

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93143; File No. SR-BX-2021-042)

September 28, 2021

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish a New Rule Requiring Members to Input Accurate Information into BX Systems

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 22, 2021, 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 establish a new rule applicable to the Nasdaq BX Equities Market (the “Equities Market”) that explicitly requires members to input accurate information into BX systems.

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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

In 2009, The Nasdaq Stock Market LLC (“Nasdaq”) adopted provisions that required its members to input accurate information into the Nasdaq Market Center and Nasdaq Options Market.³ The Exchange proposes to adopt a rule identical to Nasdaq Equity 2, Section 3(a)(6)⁴ that makes clear its members’ responsibility to input accurate quotation and order information into the Equities Market.⁵ The Equities Market requires entry of certain information to post a quote or to enter an order. Such information, among other things, identifies the member, the size and price of the order or quote, and the member’s capacity in placing an order. Accurate trade and quote information is fundamental to the operation of an efficient and fair market.

Moreover, the information input by members when posting a quote or placing an order is used for purposes of policing the Equities Market. For instance, the Financial Industry Regulatory Authority, Inc. (“FINRA”) conducts trade abuse surveillances of the Equities Market on the Exchange’s behalf. The trade abuse surveillances use capacity information input by members. A member’s capacity in a trade concerns whether the member is acting as an agent,

³ Securities Exchange Act Release No. 59547 (March 10, 2009), 74 FR 11386 (March 17, 2009) (SR-NASDAQ-2009-014).

⁴ Nasdaq Equity 2, Section 3 was previously numbered Nasdaq Rule 4611; however, the rule was renumbered and relocated in 2020. See Securities Exchange Act Release No. 34-90577 (December 7, 2020), 85 FR 80202 (December 11, 2020) (SR-NASDAQ-2020-079).

⁵ As defined in BX Equity 1, Section 1(a)(6).

principal, or “riskless” principal in the transaction. Accordingly, accurate input of capacity information is of fundamental regulatory importance. BX does not have a rule that makes an explicit statement regarding a member’s obligation to input accurate information into the Equities Market. (That said, BX believes that disciplinary cases against members entering inaccurate or incomplete information may be brought appropriately under BX General 9, Section 1(a), which requires members to observe high standards of commercial honor and just and equitable principles of trade. BX General 9, Section 1(a) also protects the investing public and the securities industry from dishonest practices that are unfair to investors or hinder the functioning of a free and open market, even though those practices may not be illegal or violate a specific rule or regulation.) Because of the regulatory importance of accurate information input into the Equities Market, the Exchange believes rules that directly address members’ obligation to provide accurate information are appropriate. The proposed rule makes clear the members’ obligation to input accurate information into the Equities Market, and that failure to do so would be considered a violation of BX rules.

The Exchange notes that FINRA has rules that require the accurate entry of certain trade information into its systems. For example, FINRA Rule 7330(d) requires FINRA members to report to the OTC Reporting Facility certain specific trade-related information. A failure to provide such information represents a violation of FINRA rules, and may result in disciplinary action. FINRA has substantially similar requirements for other trade reporting systems it operates.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁷ in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed amendments will serve to promote the accuracy of information input into the Equities Market. Accurate information is necessary for the efficient and fair operation of the Equities Market, and will assist the Exchange in surveilling the markets for fraudulent activity.

The Exchange also believes that the creation of this rule will bring greater transparency and will harmonize its rules with those of its affiliated exchange, Nasdaq, by giving its members the ability to compare the rules in their respective rulebooks.

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 believes that the proposed amendments do not impose an undue burden on competition because the proposed rule will make clear the members' obligation to input accurate quotation and order information into the Equities Market. Moreover, the proposed rule will align

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

the rules of the Exchange closer to the rules of The Nasdaq Stock Market, which previously adopted an identical provision.

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 Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

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 change should be approved or disapproved.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 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.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2021-042 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-2021-042. 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-2021-042 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.¹⁰

J. Matthew DeLesDernier
Assistant Secretary

¹⁰ 17 CFR 200.30-3(a)(12).