

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-92535; File No. SR-BX-2021-032)

July 30, 2021

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Options 4 Listing Rules

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 July 20, 2021, 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, 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 amend BX’s Rules at Options 2, Section 5, Market Maker Quotations; Options 4, Options Listing Rules; and Options 4A, Section 12, Terms of Index Options Contracts. This proposal also reserves Options 4C. Finally, the Exchange proposes to reserve some sections with the Equity Rules.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/bx/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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 Exchange proposes to amend the Options 4, Options Listing Rules, to conform BX’s Options 4 Listing Rules to Nasdaq ISE, LLC’s (“ISE”) Options 4 Listing Rules. The Exchange also proposes to amend BX Options 4A, Section 12, Terms of Index Options Contracts and reserve BX Options 4C. Finally, the Exchange also proposes to amend Options 2, Section 5, Market Maker Quotations to relocate rule text concerning bid/ask differentials for long-term options contracts from BX Options 4 and Options 4A, similar to ISE.

The Exchange also proposes a technical amendment to General 9, Section 51, Research Analysts and remove stray periods through Options 4. Each rule change is described below.

Options 4, Options Listing Rules

Conforming BX’s Options 4 Listing Rules to that of ISE Options 4 is part of the Exchange’s continued effort to promote efficiency in the manner in which it administers its rules. The Exchange proposes to amend these rules to conform to ISE Options 4 Rules.

*Section 1. Designation of Securities*

The Exchange proposes to replace the current rule text of Options 4, Section 1 which states,

Securities traded on the Exchange are options contracts, each of which is designated by reference to the issuer of the underlying security or name of underlying foreign currency, expiration month or expiration date, exercise price and type (put or call).

with the following rule text,

The Exchange trades options contracts, each of which is designated by reference to the issuer of the underlying security, expiration month or expiration date, exercise price and type (put or call).

The Exchange proposes to amend this sentence within Options 4, Section 1 to conform to ISE Options 4, Section 1. The revised wording does not substantively amend the paragraph.

*Section 2. Rights And Obligations Of Holders And Writers*

The Exchange proposes to replace the current rule text of Options 4, Section 1 which states,

Subject to the provisions of this Chapter, the rights and obligations of holders and writers of option contracts of any class of options dealt in on the Exchange shall be as set forth in the Rules of the Clearing Corporation.

with the following rule text,

The rights and obligations of holders and writers shall be as set forth in the Rules of the Clearing Corporation.

The Exchange proposes to amend this sentence within Options 4, Section 2 to conform to ISE Options 4, Section 1. The revised wording does not substantively amend the paragraph.

*Section 3. Criteria for Underlying Securities*

Options 4, Section 3 of the Options Listing Rules is being updated to conform to ISE Options 4, Section 3.

The Exchange proposes to amend Options 4, Section 3(a)(i) and (ii) to conform to ISE Options 4, Section 3(a)(1) and (2) by changing the “i. and ii.” to “(1) and (2),” respectively.

Also, the Exchange proposes to remove the phrase “with the SEC” within current BX Options 4, Section 3(a)(i). These amendments are non-substantive.

The Exchange proposes to amend Options 4, Section 3(b) to reword the rule text to ISE Options 4, Section 3(b). The Exchange proposes to replace the current rule text of Options 4, Section 3(b) which states,

In addition, the Exchange shall from time to time establish standards to be considered in evaluating potential underlying securities for the Exchange options transactions. There are many relevant factors which must be considered in arriving at such a determination, and the fact that a particular security may meet the standards established by the Exchange does not necessarily mean that it will be selected as an underlying security. The Exchange may give consideration to maintaining diversity among various industries and issuers in selecting underlying securities. Notwithstanding the foregoing, an underlying security will not be selected unless:

with the following rule text,

In addition, the Exchange shall from time to time establish guidelines to be considered in evaluating potential underlying securities for Exchange options transactions. There are many relevant factors which must be considered in arriving at such a determination, and the fact that a particular security may meet the guidelines established by the Exchange does not necessarily mean that it will be selected as an underlying security. Further, in exceptional circumstances an underlying security may be selected by the Exchange even though it does not meet all of the guidelines. The Exchange may also give consideration to maintaining diversity among various industries and issuers in selecting underlying securities. Notwithstanding the foregoing, however absent exceptional circumstances, an underlying security will not be selected unless:

The new rule text permits the Exchange, in exceptional circumstances, to select an underlying security even though it does not meet all of the guidelines. Today, the Exchange may establish guidelines to be considered in evaluating potential underlying securities for Exchange options transactions. Providing BX with the same ability to select an underlying security even though it does not meet all of the guidelines as ISE will permit BX to list similar options as ISE for competitive purposes. The proposal to replace the term “standards” with “guidelines” within paragraph 3(b) is non-substantive.

The Exchange is amending numbering within Options 4, Section 3(b) as well as removing extraneous rule text within current Options 4, Section 3(b)(iii), namely “or Rules thereunder.” The Exchange proposes to relocate Options 4, Section 3(k) into new Options 4, Section 3(b)(6) without change. This would align BX Options 4, Section 3(b)(6) with ISE Options 4, Section 3(b)(6). This provision states,

Notwithstanding the requirements set forth in Paragraphs 1, 2, 4 and 5 above, the Exchange may list and trade an options contract if (i) the underlying security meets the guidelines for continued approval in Options 4, Section 4; and (ii) options on such underlying security are traded on at least one other registered national securities exchange.

The Exchange proposes to renumber BX Options 4, Section 3(c) and make minor amendments to rule text within current Options 4, Section 3(c)(ii), (iii), (iv) and (v), Sections 3(d), 3(f) and 3(g) to conform the rule text to ISE Options 4, Section 3(c)(ii), (iii), (iv) and (v), Sections 3(d), 3(f) and 3(g). The proposed changes are non-substantive.<sup>3</sup>

The Exchange proposes to amend an “up” to “on” within BX Options 4, Section 3(d). This proposed change is non-substantive.

The Exchange proposes non-substantive amendments to amend BX Options 4, Section 3(f) and (g)<sup>4</sup> in addition to conforming the numbering to ISE Options 4, Section 3(f) and (g).

The Exchange proposes to relocate current BX Options 4, Section 3(h) describing a market information sharing agreement to proposed BX Options 4, Section 3(i). This text is currently located within ISE rules at Options 4, Section 3(i).

Current BX Options 4, Section 3(i) is being re-lettered as proposed Options 4, Section 3(h). The Exchange proposes to add the defined term “Financial Instruments” within Options 4, Section 3(h) and also account for money market instruments, U.S. government securities and

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<sup>3</sup> The proposed changes replace the word “standards” with “guidelines,” insert “Options 4” before “Section 3,” and remove 2 extraneous uses of “this.” Similar replacements are made throughout current Options 4, Section 3(c), including amending a capitalized “Paragraph.”

<sup>4</sup> The proposed changes replace the word “standards” with “guidelines,” insert “Rule” instead of “Section 3,” and remove an unnecessary “or.”

repurchase agreements, defined by the term “Money Market Instruments” similar to ISE Options 4, Section 3(h). The addition of money market instruments, U.S. government securities and repurchase agreements as securities deemed appropriate for options trading will make clear that these agreements are included in the acceptable securities. The Exchange notes that this rule text is clarifying in nature and will more explicitly provide for money market instruments, U.S. government securities and repurchase agreements as a separate category from what is being defined as “Financial Instruments” with this proposal. Today, these instruments are eligible as securities deemed appropriate for options trading. The remainder of the changes are non-substantive in nature and simply conform the location of words similar to ISE.<sup>5</sup> The Exchange also proposes to remove the following products from Options 4, Section 3(h): the ETFS Silver Trust, the ETFS Palladium Trust, the ETFS Platinum Trust or the Sprott Physical Gold Trust. The Exchange no longer lists these products and proposes to remove them the products from its listing rules. The Exchange will file a proposal with the Commission if it determines to list these products in the future.

The Exchange will file a proposal with the Commission if it determines to list these products in the future. Finally, the Exchange proposes to amend Options 4, Section 3(h) by removing the rule text at the end of the paragraph which provides, “all of the following conditions are met.” Paragraph (h) would simply end with “provided that:” and direct market participants to subparagraphs (1) and (2).

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<sup>5</sup> The amendment to current Options 4, Section 3(i)(B)(4) to add, “...which the Exchange-Traded Fund shares are based...” makes clear that this text applies to Exchange-Traded Fund shares. Also the word “indexes” is being changes to “indices” within this paragraph and “similar entity” is being relocated within the paragraph.

The Exchange proposes to capitalize “the” at the beginning of Options 4, Section 3(h)(1) and remove “; and” at the end of the paragraph and instead at a period so that subparagraphs (1) and (2) are not linked, but rather read independently. Today, Options 4, Section 3(h)(1) applies to all Exchange-Traded Fund Shares. Similar to ISE Options 4, Section 3(h)(2), the Exchange proposes to clarify that Options 4, Section 3(h)(2) applies to only international or global Exchange-Traded Fund Shares. Specifically, the Exchange proposes to amend Options 4, Section 3(h)(2) to provide, “Exchange-Traded Fund Shares based on international or global indexes, or portfolios that include non-U.S. securities, shall meet the following criteria.” ISE Options 4, Section 3(h) has the identical text. Proposed Options 4, Sections 3(h) generally concerns securities deemed appropriate for options trading. The proposed new rule text adds language stating that subparagraph (h)(2) of Options 4, Section 3 applies to the extent the Exchange-Traded Fund Share is based on international or global indexes, or portfolios that include non-U.S. securities. This language is intended to serve as a guidepost and clarify that (1) subparagraph (h)(2) does not apply to an Exchange-Traded Fund Shares based on a U.S. domestic index or portfolio, and (2) subparagraph (h)(2) includes Exchange-Traded Fund Shares that track a portfolio and do not track an index.

The Exchange proposes to amend Options 4, Section 3(h)(2)(A) to remove the phrase “for series of portfolio depositary receipts and index fund shares based on international or global

indexes;”. Today, Options 4, Section 3(h), subparagraphs (h)(1)<sup>6</sup> and (h)(v)<sup>7</sup> permit the Exchange to list options on Exchange-Traded Fund Shares based on generic listing standards for portfolio depositary receipts and index fund shares without applying component based requirements in subparagraphs (h)(2)(B) – (D). By removing the proposed rule text, the Exchange would make clear that subparagraph (h)(2)(A) applies to Exchange-Traded Fund Shares based on international or global indexes, or portfolios that include non-U.S. securities, that are listed pursuant to generic listing standards and comply with Options 4, Section 3(h) and subparagraph (h)(1). The identical rule text exists within ISE Options 4, Section 3(h)(2)(A).

The Exchange also proposes to amend the term “comprehensive surveillance agreement” within Options 4, Section 3(h)(2) (A) – (D) to instead provide “comprehensive surveillance

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<sup>6</sup> Subsection (h)(i) concerns passive Exchange-Traded Fund Shares. Subsection (h)(1) provides, “represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities and/or financial instruments, including, but not limited to, stock index futures contracts, options on futures, options on securities and indices, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements (the “Financial Instruments”), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the “Money Market Instruments”) comprising or otherwise based on or representing investments in broad-based indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Market Instruments).”

<sup>7</sup> Subsection (h)(v) concerns active Exchange-Traded Fund Shares. Subsection (h)(v) Provides, “represents an interest in a registered investment company (“Investment Company”) organized as an open-end management company or similar entity, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value (“NAV”), and when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV (“Managed Fund Share”).

sharing agreement.” This amendment will bring greater clarity to the term. Further, the Exchange proposes to add the phrase “if not available or applicable, the Exchange-Traded Fund’s” within Options 4, Section 3(h)(2)(B), (C), and (D) to clarify that when component securities are not available, the portfolio of securities upon which the Exchange-Traded Fund Share is based can be used instead. The Exchange notes that “not available” is intended for cases where the Exchange does not have access to the index components, in those cases the Exchange would look to the portfolio components. The term “not applicable” is intended if the fund is active and does not track an index and only the portfolio is available. These amendments will conform the rule text to ISE Options 4, Section 3(h)(2)(A) – (D).

The Exchange also proposes to wordsmith Options 4, Section 3(h)(2)(B) to amend the phrase to provide, “any non-U.S. component securities of an index on which the Exchange-Traded Fund Shares are based or if not available or applicable, the Exchange-Traded Fund’s portfolio of securities that are not subject to comprehensive surveillance sharing agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio;”. Finally, the Exchange proposes to wordsmith Options 4, Section 3(h)(2)(C) and (D) to relocate the phrase “on which the Exchange-Traded Fund Shares are based” and add “or portfolio” to bring greater clarity to the rule text by conforming the rule text of (C) and (D) to the language within (B). The Exchange believes that the revised wording will bring greater clarity to the rule text and conform the rule text to ISE Options 4, Section 3(h)(2)(B) – (D). The Exchange proposes a non-substantive technical amendment to Options 4, Section 3(C)(2)(A)(ii) to correct a typographical error by changing a “than” to a “that.” The Exchange proposes a non-substantive technical amendment to Options 4, Section 3(h)(1) to change “In” to “in.”

As noted above BX Options 4, Section 3(h), which describes a market information sharing agreement, was relocated to proposed Options 4, Section 3(i), similar to ISE Options 4, Section 3(i).

The Exchange proposes to amend Options 4, Section 3(j) to conform the rule text to ISE Options 4, Section 3(j). The proposed changes are non-substantive.<sup>8</sup>

As noted, above, Options 4, Section 3(k) was relocated to new Options 4, Section 3(b)(6).

The Exchange proposes to remove the header “Index-Linked Securities” within Options 4, Section 3(l), and re-letter Options 4, Section 3(l)(i) as Section 3(k). Proposed Options 4, Section 3(k) has non-substantive numbering and citation amendments.

Options 4, Section 3(m) is being removed as BX does not list U.S. Dollar-Settled Foreign Currency Options.

#### *Section 4. Withdrawal of Approval of Underlying Securities*

The Exchange proposes to remove the first sentence of Options 4, Section 4(a), which provides, “If put or call options contracts with respect to an underlying security are approved for listing and trading on the Exchange, such approval shall continue in effect until such approval is affirmatively withdrawn by the Exchange.” This sentence is unnecessary as the second sentence within Options 4, Section 4(a) makes clear that approval continues until it does not meet the requirements. Also, the Exchange proposes to add the following text to the end of this paragraph: “When all options contracts with respect to any underlying security that is no longer approved have expired, the Exchange may make application to the SEC to strike from trading and listing all such options contracts.” This text makes clear that options contracts that are no

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<sup>8</sup> The amendment to current Options 4, Section 3(j) replace the word “standards” with “guidelines.”

longer approved will not be listed. The remainder of the changes to Options 4, Section 4(a) are non-substantive. This proposal is intended to conform BX's Options 4, Section 4(a) with ISE Options 4, Section 4(a).

The Exchange proposes to amend Options 4, Section 4(b) to add "Absent exceptional circumstances..." at the beginning of the section. This phrase adds clarity to the rule text. The remainder of the numbering changes as well as capitalization are non-substantive and intended to conform BX's Options 4, Section 4(b) with ISE Options 4, Section 4(b). The Exchange also proposes to remove reserved sections.

Options 4, Section 4(c), which is currently reserved, is proposed to be deleted and current Options 4, Section 4(d) is proposed to be re-lettered as "c". Minor non-substantive conforming changes are proposed to current Options 4, Section 4(d) – (f).<sup>9</sup>

The Exchange proposes to amend current Options 4, Section 4(h) to re-letter it "g" and replace "security" with "Exchange-Traded Fund Shares" similar to ISE Options 4, Section 4(g). The Exchange proposes to add halt or suspension as other circumstances in which the Exchange shall not open for trading any additional series of option contracts of the class to clarify that this scenario may also exist. The other proposed changes to current Options 4, Section 4(h) are non-substantive.<sup>10</sup>

The Exchange proposes to amend current Options 4, Section 4(i) to re-letter it "h" and add "Absent exceptional circumstances, securities..." at the beginning of the section. This

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<sup>9</sup> The Exchange proposes to remove "Section 4", lowercase the term "Customer," add "options 4" and remove "thereof" within Options 4, Section 4(d) – (f).

<sup>10</sup> The Exchange proposes to amend Options 4, Section 4(h) to add "Options 4" and replace "Section 4" with "Rule;" and replace an "or" with an "and."

phrase adds clarity to the rule text. The remainder of the numbering changes are non-substantive<sup>11</sup> and conform current BX's Options 4, Section 4(i) with ISE Options 4, Section 4(h).

The Exchange proposes to adopt new Options 4, Section 4(i) similar to ISE, Options 4, Section 4(i). The proposed new section would provide,

For Holding Company Depositary Receipts (HOLDERS), the Exchange will not open additional series of options overlying HOLDERS (without prior Commission approval) if:

- (1) the proportion of securities underlying standardized equity options to all securities held in a HOLDERS trust is less than 80% (as measured by their relative weightings in the HOLDERS trust); or
- (2) less than 80% of the total number of securities held in a HOLDERS trust underlie standardized equity options.

Current Options 4, Section 4 does not describe the withdrawal of HOLDERS. This new text, similar to ISE, would provide for provisions wherein the Exchange will not open additional series of options overlying HOLDERS.

The Exchange proposes to delete current Options 4, Section 4(j), which is reserved, as well as the lettering for Options 4, Section 4(k) which states, "Index Linked Securities." The next existing paragraph is proposed to be Options 4, Section 4(j). The remainder of the numbering changes to this section are non-substantive and conform proposed Options 4, Section 4(j) with ISE Options 4, Section 4(j).

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<sup>11</sup> The term Options 4 is being relocated within the proposed new paragraph (h). Also, the term "Rule" is being used within proposed new paragraph (h)(1) instead of "Section 4," and "Section 3." "Upon annual review" is being removed from proposed new paragraph (h)(2).

The Exchange proposes to remove Options 4, Section 4(l) related to inadequate volume delisting. To remain competitive with other options markets, the Exchange proposes to adopt the same obligations for continuance of trading.<sup>12</sup> Also, pursuant to proposed new Options 4, Section 5(e) the Exchange will announce securities that have been withdrawn. With this proposal, the Exchange would eliminate the requirement that an option must be trading for more than 6 months. The Exchange notes that this condition is not present on other options markets such as ISE and Cboe Exchange, Inc. (“Cboe”).<sup>13</sup> This also applies to the requirement that the average daily volume of the entire class of options over the last six (6) month period was less than twenty (20) contracts. The Exchange notes that BX’s requirements are different than other options markets. To remain competitive the Exchange proposes to adopt the same standards as ISE and Cboe to remain competitive in order that it may list options similar to other markets.

While the Exchange may in the future determine to delist an option that is singly listed, the Exchange proposes to remove the rule text which provides that “If the option is singly listed only on the Exchange, the Exchange will cease to add new series and may delist the class of

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<sup>12</sup> Options 4, Section 4(b), as amended, establishes requirements for continued listing, similar to ISE. See proposed Phlx Options 3, Section 4(b) which provides, “Absent exceptional circumstances, an underlying security will not be deemed to meet the Exchange’s requirements for continued approval whenever any of the following occur: (1) There are fewer than 6,300,000 shares of the underlying security held by persons other than those who are required to report their security holdings under Section 16(a) of the Exchange Act. (2) There are fewer than 1,600 holders of the underlying security. (3) The trading volume (in all markets in which the underlying security is traded) has been less than 1,800,000 shares in the preceding twelve (12) months. (4) The underlying security ceases to be an “NMS stock” as defined in Rule 600 of Regulation NMS under the Exchange Act. (5) If an underlying security is approved for options listing and trading under the provisions of Options 4, Section 3(c), the trading volume of the Original Security (as therein defined) prior to but not after the commencement of trading in the Restructure Security (as therein defined), including “when-issued” trading, may be taken into account in determining whether the trading volume requirement of (3) of this paragraph (b) is satisfied.”

<sup>13</sup> See ISE Options 4, Section 4 and Cboe Rule 4.4.

options when there is no remaining open interest.” This rule text does not exist on ISE and Cboe. The Exchange today provides notification of a delisting to all Participants so therefore it is not necessary to retain the provisions within (b)(2). Also, proposed new Options 4, Section 4(e) establishes the rules by which the Exchange will announce securities that have been withdrawn. The rule text within Options 4, Section 4(b), as amended to conform to ISE rule text, will continue to govern the continued approval of options on the Exchange.

The reference to Options 4, Section 4(m) is proposed to be deleted. The provision that is currently Options 4, Section 4(m) is proposed to become proposed Supplementary Material .01 to Options 4, Section 6 with a minor non-substantive change to the current rule text to capitalize “rules.”

#### *Section 5. Series of Options Contracts Open for Trading*

The Exchange proposes to update citations within Options 4, Section 5 to reflect the replacement of current rule text. These changes are non-substantive.

#### *Section 7. Adjustments*

The Exchange proposes non-substantive amendments to Options 4, Section 7. The current text states,

Options contracts shall be subject to adjustments in accordance with the Rules of the Clearing Corporation. The Exchange will announce adjustments, and such changes will be effective for all subsequent transactions in that series at the time specified in the announcement.

The Exchange proposes to instead provide,

Options contracts shall be subject to adjustments in accordance with the Rules of the Clearing Corporation. When adjustments have been made, the Exchange will

announce that fact, and such changes will be effective for all subsequent transactions in that series at the time specified in the announcement.

The proposal conforms BX Options 4, Section 7 with ISE Options 4, Section 7.

*Section 8. Long-Term Options Contracts*

The Exchange proposes to conform the BX Options 4, Section 8 to ISE Options 4, Section 8. The proposed changes are non-substantive. BX's current rule text provides that with respect to long-term options series, bid/ask differential rules do not apply. The Exchange proposes to add this rule text to Options 4, Section 5(d)(2) within new "A" as the bid/ask differential requirements can be found within this rule. The Exchange also proposes to add a new sentence to Options 4, Section 8(a) to refer to Options 4, Section 5(d)(2)(A), which states, "Bid/ask differentials for long-term options contracts are specified within Options 3, Section 5(d)(2)(A)" for ease of reference.

*Section 9. Limitation on the Liability of Index Licensors for Options on Fund Shares*

The Exchange proposes to remove current Options 4, Section 9, U.S. Dollar-Settled Foreign Currency Option Closing Settlement Value as BX does not list U.S. Dollar-Settled Foreign Currency Options.

The Exchange proposes to adopt a new Section 9, titled "Limitation on the Liability of Index Licensors for Options on Fund Shares" identical to ISE Options 4, Section 9. ISE and Cboe have similar provisions.<sup>14</sup> The new rule would provide,

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<sup>14</sup> See Securities Exchange Act Release No. 45817 (April 24, 2002), 67 FR 21785 (May 1, 2002) (SR-CBOE-2002-19) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Amend Its Rules Relating to the Limitation of Liability for Index Licensors) and 14729 (March 19, 2003), 68 FR 14729 (March 26, 2003) (SR-ISE-2003-09) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, Inc., Relating to Limiting the Liability of Index Licensors for Options on Fund Shares).

(a) The term “index licensor” as used in this Rule refers to any entity that grants the Exchange a license to use one or more indexes or portfolios in connection with the trading of options on Exchange-Traded Fund Shares (as defined in Options 4, Section 3(h)).

(b) No index licensor with respect to any index or portfolio underlying an option on Exchange-Traded Fund Shares traded on the Exchange makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of such index or portfolio, any opening, intra-day or closing value therefor, or any data included therein or relating thereto, in connection with the trading of any option contract on Exchange-Traded Fund Shares based thereon or for any other purpose. The index licensor shall obtain information for inclusion in, or for use in the calculation of, such index or portfolio from sources it believes to be reliable, but the index licensor does not guarantee the accuracy or completeness of such index or portfolio, any opening, intra-day or closing value therefor, or any data included therein or related thereto. The index licensor hereby disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to any such index or portfolio, any opening, intra-day or closing value therefor, any data included therein or relating thereto, or any option contract on Exchange-Traded Fund Shares based thereon. The index licensor shall have no liability for any damages, claims, losses (including any indirect or consequential losses), expenses or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the person’s use of such index or portfolio, any opening,

intra-day or closing value therefor, any data included therein or relating thereto, or any option contract on Exchange-Traded Fund Shares based thereon, or arising out of any errors or delays in calculating or disseminating such index or portfolio.

Proposed Section 9(a) defines the term “index licensor” as any entity that grants the Exchange a license to use one or more indexes or portfolios in connection with the trading of options on Exchange-Traded Fund Shares (as defined in Options 4, Section 3(h)).

Proposed Options 4, Section 9(b) provides that no index licensor with respect to any index or portfolio underlying an option on Exchange-Traded Fund Shares traded on the Exchange makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of such index or portfolio, any opening, intra-day or closing value therefor, or any data included therein or relating thereto, in connection with the trading of any option contract on Exchange-Traded Fund Shares based thereon or for any other purpose. The index licensor will obtain information for inclusion in, or for use in the calculation of, such index or portfolio from sources it believes to be reliable, but the index licensor does not guarantee the accuracy or completeness of such index or portfolio, any opening, intra-day or closing value therefor, or any data included therein or related thereto. The index licensor disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to any such index or portfolio, any opening, intra-day or closing value therefor, any data included therein or relating thereto, or any option contract on Exchange-Traded Fund Shares based thereon. The index licensor will have no liability for any damages, claims, losses (including any indirect or consequential losses), expenses or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the person’s use of such index or portfolio, any opening, intra-day or closing value therefor, any data included

therein or relating thereto, or any option contract on Exchange-Traded Fund Shares based thereon, or arising out of any errors or delays in calculating or disseminating such index or portfolio.

*Section 10. Back-up Trading Arrangements*

The Exchange proposes to add a new rule to Options 4, Section 10, titled “Back-Up Trading Arrangements.” Section 10 is currently reserved. This proposed rule is identical to ISE Options 4, Section 10.<sup>15</sup> This rule would permit BX to enter into arrangements with one or more other exchanges (each a “Back-up Exchange”) to permit BX and its Participants to use a portion of a Back-up Exchange’s facilities to conduct the trading of BX exclusively listed options in the event of a Disabling Event, and permits BX to provide trading facilities at BX for another exchange’s exclusively listed options if that exchange (a “Disabled Exchange”) is prevented from trading due to a Disabling Event. Also, the proposed rule would permit BX to enter into arrangements with a Back-up Exchange to provide for the listing and trading of BX singly listed options by the Back-up Exchange if BX’s facility becomes disabled, and conversely provide for the listing and trading by BX of the singly listed options of a Disabled Exchange.

The back-up trading arrangements contemplated by Options 4, Section 10 represent BX’s immediate plan to ensure that its exclusively listed and singly listed options will have a trading venue if a catastrophe renders its primary facility inaccessible or inoperable.

Section 10(a) describes the back-up trading arrangements that would apply if BX were the Disabled Exchange. An “exclusively listed option” is defined within Section 10(a)(1)(i) to mean an option that is listed exclusively by an exchange (because the exchange has an exclusive

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<sup>15</sup> See Securities Exchange Act Release No. 71092 (December 17, 2013), 78 FR 77510 (December 23, 2013) (SR-ISE-2013-61) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Back-Up Trading Arrangements).

license to use, or has proprietary rights in, the interest underlying the option). Proposed paragraph(a)(1)(ii) provides that the facility of the Back-up Exchange used by BX to trade some or all of BX's exclusively listed options will be deemed to be a facility of BX, and such option classes shall trade as listings of BX. Since the trading of BX exclusively listed options will be conducted using the systems of the Back-up Exchange, proposed paragraph (a)(1)(iii) provides that the trading of BX listed options on BX's facility at the Back-up Exchange shall be conducted in accordance with the rules of the Back-up Exchange, and proposed paragraph (a)(1)(iv) provides that the Back-up Exchange has agreed to perform the related regulatory functions with respect to such trading, in each case except as BX and the Back-up Exchange may specifically agree otherwise. The Back-up Exchange rules that govern trading on BX's facility at the Back-up Exchange shall be deemed to be BX rules for purposes of such trading. Proposed paragraph (a)(1)(v) provides that BX shall have the right to designate its members that will be authorized to trade BX exclusively listed options on BX's facility at the Back-up Exchange and, if applicable, its member(s) that will be a BX Market Maker in those options.<sup>16</sup> If the Back-up Exchange is unable to accommodate all BX Participants that desire to trade on BX's facility at the Back-up Exchange, BX may determine which Participants shall be eligible to trade at that facility by considering factors such as whether the Participant is a BX Market Maker in the applicable product(s), the number of contracts traded by the member in the applicable product(s), market performance, and other factors relating to a member's contribution to the market in the applicable product(s). Under proposed paragraph (a)(1)(vi), Participants of the Back-up Exchange shall not be authorized to trade in any BX exclusively listed options, except that (i) BX may deputize willing brokers of the Back-up Exchange as temporary BX Participants to

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<sup>16</sup> Of note, unlike Phlx, BX does not have rules to appoint Lead Market Makers.

permit them to execute orders as brokers in BX exclusively listed options traded on BX's facility at the Back-up Exchange, and (ii) the Back-up Exchange has agreed that it will, at the instruction of BX, select members of the Back-up Exchange that are willing to be deputized by BX as temporary BX Participants authorized to trade BX exclusively listed options on BX's facility at the Back-up Exchange for such period of time following a Disabling Event as BX determines to be appropriate, and BX may deputize such members of the Back-up Exchange as temporary BX Participants for that purpose.

The foregoing exceptions would permit members of the Back-up Exchange to trade BX exclusively listed options on the BX facility on the Back-up Exchange, if, for example, circumstances surrounding a Disabling Event result in BX Participants being delayed in connecting to the Back-up Exchange in time for prompt resumption of trading. Options 4, Section 10(a)(2) of the proposed rule provides for the continued trading of BX singly listed options at the Back-up Exchange in the event of a Disabling Event at BX. Proposed paragraph (a)(2)(ii) provides that BX may enter into arrangements with a Back-up Exchange under which the Back-up Exchange will agree, in the event of a Disabling Event, to list for trading option classes that are then singly listed only by BX. Such option classes would trade on the Back-up Exchange as listings of the Back-up Exchange and in accordance with the rules of the Back-up Exchange. Under proposed paragraph (a)(2)(iii), any such options class listed by the Back-up Exchange that does not satisfy the standard listing and maintenance criteria of the Back-up Exchange will be subject, upon listing by the Back-up Exchange, to delisting (and, thus, restrictions on opening new series, and engaging in opening transactions in those series with open interest, as may be provided in the rules of the Back-up Exchange). BX singly listed option classes would be traded by members of the Back-up Exchange and by BX Participants selected

by BX to the extent the Back-up Exchange can accommodate BX Participants in the capacity of temporary members of the Back-up Exchange. If the Back-up Exchange is unable to accommodate all BX Participants that desire to trade BX singly listed options at the Back-up Exchange, BX may determine which Participants shall be eligible to trade such options at the Back-up Exchange by considering the same factors used to determine which BX Participants are eligible to trade BX exclusively listed options at the BX facility at the Back-up Exchange.

Proposed Section (a)(3) provides that BX may enter into arrangements with a Back-up Exchange to permit BX Participants to conduct trading on a Back-up Exchange of some or all of BX's multiply listed options in the event of a Disabling Event. While continued trading of multiply listed options upon the occurrence of a Disabling Event is not likely to be as great a concern as the continued trading of exclusively and singly listed options, BX nonetheless believes a provision for multiply listed options should be included in the rule so that the exchanges involved will have the option to permit members of the Disabled Exchange to trade multiply listed options on the Back-up Exchange. Such options shall trade as a listing of the Back-up Exchange in accordance with the rules of the Back-up Exchange.

Options 4, Section 10(b) describes the back-up trading arrangements that would apply if BX were the Back-up Exchange. In general, the provisions in Section (b) are the converse of the provisions in Section (a). With respect to the exclusively listed options of the Disabled Exchange, the facility of BX used by the Disabled Exchange to trade some or all of the Disabled Exchange's exclusively listed options will be deemed to be a facility of the Disabled Exchange, and such option classes shall trade as listings of the Disabled Exchange. Trading of the Disabled Exchange's exclusively listed options on the Disabled Exchange's facility at BX shall be conducted in accordance with BX rules, and BX will perform the related regulatory functions

with respect to such trading, in each case except as the Disabled Exchange and BX may specifically agree otherwise. BX rules that govern trading on the Disabled Exchange's facility at BX shall be deemed to be rules of the Disabled Exchange for purposes of such trading. Sections (b)(2) and (b)(3) describe the arrangements applicable to trading of the Disabled Exchange's singly and multiply listed options at BX, and are the converse of Sections (a)(2) and (a)(3). Paragraph (b)(2)(i) includes a provision that would permit BX to allocate singly listed option classes of the Disabled Exchange to a BX Market Maker in advance of a Disabling Event, without utilizing the allocation process under BX Rule Options 2, Section 1, to enable BX to quickly list such option classes upon the occurrence of a Disabling Event.

Options 4, Section 10(c) describes the obligations of Participants with respect to the trading by "temporary members" on the facilities of another exchange. Section (c)(1) sets forth the obligations applicable to Participants of a Back-up Exchange who act in the capacity of temporary Participants of the Disabled Exchange on the facility of the Disabled Exchange at the Back-up Exchange. Section (c)(1) provides that a temporary Participant of the Disabled Exchange shall be subject to, and obligated to comply with, the rules that govern the operation of the facility of the Disabled Exchange at the Back-up Exchange. This would include the rules of the Disabled Exchange to the extent applicable during the period of such trading, including the rules of the Disabled Exchange limiting its liability for the use of its facilities that apply to members of the Disabled Exchange. Additionally, (i) such temporary Participant shall be deemed to have satisfied, and the Disabled Exchange has agreed to waive specific compliance with, rules governing or applying to the maintenance of a person's or a firm's status as a Participant of the Disabled Exchange, including all dues, fees and charges imposed generally upon members of the Disabled Exchange based on their status as such, (ii) such temporary

Participant shall have none of the rights of a member of the Disabled Exchange except the right to conduct business on the facility of the Disabled Exchange at the Back-up Exchange to the extent described in the Rule, (iii) the Participant associated with such temporary Participant, if any, shall be responsible for all obligations arising out of that temporary Participant's activities on or relating to the Disabled Exchange, and (iv) the clearing member of such temporary Participant shall guarantee and clear the transactions of such temporary Participant on the Disabled Exchange.

Section (c)(2) sets forth the obligations applicable to members of a Disabled Exchange who act in the capacity of temporary Participants of the Back-up Exchange for the purpose of trading singly listed and multiply listed options of the Disabled Exchange. Such temporary Participants shall be subject to, and obligated to comply with, the rules of the Back-up Exchange that are applicable to the Back-up Exchange's own members, including the rules of the Back-up Exchange limiting its liability for the use of its facilities that apply to members of the Back-up Exchange. Temporary Participants of the Back-up Exchange have the same obligations as those set forth in Section (c)(1) that apply to temporary Participants of the Disabled Exchange, except that, in addition, temporary Participants of the Back-up Exchange shall only be permitted (i) to act in those capacities on the Back-up Exchange that are authorized by the Back-up Exchange and that are comparable to capacities in which the temporary Participant has been authorized to act on the Disabled Exchange, and (ii) to trade in those option classes in which the temporary Participant is authorized to trade on the Disabled Exchange.

Options 4, Section 10 provides that the rules of the Back-up Exchange shall apply to the trading of the singly and multiply listed options of the Disabled Exchange traded on the Back-up Exchange's facilities, and (with certain limited exceptions) the trading of exclusively listed

options of the Disabled Exchange traded on the facility of the Disabled Exchange at the Back-up Exchange. The Back-up Exchange has agreed to perform the related regulatory functions with respect to such trading (except as the Back-up Exchange and the Disabled Exchange may specifically agree otherwise). Section (d) provides that if a Back-up Exchange initiates an enforcement proceeding with respect to the trading during a back-up period of singly or multiply listed options of the Disabled Exchange by a temporary Participant of the Back-up Exchange, or exclusively listed options of the Disabled Exchange by a member of the Disabled Exchange (other than a member of the Back-up Exchange who is a temporary member of the Disabled Exchange), and such proceeding is in process upon the conclusion of the back-up period, the Back-up Exchange may transfer responsibility for such proceeding to the Disabled Exchange following the conclusion of the back-up period. This approach to the exercise of enforcement jurisdiction is also consistent with past precedent.

With respect to arbitration jurisdiction, proposed Section (d) provides that arbitration of any disputes with respect to any trading during a back-up period of singly or multiply listed options of the Disabled Exchange or of exclusively listed options of the Disabled Exchange on the Disabled Exchange's facility at the Back-up Exchange will be conducted in accordance with the rules of the Back-up Exchange, unless the parties to an arbitration agree that it shall be conducted in accordance with the rules of the Disabled Exchange.

Proposed Supplementary Material .01 to Options 4, Section 10 clarifies that to the extent Options 4, Section 10 provides that another exchange will take certain action, the Rule is reflecting what that exchange has agreed to do by contractual agreement with BX, but Options 4, Section 10 is not binding on the other exchange.

### Options 4C

The Exchange proposes to reserve 4C as BX does not list U.S. Dollar-Settled Foreign Currency Options.

### Bid/Ask Differentials

The Exchange proposes to amend Options 4, Section 8(a), and Options 4A, Section 12(b)(1)(i) to relocate text concerning bid/ask differentials for long-term option series. Currently, Options 4, Section 8(a) describes the bid/ask differentials for long-term options series for equity options and exchange-traded products and Options 4A, Section 12(b)(1)(i) describes the bid/ask differentials for long-term options series for indexes. Currently, the bid/ask differentials shall not apply to such options series until the time to expiration is less than nine (9) months for equity options and exchange-traded funds as provided for within Options 4, Section 8(a). Currently, bid/ask differentials shall not apply to such options series until the time to expiration is less than nine (9) months for index options as provided for within Options 4A, Section 12(b)(1)(i).

The Exchange proposes to centralize the bid/ask differentials within Options 2, Section 5(d)(2)(A) and add a sentence to both Options 4, Section 8(a) and Options 4A, Section 12(b)(1)(i) that cites to Options 2, Section 5(d)(2)(A) for information on bid/ask differentials for the various products. The Exchange also proposes to capitalize “ask” in the title of Options 2, Section 5(d)(2). The Exchange believes that this relocation will provide Market Makers with centralized information regarding their bid/ask differential requirements. The Exchange is not amending the bid/ask differentials; the rule text is simply being relocated.

## Technical Amendment

The Exchange proposes to amend General 9, Section 51, Research Analysts, to update an improper citation to “General 9, Section 50” to “this Rule.” The citation is to General 9, Section 51. The Exchange also proposes to remove stray periods throughout Options 4 in the section headings.

### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>17</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>18</sup> in particular, in that it is designed 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. Conforming BX’s Options 4 Listing Rules to that of ISE Options 4 is part of the Exchange’s continued effort to promote efficiency in the manner in which it administers its rules.

The Exchange’s proposal to amend Options 4, Sections 1, 2, 5, and 7 reflect non-substantive amendments to conform those rules to similar ISE rules. These proposed changes removes 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 since the changes are intended to ease the Participants’, market participants’, and the general public’s navigation and reading of the rules and lessen potential confusion and add clarity for market participants.

The proposed amendments to ISE Options 3, Section 3(b) to permit the Exchange, in exceptional circumstances, to select an underlying security even though it does not meet all of

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<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

the guidelines, is consistent with the Act. Today, the Exchange may establish guidelines to be considered in evaluating potential underlying securities for Exchange options transactions. Providing BX with the same ability to select an underlying security even though it does not meet all of the guidelines as ISE will permit BX to list similar options as ISE for competitive purposes.

The Exchange's proposal to add the defined term "Financial Instruments" within Options 4, Section 3(h) and also account for money market instruments, U.S. government securities and repurchase agreements, defined by the term "Money Market Instruments" similar to ISE Options 4, Section 3(h) is consistent with the Act. The addition of money market instruments, U.S. government securities and repurchase agreements as securities deemed appropriate for options trading will make clear that these agreements are included in the acceptable securities. The Exchange notes that this rule text is clarifying in nature and will more explicitly provide for money market instruments, U.S. government securities and repurchase agreements as a separate category from what is being defined as "Financial Instruments" with this proposal. Today, these instruments are eligible as securities deemed appropriate for options trading.

The Exchange's proposal to remove the following products from Options 4, Section 3(h): the ETFS Silver Trust, the ETFS Palladium Trust, the ETFS Platinum Trust or the Sprott Physical Gold Trust is consistent with the Act because the Exchange no longer lists these products and proposes to remove them the products from its listing rules. The Exchange will file a proposal with the Commission if it determines to list these products in the future.

The Exchange's proposal to amend Options 4, Section 3(h) by removing the rule text at the end of the paragraph which provides, "all of the following conditions are met," and creating separate paragraphs for Options 4, Section 3(h)(1) and (2) is consistent with the Act. These

amendments will de-link these subparagraphs so they are read independently. Today, Options 4, Section 3(h)(1) applies to all Exchange-Traded Fund Shares. The Exchange's proposal to clarify that Options 4, Section 3(h)(2) applies to only international or global indexes or portfolios that include non-U.S. securities will bring greater clarity to the qualification standards for listing options on Exchange-Traded Fund Shares. ISE Options 4, Section 3(h) currently has similar rule text. Proposed Options 4, Sections 3(h) generally concerns securities deemed appropriate for options trading. The proposed new rule text adds language stating that subparagraph (h)(2) of Options 4, Section 3 applies to the extent the Exchange-Traded Fund Share is based on international or global indexes or portfolios that include non-U.S. securities. This language is intended to serve as a guidepost and clarify that (1) subparagraph (h)(2) does not apply to an Exchange-Traded Fund Shares based on a U.S. domestic index or portfolio, and (2) subparagraph (h)(2) includes Exchange-Traded Fund Shares that track a portfolio and do not track an index.

The Exchange's proposal to amend Options 4, Section 3(h)(2)(A) to remove the phrase "for series of portfolio depositary receipts and index fund shares based on international or global indexes," is consistent with the Act. Today, Options 4, Section 3(h), subparagraphs (h)(1) and (h)(v) permit the Exchange to list options on Exchange-Traded Fund Shares based on generic listing standards for portfolio depositary receipts and index fund shares without applying component based requirements in subparagraphs (h)(2)(B) – (D). By removing the proposed rule text, the Exchange would make clear that subparagraph (h)(2)(A) applies to Exchange-Traded Fund Shares based on international or global indexes, or portfolios that include non-U.S. securities, that are listed pursuant to generic listing standards and comply with Options 4, Section 3(h) and subparagraph (h)(1).

The Exchange’s proposal to amend the term “comprehensive surveillance agreement” within Options 4, Section 3(h)(2) (A) – (D) to instead provide “comprehensive surveillance sharing agreement” is consistent with the Act as the amendment will bring greater clarity to the term.

The Exchange’s proposal to add the phrase “if not available or applicable, the Exchange-Traded Fund’s” to Options 4, Section 3(h)(2)(B), (C), and (D) is consistent with the Act as it will clarify that when component securities are not available, the portfolio of securities upon which the Exchange-Traded Fund Share is based can be used instead. This rule text currently exists within ISE Options 4, Section 3(h).

The Exchange’s proposal to amend and relocate the rule text within Options 4, Section 3(h)(2)(B), (C), and (D) will bring greater clarity to the current rule text by explicitly providing that the index being referenced is the one on which the Exchange-Traded Fund Shares is based. Also, adding “or portfolio” to Options 4, Section 3(h)(2)(C), and (D) will bring greater clarity to the rule text by conforming the rule text of (C) and (D) to the language within (B).

The proposed amendments to Options 4, Section 3(h) will conform BX’s rule text to ISE Options 4, Section 3(h).

The remainder of the change to Options 3, Section 3 are non-substantive and intended to conform to ISE Options 3, Section 3. These proposed changes 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 since the changes are intended to ease the Participants’, market participants’, and the general public’s navigation and reading of the rules and lessen potential confusion and add clarity for market participants.

The proposed amendments to Options 4, Section 4 remove unnecessary rule text and make clear that options contracts that are no longer approved will not be listed. The proposed amendments to adopt new Options 4, Section 4(i) similar to ISE, Options 4, Section 4(i), are consistent with the Act. Today, the Exchange would not open additional series of HOLDRs without filing a rule change with the Commission and adopting a corresponding rule. This rule text, similar to ISE, explicitly provides that the Exchange would not open additional series of options overlying HOLDRs (without prior Commission approval) if: (1) the proportion of securities underlying standardized equity options to all securities held in a HOLDRs trust is less than 80% (as measured by their relative weightings in the HOLDRs trust); or (2) less than 80% of the total number of securities held in a HOLDRs trust underlie standardized equity options. This rule text bring greater clarity to BX's rules in that HOLDRs would not be in certain circumstances.

The Exchange's proposal to remove the rule text within Options 4, Section 4(l), related to inadequate volume delisting, is consistent with the Act. To remain competitive with other options markets, the Exchange proposes to adopt the same obligations for continuance of trading.<sup>19</sup> Also, pursuant to proposed new Options 4, Section 5(e) the Exchange will announce securities that have been withdrawn. With this proposal, the Exchange would eliminate the requirement that an option must be trading for more than 6 months. The Exchange notes that this condition is not present on other options markets such as ISE and Cboe.<sup>20</sup> This also applies to the requirement that the average daily volume of the entire class of options over the last six (6) month period was less than twenty (20) contracts. The Exchange notes that BX's requirements

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<sup>19</sup> Options 4, Section 4(b), as amended, establishes requirements for continued listing, similar to ISE.

<sup>20</sup> See ISE Options 4, Section 4 and Cboe Rule 4.4.

are different than other options markets and to remain competitive the Exchange proposes to adopt the same standards as ISE and Cboe to remain competitive and list similar options as the other markets. While the Exchange may in the future determine to delist an option that is singly listed, the Exchange's proposal to remove the rule text which provides that "If the option is singly listed only on the Exchange, the Exchange will cease to add new series and may delist the class of options when there is no remaining open interest" is consistent with the Act. This rule text does not exist on ISE and Cboe. The Exchange today provides notification of a delisting to all members so therefore it is not necessary to retain the provisions within (b)(2). Also, proposed new Options 4, Section 4(e) establishes the rules by which the Exchange will announce securities that have been withdrawn. The rule text within Options 4, Section 4(b), as amended to conform to ISE rule text, will continue to govern the continued approval of options on the Exchange.

The remainder of the changes to Options 3, Section 3 remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protects investors and the public interest. Overall, these changes are of a non-substantive nature and either modify, clarify or relocate the existing Rulebook language to reflect the language of the ISE version of the rule and are intended to ease the Participants', market participants', and the general public's navigation and reading of the rules and lessen potential confusion and add clarity for market participants.

The Exchange believes that the changes to proposed Options 4, Section 8 removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general protects investors and the public interest because the changes are mainly of a non-substantive nature with much of the rule text largely simply being relocated from current Options 4, Section 5(a)(i)(D) to new Options 4, Section 8(a) with some minor

amendments and is intended to ease the Participants', market participants', and the general public's navigation and reading of the rules and lessen potential confusion and add clarity for market participants.

The Exchange's proposal to amend Options 3, Section 8 and Options 4A, Section 12(b)(1)(i) to relocate text concerning bid/ask differentials for long-term option series is consistent with the Act. The Exchange's proposal will centralize the bid/ask differentials within Options 2, Section 5(d)(2)(A) and add a sentence to both Options 3, Section 8 and Options 4A, Section 12(b)(1)(i) that cites to Options 2, Section 5(d)(2)(A) for information on bid/ask differentials for the various products. The Exchange is not amending the bid/ask differentials; the rule text is simply being relocated. The Exchange believes that this relocation will provide Market Makers with centralized information regarding their bid/ask differential requirements.

The remainder of the changes to Options 3, Section 8 are non-substantive.

The Exchange believes that adopting a new Section 9, Limitation on the Liability of Index Licensors for Option on Fund Share, similar to ISE, is consistent with the Act. Specifically, this proposal seeks to limit the liability of index licensors who grant the BX a license to use their underlying indexes or portfolios in connection with the trading of options on Fund Shares. This rule text is identical to ISE rule text.<sup>21</sup> Proposed Section 9(b) provides that no index licensor with respect to any index or portfolio underlying an option on Exchange-Traded Fund Shares traded on the Exchange makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of such index or portfolio, any opening, intra-day or closing value therefor, or any data included therein or relating thereto, in connection with the trading of any option contract on Exchange-Traded Fund Shares based thereon or for any

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<sup>21</sup> See ISE Options Listing Rule Section 9.

other purpose. The disclaimers within proposed Section 9 are consistent with the Act in that these disclaimers provide market participants with relevant information as to the liabilities on option contracts on Exchange-Traded Fund Shares.

The Exchange believes that the adoption of Options 4, Section 10, Back-up Trading Arrangements, will provide BX with similar abilities as ISE to permit BX to enter into arrangements with one or more other exchanges (each a “Back-up Exchange”) to permit BX and its Participants to use a portion of a Back-up Exchange’s facilities to conduct the trading of BX exclusively listed<sup>22</sup> options in the event of a Disabling Event, and similarly to permit BX to provide trading facilities for another exchange’s exclusively listed options if that exchange (a “Disabled Exchange”) is prevented from trading due to a Disabling Event. With this proposal, BX is proposing to adopt listing rules similar to Phlx to list and trade U.S. Dollar-Settled Foreign Currency Options. BX believes that it is important that it develop back-up trading arrangements to minimize the potential disruption and market impact that a Disabling Event could cause. The proposed rule changes are designed to address the key elements necessary to mitigate the effects of a Disabling Event affecting the Exchange, minimize the impact of such an event on market participants, and provide for a liquid and orderly marketplace for securities listed and traded on the Exchange if a Disabling Event occurs. In particular, the proposed rule change is intended to ensure that BX’s exclusively listed and singly listed products will have a trading venue in the event that trading at BX is prevented due to a Disabling Event. The Exchange believes that having these back-up trading arrangements in place will minimize potential disruptions to the markets and investors if a catastrophe occurs that requires the Exchange’s primary facility to be

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<sup>22</sup> As defined within the proposed rule, the term “exclusively listed option” means an option that is listed exclusively by an exchange (because the exchange has an exclusive license to use, or has proprietary rights in, the interest underlying the option).

closed for an extended period. Phlx and ISE has a similar rule,<sup>23</sup> and the Exchange believes that it is important to the protection of investors and the public interest that it also adopt rules that allow BX exclusively and singly listed options to continue to trade in the event of a Disabling Event. The proposed rule change also provides authority for the BX to provide a back-up trading venue should another exchange be affected by a Disabling Event, which will benefit the markets and investors if a Disabling Event were to happen on another exchange that has entered into a back-up trading arrangement with the BX. Finally, the proposed rule change grants authority to Exchange officials to take action under emergency conditions, which should enable key actions to be taken by BX representatives in the event of a Disabling Event, and clarifies the fees that will apply if these back-up trading arrangements are invoked, which will reduce investor confusion and minimize the disruption to investors associated with a Disabling Event. Under proposed paragraph (a)(1)(vi), members of the Back-up Exchange shall not be authorized to trade in any BX exclusively listed options, except that (i) BX may deputize willing brokers of the Back-up Exchange as temporary BX Participants to permit them to execute orders as Participants in BX exclusively listed options traded on BX's facility at the Back-up Exchange, and (ii) the Back-up Exchange has agreed that it will, at the instruction of BX, select members of the Back-up Exchange that are willing to be deputized by BX as temporary BX members authorized to trade BX exclusively listed options on BX's facility at the Back-up Exchange for such period of time following a Disabling Event as BX determines to be appropriate, and BX may deputize such members of the Back-up Exchange as temporary BX members for that purpose. The foregoing exceptions would permit members of the Back-up Exchange to trade BX exclusively listed options on the BX facility on the Back-up Exchange, if, for example, circumstances surrounding

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<sup>23</sup> See Phlx and ISE Rules Options 3, Section 10.

a Disabling Event result in BX members being delayed in connecting to the Back-up Exchange in time for prompt resumption of trading.

The Exchange's proposal to reserve Options 4C will make clear that BX does not list U.S. Dollar-Settled Foreign Currency Options. Other Nasdaq Affiliated exchanges, such as Nasdaq Phlx LLC, list U.S. Dollar-Settled Foreign Currency Options and would therefore have rules in that section. By marking Options 4C reserved, market participants will be given additional insight into the types of products available on BX.

#### Technical Amendment

The Exchange's proposal to amend General 9, Section 51, Research Analysts, to update an improper citation to "General 9, Section 50" to "this Rule" and remove stray periods throughout Options 4 in the section headings are consistent with the Act. This non-substantive amendment will bring greater clarity to the rule.

#### 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 relocation of the Options Listing Rules will facilitate the use of the Rulebook by Participants of the Exchange, who are members of other Affiliated Exchanges; other market participants; and the public in general. The changes are consistent with the ISE Rulebook.

The Exchange's proposal to amend Options 4, Sections 1, 2, 5, and 7 reflects non-substantive amendments to conform those rules to similar ISE rules at Options 4, Sections 1, 2, 5, and 7. These proposed changes do not impose an undue burden on competition since the changes are intended to ease the Participants', market participants', and the general public's navigation and reading of the rules and lessen potential confusion and add clarity for market participants.

The proposed amendments to ISE Options 3, Section 3(b) to permits the Exchange, in exceptional circumstances, to select an underlying security even though it does not meet all of the guidelines do not impose an undue burden on competition. Today, the Exchange may establish guidelines to be considered in evaluating potential underlying securities for Exchange options transactions. Providing BX with the same ability to select an underlying security even though it does not meet all of the guidelines as ISE will permit BX to list similar options as ISE for competitive purposes.

The Exchange's proposal to add the defined term "Financial Instruments" within Options 4, Section 3(h) and also account for money market instruments, U.S. government securities and repurchase agreements, defined by the term "Money Market Instruments" similar to ISE Options 4, Section 3(h) do not impose an undue burden on competition. The addition of money market instruments, U.S. government securities and repurchase agreements as securities deemed appropriate for options trading will make clear that these agreements are included in the acceptable securities.

The Exchange's proposal to remove the following products from Options 4, Section 3(h): the ETFs Silver Trust, the ETFs Palladium Trust, the ETFs Platinum Trust or the Sprott Physical Gold Trust do not impose an undue burden on competition. The Exchange no longer lists these products and proposes to remove them the products from its listing rules.

The Exchange's proposal to amend Options 4, Section 3(h) by removing the rule text at the end of the paragraph which provides, "all of the following conditions are met," and creating separate paragraphs for Options 4, Section 3(h)(1) and (2) does not impose an undue burden on competition. These amendments will de-link these subparagraphs so they are read independently. Today, Options 4, Section 3(h)(1) applies to all Exchange-Traded Fund Shares.

The Exchange’s proposal to clarify that Options 4, Section 3(h)(2) applies to only international or global Exchange-Traded Fund Shares that include non-U.S. securities will bring greater clarity to the qualification standards for listing options on Exchange-Traded Fund Shares. Specifically, this language is intended to serve as a guidepost and clarify that (1) subparagraph (h)(2) does not apply to an Exchange-Traded Fund Shares based on a U.S. domestic index or portfolio, and (2) subparagraph (h)(2) includes Exchange-Traded Fund Shares that track a portfolio and do not track an index. This amendment will uniformly apply the criteria within Options 4, Section 3 when it lists options products on BX.

The Exchange’s proposal to amend Options 4, Section 3(h)(2)(A) to remove the phrase “for series of portfolio depositary receipts and index fund shares based on international or global indexes,” does not impose an undue burden on competition. Today, Options 4, Section 3(h), subparagraphs (h)(1) and (h)(v) permit the Exchange to list options on Exchange-Traded Fund Shares based on generic listing standards for portfolio depositary receipts and index fund shares without applying component based requirements in subparagraphs (h)(2)(B) – (D). By removing the proposed rule text, the Exchange would make clear that subparagraph (h)(2)(A) applies to Exchange-Traded Fund Shares based on international or global indexes, or portfolios that include non-U.S. securities, that are listed pursuant to generic listing standards and comply with Options 4, Section 3(h) and subparagraph (h)(1). This amendment will uniformly apply the criteria within Options 4, Section 3 when it lists options products on BX.

The Exchange’s proposal to amend the term “comprehensive surveillance agreement” within Options 4, Section 3(h)(2) (A) – (D) to instead provide “comprehensive surveillance sharing agreement” does not impose an undue burden on competition as the amendment will bring greater clarity to the term.

The Exchange’s proposal to add the phrase “if not available or applicable, the Exchange-Traded Fund’s” to Options 4, Section 3(h)(2)(B), (C), and (D) does not impose an undue burden on competition as it will clarify that when component securities are not available, the portfolio of securities upon which the Exchange-Traded Fund Share is based can be used instead.

The Exchange’s proposal to amend and relocate the rule text within Options 4, Section 3(h)(2)(B), (C), and (D) will bring greater clarity to the current rule text by explicitly providing that the index being referenced is the one on which the Exchange-Traded Fund Shares is based. Also, adding “or portfolio” to Options 4, Section 3(h)(2)(C), and (D) will bring greater clarity to the rule text by conforming the rule text of (C) and (D) to the language within (B).

The proposed amendments to Options 4, Section 4 remove unnecessary rule text and make clear that options contracts that are no longer approved will not be listed. The proposed amendments to adopt new Options 4, Section 4(i) similar to ISE, Options 4, Section 4(i), does not impose an undue burden on competition. The amendments would provide for provisions wherein the Exchange will not open additional series of options overlying HOLDERS similar to ISE, which provisions do not currently exist.

The Exchange’s proposal to remove the rule text within Options 4, Section 4(l), related to inadequate volume delisting, does not impose an undue burden on competition. To remain competitive with other options markets, the Exchange proposes to adopt the same obligations for continuance of trading.<sup>24</sup> Also, pursuant to proposed new Options 4, Section 5(e) the Exchange will announce securities that have been withdrawn. With this proposal, the Exchange would eliminate the requirement that an option must be trading for more than 6 months. The Exchange

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<sup>24</sup> Options 4, Section 4(b), as amended, establishes requirements for continued listing, similar to ISE.

notes that this condition is not present on other options markets such as ISE and Cboe.<sup>25</sup> This also applies to the requirement that the average daily volume of the entire class of options over the last six (6) month period was less than twenty (20) contracts. The Exchange notes that BX's requirements are different than other options markets and to remain competitive the Exchange proposes to adopt the same standards as ISE and Cboe to remain competitive and list similar options as the other markets. The Exchange's proposal removes the rule text which provides that "If the option is singly listed only on the Exchange, the Exchange will cease to add new series and may delist the class of options when there is no remaining open interest" does not impose an undue burden on competition. This rule text does not exist on ISE and Cboe. The Exchange today provides notification of a delisting to all members so therefore it is not necessary to retain the provisions within (b)(2). Also, proposed new Options 4, Section 4(e) establishes the rules by which the Exchange will announce securities that have been withdrawn.

The Exchange believes that the changes to proposed Options 4, Section 8 do not impose an undue burden on competition as the changes are mainly of a non-substantive nature with much of the rule text largely simply being relocated from current Options 4, Section 5(a)(i)(D) to new Options 4, Section 8(a) with some minor amendments.

The Exchange's proposal to amend Options 3, Section 8 and Options 4A, Section 12(b)(1)(i) to relocate text concerning bid/ask differentials for long-term option series does not impose an undue burden on competition. The Exchange believes that this relocation will provide Market Makers with centralized information regarding their bid/ask differential requirements.

Adopting a new Section 9, Limitation on the Liability of Index Licensors for Option on Fund Share, similar to ISE does not impose an undue burden on competition. The proposal seeks

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<sup>25</sup> See ISE Options 4, Section 4 and Cboe Rule 4.4.

to limit the liability of index licensors who grant the BX a license to use their underlying indexes or portfolios in connection with the trading of options on Fund Shares. This rule text is identical to ISE rule text.<sup>26</sup> Proposed Section 9(b) provides that no index licensor with respect to any index or portfolio underlying an option on Exchange-Traded Fund Shares traded on the Exchange makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of such index or portfolio, any opening, intra-day or closing value therefor, or any data included therein or relating thereto, in connection with the trading of any option contract on Exchange-Traded Fund Shares based thereon or for any other purpose.

The Exchange believes that the adoption of Options 4, Section 10, Back-up Trading Arrangements, will provide BX with similar abilities as ISE to permit BX to enter into arrangements with one or more other exchanges (each a “Back-up Exchange”) to permit BX and its Participants to use a portion of a Back-up Exchange’s facilities to conduct the trading of BX exclusively listed<sup>27</sup> options in the event of a Disabling Event, and similarly to permit BX to provide trading facilities for another exchange’s exclusively listed options if that exchange (a “Disabled Exchange”) is prevented from trading due to a Disabling Event. Permitting BX to list U.S. Dollar-Settled Foreign Currency Options similar to Phlx would allow market participants another venue in which to transact U.S. Dollar-Settled Foreign Currency Options.

#### Technical Amendment

The Exchange’s proposal to amend General 9, Section 51, Research Analysts, to update an improper citation to “General 9, Section 50” to “this Rule” and remove stray periods

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<sup>26</sup> See ISE Options Listing Rule Section 9.

<sup>27</sup> As defined within the proposed rule, the term “exclusively listed option” means an option that is listed exclusively by an exchange (because the exchange has an exclusive license to use, or has proprietary rights in, the interest underlying the option).

throughout Options 4 in the section headings do not impose an undue burden on competition.

This non-substantive amendment will bring greater clarity to the rule.

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)(iii) of the Act<sup>28</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>29</sup>

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

A proposed rule change filed under Rule 19b-4(f)(6)<sup>30</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-

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<sup>28</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>29</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>30</sup> 17 CFR 240.19b-4(f)(6).

4(f)(6)(iii),<sup>31</sup> the Commission may designate a shorter time if such action is consistent with 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 operative upon filing. The Exchange's proposal does not raise any new or novel issues. Therefore, the Commission believes that waving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposed rule change to be operative on upon filing.<sup>32</sup>

#### 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-2021-032 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-2021-032. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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<sup>31</sup> 17 CFR 240.19b-4(f)(6).

<sup>32</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2021-032 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>33</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>33</sup> 17 CFR 200.30-3(a)(12).