

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84227; File No. SR-BX-2018-045)

September 20, 2018

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Equity Rule 6950 Series Concerning the Order Audit Trail System to Make Conforming and Technical Changes

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 12, 2018, 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 Exchange filed the proposal as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 the [sic] Rule 6950 Series concerning the Order Audit Trail System to make conforming and technical changes.

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqbx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

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 is proposing to amend the Equity Rule 6950 Series⁵ concerning the Order Audit Trail System to: (1) renumber the whole Equity Rule 6950 Series to conform it to the numbering convention used by the Nasdaq Stock Market LLC (“Nasdaq”) and FINRA; (2) amend Equity Rule 7410A to expand two exemptions and to make technical changes to text under the Rule; (3) delete inapplicable text from Equity Rules 7430A, 7440A and 7450A and make other conforming changes to these Rules; (4) reorganize rule text under Equity Rule 7450A; (5) delete current Equity Rules 6957 and 6958.

The Exchange’s Equity Rule 6950 Series imposes an obligation on Exchange members to record in electronic form and report to FINRA on a daily basis certain information with respect to orders originated, received, transmitted, modified, canceled, or executed by members in Nasdaq- and Exchange-listed stocks. FINRA’s Order Audit Trail System (“OATS”) captures this order information and integrates it with quote and transaction information to create a time-

⁵ The term “Equity Rules” means the numbered rules set forth in the Exchange Manual denominated as the 0100, 1000, 2000, 3000, 4000, 5000, 6000, 7000, 8000, 9000, 10000, and 11000 Series Rules. See Equity Rule 0120(p). The Exchange is proposing to make it clear in the proposed rules that references to rules of the Exchange are “Equity Rules.”

sequenced record of orders, quotes, and transactions. This information is used by FINRA staff to conduct surveillance and investigations of members for potential violation of Exchange rules and federal securities laws.

The Exchange adopted the Equity Rule 6950 Series to copy Nasdaq and FINRA OATS rules, where appropriate. As a general principle, the Exchange endeavors to keep its rules worded and structured as closely as possible to the FINRA rules on which they are based, including FINRA's OATS rules under its Rule 7000 Series. In instances where the FINRA rules are inapplicable to the Exchange, such as FINRA Rule 7410(o)(2), which concerns an exception to the definition of a Reporting Member relating to members operating on equities floors, the Exchange has not copied those FINRA rules. Generally, the Exchange also seeks to keep the Equity Rule 6950 Series consistent with Nasdaq's Rule 7400A Series, which should also be materially identical to the related rules of the Exchange. The proposed changes will harmonize Exchange rules with analogous Nasdaq and FINRA rules, which have been amended since the Exchange first adopted its rules.

First Change

The Exchange is proposing to renumber the Equity Rule 6950 Series to a new Equity Rule 7000A Series, which is identical to how Nasdaq presents its OATS rules. This will allow the Exchange's OATS rules to follow the numbering convention used by Nasdaq and FINRA. Like Nasdaq, the Exchange is proposing to add an "A" to each of the rules so that they do not conflict with the existing Equity Rule 7000 Series within the Exchange's rule book yet also follow FINRA's numbering convention. FINRA's OATS rules are under the FINRA Rule 7400 Series and individual rule numbers align with those of Nasdaq's OATS rules and those proposed by the Exchange. As part of this change, the Exchange is also updating references to rules in the Equity Rule 6950 Series to the renumbered rules in the Equity Rule 7000A Series. Relatedly, the

Exchange is correcting citations in Equity Rules 7430A, 7440A, and 7450A that currently reference NASD rule [sic] that have been renumbered as FINRA rules.

Second Change

The Exchange is amending Equity Rule 7410A to conform it to the rules of Nasdaq. The Exchange is proposing to add new text as paragraph (a) noting that terms used in the Rule have the same meanings as are ascribed to those terms in the Exchange's By-Laws and in its other rules, unless otherwise noted, which is identical to Nasdaq's Rule 7410A. Consequently, the Exchange is renumbering current paragraphs (a) – (n) as paragraphs (b) – (o). The Exchange is also amending Equity Rule 7410A to make technical changes that harmonize the definitions of "Electronic Communication Network," "Index Arbitrage Trade," "Intermarket Sweep Order," and "Program Trade" with the definitions of those terms in the Nasdaq Rules.⁶

The Exchange is also proposing to adopt the same limited exemption from OATS order data recordation requirements provided under Nasdaq Rule 7410A(k) for BX members that are registered market makers in standardized options on any market. Equity Rule 7410A(j) defines the term "Order" and provides a limited exemption from the definition for a proprietary transaction originated by a trading desk in the ordinary course of a member's market making activities. The Exchange is proposing to adopt a second limited exemption currently available under Nasdaq's analogous definition of "Order."⁷ That limited exemption excludes from the definition of an "Order" a bona fide hedge transaction involving a Nasdaq-listed equity security

⁶ The Exchange is not adopting the definition of "NMS Stock" found under Nasdaq Rule 7410A(j). The term is not used in the BX OATS rules. In addition, the term is not used in the Nasdaq OATS rules. The term is used in FINRA Rule 7410(k) defining "Order Audit Trail System," whereas BX and Nasdaq instead reference Exchange and Nasdaq listed securities under Equity Rule 7410A(k) and Nasdaq listed securities under Nasdaq Rule 7410A(l).

⁷ See Nasdaq Rule 7410A(k).

originated by a trading desk in the ordinary course of the member's options market making activities.⁸ As noted by Nasdaq in adopting the exemption, OATS was designed to provide an accurate, time-sequenced record of orders and transactions, beginning with the receipt of an equity order at the first point of contact between the broker-dealer and the customer or counterparty and further documenting the life of the equity order through the process of execution.⁹ The proposed rule change does not impact the customer protection orientation of OATS since, by definition, bona fide hedging transactions in equity securities that are undertaken by options market makers do not involve customer orders in those equity securities. Rather, bona fide hedging transactions in equity securities are undertaken by an options market maker to hedge against the firm risk that it creates through its conduct as a registered options market maker. Accordingly, submitting bona fide hedging transactions to OATS recording requirements provides no customer protection or equivalent regulatory benefit. It is also very expensive for firms that are not currently FINRA members or that do not currently trade Exchange or Nasdaq equities to develop and maintain the compliance systems and compliance staff required to continuously monitor the daily transmission of OATS data. For these reasons, the Exchange is proposing to adopt such an exemption, available to its options market makers.

The Exchange is proposing to amend Equity Rule 7410A(n)(1) to harmonize the rule with FINRA Rule 7410(o)(1)(A) and Nasdaq Rule 7410A(o)(1)(A). Equity Rule 7410A(n) defines a "Reporting Member" as a member that receives or originates an order and has an obligation to record and report information under Equity Rules 7440A and 7450A. The Rule

⁸ The Exchange notes that Nasdaq capitalizes the term "Bona Fide Hedge Transaction" in Nasdaq Rule 7410A(k), although the term is not defined in Nasdaq's rules. The Exchange believes that capitalizing the term was an error and is therefore not capitalizing the term in Equity Rule 7410A(k).

⁹ See Securities Exchange Act Release No. 59369 (February 6, 2009), 74 FR 7278 (February 13, 2009) (SR-NASDAQ-2008-097).

also provides an exception to the general definition of a “Reporting Member” if the member meets four conditions.¹⁰ The first condition in subparagraph (n)(1), which is the only condition at issue in this proposal, is that currently the member engages in a non-discretionary order routing process, pursuant to which it immediately routes, by electronic or other means, all of its orders to a single receiving Reporting Member. On May 12, 2014, FINRA amended FINRA Rule 7410(o)(1)(A) to allow a member to satisfy this condition by permitting a member to alternatively route its orders to two receiving Reporting Members, if two related requirements were met.¹¹ First, the orders must be routed by the member to each receiving Reporting Member on a pre-determined schedule approved by FINRA. Second, the FINRA member’s orders must be routed to two receiving Reporting Members pursuant to the schedule for a time period not to exceed one year. Under FINRA’s rule as amended, FINRA members may continue to rely on the exception from the definition of Reporting Member if it [sic] routes all of its [sic] orders to a single Reporting Member, provided the other conditions of the exception are met. Consequently, BX is also keeping its existing single receiving Reporting Member exception and adding a second exception for two receiving Reporting Members. FINRA noted in adopting the change that the rule was intended to accommodate introducing firms that transition to a different clearing firm over time and, during the transition, route their orders [sic] two different clearing firms, both of which report the introducing firm’s information to OATS during the transition time. Nasdaq recently amended its rule to incorporate this change.¹² The Exchange believes that this additional limited exception is appropriate for its members, which likewise may encounter a

¹⁰ The four conditions are provided under Equity Rules 7410A(n)(1)-(4).

¹¹ See Securities Exchange Act Release No. 72191 (May 20, 2014), 79 FR 30219 (May 27, 2014) (SR-FINRA-2014-024).

¹² See Securities Exchange Act Release No. 83115 (April 26, 2018), 83 FR 19384 (May 2, 2018) (SR-NASDAQ-2018-030).

transition to a different clearing firm whereby a member would no longer be eligible for the exception to the definition of Reporting Member. Accordingly, the Exchange is proposing to adopt the FINRA rule text under Equity Rule 7410A(n)(1)(B).

Third Change

The Exchange is proposing to amend Equity Rules 7430A(a), 7440A(a) and 7450A(a) to delete text concerning FINRA's process of transitioning certain NASD rules into a new FINRA rulebook because this transition period has ended and the text is obsolete. The Exchange is also proposing to make technical changes that update citations to the appropriate FINRA rules under Equity Rules 7430A(a), 7440A(a) and 7450A(a).¹³ Consistent with Nasdaq Rule 7440A(d)(2), the Exchange is proposing to add new Equity Rule 7440A(d)(2), which provides that references to FINRA Rules 5320, 7440, and 7450 shall be construed as references to Equity Rules IM-2110-2, 7440A, and 7450A, respectively. Last, the Exchange is making minor clarifying changes under Equity Rules 7440A(d)(1) and (2) to make it clear that certain rules noted thereunder are references to FINRA rules.

Fourth Change

The Exchange is proposing to delete paragraph (c) from current Equity Rule 6954 (which will be renumbered Equity Rule 7440A and paragraph (d) from current Equity Rule 6955 (which will be renumbered Equity Rule 7450A), and move the text to Equity Rules 7440A(a) and 7450A(a), respectively, with minor technical differences to correct citations.¹⁴ The Rules

¹³ The Exchange notes that Rule 7450A(b) requires both Proprietary Trading Firms as well as their associated persons to comply with FINRA Rule 7450 in limited circumstances, whereas Nasdaq's Rule 7450A only requires compliance by Proprietary Trading Firms. The Exchange believes that this is an omission in the Nasdaq rule and is accordingly not adjusting the Exchange rule.

¹⁴ The Exchange is not including text from current Equity Rules 6954(c) and 6955(d), which notes that members are complying with these rules by complying with the related

explain that the Exchange and FINRA are parties to the FINRA Regulatory Contract, pursuant to which FINRA has agreed to perform certain functions on behalf of the Exchange. The Rules also note that members are complying with current Equity Rules 6954 and 6955 by complying with NASD Rules 6954 and 6955, respectively. Nasdaq places the same text as current Equity Rules 6954(d) and 6955(d) under Nasdaq Rules 7440A(a) and 7450A(a), respectively. Thus, the Exchange is moving the text, as amended, under Equity Rules 7440A(a) and 7450A(a). As a consequence, the Exchange is changing the lettering of paragraphs (d) and (e) of current Equity Rule 6954 to paragraphs (c) and (d), respectively, of Equity Rule 7440A, and the lettering of paragraph (e) of current Equity Rule 6955 to paragraph (d) of Equity Rule 7450A.

Fifth Change

The Exchange is proposing to delete current Equity Rules 6957 and 6958. Equity Rule 6957 concerns compliance with NASD Rule 6954. NASD Rule 6954 provided the effective dates of requirements of the Order Audit Trail System, all of which have passed. FINRA has deleted NASD Rule 6954 and consequently, the Exchange is proposing to delete Equity Rule 6957.

The Exchange is proposing to delete current Equity Rule 6958, which will be renumbered Equity Rule 7470A and held in reserve. Current Equity Rule 6958 provided an exemption from the order recording and data transmission requirements of current Equity Rules 6954 and 6955, which are OATS rules applicable to manual orders. The exemption has not been requested by any Exchange member to date and the Exchange does not believe that Exchange members are likely to need the exemption, since the vast majority of such members to which the rule applies

FINRA rules, in Equity Rules 7440A(a) and 7450A(a). The Exchange believes these sentences are duplicative of the first sentence of Equity Rules 7440A(a) and 7450A(a). The Exchange notes that Nasdaq's Rules 7440A(a) and 7450A(a) include this duplicative text.

are electronic proprietary trading firms that would not qualify for the exemption.¹⁵ Thus, the Exchange is proposing to eliminate the rule text under Equity Rule 6958 from its rule book, renumber the rule to Equity Rule 7470A, and hold the rule in reserve.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁷ 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, by harmonizing the Exchange's OATS rules with those of FINRA, on which they are based, and with those of Nasdaq, which they should largely match. Consequently, the proposed change will conform Exchange Rules to changes made to corresponding FINRA and Nasdaq rules, thus promoting consistent regulatory standards with respect to rules that FINRA enforces pursuant to its Regulatory Services Agreements with the Exchange and Nasdaq. With respect to the proposed amendment to Equity Rule 7410A(n)(1), the exemption will provide Exchange members with the same flexibility to transition to a new clearing firm that both Nasdaq and FINRA members currently enjoy. The rule is intended to accommodate introducing firms that transition to a different clearing firm over time and, during the transition, route their orders to two different clearing firms, both of which report the introducing firm's information to OATS during the transition time. Adopting the new and amended rule text under Equity Rule 7410A will also align the Exchange rulebook with

¹⁵ The Exchange notes that Nasdaq does not have an analogous rule, having eliminated similar text recently for the same reasons. See note 10 [sic], supra.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

Nasdaq's and FINRA's, thereby reducing complexity from FINRA's work under a regulatory services agreement with the Exchange.

The Exchange believes that adopting the new limited exception to the definition of "Order" is consistent with the Act because it provides a very narrow exemption from reporting transactions that are done to manage risk and facilitate options market making. Bona fide hedging transactions in equity securities that are undertaken by options market makers do not involve customer orders in those equity securities and thus do not implicate customer protection issues. Moreover, information regarding bona fide hedging transactions retained by a registered BX Options Market market maker is otherwise available to FINRA and BX Regulation through the Exchange's electronic delivery systems, upon request. This information includes trade reporting data, including order time and sales data captured by the Exchange system.

With respect to the proposed technical corrections to the rules, the Exchange believes that these changes are consistent with the Act because they will prevent investor confusion that may be caused by including in the Rules incorrect rule citations, defunct rule text and expired exemptions.

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 proposed rule change align [sic] the Exchange's rules with those of Nasdaq and FINRA, which will assist FINRA in its oversight work done pursuant to a regulatory services agreement. The proposed changes also provide uniform standards with which market participants must comply.

Consequently, the Exchange does not believe that the proposed changes implicate competition at all.

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 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 prior to 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 Act¹⁸ and Rule 19b-4(f)(6) thereunder.¹⁹

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.

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-2018-

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 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.

045 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-2018-045. 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-2018-045 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.²⁰

Eduardo A. Aleman
Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).