For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

Eduardo A. Aleman,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79615; File No. SR–BX–2016–069]

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 4770 (Compliance With Regulation NMS Plan To Implement a Tick Size Pilot)

December 20, 2016.

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 December 13, 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 and II 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 Rule 4770 (Compliance with Regulation NMS Plan to Implement a Tick Size Pilot) relating to the handling to certain Order Types in Test Group Three Pilot Securities in connection with the Regulation NMS Plan to Implement a Tick Size Pilot Program (''Plan'' or ''Pilot'').[3] Relatedly, BX also proposes to delete Commentary .14, which addresses the current handling of those Order Types. Finally, BX proposes to add language to Rule 4770(d)(1) to clarify the treatment of orders in a Test Group Three Security entered through the RASH or FIX protocols.

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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 7, 2016, the Exchange filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change (''Proposal'') to adopt paragraph (d) to Exchange Rule 4770 to describe changes to system functionality necessary to implement the Plan. The Exchange also proposed amendments to Rule 4770(a) and (c) to clarify how the Trade-at exception may be satisfied. The SEC published the Proposal in the **Federal Register** for notice and comment on September 20, 2016.[4] BX subsequently filed three Partial Amendments to clarify aspects of the Proposal. The Commission approved the Proposal, as amended, on October 7, 2016.[5]

In SR–BX–2016–050, BX had initially proposed a re-pricing functionality for Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through the OUCH and FLITE protocols in Group Three Pilot Securities.[6] BX subsequently determined that it would not offer this re-pricing functionality for Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through the OUCH and FLITE protocols in Test Group Three Pilot securities. As part of Partial Amendment No. 2 to SR–BX–2016–050, BX proposed to delete the relevant language from Rule 4770 related to this re-pricing functionality.

In that amendment, BX noted that this change would only impact the treatment of Price to Comply Orders, Non-Displayed Orders, and Post-Only orders that are submitted through the OUCH and FLITE protocols in Test Group Three Pilot Securities, as these types of Orders that are currently submitted to BX through the RASH or FIX protocols are already subject to this re-pricing functionality and will remain subject to this functionality under the Pilot.

In the Amendment, BX further noted that its systems are currently programmed so that Price to Comply Orders, Non-Displayed Orders and Post-Only Orders entered through the OUCH and FLITE protocols in Test Group Three Pilot Securities may be adjusted repeatedly to reflect changes to the NBBO and/or the best price on the BX book. BX stated that it was re-programming its systems to remove this functionality for Price to Comply Orders, Non-Displayed Orders and Post-Only Orders entered through the OUCH and FLITE protocols in Test Group Three Pilot Securities. In the Amendment, BX stated that it anticipated that this re-programming shall be completed no later than November 30, 2016. If it appeared that this functionality would remain operational by October 17, 2016, BX indicated that it would file a proposed rule change with the SEC and will provide notice to market participants sufficiently in advance of that date to provide effective notice. The rule change and the notice to market participants will describe the current operation of the BX systems in this regard, and the timing related to the re-programming.

On October 17, 2016, BX filed a proposal to extend the date by which it would complete the re-programing of its systems to eliminate the re-pricing functionality in Test Group Three Pilot Securities for Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols.[7] In that proposal, BX stated

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[42] 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. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (''Approval Order'').

[4] *See* Securities Exchange Act Release No. 78838 (September 14, 2016), 81 FR 64566 (September 20, 2016) (Notice of filing of SR–BX–2016–050).

[5] *See* Securities Exchange Act Release No. 79076 (October 7, 2016) (Order approving SR–BX–2016–050).

[6] As originally proposed, Rule 4770(d)(2) stated that Price to Comply Orders in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO until such time as the Price to Comply Order is able to be ranked and displayed at its original entered limit price. Rule 4770(d)(3) stated that, if market conditions allow, a Non-Displayed Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO up (down) to the Order's limit price. Rule 4770(d)(4) stated that, if market conditions allow, the Post-Only Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO or the best price on the BX Book, as applicable until such time as the Post-Only Order is able to be ranked and displayed at its original entered limit price.

[7] *See* Securities Exchange Act Release No. 79154 (October 25, 2016), 81 FR 75468 (October 31, 2016) (SR–BX–2016–054).

Subsequent to the approval of SR–BX–2016–050, BX become aware that this re-pricing functionality that it anticipated that this re-programming shall be complete on or before October 31, 2016.[8] As BX continued to re-program its systems to eliminate the re-pricing functionality in Test Group Three Pilot Securities for Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols, it extended the date by which the re-programming shall be complete to the current date of December 12, 2016.[9]

The Exchange has now completed the re-programming its systems to eliminate the re-pricing functionality in Test Group Three Pilot Securities for Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols. However, as a result of removing the re-pricing functionality, there are instances, due to the different functionality of the OUCH and FLITE protocols in comparison to the other applicable Exchange protocols, where the behavior of certain Order Types entered through the OUCH and FLITE protocols in Test Group Three Pilot Securities will differ from the behavior of those Order Types as set forth in Rule 4770; specifically, the behavior of Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through the OUCH and FLITE protocols when the Order locks or crosses a Protected Quotation. As discussed below, BX is therefore amending Rule 4770 to clarify these differences. Although the changes made to Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through OUCH and FLITE reflect the different functionality of the OUCH and FLITE protocols in comparison with the other BX protocols, the proposed changes treat Price to Comply Orders, Non-Displayed Orders and Post-Only Orders entered through OUCH and FLITE protocols in Test Group Three Securities as consistently as possible with such orders entered through OUCH and FLITE in Control Group Securities, and Test Group One and Test Group Two Securities. These changes will adjust Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through OUCH and FLITE when the Order has been ranked at a midpoint of the NBBO that then becomes impermissible due to changes in the NBBO.

Price to Comply Orders

Currently, Rule 4770(d)(2) states that a Price to Comply Order in a Test Group Pilot Security will operate as described in Rule 4702(b)(1) except as provided under this paragraph. If a Price to Comply Order for a Test Group Three Pilot Security is partially executed upon entry and the remainder would lock a Protected Quotation of another market center, the unexecuted portion of the Order will be cancelled. If the Order is not executable against any previously posted orders on the Exchange Book, and the limit price of a buy (sell) Price to Comply Order in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, the Order will display at one minimum price increment below (above) the Protected Quotation, and the Order will be ranked on the Exchange Book at the current midpoint of the NBBO.

BX proposes to augment this provision to clarify the behavior of Price to Comply Orders entered through the OUCH or FLITE protocols in Test Group Three Pilot Securities that lock or cross a Protected Quotation. Specifically, a Price to Comply Order in a Test Group Three Pilot Security entered through OUCH or FLITE may be adjusted in the following manner after initial entry and posting to the BX Book.

If entered at a price that locked a Protected Quotation, and if the NBBO changes such that its price will no longer lock a Protected Quotation, the Price to Comply Order will be adjusted to rank and display at its original entered limit price.[10]

If entered at a price that crossed a Protected Quotation, and if the NBBO changes such that it can be ranked at the price of the Protected Quotation it crossed, the Price to Comply Order, based on the participant's choice, may either be (i) cancelled or (ii) adjusted to rank at the price of the Protected Quotation it crossed upon entry with its displayed price remaining unchanged.

If, after being posted on the BX Book, the non-displayed price of a Price to Comply Order becomes locked or crossed by a Protected Quotation due to a change in the NBBO, or if the Price to Comply Order is at an impermissible price under Regulation NMS or the Plan and it cannot otherwise be adjusted as above, the Price to Comply Order will be cancelled.[11]

Non-Displayed Orders

Currently, Rule 4770(d)(3) states that a Non-Displayed Order in a Test Group Pilot Security will operate as described in Rule 4702(b)(3) except as provided under this paragraph. A resting Non-Displayed Order in a Test Group Three Pilot security cannot execute at the price of a Protected Quotation of another market center unless the incoming Order otherwise qualifies for an exception to the Trade-at prohibition provided under Rule 4770(c)(3)(D). If the limit price of a buy (sell) Non-Displayed Order in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, the Order will be ranked on the Exchange Book at either one minimum price increment below (above) the National Best Offer (National Best Bid) or at the midpoint of the NBBO, whichever is higher (lower). For a Non-Displayed Order in a Test Group Three Pilot Security entered through RASH or FIX, if after being posted to the Exchange Book, the NBBO changes so that the Non-Displayed Order would no longer be executable at its posted price due to the requirements of Regulation NMS or the Plan, the Non-Displayed Order will be repriced to a price that is at either one minimum price increment below (above) the National Best Offer (National Best Bid) or at the midpoint of the NBBO, whichever is higher (lower) and will receive a new timestamp.[12] For

also applies to Price to Display Orders that are entered through the OUCH and FLITE protocols in Test Group Three Securities, and amended Commentary .14 to indicate that Price to Display Orders will be treated in the same manner as Price to Comply Orders under the re-pricing functionality. *Id.*

[8] *Id.*

[9] *See* Securities Exchange Act Release Nos. 79262 (November 8, 2016), 81 FR 80123 (November 15, 2016) (SR–BX–2016–153) (extending current re-pricing functionality to November 14, 2016); 79409 (November 28, 2016), 81 FR 87091 (December 2, 2016) (SR–BX–2016–061) (extending current re-pricing functionality to December 12, 2016).

[10] BX notes that a Price to Comply Order will always be adjusted in this scenario, regardless of its port setting.

[11] For example, if the National Best Bid is $10.00 and the National Best Offer is $10.10, and a Price to Comply Order to buy at $10.15 is entered, the Price to Comply Order will be displayed at $10.05 and ranked at $10.075. If the National Best Offer then changes to $10.15, the Price to Comply Order will be adjusted to rank at $10.10, and will remain displayed at $10.05. If the National Best Offer subsequently changes to $10.10, the Price to Comply Order will be cancelled.

BX notes that a Price to Comply Order, Non-Displayed Order, or Post-Only Order entered through OUCH or FLITE in either a Control Group Security, a Test Group One Pilot Security or a Test Group Two Pilot Security would only cancel if the resting order is crossed (not locked) by a Protected Quotation due to a change in the NBBO.

[12] As part of this proposal, BX also proposes to clarify the operation of this provision so that it is structurally consistent with provisions in the descriptions of Price to Comply and Post-Only Orders. Specifically, BX will amend this language to provide that, if a resting Non-Displayed Order in a Test Group Three Pilot Security entered through RASH or FIX becomes locked or crossed by a Protected Quotation due to a change in the NBBO, or if the Non-Displayed Order is at an impermissible price under Regulation NMS or the Plan, the Non-Displayed Order will be repriced to

Continued

a Non-Displayed Order in a Test Group Three Pilot Security entered through OUCH or FLITE, if after such a Non-Displayed Order is posted to the Exchange Book, the NBBO changes so that the Non-Displayed Order would no longer be executable at its posted price due to the requirements of Regulation NMS or the Plan, the Non-Displayed Order will be cancelled back to the Participant.

BX proposes to amend this provision to clarify the behavior of Non-Displayed Orders entered through the OUCH or FLITE protocols in Test Group Three Pilot Securities that lock or cross a Protected Quotation. Specifically, a Non-Displayed Order in a Test Group Three Pilot Security entered through OUCH or FLITE may be adjusted in the following manner after initial entry and posting to the BX Book.

If entered at a price that locked a Protected Quotation, and if the NBBO changes such that its price would no longer lock a Protected Quotation, the Non-Displayed Order will be adjusted to rank at its original entered limit price.[13]

If entered at a price that crossed a Protected Quotation, and if the NBBO changes such that it can be ranked at the price of the Protected Quotation it crossed, the Order, based on the Participant's choice, may either be (i) cancelled or (ii) adjusted to rank at the price of the Protected Quotation it crossed.[14]

If entered at a price that locked or crossed a Protected Quotation, and if the NBBO changes such that it cannot be ranked at the price of the Protected Quotation it locked or crossed but can be ranked closer to its original limit price, the Non-Displayed Order will be adjusted to the new midpoint of the NBBO.[15]

If, after being posted on the BX Book, the Non-Displayed Order becomes locked or crossed by a Protected Quotation due to a change in the NBBO, or if the Non-Displayed Order is at an impermissible price under Regulation NMS or the Plan and it cannot otherwise be adjusted as above, the Non-Displayed Order will be cancelled.[16]

Post-Only Orders

Currently, Rule 4770(d)(4) states that a Post-Only Order in a Test Group Pilot Security will operate as described in Rule 4702(b)(4) except as provided under this paragraph. For orders that are not attributable, if the limit price of a buy (sell) Post-Only Order in a Test Group Three Pilot Security would lock or cross a Protected Quotation of another market center, the Order will display at one minimum price increment below (above) the Protected Quotation, and the Order will be ranked on the Exchange Book at the current midpoint of the NBBO.

BX proposes to augment this provision to clarify the behavior of Post-Only Orders entered through the OUCH or FLITE protocols in Test Group Three Pilot Securities that lock or cross a Protected Quotation. Specifically, a Non-Attributable Post-Only Order in a Test Group Three Pilot Security entered through OUCH or FLITE may be adjusted in the following manner after initial entry and posting to the BX Book.

If entered at a price that locked a Protected Quotation, and if the NBBO changes such that its price will no longer lock a Protected Quotation, the Post-Only Order will be adjusted to rank and display at its original entered limit price.[17]

If entered at a price that crossed a Protected Quotation, and if the NBBO changes such that it can be ranked at the price of the Protected Quotation it crossed, the Post-Only Order, based on the Participant's choice, may either be (i) cancelled or (ii) adjusted to rank at the price of the Protected Quotation it crossed upon entry with its displayed price remaining unchanged.

If, after being posted on the BX Book, the non-displayed price of a resting Post-Only Order becomes locked or crossed by a Protected Quotation due to a change in the NBBO, or if the Post-Only Order is at an impermissible price under Regulation NMS or the Plan and it cannot otherwise be adjusted as above, the Post-Only Order will be cancelled.

Commentary .14

In removing the current re-pricing functionality, Commentary .014 [sic], which addresses the behavior of current treatment of Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols in Test Group Three Pilot Securities, is no longer necessary.[18] The Exchange therefore proposes to delete this Commentary from the Rule.

Finally, BX proposes to add language to Rule 4770(d)(1) to clarify the treatment of orders in a Test Group Three Security entered through the RASH or FIX protocols. Specifically, subject to the provisions set forth in the remainder of Rule 4770(d), if the entered limit price of an Order in a Test Group Three Pilot Security, entered through RASH or FIX, locked or crossed a Protected Quotation and the NBBO changes so that the Order can be ranked closer to its original entered limit price, the price of the Order will be adjusted repeatedly in accordance with changes to the NBBO. BX is proposing to make this change to clarify the current treatment of orders in Test Group Three Pilot Securities entered through RASH or FIX.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)

a price that is at either one minimum price increment below (above) the National Best Offer (National Best Bid) or at the midpoint of the NBBO, whichever is higher (lower) and will receive a new timestamp.

BX notes that a Non-Displayed Order entered through OUCH or FLITE in either a Control Group Security, a Test Group One Pilot Security or a Test Group Two Pilot Security would be ranked at the locking price upon entry.

[13] BX notes that a Non-Displayed Order will always be adjusted in this scenario, regardless of its port setting.

[14] For example, if the National Best Bid is $10.00 and the National Best Offer is $10.10, and a Non-Displayed Order to buy at $10.15 is entered, the Non-Displayed Order will be ranked at $10.05. If the National Best Offer then changes to $10.15, the Non-Displayed Order may either be adjusted to rank at $10.10, or may be cancelled back to the Participant.

[15] For example, if the National Best Bid is $10.00 and the National Best Offer is $10.10, and a Non-Displayed Order to buy at $10.10 is entered, the Non-Displayed Order will be ranked at $10.05. If the National Best Bid then changes to $10.05, the price of the Non-Displayed Order will be adjusted to $10.075.

[16] For example, if the National Best Bid is $10.00 and the National Best Offer is $10.10, and a Non-Displayed Order to buy at $10.10 is entered, the Non-Displayed Order will be ranked at $10.05. If the National Best Offer then changes to $10.05, the Non-Displayed Order will be cancelled back to the Participant.

[17] BX notes that a Post-Only Order will always be adjusted in this scenario, regardless of its port setting.

[18] Under Commentary .14, the current treatment of Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols in Test Group Three securities is as follows:

Following entry, and if market conditions allow, a Price to Comply Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO until such time as the Price to Comply Order is able to be ranked and displayed at its original entered limit price.

Following entry, and if market conditions allow, a Price to Display Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO until such time as the Price to Display Order is able to be ranked and displayed at its original entered limit price.

Following entry, and if market conditions allow, a Non-Displayed Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO up (down) to the Order's limit price.

Following entry, and if market conditions allow, the Post-Only Order in a Test Group Three Pilot Security will be adjusted repeatedly in accordance with changes to the NBBO or the best price on the Exchange Book, as applicable until such time as the Post-Only Order is able to be ranked and displayed at its original entered limit price.

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.

The Exchange believes that the proposed rule change is consistent with the Act because it clarifies the changes the Exchange is making to the handling of certain Order Types necessary to implement the requirements of the Plan on its System and, in the case of the changes of Rule 4770(d)(1), to clarify the current treatment of orders in Test Group Three Pilot Securities entered through RASH or FIX.

As a result of removing the current re-pricing functionality that applies to certain Order Types in Test Group Three Securities entered through the OUCH and FLITE protocols, and due to the different functionality of the OUCH and FLITE protocols in comparison to the other applicable BX protocols, these Order Types will behave differently than is currently set forth in Rule 4770 when entered through the OUCH or FLITE protocols in certain instances. As noted above, these changes will adjust Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through OUCH and FLITE when the Order has been ranked at a midpoint of the NBBO that then becomes impermissible due to changes in the NBBO. These changes also will adjust Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders entered through OUCH and FLITE in scenarios where the subsequent movement of the NBBO implicates the Trade-at prohibition with respect to the resting order.

By clarifying the behavior of certain Order Types in Test Group Three Pilot Securities entered through the OUCH or FLITE protocols, the proposal will help allow market participants to continue to trade NMS Stocks, within quoting and trading requirements that are in compliance with the Plan, with certainty on how certain orders and trading interests would be treated. This, in turn, will help encourage market participants to continue to provide liquidity in the marketplace.

More generally, BX also notes that the Plan, which was approved by the Commission pursuant to an order issued by the Commission in reliance on Section 11A of the Act,[21] provides the Exchange authority to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The Exchange believes that the proposed rule change is consistent with the authority granted to it by the Plan to establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of the Plan. Likewise, the Exchange believes that the proposed rule change provides interpretations of the Plan that are consistent with the Act, in general, and furthers the objectives of the Act, in particular.

Finally, BX believes that the proposal is consistent with the Act because the proposed functionality will more closely align the handling of Price to Comply Orders, Non-Displayed Orders, and Post-Only Orders that are entered through the OUCH or FLITE protocols for Test Group Three Pilot Securities with the handling of such Orders entered through the OUCH or FLITE protocols for Control Group, Test Group One and Test Group Two Securities than the current functionality in place for these Orders.

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 proposed changes are being made to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the trading and quoting requirements specified in the Plan, of which other equities exchanges are also Participants. Other competing national securities exchanges are subject to the same trading and quoting requirements specified in the Plan, and must take the same steps that the Exchange has to conform its existing rules to the requirements of the Plan. Therefore, the proposed changes would not impose any burden on competition, while providing certainty of treatment and execution of trading interests on the Exchange to market participants in NMS Stocks that are acting in compliance with the requirements specified in the Plan.

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 Act[22] and subparagraph (f)(6) of Rule 19b–4 thereunder.[23]

A proposed rule change filed under Rule 19b–4(f)(6)[24] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[25] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. In this filing, the Exchange has asked that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing.

The Exchange notes the proposed rule is intended to clarify the differences in the handling of certain orders entered into the system by different protocols. The Exchange notes that orders will be treated as consistently as possible across the Test Groups and the Control Group while complying with each grouping's varied quoting and trading requirements. Additionally, the Exchange proposed to remove Commentary .14 because it is no longer necessary.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal clarifies the Exchange's rules and provides transparency to members with regards to the handling of certain orders entered via OUCH and FLITE as well as RASH or FIX protocols for locked or crossed orders in Test Group Three Pilot Securities. The Commission notes that the Exchange proposed to remove the functionality described in Commentary .14 and make the necessary corresponding systems changes in Partial Amendment No. 2 to BX–2016–050, which the Commission approved.[26] The Exchange notes that it was able to implement the systems changes and that they became fully operational on the December 14, 2016. Therefore, the

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78k–1.

[22] 15 U.S.C. 78s(b)(3)(A)(iii).

[23] 17 CFR 240.19b–4(f)(6).

[24] *Id.*

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] *See supra* note 5.

Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative on December 14, 2016.[27]

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2016–069 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2016–069. 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 the 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 Number SR–BX–2016–069 and should be submitted on or before January 17, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Eduardo A. Aleman,

Assistant Secretary.

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[27] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79621; File No. SR–CBOE–2016–089]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Credit Option Margin Pilot Program Through July 18, 2017

December 20, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 14, 2016, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") 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[3] and Rule 19b–4(f)(6) thereunder.[4] 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 proposes to amend Rule 12.3 by extending the Credit Option Margin Pilot Program through July 18, 2017.

The text of the proposed rule change is available on the Exchange's Web site (*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

On February 2, 2011, the Commission approved the Exchange's proposal to establish a Credit Option Margin Pilot Program ("Program").[5] The proposal became effective on a pilot basis to run on a parallel track with Financial Industry Regulatory Authority ("FINRA") Rule 4240 that similarly operates on an interim pilot basis.[6]

On January 17, 2012, the Exchange filed a rule change to, among other things, decouple the Program with the FINRA program and to extend the expiration date of the Program to January 17, 2013.[7] The Program, however, continues to be substantially

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 63819 (February 2, 2011), 76 FR 6838 (February 8, 2011) order approving (SR–CBOE–2010–106). To implement the Program, the Exchange amended Rule 12.3(l), *Margin Requirements,* to make CBOE's margin requirements for Credit Options consistent with Financial Industry Regulatory Authority ("FINRA") Rule 4240, *Margin Requirements for Credit Default Swaps.* CBOE's Credit Options (*i.e.,* Credit Default Options and Credit Default Basket Options) are analogous to credit default swaps.

[6] *See* Securities Exchange Act Release No. 59955 (May 22, 2009), 74 FR 25586 (May 28, 2009) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change; SR–FINRA–2009–012).

[7] *See* Securities Exchange Act Release No. 66163 (January 17, 2012), 77 FR 3318 (January 23, 2012) (SR–CBOE–2012–007).