposal, the Participants stated that the public data will be made available for free "on a disaggregated basis by trading center" on the Web sites of the Participants and the Designated Examining Authorities.<sup>8</sup> However, market participants have expressed confidentiality concerns regarding this approach for over-the-counter ("OTC") data.<sup>9</sup> Thus, BX is filing the instant proposed rule change to provide additional time to assess a means of addressing the confidentiality concerns raised in connection with the publication of Appendix B data related to OTC activity in furtherance of the objectives of the Plan.<sup>10</sup> Pursuant to this amendment, Appendix B data publication will be delayed until April 28, 2017. The Participants anticipate filing additional proposed rule changes to address Appendix B data publication.

BX has filed the proposed rule change for immediate effectiveness. The operative date of the proposed rule change will be the date of filing.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>12</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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

to the language of Rule 4770(b)(4) relating to the timing of the publication of Appendix C data for the Pilot Period is needed.

<sup>8</sup> See Securities Exchange Act Release No. 73511 (November 3, 2014), 79 FR 66423 (November 7, 2014) (Notice of Filing of Proposed National Market System Plan to Implement a Tick Size Pilot Program on a One-Year Pilot Basis, File No. 4-657) ("Tick Size Plan Proposal").

<sup>9</sup> See letters from Adam C. Cooper, Senior Managing Director and Chief Legal Officer, Citadel Securities, to Brent J. Fields, Secretary, Commission, dated December 21, 2016 ("Citadel letter"); and William Hebert, Managing Director, Financial Information Forum, to Robert W. Errett, Deputy Secretary, Commission, dated December 21, 2016 ("FIF letter").

<sup>10</sup> In connection with its filing to implement a similar change in its rules, the Financial Industry Regulatory Authority, Inc. is also submitting an exemptive request to the SEC on behalf of all Plan Participants requesting relief from the relevant requirements of the Plan.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

general to protect investors and the public interest. BX also believes that the proposal is consistent with Section 6(b)(8) of the Act,<sup>13</sup> which requires that Exchange rules not impose any burden on competition that is not necessary or appropriate.

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stock of small-capitalization companies. BX believes that this proposal is consistent with the Act because it is in furtherance of the objectives of Section VII(A) of the Plan in that it is designed to provide BX with additional time to assess a means of addressing the confidentiality concerns raised in connection with the publication of Appendix B data, to comply with the Plan's requirements that the data made publicly available will not identify the trading center that generated the data.

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

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

*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) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The

<sup>13</sup> 15 U.S.C. 78f(b)(8).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

Exchange has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing so that it may become operative on February 28, 2017.

The Exchange notes that the proposed rule change is intended to address confidentiality concerns raised in connection with the publication of OTC Appendix B data by permitting the Exchange to delay Web site publication of its Appendix B data from February 28, 2017 to April 28, 2017.<sup>16</sup> The Exchange notes that the delay would provide additional time to assess a means of addressing the confidentiality concerns. The Exchange notes that it expects Participants to file proposed rule changes related to publishing Appendix B data.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to delay publication of its Appendix B data until April 28, 2017. As noted above, commenters continue to raise concerns about the publication of OTC Appendix B data.<sup>17</sup> Delaying publication of Exchange's Appendix B data<sup>18</sup> will prevent the publication of partial (*i.e.*, Exchange-only) Appendix B data required under the Plan. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative on February 28, 2017.<sup>19</sup>

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

the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

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

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2017-016 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-2017-016. 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 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 Web site 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-2017-016, and should be submitted on or before April 7, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549-2736.

#### Extension:

Rule 17a-5, SEC File No. 270-155, OMB Control No. 3235-0123.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) ("PRA"), the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in Rule 17a-5 (17 CFR 240.17a-5), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 17a-5 is the basic financial reporting rule for brokers and dealers.<sup>1</sup> The rule requires the filing of Form X-17A-5, the Financial and Operational Combined Uniform Single Report ("FOCUS Report"), which was the result of years of study and comments by representatives of the securities industry through advisory committees and through the normal rule proposal methods. The FOCUS Report was designed to eliminate the overlapping regulatory reports required by various self-regulatory organizations and the Commission and to reduce reporting burdens as much as possible. The rule also requires the filing of an annual audited report of financial statements.

The FOCUS Report consists of: (1) Part I, which is a monthly report that must be filed by brokers or dealers that clear transactions or carry customer securities; (2) one of three alternative quarterly reports: Part II, which must be filed by brokers or dealers that clear transactions or carry customer securities; Part IIA, which must be filed by brokers or dealers that do not clear transactions or carry customer

<sup>1</sup> Rule 17a-5(c) requires a broker or dealer to furnish certain of its financial information to customers and is subject to a separate PRA filing (OMB Control Number 3235-0199).

<sup>16</sup> See *supra* note 9. The Commission notes that FINRA has submitted a proposed rule change to delay the publication of OTC Appendix B data. See SR-FINRA-2017-005.

<sup>17</sup> The Commission notes that FINRA has filed a proposed rule change that is intended to mitigate confidentiality concerns raised by commenters regarding the publication of OTC Appendix B data. See SR-FINRA-2017-006.

<sup>18</sup> The Commission notes that other Participants have proposed to delay the publication of their Appendix B data until April 28, 2017. See SR-BatsBYX-2017-05; SR-BatsBZX-2017-15; SR-BatsEDGA-2017-05; SR-BatsEDGX-2017-13; SR-CHX-2017-05; SR-FINRA-2017-005; SR-IEX-2017-07; SR-NASDAQ-2017-024; SR-Phlx-2017-22; SR-NYSE-2017-10; SR-NYSEArca-2017-19; SR-NYSEMKT-2017-11.

<sup>19</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>20</sup> 17 CFR 200.30-3(a)(12).