

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 15

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

File No. \* SR 2022 - \* 025

Amendment No. (req. for Amendments \*)

Filing by NASDAQ BX, Inc.

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

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"/>
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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 \*).

A proposal to address an erroneous reference in Equity 4, Rule 4780(e).

### 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 \* Brett Last Name \* Kitt

Title \* Principal Associate General Counsel

E-mail \* Brett.Kitt@nasdaq.com

Telephone \* (301) 978-8132 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 12/01/2022


(Title \*)

By John Zecca

EVP and Chief Legal Officer

(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: 2022.12.01 13:57:54 -05'00'

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-2022-025 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-2022-025 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**

Add Remove View

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**

Add Remove View

SR-BX-2022-025 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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to address an erroneous reference in Equity 4, Rule 4780(e).

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

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors (the “Board”). 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:

Brett Kitt  
AVP - Principal Associate General Counsel  
Nasdaq, Inc.  
(301) 978-8132

or

Camila Zubieta Ferreira  
Senior Paralegal  
Nasdaq, Inc.  
(571) 538-2761

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

<sup>2</sup> 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 purpose of this filing is to correct an erroneous reference in Equity 4, Rule 4780(e) involving the dissemination process of the Retail Liquidity Identifier as part of the Exchange's Retail Price Improvement Program ("RPI Program"). Under the RPI Program, all Retail Price Improvement Orders ("RPI Orders") provide liquidity at a price at least \$0.001 better than the National Best Bid and Offer ("NBBO") through a special execution process.<sup>3</sup> Currently, unless a Participant opts out of identifying their RPI Interest, the Exchange disseminates the Retail Liquidity Identifier when RPI interest is present on the Exchange.

Equity 4, Rule 4780(e) states that the Retail Liquidity Identifier will be disseminated when RPI interest is priced at least \$0.001 per share better than the "Exchange's" Protected Bid or Protected Offer. However, this language is erroneous. In intent and practice, the Exchange disseminates the Retail Liquidity when RPI interest is priced at least \$0.001 better than the NBBO. The Exchange's intent in this regard is evident in Equity 4, Rule 4702(b)(5)(A), which describes an RPI Order as being priced better than the NBBO. Moreover, measuring retail price improvement with reference to the NBBO, rather than to the Exchange's Best Bid or Offer, ensures that the RPI Program will alert participants to real price improvement opportunities that exist on Nasdaq, i.e.,

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<sup>3</sup> Equity 4, Rule 4702(b)(5)(A) states that, "A "Retail Price Improving Order" or "RPI Order" is an Order Type with a Non- Display Order Attribute that is held on the Exchange Book in order to provide liquidity at a price at least \$0.001 better than the NBBO through a special execution process described in Rule 4780. A Retail Price Improving Order may be entered in price increments of \$0.001. RPI Orders collectively may be referred to as "RPI Interest."

prices that are better than the NBBO, rather than prices better than the Exchange's Best Bid or Offer, but not better than the NBBO.

The Exchange proposes to correct this erroneous reference in Equity 4, Rule 4780(e). The correction is necessary to ensure that the provision is consistent with the circumstances in which the Exchange intends to and actually disseminates the Retail Liquidity Identifier. It will also ensure that the Retail Liquidity Identifier will alert participants to genuine retail price improvement opportunities on the Nasdaq Book, as discussed above.

The Exchange noticed the error in the language and promptly sought to correct the inconsistency. The Exchange notes that it has not received any complaints or notices from Exchange Members expressing confusion or alerting the Exchange to the error.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>5</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The proposal would correct an error that otherwise renders inaccurate an example of the application of Equity 4, Rule 4780(e). The Exchange believes that it is consistent with the interest of the public, investors, and the market for the Exchange to take steps to ensure that its Rulebook is accurate.

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<sup>4</sup> 15 U.S.C. 78f(b).

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

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is non-substantive and it will have no impact on competition because it simply corrects an error in the Rule text to render the text more accurate.

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)<sup>6</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>7</sup> in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The proposal does not significantly affect the protection of investors or the public interest because it amends Rule 4780(e) to render the Rule text more accurate and

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

consistent with the Rule’s intent and operability. The amended text is also consistent with the practice of another exchange that offers a similar retail price improvement program which measures price improvement relative to the NBBO.<sup>8</sup> For the same reason, it does not impose any significant burden on competition. Therefore, the Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).<sup>9</sup>

Furthermore, Rule 19b-4(f)(6)(iii)<sup>10</sup> 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

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<sup>8</sup> See Investors Exchange Rule 11.232(f) (“Retail Liquidity Identifier. An identifier shall be disseminated through the Exchange’s TOPS and DEEP data products (specified in IEX Rule 11.330) and through the appropriate securities information processor, when Retail Liquidity Provider order interest (“RLP Interest”) aggregated to form at least one round lot for a particular security is available in the System (“Retail Liquidity Identifier”), provided that the RLP Interest is resting at the Midpoint Price and priced at least \$0.001 better than the NBB or NBO.”).

<sup>9</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

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 30-day operative delay contained in Rule 19b-4(f)(6)(iii) so that the Exchange can immediately correct the error in Rule 4780(e) to ensure the accuracy of the rulebook as soon as possible and to avoid any potential confusion regarding the operation of the Retail Liquidity Identifier.

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

The proposed rule change is similar to IEX's Rule 11.232(f) in that IEX also employs a retail liquidity identifier that alerts its members to price improvement opportunities that exist relative to the NBBO.

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-2022-025)

December \_\_, 2022

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Address an Erroneous Reference in Equity 4, Rule 4780(e).

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 1, 2022, 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 address an erroneous reference in Equity 4, Rule 4780(e).

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

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

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

received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of this filing is to correct an erroneous reference in Equity 4, Rule 4780(e) involving the dissemination process of the Retail Liquidity Identifier as part of the Exchange's Retail Price Improvement Program ("RPI Program"). Under the RPI Program, all Retail Price Improvement Orders ("RPI Orders") provide liquidity at a price at least \$0.001 better than the National Best Bid and Offer ("NBBO") through a special execution process.<sup>3</sup> Currently, unless a Participant opts out of identifying their RPI Interest, the Exchange disseminates the Retail Liquidity Identifier when RPI interest is present on the Exchange.

Equity 4, Rule 4780(e) states that the Retail Liquidity Identifier will be disseminated when RPI interest is priced at least \$0.001 per share better than the "Exchange's" Protected Bid or Protected Offer. However, this language is erroneous. In intent and practice, the Exchange disseminates the Retail Liquidity when RPI interest is priced at least \$0.001 better than the NBBO. The Exchange's intent in this regard is evident in Equity 4, Rule 4702(b)(5)(A), which describes an RPI Order as being priced

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<sup>3</sup> Equity 4, Rule 4702(b)(5)(A) states that, "A "Retail Price Improving Order" or "RPI Order" is an Order Type with a Non- Display Order Attribute that is held on the Exchange Book in order to provide liquidity at a price at least \$0.001 better than the NBBO through a special execution process described in Rule 4780. A Retail Price Improving Order may be entered in price increments of \$0.001. RPI Orders collectively may be referred to as "RPI Interest."

better than the NBBO. Moreover, measuring retail price improvement with reference to the NBBO, rather than to the Exchange's Best Bid or Offer, ensures that the RPI Program will alert participants to real price improvement opportunities that exist on Nasdaq, i.e., prices that are better than the NBBO, rather than prices better than the Exchange's Best Bid or Offer, but not better than the NBBO.

The Exchange proposes to correct this erroneous reference in Equity 4, Rule 4780(e). The correction is necessary to ensure that the provision is consistent with the circumstances in which the Exchange intends to and actually disseminates the Retail Liquidity Identifier. It will also ensure that the Retail Liquidity Identifier will alert participants to genuine retail price improvement opportunities on the Nasdaq Book, as discussed above.

The Exchange noticed the error in the language and promptly sought to correct the inconsistency. The Exchange notes that it has not received any complaints or notices from Exchange Members expressing confusion or alerting the Exchange to the error.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>5</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The proposal would correct an error that otherwise renders inaccurate an example of the application of

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<sup>4</sup> 15 U.S.C. 78f(b).

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

Equity 4, Rule 4780(e). The Exchange believes that it is consistent with the interest of the public, investors, and the market for the Exchange to take steps to ensure that its Rulebook is accurate.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is non-substantive and it will have no impact on competition because it simply corrects an error in the Rule text to render the text more accurate.

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 Act<sup>6</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>7</sup>

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>7</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

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

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2022-025 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-2022-025. 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-2022-025 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.<sup>8</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

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

**NASDAQ BX, INC. RULES**

\* \* \* \* \*

**Equity Rules**

\* \* \* \* \*

**Equity 4: Equity Trading Rules**

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**4780. Retail Price Improvement Program**

(a) – (d) No change.

(e) Retail Liquidity Identifier. If a Participant does not opt out of identifying their RPI interest as such, an identifier shall be disseminated through proprietary data feeds and through the appropriate Securities Information Processor when RPI interest priced at least \$0.001 better than the [Exchange's Protected Bid or Protected Offer] NBBO for a particular security is available in the System ("Retail Liquidity Identifier"). The Retail Liquidity Identifier shall reflect the symbol for the particular security and the side (buy or sell) of the RPI interest, but shall not include the price or size of the RPI interest. If a Participant opts out of identifying their RPI interest as such, no Retail Liquidity Identifier will be disseminated.

(f) – (h) No change.

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