

necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather than facilitate the listing and trading of an additional exchange-traded product that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2023-095 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-CboeBZX-2023-095. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the

Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeBZX-2023-095 and should be submitted on or before June 20, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁹

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024-11707 Filed 5-28-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100211; File No. SR-BX-2024-016]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt an OTTO Protocol

May 22, 2024.

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 May 8, 2024, Nasdaq BX, Inc. ("BX" or "Exchange") 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 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 adopt a new protocol, "Ouch to Trade Options" or "OTTO" and establish pricing for this new protocol.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

⁵⁹ 17 CFR 200.30-3(a)(12).

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

BX proposes to offer a new order entry protocol called OTTO. Today, BX Participants may enter orders into the Exchange through the "Financial Information eXchange" or "FIX."³ The proposed new OTTO protocol is identical to the OTTO protocol offered today on 3 Nasdaq affiliated exchanges, Nasdaq ISE, LLC ("ISE"), Nasdaq GEMX, LLC ("GEMX") and Nasdaq MRX, LLC ("MRX").

The OTTO protocol is a proprietary protocol of Nasdaq, Inc. The Exchange continues to innovate and modernize technology so that it may continue to compete among options markets. The ability to continue to innovate with technology and offer new products to market participants allows BX to remain competitive in the options space which currently has seventeen options markets and potential new entrants.

OTTO Protocol

As proposed, OTTO would allow Participants and their Sponsored Customers⁴ to connect, send, and receive messages related to orders, auction orders, and auction responses to the Exchange. OTTO features would

³ FIX is an interface that allows 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. In addition, a BX Participant may elect to utilize FIX to send a message and PRISM Order, as defined within Options 3, Section 13, to all BX Participants that opt in to receive Requests for PRISM requesting that it submit the sender's PRISM Order with responder's Initiating Order, as defined within Options 3, Section 13, into the Price Improvement Auction ("PRISM") mechanism, pursuant to Options 3, Section 13 ("Request for PRISM"). See Options 3, Section 7(e)(1)(A).

⁴ General 2, Section 22 describes Sponsored Access arrangements.

include the following: (1) options symbol directory messages (e.g., underlying and complex instruments); (2) System⁵ event messages (e.g., start of trading hours messages and start of opening); (3) trading action messages (e.g., halts and resumes); (4) execution messages; (5) order messages; (6) risk protection triggers and cancel notifications; (7) auction notifications; (8) auction responses; and (9) post trade allocation messages. The Exchange notes that unlike FIX, which offers routing capability, OTTO does not permit routing. The Exchange proposes to include this description of OTTO in new Options 3, Section 7(e)(1)(B) and re-letter current “B” as “C”.

Only one order protocol is required for a BX Participant to submit orders into BX. Only BX Participants may utilize ports on BX. Any market participant that sends orders to a BX Participant would not need to utilize a port. The BX Participant may send all orders, proprietary and agency, through one port to BX. Participants may elect to obtain multiple ports to organize their business,⁶ however only one port is necessary for a Participant to enter orders on BX.

Participants may elect to enter their orders through FIX, OTTO, or both protocols, although both protocols are not necessary. Participants may prefer one protocol as compared to another protocol, for example, the ability to route may cause a Participant to utilize FIX and a Participant that desires to execute an order locally may prefer

⁵ The term “System” or “Trading System” means the automated system for order execution and trade reporting owned and operated by BX as the BX Options market. The BX Options market comprises: (A) an order execution service that enables Participants to automatically execute transactions in option series; and provides Participants with sufficient monitoring and updating capability to participate in an automated execution environment; (B) a trade reporting service that submits “locked-in” trades for clearing to a registered clearing agency for clearance and settlement; transmits last-sale reports of transactions automatically to the Options Price Reporting Authority for dissemination to the public and industry; and provides participants with monitoring and risk management capabilities to facilitate participation in a “locked-in” trading environment; and (C) the data feeds described in Options 3, Section 23. See BX Options 1, Section 1(a)(59).

⁶ For example, a Participant may desire to utilize multiple FIX or OTTO Ports for accounting purposes, to measure performance, for regulatory reasons, segregating order flow among different trading desks, or other determinations that are specific to that Participant. A market participant may utilize multiple ports in some cases to send multiple orders through different ports to avoid any latency or queuing of orders. The Exchange notes that to the extent that different OTTO Ports are used to send multiple orders as compared to sending multiple orders through one OTTO Port the difference from a latency standpoint would be in nanoseconds.

OTTO. Also, the OTTO Port offers lower latency as compared to the FIX Port, which may be attractive to Participants depending on their trading behavior. Nasdaq believes that the addition of OTTO will provide BX Participants with additional choice when submitting orders to BX.

While the Exchange has no way of predicting with certainty the amount or type of OTTO Ports market participants will in fact purchase, the Exchange anticipates that some Participants will subscribe to multiple OTTO Ports in combination with FIX Ports. The Exchange notes that Options Participants may use varying number of OTTO ports based on their business needs.

Other Amendments

In connection with offering OTTO, the Exchange proposes to amend other rules within Options 3. Each amendment is described below.

Options 3, Section 7

BX proposes to amend Options 3, Section 7, Types of Orders and Quote Protocols. Specifically, BX proposes to amend Options 3, Section 7 (b)(2) that describes the Immediate-or-Cancel” or “IOC” order. Today, Options 3, Section 7(b)(2)(B) notes that an IOC order may be entered through FIX or SQF, provided that an IOC Order entered by a Market Maker through SQF is not subject to the Order Price Protection, the Market Order Spread Protection, or Size Limitation in Options 3, Section 15(a)(1), (a)(2), and (b)(2), respectively. The Exchange proposes to add “OTTO” to the list of protocols to note that an IOC order may also be entered through OTTO.

BX also proposes to amend the “DAY” order in Options 3, Section 7(b)(3) that currently provides that a Day order may be entered through FIX. With the addition of OTTO, a Day order may also be entered through OTTO.

BX also proposes to amend the “Good Til Cancelled” or “GTC” order which currently does not specify that a GTC order may be entered through FIX. GTC orders would only be able to be entered through FIX and not OTTO. The Exchange proposes to amend Options 3, Section 7(b)(4) to add a sentence to note that GTC orders may be entered through FIX.

Options 3, Section 8

BX proposes to amend Options 3, Section 8, Options Opening Process. BX proposes to amend Options 3, Section 8(l) that describes the Opening Process Cancel Timer. The Opening Process Cancel Timer represents a period of

time since the underlying market has opened. If an option series has not opened before the conclusion of the Opening Process Cancel Timer, a Participant may elect to have orders returned by providing written notification to the Exchange. Today, these orders include all non-Good Til Cancelled Orders received over the FIX protocol. The Exchange proposes to add the OTTO protocol as well to the rule text language in that paragraph.

Options 3, Section 12

The Exchange proposes to amend the Options 3, Section 12, Crossing Orders. Specifically, the Exchange proposes to amend Customer Crossing Orders in Options 3, Section 12(a) that currently provides Public Customer-to-Public Customer Cross Orders are automatically executed upon entry provided that the execution is at or between the best bid and offer on the Exchange and (i) is not at the same price as a Public Customer Order on the Exchange’s limit order book and (ii) will not trade through the NBBO. Public Customer-to-Public Customer Cross Orders must be entered through FIX. The Exchange proposes to remove the sentence that provides that Public Customer-to-Public Customer Cross Orders must be entered through FIX because they will be able to be entered through both FIX and OTTO.

Options 3, Section 17

The Exchange proposes to amend the Kill Switch at Options 3, Section 17. The Kill Switch provides Participants with an optional risk management tool to promptly cancel and restrict orders. With the introduction of OTTO, the Exchange proposes to align its Kill Switch rule text with MRX’s Kill Switch.⁷ The Exchange proposes to note in Options 3, Section 17(a) that BX Participants may initiate a message(s) to the System to promptly cancel and restrict their order activity on the Exchange, as is the case today, as described in section (a)(1). This amendment simply rewords the rule text without a substantive amendment to the rule text.

The Exchange proposes to renumber Options 3, Section 17(a)(i) and (ii) as (a)(1) and (2). Current Options 3, Section 17(a)(i) states, “If orders are cancelled by the BX Participant utilizing the Kill Switch, it will result in the cancellation of all orders requested for the Identifier(s). The BX Participant will be unable to enter additional orders for the affected Identifier(s) until re-entry has been enabled pursuant to section

⁷ See MRX Options 3, Section 17.

(a)(ii).” The Exchange proposes to instead provide, “A BX Participant may submit a request to the System through FIX or OTTO to cancel all existing orders and restrict entry of additional orders for the requested Identifier(s) on a user level on the Exchange.” With the addition of OTTO, the Exchange notes that both FIX and OTTO orders may be cancelled. Further, today, BX Participants utilize an interface to send a message to the Exchange to initiate a Kill Switch.⁸ The Exchange notes that in lieu of the interface, BX Participants will only be able to initiate a cancellation of their orders by sending a mass purge request through FIX or OTTO. This change will align the Kill Switch functionality to that of ISE, GEMX and MRX Options 3, Section 17 and will enable BX Participants to initiate the Kill Switch more seamlessly without the need to utilize a separate interface. When initiating a cancellation of their orders by sending a mass purge request through FIX or OTTO, Participants will be able to submit a Kill Switch request on a user level only. This is a change from the ability to cancel orders on either a user or group level⁹ with the interface. The Exchange proposes to amend Options 3, Section 17(a) to note this change by removing the words “or group” and the following sentence that applies to a group.¹⁰

Finally, the Exchange proposes to amend proposed Options 3, Section 17(a)(2) to align to MRX’s rule text by providing “Once a BX Participant initiates a Kill Switch pursuant to (a)(1) above . . .” in the first sentence. This amendment simply rewords the rule text without a substantive amendment to the rule text.

Options 3, Section 18

The Exchange proposes to amend Options 3, Section 18, Detection of Loss of Communication. The Exchange proposes to add OTTO to Options 3, Section 18 as OTTO would also be subject to this rule. Today, when the SQF Port or the FIX Port detects the loss of communication with a Participant’s Client Application because the

Exchange’s server does not receive a Heartbeat message for a certain time period, the Exchange will automatically logoff the Participant’s affected Client Application and automatically cancel all of the Participant’s open quotes through SQF and open orders through FIX. Quotes and orders are cancelled across all Client Applications that are associated with the same BX Options Market Maker ID and underlying issues.

At this time, the Exchange proposes to permit orders entered through OTTO to be cancelled similar to FIX orders when the Exchange’s server does not receive a Heartbeat message for a certain time period. The Exchange is proposing to amend Options 3, Section 18 to also rearrange the rule text to add the word “Definitions” next to “a” and move the rule text in current “a” to “b” and re-letter the other paragraphs accordingly. Also, the Exchange proposes to define “Session of Connectivity” for purposes of this rule to mean each time the Participant connects to the Exchange’s System. Further, each new connection, intra-day or otherwise, is a new Session of Connectivity. The Exchange proposes to use the new definition throughout Options 3, Section 18.

Similar to FIX, when the OTTO Port detects the loss of communication with a Participant’s Client Application because the Exchange’s server does not receive a Heartbeat message for a certain time period, the Exchange will automatically logoff the Participant’s affected Client Application and automatically cancel all of the Participant’s open orders through OTTO. Orders would be cancelled across all Client Applications that are associated with the same BX Options Market Maker ID and underlying issues. The Exchange proposes to update Options 3, Section 18 to provide in proposed Options 3, Section 18(a)(3) that the OTTO Port is the Exchange’s proprietary System component through which Participants communicate their orders from the Client Application. Further, the Exchange would note in proposed Options 3, Section 18(c) that when the OTTO Port detects the loss of communication with a Participant’s Client Application because the Exchange’s server does not receive a Heartbeat message for a certain time period (“nn” seconds), the Exchange will automatically logoff the Participant’s affected Client Application and if the Participant has elected to have its orders cancelled pursuant to proposed Section 18(f), automatically cancel all orders. Proposed Options 3, Section 18(f) would provide that the default period of “nn” seconds for OTTO Ports would be fifteen (15)

seconds for the disconnect and, if elected, the removal of orders. A Participant may determine another time period of “nn” seconds of no technical connectivity, as required in proposed paragraph (c), to trigger the disconnect and, if so elected, the removal of orders and communicate that time to the Exchange. The period of “nn” seconds may be modified to a number between one hundred (100) milliseconds and 99,999 milliseconds for OTTO Ports prior to each Session of Connectivity to the Exchange. This feature may be disabled for the removal of orders, however the Participant will be disconnected.

Proposed Options 3, Section 18(f)(1) would provide that if the Participant changes the default number of “nn” seconds, that new setting shall be in effect throughout the current Session of Connectivity and will then default back to fifteen seconds. The Participant may change the default setting prior to each Session of Connectivity. Finally, as proposed in Options 3, Section 18(f)(2), if the time period is communicated to the Exchange by calling Exchange operations, the number of “nn” seconds selected by the Participant will persist for each subsequent Session of Connectivity until the Participant either contacts Exchange operations by phone and changes the setting or the Participant selects another time period through the Client Application prior to the next Session of Connectivity. The trigger for OTTO Ports is event and Client Application specific. The automatic cancellation of the BX Options Market Maker’s open orders for OTTO Ports entered into the respective OTTO Ports via a particular Client Application will neither impact nor determine the treatment of orders of the same or other Participants entered into the OTTO Ports via a separate and distinct Client Application. The proposed amendments for OTTO mirror the manner in which FIX Ports are treated when the Exchange’s server does not receive a Heartbeat message for a certain time period for a FIX Port.¹¹

Pricing

BX proposes to amend its Pricing Schedule at Options 7, Section 3, BX Options Market—Ports and other Services, to assess a port fee for the new OTTO protocol.

The Exchange proposes to assess an OTTO Port Fee of \$650 per port, per month, per account number. OTTO would be an additional order entry protocol for BX Participants in addition

⁸ See Securities Exchange Act Release No. 76116 (October 8, 2015), 80 FR 62147 (October 15, 2015) (SR-BX-2015-050) (Order Approving Proposed Rule Change To Adopt a Kill Switch).

⁹ A permissible group could include all badges associated with a Market Maker. Today, a Participant is able to set up these groups in the interface to include all or some of the Identifiers associated with the Participant firm so that a GUI Kill Switch request could apply to this pre-defined group.

¹⁰ The Exchange proposes to remove this sentence, “Permissible groups must reside within a single broker-dealer” as the group option would no longer exist.

¹¹ The Exchange proposes to update internal cross-references to accommodate relocated text.

to FIX, which is currently utilized by BX Participants to enter orders into BX. The Exchange currently assesses a FIX Port Fee of \$650 per port, per month, per account number.¹² Only one FIX order protocol is required for a BX Participant to submit orders into BX and to meet its regulatory requirements.¹³ The Exchange will provide each Participant the first FIX Port at no cost to submit orders into BX. Only one account number is necessary to transact an options business on BX and account numbers are available to Participants at no cost.

Only BX Participants may utilize ports on MRX. [sic] Any market participant that sends orders to a Participant would not need to utilize a port. The BX Participant can send all orders, proprietary and agency, through one port to BX. Participants may elect to obtain multiple account numbers to organize their business, however only one account number and one port for orders is necessary for a BX Participant to trade on BX. All other order entry ports offered by BX are not required for an BX Participant to meet its regulatory obligations. BX Participants utilizing the first FIX Port offered at no cost do not need to purchase an OTTO Port to meet their regulatory obligations.

Further, while only one FIX protocol is necessary to submit orders into BX, Participants may choose to purchase a greater number of order entry ports, depending on their business model.¹⁴ To the extent that Participants chose to utilize more than one FIX Port, the Participant would be assessed \$650 per port, per month, per account number for each subsequent port beyond the first port.

The Exchange also proposes to add OTTO to the list of ports that are capped at \$7,500 on BX. Today, the maximum monthly fees in the aggregate for FIX Port, CTI Port, FIX DROP Port, BX Depth Port and BX TOP Port Fees on BX is \$7,500.¹⁵ These ports are available to all BX Participants. To the extent that a Participant expended more than \$7,500 for FIX or OTTO Ports, BX would not charge a Participant for additional FIX

or OTTO Ports, respectively, beyond the cap.

Only one FIX order protocol is required for an MRX [sic] Member to submit orders into MRX [sic] and to meet its regulatory requirements.¹⁶ The Exchange will provide each Participant the first FIX Port at no cost to submit orders into BX. Only one account number is necessary to transact an options business on BX and account numbers are available to Participants at no cost. Both FIX and OTTO ports are not necessary to conduct business on BX; a Participant may choose among protocols based on their business workflow. The Exchange's proposal to offer the first FIX Port at no cost would allow BX Participants to submit orders and quotes into BX at no cost while meeting their regulatory obligations.

The proposed fee for OTTO is identical to the fee offered for OTTO, an identical protocol, on MRX. Additionally, MRX offers one free FIX Port to its Members and assesses the same FIX Port fee of \$650 per port, per month, per account number as BX assessed today for FIX. MRX also offers a free FIX Disaster Recovery Port. Today, BX does not assess Disaster Recovery Port fees.¹⁷ Finally, today, MRX offers a \$7,500 monthly cap for OTTO Ports, CTI Ports, FIX Ports, FIX Drop Ports and all Disaster Recovery Ports.¹⁸ BX's proposed monthly cap does not include Disaster Recovery Ports, which are free on BX, but does include BX Depth Ports and BX Top Ports which are assessed fees of \$650 per port, per month.

Implementation

The Exchange will implement this rule change on or before December 20, 2025. The Exchange will announce the operative date to Participants in an Options Trader Alert.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁰ 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. Additionally, the Exchange believes that

its proposal furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,²¹ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

OTTO Protocol

The Exchange's proposal to adopt OTTO is consistent with the Act because OTTO would provide BX Participants with an alternative protocol to submit orders to the Exchange. As proposed, BX would offer the first OTTO Port at no cost to submit orders into BX, which would remove impediments to and perfect the mechanism of a free and open market. While BX Participants may elect to obtain multiple ports to organize their business,²² only one order port is necessary for a Participant to enter orders on BX. A BX Participant may send all orders, proprietary and agency, through one port to BX without incurring any cost with this proposal. In the alternative, BX Participants may elect to obtain multiple ports to organize their business.²³

With the addition of OTTO, a BX Participant may elect to enter their orders through FIX, OTTO, or both protocols, although both protocols are not necessary. Each BX Participant would receive one OTTO Port at no cost, thereby promoting just and equitable principles of trade. The Exchange notes that Participants may prefer one order protocol as compared to another order protocol, for example, the ability to route an order may cause a Participant to utilize FIX and a Participant that desires to execute an order locally may utilize OTTO. Also, the OTTO Port offers lower latency as compared to the FIX Port, which may be attractive to Participants depending on their trading behavior. With this proposal, BX Participant may organize their business as they chose with the ability to send orders to BX at no cost. The proposed new OTTO protocol is identical to the OTTO protocol offered today on ISE, GEMX, MRX.

²¹ See 15 U.S.C. 78f(b)(4) and (5).

²² For example, a Participant may desire to utilize multiple FIX or OTTO Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Participant.

²³ For example, a Participant may desire to utilize multiple FIX or OTTO Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Participant.

¹² The term "account number" means a number assigned to a Participant. Participants may have more than one account number. See Options 1, Section 1(a)(2). Account numbers are free on BX.

¹³ BX Participants have trade-through requirements under Regulation NMS as well as broker-dealers' best execution obligations.

¹⁴ For example, a Participant may desire to utilize multiple FIX or OTTO Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Participant.

¹⁵ See BX Options 7, Section 3(i).

¹⁶ BX Participants have trade-through requirements under Regulation NMS as well as broker-dealers' best execution obligations.

¹⁷ See BX Options 7, Section 3.

¹⁸ See MRX Options 7, Section 6.

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(5).

Other Amendments

In connection with offering OTTO, the Exchange proposes to amend other rules within Options 3 to make clear where the FIX and OTTO protocols may be utilized. IOC Orders may be entered through FIX, OTTO or SQF. A Day order may be entered through FIX or OTTO. A GTC order may only be entered through FIX. A Public Customer-to-Public Customer Cross Order may be entered through FIX or OTTO. Other processes such the Opening Cancel Timer would impact FIX and OTTO equally.

The Exchange's proposal to amend the Kill Switch at Options 3, Section 17 to align its rule text in proposed Options 3, Section 17(a) and (a)(2) with MRX's Options 3, Section 17 is consistent with the Act because it does not substantively amend the functionality beyond removing the group level cancel capability. The Exchange's proposal to amend proposed Options 3, Section 17(a)(2) to specify that FIX and OTTO orders may be cancelled is consistent with the Act as it will make clear that all orders entered on BX may be purged through the Kill Switch. Finally, allowing BX Participants to send a mass purge request through FIX or OTTO, in lieu of an interface, is consistent with Act and the protection of investors and the general public because it will enable BX Participants to initiate the Kill Switch more seamlessly without the need to utilize a separate interface. Further, utilizing the order protocols directly, in lieu of the interface, will align the Kill Switch functionality to that of ISE, GEMX and MRX. When initiating a cancellation of their orders by sending a mass purge request through FIX or OTTO, Participants will be able to submit a Kill Switch request on a user level only because the purge will be specific to a FIX or OTTO user for these ports.

Finally, the Detection of Loss of Communication would apply equally to FIX and OTTO. The Exchange believes that its proposal is consistent with the Act and protects investors as the Exchange is making clear what types of order types and other mechanisms may utilize OTTO. Today, BX Participants utilize FIX to enter their orders. Despite the fact that OTTO would not be available for the GTC Time-In-Force modifier, the Exchange notes that one OTTO Port is being provided to Participants at no cost. Today, FIX is the only manner in which to enter orders into BX.

Pricing

Proposed Port Fees Are Reasonable, Equitable and Not Unfairly Discriminatory

Only one FIX order protocol is required for a BX Participant to submit orders into BX and to meet its regulatory requirements²⁴ at no cost while meeting its regulatory requirements. The Exchange will provide each Participant the first FIX Port at no cost to submit orders into BX. Only one account number is necessary to transact an options business on BX and account numbers are available to Participants at no cost.

The Exchange proposes to offer each Participant the first FIX Port at no cost to meet their regulatory requirements. As noted above, Participants may freely choose to rely on one or many ports, depending on their business model.

The Exchange's proposal is reasonable, equitable and not unfairly discriminatory as BX is providing BX Participants the first FIX Port to submit orders at no cost. These ports, which are offered at no cost, would allow a BX Participant to meet its regulatory requirements. All other ports offered by BX are not required for an BX Participant to meet its regulatory obligations. Therefore, for the foregoing reasons, it is reasonable to assess no fee for the first FIX Port obtained by a Participant as an BX Participant is able to meet its regulatory requirements with these ports.

Further it is equitable and not unfairly discriminatory to assess no fee for the first FIX Port to Participants as all Participants would be entitled to the first FIX Port at no cost. With this proposal, BX Participants may organize their business in such a way as to submit orders to BX at no cost.

The Exchange's proposal to assess \$650 per port, per month, per account number for an OTTO Port is reasonable because OTTO is not required for a Participant to meet its regulatory requirements. The Exchange is offering the first FIX Port at no cost to submit orders to BX. In addition to the FIX Port, all Participants may elect to purchase OTTO to submit orders to BX. BX Participants utilizing the FIX Port, which is offered at no cost, do not need to utilize OTTO.

Finally, in the event that a BX Participant elects to subscribe to multiple ports, the Exchange offers a monthly cap beyond which a

Participant would be assessed no additional fees for the month and proposes to add OTTO to the monthly cap. Today, OTTO Port, CTI Port, FIX Port, FIX Drop Port and all Disaster Recovery Ports are subject to a monthly cap of \$7,500. These caps are reasonable because they allow Participants to limit their fees beyond a certain level if they elect to purchase multiple ports in a given month. The caps are also equitable and not unfairly discriminatory because any Participant will be subject to the cap, provided they exceeded the appropriate dollar amount in a given month. These ports are available to all BX Participants.

The proposed BX OTTO fee is the same as the OTTO Port fee on MRX, for the identical port. Additionally, MRX offers one free FIX Port to its Members and assesses the same FIX Port fee of \$650 per port, per month, per account number as BX assesses today for a FIX Port. MRX offers its Members a free FIX Disaster Recovery Port.²⁵ Today, BX does not assess Disaster Recovery Port fees.²⁶ Finally, today, MRX offers a \$7,500 monthly cap for OTTO Ports, CTI Ports, FIX Ports, FIX Drop Ports and all Disaster Recovery Ports.²⁷ BX's proposed monthly cap does not include Disaster Recovery Ports, which are free on BX, but does include BX Depth Ports and BX Top Ports which are currently assessed fees of \$650 per port, per month.

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 OTTO protocol is a proprietary protocol of Nasdaq, Inc. The Exchange continues to innovate and modernize technology so that it may continue to compete among options markets. The ability to continue to innovate with technology and offer new products to market participants allows BX to remain competitive in the options space which currently has seventeen options markets and potential new entrants. If BX were unable to offer and price new protocols, it would result in an undue burden on competition as BX would not have the ability to innovate and modernize its technology to compete effectively in the options space. BX's ability to offer OTTO will enable it to compete with other options markets that provide its market participants a choice as to the

²⁴ BX Participants have trade-through requirements under Regulation NMS as well as broker-dealers' best execution obligations. See Rule 611 of Regulation NMS; 17 CFR 242.611 and FINRA Rule 5310.

²⁵ See MRX Options 7, Section 6.

²⁶ See BX Options 7, Section 3.

²⁷ See MRX Options 7, Section 6.

type of order entry protocols that may be utilized. BX's ability to offer and price new and innovative products and continue to modernize its technology, similar to other options markets, supports intermarket competition.

OTTO Protocol

The Exchange's proposal to adopt an OTTO Protocol does not impose an undue burden on intramarket competition. Today, all BX Participants utilize FIX to send orders to BX. The Exchange would offer each BX Participant the first OTTO Port at no cost with this proposal. With the addition of OTTO Ports, a BX Participant may elect to enter their orders through FIX, OTTO, or both protocols, although both protocols are not necessary. The Exchange's proposal to adopt an OTTO Protocol does not impose an undue burden on intermarket competition as other options exchanges offer multiple protocols today such as ISE, GEMX and MRX.

Other Amendments

The Exchange's proposal to amend other rules within Options 3 to make clear where the FIX and OTTO protocols may be utilized does not impose an undue burden on intramarket competition as these rules will apply in the same manner to all Participants. The Exchange's proposal to amend other rules within Options 3 to make clear where the FIX and OTTO protocols may be utilized does not impose an undue burden on intermarket competition as other options exchanges may elect to utilize their order entry protocols in different ways.

Pricing

Nothing in the proposal burdens inter-market competition because BX's proposal to offer the first FIX Port for free is similar to MRX's FIX Port offering, and would allow BX Participants to meet their regulatory obligations. BX's offering would permit Participants the ability to submit orders to BX at no cost. OTTO Ports are not required for BX Participants to meet their regulatory obligations.

Nothing in the proposal burdens intra-market competition because the Exchange would uniformly assess the port fees to all Participants, as applicable, and would uniformly apply monthly caps. The proposed fees are identical to fees recently approved on MRX.²⁸ The proposed BX OTTO fee is the same as the OTTO Port fee on MRX,

for the identical port. Additionally, MRX offers one free FIX Port to its Members and assesses the same FIX Port fee of \$650 per port, per month, per account number as BX assessed today for FIX.²⁹ MRX also offers a free FIX Disaster Recovery Port.³⁰ Today, BX does not assess Disaster Recovery Port fees.³¹ Finally, today, MRX offers a \$7,500 monthly cap for OTTO Ports, CTI Ports, FIX Ports, FIX Drop Ports and all Disaster Recovery Ports.³² BX's proposed monthly cap does not include Disaster Recovery Ports, which are free on BX, but does include BX Depth Ports and BX Top Ports which are assessed fees of \$650 per port, per month.

To the extent that the Commission does not permit BX to assess the same identical fees for the same identical products on its market, the Commission is creating a burden on competition by allowing MRX to assess fees and offer a product that would otherwise be unavailable on BX. Additionally, the proposal offers a free FIX Port to BX Participants that already subscribe to FIX, the only order port currently offered on BX. Each SRO should be permitted to mirror fees assessed by another SRO to further competition among the exchanges.

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

Because the foregoing 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, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act³³ and subparagraph (f)(6) of Rule 19b-4 thereunder.³⁴

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 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-BX-2024-016 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-2024-016. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication

²⁸ See MRX Options 7, Section 6.

³⁰ Id.

³¹ See BX Options 7, Section 3.

³² See MRX Options 7, Section 6.

³³ 15 U.S.C. 78s(b)(3)(A)(iii).

³⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

²⁸ See Securities Exchange Commission Release No. 96824 (February 7, 2023), 88 FR 8975 (February 10, 2023) (SR-MRX-2023-05).

submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–BX–2024–016 and should be submitted on or before June 20, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁵

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024–11703 Filed 5–28–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100218; File No. SR–CboeBZX–2024–018]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of Amendment No. 1 to a Proposed Rule Change Relating To List and Trade Shares of the Franklin Ethereum ETF, a Series of the Franklin Ethereum Trust, Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

May 22, 2024.

On February 22, 2024, Cboe BZX Exchange, Inc. (“BZX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b–4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the Franklin Ethereum ETF, a series of the Franklin Ethereum Trust, under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the *Federal Register* on March 13, 2024.³ On April 23, 2024, pursuant to Section 19(b)(2) of the Act,⁴ 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.⁵ On May 21, 2024, the Exchange filed Amendment No. 1 to the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment No. 1 amended and replaced the proposed rule change in its entirety. The

Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change to list and trade shares of the Franklin Ethereum ETF (the “Fund”), a series of the Franklin Ethereum Trust (the “Trust”),⁶ under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), 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

This Amendment No. 1 to SR–CboeBZX–2024–018 amends and replaces in its entirety the proposal as originally submitted on February 22, 2024. The Exchange submits this Amendment No. 1 in order to clarify certain points and add additional details to the proposal.

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(e)(4),⁷ which governs the listing and trading of Commodity-Based Trust

Shares on the Exchange.⁸ Franklin Holdings, LLC is the sponsor of the Fund (“Sponsor”). The Shares will be registered with the Commission by means of the Trust’s registration statement on Form S–1 (the “Registration Statement”).⁹

The Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts, including spot-based Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.¹⁰ With this in mind, the

⁸ Any of the statements or representations regarding the index composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, and intraday indicative values, or the applicability of Exchange listing rules specified in this filing to list a series of Other Securities (collectively, “Continued Listing Representations”) shall constitute continued listing requirements for the Shares listed on the Exchange.

⁹ On February 12, 2024, the Trust filed with the Commission the Registration Statement on Form S–1, submitted to the Commission by the Sponsor on behalf of the Trust (333–277008). The descriptions of the Fund, the Trust, the Shares, and the Index (as defined below) contained herein are based, in part, on information in the Registration Statement. The Registration Statement is not yet effective and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

¹⁰ See Securities Exchange Act Release No. 78262 (July 8, 2016), 81 FR 78262 (July 14, 2016) (the “Winklevoss Proposal”). The Winklevoss Proposal was subsequently disapproved by the Commission. See Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the “Winklevoss Order”). Prior orders from the Commission have pointed out that in every prior approval order for Commodity-Based Trust Shares, there has been a derivatives market that represents the regulated market of significant size, generally a Commodity Futures Trading Commission (the “CFTC”) regulated futures market. Further to this point, the Commission’s prior orders have noted that the spot commodities and currency markets for which it has previously approved spot ETPs are generally unregulated and that the Commission relied on the underlying futures market as the regulated market of significant size that formed the basis for approving the series of Currency and Commodity-Based Trust Shares, including gold, silver, platinum, palladium, copper, and other commodities and currencies. The Commission specifically noted in the Winklevoss Order that the approval order issued related to the first spot gold ETP “was based on an assumption that the currency market and the spot gold market were largely unregulated.” See Winklevoss Order at 37592. As such, the regulated market of significant size test does not require that the spot ether market be regulated in order for the Commission to approve this proposal, and precedent makes clear that an underlying market for a spot commodity or currency being a regulated market would actually be an exception to the norm. These largely unregulated currency and commodity markets do not provide the same protections as the markets that are subject to the Commission’s oversight, but the Commission has consistently looked to surveillance

Continued

³⁵ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 99686 (Mar. 7, 2024), 89 FR 18447. Comments on the proposed rule change are available at: <https://www.sec.gov/comments/sr-cboebzx-2024-018/sr-cboebzx2024018.htm>.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 100015, 89 FR 33431 (Apr. 29, 2024).

⁶ The Trust was formed as a Delaware statutory trust on February 8, 2024. The Fund is operated as a grantor trust for U.S. federal tax purposes. The Trust and the Fund have no fixed termination date.

⁷ The Commission approved BZX Rule 14.11(e)(4) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).