

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Eduardo A. Aleman,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84847; File No. SR-BX-2018-063]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period for the Exchange's Retail Price Improvement Program Until June 30, 2019

December 18, 2018.

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 11, 2018, 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 extend the pilot period for the Exchange's Retail Price Improvement ("RPI") Program (the "Program"), which is set to expire on December 31, 2018, for an additional period to expire on June 30, 2019.

The Exchange has designated December 11, 2018 as the date the proposed rule change becomes effective.

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.

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 this filing is to extend the pilot period of the RPI Program,³ currently scheduled to expire on December 31, 2018, for an additional period to expire on June 30, 2019.

Background

In November 2014, the Commission approved the RPI Program on a pilot basis.⁴ The Program is designed to attract retail order flow to the Exchange, and allow such order flow to receive potential price improvement. The Program is currently limited to trades occurring at prices equal to or greater than \$1.00 per share. Under the Program, a new class of market participant called a Retail Member Organization ("RMO") is eligible to submit certain retail order flow ("Retail Orders")⁵ to the Exchange. BX members ("Members") are permitted to provide potential price improvement for Retail Orders in the form of non-displayed interest that is priced more aggressively than the Protected National Best Bid or Offer ("Protected NBBO").⁶

³ Securities Exchange Act Release No. 73702 (November 28, 2014), 79 FR 72049 (December 4, 2014) ("RPI Approval Order") (SR-BX-2014-048).

⁴ See *id.*

⁵ A "Retail Order" is defined in BX Rule 4780(a)(2) by referencing BX Rule 4702, and BX Rule 4702(b)(6) says it is an order type with a non-display order attribute submitted to the Exchange by a RMO. A Retail Order must be an agency order, or riskless principal order that satisfies the criteria of FINRA Rule 5320.03. The Retail Order must reflect trading interest of a natural person with no change made to the terms of the underlying order of the natural person with respect to price (except in the case of a market order that is changed to a marketable limit order) or side of market and that does not originate from a trading algorithm or any other computerized methodology.

⁶ The term Protected Quotation is defined in Chapter XII, Sec. 1(19) and has the same meaning as is set forth in Regulation NMS Rule 600(b)(58). The Protected NBBO is the best-priced protected bid and offer. Generally, the Protected NBBO and the national best bid and offer ("NBBO") will be the same. However, a market center is not required to route to the NBBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBBO is otherwise not available for an automatic execution. In such case, the Protected NBBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.

The Program was approved by the Commission on a pilot basis running one-year from the date of implementation.⁷ The Commission approved the Program on November 28, 2014.⁸ The Exchange implemented the Program on December 1, 2014 and the pilot has since been extended for a one year period twice and for an additional six month period twice, with it now scheduled to end on December 31, 2018.⁹

Proposal To Extend the Operation of the Program

The Exchange established the RPI Program in an attempt to attract retail order flow to the Exchange by potentially providing price improvement to such order flow. The Exchange believes that the Program promotes competition for retail order flow by allowing Exchange members to submit Retail Price Improvement Orders ("RPI Orders")¹⁰ to interact with Retail Orders. Such competition has the ability to promote efficiency by facilitating the price discovery process and generating additional investor interest in trading securities, thereby promoting capital formation. The Exchange believes that extending the pilot is appropriate because it will allow the Exchange and the Commission additional time to analyze data regarding the Program that the Exchange has committed to provide.¹¹ As such, the Exchange believes that it is appropriate to extend the current operation of the Program.¹² Through this filing, the Exchange seeks to amend BX Rule 4780(h) and extend the current pilot period of the Program

⁷ See RPI Approval Order, *supra* note 3 at 72053.

⁸ *Id.* at 72049.

⁹ See Securities Exchange Act Release No. 76490 (November 20, 2015), 80 FR 74165 (November 27, 2015) (SR-BX-2015-073); Securities Exchange Act Release No. 79446 (December 1, 2016), 81 FR 88279 (December 7, 2016) (SR-BX-2016-065); Securities Exchange Act Release No. 82192 (December 1, 2017), 82 FR 57809 (December 7, 2017) (SR-BX-2017-055); and Securities Exchange Act Release No. 83539 (June 28, 2018), 83 FR 31203 (July 3, 2018) (SR-BX-2018-026).

¹⁰ A Retail Price Improvement Order is defined in BX Rule 4780(a)(3) by referencing BX Rule 4702 and BX Rule 4702(b)(5) says that it is as 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.

¹¹ See RPI Approval Order, *supra* note 3 at 72051.

¹² Concurrently with this filing, the Exchange has submitted a request for an extension of the exemption under Regulation NMS Rule 612 previously granted by the Commission that permits it to accept and rank the RPI orders in sub-penny increments. See Letter from Jeffrey S. Davis, Vice President and Deputy General Counsel and Secretary, Nasdaq BX, Inc. to Eduardo A. Aleman, Assistant Secretary, Securities and Exchange Commission dated December 11, 2018.

¹² 17 CFR 200.30-3(a)(83).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

until the earlier of approval of the filing to make the Program permanent or June 30, 2019.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹³ in general, and with Section 6(b)(5) of the Act,¹⁴ 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 extending the pilot period for the RPI Program is consistent with these principles because the Program is reasonably designed to attract retail order flow to the exchange environment, while helping to ensure that retail investors benefit from the better price that liquidity providers are willing to give their orders. Additionally, as previously stated, the competition promoted by the Program may facilitate the price discovery process and potentially generate additional investor interest in trading securities. The extension of the pilot period will allow the Commission and the Exchange to continue to monitor the Program for its potential effects on public price discovery, and on the broader market structure.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed rule change extends an established pilot program for an additional period, to expire on June 30, 2019, thus allowing the RPI Program to enhance competition for retail order flow and contribute to the public price discovery process.

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 Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶ 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 Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸

A proposed rule change filed under Rule 19b-4(f)(6)¹⁹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁰ 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 Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because waiver would allow the pilot period to continue uninterrupted after its current expiration date of December 31, 2018, thereby avoiding any potential investor confusion that could result from temporary interruption in the Program. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.²¹

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.

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 email to rule-comments@sec.gov. Please include File Number SR-BX-2018-063 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-2018-063. 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 (<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-2018-063, and should be submitted on or before January 16, 2019.

¹⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 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 requested that the Commission waive the five-day pre-filing notice requirement, and the Commission has agreed to waive the requirement.

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 17 CFR 240.19b-4(f)(6)(iii).

²¹ 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).

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Eduardo A. Aleman,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84844; File No. SR-CboeBZX-2018-087]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule

December 18, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 3, 2018, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. 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 is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the fee schedule applicable to Members and non-Members⁵ of the Exchange pursuant to BZX Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing.

²² 17 CFR 200.30-3(a)(12) and (59).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ A Member is defined as “any registered broker or dealer that has been admitted to membership in the Exchange.” See Exchange Rule 1.5(n).

The text of the proposed rule change is available on the Exchange’s website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange’s Office of the Secretary, 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. 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 fee schedule applicable to its equities trading platform (“BZX Equities”) to increase the rebate under the Non-Displayed Add Volume Tape A Tier 1, effective December 3, 2018.

The Exchange currently provides a standard rebate of \$0.00150 per share for non-displayed orders that add liquidity. The Exchange also provides an enhanced rebate under Non-Displayed Add Volume Tape A Volume Tier, Tier 1 under Footnote 1 (“HV Volume Tier”) which is available for qualifying non-displayed orders that add liquidity (Tape A), (*i.e.*, orders which yield fee code HV). Particularly, under the HV Volume Tier, a Member may receive an enhanced rebate of \$0.00260 per share where they add an ADV⁶ greater than or equal to 0.20% of the TCV⁷ as Non-Displayed orders that yield fee codes HI or HV.⁸ The Exchange

⁶ “ADV” means average daily volume calculated as the number of shares added or removed, combined, per day. ADAV and ADV are calculated on a monthly basis.

⁷ “TCV” means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

⁸ Fee code HI is appended to non-displayed orders that receive price improvement and add liquidity.

proposes to increase the HV Volume Tier rebate from \$0.00260 per share to \$0.00275 per share. The Exchange believes the proposed change will encourage Members to increase non-displayed add liquidity on the exchange. The Exchange also notes that another Exchange offers the same rebate amount for similar transactions.⁹

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(4),¹¹ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange.

The Exchange believes increasing the rebate under the HV Volume Tier is reasonable because Members are provided an opportunity to receive an enhanced rebate for Non-Displayed orders that add liquidity and is a reasonable means to encourage Members to increase their liquidity on the Exchange. The Exchange also notes that another Exchange offers a similar rebate.¹² The Exchange also believes the proposed fee change is equitable and non-discriminatory because it applies uniformly to all Members.

B. Self-Regulatory Organization’s Statement on Burden on Competition

⁹ See New York Stock Exchange Price List 2018, which provides that the equity per share credit for all Midpoint Passive Liquidity (“MPL”) orders that provide liquidity, other than MPL orders from Designated Market Makers (“DMMs”), will receive a rebate of \$0.00275 per share if a Member adds an ADV greater than or equal to 0.14% Tape A NYSE consolidated average daily volume (“CADV”), excluding any liquidity added by a DMM.

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(4).

¹² See New York Stock Exchange Price List 2018, which provides that the equity per share credit for all MPL orders that provide liquidity, other than MPL orders from DMMs, will receive a rebate of \$0.00275 per share if a Member adds an ADV greater than or equal to 0.14% Tape A CADV, excluding any liquidity added by a DMM.