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–MRX–2017–08, and should be submitted on or before July 14, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.21

Eduardo A. Aleman, Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing of a Proposed Rule Change To Adopt Rule 6896 and Chapter IX, Section 9


Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”),1 and Rule 19b–4 thereunder,2 notice is hereby given that on June 9, 2017, 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 adopt Rule 6896 and Chapter IX, Section 9 (Consolidated Audit Trail—Fee Dispute Resolution) to establish the procedures for resolving potential disputes related to CAT Fees charged to Industry Members.3

The text of the proposed rule change is available on the Exchange’s Web site at http://nasdaqbx.chwwallstreet.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

Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. (“FINRA”), Investors’ Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC,4 NASDAQ PHILX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE MKT LLC, NYSE Arca, Inc. and NYSE National, Inc.,5 (collectively, the “Participants”) filed with the Commission, pursuant to Section 11A of the Exchange Act 6 and Rule 608 of Regulation NMS thereunder, 7 the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”).8 The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act. The Plan was published for comment in the Federal Register on May 17, 2016,9 and approved by the Commission, as modified, on November 15, 2016.10 The Plan is designed to create, implement and maintain a consolidated audit trail (“CAT”) that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS, LLC (the “Company”), of which each Participant is a member, to operate the CAT.11 Under the CAT NMS Plan, the Operating Committee of the Company (“Operating Committee”) has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be implemented by the Participants (“CAT Fees”).12 The Participants are required to file with the SEC under Section 19(b) of the Exchange Act any such CAT Fees applicable to Industry Members that the Operating Committee approves.13 Accordingly, the Exchange has filed a proposed rule change with the SEC to adopt the Consolidated Audit Trail Funding Fees, which will require Industry Members that are Exchange members to pay the CAT Fees determined by the Operating Committee.14 The Exchange submits this rule filing to adopt Rule 6896 and Chapter IX, Section 9 (Consolidated


7 17 CFR 242.100.
8 See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.
11 The Plan also serves as the limited liability company agreement for the Company.
12 Section 11A(b) of the CAT NMS Plan.
13 Id.
Audit Trail—Fee Dispute Resolution) to establish the procedures for resolving potential disputes related to CAT Fees charged to Industry Members. The proposed rules are described below.

(1) Definitions

Paragraph (a) of Proposed Rule 6896 and Chapter IX, Section 9 sets forth the definitions for Proposed Rule 6896 and Chapter IX, Section 9. Paragraph (a)(1) of Proposed Rule 6896 and Chapter IX, Section 9 states that, for purposes of Rule 6896 and Chapter IX, Section 9, the terms “CAT NMS Plan”, “Industry Member”, “Operating Committee”, and “Participant” are defined as set forth in the Rule 6810 and Chapter IX, Section 8(a) (Consolidated Audit Trail—Definitions), respectively, and the term “CAT Fee” is defined as set forth in the Consolidated Audit Trail Funding Fees. In addition, the Exchange proposes to add new paragraph (a)(2) to Proposed Rule 6896 and Chapter IX, Section 9. New paragraph (a)(2) would define the term “Subcommittee” to mean a subcommittee designated by the Operating Committee pursuant to the CAT NMS Plan. This definition is the same substantive definition as set forth in Section 1.1 of the CAT NMS Plan.

(2) Fee Dispute Resolution

Section 11.5 of the CAT NMS Plan requires Participants to adopt rules requiring that disputes with respect to CAT Fees charged to Industry Members pursuant to the CAT NMS Plan be determined by the Operating Committee or Subcommittee. Section 11.5 of the CAT NMS Plan also states that decisions by the Operating Committee or Subcommittee on such matters shall be binding on Industry Members, without prejudice to the rights of any such Industry Member to seek redress from the SEC or in any other appropriate forum. The Exchange proposes to adopt paragraph (b) of Proposed Rule 6896 and Chapter IX, Section 9. Paragraph (b) of Proposed Rule 6896 and Chapter IX, Section 9 states that disputes initiated by an Industry Member with respect to CAT Fees charged to such Industry Member pursuant to the Consolidated Audit Trail Funding Fees, including disputes related to the designated tier and the fee calculated pursuant to such tier, shall be resolved by the Operating Committee, or a Subcommittee designated by the Operating Committee, of the CAT NMS Plan, pursuant to the Fee Dispute Resolution Procedures adopted pursuant to the CAT NMS Plan and set forth in paragraph (c) of Proposed Rule 6896 and Chapter IX, Section 9. Decisions on such matters shall be binding on Industry Members, without prejudice to the rights of any such Industry Member to seek redress from the SEC or in any other appropriate forum.

The Operating Committee has adopted “Fee Dispute Resolution Procedures” governing the manner in which disputes regarding CAT Fees charged pursuant to the Consolidated Audit Trail Funding Fees will be addressed. These Fee Dispute Resolution Procedures, as they relate to Industry Members, are set forth in paragraph (c) of Proposed Rule 6896 and Chapter IX, Section 9. Specifically, the Fee Dispute Resolution Procedures provide the procedure for Industry Members that dispute CAT Fees charged to such Industry Member pursuant to one or more of the Participants’ Consolidated Audit Trail Funding Fees Rules, including disputes related to the designated tier and the fee calculated pursuant to such tier, to apply for an opportunity to be heard and to have the CAT Fees charged to such Industry Member reviewed. The Procedures are modeled after the adverse action procedures adopted by various exchanges,15 and will be posted on the Web site for the CAT NMS Plan Web site.16

Under these Procedures, an Industry Member that disputes CAT Fees charged to such Industry Member and that desires to have an opportunity to be heard with respect to such disputed CAT Fees must file a written application with the Company within 15 business days after being notified of such disputed CAT Fees. The application must identify the disputed CAT Fees, state the specific reasons for the action taken by the Company who shall present the reasons for the action taken by the Company that allegedly aggrieved the applicant. The applicant is entitled to be accompanied, represented and advised by counsel at all stages of the proceedings.

The Fee Review Subcommittee will determine all questions concerning the admissibility of evidence and will otherwise regulate the conduct of the hearing. Each of the parties will be permitted to make an opening statement, present witnesses and documentary evidence, cross examine opposing witnesses and present closing arguments orally or in writing as determined by the Fee Review Subcommittee. The Fee Review Subcommittee also will have the right to question all parties and witnesses to the proceeding. The Fee Review Subcommittee must keep a record of the hearing. The formal rules of evidence will not apply.

The Fee Review Subcommittee must set forth its decision in writing and send the written decision to the parties to the proceeding. Such decisions will contain the reasons supporting the conclusions of the Fee Review Subcommittee.

The decision of the Fee Review Subcommittee will be subject to review by the Operating Committee either on its own motion within 20 business days after issuance of the decision or upon written request submitted by the applicant within 15 business days after issuance of the decision. The applicant’s petition must be in writing and must specify the findings and conclusions to which the applicant objects, together with the reasons for such objections. Any objection to a decision not specified in writing will be considered to have been abandoned and may be disregarded. Parties may petition to submit a written argument to the Operating Committee and may request an opportunity to make an oral argument before the Operating Committee. The Operating Committee

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15 See, e.g., Chapter X of BATS BZX Exchange, Inc. (Adverse Action); and Chapter X of NYSE National, Inc. (Adverse Action).

will have sole discretion to grant or deny either request. The Operating Committee will conduct the review. The review will be made upon the record and will be made after such further proceedings, if any, as the Operating Committee may order. Based upon such record, the Operating Committee may affirm, reverse or modify, in whole or in part, the decision of the Fee Review Subcommittee. The decision of the Operating Committee will be in writing, will be sent to the parties to the proceeding and will be final.

The Procedures state that a final decision regarding the disputed CAT Fees by the Operating Committee, or the Fee Review Subcommittee (if there is no review by the Operating Committee), must be provided within 90 days of the date on which the Industry Member filed a written application regarding disputed CAT Fees with the Company. The Operating Committee may extend the 90-day time limit at its discretion. In addition, the Procedures state that any notices or other documents may be served upon the applicant either personally or by leaving the same at its, his or her last known business or residence address. The Procedures also state that any time limits imposed under the Procedures for the submission of answers, petitions or other materials may be extended by permission of the Operating Committee. All papers and documents relating to review by the Fee Review Subcommittee or the Operating Committee must be submitted to the Fee Review Subcommittee or Operating Committee, as applicable.

The Procedures also note that decisions on such CAT Fee disputes made pursuant to these Procedures will be binding on Industry Members, without prejudice to the rights of any such Industry Member to seek redress from the SEC or in any other appropriate forum.

Finally, an Industry Member that files a written application with the Company regarding disputed CAT Fees in accordance with these Procedures is not required to pay such disputed CAT Fees until the dispute is resolved in accordance with these Procedures, including any review by the SEC or in any other appropriate forum. For these purposes, the disputed CAT Fees means the amount of the invoiced CAT Fees that the Industry Member has asserted pursuant to these Procedures that such Industry Member does not owe to the Company. The Industry Member must pay any invoiced CAT Fees that are not disputed CAT Fees when due as set forth in the original invoice.

Once the dispute regarding CAT Fees is resolved pursuant to these Procedures, if it is determined that the Industry Member owes any of the disputed CAT Fees, then the Industry Member must pay such disputed CAT Fees that are owed as well as interest on such disputed CAT Fees from the original due date (that is, 30 days after receipt of the original invoice of such CAT Fees) until such disputed CAT Fees are paid at a per annum rate equal to the lesser of (i) the Prime Rate plus 300 basis points, or (ii) the maximum rate permitted by applicable law.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,17 which requires, among other things, that the Exchange rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers and dealer[sic], and Section 6(b)(4) of the Act,18 which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using its facilities.

The Exchange believes that this proposal is consistent with the Act because it implements, interprets or clarifies Section 11.5 of the Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan “is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.” 19 To the extent that this proposal implements, interprets or clarifies the Plan and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

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The Exchange believes that this proposal is consistent with the Act because it implements, interprets or clarifies Section 11.5 of the Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan “is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.” 19 To the extent that this proposal implements, interprets or clarifies the Plan and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

19 Approval Order at 84697.
SECURITIES AND EXCHANGE COMMISSION  


Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing of a Proposed Rule Change To Adopt Rule 912


Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”), and Rule 19b–4 thereunder,2 notice is hereby given that on June 9, 2017, Nasdaq GEMX, LLC (“GEMX” 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 adopt Rule 912 (Consolidated Audit Trail—Fee Dispute Resolution) to establish the procedures for resolving potential disputes related to CAT Fees charged to Industry Members.3

The text of the proposed rule change is available on the Exchange’s Web site at http://nasdagemx.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

Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. (“FINRA”), Investors’ Exchange LLC, Miami International Securities, Exchange, LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISLE, LLC, Nasdaq MRX, LLC, NASDAQ PHIX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE MKT LLC, NYSE Arca, Inc. and NYSE National, Inc. (collectively, the “Participants”) filed with the Commission, pursuant to Section 11A of the Exchange Act and Rule 608 of Regulation NMS thereunder, the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”). The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act. The Plan was published for comment in the Federal Register on May 17, 2016, and approved by the Commission, as modified, on November 15, 2016. The Plan is designed to create, implement and maintain a consolidated audit trail (“CAT”) that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS LLC (the “Company”), of which each Participant is a member, to operate the CAT. Under the CAT NMS Plan, the Operating Committee of the Company (“Operating Committee”) has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be


2 Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth herein, or in the Consolidated Audit Trail Funding Fees Rule, the CAT Compliance Rule Series or in the CAT NMS Plan.

3 See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.


6 The Plan also serves as the limited liability company agreement for the Company.