

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-88322; File No. SR-BX-2020-003)

March 5, 2020

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Correct and Clarify Rules 4702(b)(3)(B) and 4703(d)

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 February 26, 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 a proposal to correct and clarify Rules 4702(b)(3)(B) and 4703(d).

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

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

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

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 Exchange proposes to amend Rules 4702 and 4703 to correct and clarify its various descriptions of the circumstances in which the Exchange will cancel certain types of midpoint pegged Orders<sup>3</sup> after they post to the Exchange Book<sup>4</sup> and the National Best Bid and National Best Offer (“NBBO”) or the Inside Bid and Inside Offer subsequently shifts.<sup>5</sup> The Exchange intended for these descriptions to be consistent and comprehensive, but upon review, they are somewhat discordant and confusing.

In 2015, the Exchange restated its Rules that describe its Order Types (Rule 4702) and Attributes (Rule 4703).<sup>6</sup> Among the topics that the restated Rules described were the

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<sup>3</sup> Pursuant to Rule 4701(e), the term “Order” means an instruction to trade a specified number of shares in a specified System Security submitted to the System by a Participant. 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. 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.

<sup>4</sup> Pursuant to Rule 4701(a)(1), the “Exchange Book” refers to a montage for Quotes and Orders that collects and ranks all Quotes and Orders submitted by Participants. The term “Quote” means a single bid or offer quotation submitted to the System by a Market Maker or Equities ECN and designated for display (price and size) next to the Participant’s MPID in the Exchange Book. See Rule 4701(d).

<sup>5</sup> Pursuant to Rule 4703(d), the terms “Inside Bid” and “Inside Offer” mean the price to which an Order is pegged for purposes of Rule 4703. The term “Midpoint” means the midpoint of the NBBO or the Inside Bid and Inside Offer.

<sup>6</sup> See Securities Exchange Act Release No. 34-75291 (June 24, 2015), 80 FR 37698 (July 1, 2015) (SR-BX-2015-015).

circumstances in which the Exchange cancels orders priced at the Midpoint of the NBBO (the Inside Bid and the Inside Offer) or priced at their limit price when the NBBO (the Inside Bid and the Inside Offer) changes after the order posts to the Exchange Book. The Exchange described these circumstances in two different provisions of its Rules pertaining to Orders with Midpoint pegging (“Midpoint-Pegged Orders”).

First, in Rule 4702(b)(3)(B), the Exchange states as follows in describing the cancellation of a Non-Displayed Order with a Midpoint Pegging Order Attribute assigned to it:

If a Non-Displayed Order entered through OUCH or FLITE is assigned a Midpoint Pegging Order Attribute, and if, after being posted to the Exchange Book, the NBBO changes so that the Non-Displayed Order is no longer at the Midpoint between the NBBO, the Non-Displayed Order will be cancelled back to the Participant. In addition, if a Non-Displayed Order entered through OUCH or FLITE is assigned a Midpoint Pegging Attribute and also has a limit price that is lower than the midpoint between the NBBO for an Order to buy (higher than the midpoint between the NBBO for an Order to sell), the Order will nevertheless be accepted at its limit price and will be cancelled if the midpoint between the NBBO moves lower than (higher than) the price of an Order to buy (sell).

Second, in describing the Midpoint Pegging Attribute, Rule 4703(d) explains when the Exchange will cancel an Order with this Attribute enabled:

An Order entered through OUCH or FLITE with Midpoint Pegging will have its price set upon initial entry to the Midpoint, unless the Order has a limit price that is lower than the Midpoint for an Order to buy (higher than the Midpoint for an Order to sell), in which case the Order will be ranked on the Exchange Book at its limit price. Thereafter, if the

NBBO changes so that: the Midpoint is lower than (higher than) the price of an Order to buy (sell), the Pegged Order will be cancelled back to the Participant.

The Exchange intended for these two Rules to be substantively identical. That is, the Rules should have provided for the Exchange to cancel Midpoint-Pegged Orders in the same circumstances when entered through OUCH or FLITE. Upon review, however, the Exchange has determined that the Rules provide somewhat opaque descriptions of the circumstances in which a change in the NBBO/Inside Bid and Inside Offer will and will not result in the cancellation of a Midpoint-Pegged Order. Each Rule states that the Exchange will cancel an Order to buy (sell) if, after entry, the NBBO/Inside Bid and Inside Offer shifts so that the Midpoint is lower (higher) than the price of the buy (sell) Order. However, these descriptions in the Rules do not clearly distinguish between Midpoint-Pegged Orders that post to the Exchange Book at the Midpoint of the NBBO/Inside Bid and Inside Offer (i.e., orders with limit prices more aggressive than the Midpoint) from those Orders that post to the Book at their limit prices (i.e., orders with limit prices at or less aggressive than the Midpoint). In the former case, any post-entry shift in the Midpoint of the NBBO/Inside Bid and Inside Offer will result in cancellation of the Order. In the latter case, however, a post-entry shift in the Midpoint of the NBBO/Inside Bid and Inside Offer will result in cancellation only if the Midpoint shifts lower than (higher than) the limit price of an Order to buy (sell). If the Midpoint is higher than (lower than) the limit price of an Order to buy (sell) upon Order entry, and it remains so after shifting, then the Order will remain on the Book at its limit price. The Exchange believes that this result is implicit in the notion that these Order Types may post to the Exchange Book at their limit prices when the Midpoints are higher (lower) than the limit prices of Orders to buy (sell). Nevertheless, the Rules do not describe this scenario expressly.

Similarly, the Rules do not distinguish the particular circumstances in which a crossed Inside Bid and Inside Offer will and will not result in a cancellation of an Order. The Midpoint Pegging Attribute rule simply states that the Exchange will cancel Orders when the Inside Bid and Inside Offer becomes crossed after these Orders are posted to the Exchange Book. However, the Exchange will only cancel a Midpoint-Pegged Order that is ranked at its limit price where the Inside Bid and Inside Offer become crossed, such that the Midpoint of the crossed quotation remains equal to or higher (lower) than the limit price of the Order to buy (sell), and a new sell (buy) Order is received at a price that locks or crosses the limit price of the resting Midpoint-Pegged Order. If an Order to buy (sell) posts to the Exchange Book at its limit price, and the Inside Bid and Inside Offer subsequently become crossed but the Midpoint remains equal to or higher than (lower than) the limit price of the Order (and there are no contra-side orders that lock or cross the Order), then the Exchange will not cancel the Order. Likewise, if a Midpoint-Pegged Order is ranked at the Midpoint of the Inside Bid and Inside Offer and the Inside Bid and Inside Offer becomes crossed but the Midpoint does not change, then the Exchange will not cancel the order unless a new Order is received at a price that locks or crosses the Midpoint of the Inside Bid and Inside Offer.

To address the foregoing issues and to increase clarity, the Exchange proposes to amend and restate Rules 4702(b)(3)(B) and 4703(d), as follows.

First, the Exchange proposes to delete entirely the language of Rule 4702(b)(3)(B) excerpted above. This language, which again describes the behavior of a Non-Displayed Order with a Midpoint Pegging Attribute enabled, is duplicative of the general description of the behavior of a Midpoint Pegging Attribute in Rule 4703(d). The Exchange believes that the concept described in these two Rules is best stated only once to avoid unintended discrepancies.

In this instance, the Exchange believes that the language is most appropriate for inclusion in Rule 4703(d).

Second, the Exchange proposes to restate the relevant language of Rule 4703(d) as follows:

An Order entered through OUCH or FLITE with Midpoint Pegging will have its price set upon initial entry to the Midpoint, unless the Order has a limit price, and that limit price is lower than the Midpoint for an Order to buy (higher than the Midpoint for an Order to sell), in which case the Order will be ranked on the Exchange Book at its limit price. The price of the Order will not thereafter be adjusted based on changes to the Inside Bid or Offer. However, an Order with Midpoint Pegging entered through OUCH or FLITE will be cancelled back to the Participant after initial entry and posting to the Exchange Book if any of the following conditions are met:

- There is no Inside Bid and/or Inside Offer;
- The Order to buy (sell) is entered with a limit price above (below) the Midpoint and is ranked at the Midpoint; thereafter the Inside Bid and/or Inside Offer change so that the Midpoint changes and the Order is no longer at the Midpoint;
- The Order to buy (sell) is entered at a limit price that is equal to or less than (greater than) the Midpoint and is ranked at its limit price; thereafter, the Inside Bid and/or Inside Offer change so that the Midpoint is lower (higher) than the limit price of the Order;
- The Order to buy (sell) is entered at a limit price that is equal to or less than (greater than) the Midpoint and is ranked at its limit price; thereafter, the Inside Bid and Inside Offer become crossed, such that the Midpoint of the crossed

Quotation remains equal to or higher (lower) than the limit price of the Order, and then a new sell (buy) Order is received at a price that locks or crosses the limit price of the resting Order marked for Midpoint Pegging; or

- The Order to buy (sell) is entered at a limit price that is greater than (less than) the Midpoint and is therefore ranked at the Midpoint; thereafter, the Inside Bid and Inside Offer become crossed but the Midpoint does not change, and then a new sell (buy) Order is received at a price that locks or crosses the Midpoint of the Inside Bid and Inside Offer.

The Exchange believes that the restated language is more precise than the existing language because it specifies that the Exchange will cancel an Order with Midpoint Pegging that posts to the Exchange Book at its limit price, when the Inside Bid and Inside Offer later shift, only when the Inside Bid and Inside Offer shift so that the Midpoint of the Inside Bid and Inside Offer becomes lower (higher) than the limit price of an Order to buy (sell). Again, where the Inside Bid and Inside Offer shift after the Order posts such that the Midpoint of the Inside Bid and Inside Offer remains or becomes higher (lower) than the limit price of an Order to buy (sell), cancellation of the Order is unnecessary because the Order can simply remain on the Exchange Book at its limit price. The restated language is also more precise because it specifies that for an Order with Midpoint Pegging with a limit price that is more aggressive than the Midpoint of the Inside Bid and Inside Offer, any change to the Midpoint will result in cancellation of the Order.

Likewise, the restated language is more precise than the existing language in that the restated language specifies that the Exchange will cancel an Order with Midpoint Pegging to buy (sell) that posts at its limit price, when the Inside Bid and Inside Offer subsequently become crossed and the Midpoint of the crossed Inside Bid and Inside Offer remains equal to or higher

(lower) than the limit price of the Order to buy (sell), only when a new sell (buy) Order is received at a price that locks or crosses the limit price of the resting Order. The restated language also specifies that the Exchange will cancel an Order with Midpoint Pegging to buy (sell) that posts at the Midpoint of the Inside Bid and Inside Offer, when the Inside Bid and Inside Offer subsequently become crossed and the Midpoint of the crossed Inside Bid and Inside Offer remains the same, only when the Exchange receives a new sell (buy) Order at a price that locks or crosses the Midpoint of the Inside Bid and Inside Offer. Other than in these two circumstances, cancellation of an Order simply because the Inside Bid and Inside Offer cross is unnecessary because the Order need not be re-priced. When an Order to buy (sell) is ranked at its limit price, and the Inside Bid and Inside Offer become crossed while the Midpoint remains at or above (below) the limit price, the crossed market does not impact the Order, which can still rest on the Exchange Book at its limit price because the Inside Bid and Inside Offer could uncross prior to the Order executing. Likewise, when an Order to buy (sell) is ranked at the Midpoint of the Inside Bid and Inside Offer, and the Inside Bid and Inside Offer become crossed but the Midpoint does not change, the crossed market also does not impact the Order, which can continue to rest on the Exchange Book at the Midpoint because the Inside Bid and Inside Offer could uncross (with the Midpoint still remaining unchanged) prior to the Order executing.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect

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

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



the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The proposal will protect investors by amending Rules 4702 and 4703 so that they will describe more clearly what the Rules currently imply with respect to the circumstances in which the Exchange will not cancel Midpoint-Pegged Orders. That is, the Exchange believes that concept of a limit price fairly implies that the Exchange has no need to and thus, it does not presently, cancel a Midpoint-Pegged Order to buy (sell) when such an Order is posted at its limit price and the Inside Bid and Inside Offer shifts thereafter but the Midpoint remains above (below) the limit price; however, Rule 4702(a)(3)(B) merely states that any post-entry shift in the Midpoint will result in the cancellation of a Midpoint-Pegged Order. To avoid confusion, the proposal clarifies that the Exchange will cancel a Midpoint-Pegged Order posted at its limit price if the Inside Bid and Inside Offer shifts after entry such that the Midpoint becomes lower (higher) than the limit price. In this circumstance, cancellation is warranted because the Order would need to be re-priced, and a Midpoint-Pegged Order entered using OUCH or FLITE cannot be re-priced. Similarly, if a Midpoint-Pegged Order posts to the Exchange Book at the Midpoint of the Inside Bid and Inside Offer and then the Midpoint shifts in either direction, the Order will be cancelled because it would need to be re-priced, and again, OUCH or FLITE do not allow for re-pricing to occur.

Similarly, the Exchange believes that it is helpful to investors to clarify the circumstances in which the Exchange does and does not cancel Midpoint-Pegged Orders in a crossed market. Rule 4703(d) states generally that the Exchange will cancel Midpoint-Pegged Orders if the Inside Bid and Inside Offer become crossed. However, as discussed above, the Exchange does not need to, and thus it does not presently, cancel Midpoint-Pegged Orders in all such instances.

Although cancellation is warranted to prevent Orders from actually executing in a crossed market,<sup>9</sup> the Exchange does not believe that cancellation is warranted simply because the markets cross if there remains a possibility that the markets will uncross prior to an execution occurring. Thus, the Exchange proposes that it will not cancel a Midpoint-Pegged Order to buy (sell) when the Order is ranked at its limit price and the Inside Bid and Inside Offer become crossed thereafter (and the Midpoint remains equal to or more aggressive than its limit price), but no new sell (buy) Order is received that locks or crosses the limit price of the resting Midpoint-Pegged Order. Unless or until the Exchange receives a new Order that locks or crosses the limit price of the resting Midpoint-Pegged Order while the market remains crossed, cancellation is unnecessary because the Midpoint-Pegged Order can continue to rest at its limit price and the market may uncross before the Midpoint-Pegged Order executes. Likewise, as was also discussed above, the Exchange proposes that it will not cancel a Midpoint-Pegged Order that is ranked at the Midpoint of the Inside Bid and Inside Offer where the market becomes crossed, provided that while the market is crossed, the Midpoint of the crossed Inside Bid and Inside Offer does not change, and the Exchange does not receive a new Order that would lock or cross the Midpoint. Again, cancellation is unnecessary in this scenario because the Midpoint-Pegged Order can continue to rest at the Midpoint while the market is crossed and because the market may uncross (with the Midpoint remaining unchanged) prior to execution of the Order.<sup>10</sup>

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<sup>9</sup> See Securities Exchange Act Release No. 34-79290 (Nov. 10, 2016), 81 FR 81184, 81186 (Nov. 17, 2016) (stating that the “midpoint of a crossed market is not a clear and accurate indication of a valid price” and that cancellation in a crossed market “would avoid mispriced executions”).

<sup>10</sup> If at any point after the Midpoint-Pegged Order posts to the Exchange Book at the Midpoint, the Inside Bid and Inside Offer changes so that the price of the Order is no longer at the Midpoint, then the order must be cancelled because orders entered through OUCH or FLITE cannot be re-priced.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange intends for the proposal to improve the precision with which the Rules describe the circumstances in which it will cancel Midpoint-Pegged Orders after entry, as described above. The Exchange does not expect that these changes will have any impact whatsoever on competition.

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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

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

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2020-003 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-2020-003. 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. 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-2020-003, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).