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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2021 - * 041

Amendment No. (req. for Amendments *)

Filing by NASDAQ BX, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

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

Amend Options 3, Section 26, Message Traffic Mitigation

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 * Angela Last Name * Dunn

Title * Principal Associate General Counsel

E-mail * angela.dunn@nasdaq.com

Telephone * (215) 496-5692 Fax


Signature

Pursuant to the requirements of the Securities Exchange of 1934, NASDAQ BX, Inc. has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 09/14/2021 (Title *)

By John Zecca EVP and Chief Legal Counsel
(Name *)

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

 Date: 2021.09.14 13:26:01 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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SR-BX-2021-041 19b-4.doc

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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SR-BX-2021-041 Exhibit 1.doc

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 Advanced 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 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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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 Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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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 Sent As Paper Document

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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SR-BX-2021-041 Exhibit 5.doc

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 (“Commission”) a proposal to amend BX Rules at Options 2, Section 10, Directed Market Makers, Options 3, Section 26, Message Traffic Mitigation, and Options 3, Section 27 Limitation of Liability.

The Exchange also proposes to amend Options 10, Doing Business With The Public: Section 5, Branch Offices, Section 6, Opening of Accounts, and Section 9, Discretionary Accounts.

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 senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (the “Board”) on November 5, 2020. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

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

Angela Saccomandi Dunn
Principal Associate General Counsel
Nasdaq, Inc.
(215) 496-5692

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 Options 2, Section 10, Directed Market Makers, Options 3, Section 26, Message Traffic Mitigation, and Options 3, Section 27 Limitation of Liability. The Exchange also proposes to amend Options 10, Doing Business With The Public: Section 5, Branch Offices, Section 6, Opening of Accounts, and Section 9, Discretionary Accounts. Each change shall be described below.

Options 2, Section 10

The Exchange proposes to amend Options 2, Section 10, Directed Market Makers, to more explicitly describe, within subparagraph (a)(1) of that rule, the price at which a Directed Market Maker must be quoting at to execute against the Directed Order. Today, the rule provides, "When the Exchange's disseminated price is the NBBO at the time of receipt of the Directed Order, and the Directed Market Maker is quoting at or improving the Exchange's disseminated price, the Directed Order shall be automatically executed and allocated in accordance with Options 3, Section 10 such that the Directed Market Maker shall receive a Directed Market Maker participation entitlement provided for therein." The Exchange proposes to more explicitly provide, "When the Exchange's disseminated price is the NBBO at the time of receipt of the Directed Order, and the Directed Market Maker is quoting at the better of the internal BBO or the NBBO, the Directed Order shall be automatically executed and allocated in accordance with Options 3, Section 10 such that the Directed Market Maker shall receive a Directed Market Maker participation entitlement provided for therein."

Pursuant to Options 3, Section 4(b)(6), “A quote will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. If, at the time of entry, a quote would cause a locked or crossed market violation or would cause a trade-through violation, it will be re-priced to the current national best offer (for bids) or the current national best bid (for offers) and displayed at one minimum price variance above (for offers) or below (for bids) the national best price.” The re-priced quote may be better than the NBBO, but non-displayed on BX.³ Therefore, the Exchange proposes to make clear that “quoting at the Exchange’s best price” means “quoting at the better of the internal BBO or the NBBO.” The Exchange believes this amendment will bring greater clarity to the Directed Market Maker rule.

Options 3, Section 26

The Exchange proposes to amend Options 3, Section 26, Message Traffic Mitigation, to replace its current rule with a rule identical to Nasdaq Phlx LLC (“Phlx”) Options 3, Section 26.

Currently, BX Options 3, Section 26 provides,

For the purpose of message traffic mitigation, based on BX Options’s traffic with respect to target traffic levels and in accordance with BX Options’s overall objective of reducing both peak and overall traffic:

(a) BX Options will periodically delist options with an average daily volume (“ADV”) of less than 100 contracts. BX will, on a monthly basis, determine the ADV for each series listed on BX Options and delist the current series and not list the next series after expiration where the ADV is

³ Because the Exchange re-prices its quotes to avoid locking or crossing an away market, it may be the case that the Exchange’s non-displayed order book has a quote that is priced better than the NBBO. Therefore, the internal BBO would be the best price available on the Exchange at that time and would enable a Directed Market Maker’s quote to be automatically executed and allocated in accordance with Options 3, Section 10.

less than 100 contracts. For options series traded solely on BX Options, BX will delay delisting until there is no open interest in that options series.

(b) BX Options will implement a process by which an outbound quote message that has not been sent, but is about to be sent, will not be sent if a more current quote message for the same series is available for sending. This replace on queue functionality will be applied to all options series listed on the BX Options Market in real time and will not delay the sending of any messages.

(c) When the size associated with a bid or offer increases by an amount less than or equal to a percentage (never to exceed 20%) of the size associated with the previously disseminated bid or offer, BX Options will not disseminate the new bid or offer.

(d) All message traffic mitigation mechanisms which are used on BX Options will be identical for the OPRA "top of the book" broadcast.

With this proposal, the Exchange proposes to provide:

(a) The Exchange shall disseminate an updated bid and offer price, together with the size associated with such bid and offer, when:

(1) the Exchange's disseminated bid or offer price increases or decreases;

(2) the size associated with the Exchange's disseminated bid or offer decreases; or

(3) the size associated with the Exchange's bid (offer) increases by an amount greater than or equal to a percentage (never to exceed 20%) of the size associated with previously disseminated bid (offer). Such percentage, which shall never exceed 20%, will be determined by the Exchange on an issue-by-issue basis and posted on the Exchange's website.

Current BX Options 3, Section 26(a) describes how BX would periodically delist options with an average daily volume of less than 100 contracts. Further, pursuant to Options 3, Section 26(a), BX would determine the ADV for each series listed on BX and monthly, delist the current series, and not list the next series after expiration where the ADV is less

than 100 contracts.⁴ Options 3, Section 26(a) was intended to mitigate message traffic by requiring the Exchange to delist certain options. While, today, BX does not delist options in accordance with Options 3, Section 26(a), BX does delist options pursuant to Options 4, Section 5.⁵ Specifically, BX periodically delists options across its various listing programs pursuant to Options 4, Section 5 at Supplementary Material .01(d), Supplementary Material .03(d), and Supplementary Material .04(f). In addition, BX recently filed to delist additional intervals across its weekly programs to further reduce message traffic.⁶ The Exchange notes that other Nasdaq affiliated markets also delist according to similar listing rules.⁷ The Exchange's process for delisting options pursuant to Options 4, Section 5 accomplishes the same objectives as originally intended for delisting pursuant to subparagraph (a). The current delisting process utilized by BX ensures mitigation of message traffic. At this time, the Exchange proposes to remove the rule text within Options 3, Section 26(a), as BX does not delist in that manner today, and, instead, BX proposes to continue to delist pursuant to Options 4, Section 5. BX's message traffic mitigation would not be impacted by the removal of Options 3, Section

⁴ For options series traded solely on BX, the Exchange will delay delisting until there is no open interest in that options series. See BX Options 3, Section 26(a).

⁵ BX currently delists options pursuant to Options 4, Section 5 at Supplementary Material .01(d), Supplementary Material .03(d), Supplementary Material .04(f), and Supplementary Material .07.

⁶ See Securities Exchange Act Release No. 91125 (February 12, 2021), 86 FR 10375 (February 19, 2021) (SR-BX-2020-032) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, To Amend Options 4, Section 5, To Limit Short Term Options Series Intervals Between Strikes That Are Available for Quoting and Trading on BX).

⁷ See Phlx, Nasdaq ISE, LLC ("ISE"), Nasdaq GEMX, LLC ("GEMX") and Nasdaq MRX, LLC ("MRX") Options 4, Section 5.

26(a) because, today, BX is not delisting in that manner, rather it delists according to Options 4, Section 5 and will continue to delist in that manner.

Current BX Options 3, Section 26(b) provides that BX will implement a replace on queue functionality whereby an outbound quote message that has not been sent, but is about to be sent, will not be sent if a more current quote message for the same series is available for sending. Further, the rule provides that this replace on queue functionality will be applied to all options series listed on BX in real time and will not delay the sending of any messages. Options 3, Section 26(b) was intended to mitigate message traffic by implementing the replace on queue functionality to reduce the message traffic by disseminating only the most current quote in certain instances where a quote was recently updated. The Exchange did not implement the replace on queue functionality, so it is unavailable and has never been utilized on BX. To date, BX has been mitigating quotations by delisting pursuant to Options 4, Section 5 and mitigating pursuant to Options 3, Section 26(c) as described below in greater detail. BX's quote mitigation process would remain unchanged with this proposal. Also, BX's quote mitigation process is consistent with Phlx's current process for mitigating quotes. The Exchange believes that despite not implementing the replace on queue functionality, it continues to mitigate quotes in a fair and equitable manner consistent with Phlx's process for mitigating quotes. At this time, the Exchange proposes to delete Options 3, Section 26(b). BX's message traffic mitigation would not be impacted by the removal of Options 3, Section 26(b) because, today, BX does not have the functionality described within Options 3, Section 26(b) and would not be changing its quote mitigation practice as a result of deleting the rule text.

Current Options 3, Section 26(c) provides that when the size associated with a bid or offer increases by an amount less than or equal to a percentage (never to exceed 20%) of the size associated with the previously disseminated bid or offer, BX will not disseminate the new bid or offer. Options 3, Section 26(c) was intended to mitigate message traffic by disseminating quotes only when the size associated with a bid or offer increases by an amount greater than or equal to a certain percentage established by the Exchange. Today, the Exchange's System is not disseminating quotes as specified within Options 3, Section 26(c), rather BX is disseminating quotes as specified in Phlx Options 3, Section 26.⁸ The Exchange's current practice is aligned with the original intent. Today, BX mitigates quotes by disseminating them only when the size associated with a bid or offer increases by an amount greater than or equal to a certain percentage established by the Exchange. At this time, the Exchange proposes to update BX Options 3, Section 26 to reflect BX's current practice, which is identical to Phlx's practice, and adopt rule text identical to Phlx Options 3, Section 26. Because BX is not amending its practice with respect to the dissemination of quotes, the Exchange notes that there would be no change in the number of quotes that will be disseminated by the Exchange and the proposed change aligns with the original intent of the rule.

BX's rule also proposes to adopt rule text identical to Phlx to permit it to determine the percentage by which it will disseminate an updated bid or offer price based

⁸ Current Options 3, Section 26(c) refers to an amount "less than or equal to a percentage." The phrase "equal to" is incorrect. Today, when the size associated with a bid or offer increases by an amount greater than a percentage (never to exceed 20%) of the size associated with the previously disseminated bid or offer, BX does not and will not disseminate the new bid or offer. This substantive change also adopts rule text identical to Phlx Options 3, Section 26.

on the size on an issue-by-issue basis.⁹ Phlx Options 3, Section 26(a)(3) permits it to determine the percentage in this matter. BX proposes to amend its rule to provide for the same flexibility as Phlx to permit it to determine the way it will mitigate quotes among options. Also, with this proposed change, BX would commence posting the percentage specified within proposed Options 3, Section 26(a)(3) on the Exchange's website. The Exchange believes that posting the percentage will provide transparency to Participants.

Finally, Options 3, Section 26(d) provides that all message traffic mitigation mechanisms which are used on BX will be identical for the OPRA "top of the book" broadcast. The text of Options 3, Section 26(d) is unnecessary as OPRA publishes messages disseminated by each options exchange in a similar fashion. Further, BX Options 5, Section 1(17) describes the type of information disseminated by OPRA.

Today, and over the years, Phlx's number of listed underlyings exceeds the underlyings listed on BX and, therefore, utilizing a message traffic protocol identical to Phlx Options 3, Section 26(c) would permit BX to sufficiently mitigate quotes.

Options 3, Section 27

The Exchange proposes to update a citation to Rule 4626 within Options 3, Section 27, Limitation of Liability. The Exchange relocated Rule 4626 to Equity 2, Section 17 in a prior rule change.¹⁰ The Exchange proposes to update the erroneous

⁹ BX's current rule is silent regarding the Exchange's ability to set the percentage on an issue-by-issue basis and post the percentage to its website. Today, Phlx and BX both specify the percentage on the Exchange's website. Today, the Exchange has set the same percentage for all options listed on BX.

¹⁰ See Securities Exchange Act Release No. 91830 (May 10, 2021), 86 FR 26567 (May 14, 2021) (SR-BX-2021-012) (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).

citation. The proposed amendment is non-substantive.

Options 10, Sections 5, 6 and 9

In 2018, BX's registration requirements¹¹ were updated to mirror changes made by FINRA to its qualification rules.¹² At that time, BX Options 10, Sections 5, 6 and 9 should have been amended to update certain terminology to align with General 4 terminology.¹³ At this time, the Exchange proposes to update the terminology within

¹¹ See Securities Exchange Act No. 84353 (October 3, 2018), 83 FR 50999 (October 10, 2018) (SR-BX-2018-047) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend, Reorganize and Enhance Membership, Registration and Qualification Rules, and To Make Conforming Changes to Certain Other Rules).

¹² See Securities Exchange Act Release No. 81098 (July 7, 2017), 82 FR 32419 (July 13, 2017) (SR-FINRA-2017-007) (Order Approving Proposed Rule Change To Adopt Consolidated Registration Rules, Restructure the Representative-Level Qualification Examination Program, Allow Permissive Registration, Establish Exam Waiver Process for Persons Working for Financial Services Affiliate of Member, and Amend the Continuing Education Requirements).

¹³ Specifically, in 2018, BX amended then Chapter II, Section (2)(g) as Rule 1220(a)(8) (current General 4, Section 1220) to rename the registration category from "Registered Options and Security Futures Principal" to "Registered Options Principal." Further, Rule 1220(b), Supplementary Material .02 was amended to provide that each person who is registered with the Exchange as a Registered Options Principal (or as a General Securities Representative, Options Representative, or General Securities Sales Supervisor) shall be eligible to engage in security futures activities as a principal, as applicable, provided that such individual completes a Firm Element program as set forth in proposed Rule 1240 that addresses security futures products before such person engages in security futures activities. All references to a revised examination that includes security futures products were removed and FINRA shortened references to "Registered Options and Security Futures Principal" in its rulebook to "Registered Options Principal". See Securities Exchange Act Release No. 58932 (November 12, 2008), 73 FR 69696 (November 19, 2008) (SR-FINRA-2008-032).

Rule 1220(b), Supplementary Material .02 was amended to provide that each person who is registered with the Exchange as a Registered Options Principal (or as a General Securities Representative, Options Representative, or General Securities Sales Supervisor) shall be eligible to engage in security futures

Options 10, Sections 5, 6 and 9 so that it is consistent with General 4 terminology. The proposed amendments are non-substantive. Specifically, with respect to Options 10, Section 5, Branch Offices, the manager must be registered as an Options Principal or General Securities Sales Supervisor in accordance with Nasdaq General 4, Section 1220(a)(8)¹⁴ and Supplementary Material .04 of that rule.¹⁵ The Exchange proposes to replace the qualification “Registered Options and Security Futures Principal” with “Registered Options Principal or General Securities Sales Supervisor.” With respect to Options 10, Section 6, Opening of Accounts, and Options 10, Section 9, Discretionary Accounts, the Exchange proposes to replace the qualification “Registered Options and Security Futures Principal” with “Registered Options Principal” to align with the current

activities as a principal, as applicable, provided that such individual completes a Firm Element program as set forth in proposed Rule 1240 that addresses security futures products before such person engages in security futures activities.

¹⁴ General 4, Rule 1220(a)(8) provides, in part, “Each member that is engaged in transactions in options with the public shall have at least one Registered Options Principal. In addition, each principal as defined in paragraph (a)(1) of this Rule who is responsible for supervising a member's options sales practices with the public shall be required to register with the Exchange as a Registered Options Principal, subject to the following exception. If a principal's options activities are limited solely to those activities that may be supervised by a General Securities Sales Supervisor, then such person may register as a General Securities Sales Supervisor pursuant to paragraph (a)(10) of this Rule in lieu of registering as a Registered Options Principal.”

¹⁵ Supplementary Material .04 to General 4, Rule 1220 provides, in part, “Any person required to be registered as a principal who supervises sales activities in corporate, municipal and option securities, investment company products, variable contracts, direct participation program securities and security futures may be registered solely as a General Securities Sales Supervisor. In addition to branch office managers, other persons such as regional and national sales managers may also be registered solely as General Securities Sales Supervisors as long as they supervise only sales activities.” BX General 4 is incorporated by reference to Nasdaq General 4.

terminology with General 4, Rule 1220.¹⁶

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁸ in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

Options 2, Section 10

The Exchange's proposal to amend Options 2, Section 10, Directed Market Makers, to more explicitly describe, within subparagraph (a)(1) of that rule, the price at which a Directed Market Maker must be quoting at to execute against the Directed Order is consistent with the Act. Pursuant to Options 3, Section 4(b)(6), "A quote will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. If, at the time of entry, a quote would cause a locked or crossed market violation or would cause a trade-through violation, it will be re-priced to the current national best offer (for bids) or the current national best bid (for offers) and displayed at one minimum price variance above (for offers) or below (for bids) the national best price." The re-priced quote may be better than the NBBO but non-displayed on BX.¹⁹ Making clear that "quoting at the Exchange's best price" means

¹⁶ The Exchange also proposes to renumber a paragraph within Options 10, Section 9(a) from "2" to "3" as there are currently two sections numbered as "2."

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ See supra note 3.

“quoting at the better of the internal BBO or the NBBO” will bring greater clarity to the Directed Market Maker rule.

Options 3, Section 26

The Exchange’s proposal to amend Options 3, Section 26, Message Traffic Mitigation, to replace its current rule with a rule identical to Phlx Options 3, Section 26 is consistent with the Act. The proposal will harmonize BX’s Options 3, Section 26 with Phlx’s Options 3, Section 26 without an impact to the way BX mitigates message traffic today.

Removing current Options 3, Section 26(a), which describes how BX would periodically delist options with an average daily volume of less than 100 contracts and determine the ADV for each series listed on BX and monthly, delist the current series and not list the next series after expiration where the ADV is less than 100 contracts, is consistent with the Act. Options 3, Section 26(a) was intended to mitigate message traffic by requiring the Exchange to delist certain options. While, today, BX does not delist options in accordance with Options 3, Section 26(a), BX does delist options pursuant to Options 4, Section 5.²⁰ In addition, BX recently filed to delist additional intervals across its weekly programs to further reduce message traffic.²¹ The Exchange

²⁰ BX currently delists options pursuant to Options 4, Section 5 at Supplementary Material .01(d), Supplementary Material .03(d), Supplementary Material .04(f), and Supplementary Material .07.

²¹ See Securities Exchange Act Release No. 91125 (February 12, 2021), 86 FR 10375 (February 19, 2021) (SR-BX-2020-032) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, To Amend Options 4, Section 5, To Limit Short Term Options Series Intervals Between Strikes That Are Available for Quoting and Trading on BX).

notes that other Nasdaq affiliated markets also delist according to similar rules.²² The Exchange's process for delisting options pursuant to Options 4, Section 5 protects investors and the public interest because it accomplishes the same objectives as originally intended for delisting pursuant to subparagraph (a) and ensures mitigation of message traffic by delisting according to Options 4, Section 5.

Removing current BX Options 3, Section 26(b), which describes how BX will implement a replace on queue functionality whereby an outbound quote message that has not been sent, but is about to be sent, will not be sent if a more current quote message for the same series is available for sending is consistent with the Act. Options 3, Section 26(b) was intended to mitigate message traffic by implementing the replace on queue functionality to reduce the message traffic by disseminating only the most current quote in certain instances where a quote was recently updated. While the Exchange did not implement the replace on queue functionality, BX has been mitigating quotations by delisting pursuant to Options 4, Section 5 and mitigating pursuant to Options 3, Section 26(c). The proposal would protect investors and the public interest because BX's quote mitigation process would remain unchanged with this proposal. Also, BX's quote mitigation process is consistent with Phlx's current process for mitigating quotes. The Exchange believes that despite not implementing the replace on queue functionality, it continues to mitigate quotes in a fair and equitable manner consistent with Phlx's process for mitigating quotes.

Amending current Options 3, Section 26(c), as described above, is consistent with the Act because Options 3, Section 26(c) was intended to mitigate message traffic by

²² See Phlx, Nasdaq ISE, LLC ("ISE"), Nasdaq GEMX, LLC ("GEMX") and Nasdaq MRX, LLC ("MRX") Options 4, Section 5.

disseminating quotes only when the size associated with a bid or offer increases by an amount greater than or equal to a certain percentage established by the Exchange. While, today, the Exchange's System is not disseminating quotes as specified within Options 3, Section 26(c), it is disseminating quotes as specified in Phlx Options 3, Section 26. The Exchange's current practice is aligned with the original intent. Today, BX mitigates quotes by disseminating them only when the size associated with a bid or offer increases by an amount greater than or equal to a certain percentage established by the Exchange. Because BX is not amending its practice with respect to the dissemination of quotes, the Exchange notes that there would be no change in the number of quotes that will be disseminated by the Exchange and the proposed change aligns with the original intent of the rule.

BX's proposal to amend its rule text identical to Phlx to permit it to determine the percentage by which it will disseminate an updated bid or offer price based on the size on an issue-by-issue basis is consistent with the Act. This proposal would provide BX the same flexibility as Phlx to permit it to determine the way it will mitigate quotes among options. BX's proposal to commence posting the percentage specified within proposed Options 3, Section 26(a)(3) on the Exchange's website will continue to provide transparency to Participants.

Finally, removing current Options 3, Section 26(d) which provides that all message traffic mitigation mechanisms which are used on BX will be identical for the OPRA "top of the book" broadcast, is consistent with the Act. The Exchange will mitigate quotes pursuant to its rules for all quotes on the Exchange, including those that constitute the Exchange's best bid and offer. The text of Options 3, Section 26(d) is

unnecessary as OPRA publishes messages disseminated by each options exchange in a similar fashion. Further, BX Options 5, Section 1(17) describes the type of information disseminated by OPRA.

Today, and over the years, Phlx's number of listed underlyings exceeds the underlyings listed on BX and, therefore, utilizing a message traffic protocol identical to Phlx Options 3, Section 26(c) would permit BX to sufficiently mitigate quotes.

Options 3, Section 27

The Exchange's proposal to update a citation to Rule 4626 within Options 3, Section 27, Limitation of Liability, from Rule 4626 to Equity 2, Section 17 will bring greater clarity to the rule and is therefore consistent with the Act. The proposed amendment is non-substantive.

Options 10, Sections 5, 6, and 9

The Exchange's proposal to amend Options 10, Sections 5, 6, and 9 to amend the certain terminology in those rules to align with General 4 terminology is consistent with the Act. These non-substantive amendments will bring greater clarity to the current registration requirements.

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.

Options 2, Section 10

The Exchange's proposal to amend Options 2, Section 10, Directed Market Makers, to more explicitly describe, within subparagraph (a)(2) of that rule, the price at

which a Directed Market Maker must be quoting at to execute against the Directed Order does not impose an undue burden on competition. Every Directed Market Maker must be quoting at the better of the internal BBO or the NBBO to execute against a Directed Order. This amendment will bring greater clarity to the Directed Market Maker rule.

Options 3, Section 26

The Exchange's proposal to amend Options 3, Section 26, Message Traffic Mitigation, to replace its current rule with a rule identical to Phlx Options 3, Section 26 does not create an undue burden on competition. Specifically, removing the rule text within Options 3, Section 26(a), (b) and (d) and amending the rule text within (c) aligns with BX's current practice for mitigating message traffic. BX's current practice will remain unchanged with this proposal. BX would continue to utilize its current quote mitigation strategies without amending the quantity of messages disseminated.

Amending BX's rule text identical to Phlx to permit it to determine the percentage by which it will disseminate an updated bid or offer price based on the size on an issue-by-issue basis does not impose an undue burden on competition, rather the amendment would provide BX the same flexibility as Phlx to permit it to determine the way it will mitigate quotes among options. Posting the percentage specified within proposed Options 3, Section 26(a)(3) on the Exchange's website, does not impose an undue burden on competition, rather the proposal will continue to provide transparency to Participants.

Options 3, Section 27

The Exchange's proposal to update a citation to Rule 4626 within Options 3, Section 27, Limitation of Liability, from Rule 4626 to Equity 2, Section 17 does not impose an undue burden on competition. The proposal will bring greater clarity to the

rule. This amendment is non-substantive.

Options 10, Sections 5, 6 and 9

The Exchange's proposal to amend Options 10, Sections 5, 6, and 9 to conform the terminology to General 4 terminology does not impose an undue burden on competition, rather it will bring greater clarity to the current registration requirements. These amendments are non-substantive.

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)²³ of the Act and Rule 19b-4(f)(6) thereunder²⁴ 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.

Amending Options 2, Section 10, Directed Market Makers, does not significantly affect the protection of investors or the public interest as it more explicitly describes,

²³ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁴ 17 CFR 240.19b-4(f)(6).

within subparagraph (a)(1) of that rule, the price at which a Directed Market Maker must be quoting at to execute against the Directed Order. Also, the proposal does not impose any significant burden on competition as all Market Makers may elect to become a Directed Market Maker and may receive the allocation if they quote at the best price and receive a directed order pursuant to Options 2, Section 10. Amending Options 3, Section 26 does not significantly affect the protection of investors or the public interest as the Exchange will continue to mitigate quotations in the same fashion as it does today. Today, BX does not delist options in accordance with Options 3, Section 26(a), rather, BX delists options pursuant to Options 4, Section 5, similar to other Nasdaq affiliated markets who also delist according to similar listing rules.²⁵ Removing Options 3, Section 26(b) does not significantly affect the protection of investors or the public interest as this functionality was never implemented on BX and is therefore unavailable today. Today, BX mitigates messages in the same manner as Phlx Options 3, Section 26. Amending Options 3, Section 26(c) to align with rule text within Phlx would conform BX's rule with its current practice. Adopting the ability to determine quote mitigation on an issue-by-issue basis will align BX's ability to manage message traffic with that of Phlx. Phlx Options 3, Section 26(a)(3) permits Phlx to manage quote message on an issue-by-issue basis. Finally, posting the percentage specified within proposed Options 3, Section 26(a)(3) on the Exchange's website will continue to provide transparency to Participants. Amending Options 3, Section 26 does not impose any significant burden on competition as BX's current practice will remain unchanged with this proposal. BX would continue to utilize its current quote mitigation strategies without amending the quantity of

²⁵ See supra note 7.

messages disseminated. The Exchange's proposal to update a citation to Rule 4626 within Options 3, Section 27, Limitation of Liability, from Rule 4626 to Equity 2, Section 17 and amend terminology within Options 10, Sections 5, 6, and 9 to conform with General 4 terminology will bring greater clarity to the current rules. These amendments are non-substantive.

Furthermore, Rule 19b-4(f)(6)(iii)²⁶ 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 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.

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 requests that the Commission waive the operative delay to permit the Exchange to immediately amend Options 3, Section 26 to adopt a rule identical to Phlx which reflects BXs current quote mitigation practice. Today, Options 3, Section 26 does not correctly explain the way BX mitigates messages.

²⁶ 17 CFR 240.19b-4(f)(6)(iii).

This proposal will provide clarity as to how BX mitigates messages today. Further, the Exchange would have the ability, similar to Phlx Options 3, Section 26(a)(3) to manage quote messages on an issue-by-issue basis. Also, posting the percentage by which the Exchange would disseminate bids and offers referenced within Options 3, Section 26(a)(3) on the Exchange's website will continue to provide transparency to Participants. Amending Options 2, Section 10 to better describe the price at which a Directed Market Maker must be quoting at to execute against the Directed Order will bring greater transparency to the rule. Updating citations and terminology within Options 3, Section 27, and Options 10, Section 5, 6 and 9 will clarify the Rulebook.

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

The amendments to BX Options 3, Section 26 are identical to Phlx Options 3, Section 26.

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-2021-041)

September __, 2021

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Options 3, Section 26, Message Traffic Mitigation

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 September 14, 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, 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 amend BX Rules at Options 2, Section 10, Directed Market Makers, Options 3, Section 26, Message Traffic Mitigation, and Options 3, Section 27 Limitation of Liability.

The Exchange also proposes to amend Options 10, Doing Business With The Public: Section 5, Branch Offices, Section 6, Opening of Accounts, and Section 9, Discretionary Accounts.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 2, Section 10, Directed Market Makers, Options 3, Section 26, Message Traffic Mitigation, and Options 3, Section 27 Limitation of Liability. The Exchange also proposes to amend Options 10, Doing Business With The Public: Section 5, Branch Offices, Section 6, Opening of Accounts, and Section 9, Discretionary Accounts. Each change shall be described below.

Options 2, Section 10

The Exchange proposes to amend Options 2, Section 10, Directed Market Makers, to more explicitly describe, within subparagraph (a)(1) of that rule, the price at which a Directed Market Maker must be quoting at to execute against the Directed Order. Today, the rule provides, "When the Exchange's disseminated price is the NBBO at the time of receipt of the Directed Order, and the Directed Market Maker is quoting at or improving the Exchange's disseminated price, the Directed Order shall be automatically executed

and allocated in accordance with Options 3, Section 10 such that the Directed Market Maker shall receive a Directed Market Maker participation entitlement provided for therein.” The Exchange proposes to more explicitly provide, “When the Exchange's disseminated price is the NBBO at the time of receipt of the Directed Order, and the Directed Market Maker is quoting at the better of the internal BBO or the NBBO, the Directed Order shall be automatically executed and allocated in accordance with Options 3, Section 10 such that the Directed Market Maker shall receive a Directed Market Maker participation entitlement provided for therein.”

Pursuant to Options 3, Section 4(b)(6), “A quote will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. If, at the time of entry, a quote would cause a locked or crossed market violation or would cause a trade-through violation, it will be re-priced to the current national best offer (for bids) or the current national best bid (for offers) and displayed at one minimum price variance above (for offers) or below (for bids) the national best price.” The re-priced quote may be better than the NBBO, but non-displayed on BX.³ Therefore, the Exchange proposes to make clear that “quoting at the Exchange’s best price” means “quoting at the better of the internal BBO or the NBBO.” The Exchange believes this amendment will bring greater clarity to the Directed Market Maker rule.

Options 3, Section 26

The Exchange proposes to amend Options 3, Section 26, Message Traffic

³ Because the Exchange re-prices its quotes to avoid locking or crossing an away market, it may be the case that the Exchange’s non-displayed order book has a quote that is priced better than the NBBO. Therefore, the internal BBO would be the best price available on the Exchange at that time and would enable a Directed Market Maker’s quote to be automatically executed and allocated in accordance with Options 3, Section 10.

Mitigation, to replace its current rule with a rule identical to Nasdaq Phlx LLC (“Phlx”) Options 3, Section 26.

Currently, BX Options 3, Section 26 provides,

For the purpose of message traffic mitigation, based on BX Options’s traffic with respect to target traffic levels and in accordance with BX Options’s overall objective of reducing both peak and overall traffic:

(a) BX Options will periodically delist options with an average daily volume ("ADV") of less than 100 contracts. BX will, on a monthly basis, determine the ADV for each series listed on BX Options and delist the current series and not list the next series after expiration where the ADV is less than 100 contracts. For options series traded solely on BX Options, BX will delay delisting until there is no open interest in that options series.

(b) BX Options will implement a process by which an outbound quote message that has not been sent, but is about to be sent, will not be sent if a more current quote message for the same series is available for sending. This replace on queue functionality will be applied to all options series listed on the BX Options Market in real time and will not delay the sending of any messages.

(c) When the size associated with a bid or offer increases by an amount less than or equal to a percentage (never to exceed 20%) of the size associated with the previously disseminated bid or offer, BX Options will not disseminate the new bid or offer.

(d) All message traffic mitigation mechanisms which are used on BX Options will be identical for the OPRA "top of the book" broadcast.

With this proposal, the Exchange proposes to provide:

(a) The Exchange shall disseminate an updated bid and offer price, together with the size associated with such bid and offer, when:

(1) the Exchange's disseminated bid or offer price increases or decreases;

(2) the size associated with the Exchange's disseminated bid or offer decreases; or

(3) the size associated with the Exchange's bid (offer) increases by an amount greater than or equal to a percentage (never to exceed 20%) of the size associated with previously disseminated bid (offer). Such percentage, which shall never exceed 20%, will be determined by the Exchange on an issue-by-issue basis and posted on the Exchange's website.

Current BX Options 3, Section 26(a) describes how BX would periodically delist options with an average daily volume of less than 100 contracts. Further, pursuant to Options 3, Section 26(a), BX would determine the ADV for each series listed on BX and monthly, delist the current series, and not list the next series after expiration where the ADV is less

than 100 contracts.⁴ Options 3, Section 26(a) was intended to mitigate message traffic by requiring the Exchange to delist certain options. While, today, BX does not delist options in accordance with Options 3, Section 26(a), BX does delist options pursuant to Options 4, Section 5.⁵ Specifically, BX periodically delists options across its various listing programs pursuant to Options 4, Section 5 at Supplementary Material .01(d), Supplementary Material .03(d), and Supplementary Material .04(f). In addition, BX recently filed to delist additional intervals across its weekly programs to further reduce message traffic.⁶ The Exchange notes that other Nasdaq affiliated markets also delist according to similar listing rules.⁷ The Exchange's process for delisting options pursuant to Options 4, Section 5 accomplishes the same objectives as originally intended for delisting pursuant to subparagraph (a). The current delisting process utilized by BX ensures mitigation of message traffic. At this time, the Exchange proposes to remove the rule text within Options 3, Section 26(a), as BX does not delist in that manner today, and, instead, BX proposes to continue to delist pursuant to Options 4, Section 5. BX's message traffic mitigation would not be impacted by the removal of Options 3, Section

⁴ For options series traded solely on BX, the Exchange will delay delisting until there is no open interest in that options series. See BX Options 3, Section 26(a).

⁵ BX currently delists options pursuant to Options 4, Section 5 at Supplementary Material .01(d), Supplementary Material .03(d), Supplementary Material .04(f), and Supplementary Material .07.

⁶ See Securities Exchange Act Release No. 91125 (February 12, 2021), 86 FR 10375 (February 19, 2021) (SR-BX-2020-032) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, To Amend Options 4, Section 5, To Limit Short Term Options Series Intervals Between Strikes That Are Available for Quoting and Trading on BX).

⁷ See Phlx, Nasdaq ISE, LLC ("ISE"), Nasdaq GEMX, LLC ("GEMX") and Nasdaq MRX, LLC ("MRX") Options 4, Section 5.

26(a) because, today, BX is not delisting in that manner, rather it delists according to Options 4, Section 5 and will continue to delist in that manner.

Current BX Options 3, Section 26(b) provides that BX will implement a replace on queue functionality whereby an outbound quote message that has not been sent, but is about to be sent, will not be sent if a more current quote message for the same series is available for sending. Further, the rule provides that this replace on queue functionality will be applied to all options series listed on BX in real time and will not delay the sending of any messages. Options 3, Section 26(b) was intended to mitigate message traffic by implementing the replace on queue functionality to reduce the message traffic by disseminating only the most current quote in certain instances where a quote was recently updated. The Exchange did not implement the replace on queue functionality, so it is unavailable and has never been utilized on BX. To date, BX has been mitigating quotations by delisting pursuant to Options 4, Section 5 and mitigating pursuant to Options 3, Section 26(c) as described below in greater detail. BX's quote mitigation process would remain unchanged with this proposal. Also, BX's quote mitigation process is consistent with Phlx's current process for mitigating quotes. The Exchange believes that despite not implementing the replace on queue functionality, it continues to mitigate quotes in a fair and equitable manner consistent with Phlx's process for mitigating quotes. At this time, the Exchange proposes to delete Options 3, Section 26(b). BX's message traffic mitigation would not be impacted by the removal of Options 3, Section 26(b) because, today, BX does not have the functionality described within Options 3, Section 26(b) and would not be changing its quote mitigation practice as a result of deleting the rule text.

Current Options 3, Section 26(c) provides that when the size associated with a bid or offer increases by an amount less than or equal to a percentage (never to exceed 20%) of the size associated with the previously disseminated bid or offer, BX will not disseminate the new bid or offer. Options 3, Section 26(c) was intended to mitigate message traffic by disseminating quotes only when the size associated with a bid or offer increases by an amount greater than or equal to a certain percentage established by the Exchange. Today, the Exchange's System is not disseminating quotes as specified within Options 3, Section 26(c), rather BX is disseminating quotes as specified in Phlx Options 3, Section 26.⁸ The Exchange's current practice is aligned with the original intent. Today, BX mitigates quotes by disseminating them only when the size associated with a bid or offer increases by an amount greater than or equal to a certain percentage established by the Exchange. At this time, the Exchange proposes to update BX Options 3, Section 26 to reflect BX's current practice, which is identical to Phlx's practice, and adopt rule text identical to Phlx Options 3, Section 26. Because BX is not amending its practice with respect to the dissemination of quotes, the Exchange notes that there would be no change in the number of quotes that will be disseminated by the Exchange and the proposed change aligns with the original intent of the rule.

BX's rule also proposes to adopt rule text identical to Phlx to permit it to determine the percentage by which it will disseminate an updated bid or offer price based

⁸ Current Options 3, Section 26(c) refers to an amount "less than or equal to a percentage." The phrase "equal to" is incorrect. Today, when the size associated with a bid or offer increases by an amount greater than a percentage (never to exceed 20%) of the size associated with the previously disseminated bid or offer, BX does not and will not disseminate the new bid or offer. This substantive change also adopts rule text identical to Phlx Options 3, Section 26.

on the size on an issue-by-issue basis.⁹ Phlx Options 3, Section 26(a)(3) permits it to determine the percentage in this matter. BX proposes to amend its rule to provide for the same flexibility as Phlx to permit it to determine the way it will mitigate quotes among options. Also, with this proposed change, BX would commence posting the percentage specified within proposed Options 3, Section 26(a)(3) on the Exchange's website. The Exchange believes that posting the percentage will provide transparency to Participants.

Finally, Options 3, Section 26(d) provides that all message traffic mitigation mechanisms which are used on BX will be identical for the OPRA "top of the book" broadcast. The text of Options 3, Section 26(d) is unnecessary as OPRA publishes messages disseminated by each options exchange in a similar fashion. Further, BX Options 5, Section 1(17) describes the type of information disseminated by OPRA.

Today, and over the years, Phlx's number of listed underlyings exceeds the underlyings listed on BX and, therefore, utilizing a message traffic protocol identical to Phlx Options 3, Section 26(c) would permit BX to sufficiently mitigate quotes.

Options 3, Section 27

The Exchange proposes to update a citation to Rule 4626 within Options 3, Section 27, Limitation of Liability. The Exchange relocated Rule 4626 to Equity 2, Section 17 in a prior rule change.¹⁰ The Exchange proposes to update the erroneous

⁹ BX's current rule is silent regarding the Exchange's ability to set the percentage on an issue-by-issue basis and post the percentage to its website. Today, Phlx and BX both specify the percentage on the Exchange's website. Today, the Exchange has set the same percentage for all options listed on BX.

¹⁰ See Securities Exchange Act Release No. 91830 (May 10, 2021), 86 FR 26567 (May 14, 2021) (SR-BX-2021-012) (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).

citation. The proposed amendment is non-substantive.

Options 10, Sections 5, 6 and 9

In 2018, BX's registration requirements¹¹ were updated to mirror changes made by FINRA to its qualification rules.¹² At that time, BX Options 10, Sections 5, 6 and 9 should have been amended to update certain terminology to align with General 4 terminology.¹³ At this time, the Exchange proposes to update the terminology within

¹¹ See Securities Exchange Act No. 84353 (October 3, 2018), 83 FR 50999 (October 10, 2018) (SR-BX-2018-047) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend, Reorganize and Enhance Membership, Registration and Qualification Rules, and To Make Conforming Changes to Certain Other Rules).

¹² See Securities Exchange Act Release No. 81098 (July 7, 2017), 82 FR 32419 (July 13, 2017) (SR-FINRA-2017-007) (Order Approving Proposed Rule Change To Adopt Consolidated Registration Rules, Restructure the Representative-Level Qualification Examination Program, Allow Permissive Registration, Establish Exam Waiver Process for Persons Working for Financial Services Affiliate of Member, and Amend the Continuing Education Requirements).

¹³ Specifically, in 2018, BX amended then Chapter II, Section (2)(g) as Rule 1220(a)(8) (current General 4, Section 1220) to rename the registration category from "Registered Options and Security Futures Principal" to "Registered Options Principal." Further, Rule 1220(b), Supplementary Material .02 was amended to provide that each person who is registered with the Exchange as a Registered Options Principal (or as a General Securities Representative, Options Representative, or General Securities Sales Supervisor) shall be eligible to engage in security futures activities as a principal, as applicable, provided that such individual completes a Firm Element program as set forth in proposed Rule 1240 that addresses security futures products before such person engages in security futures activities. All references to a revised examination that includes security futures products were removed and FINRA shortened references to "Registered Options and Security Futures Principal" in its rulebook to "Registered Options Principal". See Securities Exchange Act Release No. 58932 (November 12, 2008), 73 FR 69696 (November 19, 2008) (SR-FINRA-2008-032).

Rule 1220(b), Supplementary Material .02 was amended to provide that each person who is registered with the Exchange as a Registered Options Principal (or as a General Securities Representative, Options Representative, or General Securities Sales Supervisor) shall be eligible to engage in security futures

Options 10, Sections 5, 6 and 9 so that it is consistent with General 4 terminology. The proposed amendments are non-substantive. Specifically, with respect to Options 10, Section 5, Branch Offices, the manager must be registered as an Options Principal or General Securities Sales Supervisor in accordance with Nasdaq General 4, Section 1220(a)(8)¹⁴ and Supplementary Material .04 of that rule.¹⁵ The Exchange proposes to replace the qualification “Registered Options and Security Futures Principal” with “Registered Options Principal or General Securities Sales Supervisor.” With respect to Options 10, Section 6, Opening of Accounts, and Options 10, Section 9, Discretionary Accounts, the Exchange proposes to replace the qualification “Registered Options and

activities as a principal, as applicable, provided that such individual completes a Firm Element program as set forth in proposed Rule 1240 that addresses security futures products before such person engages in security futures activities.

¹⁴ General 4, Rule 1220(a)(8) provides, in part, “Each member that is engaged in transactions in options with the public shall have at least one Registered Options Principal. In addition, each principal as defined in paragraph (a)(1) of this Rule who is responsible for supervising a member's options sales practices with the public shall be required to register with the Exchange as a Registered Options Principal, subject to the following exception. If a principal's options activities are limited solely to those activities that may be supervised by a General Securities Sales Supervisor, then such person may register as a General Securities Sales Supervisor pursuant to paragraph (a)(10) of this Rule in lieu of registering as a Registered Options Principal.”

¹⁵ Supplementary Material .04 to General 4, Rule 1220 provides, in part, “Any person required to be registered as a principal who supervises sales activities in corporate, municipal and option securities, investment company products, variable contracts, direct participation program securities and security futures may be registered solely as a General Securities Sales Supervisor. In addition to branch office managers, other persons such as regional and national sales managers may also be registered solely as General Securities Sales Supervisors as long as they supervise only sales activities.” BX General 4 is incorporated by reference to Nasdaq General 4.

Security Futures Principal” with “Registered Options Principal” to align with the current terminology with General 4, Rule 1220.¹⁶

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁸ in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

Options 2, Section 10

The Exchange’s proposal to amend Options 2, Section 10, Directed Market Makers, to more explicitly describe, within subparagraph (a)(1) of that rule, the price at which a Directed Market Maker must be quoting at to execute against the Directed Order is consistent with the Act. Pursuant to Options 3, Section 4(b)(6), “A quote will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. If, at the time of entry, a quote would cause a locked or crossed market violation or would cause a trade-through violation, it will be re-priced to the current national best offer (for bids) or the current national best bid (for offers) and displayed at one minimum price variance above (for offers) or below (for bids) the national best price.” The re-priced quote may be better than the NBBO but non-displayed on BX.¹⁹ Making clear that “quoting at the Exchange’s best price” means

¹⁶ The Exchange also proposes to renumber a paragraph within Options 10, Section 9(a) from “2” to “3” as there are currently two sections numbered as “2.”

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ See supra note 3.

“quoting at the better of the internal BBO or the NBBO” will bring greater clarity to the Directed Market Maker rule.

Options 3, Section 26

The Exchange’s proposal to amend Options 3, Section 26, Message Traffic Mitigation, to replace its current rule with a rule identical to Phlx Options 3, Section 26 is consistent with the Act. The proposal will harmonize BX’s Options 3, Section 26 with Phlx’s Options 3, Section 26 without an impact to the way BX mitigates message traffic today.

Removing current Options 3, Section 26(a), which describes how BX would periodically delist options with an average daily volume of less than 100 contracts and determine the ADV for each series listed on BX and monthly, delist the current series and not list the next series after expiration where the ADV is less than 100 contracts, is consistent with the Act. Options 3, Section 26(a) was intended to mitigate message traffic by requiring the Exchange to delist certain options. While, today, BX does not delist options in accordance with Options 3, Section 26(a), BX does delist options pursuant to Options 4, Section 5.²⁰ In addition, BX recently filed to delist additional intervals across its weekly programs to further reduce message traffic.²¹ The Exchange

²⁰ BX currently delists options pursuant to Options 4, Section 5 at Supplementary Material .01(d), Supplementary Material .03(d), Supplementary Material .04(f), and Supplementary Material .07.

²¹ See Securities Exchange Act Release No. 91125 (February 12, 2021), 86 FR 10375 (February 19, 2021) (SR-BX-2020-032) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, To Amend Options 4, Section 5, To Limit Short Term Options Series Intervals Between Strikes That Are Available for Quoting and Trading on BX).

notes that other Nasdaq affiliated markets also delist according to similar rules.²² The Exchange's process for delisting options pursuant to Options 4, Section 5 protects investors and the public interest because it accomplishes the same objectives as originally intended for delisting pursuant to subparagraph (a) and ensures mitigation of message traffic by delisting according to Options 4, Section 5.

Removing current BX Options 3, Section 26(b), which describes how BX will implement a replace on queue functionality whereby an outbound quote message that has not been sent, but is about to be sent, will not be sent if a more current quote message for the same series is available for sending is consistent with the Act. Options 3, Section 26(b) was intended to mitigate message traffic by implementing the replace on queue functionality to reduce the message traffic by disseminating only the most current quote in certain instances where a quote was recently updated. While the Exchange did not implement the replace on queue functionality, BX has been mitigating quotations by delisting pursuant to Options 4, Section 5 and mitigating pursuant to Options 3, Section 26(c). The proposal would protect investors and the public interest because BX's quote mitigation process would remain unchanged with this proposal. Also, BX's quote mitigation process is consistent with Phlx's current process for mitigating quotes. The Exchange believes that despite not implementing the replace on queue functionality, it continues to mitigate quotes in a fair and equitable manner consistent with Phlx's process for mitigating quotes.

Amending current Options 3, Section 26(c), as described above, is consistent with

²² See Phlx, Nasdaq ISE, LLC ("ISE"), Nasdaq GEMX, LLC ("GEMX") and Nasdaq MRX, LLC ("MRX") Options 4, Section 5.

the Act because Options 3, Section 26(c) was intended to mitigate message traffic by disseminating quotes only when the size associated with a bid or offer increases by an amount greater than or equal to a certain percentage established by the Exchange. While, today, the Exchange's System is not disseminating quotes as specified within Options 3, Section 26(c), it is disseminating quotes as specified in Phlx Options 3, Section 26. The Exchange's current practice is aligned with the original intent. Today, BX mitigates quotes by disseminating them only when the size associated with a bid or offer increases by an amount greater than or equal to a certain percentage established by the Exchange. Because BX is not amending its practice with respect to the dissemination of quotes, the Exchange notes that there would be no change in the number of quotes that will be disseminated by the Exchange and the proposed change aligns with the original intent of the rule.

BX's proposal to amend its rule text identical to Phlx to permit it to determine the percentage by which it will disseminate an updated bid or offer price based on the size on an issue-by-issue basis is consistent with the Act. This proposal would provide BX the same flexibility as Phlx to permit it to determine the way it will mitigate quotes among options. BX's proposal to commence posting the percentage specified within proposed Options 3, Section 26(a)(3) on the Exchange's website will continue to provide transparency to Participants.

Finally, removing current Options 3, Section 26(d) which provides that all message traffic mitigation mechanisms which are used on BX will be identical for the OPRA "top of the book" broadcast, is consistent with the Act. The Exchange will mitigate quotes pursuant to its rules for all quotes on the Exchange, including those that

constitute the Exchange's best bid and offer. The text of Options 3, Section 26(d) is unnecessary as OPRA publishes messages disseminated by each options exchange in a similar fashion. Further, BX Options 5, Section 1(17) describes the type of information disseminated by OPRA.

Today, and over the years, Phlx's number of listed underlyings exceeds the underlyings listed on BX and, therefore, utilizing a message traffic protocol identical to Phlx Options 3, Section 26(c) would permit BX to sufficiently mitigate quotes.

Options 3, Section 27

The Exchange's proposal to update a citation to Rule 4626 within Options 3, Section 27, Limitation of Liability, from Rule 4626 to Equity 2, Section 17 will bring greater clarity to the rule and is therefore consistent with the Act. The proposed amendment is non-substantive.

Options 10, Sections 5, 6, and 9

The Exchange's proposal to amend Options 10, Sections 5, 6, and 9 to amend the certain terminology in those rules to align with General 4 terminology is consistent with the Act. These non-substantive amendments will bring greater clarity to the current registration requirements.

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.

Options 2, Section 10

The Exchange's proposal to amend Options 2, Section 10, Directed Market Makers, to more explicitly describe, within subparagraph (a)(2) of that rule, the price at

which a Directed Market Maker must be quoting at to execute against the Directed Order does not impose an undue burden on competition. Every Directed Market Maker must be quoting at the better of the internal BBO or the NBBO to execute against a Directed Order. This amendment will bring greater clarity to the Directed Market Maker rule.

Options 3, Section 26

The Exchange's proposal to amend Options 3, Section 26, Message Traffic Mitigation, to replace its current rule with a rule identical to Phlx Options 3, Section 26 does not create an undue burden on competition. Specifically, removing the rule text within Options 3, Section 26(a), (b) and (d) and amending the rule text within (c) aligns with BX's current practice for mitigating message traffic. BX's current practice will remain unchanged with this proposal. BX would continue to utilize its current quote mitigation strategies without amending the quantity of messages disseminated.

Amending BX's rule text identical to Phlx to permit it to determine the percentage by which it will disseminate an updated bid or offer price based on the size on an issue-by-issue basis does not impose an undue burden on competition, rather the amendment would provide BX the same flexibility as Phlx to permit it to determine the way it will mitigate quotes among options. Posting the percentage specified within proposed Options 3, Section 26(a)(3) on the Exchange's website, does not impose an undue burden on competition, rather the proposal will continue to provide transparency to Participants.

Options 3, Section 27

The Exchange's proposal to update a citation to Rule 4626 within Options 3, Section 27, Limitation of Liability, from Rule 4626 to Equity 2, Section 17 does not impose an undue burden on competition. The proposal will bring greater clarity to the

rule. This amendment is non-substantive.

Options 10, Sections 5, 6 and 9

The Exchange's proposal to amend Options 10, Sections 5, 6, and 9 to conform the terminology to General 4 terminology does not impose an undue burden on competition, rather it will bring greater clarity to the current registration requirements. These amendments are non-substantive.

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 Act²³ and subparagraph (f)(6) of Rule 19b-4 thereunder.²⁴

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

²³ 15 U.S.C. 78s(b)(3)(A)(iii).

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

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-2021-041 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-2021-041. 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 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-2021-041 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.²⁵

J. Matthew DeLesDernier
Assistant Secretary

²⁵ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

Nasdaq BX, Inc. Rules

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Options Rules

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Options 2 Options Market Participants

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Section 10. Directed Market Makers

(a) Market Makers may receive Directed Orders in their appointed classes in accordance with the provisions of this Rule, provided they indicated to the Exchange, in a form specified, that they will receive Directed Orders.

(1) When the Exchange's disseminated price is the NBBO at the time of receipt of the Directed Order, and the Directed Market Maker is quoting at the better of the internal BBO or the NBBO[or improving the Exchange's disseminated price], the Directed Order shall be automatically executed and allocated in accordance with Options 3, Section 10 such that the Directed Market Maker shall receive a Directed Market Maker participation entitlement provided for therein.

(2) When (a) the Exchange's disseminated price is the NBBO, and the quotation disseminated by the Directed Market Maker on the opposite side of the market from the Directed Order is inferior to the NBBO at the time of receipt of the Directed Order, or (b) the Exchange's disseminated price is not the NBBO at the time of receipt of the Directed Order, the Directed Order shall be processed as though it were not a Directed Order.

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Options 3 Options Trading Rules

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Section 26. Message Traffic Mitigation

(a) The Exchange shall disseminate an updated bid and offer price, together with the size associated with such bid and offer, when:

(1) the Exchange's disseminated bid or offer price increases or decreases;

(2) the size associated with the Exchange's disseminated bid or offer decreases; or

(3) the size associated with the Exchange's bid (offer) increases by an amount greater than or equal to a percentage (never to exceed 20%) of the size associated with previously disseminated bid (offer). Such percentage, which shall never exceed 20%, will be determined by the Exchange on an issue-by-issue basis and posted on the Exchange's website.

[For the purpose of message traffic mitigation, based on BX Options's traffic with respect to target traffic levels and in accordance with BX Options's overall objective of reducing both peak and overall traffic:

(a) BX Options will periodically delist options with an average daily volume ("ADV") of less than 100 contracts. BX will, on a monthly basis, determine the ADV for each series listed on BX Options and delist the current series and not list the next series after expiration where the ADV is less than 100 contracts. For options series traded solely on BX Options, BX will delay delisting until there is no open interest in that options series.

(b) BX Options will implement a process by which an outbound quote message that has not been sent, but is about to be sent, will not be sent if a more current quote message for the same series is available for sending. This replace on queue functionality will be applied to all options series listed on the BX Options Market in real time and will not delay the sending of any messages.

(c) When the size associated with a bid or offer increases by an amount less than or equal to a percentage (never to exceed 20%) of the size associated with the previously disseminated bid or offer, BX Options will not disseminate the new bid or offer.

(d) All message traffic mitigation mechanisms which are used on BX Options will be identical for the OPRA "top of the book" broadcast.]

Section 27. Limitation of Liability

(a) Except as provided for in [Rule 4626]Equity 2, Section 17, BX Options and its affiliates shall not be liable for any losses, damages, or other claims arising out of the BX Options Trading System or its use. Any losses, damages, or other claims, related to a failure of the BX Options Trading System to deliver, display, transmit, execute, compare, submit for clearance and settlement, adjust, retain priority for, or otherwise correctly process an order, message, or other data entered into, or created by, the BX Options Trading System shall be absorbed by the Member, or the Member sponsoring the customer, that entered the order, message, or other data into the BX Options Trading System.

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Options 10 Doing Business With The Public

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Section 5. Branch Offices

(a) Every OEF approved to do options business with the public under this Options 10 shall file with BX Regulation and keep current a list of each of its branch offices showing the location of each such office and the name of the manager of each such office.

(b) No branch office of an OEF shall transact options business with the public unless the manager of such branch office has been qualified as a Registered Options[and Security Futures] Principal or General Securities Sales Supervisor; provided, that this requirement shall not apply to branch offices in which not more than three (3) representatives are located so long as the OEF can demonstrate to the satisfaction of BX Regulation that the options activities of such branch offices are appropriately supervised by a Registered Options[and Security Futures]Principal or .

Section 6. Opening of Accounts

(a) – (e) No change.

(f) Every OEF transacting business with the public in uncovered options contracts shall develop, implement and maintain specific written procedures governing the conduct of such business that shall at least include the following:

(A) specific criteria and standards to be used in evaluating the suitability of a Public Customer for uncovered short options transactions;

(B) specific procedures for approval of accounts engaged in writing uncovered short options contracts (which for the purposes of this Rule shall include combinations and any transactions that involve naked writing), including written approval of such accounts by an Options Principal;

(C) designation of a specific Registered Options [and Security Futures]Principal(s) as responsible for approving accounts that do not meet the specific criteria and standards for writing uncovered short options transactions and for maintaining written records of the reasons for every account so approved;

(D) and (E) No change.

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Section 9. Discretionary Accounts

(a) *Authorization and Approval Required.* No OEF shall exercise any discretionary power with respect to trading in options contracts in a Public Customer's account unless such Public Customer has given prior written authorization and the account has been accepted in writing by a Registered Options [and Security Futures]Principal.

(1) Each participant shall designate specific Registered Options Principal [and Security Futures Principals]to review discretionary accounts. A Registered Options [and Security Futures]Principal other than the Registered Options[and Security Futures] Principal who accepted the account shall review the acceptance of each discretionary account to determine

that the Registered Options[and Security Futures] Principal accepting the account had a reasonable basis for believing that the Public Customer was able to understand and bear the risks of the strategies or transactions proposed, and the reviewing Registered Options[and Security Futures] Principal shall maintain a record of the basis for his determination.

(2) Every discretionary order shall be identified as discretionary on the order at the time of its entry into BX Options market.

([2[3]) Discretionary accounts shall receive frequent appropriate supervisory review by a Registered Options[and Security Futures] Principal who is not exercising the discretionary authority.

(b) – (e) No change.

(f) Any participant that does not utilize computerized surveillance tools for the frequent and appropriate review of discretionary account activity must establish and implement procedures to require Registered Options[and Security Futures] Principal qualified individuals who have been designated to review discretionary accounts to approve and initial each discretionary order on the day entered.

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