

As described above in section II.C., OCC proposes to clarify and amend its rules related to borrowing Clearing Fund collateral. Specifically, OCC proposes to clarify its authority to borrow cash directly from the Clearing Fund and to reject substitution requests that would require the withdrawal of non-cash collateral that OCC has pledged to access a liquidity facility. The proposal would also authorize OCC to charge as a loss amounts obtained through borrowing against the Clearing Fund earlier than currently permitted under OCC's rules, thereby permitting OCC to require Clearing Members to provide collateral to replenish the Clearing Fund earlier than would otherwise be permitted under its existing rules. Taken together, the Commission believes that the proposed changes concerning OCC borrowing of Clearing Fund collateral and losses related to such borrowing are consistent with the requirements of Rule 17Ad-22(e)(7)(ix) under the Exchange Act.<sup>52</sup>

#### 4. Consistency With Section (iv) of Rule 17Ad-22(e)(7)

Rule 17Ad-22(e)(7)(iv) under the Exchange Act requires that the covered clearing agency's policies and procedures be designed to require the undertaking of due diligence to confirm that it has a reasonable basis to believe each of its liquidity providers, whether or not such liquidity provider is a clearing member, has: (A) Sufficient information to understand and manage the liquidity provider's liquidity risks; and (B) the capacity to perform as required under its commitments to provide liquidity to the covered clearing agency.<sup>53</sup>

As described above in section II.D., the proposed LRMF explicitly contemplates OCC's due diligence for supporting institutions, including liquidity providers, to confirm OCC has a reasonable basis to believe each of its liquidity providers has (1) sufficient information to understand and manage the potential liquidity demands of OCC and its associated liquidity risk and (2) the capacity to perform as required under its commitments. Such due diligence would include the execution of periodic tests at least once every 12 months to measure the performance and reliability of OCC's liquidity facilities. The Commission believes that proposed rules setting forth such due diligence requirements are consistent with the requirements of Rule 17Ad-22(e)(7)(iv) under the Exchange Act.<sup>54</sup>

<sup>52</sup> 17 CFR 240.17Ad-22(e)(7)(ix).

<sup>53</sup> 17 CFR 240.17Ad-22(e)(7)(iv).

<sup>54</sup> *Id.*

Accordingly, the Commission believes that implementation of Proposed Rule Change would be consistent with Rule 17Ad-22(e)(7) under the Exchange Act.<sup>55</sup>

#### C. Consistency With Rule 17Ad-22(e)(18) Under the Exchange Act

Rule 17Ad-22(e)(18) under the Exchange Act requires, in part, that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency.<sup>56</sup>

As described above in section II.E., OCC proposes to require that each Clearing Member maintain adequate procedures, including but not limited to contingency funding. More specifically, the proposed change would require Clearing Members to maintain procedures to address a failure or operational issue at a Clearing Member's settlement bank. Such a requirement would be in addition to the current requirement that Clearing Members have access to sufficient financial resources to meet obligations arising from clearing membership in extreme but plausible market conditions. The Commission believes that requiring Clearing Members to maintain such procedures would help to ensure that Clearing Members have the operational capacity to meet obligations arising from participation in OCC. The Commission believes, therefore, that the proposed change is consistent with the requirements of Rule 17Ad-22(e)(18) under the Exchange Act.<sup>57</sup>

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act<sup>58</sup> and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act,<sup>59</sup> that the Proposed Rule Change (SR-

<sup>55</sup> 17 CFR 240.17Ad-22(e)(7).

<sup>56</sup> 17 CFR 240.17Ad-22(e)(18).

<sup>57</sup> *Id.*

<sup>58</sup> In approving this Proposed Rule Change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

<sup>59</sup> 15 U.S.C. 78s(b)(2).

OCC-2020-003) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>60</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89010; File No. SR-BX-2020-007]

### Self-Regulatory Organizations; Nasdaq BX, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Assume Operational Responsibility for Certain Enforcement Functions Currently Performed by FINRA Under the Exchanges Authority and Supervision

June 4, 2020.

#### I. Introduction

On April 16, 2020, Nasdaq BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to assume operational responsibility for certain enforcement functions currently performed by the Financial Industry Regulatory Authority ("FINRA") under the Exchange's authority and supervision. On April 23, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on April 30, 2020.<sup>3</sup> The Commission did not receive any comment letters on the proposed rule change. The Commission is approving the proposed rule change, as modified by Amendment No. 1.

#### II. Description of the Proposal, as Modified by Amendment No. 1

According to the Exchange, since its acquisition by The NASDAQ OMX Group, Inc., the Exchange has contracted with FINRA through various regulatory services agreements ("RSAs") to perform certain regulatory functions on its behalf.<sup>4</sup> At the same time, the

<sup>60</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> *See* Securities Exchange Act Release No. 88746 (April 24, 2020), 85 FR 24064 ("Release").

<sup>4</sup> *See* Release, *supra* note 3, at 24065.

Exchange retained operational responsibility for a number of regulatory functions, including real-time surveillance, qualification of companies listed on the Exchange, and most surveillance related to its affiliated options markets.<sup>5</sup> In June 2019, the Exchange reallocated operational responsibility from FINRA to BX Regulation for certain investigative and enforcement activity, including the investigation and enforcement responsibilities for conduct occurring on The BX Options Market,<sup>6</sup> and investigation and enforcement responsibilities for conduct occurring on BX's equity market only, *i.e.*, not also on non-Nasdaq-affiliated equities markets.<sup>7</sup> According to the Exchange, notwithstanding the changes made in June 2019, FINRA continues to perform certain functions pursuant to an RSA,<sup>8</sup> including the handling of contested disciplinary proceedings arising out of BX Regulation-led investigation and enforcement activities.

The Exchange now proposes to reallocate operational responsibility from FINRA to BX Regulation for certain enforcement activity, specifically, the handling of certain contested disciplinary proceedings.<sup>9</sup> The Exchange states that it anticipates handling those contested disciplinary proceedings that FINRA is unable or unwilling to handle due to strained resources or other similar limitations.<sup>10</sup> Furthermore, the Exchange states that in all cases, the Exchange will continue to use FINRA's Office of Hearing Officers to administer the hearing process, and that the rules applicable to the disciplinary process will remain the same.<sup>11</sup>

<sup>5</sup> See *id.*

<sup>6</sup> According to the Exchange, as appropriate, BX Regulation coordinates with other SROs to the extent it is investigating activity occurring on non-Nasdaq options markets to ensure no regulatory duplication occurs. See Release, *supra* note 3, at 24065 fn. 9.

<sup>7</sup> Securities Exchange Act Release No. 86051 (June 6, 2019), 84 FR 27387 (June 12, 2019).

<sup>8</sup> In addition to work performed pursuant to a RSA, FINRA also performs work for matters covered by agreements to allocate regulatory responsibility under Rule 17d-2 of the Act. See Release, *supra* note 3, at 24065 fn. 11.

<sup>9</sup> See Release, *supra* note 3, at 24065. The Exchange states that BX Regulation's decision to assume operational responsibility for any given contested disciplinary proceeding with be made on a case by case basis. See Release, *supra* note 3, at 24065 fn. 14. Furthermore, the Exchange states that for those contested disciplinary proceedings that BX Regulation does not assume operational responsibility for, the Exchange will continue to use FINRA to litigate those matters. See Release, *supra* note 3, at 24065.

<sup>10</sup> See Release, *supra* note 3, at 24065.

<sup>11</sup> See Release, *supra* note 3, at 24065 fn. 12.

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>12</sup> and, in particular, with Sections 6(b)(5) and 6(b)(7) of the Act.<sup>13</sup> As noted above, since its acquisition by The NASDAQ OMX Group, Inc., the Exchange has contracted with FINRA through various regulatory services agreements to perform certain regulatory functions on its behalf.<sup>14</sup> BX General Rule 2, Section 7 requires that, unless BX obtains prior Commission approval, the regulatory functions subject to RSAs in effect at the time when BX executed the FINRA Regulatory Contract must at all times continue to be performed by FINRA or an affiliate thereof or by another independent self-regulatory organization. The Exchange now proposes to reallocate operational responsibility for the certain contested disciplinary activities discussed above from FINRA to BX Regulation.<sup>15</sup>

The Commission believes that the Exchange could leverage its knowledge of its markets and members, its experience with investigation and enforcement work, and its surveillance, investigation, and enforcement staff, in helping to effectively, efficiently, and with immediacy, litigate certain contested disciplinary proceedings.<sup>16</sup> The Commission also notes that, as discussed above, the proposal would not change or alter in any way the disciplinary process around how contested matters are handled, and FINRA's Office of Hearing Officers will continue to administer the hearing process for all contested disciplinary proceedings.<sup>17</sup> Furthermore, as the Exchange states, by assuming operational responsibility for certain contested disciplinary proceedings, the Exchange may be able to deliver increased efficiencies in the regulation of its markets and to act promptly and provide more effective regulation by enabling timely and more efficient action.<sup>18</sup> Accordingly, the Commission believes that the proposed rule change,

<sup>12</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78f(b)(5), (7).

<sup>14</sup> See *supra* note 4 and accompanying text.

<sup>15</sup> See *supra* notes 9 and 10 and accompanying text.

<sup>16</sup> See Release, *supra* note 3, at 24065.

<sup>17</sup> See *id.*

<sup>18</sup> See *id.*

as modified by Amendment No. 1, is consistent with the Act.

### VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change (SR-BX-2020-007), as modified by Amendment No. 1 be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89007; File No. SR-CboeEDGX-2020-010]

### Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend the Rule Relating to MidPoint Discretionary Orders To Allow Optional Offset or Quote Depletion Protection Instructions

June 4, 2020.

#### I. Introduction

On February 19, 2020, Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend EDGX Rule 11.8(g), which describes the handling of MidPoint Discretionary Orders entered on the Exchange. The proposed rule change was published for comment in the **Federal Register** on March 6, 2020.<sup>3</sup> On April 16, 2020, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup>

<sup>19</sup> *Id.*

<sup>20</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 88309 (March 2, 2020), 85 FR 13193.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 88663, 85 FR 22474 (April 22, 2020). The Commission designated June 4, 2020 as the date by which the Commission shall approve or disapprove, or