SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78838; File No. SR-BX-2016-050)

September 14, 2016

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing of Proposed Rule Change to Describe Changes to System Functionality Necessary to Implement the Tick Size Pilot Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b-4 thereunder,[2] notice is hereby given that on September 7, 2016, 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 adopt paragraph (d) to Exchange Rule 4770 to describe changes to System[3] functionality necessary to implement the Regulation NMS Plan to Implement

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] The term "System" is defined as the automated system for order execution and trade reporting owned and operated by the Exchange. The System comprises: (1) a montage for Quotes and Orders, referred to herein as the "Exchange Book," that collects and ranks all Quotes and Orders submitted by Participants; (2) an Order execution service that enables Participants to automatically execute transactions in System Securities; and provides Participants with sufficient monitoring and updating capability to participate in an automated execution environment; (3) a trade reporting service that submits "locked-in" trades for clearing to a registered clearing agency for clearance and settlement; transmits last-sale reports of transactions automatically to the national trade reporting system, if required, for dissemination to the public and industry; and provides participants with monitoring and risk management capabilities to facilitate participation in a "locked-in" trading environment; and (4) data feeds that can be used to display with attribution to Participants' MPIDs all Quotes and displayed Orders on both the bid and offer side of the market for all price levels then within the NASDAQ OMX BX Equities Market, and that disseminate such additional information about Quotes, Orders, and transactions within

a Tick Size Pilot Program ("Plan").[4] The Exchange is also proposing amendments to Rule 4770(a) and (c) to clarify how the Trade-at exception may be satisfied.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

On August 25, 2014, NYSE Group, Inc., on behalf of Bats BZX Exchange, Inc. (f/k/a BATS Exchange, Inc.), Bats BYX Exchange, Inc. (f/k/a BATS Y-Exchange, Inc.), Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., the Exchange, Financial Industry Regulatory Authority, Inc. ("FINRA"), The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NASDAQ PHLX LLC, NYSE Arca, Inc., and the NYSE MKT LLC, (collectively "Participants"), filed the Plan with the Commission pursuant to Section 11A of the

the System as shall be reflected in the Exchange Rules. See Rule 4701(a).

4 See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) ("Approval Order").

Act[5] and Rule 608 of Regulation NMS thereunder.[6] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014 (the "June 2014 Order").[7] The Plan[8] was published for comment in the Federal Register on November 7, 2014,[9] and approved by the Commission, as modified, on May 6, 2015.[10]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small capitalization companies. The Commission plans to use the Tick Size Pilot Program to assess whether wider tick sizes enhance the market quality of Pilot Securities for the benefit of issuers and investors. Each Participant is required to comply with, and to enforce compliance by its members, as applicable, with the provisions of the Plan.

On October 9, 2015, the Operating Committee approved the Exchange's proposed rules as model Participant rules that would require compliance by a Participant's members with the provisions of the Plan, as applicable, and would establish written policies and procedures reasonably designed to comply with applicable quoting and trading requirements specified in the

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5 15 U.S.C. 78k-1.

6 See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

7 See Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

8 Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

9 See Securities and Exchange Act Release No. 73511 (November 3, 2014), 79 FR 66423 (File No. 4-657) (Tick Plan Filing).

10 See Tick Plan Approval Order, supra note 4. See also Securities Exchange Act Release No. 77277 (March 3, 2016), 81 FR 12162 (March 8, 2016) (File No. 4-657), which amended the Plan to add National Stock Exchange, Inc. as a Participant.

Plan.[11] As described more fully below, the proposed rules would require members to comply with the Plan and provide for the widening of quoting and trading increments for Pilot Securities, consistent with the Plan.

The Plan will include stocks of companies with $3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least $2.00 for every trading day. The Plan will consist of a control group of approximately 1,400 Pilot Securities and three test groups with 400 Pilot Securities in each selected by a stratified sampling.[12] During the pilot, Pilot Securities in the control group will be quoted at the current tick size increment of $0.01 per share and will trade at the currently permitted increments. Pilot Securities in the first test group ("Test Group One") will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[13] Pilot Securities in the second test group ("Test Group Two") will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor exception, and a negotiated trade exception.[14] Pilot Securities in the third test group ("Test Group Three") will be subject to the same terms as Test Group Two and also will be subject to the "Trade-at" requirement to prevent price matching by a person not

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11 The Operating Committee is required under Section III(C)(2) of the Plan to "monitor the procedures established pursuant to the Plan and advise Participants with respect to any deficiencies, problems, or recommendations as the Operating Committee may deem appropriate." The Operating Committee is also required to "establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of the Plan."

12 See Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

13 See Section VI(B) of the Plan. Pilot Securities in Test Group One will be subject to a midpoint exception and a retail investor exception.

14 See Section VI(C) of the Plan.

displaying at a price of a Trading Center's "Best Protected Bid" or "Best Protected Offer," unless an enumerated exception applies.[15] In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that closely resemble those under Rule 611 of Regulation NMS[16] will apply to the Trade-at requirement.

The Plan also contains requirements for the collection and transmission of data to the Commission and the public. A variety of data generated during the Plan will be released publicly on an aggregated basis to assist in analyzing the impact of wider tick sizes on smaller capitalization stocks.[17]

As noted above, the Plan requires the Exchange to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the applicable quoting and trading requirements specified in the Plan. Accordingly, the Exchange adopted paragraph (c) of Rule 4770 to require members to comply with the quoting and trading provisions of the Plan. The Exchange also adopted paragraph (b) of Rule 4770 to require members to comply with the data collection provisions under Appendix B and C of the Plan.[18] The Exchange is proposing to adopt paragraph (d) of Rule 4770 to describe the changes to System functionality necessary to implement the Plan and to amend certain rules under Rule 4770. As discussed below, certain of these proposed changes are intended to reduce risk in the System by eliminating unnecessary complexity or by eliminating functionality that would serve no purpose or meaningful benefit to the market. The Exchange believes that all of the proposed

15 See Section VI(D) of the Plan.

16 17 CFR 242.611.

17 See Section VII of the Plan.

18 See Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

changes are designed to directly comply with the Plan and to assist the Exchange in meeting its regulatory obligations thereunder.

Proposed System Changes

Proposed paragraph (d) of Rule 4770 would set forth the Exchange's specific procedures for handling, executing, repricing, and displaying of certain Order Types[19] and Order Attributes[20] applicable to Pilot Securities. Unless otherwise indicated, paragraph (d) of Rule 4770 would apply to Order Types and Order Attributes in Pilot Securities in Test Groups One, Two, and Three and not to Pilot Securities included in the Control Group. The Exchange is proposing to adopt new Rule 4770(d)(1) to make it clear that it will not accept an Order in a Test Group Pilot Security that is not entered in the Pilot's minimum price increment of $0.05, applied to all Order Types that require a price and do not otherwise qualify for an exemption to the $0.05 minimum price increment required by the Plan. The Exchange is also clarifying under new Rule 4770(d)(1) that it will use the $0.05 minimum price increment when the System reprices an Order, including when it rounds a derived price up or down. Although not required by the Plan nor prohibited, the Exchange has determined to apply the Trade-at restrictions during the Pre-Market Hours and Post-Market Hours trading sessions,[21] in addition to the regular Market Hours

19 An "Order Type" is a standardized set of instructions associated with an Order that define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the System. See Rule 4701(e).

20 An "Order Attribute" is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the System. The available Order Types and Order Attributes, and the Order Attributes that may be associated with particular Order Types, are described in Rules 4702 and 4703. One or more Order Attributes may be assigned to a single Order; provided, however, that if the use of multiple Order Attributes would provide contradictory instructions to an Order, the System will reject the Order or remove non-conforming Order Attributes. Id.

21 As used in this proposal, the term "Market Hours" means the period of time beginning at

trading session.[22] The Exchange believes that applying the same process and requirements in Test Group Three Pilot Securities will simplify processing of Orders by the Exchange, avoiding market participant confusion that may be caused by applying only some of the Plan requirements and not others during the different market sessions.

In determining the scope of the proposed changes to implement the Plan, the Exchange carefully weighed the impact on the Plan, System complexity, and the usage of such Order Types and Order Attributes in Pilot Securities. The Exchange found that it can support nearly all Order Type and Order Attribute functionality;[23] however, as described in detail below, it must amend such functionality in a handful of cases to address the requirements of the Plan. Thus, in addition to the changes of broad application discussed above, the Exchange is proposing the following select and discrete amendments to the operation of the following Order Types and Order Attributes, as discussed in detail below: (i) Price to Comply Orders[24]; (ii) Non-Displayed Orders[25]; (iii) Post-Only Orders[26]; (iv) Retail Price Improving Order[27]; (v) Retail Order[28]; (vi)

9:30 a.m. ET and ending at 4:00 p.m. ET (or such earlier time as may be designated by the Exchange on a day when the Exchange closes early). The term "Pre-Market Hours" means the period of time beginning at 7:00 a.m. ET and ending immediately prior to the commencement of Market Hours. The term "Post-Market Hours" means the period of time beginning immediately after the end of Market Hours and ending at 7:00 p.m. ET. See Rule 4701(g).

22 Regular Trading Hours is defined by the Plan as having the same meaning as Rule 600(b)(64) of Regulation NMS.

23 As discussed below, the Exchange cannot support Supplemental Orders in Test Group Three Pilot Securities.

24 See Rule 4702(b)(1).

25 See Rule 4702(b)(3).

26 See Rule 4702(b)(4).

27 See Rule 4702(b)(5).

28 See Rule 4702(b)(6).

Market Maker Peg Orders[29]; (vii) Midpoint Pegging[30]; (viii) Reserve Size[31]; and (ix) Good-till-Cancelled[32].

The Exchange is also proposing to amend existing rules under Rule 4770 to clarify the operation of the Plan on the Exchange. Specifically, the Exchange is proposing to amend Rule 4770(a)(1)(D)(ii), which defines the term "Trade-at Intermarket Sweep Order," and Rule 4770(c)(3)(D)(iii)j, which describes an exception to the Trade-at prohibition of the Plan involving the use of Trade-at Intermarket Sweep Orders, as described in detail below.

Lastly, the Exchange is proposing to adopt new Commentary .12 to Rule 4770 to describe what qualifies as a Block Order for purposes of the Trade-at exception under Rule 4770(c)(3)(D)(iii).

Price to Comply Orders

The Price to Comply Order is an Order Type designed to comply with Rule 610(d) under Regulation NMS by having its price and display characteristics adjusted to avoid the display of quotations that lock or cross any Protected Quotation in a System Security during Market Hours. The Price to Comply Order is also designed to provide potential price improvement. The System does not have a "plain vanilla" limit order that attempts to execute at its limit price and is then posted at its price or rejected if it cannot be posted; rather, the Price to Comply Order, with its price and display adjustment features, is one of the primary Order Types used by Participants to access and display liquidity in the System. The price and display adjustment features of the Order Type enhance efficiency and investor protection by offering an Order Type that first

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29 See Rule 4702(b)(7).

30 See Rule 4703(d).

31 See Rule 4703(h).

32 See Rule 4703(a)(3).

attempts to access available liquidity and then to post the remainder of the Order at prices that are designed to maximize their opportunities for execution.

When a Price to Comply Order is entered by a market participant, the Price to Comply Order will be executed against previously posted Orders on the Exchange Book that are priced equal to or better than the price of the Price to Comply Order, up to the full amount of such previously posted Orders, unless such executions would trade through a Protected Quotation. Any portion of the Order that cannot be executed in this manner will be posted on the Exchange Book (and/or routed if it has been designated as Routable).[33]

During Market Hours, the price at which a Price to Comply Order is posted is determined in the following manner. If the entered limit price of the Price to Comply Order would lock or cross a Protected Quotation and the Price to Comply Order could not execute against an Order on the Exchange Book at a price equal to or better than the price of the Protected Quotation, the Price to Comply Order will be displayed on the Exchange Book at a price one minimum price increment below the current Best Offer (for a Price to Comply Order to buy) or above the current Best Bid (for a Price to Comply Order to sell) but will also be ranked on the Exchange Book with a non-displayed price equal to the current Best Offer (for a Price to Comply Order to buy) or to the current Best Bid (for a Price to Comply Order to sell). The posted Order will then be available for execution at its non-displayed price, thus providing opportunities for price improvement to incoming Orders.

A Price to Comply Order in a Test Group Pilot Security will operate as described in Rule 4702(b)(1) except the Exchange is proposing to change how it handles a Price to Comply Order in a Test Group Three Pilot Security to ensure that it conforms with the Trade-at prohibition of

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[33] See Rules 4703(f) and 4758.

the Plan. First, the Exchange is proposing that if the Exchange received a Price to Comply Order for a Test Group Three Pilot Security that locks or crosses a Protected Quotation of another market center, is partially executed upon entry, and the remainder of the Order would lock a Protected Quotation of another market center, the unexecuted portion of the Order will be cancelled. Second, if the limit price of a buy (sell) Price to Comply Order in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, and is not executable against any previously posted Orders on the Exchange Book, the Order will display at one minimum price increment below (above) the Protected Quotation, and the order will be added to the Exchange Book at the midpoint of the order's displayed price and the National Best Offer (National Best Bid).[34] Thus, the Order would avoid possible execution at a prohibited price, but potentially receive price improvement and be displayed at a permissible price away from the Protected Quotation. Due to the Trade-at requirement of Test Group Three Pilot Securities, the Exchange is also proposing to adjust such Orders repeatedly towards the limit price of the order in accordance with changes to the NBBO until such time as the Price to Comply Order is able to be ranked and displayed at its original entered limit price.[35]

Non-Displayed Orders

A Non-Displayed Order is an Order Type that is not displayed to other Participants, but nevertheless remains available for potential execution against incoming Orders until executed in

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[34] When the market is locked, the price and display logic for Orders that would lock or cross an away market is slightly different. Display Orders at the locking price will post at the locking price if there are other Orders already posted on BX at that price (i.e., BX is part of the locked market). Otherwise, the order will post at one minimum price increment away from the locking price. Non-Displayed orders received when the market is locked will always post one minimum price increment away from the locking price.

[35] The repricing of Price to Comply and Post-Only Orders in Test Group Three Pilot Securities described in this rule filing are not subject to the limitations on Order updates, as described in Rule 4756(a)(4).

full or cancelled. In addition to the Non-Displayed Order Type, there are other Order Types that are not displayed on the Exchange Book. Thus, "Non- Display" is both a specific Order Type and an Order Attribute of certain other Order Types.

When a Non-Displayed Order is entered, the Non-Displayed Order will be executed against previously posted Orders on the Exchange Book that are priced equal to or better than the price of the Non-Displayed Order, up to the full amount of such previously posted Orders, unless such executions would trade through a Protected Quotation. Any portion of the Non-Displayed Order that cannot be executed in this manner will be posted to the Exchange Book (unless the Non-Displayed Order has a Time-in-Force of IOC) and/or routed if it has been designated as Routable. During Market Hours, if the entered limit price of the Non-Displayed Order would lock a Protected Quotation, the Non-Displayed Order will be placed on the Exchange Book at the locking price. If the Non-Displayed Order would cross a Protected Quotation, the Non-Displayed Order will be repriced to a price that would lock the Protected Quotation and will be placed on the Exchange Book at that price.

To avoid possible execution of a Non-Displayed Order at the Protected Quote on the Exchange in a Test Group Three Pilot Security, the Exchange is proposing to not allow execution of a Non-Displayed Order in a Test Group Three Pilot Security at the price of a Protected Quotation unless the incoming Order otherwise qualifies for an exception to the Trade-at prohibition. If the limit price of a buy (sell) Non-Displayed Order in a Test Group Three security would lock or cross a Protected Quotation of another Market Center, the Order will be added to the Exchange Book at either one minimum price increment ($0.05) below (above) the National Best Offer (National Best Bid) or at the midpoint of the NBBO, whichever is higher (lower). Thus the Order would avoid possible execution at a prohibited price, but potentially receive price improvement or post at a permissible price away from the Protected Quotation. After posting and if conditions allow, such an Order will be adjusted repeatedly in accordance with changes to the NBBO up (down) to the Order's limit price.[36]

The Exchange is proposing a change to how a Non-Displayed Order in a Test Group Three Pilot Security would be treated to comply with the Trade-at requirement. Currently, for a Non-Displayed Order that is entered through a RASH or FIX port, if, after being posted to the Exchange Book, the NBBO changes so that the Non-Displayed Order would cross a Protected Quotation, the Non-Displayed Order will be repriced at a price that would lock the new NBBO and receive a new timestamp. For a Non-Displayed Order entered through OUCH or FLITE, if, after the Non-Displayed Order is posted to the Exchange Book, the NBBO changes so that the Non-Displayed Order would cross a Protected Quotation, the Non-Displayed Order will be cancelled back to the Participant. The Exchange is proposing to trigger repricing of a Non-Displayed Order in a Test Group Three Pilot Security if the Order would lock or cross a Protected Quotation by posting the Order to the Exchange Book at either one minimum price increment below (above) the National Best Offer (National Best Bid) or at the midpoint of the NBBO, whichever is higher (lower). Thus, the Order is repriced to avoid execution at the Protected Quotation, but may also receive price improvement. If market conditions allow, a Non-Displayed Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO up (down) to the Order's limit price. For a Non-Displayed Order in a Test Group Three Pilot Security entered through RASH or FIX, if after being posted to the Exchange Book, the NBBO changes so that the Non-Displayed Order would

[36] The repricing of Non-Displayed Orders in Test Group Three Pilot Securities in accordance with changes to the NBBO up (down) to the Order's limit price are not subject to the limitations on Order updates, as described in Rule 4756(a)(4).

no longer be executable at its posted price due to the requirements of Regulation NMS or the Plan, the Non-Displayed Order will be repriced to a price that is at either one minimum increment below (above) the National Best Offer (National Best Bid) or at the midpoint of the NBBO, whichever is higher (lower) and will receive a new timestamp. For a Non-Displayed Order in a Test Group Three Pilot Security entered through OUCH or FLITE, if after such a Non-Displayed Order is posted to the Exchange Book, if the NBBO changes so that the Non-Displayed Order would no longer be executable at its posted price due to the requirements of Regulation NMS or the Plan, the Non-Displayed Order will be cancelled back to the Participant. A posted order is no longer eligible to execute at its posted price under three distinct scenarios. First, in Test Group Pilot Securities, if the NBBO moves such that the posted Order's price crosses a protected quotation, it is no longer executable due to the trade through prohibition under Regulation NMS (this is current functionality). Second, in Test Group Three Pilot Securities, if a Non-Displayed Order is posted at the midpoint and the NBBO moves such that its posted price is no longer a valid increment, the Order will be adjusted as described above. For example, if the NBB is $10.00 and the NBO is $10.05 in a Test Group Three Pilot Security, and a Non-Displayed Order to buy 100 shares of the security with a limit price of $10.05 is received by the System, the Order would be repriced and posted at $10.025 (the midpoint of the NBBO) to avoid locking the market. If subsequently the NBB changes to $9.95 and the NBO to $10.05, then the Order would no longer be eligible for the midpoint exception to the Plan's minimum price increment requirement and therefore would be adjusted and/or cancelled as described above. Third, in Test Group Three Pilot Securities, if the NBBO moves such that the Order's posted price locks a protected quotation, it is no longer executable due to the Trade-at prohibition under the Plan and would be adjusted and/or cancelled as described above.

Post-Only Orders

A Post-Only Order is an Order Type designed to have its price adjusted as needed to post to the Exchange Book in compliance with Rule 610(d) under Regulation NMS[37] by avoiding the display of quotations that lock or cross any Protected Quotation in a System Security during Market Hours, or to execute against locking or crossing quotations in circumstances where economically beneficial to the Participant entering the Post-Only Order.

Post-Only Orders in Test Group Pilot Securities will operate as described under Rule 4702(b)(4), however, the Exchange is proposing changes to the handling of a Post-Only Order in Test Group Three Pilot Securities to ensure that the Trade-at prohibition is enforced. Specifically, the Exchange is proposing to modify how a Post-Only Order in a Test Group Three Pilot Security is handled if it locks or crosses the Protected Quotation of another market center. If the limit price of a buy (sell) Post-Only Order in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, the Order will display at one minimum price increment below (above) the Protected Quotation, and the Order will be added to the Exchange Book at the midpoint of the Order's displayed price and the National Best Offer (National Best Bid). Thus the Order would avoid possible execution at a prohibited price, but potentially receive price improvement or post at a permissible price away from the Protected Quotation. Thereafter and if market conditions allow, the Post-Only Order will be adjusted repeatedly towards its limit price in accordance with changes to the NBBO or the best price on the Exchange Book, as applicable, until such time as the Post-Only Order is able to be ranked and displayed at its original entered limit price.[38]

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[37] 17 CFR 242.610(d).

[38] As discussed above, repricing of Price to Comply and Post-Only Orders in Test Group Three Pilot Securities described in this rule filing are not subject to the limitations on

Retail Price Improving Order

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." An RPI Order will be posted to the Exchange Book regardless of its price, but an RPI Order may execute only against a Retail Order, and only if its price is at least $0.001 better than the NBBO.

A Retail Price Improving Order in a Test Group Pilot Security will operate as described in Rule 4702(b)(5) except as provided under this paragraph. A Retail Price Improving Order in a Test Group Two or Three Pilot Security must be entered in a minimum price increment of $0.005 and will only execute against Retail Orders if its price is at least $0.005 better than the NBBO.

Retail Order

A Retail Order is an Order Type with a Non-Display Order Attribute submitted to the Exchange by a Retail Member Organization (as defined in Rule 4780). A Retail Order must be an agency Order, or riskless principal Order that satisfies the criteria of FINRA Rule 5320.03. The Retail Order must reflect trading interest of a natural person with no change made to the terms of the underlying order of the natural person with respect to price (except in the case of a market order that is changed to a marketable limit order) or side of market and that does not originate from a trading algorithm or any other computerized methodology. A Retail Order may be designated as either a Type-1 Retail Order or a Type-2 Retail Order. Upon entry, a Type-1

Order updates, as described in Rule 4756(a)(4). Supra note 35.

Retail Order will attempt to execute against RPI Orders and any other Orders on the Exchange Book with a price that is (i) equal to or better than the price of the Type-1 Retail Order and (ii) at least $0.001 better than the NBBO. A Type-1 Retail Order is not Routable and will thereafter be cancelled.

A Retail Order in a Test Group Pilot Security will operate as described in Rule 4702(b)(6) except in the following two circumstances. First, a Retail Order in a Test Group One Pilot Security must be entered with a limit price in a minimum price increment ($0.05), to comply with the Plan's minimum price increment requirement, and may execute in an increment other than a minimum price increment if the Order is provided with price improvement that is at least $0.001 better than the NBBO, which is the case today under the Retail Price Improvement Program. Second, a Retail Order in a Test Group Two or Three Pilot Security must be entered in a minimum price increment ($0.05), to comply with the Plan's minimum price increment requirement, and may execute in an increment other than a minimum price increment if the Order is provided with price improvement that is at least $0.005 better than the NBB or NBO. Test Group Two and Three Pilot Securities are subject to the Plan's minimum price increment requirement for both quoting and trading, however, Retail Investor Orders may be provided with price improvement that is at least $0.005 better than the NBBO or NBO.

Midpoint Peg Post-Only Orders

A "Midpoint Peg Post-Only Order" is an Order Type with a Non-Display Order Attribute that is priced at the midpoint between the NBBO and that will execute upon entry against locking or crossing quotes only in circumstances where economically beneficial to the party entering the Order. Because the Order is priced at the midpoint, it can provide price improvement to incoming Orders when it is executed after posting to the Exchange Book. The Midpoint Peg Post-Only Order is available during Market Hours only.

The Plan allows Orders in Test Group Pilot Securities priced to execute at the midpoint of the NBBO to be ranked and accepted in increments less than the Plan's minimum price increment of $0.05. Thus, the Exchange is proposing to make it clear that Midpoint Peg Post-Only Orders in any of the Test Group Pilot Securities may execute in an increment other than the minimum price increment of the Plan.

Market Maker Peg Orders

A "Market Maker Peg Order" is an Order Type designed to allow a Market Maker to maintain a continuous two-sided quotation at a price that is compliant with the quotation requirements for Market Makers set forth in Rule 4613(a)(2).[39] The price of the Market Maker Peg Order is set with reference to a "Reference Price" in order to keep the price of the Market Maker Peg Order within a bounded price range. A Market Maker Peg Order may be entered through RASH or FIX only. A Market Maker Peg Order must be entered with a limit price beyond which the Order may not be priced. The Reference Price for a Market Maker Peg Order to buy (sell) is the then-current Best Bid (Best Offer) (including BX), or if no such Best Bid or Best Offer, the most recent reported last-sale eligible trade from the responsible single plan processor for that day, or if none, the previous closing price of the security as adjusted to reflect any corporate actions (e.g., dividends or stock splits) in the security.

Upon entry, the price of a Market Maker Peg Order to buy (sell) is automatically set by the System at the Designated Percentage (as defined in Rule 4613) away from the Reference Price in order to comply with the quotation requirements for Market Makers set forth in Rule

[39] As with other Order Types, the Market Maker Peg Order must be an Order either to buy or to sell; thus, at least two Orders would be required to maintain a two-sided quotation.

4613(a)(2). For example, if the Best Bid is $10 and the Designated Percentage for the security is 8%, the price of a Market Marker Peg Order to buy would be $9.20. If the limit price of the Order is not within the Designated Percentage, the Order will be sent back to the Participant.

Once a Market Maker Peg Order has posted to the Exchange Book, its price is adjusted if needed as the Reference Price changes. Specifically, if as a result of a change to the Reference Price, the difference between the price of the Market Maker Peg Order and the Reference Price reaches the Defined Limit (as defined in Rule 4613), the price of a Market Maker Peg Order to buy (sell) will be adjusted to the Designated Percentage away from the Reference Price. In the foregoing example, if the Defined Limit is 9.5% and the Best Bid increased to $10.17, such that the price of the Market Maker Peg Order would be more than 9.5% away, the Order will be repriced to $9.35, or 8% away from the Best Bid. Note that calculated prices of less than the minimum increment will be rounded in a manner that ensures that the posted price will be set at a level that complies with the percentages stipulated by this rule. If the limit price of the Order is outside the Defined Limit, the Order will be sent back to the Participant.

Similarly, if as a result of a change to the Reference Price, the price of a Market Maker Peg Order to buy (sell) is within one minimum price variation more than (less than) a price that is 4% less than (more than) the Reference Price, rounded up (down), then the price of the Market Maker Peg Order to buy (sell) will be adjusted to the Designated Percentage away from the Reference Price. For example, if the Best Bid is $10 and the Designated Percentage for the security is 8%, the price of a Market Marker Peg Order to buy would initially be $9.20. If the Best Bid then moved to $9.57, such that the price of the Market Maker Peg Order would be a minimum of $0.01 more than a price that is 4% less than the Best Bid, rounded up (i.e. $9.57 –

($9.57 x 0.04) = $9.1872, rounding up to $9.19), the Order will be repriced to $8.81, or 8% away from the Best Bid.

A Market Maker may enter a Market Maker Peg Order with a more aggressive offset than the Designated Percentage, but such an offset will be expressed as a price difference from the Reference Price. Such a Market Maker Peg Order will be repriced in the same manner as a Price to Display Order with Attribution and Primary Pegging. As a result, the price of the Order will be adjusted whenever the price to which the Order is pegged is changed.

A new timestamp is created for a Market Maker Peg Order each time that its price is adjusted. In the absence of a Reference Price, a Market Maker Peg Order will be cancelled or rejected. If, after entry, a Market Maker Peg Order is priced based on a Reference Price other than the NBBO and such Market Maker Peg Order is established as the Best Bid or Best Offer, the Market Maker Peg Order will not be subsequently adjusted in accordance with this rule until a new Reference Price is established.

In light of the minimum price increment requirement of the Plan, the Exchange is proposing to require the displayed price of a Market Maker Peg Order in a Test Group One, Two or Three Pilot Security to be rounded up (down) to the nearest minimum price increment for bids (offers), if it would otherwise display at an increment smaller than minimum price increment. For example, if the NBB is $10.05 and the NBO is $10.15, and the Designated Percentage is 28%, the displayed price of a Market Maker Peg Order to buy 100 shares of a Test Group Pilot Security would be $7.25 (i.e. $10.05 – ($10.05 x 0.28) = $7.236, rounded up to $7.25). Using the same market, but with a Market Maker Peg Order to sell 100 shares, the Order would be displayed at $12.95 (i.e. $10.15 + ($10.15 x 0.28) = $12.992, rounded down to $12.95). Thus, the rounding done to derive the price of the Market Maker Peg Order in a Test Group Pilot Security will conform to the minimum price increment requirement of the Plan.

As a consequence of conforming the Market Maker Peg Order to the minimum price increment of the Plan, a Market Maker Peg Order may have a higher likelihood of execution, particularly in lower priced securities. For example, if a member entered a Market Maker Peg Order to buy 100 shares of a Test Group Pilot Security with a limit price of $1.70 when the NBB is $1.60 and the NBO is $1.65, if the security is a Tier 2 security, the Order would be pegged at 28% from the NBB, which is $1.20 ($1.60 x .72 = $1.152 which rounds up to $1.20). If the market subsequently moves downward to a NBB of $1.20 and NBO of $1.30, the buy Market Maker Peg Order would not reprice because it had not reached one minimum price increment more than a price that is 4% less than the NBB (i.e., $1.20 x .96 = $1.152, which rounds up to $1.20 and which is not greater than the NBB + $0.05). Thus, the Market Maker Peg Order may receive an execution prior to reaching a point at which it would reprice. This increased likelihood of execution of Market Maker Peg Orders would occur in any Order in a Test Group Pilot Security with a price less than $1.25.

Midpoint Pegging

Pegging is an Order Attribute that allows an Order to have its price automatically set with reference to the NBBO. An Order with a Pegging Order Attribute may be referred to as a "Pegged Order." Midpoint Pegging means Pegging with reference to the midpoint between the Inside Bid and the Inside Offer (the "Midpoint"). Thus, if the Inside Bid was $11 and the Inside Offer was $11.06, an Order with Midpoint Pegging would be priced at $11.03. An Order with Midpoint Pegging is not displayed. An Order with Midpoint Pegging may be executed in sub-pennies if necessary to obtain a midpoint price.

As discussed above, the Plan allows Orders in Test Group Pilot Securities priced to execute at the midpoint of the NBBO to be ranked and accepted in increments less than the Plan's minimum price increment of $0.05. Thus, the Exchange is proposing to make it clear that an Order in a Test Group Pilot Security with Midpoint Pegging may execute in an increment other than the minimum price increment of the Plan.

Reserve Size

Reserve Size is an Order Attribute that permits a Participant to stipulate that an Order Type that is displayed may have its displayed size replenished from additional non-displayed size. An Order with Reserve Size may be referred to as a "Reserve Order." At the time of entry, the displayed size of such an Order selected by the Participant must be one or more normal units of trading; an Order with a displayed size of a mixed lot will be rounded down to the nearest round lot. A Reserve Order with displayed size of an odd lot will be accepted but with the full size of the Order displayed. Reserve Size is not available for Orders that are not displayed; provided, however, that if a Participant enters Reserve Size for a Non-Displayed Order with a Time-in-Force of IOC, the full size of the Order, including Reserve Size, will be processed as a Non-Displayed Order.

Whenever a Participant enters an Order with Reserve Size, the System will process the Order as two Orders: a Displayed Order (with the characteristics of its selected Order Type) and a Non-Displayed Order. Upon entry, the full size of each such Order will be processed for potential execution in accordance with the parameters applicable to the Order Type. For example, a Participant might enter a Price to Display Order with 200 shares displayed and an additional 3,000 shares non-displayed. Upon entry, the Order would attempt to execute against available liquidity on the Exchange Book, up to 3,200 shares. Thereafter, unexecuted portions of the Order would post to the Exchange Book as a Price to Display Order and a Non-Displayed Order; provided, however, that if the remaining total size is less than the display size stipulated by the Participant, the Displayed Order will post without Reserve Size. Thus, if 3,050 shares executed upon entry, the Price to Display Order would post with a size of 150 shares and no Reserve Size.

When an Order with Reserve Size is posted, if there is an execution against the Displayed Order that causes its size to decrease below a normal unit of trading, another Displayed Order will be entered at the level stipulated by the Participant while the size of the Non-Displayed Order will be reduced by the same amount. Any remaining size of the original Displayed Order will remain on the Exchange Book. The new Displayed Order will receive a new timestamp, but the Non-Displayed Order (and the original Displayed Order, if any) will not; although the new Displayed Order will be processed by the System as a new Order in most respects at that time, if it was designated as Routable, the System will not automatically route it upon reentry. For example, if a Price to Comply Order with Reserve Size posted with a Displayed Size of 200 shares, along with a Non- Displayed Order of 3,000 and the 150 shares of the Displayed Order was executed, the remaining 50 shares of the original Price to Comply Order would remain, a new Price to Comply Order would post with a size of 200 shares and a new timestamp, and the Non- Displayed Order would be decremented to 2,800 shares. Because a new Displayed Order is entered and the Non-Displayed Order is not reentered, there are circumstances in which the Displayed Order may receive a different price than the Non-Displayed Order. For example, if, upon reentry, a Price to Display Order would lock or cross a newly posted Protected Quotation, the price of the Order will be adjusted but its associated Non- Displayed Order would not be adjusted. In that circumstance, it would be possible for the better priced Non-Displayed Order to execute prior to the Price to Display Order.

When the Displayed Order with Reserve Size is executed and replenished, applicable market data disseminated by the Exchange will show the execution and decrementation of the Displayed Order, followed by replenishment of the Displayed Order.

In all cases, if the remaining size of the Non-Displayed Order is less than the fixed or random amount stipulated by the Participant, the full remaining size of the Non- Displayed Order will be displayed and the Non-Displayed Order will be removed.

The Exchange is proposing to not allow a resting order in a Test Group Three Pilot Security with a Reserve Size to execute the non-displayed Reserve Size at the price of a Protected Quotation of another market center unless the incoming order otherwise qualifies for an exception to the Trade-at prohibition provided under Rule 4770(c)(3)(D). If the Exchange received a Reserve Order for a Test Group Three Pilot Security that locks or crosses a Protected Quotation of another market center, is partially executed upon entry, and the remainder of the Order would lock a Protected Quotation of another market center, the unexecuted portion of the Order will be cancelled. If the limit price of a buy (sell) Reserve Order in a Test Group Three Pilot Security that is not attributable would lock or cross a Protected Quotation of another market center, and is not executable against any previously posted Orders on the Exchange Book, the displayed portion of the Order will display at one minimum price increment below (above) the Protected Quotation, and the Order will be added to the Exchange Book at the midpoint of the Order's displayed price and the National Best Offer (National Best Bid). Thus, the Order would avoid possible execution at a prohibited price, but potentially receive price improvement and be displayed at a permissible price away from the Protected Quotation. If the limit price of a buy (sell) Reserve Order in a Test Group Three Pilot Security that is attributable would lock or cross a Protected Quotation of another market center, and is not executable against any previously posted Orders on the Exchange Book, the displayed portion of the Order will be adjusted and displayed at one minimum price increment below (above) the Protected Quotation, and the non-displayed Reserve Size will be added to the Exchange Book at the midpoint of the Order's displayed price and the National Best Offer (National Best Bid). If after being posted to the Exchange Book, the NBBO changes so that the Reserve Order, if it is not attributable, would lock or cross a Protected Quotation, the displayed portion of the Reserve Order will display one minimum price increment below (above) the Protected Quotation, and the Order will be repriced to the midpoint of the Order's displayed price and the National Best Offer (National Best Bid).[40] If after being posted to the Exchange Book, the NBBO changes so that the Reserve Order in a Test Group Three Pilot Security, if it is attributable, would no longer be executable at its posted price due to the requirements of Regulation NMS or the Plan, the displayed portion of the Reserve Order will be adjusted and display one minimum price increment below (above) the Protected Quotation, and the non-displayed Reserve Size will be repriced to the midpoint of the Order's displayed price and the National Best Offer (National Best Bid). Thus, the Order would continue to comply with the Trade-at requirement by avoiding potential execution at a prohibited price.

Good-till-Cancelled

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[40] Both a Price to Comply Order and a Price to Display Order with a Reserve Attribute would be repriced pursuant to Reserve Order process described in proposed Rule 4770(d)(9). A Price to Display Order is an Order Type designed to comply with Rule 610(d) under Regulation NMS by avoiding the display of quotations that lock or cross any Protected Quotation in a System Security during Market Hours, and are available solely to Participants that are Market Makers. See Rule 4702(b)(2).

Good-till-Cancelled is a Time-in-Force Order Attribute that is designated to deactivate one year after entry. Under certain circumstances at the election of the member, an Order designated as Good-till-Cancelled must be adjusted to account for corporate actions related to a dividend, payment or distribution. Rule 4761(b) sets forth the circumstances and method by which an Order designated as Good-till-Cancelled is adjusted. The Exchange is making it clear that an order in a Test Group Pilot Security with a Good-till-Cancelled Time-in-Force that is adjusted pursuant to Rule 4761(b) will be adjusted based on a $0.05 increment.

Rule 4770(a) and (c) Changes

Rule 4770(a) provides definitions of terms used under the Rule. Rule 4770(a) defines the term "Trade-at Intermarket Sweep Order" as "a limit order for a Pilot Security that meets the following requirements: (i) When routed to a Trading Center, the limit order is identified as a Trade-at Intermarket Sweep Order; and (ii) Simultaneously with the routing of the limit order identified as a Trade-at Intermarket Sweep Order, one or more additional limit orders, as necessary, are routed to execute against the full size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order. These additional routed orders also must be marked as Trade-at Intermarket Sweep Orders." Rule 4770(c)(3)(D)(iii)j. provides an exception to the Trade-at prohibition, requiring that, to satisfy the exception, the order is executed by a Trading Center that simultaneously routed Trade-at Intermarket Sweep Orders or Intermarket Sweep Orders to execute against the full displayed size of the Protected Quotation that was traded at.

The Exchange is proposing to amend paragraph (ii) of Rule 4770(a) and Rule 4770(c)(3)(D)(iii)j. to allow the Exchange to use Intermarket Sweep Orders in lieu of Trade-at Intermarket Sweep Orders, when it is in receipt of an Order from a member that would trade through a protected price on another market. An Intermarket Sweep Order or "ISO" is an Order Attribute that allows the Order to be executed within the System by Participants at multiple price levels without respect to Protected Quotations of other market centers within the meaning of Rule 600(b) under Regulation NMS. ISOs are immediately executable within the System against Orders against which they are marketable.

For purposes of the Exchange's satisfaction of the Trade-at Intermarket Sweep Order exception to the Trade-at prohibition of Test Group Three Pilot Securities, the ISO Order will operate functionally identically to the use of a Trade-at Intermarket Sweep Order. Intermarket Sweep Orders are sent by the exchange to execute against displayed size represented in away market centers' Protected Quotation and thus provide the same function as a Trade-at Intermarket Sweep Order because either order type would execute against the displayed portion of the away market centers' liquidity. The Exchange's routing broker is currently programmed to accept and route ISO Orders and adding an additional functionality to support routing of Trade-at Intermarket Sweep Orders would add complexity to the process with no functional benefit. Accordingly, the Exchange is proposing to use ISOs when routing Orders to satisfy the exception to the Trade-at prohibition.

New Commentary .12

The Exchange is proposing to adopt a new Commentary .12 to Rule 4770 to clarify what qualifies as a Block Order for purposes of the Block Size exception to the Trade-at prohibition. Rule 4770(c)(3)(D)(iii)c. provides an exception to the Trade-at prohibition for an Order that is of

Block Size at the time of origin and is not an aggregation of non-block Orders, broken into Orders smaller than Block Size prior to submitting the Order to a Trading Center for execution, or is executed on multiple Trading Centers. The Plan defines Block Size as an Order of at least 5,000 shares or for a quantity of stock having a market value of at least $100,000. The Exchange has assessed the technological complexity and effort required to change the System to identify the market value of a quantity of stock and found that it would be exceedingly burdensome and complex without any clear benefit to the Exchange, its members, and the marketplace as a whole. As a consequence, the Exchange is proposing to only allow Orders that have a minimum size of 5,000 shares to qualify as Block Size for purposes of the exception provided by Rule 4770(c)(3)(D)(iii)c. and will only execute if the execution in aggregate is at least 5,000 shares.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[41] in general, and furthers the objectives of Section 6(b)(5) of the Act,[42] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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 Exchange believes that the proposed rule change is consistent with the Act because it allows the Exchange to make changes to its handling of Order Types and Order Attributes necessary to implement the requirements of the Plan on its System. The Plan, which was approved by the Commission pursuant to an order issued by the Commission in reliance on Section 11A of the

41 15 U.S.C. 78f(b).

42 15 U.S.C. 78f(b)(5).

Act,[43] provides the Exchange authority to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The Exchange believes that the proposed rule change is consistent with the authority granted to it by the Plan to establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of the Plan. Likewise, the Exchange believes that the proposed rule change provides interpretations of the Plan that are consistent with the Act, in general, and furthers the objectives of the Act, in particular.

The Exchange is a Participant under the Plan and is subject to the Plan's provisions. The proposed rule change ensures that the Exchange's systems would not display or execute trading interests outside the requirements specified in such Plan, which otherwise may occur given existing System functionality. The proposal would also help allow market participants to continue to trade NMS Stocks, within quoting and trading requirements that are in compliance with the Plan, with certainty on how certain orders and trading interests would be treated. This, in turn, will help encourage market participants to continue to provide liquidity in the marketplace.

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. The proposed changes are being made to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the trading and quoting requirements specified in the Plan, of which other equities exchanges are also Participants. Other competing

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[43] 15 U.S.C. 78k-1.

national securities exchanges are subject to the same trading and quoting requirements specified in the Plan, and must take the same steps that the Exchange has to conform its existing rules to the requirements of the Plan. Therefore, the proposed changes would not impose any burden on competition, while providing certainty of treatment and execution of trading interests on the Exchange to market participants in NMS Stocks that are acting in compliance with the requirements specified in the Plan.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2016-050 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-2016-050. 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 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; 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-2016-050, and should be submitted on or before [insert date 14 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

Robert W. Errett
Deputy Secretary

44 17 CFR 200.30-3(a)(12).