

the designated custodian to consent to act in such a capacity, which will address the potentially problematic situation where the person named as the custodian on the Form BDW was not aware that the member was designating the person as a custodian and did not have access to the former firm's books and records. Furthermore, given the optional nature of the proposed rule change, the Commission has no reason to believe that this proposal will impose undue burdens on FINRA member firms.

The Commission acknowledges the concerns of the commenter who argued that "a considerable amount of work" would be required of a clearing broker-dealer that agrees to be designated as a custodian under the proposed rule change and that such firm would bear additional financial and operational costs.<sup>30</sup> The Commission believes, nevertheless, that the comment does not preclude approval of the proposal. The proposed changes to FINRA Rule 4570 would permit, but not obligate, a member firm to take on the responsibilities associated with being designated as a custodian by another FINRA member on the Form BDW.<sup>31</sup> This change will allow member firms that have already indicated their willingness to be named as custodian for other broker-dealers the ability to be designated as such. The Commission also notes that FINRA vetted the proposal with several advisory committees, including the Clearing Firm Advisory Committee. These committees would be aware of the concerns expressed by the commenter, but they supported the proposal given its optional nature. With respect to the commenter's assumption that the costs for custodial services provided by clearing firms could not be priced into contracts with introducing broker-dealers, the commenter did not offer data or other analysis to support its position. In the absence of such data or analysis, and given that the proposal does not create any mandate for any member to become a custodian of books and records of another member, it is difficult for the Commission to understand the commenter's contention that the proposed rule change would impose substantial operational and financial burdens on clearing firms. The Commission further notes that the optional nature of the proposed rule change would permit a clearing firm to avoid taking on the responsibilities and burdens associated with becoming a custodian for an introducing member

until such time that the market allows it to price such custodial services into its contracts with introducing firms.

The Commission also acknowledges the commenter's requested clarifications to the proposed rule change.<sup>32</sup> The Commission notes that while the proposal requires that the broker-dealer filing the Form BDW receive written or oral consent from the custodian, it also requires that the custodian follow up with a written confirmation to FINRA stating that the custodian agrees to this designation and that it understands its obligations under the rule.<sup>33</sup> This second step effectively ensures that there is written confirmation from the custodian before it can be designated as such. Furthermore, the Commission notes that the current proposal makes clear that any member firm that undertakes custodial responsibilities for another member firm would not be expected to verify the completeness or accuracy of any books and records it receives as part of its custodial duties.<sup>34</sup> However, the Commission believes that a limitation on liability with respect to the custodian's maintenance or preservation of records would frustrate the policy objectives of Rule 17a-4 under the Exchange Act and FINRA Rule 4570.

As discussed above, the proposed rule change will facilitate compliance with recordkeeping requirements for member firms and preserve FINRA's ability to have jurisdiction over, and obtain information from, the member that has agreed to act as custodian.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act,<sup>35</sup> that the proposed rule change (SR-FINRA-2018-039) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>36</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

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<sup>32</sup> See NFS Letter at 5-6.

<sup>33</sup> See Notice, 83 FR at 61690.

<sup>34</sup> See *id.*

<sup>35</sup> 15 U.S.C. 78s(b)(2).

<sup>36</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85213; File No. SR-BX-2018-066]

### Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Withdrawal of a Proposed Rule Change To Amend the Exchange's Port Fee Schedule

February 27, 2019.

On December 20, 2018, Nasdaq BX, Inc. ("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 amend its port fee schedule. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on January 31, 2019.<sup>4</sup> On February 15, 2019, pursuant to Section 19(b)(3)(C) of the Act, the Commission: (1) Temporarily suspended the proposed rule change; and (2) instituted proceedings to determine whether to approve or disapprove the proposed rule change.<sup>5</sup> The Commission has received no comment letters on the proposed rule change. On February 25, 2019, the Exchange withdrew its proposed rule change (SR-BX-2018-066).

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

**Eduardo A. Aleman,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85212; File No. SR-Phlx-2018-83]

### Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Withdrawal of a Proposed Rule Change To Amend the Exchange's Port Fee Schedule

February 27, 2019.

On December 20, 2018, Nasdaq PHLX LLC ("Exchange") filed with the Securities and Exchange Commission

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> See Securities Exchange Act Release No. 84965 (December 26, 2018), 84 FR 842.

<sup>5</sup> See Securities Exchange Act Release No. 85152, 84 FR 5737 (February 22, 2019).

<sup>6</sup> 17 CFR 200.30-3(a)(12).

<sup>30</sup> See NFS Letter at 1-2.

<sup>31</sup> See Notice, 83 FR at 61690.

(“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 its port fee schedule. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on January 31, 2019.<sup>4</sup> On February 15, 2019, pursuant to Section 19(b)(3)(C) of the Act, the Commission: (1) Temporarily suspended the proposed rule change; and (2) instituted proceedings to determine whether to approve or disapprove the proposed rule change.<sup>5</sup> The Commission has received no comment letters on the proposed rule change. On February 25, 2019, the Exchange withdrew its proposed rule change (SR-Phlx-2018-83).

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

**Eduardo A. Aleman,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85205; File No. SR-CBOE-2019-013]

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Allow the Addition of New Series of Options on an Individual Stock Until the Close of Trading on the Business Day Prior to Expiration in Unusual Market Conditions

February 27, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 21, 2019, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The

Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to allow the addition of new series of options on an individual stock until the close of trading on the business day prior to expiration in unusual market conditions. The text of the proposed rule change is provided below and in Exhibit 1.

(deletions are [bracketed])

\* \* \* \* \*

#### Rules of Cboe Exchange, Inc.

\* \* \* \* \*

#### Rule 5.5. Series of Option Contracts Open for Trading

(a)–(e) (No change).

. . . Interpretations and Policies:

.01-.03 (No change).

.04 New series of options on an individual stock may be added until the beginning of the month in which the option contract will expire. Due to unusual market conditions, the Exchange, in its discretion, may add new series of options on an individual stock until the close of trading on the [second] business day prior to expiration.

.05-.23 (No change).

\* \* \* \* \*

The text of the proposed rule change is also 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 Interpretation and Policy .04 to Rule 5.5. to allow for the addition of new series of options on an individual stock until the close of trading on the business day prior to expiration in unusual market conditions. This is a competitive proposed rule change based on filings submitted by the International Securities Exchange, LLC (“ISE”) and NASDAQ OMX BX (“BX”) to the Securities and Exchange Commission (“Commission”).<sup>5</sup>

Currently, under Interpretation and Policy .04 to Rule 5.5, when faced with unusual market conditions, the Exchange may add new series of options on an individual stock until the close of trading on the second business day prior to expiration. In 2013, the Options Clearing Corporation (“OCC”) implemented a transition for standard option monthly expiration processing from Saturday to Friday. Accordingly, the Exchange, along with other exchanges, updated its rules to reflect the OCC change, referencing Friday expiration dates to replace Saturday expiration dates for all options expiring on or after February 1, 2015.<sup>6</sup> The Exchange also replaced any historic references to expiration dates with Friday expiration. At this time, other exchanges amended their rules to differentiate between Friday and Saturday or non-business day expirations during the transitional period. Other exchanges specified that additional series of individual stock options may be added during unusual market conditions until the close of trading on the business day prior to expiration in the case of an option contract expiring on a business day (*i.e.*, Thursday for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day until

<sup>5</sup> See Securities Exchange Act Release 34-70900 (November 19, 2013), 78 FR 70382 (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Change the Expiration Date for Most Options Contracts to the Third Friday of the Expiration Month Instead of the Saturday Following the Third Friday) (SR-ISE-2013-58); Securities Exchange Act Release 34-70746 (October 23, 2013), 78 FR 64563 (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Implement Transition to Friday Expiration for Most Options Contracts) (SR-BX-2013-055).

<sup>6</sup> See Rule 1.1(mmm), Rule 23.5 & Rule 24.9.

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> See Securities Exchange Act Release No. 84967 (December 26, 2018), 84 FR 861.

<sup>5</sup> See Securities Exchange Act Release No. 85152, 84 FR 5737 (February 22, 2019).

<sup>6</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> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).