

Required fields are shown with yellow backgrounds and asterisks.

Filing by NASDAQ BX, Inc.
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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|-------------------------------------|---|--------------------------|--------------------------------------|---|------------------------------|
| Initial * | Amendment * | Withdrawal | Section 19(b)(2) * | Section 19(b)(3)(A) * | Section 19(b)(3)(B) * |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| | | | Rule | | |
| Pilot | Extension of Time Period for Commission Action * | Date Expires * | <input type="checkbox"/> 19b-4(f)(1) | <input type="checkbox"/> 19b-4(f)(4) | |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="text"/> | <input type="checkbox"/> 19b-4(f)(2) | <input type="checkbox"/> 19b-4(f)(5) | |
| | | | <input type="checkbox"/> 19b-4(f)(3) | <input checked="" type="checkbox"/> 19b-4(f)(6) | |

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| Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 | Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 |
| Section 806(e)(1) * | Section 806(e)(2) * |
| <input type="checkbox"/> | <input type="checkbox"/> |
| Section 3C(b)(2) * | |
| <input type="checkbox"/> | |

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|---|---|
| Exhibit 2 Sent As Paper Document | Exhibit 3 Sent As Paper Document |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |

Description

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

Proposal to harmonize the Exchanges By-Law provisions regarding the size of the Exchanges Board of Directors

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Sun Last Name * Kim

Title * Associate General Counsel

E-mail * sun.kim@nasdaq.com

Telephone * (212) 231-5106 Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date 06/17/2019 Global Chief Legal and Policy Officer

By Edward S. Knight

(Name *)

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Nasdaq BX, Inc. (“BX” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to harmonize the Exchange’s By-Law provisions regarding the size of the Exchange’s Board of Directors (“Board”) to those of the other Nasdaq, Inc.-owned U.S. exchanges, The Nasdaq Stock Market LLC (“Nasdaq”), Nasdaq PHLX LLC (“Phlx”), Nasdaq ISE, LLC (“ISE”), Nasdaq GEMX, LLC (“GEMX”), and Nasdaq MRX, LLC (“MRX”) (together, “Affiliated Exchanges”).

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of the Exchange on May 8, 2019. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Sun Kim
Associate General Counsel
Nasdaq, Inc.
212-231-5106

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

The Exchange proposes to amend its By-Laws at Article IV, Section 4.2³ to conform its provisions regarding the size of the Exchange's Board to those of the Affiliated Exchanges.⁴

By-Law Article IV contains provisions regarding the powers and composition of the Board, which are generally aligned with similar provisions in the Limited Liability Company ("LLC") Agreements and By-Laws of the Affiliated Exchanges. For instance, as is the case with the Affiliated Exchanges, the composition of the Exchange's Board is required to reflect a balance among Industry Directors,⁵ Member Representative

³ In Exhibit 5, the references to "Corporation" mean the Exchange.

⁴ See Nasdaq Second Amended Limited Liability Company Agreement ("Nasdaq LLC Agreement"), Section 9(a); Phlx Second Amended Limited Liability Company Agreement ("Phlx LLC Agreement"), Section 8(a); and ISE, GEMX, and MRX Limited Liability Company Agreements, Section 9(a).

⁵ "Industry Director" means a Director (excluding any two officers of the Exchange, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors (the "Staff Directors")), who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute twenty percent or more of the professional revenues received by the Director or twenty percent or more of the gross revenues received by the Director's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns fifty percent or more of the voting stock of a broker or dealer, and such services relate

Directors,⁶ and Non-Industry Directors,⁷ including Public Directors⁸ and Director representatives of issuers and investors (“issuer representatives”). Specifically, the number of Non-Industry Directors, including at least one Public Director and at least one issuer representative, shall equal or exceed the sum of the number of Industry Directors and Member Representative Directors. In addition, at least 20% of the Directors shall be Member Representative Directors.⁹

to the director's, officer's, or employee's professional capacity and constitute twenty percent or more of the professional revenues received by the Director or twenty percent or more of the gross revenues received by the Director's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Exchange or any affiliate thereof or to FINRA or has had any such relationship or provided any such services at any time within the prior three years. See By-Law Article I(t).

⁶ “Member Representative Director” means a Director who has been elected by the stockholders after having been nominated by the Member Nominating Committee or voted upon by Exchange Members pursuant to the By-Laws (or elected by the stockholders without such nomination or voting in the case of the Member Representative Directors elected pursuant to Section 4.3(b)). A Member Representative Director may, but is not required to be, an officer, director, employee, or agent of an Exchange Member. See By-Law Article I(x). Member Representative Directors are directors that meet the fair representation requirement in Section 6(b)(3) of the Act, which requires that the “rules of the Exchange assure a fair representation of its members in the selection of its directors and administration of its affairs...”

⁷ “Non-Industry Director” means a Director (excluding Staff Directors) who is (i) a Public Director; (ii) an officer or employee of an issuer of securities listed on the Exchange; or (iii) any other individual who would not be an Industry Director. See By-Law Article I(bb).

⁸ “Public Director” means a Director who has no material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA. See By-Law Article I(gg).

⁹ See By-Law Article IV, Section 4.3. The Affiliated Exchanges have substantially similar board composition requirements, including the requirement that at least 20% of the directors be Member Representative Directors. In addition, the By-Laws of Nasdaq, ISE, GEMX, and MRX each have an additional board composition requirement of at least two issuer representatives if the board

Furthermore, consistent with the Affiliated Exchanges, the Exchange's By-Laws presently allow the stockholders¹⁰ to set the exact number of Directors.¹¹ Unlike the Affiliated Exchanges, however, the Exchange's By-Laws require that the minimum Board size be fixed at ten Directors.¹² The Exchange now proposes to remove the minimum threshold of ten Directors contained in the By-Laws to align with the provisions in the LLC Agreements of the Affiliated Exchanges. The Exchange does not seek to amend the Board's authority or qualification requirements in the By-Laws other than to remove this minimum threshold. As such, the current requirements that the number of Non-Industry Directors (including at least one Public Director and at least one issuer representative) equal or exceed the sum of the number of Industry Directors and Member Representative Directors, and at least 20% of the Directors be Member Representative Directors, would continue to apply.

The practical effect of the proposed rule change is to enable the size of the Board to be set below ten members. The Exchange believes that a Board consisting of less than ten members is sufficiently large to effectively perform the Board's oversight responsibilities, and when combined with the current Board composition requirements discussed above, is consistent with the Act. Furthermore, as noted above, while the

consists of ten or more directors. See Nasdaq LLC Agreement, Section 9(a) and Nasdaq By-Laws, Article III, Section 2(a); Phlx LLC Agreement, Section 8(a) and Phlx By-Laws, Article III, Section 3-2(a); and ISE, GEMX, and MRX LLC Agreements, Section 9(a) and ISE, GEMX, and MRX By-Laws, Article III, Section 2(a).

¹⁰ Nasdaq, Inc. is the sole stockholder of the Exchange.

¹¹ See By-Law Article IV, Section 4.2. See supra note 4.

¹² See By-Law Article IV, Section 4.2. Section 4.2 also provides that no decrease in the number of Directors shall shorten the term of any incumbent Director.

Affiliated Exchanges have substantially similar provisions in their respective LLC Agreements authorizing the sole member to determine the number of directors, these LLC Agreement provisions do not have a strict minimum threshold on Board size like BX.¹³ As such, the proposed changes will further streamline the rules governing the organization and administration across BX and the Affiliated Exchanges.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(1) of the Act,¹⁵ which requires that the Exchange to be so organized so as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange; Section 6(b)(3) of the Act,¹⁶ which requires that the rules of a national securities exchange assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer; and Section 6(b)(5) of the Act,¹⁷ 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,

¹³ See supra note 4.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(1).

¹⁶ 15 U.S.C. 78f(b)(3).

¹⁷ 15 U.S.C. 78f(b)(5).

in general to protect investors and the public interest. The proposed changes will eliminate the requirement for a minimum of ten Directors on the Board currently in Article IV, Section 4.2 of the Exchange's By-Laws. As discussed above, the current Board composition requirements in the By-Laws remain unchanged under this proposal, and the requirements that the number of Non-Industry Directors (including at least one Public Director and at least one issuer representative) equal or exceed the sum of the number of Industry Directors and Member Representative Directors, and at least 20% of the Directors be Member Representative Directors, would continue to apply.

Accordingly, the Exchange believes that the proposed removal of the minimum threshold will improve administrative efficiency and effectiveness by operating with a smaller number of directors while continuing to fulfill its statutory obligations regarding the fair representation of members of the Exchange. In addition, the proposed amendments will have the additional benefit of bringing the Exchange's requirements on Board size into greater conformity with those of the Affiliated Exchanges, which allow for discretion as to the size of their boards, thereby creating more consistent standards among the affiliated exchanges owned by Nasdaq, Inc.¹⁸ As such, the Exchange believes that its proposal will bring greater consistency to its rules, which is beneficial to both investors and the public interest.

4. 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 relates solely to the administration and governance of the

¹⁸ See supra note 4.

Exchange and will have no effect on the Exchange's business operations or competitive position.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)¹⁹ of the Act and Rule 19b-4(f)(6) thereunder²⁰ in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange does not believe that this proposal significantly affects the protection of investors and the public interest because the proposed rule change seeks to conform the Exchange's requirements regarding the Board size to those of the Affiliated Exchanges, thereby creating equivalent standards among all of the U.S. securities exchanges owned by Nasdaq, Inc., and will bring greater consistency to its rules to the benefit of investors and the public interest. As discussed above, the current requirements,

¹⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁰ 17 CFR 240.19b-4(f)(6).

including the Board composition requirements, will continue to apply.²¹ Furthermore, the Exchange does not believe that this proposal imposes any significant burden on competition because the proposed amendments do not address competitive issues but relates to the administration and governance of the Exchange, as discussed above.

Furthermore, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange respectfully requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) so that the Exchange may amend its By-Laws to conform to the current Affiliated Exchanges as soon as possible. The annual meeting of the stockholder will take place in June 2019 to address the election of Directors as well as certain housekeeping items, which has

²¹ See supra note 9, with accompanying text.

historically included setting the size of the Board. Waiver of the operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to harmonize its rules across the Affiliated Exchanges in a timely manner, thereby creating more consistent standards for the administration and governance across the Nasdaq, Inc.-owned affiliated exchanges.

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

The proposal is based on Nasdaq LLC Agreement, Section 9(a); Phlx LLC Agreement, Section 8(a); and ISE, GEMX, and MRX LLC Agreements, Section 9(a).

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-BX-2019-021)

June __, 2019

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Harmonize the Exchanges By-Law Provisions Regarding the Size of the Exchanges Board of Directors to Those of the Other Nasdaq, Inc.-owned U.S. Exchanges

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 June 17, 2019, Nasdaq BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to harmonize the Exchange’s By-Law provisions regarding the size of the Exchange’s Board of Directors (“Board”) to those of the other Nasdaq, Inc.-owned U.S. exchanges, The Nasdaq Stock Market LLC (“Nasdaq”), Nasdaq PHLX LLC (“Phlx”), Nasdaq ISE, LLC (“ISE”), Nasdaq GEMX, LLC (“GEMX”), and Nasdaq MRX, LLC (“MRX”) (together, “Affiliated Exchanges”).

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

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

1. Purpose

The Exchange proposes to amend its By-Laws at Article IV, Section 4.2³ to conform its provisions regarding the size of the Exchange's Board to those of the Affiliated Exchanges.⁴

By-Law Article IV contains provisions regarding the powers and composition of the Board, which are generally aligned with similar provisions in the Limited Liability Company ("LLC") Agreements and By-Laws of the Affiliated Exchanges. For instance, as is the case with the Affiliated Exchanges, the composition of the Exchange's Board is required to reflect a balance among Industry Directors,⁵ Member Representative

³ In Exhibit 5, the references to "Corporation" mean the Exchange.

⁴ See Nasdaq Second Amended Limited Liability Company Agreement ("Nasdaq LLC Agreement"), Section 9(a); Phlx Second Amended Limited Liability Company Agreement ("Phlx LLC Agreement"), Section 8(a); and ISE, GEMX, and MRX Limited Liability Company Agreements, Section 9(a).

⁵ "Industry Director" means a Director (excluding any two officers of the Exchange, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors (the "Staff Directors")), who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day

Directors,⁶ and Non-Industry Directors,⁷ including Public Directors⁸ and Director representatives of issuers and investors (“issuer representatives”). Specifically, the

management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute twenty percent or more of the professional revenues received by the Director or twenty percent or more of the gross revenues received by the Director's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns fifty percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute twenty percent or more of the professional revenues received by the Director or twenty percent or more of the gross revenues received by the Director's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Exchange or any affiliate thereof or to FINRA or has had any such relationship or provided any such services at any time within the prior three years. See By-Law Article I(t).

⁶ “Member Representative Director” means a Director who has been elected by the stockholders after having been nominated by the Member Nominating Committee or voted upon by Exchange Members pursuant to the By-Laws (or elected by the stockholders without such nomination or voting in the case of the Member Representative Directors elected pursuant to Section 4.3(b)). A Member Representative Director may, but is not required to be, an officer, director, employee, or agent of an Exchange Member. See By-Law Article I(x). Member Representative Directors are directors that meet the fair representation requirement in Section 6(b)(3) of the Act, which requires that the “rules of the Exchange assure a fair representation of its members in the selection of its directors and administration of its affairs...”

⁷ “Non-Industry Director” means a Director (excluding Staff Directors) who is (i) a Public Director; (ii) an officer or employee of an issuer of securities listed on the Exchange; or (iii) any other individual who would not be an Industry Director. See By-Law Article I(bb).

⁸ “Public Director” means a Director who has no material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA. See By-Law Article I(gg).

number of Non-Industry Directors, including at least one Public Director and at least one issuer representative, shall equal or exceed the sum of the number of Industry Directors and Member Representative Directors. In addition, at least 20% of the Directors shall be Member Representative Directors.⁹

Furthermore, consistent with the Affiliated Exchanges, the Exchange's By-Laws presently allow the stockholders¹⁰ to set the exact number of Directors.¹¹ Unlike the Affiliated Exchanges, however, the Exchange's By-Laws require that the minimum Board size be fixed at ten Directors.¹² The Exchange now proposes to remove the minimum threshold of ten Directors contained in the By-Laws to align with the provisions in the LLC Agreements of the Affiliated Exchanges. The Exchange does not seek to amend the Board's authority or qualification requirements in the By-Laws other than to remove this minimum threshold. As such, the current requirements that the number of Non-Industry Directors (including at least one Public Director and at least one issuer representative) equal or exceed the sum of the number of Industry Directors and

⁹ See By-Law Article IV, Section 4.3. The Affiliated Exchanges have substantially similar board composition requirements, including the requirement that at least 20% of the directors be Member Representative Directors. In addition, the By-Laws of Nasdaq, ISE, GEMX, and MRX each have an additional board composition requirement of at least two issuer representatives if the board consists of ten or more directors. See Nasdaq LLC Agreement, Section 9(a) and Nasdaq By-Laws, Article III, Section 2(a); Phlx LLC Agreement, Section 8(a) and Phlx By-Laws, Article III, Section 3-2(a); and ISE, GEMX, and MRX LLC Agreements, Section 9(a) and ISE, GEMX, and MRX By-Laws, Article III, Section 2(a).

¹⁰ Nasdaq, Inc. is the sole stockholder of the Exchange.

¹¹ See By-Law Article IV, Section 4.2. See supra note 4.

¹² See By-Law Article IV, Section 4.2. Section 4.2 also provides that no decrease in the number of Directors shall shorten the term of any incumbent Director.

Member Representative Directors, and at least 20% of the Directors be Member Representative Directors, would continue to apply.

The practical effect of the proposed rule change is to enable the size of the Board to be set below ten members. The Exchange believes that a Board consisting of less than ten members is sufficiently large to effectively perform the Board's oversight responsibilities, and when combined with the current Board composition requirements discussed above, is consistent with the Act. Furthermore, as noted above, while the Affiliated Exchanges have substantially similar provisions in their respective LLC Agreements authorizing the sole member to determine the number of directors, these LLC Agreement provisions do not have a strict minimum threshold on Board size like BX.¹³ As such, the proposed changes will further streamline the rules governing the organization and administration across BX and the Affiliated Exchanges.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(1) of the Act,¹⁵ which requires that the Exchange to be so organized so as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange; Section 6(b)(3) of the Act,¹⁶ which

¹³ See supra note 4.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(1).

¹⁶ 15 U.S.C. 78f(b)(3).

requires that the rules of a national securities exchange assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer; and Section 6(b)(5) of the Act,¹⁷ 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 proposed changes will eliminate the requirement for a minimum of ten Directors on the Board currently in Article IV, Section 4.2 of the Exchange's By-Laws. As discussed above, the current Board composition requirements in the By-Laws remain unchanged under this proposal, and the requirements that the number of Non-Industry Directors (including at least one Public Director and at least one issuer representative) equal or exceed the sum of the number of Industry Directors and Member Representative Directors, and at least 20% of the Directors be Member Representative Directors, would continue to apply.

Accordingly, the Exchange believes that the proposed removal of the minimum threshold will improve administrative efficiency and effectiveness by operating with a smaller number of directors while continuing to fulfill its statutory obligations regarding the fair representation of members of the Exchange. In addition, the proposed amendments will have the additional benefit of bringing the Exchange's requirements on Board size into greater conformity with those of the Affiliated Exchanges, which allow for discretion as to the size of their boards, thereby creating more consistent standards among the affiliated

¹⁷ 15 U.S.C. 78f(b)(5).

exchanges owned by Nasdaq, Inc.¹⁸ As such, the Exchange believes that its proposal will bring greater consistency to its rules, which is beneficial to both investors and the public interest.

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 relates solely to the administration and governance of the Exchange and will have no effect on the Exchange's business operations or competitive position.

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.²⁰

¹⁸ See supra note 4.

¹⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁰ 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

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 e-mail to rule-comments@sec.gov. Please include File Number SR- BX-2019-021 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-2019-021. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The

proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR- BX-2019-021 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Eduardo A. Aleman
Assistant Secretary

²¹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

By-Laws of Nasdaq BX, Inc.

* * * * *

Article IV Board of Directors

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Section 4.2 Number of Directors

The exact number of Directors shall be fixed from time to time by the stockholders of the Corporation[, but shall in no event be fixed at less than ten Directors]. No decrease in the number of Directors shall shorten the term of any incumbent Director.

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