

Moreover, Congress was aware of the Commission's ability to delegate authority to approve SRO rule filings when the time restrictions in Exchange Act Section 19(b)(2)(D) were enacted. Yet it did not indicate that a delegated order would not comply with the statutory deadlines. Congress authorized actions taken by delegated authority in 1962,¹⁰⁸ added the 240-day requirement for approving or disapproving a proposed rule change in 1975,¹⁰⁹ and added the provision that a proposed rule change is deemed approved if the Commission fails to act in that time in 2010.¹¹⁰ Indeed, Congress amended the delegated authority provisions at the same time it enacted the majority of the current review provisions for SRO proposed rule changes.¹¹¹

To construe Section 19(b)(2), as BOX does, to require Commission review of an order by delegated authority to be completed within 240 days "would undermine both the specific deadlines set forth in the statute and the Commission's ability to delegate functions."¹¹² Exchange Act Section 4A makes clear that, when it delegates an action, the Commission retains a discretionary right to review staff action, either on its own initiative or at the request of a party to that action.¹¹³ If action taken by delegated authority were insufficient to meet the statutory deadline, the Commission would either be unable to delegate this function, or be

entered pursuant to [delegated authority]"); Rule of Practice 431(f), 17 CFR 201.431(f) (giving an order by delegated authority operative effect, even when review has been sought, until a person receives actual notice that it was stayed, modified, or reversed on review).

¹⁰⁸ See "An Act to Authorize the Securities and Exchange Commission to Delegate Certain Functions," Public Law 87-592, 76 Stat. 394, 394-95 (1962).

¹⁰⁹ See Securities Act Amendments of 1975, Public Law 94-29, 89 Stat. 97.

¹¹⁰ Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010). Commission Rule of Practice 431(e), which states that actions performed by delegated authority shall be deemed the actions of the Commission, was originally enacted in 1963, and in its current form in 1995. See Exchange Act Release No. 35833 (June 9, 1995), 60 FR 32738, 32823 (June 23, 1995), <https://www.govinfo.gov/content/pkg/FR-1995-06-23/pdf/95-14750.pdf> (noting that Rule of Practice 431(e) replaced previous Rule 26(e)); Exchange Act Release No. 7031, 1963 WL 64555, at *12 (Mar. 8, 1963) ("Any determination at a delegated level shall have immediate effect and be deemed the action of the Commission.").

¹¹¹ See Securities Act Amendments of 1975, 89 Stat. 97.

¹¹² See *Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and No. 2, Regarding the Acquisition of CHX Holdings, Inc. by North America Casin Holdings, Inc.*, Exchange Act Release No. 82727 (Feb. 15, 2018) at 21-23, <https://www.sec.gov/rules/sro/chx/2018/34-82727.pdf>.

¹¹³ See 15 U.S.C. 78d-1(b).

faced with the possibility that this right of review would be thwarted; action taken by delegated authority close to the end of the statutory period would leave insufficient time for either the Commission or outside parties to seek review. Alternatively, to avoid this result, an action taken by delegated authority would have to be taken well before the end of the statutory period so the Commission could complete any review of the action before the underlying proposed rule change was deemed approved. And the Commission might have to issue its decision with insufficient time to engage in the independent and thoughtful analysis required by both the Exchange Act and the APA or otherwise have the order deemed approved before completing its deliberations.¹¹⁴

Nor does Exchange Act Section 4A(c) support BOX's argument. That provision states: "If the right to exercise such review is declined, or if no such review is sought within the time stated in the rules promulgated by the Commission, then the action [taken by delegated authority] shall, for all purposes, including appeal or review thereof, be deemed the action of the Commission."¹¹⁵ Contrary to BOX's assertion, this does not mean that an action taken by delegated authority shall "be deemed the action of the Commission" *only* "[i]f the right to exercise such review is declined, or if no such review is sought within the time stated in the rules promulgated by the Commission."¹¹⁶ Section 4A is silent on the effect of a delegated action when Commission review is sought and granted.¹¹⁷ And the Commission employed the rulemaking authority granted by Section 4A(b) to promulgate Rule 431(e), which provides that actions made pursuant to delegated authority are deemed actions of the Commission.¹¹⁸

¹¹⁴ See *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) ("[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)).

¹¹⁵ 15 U.S.C. 78d-1(c).

¹¹⁶ The emphasis and alteration are in BOX's filing. The language in the internal quotation marks is in Section 4A(c), 15 U.S.C. 78d-1(c). The word "only" is not. *Id.*

¹¹⁷ *Cf. Indiana Bell Telephone Co., Inc. v. McCarthy*, 362 F.3d 378, 387 (7th Cir. 2004) (noting that decisions made pursuant to delegated authority represent actions of the agency).

¹¹⁸ See Exchange Act Section 4A(a), 15 U.S.C. 78d-1(a) ("[T]he Commission shall have the authority to delegate, by published order or rule, any of its functions . . ."); see also Exchange Act Release No. 35833 (June 9, 1995), 60 FR 32738, 32777 (June 23, 1995), <https://www.govinfo.gov/>

III. Conclusion

For the reasons set forth above, the Commission does not find, pursuant to Section 19(b)(2) of the Exchange Act, that BOX has met its burden of demonstrating that the Proposed Rule Changes are consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange. *It is therefore ordered*, pursuant to Rule 431 of the Commission's Rules of Practice, that the Proposed Rule Changes (SR-BOX-2018-24; SR-BOX-2018-37; SR-BOX-2019-04) be, and hereby are, disapproved.

By the Commission.

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88505; File No. SR-BX-2020-005]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Current Pilot Program Related to BX Rule 11890

March 27, 2020.

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 March 23, 2020, 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 extend the current pilot program related to BX Rule 11890 (Clearly Erroneous Transactions) by six months, to the close of business on October 20, 2020.

content/pkg/FR-1995-06-23/pdf/95-14750.pdf (noting that Commission was relying on the authority granted by Exchange Act Section 4A, among other provisions, in promulgating the Rule 430 series); Exchange Act Release No. 7031, 1963 WL 64555, at *1 (Mar. 8, 1963) (noting that original rule relied on same language from Section 4A(a)).

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 <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 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 the proposed rule change is to extend the current pilot program related to Rule 11890, Clearly Erroneous Transactions, to the close of business on October 20, 2020. This change is being proposed to allow the Exchange to further consider a permanent proposal for clearly erroneous execution reviews.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 11890 that, among other things: (i) Provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.³ In 2013, the Exchange adopted a provision designed to address the operation of the Plan.⁴ Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic

³ See Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR-BX-2010-040).

⁴ See Securities Exchange Act Release No. 68818 (February 1, 2013), 78 FR 9100 (February 7, 2013) (SR-BX-2013-010).

communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.⁵ These changes are currently scheduled to operate for a pilot period that concludes on April 20, 2020.⁶

If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (a)(2)(C), (c)(1), (b)(i), and (b)(ii) shall be in effect, and the provisions of paragraphs (g) through (i) shall be null and void.⁷ In such an event, the remaining sections of Rule 11890 would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority ("FINRA") will also file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to Rule 11890.

The Exchange does not propose any additional changes to Rule 11890. The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a limited six month pilot basis after the current expiration date to allow the Exchange to continue to assess whether additional changes should also be made to the operation of the clearly erroneous execution rules. Extending the effectiveness of Rule 11890 for an additional six months should provide the Exchange, other national securities exchanges and FINRA additional time to consider further amendments to the clearly erroneous execution rules.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,⁸ in general, and Section 6(b)(5) of the Act,⁹ in particular, in that it is designed to remove impediments to and perfect

⁵ See Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR-BX-2014-021).

⁶ See Securities Exchange Act Release No. 87359 (October 18, 2019), 84 FR 57131 (October 24, 2019) (SR-BX-2019-037).

⁷ See notes 3-5, *supra*. The prior versions of paragraphs (a)(2)(C), (c)(1), (b)(i), and (b)(ii) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Rule 11890 for an additional six months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended Clearly Erroneous Transactions rule should continue to be in effect on a pilot basis while the Exchange, other national securities exchanges and FINRA consider a permanent proposal for clearly erroneous execution reviews.

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while the Exchange, other national securities exchanges and FINRA consider further amendments to these rules. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

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 Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

A proposed rule change filed under Rule 19b-4(f)(6)¹² normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)¹³ 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 asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the current clearly erroneous execution pilot program to continue uninterrupted, without any changes, while the Exchange and the other national securities exchanges consider a permanent proposal for clearly erroneous execution reviews. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.¹⁴

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 email to rule-comments@sec.gov. Please include File Number SR-BX-2020-005 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-2020-005. 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-2020-005 and should be submitted on or before April 23, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88500; File No. SR-CboeEDGX-2020-013]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Current Pilot Program Related to EDGX Rule 11.15, Clearly Erroneous Executions, to the Close of Business on October 20, 2020

March 27, 2020.

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 March 18, 2020, Cboe EDGX Exchange, Inc. ("Exchange" or "EDGX") 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 Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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

Cboe EDGX Exchange, Inc. ("EDGX" or the "Exchange") is filing with the Securities and Exchange Commission (the "Commission") a proposed rule change to extend the current pilot program related to EDGX Rule 11.15, Clearly Erroneous Executions, to the close of business on October 20, 2020. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/options/regulation/rule_filings/edgx/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 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.

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).