

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁶

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91830; File No. SR-BX-2021-012]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Its Equity and General Rules From Its Current Rulebook Into Its New Rulebook Shell

May 10, 2021.

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 April 27, 2021, Nasdaq BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“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 relocate its equity and general rules from its current Rulebook into its new Rulebook shell.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/bx/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it 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 purpose of this rule change is to relocate BX’s equity and general rules from the current Rulebook into the new Rulebook shell.³ The Exchange also proposes a number of minor, non-substantive changes to the Rulebook shell as described below. The relocation and harmonization of these rules is part of the Exchange’s continued effort to promote efficiency and conformity of its rules to the extent applicable with those of its affiliated exchanges. The Exchange believes that the placement of these rules into their new location in the Rulebook shell will facilitate the use of the Rulebook by members.

Universal Changes

The Exchange proposes to update all cross-references within the Rulebook shell to the new relocated rule cites. The Exchange proposes to replace internal rule references to simply state “this Rule” where the rule is citing itself without a more specific cite included in the Rule. For example, if BX Rule 4619 refers currently to “Rule 4619” or “this Rule 4619” the Exchange will amend the phrase to simply “this Rule.” Except where the Exchange specifies below that it will retain the current rule numbering, the Exchange also proposes to conform the paragraph numbering and lettering to that used in the Rulebook shell for greater consistency, and to correct punctuation. The Exchange proposes to rename the term “Commentary” with “Supplementary Material.” Furthermore, the Exchange proposes to delete reserved rules, other than those within the 5000 Series Rules and 11100 Series Rules which are both being relocated without deleting the reserved rules, with the exception of Rules 5300 and 5400, which are currently reserved, and are being deleted. The Exchange also proposes to delete rules that are currently marked as deleted.

The Exchange proposes to update the references to the 9000 Series and 9600 Series to refer to the General 5, 9000 Series and General 5, 9600 Series respectively in connection with a prior rule change that incorporated Nasdaq

General 5, Rule 9000 and 9600 Series into BX General 5.⁴

The Exchange also proposes to delete the following section headers that are currently within the BX Rules: 2100. General Standards; 2800. Special Products; 2900. Responsibilities to Other Brokers or Dealers;⁵ 2000A. Business Conduct; 3000. Responsibilities Relating to Associated Persons, Employees, and Others’ Employees; 3300. Trading; 4000. Listing and Trading on the Exchange; 4100. General; 4400. Other Listing Rules; 4600. Requirements for Equities Market Makers and Other Participants in the Nasdaq BX Equities Market; 4610. Registration and Other Requirements; 4700. The Nasdaq BX Equities Market; 4750. Execution Services; 5000. BX Venture Market Listing Rules; 6000. Other Systems and Programs;⁶ 7000A. Order Audit Trail Series; 7400A. Order Audit Trail System; and 11000. Uniform Practice Code.

General 1

The Exchange proposes to amend the section heading from General 1, General 1 to General 1, Section 1. The Exchange also proposes to retitle General 1, Section 1 from “General Provisions” to “Definitions.” The Exchange proposes to update the citations within General 1, Section 10 (Exchange Review Council) to account for rule relocations proposed herein and remove the word “Rules” associated with the citations.

General 2

The Exchange proposes to relocate Rule 4615 (Sponsored Participants) to General 2, Section 22, which is currently reserved, to harmonize the Exchange’s rule numbering to that of Nasdaq PHLX LLC (“Phlx”) General 2, Section 22, which currently sets forth the same rule on Phlx.

General 3

The Exchange proposes to reword references to the Nasdaq Rule 1000 Series to Nasdaq General 3, Rule 1000 Series to reflect the placement and numbering of the rule within the

⁴ See Securities and Exchange Act Release No. 88938 (June 1, 2020), 85 FR 33235 (May 26, 2020) (SR-BX-2020-009) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate the BX Disciplinary Rules and Incorporate by Reference the Disciplinary Rules of The Nasdaq Stock Market LLC).

⁵ BX proposes to delete the other non-substantive rule text under this header which replicates the header and indicates that Rule 2910 was deleted.

⁶ BX proposes to delete the non-substantive reference to 6800 which is reserved under this header.

³⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Previously, the Exchange filed to relocate other rules within its Rulebook. See Securities Exchange Act Release No. 87468 (November 5, 2019), 84 FR 61091 (November 12, 2019) (SR-BX-2019-039).

Nasdaq Rulebook.⁷ The Exchange proposes to update the citation to Nasdaq Rule 0120 within General 3, Section 1. Nasdaq Rule 0120 was relocated to General 1 within SR–NASDAQ–2019–098.⁸ The Exchange also proposes to update citations to Rules 3010 and 3011 within General 3, Section 1. Rule 3010 was relocated to General 9, Section 20 and Rule 3011 was relocated to General 9, Section 37 within SR–BX–2019–039.⁹ Similarly, Nasdaq Rule 3010 was relocated to General 9, Section 20 and Nasdaq Rule 3011 was relocated to General 9, Section 37 within SR–NASDAQ–2019–039.¹⁰

General 9

The Exchange proposes to relocate Rule 2170 (Disruptive Quoting and Trading Activity Prohibited) to General 9, Section 53, and to reserve General 9, Section 52. The Exchange also proposes to re-number certain subsections under proposed new General 9, Section 53 to conform to the numbering in Nasdaq General 9, Section 53. In particular, relocating Rule 2170 to General 9, Section 53 will harmonize the Exchange’s rule numbering to that of Phlx General 9, Section 53, which currently sets forth the same rule prohibiting disruptive quoting and trading activity on Phlx. Because this Rule is being added to General 9, which applies to both the Exchange’s equities and options markets, the Exchange proposes to delete a duplicate rule in Options 9, Section 4, which applies only to the options market. The

Exchange proposes to relocate Rule 2843, Account Approval, to General 9, Section 64 to harmonize the Exchange’s rules to that of Phlx General 9, Section 64. The proposed rule numbering is to ensure that the Exchange’s General 9 rules mirror its affiliated exchanges’ General 9 rules as closely as practicable.

The Exchange also proposes to relocate Rule 4570 (Custodian of Books and Records) to General 9, Section 71 similar to Nasdaq. Also, BX proposes to reserve Sections 54–70, except Section 64.

The Exchange further proposes to update several obsolete cross-references throughout General 9 that presently refer to rules that were already moved to the Rulebook shell under SR–BX–2019–039.¹¹ The Exchange also proposes to update the cross-references to Rule 2310A (within General 9, Section 12(b)), and Rule 2310A (within General 9, Section 18(c)(1)(C)(iv)) to relocated Equity 10, Section 1, and update the references to General 4, Section 1.1200 Series and General 4, Section 1.1210 (within General 9, Section 20(b)) by replacing “Section 1.” with the word “Rule”.

Equity 1

The Exchange proposes to amend the section header from Equity 1, Equity 1 to Equity 1, Section 1. The Exchange also proposes to add “(a)” before the phrase “When used in the Equity Rules . . .” to conform to the paragraph lettering of the Rulebook shell. Lastly, the Exchange proposes to relocate the

defined terms currently within Rule 4701(a)–(l) into Equity 1, Section 1(a)(6), subsections (1)–(4) and (8)–(18). With respect to current Rule 4701(a), which contains the term “Nasdaq BX Equities Market” or “System”, BX notes this term currently exists within Equity 1, Section 1(6), however, BX proposes to add portions of Rule 4701(a) that are not currently described within Equity 1, Section 1(6). Current Rule 4701(a) provides, “(a) The term “Nasdaq BX Equities Market” or “System” shall mean the automated system for order execution and trade reporting owned and operated by the Exchange. The System comprises: . . .”. The Exchange notes that provisions of Rule 4701(a) starting with the phrase “The System comprises . . .” are not contained in the current definition of “Nasdaq BX Equities Market” or “System” at Equity 1, Section 1(6), and therefore, the Exchange proposes to relocate those provisions to proposed Equity 1, Section 1(a)(6). The Exchange notes that the remainder of the rule text within Rule 4701(a) was duplicative with the rule text within Equity 1, Section 1(6) and therefore, the Exchange proposes to delete the duplicative text.

Equity 2

The Exchange proposes to relocate the following rules into Equity 2 which is titled Equity Market Participants. The Exchange proposes to instead title this section “Market Participants” to conform to Nasdaq’s Rulebook Structure.¹²

Shell rule	Current rule
Section 1	4601. Scope.
Section 2	4200. Definitions. ¹³
Section 3	4611. Nasdaq BX Market Participant Registration.
Section 4	4612. Registration as an Equities Market Maker.
Section 5	4613. Market Maker Obligations. ¹⁴
Section 6	4614. Stabilizing Bids.
Section 7	4616. Reports.
Section 8	4617. Normal Business Hours.
Section 9	4618. Clearance and Settlement.
Section 10	4619. Withdrawal of Quotations.
Section 11	4620. Voluntary Termination of Registration.
Section 12	4621. Suspension and Termination of Quotations.
Section 13	4622. Termination of Exchange Service.
Section 14	4623. Alternative Trading Systems.
Section 15	4624. Penalty Bids and Syndicate Covering Transactions.
Section 16	4625. Obligation to Provide Information. ¹⁵
Section 17	4626. Limitation of Liability.

⁷ See Securities Exchange Act Release No. 87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR–NASDAQ–2020–079) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Its Equity and General Rules From Its Current Rulebook Into Its New Rulebook Shell).

⁸ The Exchange previously relocated certain definitions within Rule 0120, “Definitions” into General 1 and Equity 1. The definitions applicable to General 3 are located within General 1. See

Securities Exchange Act Release No. 87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR–NASDAQ–2019–098) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Rules From Its Current Rulebook Into Its New Rulebook Shell).

⁹ See *supra* note 3.

¹⁰ See Securities Exchange Act Release No. 87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR–NASDAQ–2019–098) (Notice of Filing and Immediate Effectiveness of Proposed Rule

Change To Relocate Rules From Its Current Rulebook Into Its New Rulebook Shell).

¹¹ See *supra* note 3.

¹² See Securities Exchange Act Release No. 90577 (December 7, 2020), 85 FR 80202 (December 11, 2020) (SR–NASDAQ–2020–079) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Its Equity and General Rules From Its Current Rulebook Into Its New Rulebook Shell).

Shell rule	Current rule
Section 18	4627. Obligation to Honor System Trades.
Section 19	4628. Compliance with Rules and Registration Requirements.
Section 20	4631. Customer Disclosures.

Equity 3

The Exchange proposes to re-title Equity 3, from “Equity Trading Rules” to “BX Venture Market Listing Rules.” The Exchange proposes to relocate to Equity 3 the Rule 5000 Series BX Venture Market Listing Rules without

changing the rule numbers. The Exchange proposes to delete Rules 5300 and 5400, which are reserved. The Exchange also proposes to correct the spelling of the word “decision” within Rule 5815, Review of Staff Determinations by Hearings Panel.

Equity 3A

The Exchange proposes to add a new Equity 3A, titled “Other Listing Rules and Rules Regarding Unlisted Trading Privileges.” The Exchange proposes to relocate the following rules into Equity 3A:

Shell rule	Current rule
Section 1	4201. Operation of Listing Standards.
Section 2	4420. Additional Quantitative Listing Criteria.
Section 3	4421. Derivative Securities Traded under Unlisted Trading Privileges.
Section 4	4450. Additional Quantitative Maintenance Criteria.

The Exchange proposes to remove reserved sections and re-letter and re-number the remaining sections in Rules 4201, 4420, 4421, and 4450.

Equity 4

The Exchange proposes to re-title Equity 4, currently “Limit Up Limit Down,” to “Equity Trading Rules.” The Exchange proposes to relocate Rules 4110, 4120, 4121, 4702, 4703, 4752,

4756, 4757, 4758, 4759, 4760, 4761, 4762, 4763, 4770 and 4780 into Equity 4 and retain the current rule numbers. Within Rule 4110 the Exchange is adding a reference to Equity 3A because the listing standards, as proposed herein, are set forth in the Rule 5000 Series under Equity 3 and in Equity 3A. Equity 3A contains current Rules 4201, 4420, 4421 and 4450. The Exchange proposes to relocate the rule text of IM-

4120–3, Circuit Breaker Securities Pilot, to the end of Rule 4120. Also, a reference to Rule 4751(f) is being updated to Rule 4703(g) within Rule 4756, Discretionary Orders, to correct the current citation.

Equity 5

The Exchange proposes to relocate the 7000A Series Rules to Equity 5 as follows:

Shell rule	Current rule
Section 1	7410A. Definitions. ¹⁶
Section 2	7420A. Applicability.
Section 3	7430A. Synchronization of Member Business Clocks.
Section 4	7440A. Recording of Order Information. ¹⁷
Section 5	7450A. Order Data Transmission Requirements. ¹⁸
Section 6	7460A. Violation of Order Audit Trail System Rules. ¹⁹

The Exchange proposes to delete Rule 7470A which is currently reserved.

Equity 6

The Exchange proposes to title Equity 6, which is currently reserved, to “BX

Risk Management Service; Other Systems and Programs,” and to relocate the following rules into Equity 6:

Shell rule	Current rule
Section 1	Reserved.
Section 2	Reserved.
Section 3	4764. BX Kill Switch.
Section 4	4765. Exchange Sharing of Participant Risk Settings, excluding Commentary.
Section 5	Commentary to 4765. Exchange Sharing of Participant Risk Settings (Re-titled as “Risk Settings”).

¹³ The Exchange proposes to amend the current rule text of Rule 4200(a), which refers to the Rule 4000 Series, to refer to Equity 2. The definitions within current Rule 4200(a)(1) and (2) are federal rules which apply to Equity 2 in general and the definition within Rule 4200(a)(3) is simply a defined term. The defined terms are only used in Equity 2.

¹⁴ BX proposes a minor technical amendment to change an “a” to “an” within the first sentence of proposed Section 5.

¹⁵ The Exchange will not port over the reference to IM-4120-1 into the Rulebook shell as this Rule does not currently exist in the BX Rulebook.

¹⁶ The Exchange proposes to update a cross reference currently within Rule 7410A(o) that defines “Proprietary Trading Firm.” Within that defined term, there is a reference to Rule 0210(g), which refers to the term “customer”. The current reference to Rule 0210(g) is an error and should have referred to Rule 0120(g). The Exchange previously relocated certain definitions within Rule 0120, “Definitions” into General 1 and Equity 1. The term “customer” was relocated to BX Equity 1. *See supra* note 3. That definition of customer is the same definition as in current Rule 7410A(a) which is being relocated within this proposal to proposed Equity 5, Section 1(c). The Exchange proposes to utilize the definition of the term “customer” within

Equity 5, Section 1(c) within proposed new Equity 5, Section 1(o).

¹⁷ The Exchange proposes to update the reference within current Rule 7440A, Recording of Order Information, to IM-2110-2 to General 9, Section 1. IM-2110-2 was relocated to General 9, Section 1 in SR-BX-2019-039. *See supra* note 3.

¹⁸ The Exchange proposes to amend the term “Equity Rule of the 7400A Series” within proposed Section 5, Order Data Transmission Requirements, to instead provide “Section within Equity 5.”

¹⁹ The Exchange is amending the reference to Rule 2210 to instead refer to General 9, Section 1. Rule 2210 was relocated to General 9, Section 1 in SR-BX-2019-039. *See supra* note 3.

Shell rule	Current rule
Section 6	Reserved.

<p>Equity 8</p> <p>The Exchange proposes to reserve Equity 8 which is currently titled “Uniform Practice Code.” This section does not currently contain any rules.</p>	<p>Equity 8A</p> <p>The Exchange proposes to add an Equity 8A, which will be reserved.</p> <p>Equity 9</p> <p>The Exchange proposes to re-title Equity 9, currently “Supplementary</p>	<p>Conduct Rules,” to “Business Conduct.” This section does not currently contain any rules. The Exchange proposes to relocate the following rules into Equity 9:</p>
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Shell rule	Current rule
Section 1	3220. Adjustment of Open Orders.
Section 2	3230. Clearing Agreements.
Section 3	3310. Publication of Transactions and Quotations.
Section 4	IM–3310. Manipulative and Deceptive Quotations.
Section 5	3320. Offers at Stated Prices.
Section 6	3340. Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts.
Section 7	3350. Suspension of Trading.
Section 8	3351. Trading Practices.
Section 9	3360. Short-Interest Reporting.
Section 10	3370. Prompt Receipt and Delivery of Securities.
Section 11	3380. Order Entry and Execution Practices.
Section 12	3381. SEC Rule 19c–1—Governing Certain Off-Board Agency Transactions by Members of National Securities Exchanges.
Section 13	3385. SEC Rule 19c–3—Governing Off-Board Trading by Members of National Securities Exchanges.
Section 14	3390. SEC Rule 604—Display of Customer Limit Orders.
Section 15	2844. Suitability.
Section 16	2845. Discretionary Accounts. ²⁰
Section 17	2846. Supervision of Accounts.
Section 18	2847. Customer Complaints.
Section 19	2848. Communications with the Public and Customers Concerning Index Warrants, Currency Index Warrants, and Currency Warrants.
Section 20	2849. Maintenance of Records.

<p>A reference to “NASD” is being updated to refer to “FINRA” within proposed Equity 9, Section 1, Adjustment of Open Orders. The Exchange proposes to update two obsolete cross-references in Equity 9, Section 4 (Manipulative and Deceptive Quotations) that currently point to Rules 2110 and 2120. Rule 2110 (Standards of Commercial Honor and Principles of Trade) was relocated to General 9, Section 1 of the Rulebook</p>	<p>shell under SR–BX–2019–039.²¹ Rule 2120 (Use of Manipulative, Deceptive or Other Fraudulent Devices) was likewise relocated to General 9, Section 1 of the Rulebook shell under SR–BX–2019–039. The Exchange proposes to capitalize the “The” before “Options Clearing Corporation” within new Section 13, SEC Rule 19c–3—Governing Off-Board Trading by Members of National Securities Exchanges. Finally, the</p>	<p>Exchange proposes to reserve Section 21 through Section 23.</p> <p>Equity 10</p> <p>The Exchange proposes to re-title Equity 10, which is currently titled “BX Venture Listing Rules,” to “Other Products and Securities,” and to relocate the following rules into Equity 10:</p>
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Shell rule	Current rule
Section 1	2310A. Direct Participation Programs.
Section 2	2830. Investment Company Securities.
Section 3	2840. Trading in Index Warrants, Currency Index Warrants, and Currency Warrants.
	2841. General.
	2842. Definitions.
Section 4	2850. Position Limits.
Section 5	2851. Exercise Limits.
Section 6	2852. Reporting Requirements.
Section 7	2853. Liquidation of Index Warrant Positions.
Section 8	4630. Trading in Commodity-Related Securities.

<p>Equity 11</p> <p>The Exchange proposes to add new Equity 11, titled “Uniform Practice</p>	<p>Code,” and relocate the current Rule 11000 Series into new Equity 11 without renumbering the rules.</p>	<p>The Exchange proposes to correct a spelling error in the title of IM–11110 to provide “Refusal to Abide by Rulings of</p>
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²⁰ The Exchange amended the reference in proposed new Section 16(b) of this rule to “General 9, Sections 19 and 45.”

²¹ See *supra* note 3.

the Exchange's Regulation Department Staff". The spelling of the word "Staff" is being amended.

The Exchange proposes to correct the spelling of the word "certificate" and remove the apostrophe within IM-11710. Uniform Reclamation Form.

The Exchange also proposes to update an obsolete cross-reference in IM-11720 (Obligations of Members Who Discover Securities in Their Possession to Which They Are Not Entitled) that currently points to Rule 2110. Rule 2110 (Standards of Commercial Honor and Principles of Trade) was relocated to General 9, Section 1 of the Rulebook shell under SR-BX-2019-039.²²

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²³ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁴ in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by bringing greater transparency to its rules by relocating the equity and general rules into the new Rulebook shell together with other rules which have already been relocated.²⁵ The Exchange's proposal is consistent with the Act and will protect investors and the public interest by harmonizing its rules, where applicable, across Nasdaq affiliated markets so that members can readily locate rules which cover similar topics. The relocation and harmonization of the BX Rules is part of the Exchange's continued effort to promote efficiency and conformity of its rules to the extent applicable with those of its affiliated exchanges. The Exchange believes that the placement of the BX equity and general rules into their new location in the shell will facilitate the use of the Rulebook by members. Specifically, the Exchange believes that market participants that are members of more than one Nasdaq affiliated market will benefit from the ability to compare Rulebooks.

The Exchange is not substantively amending rule text. The renumbering, re-lettering, deleting reserved and already deleted rules, amending cross-references and other minor technical changes will bring greater transparency to BX's Rules. The Exchange's affiliates have already filed similar rule changes to relocate their respective equity and general rules into the same location in each Rulebook for ease of reference.²⁶

²² See *supra* note 3.

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ See *supra* note 3.

²⁶ The Nasdaq Stock Market LLC previously filed to relocate its equity and general rules. See

The Exchange believes its proposal will benefit investors and the general public by increasing the transparency of its Rulebook and promoting easy comparisons among the various Nasdaq affiliated exchanges' Rulebooks.

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 Exchange believes that the proposed amendments do not impose an undue burden on competition because the amendments to relocate the equity and general rules are non-substantive. This rule change is intended to bring greater clarity to the Exchange's Rules and to promote easy comparisons among the various Nasdaq affiliated exchanges' Rulebooks. Renumbering, re-lettering, deleting reserved rules and already deleted rules, and amending cross-references will bring greater transparency to BX's Rules.

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 Act²⁷ and Rule 19b-4(f)(6) thereunder.²⁸

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act²⁹ normally does not become operative for 30 days after the date of its

Securities Exchange Act Release No. 90577 (December 7, 2020), 85 FR 80202 (December 11, 2020) (SR-NASDAQ-2020-079). See also Securities Exchange Act Release No. 91058 (February 4, 2021), 86 FR 8966 (February 10, 2021) (SR-Phlx-2021-04).

²⁷ 15 U.S.C. 78s(b)(3)(A).

²⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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.

²⁹ 17 CFR 240.19b-4(f)(6).

filing. However, Rule 19b-4(f)(6)(iii)³⁰ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay.³¹ Waiver of the operative delay would allow the Exchange to immediately relocate its rules and continue to file other rules that are affected by this relocation in a timely manner. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the operative delay and designates the proposed rule change operative upon filing.³²

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 change 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. Please include File Number SR-BX-2021-012 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.

³⁰ 17 CFR 240.19b-4(f)(6)(iii).

³¹ The current proposed rule change amends or relocates certain rules that were amended within SR-BX-2021-006, and those amendments within SR-BX-2021-006 are effective but not yet operative. See Securities Exchange Act Release No. 91370 (March 19, 2021), 86 FR 15996 (March 25, 2021) (SR-BX-2021-006). The current proposed rule change does not affect the operative date of those amendments within SR-BX-2021-006.

³² 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).

All submissions should refer to File Number SR–BX–2021–012. 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 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. 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–2021–012 and should be submitted on or before June 4, 2021.

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

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34267; File No. 812–15143]

Teachers Insurance and Annuity Association of America, et al.

May 10, 2021.

AGENCY: Securities and Exchange Commission (“Commission”).

ACTION: Notice.

Notice of application for an order approving the substitution of certain securities pursuant to section 26(c) of the Investment Company Act of 1940, as amended (the “Act”).

APPLICANTS: Teachers Insurance and Annuity Association of America (“TIAA”) and TIAA Separate Account VA–3 (the “Separate Account,” and together with TIAA, the “Applicants”).

SUMMARY OF APPLICATION: The Applicants seek an order pursuant to section 26(c) of the Act, approving the proposed substitution (“Substitution”) of Vanguard Institutional Index Fund (“Replacement Fund”) for shares of Vanguard 500 Index Fund (“Original Fund”) held by the Separate Account to fund certain variable annuity insurance contracts (collectively, the “Contracts”).

FILING DATES: The application was filed on July 13, 2020 and amended on November 13, 2020, February 26, 2021, and April 22, 2021.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission’s Secretary at Secretaries-Office@sec.gov and serving applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on June 4, 2021, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission’s Secretary.

ADDRESSES: The Commission: Secretaries-Office@sec.gov. Applicants: Aneal Krishnamurthy, aneal.krishnamurthy@tiaa.org.

FOR FURTHER INFORMATION CONTACT: Harry Eisenstein, Senior Special Counsel, at (202) 551–6764 or Kaitlin C. Bottock, Branch Chief at (202) 551–6825 (Division of Investment Management, Chief Counsel’s Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission’s website by searching for the file number, or for an Applicant using the Company name box, at <http://www.sec.gov/search/search.htm>, or by calling (202) 551–8090.

Applicants’ Representations

1. TIAA is a stock life insurance company organized under the laws of the state of New York. TIAA is the depositor and sponsor of the Separate Account.

2. The Separate Account is registered with the Commission under the Act as a unit investment trust. The Separate Account is divided into subaccounts and each sub account invests in a single underlying mutual fund, such as the Original Fund (all such underlying fund, “investment options”).

3. The Original Fund and the Replacement Fund are each registered under the 1940 Act as an open-end, management investment company and its securities are registered under the 1933 Act. The Original Fund and the Replacement Fund are each advised by The Vanguard Group, Inc., which is not an affiliate of the Applicants.

4. The Contracts are registered under the Securities Act of 1933, as amended (the “1933 Act”). The Contracts allow Contract owners to allocate Contract value to one or more of the investment options available in the Separate Account.

5. As set forth under each Contract, as well as in the prospectus for each Contract, the Companies reserve the right to substitute shares of the underlying fund for shares of another underlying fund.

6. The Applicants propose to replace shares of the Admiral share class of the Original Fund in the Separate Account with shares of the Institutional Plus share class of the Replacement Fund.

7. The Applicants state they are seeking the Substitution because the Original Fund, thought it provides a relatively low “Admiral” share class, does not have an institutional share class which TIAA’s clients are demanding. Additional information for the Existing Fund and the Replacement Fund, including investment objectives, principal investment strategies, principal risks, and performance, as well as the fees and expenses of the Existing Fund and the Replacement Fund, can be found in the application.

8. The Applicants state that the Substitution will be described in a supplement to the prospectuses (“Supplement”) for the Contract filed with the Commission and delivered to all affected Contract owners at least 30 days before the Substitution Date. The Supplement will advise Contract owners that, for a period beginning 30 days before the Substitution Date through at least 30 days following the Substitution Date, Contract owners are permitted to make at least one transfer of Contract value from the subaccount investing in the Existing Fund or the Replacement Fund to any other available investment option offered under their Contracts without the transfer being counted as a transfer for purposes of transfer limitations and fees

³³ 17 CFR 200.30–3(a)(12).