

exempted securities as defined in Section 3(a)(12) of the Exchange Act.

(10) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A corporate debt securities deemed illiquid by the Adviser.

(11) The Fund's investments will be consistent with the Fund's investment objectives. The Fund does not presently intend to engage in any form of borrowing for investment purposes, and will not be operated as a "leveraged ETF," *i.e.*, it will not be operated in a manner designed to seek a multiple or inverse multiple of the performance of an underlying reference index.

(12) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

The Exchange represents that all statements and representations made in the filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements.<sup>40</sup> If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

This order is based on all of the Exchange's representations, including those set forth above and in the Notice, as modified by Amendment No. 3. The Commission notes that the Fund and the Shares must comply with the requirements of Nasdaq Rule 5735 for the Shares to be listed and traded on the Exchange.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment

No. 3, is consistent with Section 6(b)(5) of the Act<sup>41</sup> and Section 11A(a)(1)(C)(iii) of the Act<sup>42</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Solicitation of Comments on Amendment No. 3

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 3 is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-NASDAQ-2016-056 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 No. SR-NASDAQ-2016-056. 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 Web site (<http://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 Web site 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-NASDAQ-

2016-056, and should be submitted on or before August 24, 2016.

#### V. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 3, prior to the thirtieth day after the date of publication of Amendment No. 3 in the **Federal Register**. The changes and additional information in Amendment No. 3 helped the Commission to evaluate the Shares' susceptibility to manipulation and whether the listing and trading of the Shares would be consistent with the protection of investors and the public interest. Amendment No. 3 also provided clarifications and additional details to the proposed rule change. Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 3, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.<sup>43</sup>

#### VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>44</sup> that the proposed rule change (SR-NASDAQ-2016-056), as modified by Amendment No. 3, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>45</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2016-18319 Filed 8-2-16; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78434; File No. 4-700]

### Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Order Approving and Declaring Effective a Proposed Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc. and the Investors Exchange LLC

July 28, 2016.

On June 20, 2016, the Financial Industry Regulatory Authority, Inc. ("FINRA") and the Investors Exchange LLC ("IEX") (together with FINRA, the "Parties") filed with the Securities and Exchange Commission ("Commission" or "SEC") a plan for the allocation of

<sup>40</sup> The Commission notes that certain other proposals for the listing and trading of Managed Fund Shares include a representation that the exchange will "surveil" for compliance with the continued listing requirements. *See, e.g.*, Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428 (April 7, 2016) (SR-BATS-2016-04). In the context of this representation, it is the Commission's view that "monitor" and "surveil" both mean ongoing oversight of a fund's compliance with the continued listing requirements. Therefore, the Commission does not view "monitor" as a more or less stringent obligation than "surveil" with respect to the continued listing requirements.

<sup>41</sup> 15 U.S.C. 78f(b)(5).

<sup>42</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>43</sup> 15 U.S.C. 78s(b)(2).

<sup>44</sup> *Id.*

<sup>45</sup> 17 CFR 200.30-3(a)(12).

regulatory responsibilities, dated June 20, 2016 (“17d–2 Plan” or the “Plan”). The Plan was published for comment on July 5, 2016.<sup>1</sup> The Commission received no comments on the Plan. This order approves and declares effective the Plan.

## I. Introduction

Section 19(g)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>2</sup> among other things, requires every self-regulatory organization (“SRO”) registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO’s own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act.<sup>3</sup> Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (“common members”). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act<sup>4</sup> was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.<sup>5</sup> With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.<sup>6</sup> Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority (“DEA”) to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.<sup>7</sup> When an SRO has been named as a common member’s DEA, all other

SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d–1 deals only with an SRO’s obligations to enforce member compliance with financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.<sup>8</sup> Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for appropriate notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors; to foster cooperation and coordination among the SROs; to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system; and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

## II. Proposed Plan

The proposed 17d–2 Plan is intended to reduce regulatory duplication for firms that are common members of both IEX and FINRA.<sup>9</sup> Pursuant to the proposed 17d–2 Plan, FINRA would assume certain examination and enforcement responsibilities for common members with respect to certain applicable laws, rules, and regulations.

The text of the Plan delineates the proposed regulatory responsibilities with respect to the Parties. Included in the proposed Plan is an exhibit (the “IEX Certification of Common Rules,” referred to herein as the “Certification”) that lists every IEX rule, and select federal securities laws, rules, and regulations, for which FINRA would bear responsibility under the Plan for

overseeing and enforcing with respect to IEX members that are also members of FINRA and the associated persons therewith (“Dual Members”).

Specifically, under the 17d–2 Plan, FINRA would assume examination and enforcement responsibility relating to compliance by Dual Members with the rules of IEX that are substantially similar to the applicable rules of FINRA,<sup>10</sup> as well as any provisions of the federal securities laws and the rules and regulations thereunder delineated in the Certification (“Common Rules”). In the event that a Dual Member is the subject of an investigation relating to a transaction on IEX, the plan acknowledges that IEX may, in its discretion, exercise concurrent jurisdiction and responsibility for such matter.<sup>11</sup>

Under the Plan, IEX would retain full responsibility for surveillance and enforcement with respect to trading activities or practices involving IEX’s own marketplace, including, without limitation, registration pursuant to its applicable rules of associated persons (*i.e.*, registration rules that are not Common Rules); its duties as a DEA pursuant to Rule 17d–1 under the Act; and any IEX rules that are not Common Rules.<sup>12</sup>

## III. Discussion

The Commission finds that the proposed Plan is consistent with the factors set forth in Section 17(d) of the Act<sup>13</sup> and Rule 17d–2(c) thereunder<sup>14</sup> in that the proposed Plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. In particular, the Commission believes that the proposed Plan should reduce unnecessary regulatory duplication by allocating to FINRA certain examination and enforcement responsibilities for common members that would otherwise be performed by IEX and FINRA. Accordingly, the proposed Plan promotes efficiency by reducing costs to

<sup>1</sup> See Securities Exchange Act Release No. 78179 (June 28, 2016), 81 FR 43673.

<sup>2</sup> 15 U.S.C. 78s(g)(1).

<sup>3</sup> 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

<sup>4</sup> 15 U.S.C. 78q(d)(1).

<sup>5</sup> See Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

<sup>6</sup> 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

<sup>7</sup> See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

<sup>8</sup> See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

<sup>9</sup> The proposed 17d–2 Plan refers to these common members as “Dual Members.” See Paragraph 1(c) of the proposed 17d–2 Plan.

<sup>10</sup> See paragraph 1(b) of the proposed 17d–2 Plan (defining Common Rules). See also paragraph 1(f) of the proposed 17d–2 Plan (defining Regulatory Responsibilities). Paragraph 2 of the Plan provides that annually, or more frequently as required by changes in either IEX rules or FINRA rules, the parties shall review and update, if necessary, the list of Common Rules. Further, paragraph 3 of the Plan provides that IEX shall furnish FINRA with a list of Dual Members, and shall update the list no less frequently than once each calendar quarter.

<sup>11</sup> See paragraph 6 of the proposed 17d–2 Plan.

<sup>12</sup> See paragraph 2 of the proposed 17d–2 Plan.

<sup>13</sup> 15 U.S.C. 78q(d).

<sup>14</sup> 17 CFR 240.17d–2(c).

common members. Furthermore, because IEX and FINRA will coordinate their regulatory functions in accordance with the Plan, the Plan should promote investor protection.

The Commission notes that, under the Plan, IEX and FINRA have allocated regulatory responsibility for those IEX rules, set forth in the Certification, that are substantially similar to the applicable FINRA rules in that examination for compliance with such provisions and rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a common member's activity, conduct, or output in relation to such rule. In addition, under the Plan, FINRA would assume regulatory responsibility for certain provisions of the federal securities laws and the rules and regulations thereunder that are set forth in the Certification. The Common Rules covered by the Plan are specifically listed in the Certification, as may be amended by the Parties from time to time.

According to the Plan, IEX will review the Certification, at least annually, or more frequently if required by changes in either the rules of IEX or FINRA, and, if necessary, submit to FINRA an updated list of Common Rules to add IEX rules not included on the then-current list of Common Rules that are substantially similar to FINRA rules; delete IEX rules included in the then-current list of Common Rules that are no longer substantially similar to FINRA rules; and confirm that the remaining rules on the list of Common Rules continue to be IEX rules that are substantially similar to FINRA rules.<sup>15</sup> FINRA will then confirm in writing whether the rules listed in any updated list are Common Rules as defined in the Plan. Under the Plan, IEX will also provide FINRA with a current list of common members and shall update the list no less frequently than once each quarter.<sup>16</sup> The Commission believes that these provisions are designed to provide for continuing communication between the Parties to ensure the continued accuracy of the scope of the proposed allocation of regulatory responsibility.

The Commission is hereby declaring effective a Plan that, among other things, allocates regulatory responsibility to FINRA for the oversight and enforcement of all IEX rules that are substantially similar to the rules of FINRA for common members of IEX and FINRA. Therefore,

modifications to the Certification need not be filed with the Commission as an amendment to the Plan, provided that the Parties are only adding to, deleting from, or confirming changes to IEX rules in the Certification in conformance with the definition of Common Rules provided in the Plan. However, should the Parties decide to add an IEX rule to the Certification that is not substantially similar to a FINRA rule; delete an IEX rule from the Certification that is substantially similar to a FINRA rule; or leave on the Certification an IEX rule that is no longer substantially similar to a FINRA rule, then such a change would constitute an amendment to the Plan, which must be filed with the Commission pursuant to Rule 17d-2 under the Act.<sup>17</sup>

#### IV. Conclusion

This Order gives effect to the Plan filed with the Commission in File No. 4-700. The Parties shall notify all members affected by the Plan of their rights and obligations under the Plan.

*IT IS THEREFORE ORDERED*, pursuant to Section 17(d) of the Act, that the Plan in File No. 4-700, between FINRA and IEX, filed pursuant to Rule 17d-2 under the Act, is approved and declared effective.

*IT IS FURTHER ORDERED* that IEX is relieved of those responsibilities allocated to FINRA under the Plan in File No. 4-700.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

Robert W. Errett,

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78431; File No. SR-BX-2016-045]

### Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Tiers Related to SPY Options

July 28, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

<sup>17</sup> The Commission also notes that the addition to or deletion from the Certification of any federal securities laws, rules, and regulations for which FINRA would bear responsibility under the Plan for examining, and enforcing compliance by, common members, also would constitute an amendment to the Plan.

<sup>18</sup> 17 CFR 200.30-3(a)(34).

(“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on July 14, 2016, NASDAQ BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 amend its Options Pricing at Chapter XV Section 2, entitled “BX Options Market—Fees and Rebates,” which governs pricing for BX members using the BX Options Market (“BX Options”). The Exchange proposes to modify fees and rebates (per executed contract) for certain Penny Pilot<sup>3</sup> Options to: (a) Delete SPY Options from the Select Symbols Options Tier Schedule; and (b) adopt a SPY Options Tier Schedule.<sup>4</sup>

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqbx.cchwallstreet.com/>, at the principal office of the Exchange, 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.

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

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

<sup>3</sup> The Penny Pilot was established in June 2012 and extended through 2016. See Securities Exchange Act Release Nos. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR-BX-2012-030) (order approving BX option rules and establishing Penny Pilot); and 78036 (June 10, 2016), 81 FR 39308 (June 16, 2016) (SR-BX-2016-021) (notice of filing and immediate effectiveness extending the Penny Pilot through December 31, 2016).

<sup>4</sup> SPY, Select Symbols Options Tier Schedule, and SPY Options Tier Schedule are discussed below.

<sup>15</sup> See paragraph 2 of the Plan.

<sup>16</sup> See paragraph 3 of the Plan.