

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84354; File No. SR-BX-2018-042)

October 3, 2018

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Align Existing Investigatory and Disciplinary Processes and Related Rules with the Investigatory and Disciplinary Processes and Related Rules of Nasdaq PHLX LLC

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 September 21, 2018, Nasdaq BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“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 a proposal [sic] to align its existing investigatory and disciplinary processes and related rules with the investigatory and disciplinary processes and related rules of Nasdaq PHLX LLC (“Phlx”).

The text of the proposed rule change is available on the Exchange’s Website 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

BX proposes to amend certain of its rules to align its existing investigatory and disciplinary processes and related rules with the investigatory and disciplinary processes and related rules of Phlx. BX notes that Phlx amended its rules recently to adopt an investigatory and disciplinary process identical in all material respects to the investigatory and disciplinary processes of Nasdaq, Inc. and BX.³ The amendment also vested the Phlx Regulation Department with the same authority proposed herein. The Exchange therefore proposes the below changes to the 8000 and 9000 Series of the BX Rules in order to conform its rules to those of Phlx 8000 and 9000 Series rules in all respects.⁴

³ See Securities Exchange Act Release No. 82143 (November 22, 2017), 82 FR 56672 (November 29, 2017) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Investigatory and Disciplinary Processes Substantially Similar to Nasdaq BX, Inc. and The Nasdaq Stock Market LLC for Phlx, which, among other things, similarly enabled Phlx to retain discretion to perform these functions).

⁴ The Exchange notes that the Financial Industry Regulatory Authority (“FINRA”) amended its rules recently to reflect an internal reorganization of FINRA’s Enforcement Operations. See Securities Exchange Act Release No. 83781 (August 6, 2018), 83 FR 39802 (August 10, 2018). In July 2017, FINRA announced its plan to consolidate its existing enforcement functions into a unified Department of Enforcement. FINRA’s recent rule change makes technical and other non-substantive changes to FINRA Rules 9000 Series Code of Procedure (the “Code”) to reflect the single Department of Enforcement. The rule change removed references to the Market Regulation department, its head and employees from the Code where those references reflect the previously separate Market Regulation enforcement function. In light of FINRA’s reorganization, the Exchange is likewise removing references to the Market Regulation department, its head and employees from the Code, and re-lettering the remainder of those sections

Definition of Exchange Regulation

The Exchange proposes to revise the definition of [sic] BX Current Rule 9120(w) (“Exchange’s Regulation Department”) to expressly include the Exchange’s Enforcement Department. The Exchange’s Enforcement Department is specifically charged with pursuing disciplinary action against members, persons associated with a member, and persons subject to the Exchange’s jurisdiction, in addition to FINRA’s departments of Enforcement and Market Regulation.

Similarly, the Exchange proposes to add references to the “Exchange’s Regulation Department” in BX Current Rule 9120(aa) (definition of the term “Party”). The Exchange also proposes to add a definition for the term “Party” as used in the BX Rule 9400 series,⁵ and to add references to “FINRA” in BX Current Rule 9120(aa)(4) to clarify that FINRA falls under the definition of “Party” as used in the BX Rule 9550 series. In addition, the Exchange is adding references to the Exchange’s Regulation Department throughout the BX Rule 8000 and 9000 series.⁶ These amendments will conform the text of BX 8000 and 9000 rules to those of Phlx.⁷

where such re-lettering is necessary (i.e. Rule 9120). Phlx will also submit a similar rule filing to remove those references in due course.

⁵ The Exchange notes that, like Phlx, it is likewise including the Department of Enforcement as a potential party to a matter under the Rule 9400 Series. The Exchange believes that including these departments in Rule 9400 Series is appropriate because they may be involved in the initiation of such a matter for BX currently. The Exchange is also adding FINRA to other parts of Rule 9400 where it is appropriate to show that FINRA may be the entity that initiated an action under the rule.

⁶ See BX Current Rules 9120, 9212, 9213, 9215, 9216, 9251, 9253, 9264, 9269, 9270, 9311, 9400, 9810, 9820, 9830, and 9840.

⁷ The Exchange is also amending Current BX Rule 9120(aa)(2), to align that rule text with FINRA’s recent rule change. The term “Party” when used in the Rule 9520 Series, now means FINRA’s Department of Enforcement, rather than Member Regulation. See Securities Exchange Act Release No. 83781 (August 6, 2018), 83 FR 39802 (August 10, 2018).

Role of FINRA

The Exchange proposes to add rule text to certain rules to clarify that FINRA may act on behalf of the Exchange. Today, FINRA is empowered to act on behalf of the Exchange.⁸ The revisions to these rules will therefore clarify FINRA's authority as it currently exists today.⁹

Jurisdiction

The Exchange proposes to replace the current rule text related to jurisdiction of BX to initiate disciplinary actions with text substantially similar to the Phlx's jurisdiction rule text. Current BX Rules 1012(h)¹⁰ and 1031(f)¹¹ permit a disciplinary action to be brought within two

⁸ See BX Current Rule 8001 ("The Exchange and FINRA are parties to the FINRA Regulatory Contract pursuant to which FINRA has agreed to perform certain functions described in these rules on behalf of the Exchange. Exchange rules that refer to the Exchange's Regulation Department, Exchange Regulation staff, Exchange staff, and Exchange departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of the Exchange pursuant to the FINRA Regulatory Contract.").

⁹ See BX Current Rules 9400, 9522, 9552, 9553, 9554, 9555, 9556, 9557, and 9558. The Exchange notes that FINRA currently performs the functions described in these rules. The proposed changes further clarify that in the rule text.

¹⁰ A resigned Exchange member or an Exchange member that has had its membership canceled or revoked shall continue to be subject to the filing of a complaint under the Rules of the Exchange based upon conduct that commenced prior to the effective date of the Exchange member's resignation from the Exchange or the cancellation or revocation of its membership. Any such complaint, however, shall be filed within two years after the effective date of resignation, cancellation, or revocation.

¹¹ A person whose association with an Exchange member has been terminated and who is no longer associated with any member of the Exchange or a person whose registration has been revoked or canceled shall continue to be subject to the filing of a complaint under the Rules of the Exchange based upon conduct which commenced prior to the termination, revocation, or cancellation or upon such person's failure, while subject to the Exchange's jurisdiction as provided herein, to provide information requested by the Exchange pursuant to the Rules of the Exchange, but any such complaint shall be filed within: (A) two years after the effective date of termination of registration pursuant to subsection (c); provided, however, that any amendment to a notice of termination filed pursuant to paragraph (c)(2) that is filed within two years of the original notice that discloses that such person may have engaged in conduct actionable under any applicable statute, rule, or regulation shall operate to recommence the running of the two-year

years after the effective date of resignation, cancellation, or revocation of a member or associated person. The current BX provisions are more limited than Phlx's jurisdictional language. Phlx Rule 9110(d) does not contain a time limit on when a matter may be brought against a member or associated person following its termination or deregistration, so long as the Exchange serves written notice within one year of receipt by the Exchange of notice of such termination or deregistration that the Exchange is making inquiry into a matter or matters which occurred prior to the termination of such person's status as a member or associated person.¹² The substantive

period under this subsection; (B) two years after the effective date of revocation or cancellation of registration pursuant to the Rules of the Exchange; or (C) in the case of an unregistered person, within two years after the date upon which such person ceased to be associated with the Exchange member.

A person whose association with a member has been terminated and is no longer associated with any Exchange member shall continue to be subject to a proceeding to suspend, consistent with Section 12.2 of the Exchange By-Laws, his or her ability to associate with a member based on such person's failure to comply with an arbitration award or a written and executed settlement agreement obtained in connection with an arbitration or mediation submitted for disposition pursuant to the Rules of the Exchange, provided that such proceeding is instituted within two years after the date of entry of such award or settlement.

¹² Any member or any partner, officer, director or person employed by or associated with any member (the Respondent) who is alleged to have violated or aided and abetted a violation of the Securities Exchange Act of 1934 (Exchange Act), the rules and regulations thereunder, the By-Laws and Rules of the Exchange or any interpretation thereof, and the Rules, Regulations, resolutions and stated policies of the Board of Directors or any Committee of the Exchange, shall be subject to the disciplinary jurisdiction of the Exchange, and after notice and opportunity for a hearing may be appropriately disciplined by expulsion, suspension, fine, censure, limitation or termination as to activities, functions, operations, or association with a member organization, or any other fitting sanction in accordance with the provisions of these disciplinary Rules.

An individual member, or a partner, officer, director or person employed by or associated with a member may be charged with any violation within the disciplinary jurisdiction of the Exchange committed by employees under his supervision or by the member with which he is associated, as though such violations were his own. A member may be charged with any violation within the disciplinary jurisdiction of the Exchange committed by its officers, directors, or employees or by a member or other person who is associated with such member, as though such violation were its own.

amendment with respect to jurisdiction is with the timeframe for bringing a disciplinary action against a member or associated person. The proposed rule expands the timeframe.

The amendment to expand jurisdiction will not apply retroactively and any complaints not filed within the existing two year time-period will be time-barred. The new jurisdiction rule will only apply to the applicable members or associated persons who terminate with the Exchange on or after October 15, 2018.

The Exchange also proposes to eliminate the rule text contained within BX Current Rules 1012(h) and 1031(f) and reserve those sections.

Interested Staff Definition

The definition of Interested Staff is being conformed to Phlx's definition and includes references to Exchange and FINRA employees as those terms are proposed to be defined.¹³ The proposed BX definition better defines who falls within the category of Interested Staff without substantively amending the definition. At this time, BX's proposal mirrors the Phlx definition, except insofar as BX's proposal omits references to FINRA's Department of Market Regulation

Any member, or any partner, officer, director, or person employed by or associated with a member organization, and any member organization shall continue to be subject to the disciplinary jurisdiction of the Exchange following the termination of such person's permit or the termination of the employment by or the association with a member organization of such member or partner, officer, director or person, or following the deregistration of a member organization from the Exchange; provided, that the Exchange serves written notice to such former member, partner, officer, director, employee, associated person or member organization within one year of receipt by the Exchange of notice of such termination or deregistration that the Exchange is making inquiry into a matter or matters which occurred prior to the termination of such person's status as a member, or as a partner, officer, director or person employed by or associated with a member organization, or prior to the deregistration of such member organization.

¹³ As noted in n.6 above, the Exchange is, however, omitting references to FINRA's Department of Market Regulation in light of FINRA's recent rule filing that similarly omitted references to its Department of Market Regulation.

for the reasons set forth in footnote 6 above.¹⁴ The Exchange also notes that it is removing the words “a district director or” from BX Current Rules 9120(t)(1)(D), 9120(t)(2)(D), and 9120(t)(3)(D) because there is no such position at the Exchange. The use of those words in the current definition refers to the individual to whom a FINRA employee may report. Those words are therefore being preserved as they relate to FINRA in Proposed BX New Rules 9120(r)(1)(H), 9120(r)(2)(E), 9120(4)(3)(E), and 9120(4)(r)(F).

Other Non-Substantive and Technical Amendments

The Exchange proposes to add a sentence within Current BX Rule 9270(e)(2), similar to Phlx, to add more specificity to this rule and make clear that the Office of Disciplinary Affairs may accept an offer of settlement and order of acceptance or refer them to the Exchange Review Council. The Exchange notes that today the Office of Disciplinary Affairs may accept an offer of settlement and order of acceptance or refer them to the Exchange Review Council, so this language is intended to clarify the current practice under the rule.

The Exchange also proposes to make certain technical amendments throughout these rules to: (i) amend “NASD” to the updated name “FINRA”¹⁵; (ii) replace “Association” with “FINRA”¹⁶; (iii) update certain incorrect cross-references to both FINRA and Nasdaq rule citations¹⁷; (iv) add rule text in certain rules to conform the rule text of BX to Phlx¹⁸; (v) include

¹⁴ The Exchange notes that it is adopting a more comprehensive definition of “Interested Staff” under BX Current Rule 9120(t) to align it with the definition used by Phlx. Specifically, the Exchange is adopting new text that accounts for the role of the Exchange’s Regulation Department, including the involvement of employees thereof. Thus, the proposed new definition will include all individuals that should be considered as “Interested Staff” for purposes of the BX Rule 9000 Series.

¹⁵ See BX Current Rule 8110 and 9120(f).

¹⁶ See BX Current Rules 9558(a), 9558(a)(2), and 9610(a).

¹⁷ See BX Current Rules 9231(c) and 9331(a)(2).

¹⁸ See BX Current Rules IM-8310-3, 9211(a)(1)-(2), and 9270(e)(2).

the phrase “or person” in various places throughout the rule to make it clear that inclusion of the person associated with a member is applicable¹⁹; and correct typographical errors.²⁰

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,²² 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. In addition, the Exchange believes that the proposed rule changes [sic] further the objectives of Section 6(b)(7) of the Act,²³ in particular, in that these changes provide for fair procedures for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof.

In addition, the Exchange believes that the proposed rule changes are consistent with Section 6(b)(6) of the Act,²⁴ which requires the rules of an exchange provide that its members be appropriately disciplined for violations of the Act as well as the rules and regulations thereunder, or the rules of the Exchange, by expulsion, suspension, limitation of activities, functions, and

¹⁹ See BX Current Rules 9552(b), 9553(b), 9554(b), 9555(b), and 9556(e).

²⁰ See BX Current Rules 9215(f), 9523(a)(4) and 9554(a).

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(5).

²³ 15 U.S.C. 78f(b)(7).

²⁴ 15 U.S.C. 78f(b)(6).

operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

The Exchange believes that the proposed changes are consistent with these requirements because the changes further harmonize BX's investigative and adjudicatory processes with similar processes used by Phlx. The new processes are well-established as fair and designed to protect investors and the public interest. Because the Exchange is conforming the BX rule text to the Phlx rule text to eliminate any differences (except for those noted herein), the Exchange believes that the proposed changes should facilitate prompt, appropriate, and effective discipline of members and their associated persons consistent with the Act. The Exchange believes that adding references to the Exchange's Regulation Department within the 8000 and 9000 BX Series rules as described in this proposal clarifies the involvement that the Exchange's Regulation Department plays in the investigation and enforcement of BX's disciplinary rules. In addition, the Exchange believes that adding references to FINRA within the 8000 and 9000 BX Series rules as described in this proposal brings greater transparency to its rules and clarifies the process as it exists today. Today, FINRA is empowered to act on behalf of the Exchange.²⁵

The Exchange believes that harmonizing the rule text of the investigative and adjudicatory processes with those of Phlx will reduce the burden on members and their associated persons as they only will need to be familiar with a single rule set going forward. Because the substance of the rules would remain unchanged, the Exchange believes that the proposed change would continue to provide fair procedures for the suspending and disciplining of members and associated persons, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the

²⁵ See BX Current Rule 8001.

prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof.

The Exchange's proposal to replace the current rule text related to jurisdiction of BX to initiate disciplinary actions with text substantially similar to the Phlx's jurisdiction rule text will permit the Exchange to initiate a disciplinary action beyond two years after the effective date of the member's or associated person's termination with the Exchange. This provision would not apply retroactively, but would permit the Exchange to bring actions after the effective date of termination, so long as the Exchange serves written notice within one year of receipt by the Exchange of notice of such termination that the Exchange is making inquiry into a matter or matters which occurred prior to the termination of status as a member or associated person. The Exchange believes that this provision will provide the Exchange with the same latitude as Phlx to bring actions against its members and associated persons for violations of its rule. The Exchange believes that it is consistent with the Act to provide the Exchange with the ability to initiate violations for members and their associated persons for violations which took place while these members and associated persons were members of the Exchange. The rule change will better protect investors and the public interest by allowing actions to proceed that may otherwise have been time barred under the old rule.

The Exchange's proposal to amend the definition of Interested Staff will conform BX's definition to Phlx's definition, except insofar as BX's proposal omits references to FINRA's Department of Market Regulation for the reasons set forth in footnote 6 above. The Exchange believes that it is consistent with the Act because the definition better defines who falls within the category of Interested Staff without substantively amending the definition.

Finally, making technical amendments in BX Rules 8110, IM-8310-3, 9120, 9211, 9231, 9270, 9331, 9522, 9523, 9552, 9553, 9554, 9555, 9556, 9558, and 9610 removes impediments to and perfects the mechanism of a free and open market by removing confusion that may result from having incorrect or incomplete material in the Exchange's rulebook.

The Exchange believes that its proposal furthers the objectives of Section 6(b)(7) of the Act,²⁶ in that it is designed to provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange or a member thereof. Specifically, the Exchange believes that the proposed investigatory and disciplinary process is consistent with Section 6(b)(7) of the Act²⁷ because it is based on the existing processes used by Phlx.

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 rule change is intended to more clearly align the text of Phlx's and the Exchange's rules. Specifically and as described in detail above, the Exchange believes that this change will bring efficiency and consistency to the investigative and adjudicatory processes, thereby reducing the burden on members and their associated persons who are also members of Phlx.

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.

²⁶ 15 U.S.C. 78f(b)(7).

²⁷ Id.

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 Act²⁸ and subparagraph (f)(6) of Rule 19b-4 thereunder.²⁹

A proposed rule change filed under Rule 19b-4(f)(6)³⁰ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),³¹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so the Exchange may immediately amend its disciplinary rules to conform to Phlx's disciplinary process. The Exchange states that the proposed amendment to expand its current jurisdiction will not apply retroactively and any complaints not filed within the existing two-year time period will be time-barred. The Exchange further states that its new jurisdiction rule will only apply to applicable members or associated persons who terminate their membership or association on October 15, 2018 or thereafter. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow BX to conform its disciplinary rules to those of Phlx. In addition, the

²⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

³⁰ 17 CFR 240.19b-4(f)(6).

³¹ 17 CFR 240.19b-4(f)(6)(iii).

proposal does not present any novel issues. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.³²

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 necessary or appropriate in the public interest, for the protection of investors, or 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 e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2018-042 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 Number SR-BX-2018-042. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

³² For purposes only of waving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<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 website 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BX-2018-042 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

Eduardo A. Aleman
Assistant Secretary

³³ 17 CFR 200.30-3(a)(12).