

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93513; File No. SR-BX-2021-051)

November 3, 2021

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing of Proposed Rule Change to Amend Exchange Rules in Connection with the Proposed Merger of BX Equities LLC with and into the Exchange

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 October 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 amend its rules in connection with the proposed merger of BX Equities LLC (“BX Equities”) with and into the Exchange (the “Merger”). As a result of the Merger, BX Equities will be eliminated, and the Exchange will directly operate its equities and options markets.

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.

¹ 15 U.S.C. 78s(b)(1).

² 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 its rules in connection with the proposed Merger of BX Equities with and into the Exchange. The Exchange notes that the proposed Merger is the second part of a two-step process, the first part of which is the transfer of Nasdaq, Inc.’s (“Nasdaq HoldCo”) entire ownership interest in BX Equities to the Exchange, which will result in the Exchange becoming the 100% direct owner and sole LLC member of BX Equities (the “Transfer” and together with the Merger, the “Transactions”).³ The Transactions will ultimately result in the elimination of BX Equities. The Transactions are designed to simplify the corporate structure of the Exchange’s sole stockholder Nasdaq HoldCo and Nasdaq HoldCo’s subsidiaries, specifically the Exchange and BX Equities. The Transactions will not have any effect on Nasdaq HoldCo’s direct ownership of the Exchange.

³ The proposed Transfer is the subject of a separate rule filing to be filed by the Exchange with the Commission concurrent with this filing. Specifically, the Transfer filing would amend the BX Equities Operating Agreement to reflect Nasdaq HoldCo’s transfer of ownership interest in BX Equities to the Exchange. The Merger filing would then delete the BX Equities Operating Agreement that was amended in the Transfer filing and delete the Delegation Agreement to reflect the Merger. See SR-BX-2021-050 (not yet published).

By way of background, BX Equities was established in 2008 as a facility of and controlled subsidiary owned and operated by the Exchange for the listing and trading of cash equity securities.⁴ BX Equities is currently governed by a Delegation Agreement between the Exchange and BX Equities (“Delegation Agreement”), under which the Exchange has delegated certain responsibilities to BX Equities to operate the Exchange’s equities market.⁵ BX Equities is also currently governed by the Fifth Amended and Restated Operating Agreement (“Operating Agreement”). As noted above, the Exchange is concurrently submitting a separate filing that amends the Operating Agreement to reflect the Transfer, which will result in the Exchange becoming the sole owner and LLC member of BX Equities.⁶

Following the Merger, the Exchange will be the surviving entity, and it will directly operate both the Exchange’s equities and options markets. The Exchange is proposing amendments in order to reflect those changes.

Specifically, the proposed amendments would ultimately allow the Exchange to directly operate both markets by:

- terminating the existing delegation to BX Equities;
- removing the BX Equities Operating Agreement; and
- amending the Exchange’s rules to eliminate all references to the Delegation Agreement, BX Equities Operating Agreement, and BX Equities LLC.

⁴ See Securities Exchange Act Release No. 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR-BSE-2008-48) (“BX Equities Approval Order”). The NASDAQ OMX Group, Inc. (as referenced in the BX Equities Approval Order) is now Nasdaq, Inc.

⁵ The Exchange also directly operates an options market.

⁶ See supra note 3.

Each item will be discussed in detail below. The Exchange intends to implement the Transactions (including the proposed changes in this filing to reflect the Merger) by the end of Q4 2021. The Exchange anticipates that the Merger will occur immediately after the Transfer.

Termination of Delegation

The Delegation Agreement was executed in 2008 following the establishment of BX Equities as a cash equities trading facility of the Exchange. The delegation is limited to the Exchange's equities market functions and does not include other functions not specifically mentioned in the limited delegation. However, the Exchange retains ultimate responsibility for its equities market, including the responsibility to ensure the fulfillment of statutory and self-regulatory obligations under the Act.⁷

In connection with the proposed Merger, the Exchange now proposes to terminate the delegation of functions to BX Equities set forth in the Delegation Agreement, and remove the Delegation Agreement from its rules. With the termination of the Delegation Agreement, all of the functions that were previously delegated to BX Equities will now be performed by the Exchange as the Exchange will directly operate its equities market upon the elimination of BX Equities. Furthermore, the Exchange will continue to bear responsibility over its equities market of ensuring the fulfillment of its statutory and self-regulatory obligations.

Removal of Operating Agreement

⁷ See Delegation Agreement (providing that the Exchange shall have ultimate responsibility for the operations, rules and regulations developed by BX Equities, as well as their enforcement, and that actions taken by BX Equities pursuant to delegated authority remain subject to review, approval or rejection by the Exchange's Board in accordance with the procedures established by the Board). See also BX Equities Approval Order at 80470.

As discussed above, the Exchange is concurrently proposing amendments to the Operating Agreement to reflect that the Exchange will be the only owner and sole LLC member of BX Equities. In addition, management of BX Equities is vested solely in the Exchange.⁸ As stated in the BX Equities Approval Order, having the managerial powers vested solely in the Exchange is designed to preserve the Exchange’s regulatory authority over BX Equities, and grants the Exchange the ability to direct BX Equities to perform any required, necessary, or appropriate act.⁹ By virtue of BX Equities’ structure as a facility of the Exchange, and the Exchange’s exclusive management rights, BX Equities is bound by all of the regulatory obligations of its SRO-member. For instance, the Exchange’s independent regulatory oversight committee (“ROC”) currently oversees the regulatory program of the Exchange and its facilities, and meets regularly with the Exchange’s Chief Regulatory Officer (“CRO”).¹⁰ In addition, the Exchange’ independent regulatory department under the oversight of the ROC carries out the Exchange’s regulatory functions, including administering its membership and disciplinary rules, and performing real-time surveillance over participants in the Exchange’s equities and options market. Ultimately, BX Equities can only act through the action of the Exchange and its officers and directors by virtue of the fact that there is no separate BX Equities board of directors and all BX Equities officers are officers of the Exchange.¹¹

⁸ See Section 4.1, Operating Agreement (stating that as sole manager of BX Equities, the Exchange shall have the power to do any and all acts necessary, convenient or incidental to or for the furtherance of the purposes described in the Operating Agreement, and that the Exchange has the authority to bind BX Equities).

⁹ See BX Equities Approval Order at 80470.

¹⁰ See Section 4.13(c) of the Exchange’s By-Laws. BX Equities does not have a separate ROC.

¹¹ See supra note 7 [sic]. See also Section 5.1, Operating Agreement (stating that officers of BX Equities must also be officers of the Exchange).

With the termination of the Delegation Agreement proposed above, BX Equities would no longer be operating the Exchange's equities market and as a result, the Operating Agreement will become obsolete. Accordingly, the Exchange proposes to remove the Operating Agreement from its rules.

Exchange Rule Amendments

The Exchange proposes to make certain conforming amendments to its rules to reflect the proposed Merger of BX Equities into the Exchange and the resulting deletion of the Delegation Agreement and Operating Agreement. In particular, the Exchange proposes to make the following conforming amendments:

- General 2, Section 8 currently references the Delegation Agreement, and states that the staff, books, records and premises of BX Equities LLC are the staff, books, records and premises of the Exchange subject to oversight pursuant to the Act, and all officers, employees and agents of BX Equities LLC are the officers, employees and agents of the Exchange for purposes of the Act. The Exchange now proposes to delete the rule text and reserve the rule.
- Equity 1, Section 1 currently includes the definitions of Delegation Agreement (Equity 1, Section 1(a)(2)) and BX Equities (Equity 1, Section 1(a)(5)). The Exchange now proposes to delete these definitions and reserve the respective rules.
- In Equity 1, Section 1(a)(3), the Exchange proposes to delete the references to the Delegation Agreement and Operating Agreement.
- In Equity 1, Section 1(a)(6), the Exchange proposes to delete “through BX Equities LLC as a facility of the Exchange” from the first sentence.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(1) of the Act,¹³ in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

Specifically, termination of the Delegation Agreement would result in the Exchange directly operating the equities market facility of the Exchange. With the termination of the Delegation Agreement, all of the functions that were previously delegated to BX Equities will now be performed by the Exchange as the Exchange will directly operate its equities market upon the elimination of BX Equities. Furthermore, the Exchange will continue to bear responsibility over its equities market of ensuring the fulfillment of its statutory and self-regulatory obligations. As stated above, the independent ROC of the Exchange's Board would continue to oversee the Exchange's regulatory and self-regulatory organization responsibilities with regards to both the equities and options markets, and the Exchange's regulatory department would continue to carry out its regulatory functions with respect to both markets under the oversight of the ROC.¹⁴ For the same reasons, the Exchange believes that its proposal to remove BX Equities' Operating Agreement from the Exchange's rules in connection with the proposed termination of the Delegation Agreement is also consistent with Section 6(b)(1) of the Act.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(1).

¹⁴ See supra note 9 [sic].

The Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Act,¹⁵ 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. The Exchange believes that the deletion of the Delegation Agreement and Operating Agreement from the Exchange's rules, and related conforming Exchange rule amendments, each as discussed above, is consistent with Section 6(b)(5) of the Act because the proposed changes would add clarity and transparency to the Exchange's Rulebook, ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rules.

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 is not designed to address any competitive issues but rather is concerned solely with the corporate structure of the Exchange and the administration and function of its corporate governance structures.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer

¹⁵ 15 U.S.C. 78f(b)(5).

period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2021-051 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-2021-051. 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-2021-051 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.¹⁶

J. Matthew DeLesDernier
Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).