not significant price improvement when the NBBO has a bid/ask differential of $0.01. Accordingly, the Exchange believes the proposed rule change to continue to require price improvement of at least one minimum price increment over the NBBO for Agency orders for less than 50 standard options contracts (or 500 mini-option contracts) when the difference in NBBO is $0.01 will help ensure that these small orders receive at least minimal price improvement, while also providing further price improvement opportunities in smaller-sized orders that have a NBBO spread wider than $0.01, which ultimately benefits investors and retail customers in particular.

Lastly, the Exchange notes the proposed rule change is generally intended to align system functionality currently offered by the Exchange with Cboe EDGX functionality in order to provide a consistent technology offering across the Exchange's affiliated exchanges. A consistent technology offering, in turn, will simplify the technology implementation, changes, and maintenance by TPHs that are also participants on Cboe EDGX. The Exchange believes this consistency will promote a fair and orderly national options market system.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it will apply uniformly to TPHs. Additionally, the Exchange notes that participation in the AIM process is completely voluntary. The Exchange believes all market participants may benefit from any additional liquidity and price improvement in the AIM Auctions that may result from the proposed rule change.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the proposed rule change relates to an Exchange-specific auction mechanism. The Exchange also notes that other options exchanges maintain similar requirements for their respective price improvement auctions.[13]

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

The Exchange neither solicited nor received comments on the proposed rule change.

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

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. 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[14] and Rule 19b–4(f)(6)[15] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will 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–CBOE–2021–024 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–CBOE–2021–024. 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–CBOE–2021–024, and should be submitted on or before May 14, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–08420 Filed 4–22–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91610; File No. SR–BX–2021–013]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 3, Section 10, Order Book Allocation

April 19, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

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[13] *See* Cboe EDGX Rule 21.19(b)(1). *See also, e.g.,* Nasdaq PHLX LLC Options 3, Section 13(a) and Nasdaq ISE LLC Options 3, Section 13(b).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 200.30–3(a)(12).

(''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 7, 2021, 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 Options 3, Section 10, Order Book Allocation.

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 Exchange proposes to amend Options 3, Section 10, Order Book Allocation. Today, pursuant to Options 3, Section 10, BX determines for each option whether to apply the Price/Time [3] or the Size Pro-Rata execution algorithm.[4] This proposal seeks to amend BX's Price/Time execution algorithm.

Price/Time Execution Algorithm

Today, there are 5 priority overlays for the Price/Time execution algorithm: (1) Public Customer Priority; (2) Lead Market Maker (''LMM'') Priority; (3) Entitlement for Orders of 5 contracts or fewer; (4) Directed Market Maker (''DMM'') Priority; and (5) All Other Remaining Interest. The Exchange proposes to amend the LMM Priority overlay with this proposal.

Today, Public Customer orders shall have priority over non-Public Customer orders at the same price.[5] Public Customer Priority is always in effect when the Price/Time execution algorithm is in effect. The LMM participant entitlements shall only be in effect when the Public Customer Priority Overlay is also in effect.[6]

Today, Options 3, Section 10(a)(1)(C)(1)(b) provides, in part, After all Public Customer orders have been fully executed, upon receipt of an order, provided the LMM's bid/offer is at or improves on the Exchange's disseminated price, the LMM will be afforded a participation entitlement. The LMM shall not be entitled to receive a number of contracts that is greater than the displayed size associated with such LMM. LMM participation entitlements will be considered after the Opening Process. The LMM participation entitlement is as follows:

(1) A BX Options LMM shall receive the greater of:

(a) Contracts the LMM would receive if the allocation was based on time priority pursuant to subparagraph (C)(1)(a) above with Public Customer priority;

(b) 50% of remaining interest if there is one or no other Market Maker at that price;

(c) 40% of remaining interest if there is two other Market Makers at that price;

(d) 30% of remaining interest if there are more than two other Market Makers at that price; or

(e) the Directed Market Maker (''DMM'') participation entitlement, if any, set forth in subsection (C)(1)(c) below (if the order is a Directed Order and the LMM is also the DMM).[7]

The Exchange notes that the System does not operate as provided for above today.[8] At this time, the Exchange proposes to amend the LMM Priority to instead provide the following:

. . . The LMM participation entitlement is as follows:

(1) A BX Options LMM shall receive the greater of:

(a) Contracts the LMM would receive if the allocation was based on time priority pursuant to subparagraph (C)(1)(a) above with Public Customer priority;

(b) 50% of remaining interest if there is one other non-Public Customer Order or Market Maker order or quote at that price;

(c) 40% of remaining interest if there are two other non-Public Customer Order or Market Maker orders or quotes at that price;

(d) 30% of remaining interest if there are more than two other non-Public Customer Order or Market Maker orders or quotes at that price; or

(e) the Directed Market Maker (''DMM'') participation entitlement, if any, set forth in subsection (C)(1)(c) below (if the order is a Directed Order and the LMM is also the DMM).

Specifically, the Exchange proposes to determine an LMM's allocation percentage (50%/40%/30%), if applicable, by how many Market Maker orders and quotes and non-Public Customer orders are present at the best price. After all Public Customer orders have been satisfied, the System would allocate to an LMM the applicable percentage based on non-Public Customer orders and Market Maker quotes and orders at the best price at the time the incoming order was received by the System. This proposed change would align the System with the rule. This amendment differs from the manner in which the LMM was allocated prior to the Migration. Prior to the Migration, only other Market Maker orders or quotes present at the same price would have determined the

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

[2] 17 CFR 240.19b–4.

[3] The System shall execute trading interest within the System in price/time priority, meaning it will execute all trading interest at the best price level within the System before executing trading interest at the next best price. Within each price level, if there are two or more quotes or orders at the best price, trading interest will be executed in time priority. *See* Options 3, Section 10(a)(1)(A).

[4] The System shall execute trading interest within the System in price priority, meaning it will execute all trading interest at the best price level within the System before executing trading interest at the next best price. Within each price level, if there are two or more quotes or orders at the best price, trading interest will be executed based on the size of each Participant's quote or order as a percentage of the total size of all orders and quotes resting at that price. If the result is not a whole number, it will be rounded up to the nearest whole number. *See* Options 3, Section 10(a)(1)(B).

[5] If there are two or more Public Customer orders for the same options series at the same price, priority shall be afforded to such Public Customer orders in the sequence in which they are received by the System. *See* Options 3, Section 10(a)(1)(C)(1)(a).

[6] *See* Options 3, Section 10(a)(1)(C)(1)(b).

[7] Rounding will be up to the nearest integer. Notwithstanding the foregoing, when a Directed Order is received and the DMM's bid/offer is at or improves on the NBBO and the LMM is at the same price level and is not the DMM, the LMM participation entitlement set forth in this subsection (C)(1)(b)(1) will not apply with respect to such Directed Order. *See* Options 3, Section 10(a)(1)(C)(1).

[8] As of September 14, 2020 and September 21, 2021 (depending on the options symbol) the LMM allocation operated as described in the proposed rule text. The migration occurred in two stages as symbols were made available on the new BX platform (''Migration'') on the two days noted.

percentage of allocation for an LMM. With this amendment, non-Public Customers orders present at the same price would also be considered in determining the percentage. The proposed amendment is similar to functionality on Nasdaq ISE, LLC (''ISE''), Nasdaq GEMX, LLC (''GEMX''), Nasdaq MRX, LLC (''MRX'') and the Cboe Exchange, Inc (''Cboe'').[9]

The Exchange is not considering Public Customer orders in determining the LMM allocation because, as noted above, Public Customer orders shall have priority over all other interest at the same price and those orders would have been executed prior to any LMM allocation.

With respect to LMMS, unlike other market participants, LMMs have unique obligations [10] to the market which include, among other things, quoting obligations.[11] However, similar to other market participants, an LMM cannot receive any portion of an allocation, regardless of its participation rights, unless it is quoting at the best price at the time the executable order is received by the System. With this proposal LMM's would continue to be entitled to an enhanced allocation, once Public Customer orders have been satisfied, except that allocation would be subject to the amount of other Market Maker interest as well as non-Public Customer orders. The Exchange seeks to consider non-Public Customer orders in its LMM allocation to recognize other market participant interest, except for Public Customer, that was present in the Order Book at the same price at the time of execution. By considering this interest, non-Public Customers allocated in the ''All Other Remaining Interest'' category would be entitled to potentially higher allocations. The Exchange's proposal is intended to encourage LMMs to continue to quote at or improve the NBBO in order to be afforded the highest allocation attainable. The proposal also seeks to recognize other non-Public Customer interest that was at the same price at the time of execution by permitting those market participants to capture a potentially higher allocation. Below are some examples.

LMM Allocation Example—Which Only Considers Market Maker Interest

Assume the option below is open and away markets are wider than BX's interest that arrives in sequence as specified below:

- *LMM Quote:* 1.00 (10) × 2.00 (10)
- Priority Customer Order Firm A to Sell 2 @ 1.95 arrives (BX BBO updates to 1.00 × 1.95)
- Broker Dealer Order to Sell 10 @ 1.95 arrives
- *LMM Updates Quote:* 1.00 (10) × 1.95 (10)
- Priority Customer Order Firm B to buy 12 @ 1.95 arrives

Allocation

In this scenario, Priority Customer Firm A is allocated 2 @ 1.95 and the LMM is allocated remaining 10 @ 1.95.

LMM Allocation Example Which Considers Market Maker and Non-Public Customer Interest

Assume the option below is open and any away markets are wider than BX's interest that arrives in sequence as specified below:

- *LMM Quote:* 1.00 (10) × 2.00 (10)
- Priority Customer Order Firm A to Sell 2 @ 1.95 arrives (BX BBO updates to 1.00 × 1.95)
- Broker Dealer Order to Sell 10 @ 1.95 arrives
- *LMM Updates Quote:* 1.00 (10) × 1.95 (10)
- Priority Customer Order Firm B to buy 12 @ 1.95 arrives

Allocation

In this scenario, Priority Customer Firm A is allocated 2 @ 1.95, the LMM is allocated 5 @ 1.95 (1 other non-public customer = 50%) and the Broker Dealer is allocated 5 @ 1.95.

At this time, a similar proposed change is not being made to BX's Size Pro-Rata execution algorithm, which today only considers Market Maker quotes and orders within the LMM Priority, and has an additional Market Maker Priority allocation within the Size Pro-Rata execution algorithm as compared to the Price/Time execution algorithm. If BX were to consider non-Public Customer Orders in the LMM Priority for BX's Size Pro-Rata execution algorithm, because there is a Market Maker Priority allocation in this model, which does not exist in the Price/Time execution algorithm, the Market Maker Priority would benefit. In the Price/Time execution algorithm, the All Other Remaining Interest allocation benefits because there is no Market Maker Priority in that model. In the Price/Time execution algorithm all Participants are on parity after the LMM Priority. This is not the case with the Size Pro-Rata execution algorithm because Market Makers have priority ahead of All Other Remaining Interest being allocated; there is not the same concept of parity. Therefore, making a similar change to BX's Size Pro-Rata execution algorithm would only serve to advantage other Market Makers at the expense of the LMM. Of note, the Lead Market Maker has higher quoting obligations both intra-day and during the Opening Process as compared to the Market Maker.[12] See below example for illustration.

LMM Size Pro-Rata Allocation Example With Market Maker Overlay

Assume the option below is open and any away markets are wider than BX's interest that arrives in sequence as specified below:

- *LMM Quote:* 1.00 (10) × 2.00 (10)
- Priority Customer Order Firm A to Sell 2 @ 1.95 arrives (BX BBO updates to 1.00 × 1.95)
- Broker Dealer Order to Sell 10 @ 1.95 arrives
- Market Maker B Quotes 1.05 × 1.95 (10)
- Market Maker C Quotes 1.05 × 1.95 (10)
- *LMM Updates Quote:* 1.00 (20) × 1.95 (20)
- Priority Customer Order Firm B to buy 12 @ 1.95 arrives

Allocation

In this scenario, Priority Customer Firm A is allocated 2 contracts @ 1.95, the LMM is allocated 4 contracts @ 1.95 (2 other Market Maker quotes present = 40% LMM allocation), both Market Makers B and C are allocated 3 contracts at @ 1.95, and Broker Dealer is not allocated any contracts. In this example, the Broker Dealer order cannot be allocated. If the Exchange were to consider the Broker Dealer order within the LMM Priority, as proposed for the Price/Time execution algorithm, it would have resulted in a higher allocation for one of the Market Makers, to the detriment of the LMM.

The Exchange notes that all symbols on BX are currently designated as Price/Time. In the event that the Exchange determines to designate options symbols as eligible for Size Pro-Rata allocation, a similar change would be considered by the Exchange and, if the Exchange determines to amend its rule, a proposed rule change would be submitted to the Commission.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to

[9] *See* ISE, GEMX and MRX Options 3, Section 10(c)(1)(B)(i) and Cboe Rule 5.32(a)(2)(B).

[10] *See* Options 2, Section 4.

[11] *See* Options 2, Section 5.

[12] *See* Options 2, Section 5 and Options 3, Section 8, respectively.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange's proposal to amend the Price/Time LMM execution algorithm to consider non-Public Customer orders in addition to Market Maker quotes and orders when allocating a percentage to an LMM is consistent with the Act. The Exchange is not considering Public Customer orders in determining the LMM allocation because, as noted above, Public Customer orders shall have priority over non-Public Customer orders at the same price and those orders would have been executed prior to any LMM allocation. With respect to LMMs, unlike other market participants, LMMs have unique obligations [15] to the market which include, among other things, quoting obligations.[16] However, similar to other market participants, an LMM cannot receive any portion of an allocation, regardless of its participation rights, unless it is quoting at the best price at the time the executable order is received by the System.

With this proposal LMM's would continue to be entitled to an enhanced allocation, once Public Customer orders have been satisfied, except that allocation would be subject to the amount of other Market Maker interest as well as non-Public Customer orders. The Exchange seeks to consider non-Public Customer orders in its LMM allocation to recognize other market participant interest, except for Public Customer, that was present in the Order Book at the same price at the time of execution. By considering this interest, non-Public Customers allocated in the ''All Other Remaining Interest'' category would be entitled to potentially higher allocations. The Exchange believes that this amendment will encourage other non-Public Customers to submit interest into the Order Book, at the same price, in order to receive a potentially higher allocation after all Maker Makers have been allocated.[17] With this proposal LMMs would be encouraged to quote at or improve the NBBO in more cases in order to be afforded the highest allocation attainable. Creating competition which rewards Participants that continuously add liquidity to the Order Book benefits all market participants.

The Exchange notes that at this time a similar proposed change is not being made to the Size Pro-Rata execution algorithm, which today only considers Market Maker quotes and orders within the LMM Enhancement. The Exchange notes that all symbols on BX are currently designated as Price/Time. Unlike the Price/Time execution algorithm, the Size Pro-Rata execution algorithm has 6 overlays: (1) Public Customer Priority; (2) LMM Priority; (3) Entitlement for Orders of 5 contracts or fewer; (4) Directed Market Maker Priority; (5) Market Maker Priority; and (6) All Other Remaining Interest. The Price/Time execution algorithm does not have a Market Maker Priority allocation similar to the Size Pro-Rata execution algorithm. The current Market Maker Priority considers all other Participant orders at the same price and, therefore, rewards Participants at that price in a similar fashion as proposed for the Price/Time execution algorithm, albeit at the Market Maker allocation instead of the LMM allocation. The Exchange believes that the proposal would serve to align the two allocation models and reward Participants at the same price by considering non-Public Customer interest as well as Market Maker interest before non-Public Customers are allocated. An example of how the same scenario presented above for the Price/Time model would allocated within the current Size Pro Rata model is below.

LMM Allocation Example—Size Pro-Rata Overlay Example

Assume the option below is open and away markets are wider than BX's interest that arrives in sequence as specified below:

- *LMM Quote:* 1.00 (10) × 2.00 (10)
- Priority Customer Order Firm A to Sell 2 @ 1.95 arrives (BX BBO updates to 1.00 × 1.95)
- Broker Dealer Order to Sell 10 @ 1.95 arrives
- Market Maker B quote 1.00 (10) × 1.95 (10) arrives
- Market Maker C quote 1.00 (10) × 1.95 (10) arrives
- *LMM Updates Quote:* 1.00 (10) × 1.95 (10)
- Priority Customer Order Firm B to buy 22 @ 1.95 arrives

Allocation

In this scenario:

- Priority Customer Firm A is allocated 2 @ 1.95
- Lead Market Maker is allocated 8 @ 1.95 (40% of remaining 20 contracts after priority customer overlay)
- Market Maker B is allocated 6 @ 1.95 (50% of remaining 12 contracts after LMM overlay)
- Market Maker C is allocated 6 @ 1.95 (50% of remaining 12 contracts after LMM overlay)

In this scenario, the Broker Dealer is not allocated as the Market Maker was allocated the remaining 12 contracts. Even if the LMM overlay considered the Broker Dealer in its allocation, the Broker Dealer will still not be allocated. The LMM would get 6 contracts (30% of 20 contracts), and each of the Market Makers would get 7 contracts, which only reduces the LMM allocation as the LMM was quoting at the same price as the other Market Makers.

The Exchange notes that the System does not operate as provided for above today.[18] This proposed change would align the System with the rule. The proposed amendment is similar to functionality on Nasdaq ISE, LLC (''ISE''), Nasdaq GEMX, LLC (''GEMX''), Nasdaq MRX, LLC (''MRX'') and the Cboe Exchange, Inc (''Cboe'').[19]

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 is not considering Public Customer orders in determining the LMM allocation because, as noted above, Public Customer orders shall have priority over non-Public Customer orders at the same price and those orders would have been executed prior to any LMM allocation.

The Exchange seeks to consider non-Public Customer orders in its LMM allocation to recognize other market participant interest, except for Public Customer, that was present in the Order Book at the same price at the time of execution. By considering this interest, non-Public Customers allocated in the ''All Other Remaining Interest'' category would be entitled to potentially higher allocations. The amendment will encourage other non-Public Customers to submit interest into the Order Book, at the same price, in order to receive a potentially higher allocation after all Maker Makers have been allocated. With this proposal LMMs would be encouraged to quote at or improve the NBBO in more cases in order to be afforded the highest allocation attainable. Creating competition which rewards Participants that continuously

[15] *See* note 10 above.

[16] *See* note 11 above.

[17] There are 5 priority overlays for the Price/Time execution algorithm: (1) Public Customer Priority; (2) LMM Priority; (3) Entitlement for Orders of 5 contracts or fewer; (4) DMM Priority; and (5) All Other Remaining Interest.

[18] *See* note 8 above.

[19] *See* ISE, GEMX and MRX Options 3, Section 10(c)(1)(B)(i) and Cboe Rule 5.32(a)(2)(B).

add liquidity to the Order Book benefits all market participants. The Exchange does not believe its proposal imposes an undue burden on competition because with this change, non-Public Customer orders would be entitled to potentially higher allocations.

With respect to LMMs, unlike other market participants, LMMs have unique obligations [20] to the market which include, among other things, quoting obligations.[21] However, similar to other market participants, an LMM cannot receive any portion of an allocation, regardless of its participation rights, unless it is quoting at the best price at the time the executable order is received by the System. LMM's would continue to be entitled to an enhanced allocation, once Public Customer orders have been satisfied, except that allocation would be subject to the amount of other Market Maker interest as well as non-Public Customer orders.

Today, LMMs may receive higher allocations as only other Market Maker interest is considered when allocating to an LMM. With this proposal, the Exchange would consider not only other Market Maker interest but also non-Public Customer orders. Considering all other interest, except Public Customer interest, that was at the same price at the time of execution results in LMMs potentially receiving lower allocations. LMMs add value through continuous quoting [22] and are subject to additional requirements and obligations [23] unlike other market participants. The Exchange incentivizes LMMs to provide liquidity on BX through enhanced allocations and pricing. The Exchange believes that this proposal will continue to incentivize LMMs to add liquidity while also benefitting all market participants through the quality of order interaction.

Unlike the Price/Time execution algorithm, the Size Pro-Rata execution algorithm has 6 overlays: (1) Public Customer Priority; (2) LMM Priority; (3) Entitlement for Orders of 5 contracts or fewer; (4) DMM Priority; (5) Market Maker Priority; and (6) All Other Remaining Interest. The Price/Time execution algorithm does not have a Market Maker Priority allocation similar to the Size Pro-Rata execution algorithm. The current Market Maker Priority considers all other Participant orders at the same price and, therefore, rewards Participants at that price in a similar fashion as proposed for the Price/Time execution algorithm, albeit at the Market Maker allocation instead of the LMM allocation. The Exchange believes that the proposal does not impose an undue burden on competition as it aligns the two models and reward Participants at the same price by considering non-Public Customer interest as well as Market Maker interest before non-Public Customers are allocated.

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 [24] and Rule 19b–4(f)(6) thereunder.[25]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [26] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [27] 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 requested that the Commission waive the 30-day operative delay. As the proposed rule change raises no novel issues and more accurately describes the System's treatment of LMM allocation, 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 hereby waives the operative delay and designates the proposed rule change operative upon filing.[28]

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–2021–013 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–2021–013. 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

[20] *See* note 10 above.

[21] *See* note 11 above.

[22] *See* Options 2, Section 5.

[23] *See* Options 2, Section 4.

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 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.

[26] 17 CFR 240.19b–4(f)(6).

[27] 17 CFR 240.19b–4(f)(6)(iii).

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

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–2021–013, and should be submitted on or before May 14, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–08421 Filed 4–22–21; 8:45 am]

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SURFACE TRANSPORTATION BOARD

[Docket No. FD 36486 (Sub-No. 1)]

Grainbelt Corporation—Trackage Rights Exemption—BNSF Railway Company

By petition filed on February 26, 2021, Grainbelt Corporation (GNBC) requests that the Board partially revoke the trackage rights exemption granted to it under 49 CFR 1180.2(d)(7) in Docket No. FD 36486, as necessary to permit that trackage rights arrangement to expire twelve months from the effective date of the exemption. GNBC filed its verified notice of exemption in Docket No. FD 36486 on February 26, 2021, and simultaneously filed its petition for partial revocation in this docket. Notice of the exemption was served and published in the **Federal Register** (86 FR 14,176) on March 12, 2021, and the exemption became effective on March 28, 2021.

As explained by GNBC in its verified notice of exemption in Docket No. 36486, GNBC and BNSF Railway Company (BNSF) have entered into an amendment to their existing trackage rights agreement covering trackage between approximately milepost 668.73 in Long, Okla., and approximately milepost 723.30 in Quanah, Tex. (the Line), allowing GNBC to (1) use the Line to access the Plains Cotton Cooperative Association (PCCA) facility near BNSF Chickasha Subdivision milepost 688.6 at Altus, Okla., and (2) to operate additional trains on the Line to accommodate the movement of trains transporting BNSF customers' railcars (loaded or empty) located along the Line, to unit train facilities on the Line.[1] GNBC Verified Notice of Exemption 1–3, *Grainbelt Corp.—Trackage Rts. Exemption—BNSF Ry.,* FD 36486.

GNBC explains that the trackage rights covered by the verified notice in Docket No. FD 36486 are local rather than overhead rights and therefore they do not qualify for the Board's class exemption for temporary trackage rights under 49 CFR 1180.2(d)(8). (GNBC Pet. 4.) GNBC therefore filed its verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7) and, in this sub-docket, filed a petition for partial revocation of the exemption as necessary to permit the amendment to the trackage rights to expire twelve months from the effective date, on March 28, 2022,[2] pursuant to the parties' agreement.[3] (*Id.* at 3.) GNBC argues that the requested relief will promote the rail transportation policy and is limited in scope. (*Id.* at 4–6.) GNBC also asserts that the Board has routinely granted similar petitions to allow trackage rights to expire on a negotiated date. (*Id.* at 4–5.)

On March 4, 2021, GNBC filed in Docket Nos. FD 36486 and FD 36486 (Sub-No. 1) letters of support from PCCA and Cargill Cotton asking that the Board promptly grant GNBC's requests in both dockets.

Discussion and Conclusions

Although GNBC and BNSF have expressly agreed on the duration of the proposed trackage rights, trackage rights approved under the class exemption at § 1180.2(d)(7) typically remain effective indefinitely, regardless of any contract provisions. At times, however, the Board has partially revoked a trackage rights exemption to allow those rights to expire after a limited time rather than lasting in perpetuity. *See, e.g., BNSF Ry.—Trackage Rts. Exemption—Union Pac. R.R.,* FD 36377 (Sub-No. 3) (STB served Feb. 23, 2021); *BNSF Ry.—Trackage Rts. Exemption—Union Pac. R.R.,* FD 36377 (Sub-No. 1) (STB served Mar. 11, 2020); *New Orleans Pub. Belt R.R.—Trackage Rts. Exemption —Ill. Cent. R.R.,* FD 36198 (Sub-No. 1) (STB served June 20, 2018).

Under 49 U.S.C. 10502, the Board may exempt a person, class of persons, or a transaction or service, in whole or in part, when the Board finds that: (1) Continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either the transaction or service is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power.

Granting partial revocation in these circumstances to permit the trackage rights to expire twelve months after the exemption's effective date would eliminate the need for GNBC to file a second pleading seeking discontinuance when the agreement expires, thereby promoting the rail transportation policy at 49 U.S.C. 10101(2), (7), and (15). Moreover, partially revoking the exemption to limit the term of the trackage rights is consistent with the limited scope of the transaction previously exempted.[4] Therefore, the Board will grant the petition and permit the trackage rights exempted in Docket No. FD 36486 to expire twelve months after the effective date of the exemption, on March 28, 2022.

To provide the statutorily mandated protection to any employee adversely affected by the discontinuance of trackage rights, the Board will impose the employee protective conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

This action is categorically excluded from environmental review under 49 CFR 1105.6(c).

It is ordered:

1. The petition for partial revocation of the trackage rights class exemption is granted.

2. As discussed above, the trackage rights in Docket No. FD 36486 are permitted to expire on March 28, 2022, subject to the employee protective conditions set forth in *Oregon Short Line.*

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[29] 17 CFR 200.30–3(a)(12).

[1] GNBC states that it already holds overhead trackage rights granted by BNSF's predecessor between Snyder Yard at milepost 664.00 and Quanah at milepost 723.30, allowing GNBC to interchange at Quanah with BNSF and Union Pacific Railroad Company. GNBC Verified Notice of Exemption 2, *Grainbelt Corp.—Trackage Rts. Exemption—BNSF Ry.,* FD 36486. According to GNBC, these original trackage rights were supplemented in 2009 to allow GNBC to operate between Snyder, Okla., and Altus, with the right to perform limited local service at Long, Okla. *Id.* (citing *Grainbelt Corp.—Trackage Rts. Exemption—BNSF Ry.,* FD 35332 (STB served Dec. 17, 2009)). GNBC states that the trackage rights were further amended in 2013 to allow GNBC to provide local service to a grain shuttle facility in Headrick, Okla., and again in 2014 to allow GNBC to provide local service to a grain shuttle facility in Eldorado, Okla. *Id.* (citing *Grainbelt Corp.—Trackage Rts. Exemption—BNSF Ry.,* FD 35719 (STB served Mar. 15, 2013), and *Grainbelt Corp.—Trackage Rts. Exemption—BNSF Ry.,* FD 35831 (STB served June 12, 2014)).

[2] On March 5, 2021, GNBC filed a supplement to clarify that the ''effective date'' referred to in the petition is the effective date of the exemption, which it identifies as March 29, 2021. (GNBC Suppl. 1.) However, the effective date of the exemption was March 28, 2021 (30 days from the filing of the verified notice); accordingly, the Board will interpret the petition as seeking to allow the trackage rights to expire on March 28, 2022.

[3] GNBC states that the expiration of the trackage rights amendment sought here will not affect the termination date of the underlying trackage rights as supplemented and amended. (GNBC Pet. 3.)

[4] Because the proposed transaction is of limited scope, the Board need not make a market power finding. *See* 49 U.S.C. 10502(a).