

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96422; File No. SR-BX-2022-024)

December 1, 2022

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Definition of Short Term Option Series

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 November 22, 2022, 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 amend certain rule text within General 2, Organization and Administration; Equity 2. Market Participants; Options 1, General Provisions; Options 4A, Options Index Rules; and Options 10, Doing Business with the Public.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/bx/rules>, 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

The Exchange proposes to amend the description of the term “Short Term Option Series” within Options 1, Section 1, Definitions, to conform the term to Nasdaq ISE, LLC’s (“ISE”) term of Short Term Option Series which was recently amended.³ The Exchange also proposes to amend certain rule text within Options 4A, Section 12, Terms of Index Options Contracts, related to the Short Term Option Series Program. Finally, the Exchange propose certain other non-substantive amendments. Each change is described below.

Short Term Option Series

Options 1, Section 1(a)(58) describes the term “Short Term Option Series” as follows:

The term “Short Term Option Series” means a series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Monday, Tuesday, Wednesday, Thursday or Friday that is a business day and that expires on the Monday, Wednesday or Friday of the next business week, or, in the case of a series that is listed on a Friday and expires on a Monday, is listed one business week and one business day prior to that expiration. If a Tuesday, Wednesday, Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Tuesday, Wednesday, Thursday or Friday, respectively. For a series listed pursuant to this Rule for Monday expiration, if a Monday is not a business day, the series shall expire on the first business day immediately following that Monday.

³ See Securities Exchange Act Release No. 96281 (November 9, 2022), 87 FR 68769 (November 16, 2022) (SR-ISE-2022-18) (Order Granting Approval of a Proposed Rule Change to Amend the Short Term Option Series Program). BX’s Options 4 Rules are incorporated by reference to ISE’s Options 4 Rules and therefore the approval of ISE’s Options 4 rules permit the listing and trading of options series with Tuesday and Thursday expirations for options on SPY and QQQ on BX.

ISE's Options 4 rules were recently amended to expand the Short Term Option Series Program to permit the listing and trading of options series with Tuesday and Thursday expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series Program.⁴ In conjunction with that change, ISE amended its definition of Short Term Option Series, within Options 1, Section 1(a)(49), to accommodate the listing of options series that expire on Tuesdays and Thursdays.⁵ Specifically, the Exchange added Tuesday and Thursday to the permitted expiration days, which currently include Monday, Wednesday, and Friday, that it may open a series for trading.

At this time, the Exchange proposes to amend the term "Short Term Option Series" at Options 1, Section 1(a)(58) to provide,

The term "Short Term Option Series" means a series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Monday, Tuesday, Wednesday, Thursday or Friday that is a business day and that expires on the Monday, Tuesday, Wednesday, Thursday, or Friday of the next business week, or, in the case of a series that is listed on a Friday and expires on a Monday, is listed one business week and one business day prior to that expiration. If a Tuesday, Wednesday, Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Tuesday, Wednesday, Thursday or Friday, respectively. For a series listed pursuant to this Rule for Monday expiration, if a Monday is not a business day, the series shall expire on the first business day immediately following that Monday.

Today, ISE's listing rules, which BX incorporates by reference, permit the listing and trading of options series with Tuesday and Thursday expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series Program.

⁴ See note 3 above. BX's Options 4 Rules are incorporated by reference to ISE's Options 4 Rules.

⁵ See note 3 above.

Options 4A, Section 12

In 2014, BX amended the Short Term Option Series Program for equity options within Chapter IV, Section 6 (currently Supplementary Material .03 to Options 4, Section 5) to change the number of currently listed option classes on which Short Term Option Series may be opened on any Short Term Option Opening Date from thirty to fifty options classes.⁶ Further, BX also amended the number of Short Term Option Series that the Exchange may open for each expiration date in that class from twenty to thirty.⁷ At that time, the Exchange neglected to update the index options rules to make similar changes to the Short Term Option Series Program given that the amount of options classes that may participate in the Short Term Option Series Program is aggregated between equity options and index options instead of between equity and index options.

Today, Options 4A, Section 12(h)(1)(i) provides,

The Exchange may select up to thirty (30) currently listed option classes on which Short Term Option Series may be opened on any Short Term Option Opening Date. In addition to the 30 option class restriction, the Exchange may also list Short Term Option Series on any option classes that are selected by other securities exchanges that employ a similar program under their respective rules. For each index option class eligible for participation in the Short Term Option Series Program, the Exchange may open up to 20 Short Term Option Series on index options for each expiration date in that class. The Exchange may also open Short Term Option Series that are opened by other securities exchanges in option classes selected by such exchanges under their respective short term option rules.

At this time, the Exchange proposes to amend Options 4A, Section 12(h)(1)(i) to increase the number of currently listed options classes on which Short Term Option Series may be opened on any Short Term Option Opening Date from thirty to fifty options classes for index options.

⁶ See Securities Exchange Act Release No. 72700 (July 29, 2014), 79 FR 45515 (August 5, 2014) (SR-BX-2014-038) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Short Term Options Series).

⁷ Id.

Additionally, the Exchange proposes to amend the number of Short Term Option Series the Exchange may open on index options for each expiration date in that class from twenty to thirty. These amendments would align the limitations within Options 4A, Section 12(h)(1)(i) with those currently within Supplementary .03 to Options 4, Section 5. The Exchange also proposes to add certain titles before Options 4A, Section 12(h)(1)(i) – (v) to indicate the subject matter of the paragraphs. Those amendments are non-substantive amendments intended to bring clarity to the rule text.

As noted above, this amendment will not result in a greater number of listings in the Short Term Option Series Program because the amount of options classes that may participate in the Short Term Option Series Program is aggregated between equity options and index options instead of apportioned between equity and index options. Amending Options 4A, Section 12(h)(1)(i) to conform to the limitations provided within Supplementary .03 to Options 4, Section 5 will avoid confusion by making clear the aggregate limitations within equity and index options for listing Short Term Option Series. Today, ISE, Nasdaq Phlx LLC (“Phlx”) and Cboe Exchange, Inc. (“Cboe”) have similar limitations within their equity and index Short Term Option Series Program.⁸

Other Non-Substantive Amendments

The Exchange proposes to remove and reserve Equity 2, Section 3, “Nasdaq BX Market Participant Registration.” The Nasdaq Stock Market LLC (“Nasdaq”) recently filed to relocate a

⁸ See ISE and Phlx Options 4A, Section 12(b)(4) and Cboe Exchange, Inc. Rules 4.5 and 4.13. See also Securities Exchange Act Release No. 95077 (June 9, 2022), 87 FR 36188 (June 15, 2022) (SR-Phlx-2022-25) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 4A, Section 12, Terms of Index Options Contracts).

similar Nasdaq Rule into General 3, Rule 1032.⁹ BX's General 3 is incorporated by reference to Nasdaq's General 3, therefore the rule within Equity 2, Section 3 is not necessary as an identical rule exists within BX General 3, Rule 1000 Series.

The Exchange proposes to make other amendments to reserve certain sections of the Rulebook. These sections contain content in other Nasdaq affiliated rulebooks. To harmonize the section numbers across the Nasdaq affiliated markets, the Exchange proposes to reserve General 2, Sections 23 and 24 as well as Options 10, Sections 26 and 27.¹⁰ These amendments are non-substantive.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² 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.

Short Term Option Series

The Exchange's proposal to amend the term "Short Term Option Series" at Options 1, Section 1(a)(58) to reflect the recent change¹³ to ISE's listing rules, which BX incorporates by

⁹ See Securities Exchange Act Release No. 96132 (October 24, 2022), 87 FR 65272 (October 28, 2022) (SR-NASDAQ-2022-058) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Equity 2, Section 3).

¹⁰ Phlx has rules within General 2, Sections 23 and 24. ISE, Nasdaq GEMX, LLC ("GEMX") and Nasdaq MRX, LLC ("MRX") have rules within Options 10, Section 26 and 27.

¹¹ 15 U.S.C. 78f(b)

¹² 15 U.S.C. 78f(b)(5).

¹³ See note 3 above.

reference, to permit the listing and trading of options series with Tuesday and Thursday expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series Program is consistent with the Exchange Act. This proposal will align the description of Short Term Option Series within Options 1, Section 1(a)(58) to the expirations permitted within the Short Term Option Series Program within Supplementary .03 to Options 4, Section 5.

Options 4A, Section 12

In 2014, BX amended the Short Term Option Series Program for equity options within Chapter IV, Section 6 (currently Options 4, Section 5) to change the number of currently listed option classes on which Short Term Option Series may be opened on any Short Term Option Opening Date from thirty to fifty options classes.¹⁴ Further, BX also amended the number of Short Term Option Series that the Exchange may open for each expiration date in that class from twenty to thirty.¹⁵ At that time, the Exchange neglected to update the index options rules to make similar changes to the Short Term Option Series Program given that the amount of options classes that may participate in the Short Term Option Series Program is aggregated between equity options and index options instead of between equity and index options. Amending Options 4A, Section 12(h)(1)(i) to conform to the limitations provided within Supplementary .03 to Options 4, Section 5 will avoid confusion by making clear the aggregate limitations within equity and index options for listing Short Term Option Series. Also, aligning the limitations within Options 4A, Section 12(h)(1)(i) with those currently within Supplementary .03 to Options 4, Section 5 will not result in a greater number of listings in the Short Term Option Series Program because the amount of options classes that may participate in the Short Term Option

¹⁴ See note 6 above.

¹⁵ See note 6 above.

Series Program is aggregated between equity options and index options instead of between equity and index options. Today, ISE, Phlx and Cboe have similar limitations within their equity and index Short Term Option Series Program.¹⁶

Other Non-Substantive Amendments

The Exchange's proposal to remove and reserve Equity 2, Section 3, "Nasdaq BX Market Participant Registration" represents a non-substantive amendment. Nasdaq recently filed to relocate a similar Nasdaq Rule into General 3, Rule 1032.¹⁷ BX's General 3 is incorporated by reference to Nasdaq's General 3, therefore the rule within Equity 2, Section 3 is not necessary as an identical rule exists within BX General 3, Rule 1000 Series.

The Exchange's proposal to make other amendments to reserve certain sections of the Rulebook, namely General 2, Sections 23 and 24 as well as Options 10, Sections 26 and 27, to harmonize section numbers across the Nasdaq affiliated markets are non-substantive.¹⁸

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Short Term Option Series

The Exchange's proposal to amend the term "Short Term Option Series" at Options 1, Section 1(a)(58) to reflect the recent change¹⁹ to ISE's listing rules, which BX incorporates by reference, to permit the listing and trading of options series with Tuesday and Thursday expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series

¹⁶ See note 8 above.

¹⁷ See note 9 above.

¹⁸ See note 10 above.

¹⁹ See note 3 above.

Program does not impose an undue burden on competition, rather this proposal will align the description of Short Term Option Series within Options 1, Section 1(a)(58) to the expirations permitted within the Short Term Option Series Program within Supplementary .03 to Options 4, Section 5.

Options 4A, Section 12

Amending Options 4A, Section 12(h)(1)(i) to conform to the limitations provided within Supplementary .03 to Options 4, Section 5 will avoid confusion by making clear the aggregate limitations within equity and index options for listing Short Term Option Series. Also, aligning the limitations within Options 4A, Section 12(h)(1)(i) with those currently within Supplementary .03 to Options 4, Section 5 will not result in a greater number of listings in the Short Term Option Series Program because the amount of options classes that may participate in the Short Term Option Series Program is aggregated between equity options and index options instead of between equity and index options. Today, ISE, Phlx and Cboe has similar limitations within its equity and index Short Term Option Series Program.²⁰

Other Non-Substantive Amendments

The Exchange's proposal to remove and reserve Equity 2, Section 3, "Nasdaq BX Market Participant Registration" represents a non-substantive amendment. Nasdaq recently filed to relocate a similar Nasdaq Rule into General 3, Rule 1032.²¹ BX's General 3 is incorporated by reference to Nasdaq's General 3, therefore the rule within Equity 2, Section 3 is not necessary as an identical rule exists within BX General 3, Rule 1000 Series.

²⁰ See note 8 above.

²¹ See note 9 above.

The Exchange's proposal to make other amendments to reserve certain sections of the Rulebook, namely General 2, Sections 23 and 24 as well as Options 10, Sections 26 and 27, to harmonize section numbers across the Nasdaq affiliated markets are non-substantive.²²

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 Act²³ and subparagraph (f)(6) of Rule 19b-4²⁴ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)²⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁶ the Commission may designate a shorter time of such action is consistent with the protection of investor and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that this proposed rule change could immediately benefit market

²² See note 10 above.

²³ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁴ 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.

²⁵ 17 CFR 240.19b-4(f)(6).

²⁶ 17 CFR 240.19b-4(f)(6)(iii).

participants by avoiding confusion, as the BX Options 4 rules are incorporated to ISE's Options 4 rules. The Exchange also states that these rules permit the listing and trading of options series with Tuesday and Thursday expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series Program. For these reasons, and because the proposed rule change does not raise any novel regulatory issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.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 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

²⁷ For purposes only of waiving 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).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2022-024 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-2022-024. This file number should be included on the subject line if e-mail 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 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-2022-024 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.²⁸

Sherry R. Haywood,
Assistant Secretary.

²⁸ 17 CFR 200.30-3(a)(12).