

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96486; File No. SR-BX-2022-025)

December 13, 2022

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Address an Erroneous Reference in Equity 4, Rule 4780(e)

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 December 1, 2022, Nasdaq BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 address an erroneous reference in Equity 4, Rule 4780(e).

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 this filing is to correct an erroneous reference in Equity 4, Rule 4780(e) involving the dissemination process of the Retail Liquidity Identifier as part of the Exchange's Retail Price Improvement Program ("RPI Program"). Under the RPI Program, all Retail Price Improvement Orders ("RPI Orders") provide liquidity at a price at least \$0.001 better than the National Best Bid and Offer ("NBBO") through a special execution process.³ Currently, unless a Participant opts out of identifying their RPI Interest, the Exchange disseminates the Retail Liquidity Identifier when RPI interest is present on the Exchange.

Equity 4, Rule 4780(e) states that the Retail Liquidity Identifier will be disseminated when RPI interest is priced at least \$0.001 per share better than the "Exchange's" Protected Bid or Protected Offer. However, this language is erroneous. In intent and practice, the Exchange disseminates the Retail Liquidity when RPI interest is priced at least \$0.001 better than the NBBO. The Exchange's intent in this regard is evident in Equity 4, Rule 4702(b)(5)(A), which describes an RPI Order as being priced better than the NBBO. Moreover, measuring retail price improvement with reference to the NBBO, rather than to the Exchange's Best Bid or Offer, ensures that the RPI Program will alert participants to real price improvement opportunities that

³ Equity 4, Rule 4702(b)(5)(A) states that, "A "Retail Price Improving Order" or "RPI Order" is an Order Type with a Non- Display Order Attribute that is held on the Exchange Book in order to provide liquidity at a price at least \$0.001 better than the NBBO through a special execution process described in Rule 4780. A Retail Price Improving Order may be entered in price increments of \$0.001. RPI Orders collectively may be referred to as "RPI Interest."

exist on Nasdaq [sic], i.e., prices that are better than the NBBO, rather than prices better than the Exchange's Best Bid or Offer, but not better than the NBBO.

The Exchange proposes to correct this erroneous reference in Equity 4, Rule 4780(e). The correction is necessary to ensure that the provision is consistent with the circumstances in which the Exchange intends to and actually disseminates the Retail Liquidity Identifier. It will also ensure that the Retail Liquidity Identifier will alert participants to genuine retail price improvement opportunities on the Nasdaq Book [sic], as discussed above.

The Exchange noticed the error in the language and promptly sought to correct the inconsistency. The Exchange notes that it has not received any complaints or notices from Exchange Members expressing confusion or alerting the Exchange to the error.

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, 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 proposal would correct an error that otherwise renders inaccurate an example of the application of Equity 4, Rule 4780(e). The Exchange believes that it is consistent with the interest of the public, investors, and the market for the Exchange to take steps to ensure that its Rulebook is accurate.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

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 non-substantive and it will have no impact on competition because it simply corrects an error in the Rule text to render the text more accurate.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁶ and Rule 19b-4(f)(6) thereunder.⁷ 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

⁷ 17 CFR 240.19b-4(f)(6).

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 the Exchange to give the Commission written notice of the Exchange's 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.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁰ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹¹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately. The Exchange requests this waiver so that it can correct an error in its rulebook as soon as possible to avoid any potential confusion regarding the operation of the Retail Liquidity Identifier. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest so that the Exchange's rulebook accurately represents the operation of the Retail Liquidity Identifier without undue delay. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹²

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.

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

¹² For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2022-025 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-2022-025. 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 offices 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-2022-025, 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.¹³

Sherry R. Haywood,
Assistant Secretary.

¹³ 17 CFR 200.30-3(a)(12), (59).