

duration for such a prohibition would be preferable? If so, what duration and why?

3. What are commenters' views on the significance of the proposed change from the current prohibition against certain transactions that would set a new high or low price on the *Exchange* for the day to the proposed prohibition against certain transactions that would result in a new *consolidated* high or low price for the day? Do commenters believe that this change would have additional consequences for the operation of Rule 104?

4. What are commenters' views on how the obligations imposed on DMMs by proposed NYSE Rule 104 during the rest of the trading day would compare with the obligations imposed by current NYSE Rule 104?

5. What are commenters' views on the Exchange's argument that changes to NYSE Rule 104 would promote aggressive DMM quoting in their assigned securities? What are commenters' views on the Exchange's argument that DMMs are currently at a competitive disadvantage because of NYSE Rule 104 and that the current rule "thwarts the ability of the DMM to meet their affirmative obligations to quote aggressively in assigned securities"?

6. What are commenters' views on whether the "Price Participation Points" that the Exchange provides to its DMMs would be sufficient under the proposed changes to NYSE Rule 104 to prevent DMMs from aggressively taking liquidity and moving prices on the Exchange immediately before the closing auction?

7. Existing Rules 104(g) and (h) refer to "DMMs," and proposed Rule 104(g) would refer instead to "DMM units." What are commenters' views of the significance, if any, of this change in wording? What are commenters' views on whether the amended rule should apply to the activities of individuals trading as DMMs on the Exchange floor?

8. Generally, would the Exchange's proposal maintain an appropriate balance between the benefits and obligations of being a DMM on the Exchange?<sup>25</sup> In light of DMMs' special

responsibility for closing auctions under NYSE rules, would the obligations of DMMs under NYSE rules be reasonably designed to prevent DMMs from inappropriately influencing or manipulating the close if the proposed rule change were approved?

Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2018-34 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-NYSE-2018-34. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2018-34 and should be submitted on or before November 28,

that the pilot had been conducted to seek "further evidence that the benefits proposed for DMMs are not disproportionate to their obligations." See Securities Exchange Act Release No. 75578 (July 31, 2015), 80 FR 47008 (Aug. 6, 2015).

2018. Rebuttal comments should be submitted by December 12, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84520; File No. SR-BX-2018-050]

### Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add Definitions to Chapter I, Section 1, Titled General Provisions and Also Amend Chapter VI, Section 18, Titled Risk Protections

November 1, 2018.

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 October 18, 2018, Nasdaq BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to add definitions to Chapter I, Section 1, titled "General Provisions" and also amend Chapter VI, Section 18, titled, "Risk Protections."

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

#### 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

<sup>25</sup> Current NYSE Rule 104 was originally approved as part of the NYSE pilot program called the "New Market Model." See Securities Exchange Act Release No. 58845 (Oct. 24, 2008), 73 FR 64379 (Oct. 29, 2008). As the Commission stated when approving the NYSE's proposal to conduct the New Market Model pilot, "[w]e carefully review trading rule proposals that seek to offer special advantages to market makers. Although an exchange may reward such participants for the benefits they provide to the exchange's market, such reward must not be disproportionate to the services provided." See *id.* In 2015, the Commission permanently approved the New Market Model pilot and noted

<sup>26</sup> 17 CFR 200.30-3(a)(57).

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

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

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

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

1. Purpose

The purpose of this rule change is to adopt certain definitions within Chapter I, Section 1, titled "General Provisions" and also amend Chapter VI, Section 18, titled, "Risk Protections." Each change is described in more detail below.

Definitions

The Exchange proposes to amend Chapter I, Section 1 to add three new definitions into its Rulebook. These definitions are utilized in technical documents issued by the Exchange and will provide an ease of reference for understanding these terms. Specifically, Chapter I, Section 1(a)(70) would define an account number as a number assigned to a Participant. Participants may have more than one account number. Chapter I, Section 1(a)(71) would define a badge as an account number, which may contain letters and/or numbers, assigned to BX Market Makers. A BX Market Maker account may be associated with multiple badges. Finally, Chapter I, Section 1(a)(72) would define a mnemonic as an acronym comprised of letters and/or numbers assigned to Participants. A Participant account may be associated with multiple mnemonics.

Risk Protections

Order Price Protection

The Exchange proposes a minor amendment to Chapter VI, Section 18(1) to add punctuation and "OPP" at the beginning of that sentence to conform the text to the remainder of the rule. The Exchange proposes to remove the example within Rule Chapter VI, Section 18(1)(B)(i) which states, "For example, if the Reference BBO on the offer side is \$1.10, an order to buy options for more than \$1.65 would be rejected. Similarly, if the Reference BBO on the bid side is \$1.10, an order to sell options for less than \$0.55 will be rejected." The Exchange also proposes to remove the example within Chapter VI, Section 18(1)(B)(ii) which states, "For example, if the Reference BBO on the offer side is \$1.00, an order to buy options for more than \$2.00 would be rejected. However, if the Reference BBO of the bid side of an incoming order to

sell is less than or equal to \$1.00, the OPP limits set forth above will result in all incoming sell orders being accepted regardless of their limit." The Exchange notes that while the examples remain accurate, the Exchange proposes to remove the text to conform the rule text to other risk protections. The Exchange does not believe it is necessary to have these examples within the rule text.

Market Order Spread Protection

The Exchange proposes to amend the Market Order Spread Protection Rule in Chapter VI, Section 18(a)(2) to permit BX to establish different thresholds for one or more series or classes of options similar to Phlx.<sup>3</sup> The Exchange desires, similar to Phlx, to be permitted the flexibility to allow it to determine a threshold suitable for each series or class of option. The Exchange's current rule provides no discretion to permit different thresholds for one or more series or classes of options. By adding this rule text, the Exchange proposes to permit one or more series or classes of options to set a different threshold, which the Exchange would announce via an Options Trader Alert, similar to Phlx. The Exchange desires to conform this protection to Phlx so that it could set the same threshold across affiliated markets. The Phlx Rule Change provided that the \$5 threshold is appropriate because it seeks to ensure that the displayed bid and offer are within reasonable ranges and do not represent erroneous prices. Further the Exchange noted that this protection will bolster the normal resilience and market behavior that persistently produces robust reference prices. This feature should create a level of protection that prevents Market Orders from entering the Order Book outside of an acceptable range for the Market Order to execute. The Exchange notes that those goals remain consistent with the Exchange's goals today for this risk feature. The Exchange would establish different thresholds for one or more series or classes of options if it believed that the threshold should differ to retain these goals.

Anti-Internalization

The Exchange proposes to add a new sentence to Anti-Internalization Rule at Chapter VI, Section 18(c)(1) to provide that Anti-Internalization functionality shall not apply in any auction. This is the current practice today. With respect

<sup>3</sup> Securities Exchange Act Release No. 83141 (May 1, 2018), 83 FR 20123 (May 7, 2018) (SR-Phlx-2018-32). Footnote 11 of this filing provides that Exchange may establish differences other than the referenced threshold for one or more series or classes of options.

to an auction,<sup>4</sup> the Exchange notes that Anti-Internalization functionality is difficult to apply during auctions, and there is limited benefit in doing so. There is limited benefit because, generally speaking, auctions do not raise the same policy concerns for wash sales and ERISA<sup>5</sup> due to the semi-random manner in which trades are matched. Also, the Exchange notes that with respect to entering quotes in an auction, a Market Maker could not start an auction in symbols in which they are assigned. With respect to orders, Market Makers can only commence a PRISM in a non-assigned symbol.<sup>6</sup> It is not common for a Market Maker to commence such an auction. Finally, the Exchange notes that Nasdaq ISE, LLC Rule 714(b)(3)(A) contains the same constraint in that it does not apply the Anti-Internalization protection in any auction.

Automated Removal of Quotes

Finally, the Exchange proposes to amend the title of Chapter VI, Section 18(c)(2) from "Automated Removal of Quotes" to "Quotation Adjustments" to conform the title across Nasdaq markets.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by adding greater transparency to the Exchange's rules. The Exchange's proposal to add definitions to Chapter I, Section 1 will bring greater clarity to the Anti-Internalization functionality and to the Rulebook. Amendments to remove examples from the OPP rule text will conform the rule text to other rules. The Exchange believes that it is unnecessary to have examples in the rule text. Adding the word "trading" before the word "halt" within the Market Order

<sup>4</sup> PRISM is the Exchange's Price Improvement Auction. See BX Rules at Chapter VI, Section 9.

<sup>5</sup> AIQ is designed to assist market participants in complying with certain rules and regulations of the Employee Retirement Income Security Act ("ERISA") that preclude and/or limit managing broker-dealers of such accounts from trading as principal with orders generated for those accounts. It can also assist Market Makers in reducing trading costs from unwanted executions potentially resulting from the interaction of executable buy and sell trading interest from the same firm when performing the same market making function.

<sup>6</sup> Specialists and ROTs can only quote in symbols in which they are assigned.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

Spread Protection rule text will bring conformity to Chapter VI, Section 18.

The Exchange's proposal to expand the Market Order Spread Protection permits the Exchange to establish different thresholds for one or more series or classes of options similar to Phlx. The Exchange desires this flexibility to allow it, similar to Phlx,<sup>9</sup> to determine a threshold suitable for each series or class of option. The Exchange believes that expanding this capability is consistent with the Act because it would allow the Exchange to consider thresholds for Market Order Spread Protection at a more granular level, per series or class, to ensure that the displayed bid and offer are within reasonable ranges and do not represent erroneous prices. The Exchange intends that this risk protection would bolster the normal resilience and market behavior that persistently produces robust reference prices, while creating a level of protection that prevents Market Orders from entering the Order Book outside of an acceptable range for the Market Order to execute.

The Exchange's proposal to make clear that the Anti-Internalization functionality will not apply in any auction will also bring greater transparency to the rules and the limitation of this functionality. With respect to an auction,<sup>10</sup> the Exchange notes that Anti-Internalization functionality is difficult to apply during auctions, and there is limited benefit in doing so. There is limited benefit because, generally speaking, auctions do not raise the same policy concerns for wash sales and ERISA<sup>11</sup> due to the semi-random manner in which trades are matched. Also, the Exchange notes that with respect to entering quotes in an auction, a Market Maker could not start an auction in symbols in which they are assigned. With respect to orders, Market Makers can only commence a PRISM in a non-assigned symbol. It is not common for a Market Maker to commence such an auction.

Finally, the Exchange's proposal to amend the title of Chapter VI, Section 18(c)(2) from "Automated Removal of Quotes" to "Quotation Adjustments" should better describe the rule and conform the title to other Nasdaq affiliate markets. The proposals noted herein are consistent with the Act because they provide more detail and transparency to the Exchange's rules noted herein to the benefit of market participants.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed amendments do not impose an undue burden on competition because the definitions and amendments to conform the rule text will provide greater clarity as to the meaning of those terms. Removing examples from the OPP rule text does not impose an undue burden on competition because this text is not necessary within the rule text. Adding the word "trading" before the word "halt" within the Market Order Spread Protection rule text will bring conformity to Chapter VI, Section 18. The Exchange's proposal to expand the Market Order Spread Protection to permit the Exchange to establish different thresholds for one or more series or classes of options, similar to Phlx, would apply uniformly to all market participants.

The Exchange's proposal to make clear that the Anti-Internalization functionality will not apply in any auction will also bring greater transparency to the rules and the limitation of this functionality. With respect to an auction, the Exchange notes that Anti-Internalization functionality is difficult to apply during auctions, and there is limited benefit in doing so. There is limited benefit because, generally speaking, auctions do not raise the same policy concerns for wash sales and ERISA<sup>12</sup> due to the semi-random manner in which trades are matched. Finally, the Exchange's proposal to amend the title of Rule Chapter VI, Section 18(c)(2) is 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) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>15</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>16</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange believes that waiver of the operative delay would allow the Exchange to update its rules without delay to remove inconsistent rule language, make clarifying changes to reflect current and accurate information, and bring greater transparency to the Exchange's risk protections and Anti-Internalization rule. Additionally, the Commission notes that the changes relating to the Anti-Internalization functionality and Market Order Spread Protection are based on the operation of similar functionality on Nasdaq ISE and Phlx, respectively. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>17</sup>

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

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>17</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>9</sup> See note 4 above.

<sup>10</sup> PIXL is the Exchange's Price Improvement XL auction. See Phlx Rule 1087.

<sup>11</sup> See note 6 above.

<sup>12</sup> See note 6 above.

#### IV. Solicitation of Comments

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

##### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2018-050 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-2018-050. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BX-2018-050, and should be submitted on or before November 28, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018-24308 Filed 11-6-18; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84521; File No. SR-OCC-2018-013]

#### **Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Extend Term Limits for Member Directors Serving on The Options Clearing Corporation's Board of Directors**

November 1, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 26, 2018, The Options Clearing Corporation ("OCC") 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 primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change by OCC would extend the term limits for Member Directors serving on the Board of Directors from two consecutive three-year terms to three consecutive three-year terms. The proposed changes to OCC's By-Laws and Board of Directors Charter and Corporate Governance Principles are included as Exhibits 5A and 5B, respectively. Material proposed to be added is underlined and material proposed to be deleted is marked in strikethrough text. The proposed rule change, including Exhibits 5A and 5B, is available on OCC's website at <https://www.theocc.com/about/publications/bylaws.jsp>. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.<sup>3</sup>

<sup>18</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> OCC's By-Laws and Rules can be found on OCC's public website: <http://optionsclearing.com/>

#### **II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

##### *(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

##### *(1) Purpose*

##### *Background*

OCC is proposing changes to Article III, Section 2 of its By-Laws and to its Board of Directors Charter and Corporate Governance Principles ("Board Charter") that would extend the term limits for Member Directors from two consecutive three-year terms to three consecutive three-year terms. The purpose of the proposed rule change is to address issues associated with frequent Member Director turnover by providing the potential for longer consecutive service by Member Directors who, among other considerations, may have developed considerable knowledge about OCC's business and the interests of Clearing Members.

##### *Board Composition and Member Director Considerations*

OCC's Certificate of Incorporation and By-Laws establish the composition of its Board of Directors ("Board") and the procedures for director selection. When at its full capacity, the Board consists of twenty directors: (i) Nine directors representing OCC Clearing Members ("Member Directors"); (ii) five directors designated by and representing each of OCC's five Equity Exchanges ("Exchange Directors"); (iii) five directors who are not affiliated with any national securities exchange, national securities association or with any broker or dealer in securities ("Public Directors"); and (iv) one management director, who serves as the Executive Chairman ("Management Director").<sup>4</sup>

*about/publications/bylaws.jsp*. OCC's Board of Directors Charter and Corporate Governance Principles is also available on OCC's public website: <https://www.theocc.com/about/corporate-information/board-charter.jsp>.

<sup>4</sup> OCC By-Laws, Article III, Sections 1, 2, 6, 6A and 7 (addressing the number of directors and required qualifications of Member Directors, Exchange Directors, Public Directors and the