

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.