

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98318; File No. SR-BX-2023-021)

September 7, 2023

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 3, Section 13 Concerning PRISM

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 August 30, 2023, 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 self-regulatory organization. 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 Options 3, Section 13, Price Improvement Auction (“PRISM”).

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 proposed rule change. The text of these statements may be examined at the places specified in Item IV below.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Options 3, Section 13, Price Improvement Auction (“PRISM”). Specifically, the Exchange proposes to amend Options 3, Section 13(i)(A) through (C) to harmonize the language within the PRISM entry checks with language within Nasdaq GEMX, LLC’s (“GEMX”) PIM, Nasdaq ISE, LLC’s (“ISE”) PIM, Nasdaq MRX, LLC’s (“MRX”) PIM, and Nasdaq Phlx LLC’s (“Phlx”) PIXL, without changing the substantive operations of these price improvement auctions. The Exchange believes that by utilizing similar language, Participants will be able to compare BX’s PRISM entry checks with similar mechanisms on Nasdaq affiliated markets.

BX proposes to add “a price that is” to the end of Options 3, Section 13(i)(A) and add new subparagraphs (1) and (2) to distinguish opposite and same side checks. The opposite side check is currently spelled out in the current rule text, however the same side check does not specify the NBBO check. Today, if the PRISM Order is for less than 50 option contracts, and if the difference between the NBBO or the internal BBO is \$0.01, the Initiating Participant must stop the entire PRISM Order at a price that is, on the same side of the market as the PRISM Order, equal to or better than the NBBO³ and better than any Limit Order or quote on the Limit Order book. The Exchange believes that the addition of the NBBO check will add clarity to the

³ For example, if the market is 0.98 bid and 0.99 offer, a Public Customer PRISM Order to buy for less than 50 contracts must be stopped at 0.98 cents in this scenario to be accepted into a PRISM Auction, provided there is no resting order or quote on the BX order book at 0.98 in which case the PRISM Order would be rejected.

rule text concerning same side price checks because the NBBO check is always relevant in the same side check to avoid a trade-through. The Exchange also proposes to capitalize “Limit Order,” and remove other extraneous words as the sentence has been rearranged. The Exchange notes that this rule text represents current System functionality.

The Exchange proposes to amend Options 3, Section 13(i)(B) to distinguish opposite and same side checks and add a semicolon to the end of Options 3, Section 13(i)(B). The opposite side check is currently spelled out in the current rule text, however the same side check does not specify the NBBO check. Today, if the PRISM Order is for the account of a Public Customer and such order is for 50 option contracts or more, or if the difference between the NBBO or the internal BBO is greater than \$0.01, the Initiating Participant must stop the entire PRISM Order at a price that is, on the same side of the market as the PRISM Order, at least \$0.01 better than any Limit Order or quote on the Limit Order book and equal to or better than the NBBO. The Exchange believes that the addition of the NBBO check will add clarity to the rule text because the NBBO check is always relevant in the same side check to avoid a trade-through. The Exchange also proposes to capitalize “Limit Order,” and remove other extraneous words as the sentence has been rearranged. The Exchange notes that this rule text represents current System functionality.

The Exchange proposes to amend Options 3, Section 13(i)(C) to distinguish opposite and same side checks and add a semicolon to the end of Options 3, Section 13(i)(C). The opposite side check is not currently delineated in the rule text. The Exchange proposes to provide that if the PRISM Order is for the account of a broker dealer or any other person or entity that is not a Public Customer and such order is for 50 option contracts or more, or if the difference between the NBBO or the internal BBO is greater than \$0.01, the Initiating Participant must stop the

entire PRISM Order at a price that is equal to or better than the internal BBO and NBBO on the opposite side of the market from the PRISM Order. The Exchange notes that this rule text represents current System functionality. The Exchange also proposes to reword the current rule text related to the same side check to provide that if the PRISM Order is for the account of a broker dealer or any other person or entity that is not a Public Customer and such order is for 50 option contracts or more, or if the difference between the NBBO or the internal BBO is greater than \$0.01, the Initiating Participant must stop the entire PRISM Order at a price that is, on the same side of the market as the PRISM Order, at least \$0.01 better than any Limit Order or quote on the Limit Order book, and equal to or better than the NBBO. The Exchange notes that this rule text represents current System functionality. The current rule text indicates that the PRISM Order must be stopped at a price that is the better of the BX BBO improved by at least \$0.01 or the PRISM Order's limit price on the same side of the market as the PRISM Order, provided in either case that such price is at or better than the NBBO. Because the language is the "better of" the Exchange notes that the proposed language, which conforms to similar language utilized on other Nasdaq affiliated markets, describes the same price checks and adds the NBBO check which is currently missing.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁵ in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

The Exchange's proposal to amend Options 3, Section 13(i)(A) through (C) to harmonize the language within the PRISM entry checks with language within GEMX's PIM, ISE's PIM, MRX's PIM, and Phlx's PIXL, without changing the substantive operations of these price improvement auctions, is consistent with the Act and the protection of investors and the general public because by utilizing similar language Participants will be able to compare BX's PRISM entry checks with similar mechanisms on Nasdaq affiliated markets.

BX's proposal to amend Options 3, Section 13(i)(A) to distinguish opposite and same side checks, and add the NBBO check to the same side price check is consistent with the Act and the protection of investors and the general public because the NBBO check is always relevant in the same side check to avoid a trade-through. The Exchange believes that the addition of the NBBO check will add clarity to the rule text because the NBBO check is always relevant in the same side check to avoid a trade-through. The remainder of the changes are non-substantive.

BX's proposal to amend Options 3, Section 13(i)(B) to distinguish opposite and same side checks, and add the NBBO check to the same side price check is consistent with the Act and the protection of investors and the general public because the NBBO check is always relevant in the same side check to avoid a trade-through. The Exchange believes that the addition of the NBBO check will add clarity to the rule text because the NBBO check is always relevant in the same side check to avoid a trade-through. The remainder of the changes are non-substantive.

BX's proposal to amend Options 3, Section 13(i)(C) to distinguish opposite and same side checks, and add the opposite side check to the rule text is consistent with the Act and the protection of investors and the general public. The opposite side check must be equal to or better than the NBBO and any non-displayed order on the Exchange's order book to avoid a trade-through. Also, the NBBO check is always relevant in the same side check to avoid a trade-

through. Rewording the current rule text related to the same side check to provide that if the PRISM Order is for the account of a broker dealer or any other person or entity that is not a Public Customer and such order is for 50 option contracts or more, or if the difference between the NBBO or the internal BBO is greater than \$0.01, the Initiating Participant must stop the entire PRISM Order at a price that is on the same side of the market as the PRISM Order, at least \$0.01 better than any Limit Order or quote on the Limit Order book, and equal to or better than the NBBO is consistent with the Act and the protection of investors and the general public. The proposed rule text describes the same price checks as the current rule while conforming the rule text to similar language utilized on other Nasdaq affiliated markets. Additionally, the proposed rule text adds the NBBO check which is always relevant in the same side check to avoid a trade-through. The Exchange believes that the addition of the NBBO check will add clarity to the rule text because the NBBO check is always relevant in the same side check to avoid a trade-through. The Exchange notes that this rule text represents current System functionality.

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.

BX's proposal to amend Options 3, Section 13(i)(A) through (C) to harmonize the language within the PRISM entry checks with language within GEMX's PIM, ISE's PIM, MRX's PIM, and Phlx's PIXL, without changing the substantive operations of these price improvement auctions, does not impose an undue burden on competition because market participants will be able to compare BX's PRISM entry checks with similar mechanisms on Nasdaq affiliated markets.

Amending Options 3, Section 13(i)(A) through (C) to specify the entry checks that are utilized by BX's System today to initiate a PRISM does not impose an undue burden on competition because these checks will apply uniformly to any order entered into PRISM. Further, the proposed amendments will add transparency to the current System functionality, which is not being substantively amended.

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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁶ and Rule 19b-4(f)(6) thereunder.⁷

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.

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 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.

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-BX-2023-021 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-2023-021. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office

of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-BX-2023-021 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Sherry R. Haywood,

Assistant Secretary.

⁸ 17 CFR 200.30-3(a)(12).