

sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> designates April 4, 2021, as the date by which the Commission shall either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR-NYSE-2020-85).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

Jill M. Peterson,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91124; File No. SR-BX-2020-033]

### Self-Regulatory Organizations; Nasdaq BX, Inc.; Order Granting Approval of a Proposed Rule Change To Utilize the FIX Protocol To Submit Orders to BX's Price Improvement Auction Mechanism

February 12, 2021.

#### I. Introduction

On October 27, 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 utilize the "Financial Information eXchange" ("FIX")<sup>3</sup> protocol for BX Participants<sup>4</sup> seeking to submit orders into the Price Improvement Auction ("PRISM") mechanism. The proposed rule change was published for comment in the **Federal Register** on November 16, 2020.<sup>5</sup> On December 29, 2020, the

Commission extended the time period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the proposed rule changes.<sup>6</sup> The Commission received no comments on the proposed rule change. The Commission is approving the proposed rule change.

#### II. Description of the Proposed Rule Change

Pursuant to BX Options 3, Section 13, a BX Participant may electronically submit for execution an order it represents as agent on behalf of a Public Customer,<sup>7</sup> broker dealer, or any other entity ("PRISM Order") against principal interest or against any other order<sup>8</sup> it represents as agent (an "Initiating Order"), provided it submits the PRISM Order for electronic execution into the Auction. According to the Exchange, BX Participants currently solicit contra-side Initiating Orders to pair with their PRISM Orders using methods such as telephone, electronically using an external order management system, or utilizing instant message.<sup>9</sup> BX proposes to provide BX Participants ("sender") the option to use the FIX protocol to send a message, which includes a PRISM Order, to one or more BX Participants ("recipient") requesting that they provide a contra-side Initiating Order in response, which would result in the start of a PRISM auction ("Request for PRISM"). BX Participants must opt-in in order to receive Requests for PRISM. A Request for PRISM would be sent simultaneously to all BX Participants who opted in to receive Requests for PRISM,<sup>10</sup> and a BX Participant who opts-in would receive all Requests for PRISM from all senders.<sup>11</sup>

<sup>6</sup> See Securities Exchange Act Release Nos. 90815, 86 FR 353 (January 5, 2021), in which the Commission designated February 14, 2021 as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove these proposed rule changes.

<sup>7</sup> A "Public Customer" means a person that is not a broker or dealer in securities and is not a Professional as defined within BX Options 1, Section 1(a)(48). See BX Options 1, Section 1(a)(49). A "Professional" means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). All Professional orders shall be appropriately marked by Participants. See BX Options 1, Section 1(a)(48).

<sup>8</sup> PRISM Orders submitted during the final two seconds of the trading session in the affected series are not eligible to initiate an Auction and will be immediately cancelled. See BX Options 3, Section 13(i)(F).

<sup>9</sup> See Notice, *supra* note 5, at 73095 n.7.

<sup>10</sup> Proposed BX Options 3, Section 7(d)(1)(A)(1)(c).

<sup>11</sup> Proposed BX Options 3, Section 7(d)(1)(A)(1)(a).

The Exchange proposes to establish a certain time period up to one second<sup>12</sup> within which a recipient, if it chooses to respond to the Request for PRISM, may utilize FIX to submit the sender's PRISM Order, along with its Initiating Order, into the System for execution into PRISM pursuant to Options 3, Section 13 ("response").<sup>13</sup> The System would enter the PRISM Order and the Initiation Order of the first recipient to respond into the PRISM through FIX to start a PRISM auction and would send a reject message to subsequent responders.<sup>14</sup> Any Initiating Order must match the PRISM Order and is not permitted to improve the price, or else it would be rejected.<sup>15</sup> However, the Initiating Order may be configured to improve the PRISM Order stop price pursuant to Options 3, Section 13(ii)(A)(1)(c);<sup>16</sup> the configuration would apply only if the System initiated a PRISM auction.<sup>17</sup> If there are no responses to the Request for PRISM, the PRISM Order would be placed on the Order Book as a Limit Order or cancelled, consistent with the sending BX Participant's instruction.<sup>18</sup>

Once a recipient of a Request for PRISM has responded to the Request for PRISM by adding the Initiating Order, the PRISM may not be cancelled.<sup>19</sup> The sender may not cancel a Request for PRISM once that Request for PRISM has

<sup>12</sup> The Exchange will initially set the time period to 100 milliseconds to respond to the Request for PRISM or otherwise not respond before the Request for PRISM would become unavailable. The Exchange will post the time period on its System settings page. See Notice, *supra* note 5, at 73096 n.8.

<sup>13</sup> Proposed BX Options 3, Section 7(d)(1)(A)(1)(b).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* BX Options 3, Section 13(ii)(A)(1) provides three options to submit a PRISM Order and initiate the PRISM Auction. Specifically, the Initiating Participant must mark the PRISM Order for Auction processing, and specify either: (a) A single price at which it seeks to execute the PRISM Order (a "stop price"); (b) that it is willing to automatically match as principal or as agent on behalf of an Initiating Order the price and size of all PAN responses, and trading interest ("auto-match") in which case the PRISM Order will be stopped at the NBBO on the Initiating Order side; or (c) that it is willing to either: (i) Stop the entire order at a single stop price and auto-match PAN responses and trading interest at a price or prices that improve the stop price to a specified price (a "No Worse Than" or "NWT" price); (ii) stop the entire order at a single stop price and auto-match all PAN responses and trading interest at or better than the stop price; or (iii) stop the entire order at the NBBO on the Initiating Order side, and auto-match PAN responses and trading interest at a price or prices that improve the stop price up to the NWT price.

<sup>17</sup> Proposed BX Options 3, Section 7(d)(1)(A)(1)(b).

<sup>18</sup> *Id.*

<sup>19</sup> Proposed BX Options 3, Section 7(d)(1)(A)(1)(d).

<sup>5</sup> *Id.*

<sup>6</sup> 17 CFR 200.30-3(a)(31).

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

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

<sup>3</sup> See BX Options 3, Section 7(e)(1). "FIX" is an interface that allows BX Participants and their Sponsored Customers to connect, send, and receive messages related to orders and auction orders and responses to and from the Exchange. Features include the following: (1) Execution messages; (2) order messages; and (3) risk protection triggers and cancel notifications.

<sup>4</sup> BX Options 1, Section 1(a)(40) defines "Participant" to mean a firm, or organization that is registered with the Exchange pursuant to Options 2A of BX Rules for purposes of participating in options trading on the BX options market as a "BX Options Order Entry Firm," as defined in BX Options 1, Section 1(a)(11), or "BX Options Market Maker," as defined in BX Options 1, Section 1(a)(10).

<sup>5</sup> See Securities Exchange Act Release No. 90383 (November 9, 2020), 85 FR 73095 ("Notice").

been sent.<sup>20</sup> The identity of the sender and recipients will not be known to any party,<sup>21</sup> and the Exchange will not disclose a list of BX Participants that have opted-in to receive Requests for PRISM.<sup>22</sup>

It would be deemed conduct inconsistent with just and equitable principles of trade and a violation of Options 9, Section 1, and other Exchange Rules, to utilize non-public information in connection with a Request for PRISM to a BX Participant's economic advantage.<sup>23</sup> The Exchange intends to begin implementation of the proposed rule change by June 30, 2021. The Exchange will issue an Options Trader Alert to BX Participants with the date of implementation.<sup>24</sup>

### III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>25</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>26</sup> which requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating and facilitating transactions in securities, 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, and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Commission also finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,<sup>27</sup> which requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The proposed rule change appears reasonably designed to offer Participants

an efficient process to solicit an Initiating Order among other BX Participants for entry into the PRISM auction.<sup>28</sup> The Commission believes that by permitting BX Participants to use FIX to send a Request for PRISM (with a PRISM Order) simultaneously to all BX Participants that have opted-in, the proposed Request for PRISM process would provide BX Participants with another means of soliciting interest for a PRISM auction from a potentially broader group of market participants, potentially providing price improvement to the PRISM Order. The Commission further notes that the proposal would not amend the manner in which PRISM auction operates. Any paired order entered into PRISM must comply with the eligibility requirements of BX Options 3, Section 13(i) to commence the auction and the auction process will operate as it does today.

The Commission also believes that the proposal appears to be designed to provide an objective process for the selection of the contra-side to the PRISM Order. Any BX Participant may choose to opt-in, and those who opt-in would receive any Request for PRISM sent from BX Participants.<sup>29</sup> Further, any BX Participant that chooses to opt-in may subsequently opt-out.<sup>30</sup> In addition, the Exchange has proposed that the identity of the sender and recipients would not be known to any party and that it would not disclose a list of the BX Participants that opted-in to receive a Request for PRISM.<sup>31</sup> Thus, the decision of which Participant is chosen to provide the Initiating Order will be based solely on which recipient responded first to the Request for PRISM.

The Commission also believes that the proposed rule change appears designed to prevent the misuse of information related to the proposed Request for PRISM and create an audit trail for surveilling Requests for PRISM. The Exchange represents that it will employ surveillances to prevent misuse of non-public information related to a Request for PRISM similar to how it employs surveillances today to ensure that information available in auctions is not misused.<sup>32</sup> The Exchange also represents that the communications that would occur, through FIX, would be available to and maintained by the

Exchange, and that it would be able to monitor entries into both the order book and the PRISM auction.<sup>33</sup> Further, the Exchange proposes in Options 3, Section 13 that it would be deemed conduct inconsistent with just and equitable principles of trade and a violation of Options 9, Section 1, and other Exchange Rules for BX Participants receiving Requests for PRISM to utilize the information to a BX Participant's economic advantage.<sup>34</sup> In addition, a Request for PRISM would be subject to the restrictions set forth in BX Options 3, Section 22 (Limitations on Order Entry), and any paired order resulting from a Request for PRISM would be subject to the PRISM auction requirements in BX Options 3, Section 13.<sup>35</sup>

For the reasons set forth above, the Commission believes that the proposed rule changes are consistent with the requirements of the Act.

### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>36</sup> that the proposed rule change (SR-BX-2020-033) hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>37</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91122; File No. SR-CBOE-2020-052]

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rules 5.37, 5.38, and 5.73 Related to Auction Notification Messages and Index Combo Orders in SPX in the Automated Improvement Mechanism, Complex Automated Improvement Mechanism, and FLEX Automated Improvement Mechanism

February 12, 2021.

#### I. Introduction

On June 3, 2020, Cboe Exchange, Inc. ("Exchange" or "Cboe") filed with the Securities and Exchange Commission

<sup>20</sup> Proposed BX Options 3, Section 7(d)(1)(A)(1)(e).

<sup>21</sup> Proposed BX Options 3, Section 7(d)(1)(A)(1)(f).

<sup>22</sup> *Id.*

<sup>23</sup> Proposed BX Options 3, Section 7(d)(1)(A)(1)(g).

<sup>24</sup> See Notice, *supra* note 5, at 73097.

<sup>25</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>26</sup> 15 U.S.C. 78f(b)(5).

<sup>27</sup> 15 U.S.C. 78f(b)(8).

<sup>28</sup> See Notice, *supra* note 5, at 73095-96 (describing the current methods Participants use to find a paired order).

<sup>29</sup> Proposed BX Options 3, Section 7(d)(1)(A)(1)(c).

<sup>30</sup> Notice, *supra* note 5, at 73097.

<sup>31</sup> Proposed BX Options 3, Section 7(d)(1)(A)(1)(f).

<sup>32</sup> Notice, *supra* note 5, at 73097.

<sup>33</sup> Notice, *supra* note 5, at 73098.

<sup>34</sup> Proposed BX Options 3, Section 7(d)(1)(A)(1)(f).

<sup>35</sup> Notice, *supra* note 5, at 73098.

<sup>36</sup> See *id.*

<sup>37</sup> 17 CFR 200.30-3(a)(12).