

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93514; File No. SR-BX-2021-050)

November 3, 2021

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing of Proposed Rule Change to Amend the BX Equities LLC Operating Agreement

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 to reflect that Nasdaq, Inc. (“Nasdaq HoldCo”), the Exchange’s sole stockholder, will transfer its entire ownership interest in the Exchange’s subsidiary Nasdaq BX Equities LLC (“BX Equities”) to the Exchange, thereby resulting in the Exchange becoming the 100% direct owner and sole LLC member of BX Equities.

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 purpose of the proposed rule change is to amend the Exchange’s rules to reflect that Nasdaq HoldCo, the Exchange’s sole stockholder, will transfer its entire ownership interest in the Exchange’s subsidiary BX Equities to the Exchange (the “Transfer”), thereby resulting in the Exchange becoming the 100% direct owner and sole LLC member of BX Equities. The Exchange notes that the proposed Transfer is the first part of a two-step process, the second part of which is the upstream merger of BX Equities with and into the Exchange (the “Merger” and together with the Transfer, the “Transactions”).³ The Transactions will ultimately result in the elimination of BX Equities. The Transactions are designed to simplify the corporate structure of 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 Merger 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-2021-051 (not yet published).

Background

BX Equities was acquired by Nasdaq HoldCo in 2008,⁴ and established as a facility of and controlled subsidiary owned and operated by the Exchange for the listing and trading of cash equity securities.⁵ Today, Nasdaq HoldCo directly owns 100% of the Exchange. The Exchange directly owns 53.21% of BX Equities, and Nasdaq HoldCo directly owns the remaining 46.79% of BX Equities.⁶ The Fifth Amended and Restated Operating Agreement of BX Equities (“Operating Agreement”) reflects that the Exchange and Nasdaq HoldCo are the only owners and LLC members of BX Equities. Under Section 8.1 of the Operating Agreement, the Exchange must obtain Commission approval for transfers of ownership interests in BX Equities, including the proposed Transfer. Subject to the Commission’s approval of this proposed rule change, the Exchange and Nasdaq HoldCo will enter into a contribution and assignment agreement (“Contribution Agreement”) pursuant to which Nasdaq HoldCo will transfer its entire 46.79% ownership interest in BX Equities to the Exchange. As a result of the Transfer, the Exchange will directly own 100% of BX Equities. In addition, the Exchange will continue to be 100% owned by Nasdaq HoldCo.

Proposal

⁴ See Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR-BSE-2008-02; -23; -25; SR-BSECC-2008-01) (“2008 Acquisition Approval Order”). At the time of the acquisition, the Exchange already owned 53.21% of BX Equities, with the remaining 46.79% owned by several investors. Following the 2008 Acquisition Approval Order, Nasdaq HoldCo purchased and as a result, became the direct owner of the 46.79% interest in BX Equities that was previously held by those investors. See 2008 Acquisition Approval Order at 46950.

⁵ 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 both the 2008 Acquisition Approval Order and the BX Equities Approval Order) is now Nasdaq, Inc.

⁶ See supra note 4.

As discussed above, BX Equities is currently governed by the Operating Agreement, which provides that the Exchange and Nasdaq HoldCo are the only owners and LLC members of BX Equities. Management of BX Equities, however, is vested solely in the Exchange. Nasdaq HoldCo has no direct management role in the operation of the entity, with the exception of its limited role as “tax matters Member” under Sections 10.9 and 12.6 and in the definitions of “Capital Account” and “Tax Amount,” and its limited rights with regard to dissolution of the entity under Article 11 and capital contributions under Section 7.4.⁷

To effectuate the proposed Transfer, the Exchange and Nasdaq HoldCo will enter into the Contribution Agreement pursuant to which Nasdaq HoldCo will transfer its entire ownership interest in BX Equities, and all of its other rights and obligations arising thereunder (including, without limitation, as tax matters Member of BX Equities), to the Exchange. Accordingly, the Exchange proposes to amend the Operating Agreement to reflect the foregoing, and to remove references throughout to Nasdaq HoldCo. Notably, the Exchange is proposing to make the following amendments:

- The introductory paragraphs, the definition of “Agreement” in Section 1.1, and Section 2.8(e) will be amended to reflect the most recent version of the Operating Agreement.
- The recitals will also be amended to add language regarding the Contribution Agreement.

⁷ As stated in the BX Equities Approval Order, Nasdaq HoldCo remained an LLC member of BX Equities to avoid certain adverse tax consequences that would be associated with contributing its ownership interest to the Exchange. See BX Equities Approval Order at 80469 - 70. Those tax considerations have since expired.

- The definitions of “Capital Account” and “Tax Amount” in Section 1.1, and Sections 10.9 and 12.6 will be amended to replace Nasdaq HoldCo with the Exchange in order to reflect that Nasdaq HoldCo will no longer be the tax matters Member of BX Equities.
- Section 7.4 will be amended to reflect that Nasdaq HoldCo will no longer have limited rights with respect to capital contributions in BX Equities. The Exchange will also correct a typo in this section.
- Section 11.1(a)(i) will be amended to reflect that Nasdaq HoldCo will no longer have limited rights regarding the dissolution of BX Equities. The Exchange will also correct a typo in this section.
- Section 18.6(a), which relates to oversight pursuant to the Exchange Act over the books, records, premises, officers, directors, agents, and employees of Nasdaq HoldCo, will be deleted in its entirety and Section 18.6 will be renumbered accordingly. Section 18.6(a) will no longer be necessary upon Nasdaq HoldCo’s withdrawal as an LLC member of BX Equities. Furthermore, Nasdaq HoldCo’s By-Laws at Section 12.1(c) currently also contain similar oversight provisions.
- Lastly, the introductory paragraphs, the definition of “Member” in Section 1.1, Section 7.2, Schedule 1, and Schedule 2 will be amended to remove references to Nasdaq HoldCo as an LLC member of BX Equities.

Subject to Commission approval, the amended Operating Agreement will be operative immediately upon the Transfer. As noted above, the Exchange is concurrently filing a separate rule change to further amend the Operating Agreement by deleting it in its entirety upon the

Merger and elimination of BX Equities.⁸ The Exchange intends to implement the Transactions by the end of Q4 2021. The Exchange anticipates that the Merger will occur immediately after the Transfer.

2. Statutory Basis

The Exchange believes that this proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(1) of the Act,¹⁰ 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 Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The proposed rule change merely seeks to simplify the corporate structure of BX Equities, and the Exchange will operate in a substantially similar manner following the Transfer as it operates today, with the addition of the Exchange's role as the tax matters Member of BX Equities. This is a corporate change, and will have no impact on how the Exchange operates its equities market.

The Exchange also believes that its proposal furthers the objectives of Section 6(b)(5) of the Act,¹¹ 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. Specifically, the proposed rule change would result in the Operating Agreement correctly reflecting the ownership structure of its subsidiary BX Equities upon completion of the Transfer. The Exchange reiterates

⁸ See supra note 3.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(1).

¹¹ 15 U.S.C. 78f(b)(5).

that it will continue to operate its equities market in the same manner as today following the Transfer.

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 BX Equities.

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 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-2021-050 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-2021-050. 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-2021-050 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.¹²

J. Matthew DeLesDernier
Assistant Secretary

¹² 17 CFR 200.30-3(a)(12).