

Commission expects the total labor cost per respondent will be approximately \$666.67<sup>8</sup> when annualized over three years.

*b. Representations regarding U.S.-person status*

Pursuant to Rule 3a71-3(a)(4)(iv), persons may rely on representations from a counterparty that the counterparty does not satisfy the criteria defining U.S. person set forth in Rule 3a71-3(a)(4)(i), unless such person knows or has reason to know that the representation is not accurate.

Commission staff has estimated, based on its understanding of OTC derivatives markets, including the domiciles of counterparties that are active in the market, that up to 2,400 entities will provide representations that they do not meet the criteria necessary to be U.S. persons.

As with representations regarding whether a transaction is conducted through a foreign branch, the Commission estimates the maximum total third-party disclosure burden associated with developing new representations will be, for each counterparty that will make such representations, no more than five hours and up to \$2,000 for the services of outside professionals, for a maximum of approximately 12,000 hours or 4,000 hours per year when annualized over three years, across all security-based swap counterparties that will make such representations. This estimate assumes little or no reliance on standardized disclosure language.

The Commission expects that the majority of the burden associated with the new disclosure requirements will be experienced during the first year as language is developed and trading documentation is amended. After the new representations are developed and incorporated into trading documentation, the Commission believes that the annual third-party disclosure burden associated with this requirement will be no more than approximately 10 hours per counterparty for verifying representations with existing counterparties and onboarding new counterparties, for a maximum of approximately 24,000 hours<sup>9</sup> across all applicable security-based swap counterparties.

The Commission believes that some of the entities that will have to comply

with Rule 3a71-3 will seek outside counsel to help them develop new representations contemplated by Rule 3a71-3. For PRA purposes, the Commission assumes that all 2,400 respondents will seek outside legal for the first year only and will, on average, consult with outside counsel for a cost of up to \$2,000. The Commission also assumes that none of the 2,400 respondents will seek outside legal services for year two or year three. Thus, the Commission expects the cost over the three-year period will be \$4,800,000<sup>10</sup> or \$1,600,000<sup>11</sup> per year when annualized over three years, across all security-based swap counterparties that will make such representations. The Commission expects the total labor cost per respondent will be approximately \$666.67<sup>12</sup> when annualized over three years.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549, or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: June 7, 2019.

**Eduardo A. Aleman,**  
*Deputy Secretary.*

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<sup>10</sup> 2,400 (total number of entities) \* \$2,000 = \$4,800,000.

<sup>11</sup> \$4,800,000 (total cost over three years) ÷ 3 years = \$1,600,000.

<sup>12</sup> \$1,600,000 (total labor cost to seek outside counsel per year) ÷ 2,400 (estimated number of entities that will seek outside counsel to help them develop new representations contemplated by Rule 3a71-3(4)(iv)) = \$666.67.

<sup>8</sup> \$33,333 (total labor cost to seek outside counsel per year) ÷ 50 (estimated number of entities that will seek outside counsel to help them develop new representations contemplated by Rule 3a71-3(a)(3)(ii)) = \$666.67.

<sup>9</sup> 2,400 (total number of entities) \* 10 hours = 24,000 hours

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86054; File No. SR-MIAX-2019-27]

### Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 510, Minimum Price Variations and Minimum Trading Increments To Extend the Penny Pilot Program

June 6, 2019.

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 May 30, 2019, Miami International Securities Exchange, LLC (“MIAX Options” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a 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 is filing a proposal to amend Rule 510, Minimum Price Variations and Minimum Trading Increments, Interpretation and Policy .01 to extend the pilot program for the quoting and trading of certain options in pennies.

The text of the proposed rule change is available on the Exchange's website at <http://www.miaxoptions.com/rule-filings/> at MIAX Options' principal office, 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.

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

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

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

1. Purpose

The Exchange is a participant in an industry-wide pilot program that provides for the quoting and trading of certain option classes in penny increments (the "Penny Pilot Program" or "Program"). The Penny Pilot Program allows the quoting and trading of certain option classes in minimum increments of \$0.01 for all series in such option classes with a price of less than \$3.00; and in minimum increments of \$0.05 for all series in such option classes with a price of \$3.00 or higher. Options overlying the PowerShares QQQ™ ("QQQ"), SPDR® S&P 500® ETF ("SPY"), and iShares® Russell 2000 ETF ("IWM"), however, are quoted and traded in minimum increments of \$0.01 for all series regardless of the price. The Penny Pilot Program was initiated at the then existing option exchanges in January 2007<sup>3</sup> and currently includes more than 300 of the most active option classes. The Penny Pilot Program is currently scheduled to expire on June 30, 2019.<sup>4</sup> The purpose of the proposed rule change is to extend the Penny Pilot Program in its current format through December 31, 2019.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>6</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

<sup>3</sup> See Securities Exchange Act Release Nos. 55154 (January 23, 2007), 72 FR 4743 (February 1, 2007) (SR-CBOE-2006-92); 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (SR-ISE-2006-62); 54886 (December 6, 2006), 71 FR 74979 (December 13, 2006) (SR-Phlx-2006-74); 54590 (October 12, 2006), 71 FR 61525 (October 18, 2006) (SR-NYSEArca-2006-73); and 54741 (November 9, 2006), 71 FR 67176 (November 20, 2006) (SR-Amex-2006-106).

<sup>4</sup> See Securities Exchange Act Release No. 84864 (December 19, 2018), 83 FR 66778 (December 27, 2018) (SR-MIAX-2018-38) (extending the Penny Pilot Program from December 31, 2018 to June 30, 2019).

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

In particular, the proposed rule change, which extends the Penny Pilot Program for six months, allows the Exchange to continue to participate in a program that has been viewed as beneficial to traders, investors and public customers and viewed as successful by the other options exchanges participating in it.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Pilot Program, the proposed rule change will allow for further analysis of the Penny Pilot Program and a determination of how the Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace, facilitating investor protection, and fostering a competitive environment. In addition, consistent with previous practices, the Exchange believes the other options exchanges will be filing similar extensions of the Penny Pilot Program.

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

Written comments were neither solicited nor 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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6)<sup>8</sup> thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</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.

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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2019-27 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-MIAX-2019-27. 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–MIAX–2019–27 and should be submitted on or before July 3, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86051; File No. SR–BX–2019–002]

### Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Reassign Certain Investigation and Enforcement Functions Under the Exchange's Authority and Supervision

June 6, 2019.

#### I. Introduction

On April 5, 2019, Nasdaq BX, Inc. (“Exchange” or “BX”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to assume operational responsibility for certain investigation and enforcement functions currently performed by the Financial Industry Regulatory Authority (“FINRA”) under the Exchange’s authority and supervision. The proposed rule change was published for comment in the **Federal Register** on April 24, 2019.<sup>3</sup> On May 2, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change as originally filed.<sup>4</sup> The Commission did not receive any comment letters on the proposed rule change. The Commission

is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

#### II. Description of the Proposal

Since its acquisition by The NASDAQ OMX Group, Inc., the Exchange has contracted with FINRA through various regulatory services agreements to perform certain regulatory functions on its behalf.<sup>5</sup> At the same time, the Exchange has retained operational responsibility for a number of regulatory functions, including real-time surveillance and most surveillance related to its affiliated options markets.<sup>6</sup>

The Exchange now proposes to reallocate operational responsibility from FINRA to the Exchange’s Regulation Department <sup>7</sup> for certain investigation and enforcement activities, specifically: (1) Investigation and enforcement responsibilities for conduct occurring on The BX Options Market,<sup>8</sup> and (2) investigation and enforcement responsibilities for conduct occurring on BX’s equity market only (*i.e.*, not also on non-Nasdaq-affiliated equities markets).<sup>9</sup> The Exchange states that it anticipates a phased transition whereby it would assume increasing investigation and enforcement responsibility throughout 2019 and into 2020.<sup>10</sup> The Exchange also anticipates transitioning certain matters currently pending with FINRA to the Exchange’s Enforcement Department if the Exchange’s Enforcement Department believes doing so is consistent with ensuring prompt resolution of regulatory matters.<sup>11</sup>

<sup>5</sup> See Amendment No. 1, *supra* note 4 at 4.

<sup>6</sup> See *id.* at 4–5.

<sup>7</sup> The Exchange’s Regulation Department includes the Exchange’s Enforcement Department. See *id.* at 6 n.7. The Exchange states that the staff that comprises the Exchange’s Regulation Department is the same that comprises the Nasdaq Regulation Department. See *id.*

<sup>8</sup> The Exchange states that, as appropriate, the Exchange’s Regulation Department will coordinate with other self-regulatory organizations to the extent it is investigating activity occurring on non-Nasdaq-affiliated options markets to ensure no regulatory duplication occurs. See *id.* at 6 n.8.

<sup>9</sup> See *id.* at 5–6. The Exchange believes its expertise in its own market structure, coupled with its expertise in surveillance activities, would enable it to conduct investigation and enforcement responsibilities for the Exchange effectively, efficiently, and with immediacy. See *id.* at 7. The Exchange also states that Commission approval of the proposal would allow it to better leverage its surveillance, investigation, and enforcement teams, to deliver increased efficiencies in the regulation of its market, and to act promptly and provide more effective regulation. See *id.* at 10.

<sup>10</sup> See *id.* at 9.

<sup>11</sup> See *id.*

The Exchange states that FINRA will continue to perform certain functions, including, among other things: (1) The investigation and enforcement of conduct occurring on the BX equity market that also relates to cross market activity on non-Nasdaq-affiliated exchanges; (2) the handling of contested disciplinary proceedings arising out of BX Regulation-led investigation and enforcement activities;<sup>12</sup> and (3) matters covered by agreements to allocate regulatory responsibility under Rule 17d–2 of the Act.<sup>13</sup>

#### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange <sup>14</sup> and, in particular, with Sections 6(b)(5) and 6(b)(7) of the Act.<sup>15</sup> As noted above, since its acquisition by The NASDAQ OMX Group, Inc., the Exchange has contracted with FINRA through various regulatory services agreements to perform certain regulatory functions on its behalf.<sup>16</sup> BX Rule 0150 requires that, unless BX obtains prior Commission approval, the regulatory functions subject to the regulatory services agreement in effect at the time when BX executed the agreement in 2008 must at all times continue to be performed by FINRA or an affiliate thereof or by another independent self-regulatory organization. The Exchange now proposes to reallocate operational responsibility for the specific investigation and enforcement activities discussed above from FINRA to the

<sup>12</sup> The Exchange states that, for example, pursuant to Rule 9216, if at the conclusion of a BX Regulation-led investigation, BX Regulation has reason to believe that a violation occurred but the Respondent disputes the violation and therefore does not execute an Acceptance, Waiver, and Consent (“AWC”) letter, or if the Respondent executes the AWC letter but the Exchange Review Council, Review Subcommittee, or FINRA’s Office of Disciplinary Affairs does not accept the executed letter, the Exchange may decide to pursue formal disciplinary proceedings. In such a case, the Exchange would refer the matter to FINRA to handle the formal disciplinary proceedings on its behalf. FINRA’s Office of Hearing Officers will continue to be responsible for the administration of the hearing process. See *id.* at 8 n.15.

<sup>13</sup> See *id.* at 8. The Exchange represents that, as with all investigation and enforcement work, all tasks delegated to FINRA are subject to BX’s supervision and ultimate responsibility. See *id.*

<sup>14</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>15</sup> 15 U.S.C. 78f(b)(5), (7).

<sup>16</sup> See *supra* note 5 and accompanying text.

<sup>9</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See Securities Exchange Act Release No. 85691 (April 18, 2019), 84 FR 17219.

<sup>4</sup> In Amendment No. 1, the Exchange: (1) Clarified that the staff performing surveillance work on behalf of BX’s options and equities markets is the same that performs surveillance work on behalf of all The Nasdaq Stock Market LLC (“Nasdaq”)–affiliated equities and options markets; (2) clarified the equities surveillance patterns and related review functions that were previously reallocated from FINRA to the Exchange; (3) clarified that the Exchange bears the ultimate responsibility for self-regulatory conduct and primary liability for self-regulatory failures; and (4) made other technical, clarifying, and conforming changes. Amendment No. 1 is available at <https://www.sec.gov/comments/sr-bx-2019-002/srbx2019002-5442622-184831.pdf>.