



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97620; File No. SR-BX-2023-013]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Various Options 3 Rules and Options 5, Section 4

May 30, 2023.

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 May 16, 2023, Nasdaq BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 3, Options Trading Rules, at: Section 4 Entry and Display of Quotes; Section 5, Entry and Display of Orders; Section 7, Types of Orders and Quote Protocols; Section 8, Options Opening Process; Section 11, Auction Mechanisms; Section 13, Price Improvement Auction (“PRISM”); Section 15, Risk Protections; and Options 3, Section 18, Detection of Loss of Communication. The Exchange also proposes to amend Options 5, Section 4, Order Routing.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

BX proposes to amend Options 3, Options Trading Rules, at: Section 4, Entry and Display of Quotes; Section 5, Entry and Display of Orders; Section 7, Types of Orders and Quote Protocols; Section 8, Options Opening Process; Section 11, Auction Mechanisms; Section 13, Price Improvement Auction ("PRISM"); Section 15, Risk Protections; and Options 3, Section 18, Detection of Loss of Communication. The Exchange also proposes to amend Options 5, Section 4, Order Routing. Each change will be discussed below. The amendments proposed herein seek to codify the current System functionality. The proposed amendments will not result in System changes.

Option 3, Sections 4 and 5

The Exchange proposes to codify existing functionality that allows Market Makers to submit their quotes to the Exchange in block quantities as a single bulk message. In other words, a Market Maker may submit a single message to the Exchange, which may contain bids and offers in multiple series. The Exchange's current rules do not specify bulk messaging for orders. The Exchange has historically provided Market Makers with information regarding bulk messaging in its publicly available technical specifications.³ To promote greater transparency,

³ See https://www.nasdaq.com/docs/2023/01/12/0054-Q23_SQF_8.2b%20akg_NAM.pdf (specifying for bulk quoting of up to 200 quotes per quote block message). The specifications note in other places the manner in which a Participant can send such quote

the Exchange is seeking to codify this functionality in its Rulebook. Specifically, the Exchange proposes to amend BX Options 3, Section 4(b)(3) to memorialize that quotes may be submitted as a bulk message. The Exchange also proposes to add a definition of “bulk message” in new subparagraph (i) of Options 3, Section 4(b)(3), which will provide that a bulk message means a single electronic message submitted by a Market Maker to the Exchange which may contain a specified number of quotations as designated by the Exchange.⁴ The bulk message, submitted via SQF,⁵ may enter, modify, or cancel quotes. Bulk messages are handled by the System in the same manner as it handles a single quote message. MRX recently added bulk messages to MRX Options 3, Section 4(b)(3).⁶ The proposed amendment to the Rulebook to add BX Options 3, Section 4(b)(3) will not result in a System change.

The Exchange also proposes to amend BX Options 3, Section 4(b)(6) to provide the following,

A quote will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. If, at the time of entry, a quote would cause a locked or crossed market violation or would cause a trade-through, violation, it will be re-priced to the current national best offer (for bids) or the current national best bid (for offers) *as non-displayed*, and displayed

block messages.

⁴ Id. As noted above, quote bulk messages can presently contain up to 200 quotes per message. This is the maximum amount that is permitted in a bulk message. The Exchange would announce any change to these specifications in an Options Technical Update distributed to all Participants.

⁵ “Specialized Quote Feed” or “SQF” is an interface that allows Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses to the Exchange. Features include the following: (1) options symbol directory messages (e.g., underlying instruments); (2) System event messages (e.g., start of trading hours messages and start of opening); (3) trading action messages (e.g., halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge requests from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series. See Options 3, Section 7(e)(1)(B).

⁶ See Securities Exchange Act, Release No. 95982 (October 4, 2022), 87 FR 61391 (October 11, 2022) (SR-MRX-2022-18) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Rules in Connection With a Technology Migration to Enhanced Nasdaq Functionality) (“SR-MRX-2022-18”).

at one minimum price variance above (for offers) or below (for bids) the national best price.

Where a quote is re-priced to avoid a locked or crossed market, the best bid or offer will be non-displayed and the re-priced order will be displayed at a price that is one minimum trading increment inferior to the ABBO. A similar change is proposed for Options 3, Section 5(d). MRX recently amended Options 3, Section 4(b)(6) and Options 3, Section 5(d) to include this language.⁷ At this time, the Exchange proposes to amend BX's rule text to reflect that the actual price remains non-displayed in this scenario. The proposed amendment to the Rulebook to add BX Options 3, Section 4(b)(6) will not result in a System change.

Similarly, the Exchange proposes to add a new BX Options 3, Section 4(b)(7) to clarify that, today, BX's System will automatically execute eligible quotes using the Exchange's displayed best bid and offer ("BBO") or the Exchange's non-displayed order book ("internal BBO")⁸ if the best bid and/or offer on the Exchange has been repriced pursuant to Options 3, Section 5(d) and Options 3, Section 4(b)(6). This rule text seeks to codify the current System function and make clear that the internal BBO is comprised of both orders and quotes.⁹ MRX recently amended Options 3, Section 4(b)(7) to include the same language.¹⁰ At this time, the Exchange proposes to align BX's rule text in Options 3, Section 4(b)(7) to MRX's rule text in Options 3, Section 4(b)(7). The proposed amendment to the Rulebook to add BX Options 3, Section 4(b)(7) will not result in a System change.

Finally, the Exchange proposes to amend BX Options 3, Section 5(c) to include a citation to Options 3, Section 4(b)(6) as the internal BBO is comprised of both orders and quotes, similar

⁷ See Securities Exchange Act, Release No. 95807 (September 16, 2022), 87 FR 57933 (September 22, 2022) (SR-MRX-2022-16) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Rules in Connection With a Technology Migration to Enhanced Nasdaq Functionality) ("SR-MRX-2022-16").

⁸ The internal BBO refers to the Exchange's non-displayed book.

⁹ The Exchange also proposes to re-number current Options 3, Section 4(b)(7) as (8).

¹⁰ See SR-MRX-2022-16.

to MRX.¹¹

The amendments proposed to Options 3, Sections 4 and 5 do not change the current System functionality.

Options 3, Section 7

The Exchange proposes to amend the title of BX Options 3, Section 7 from “Types of Orders and Quote Protocols” to “Types of Orders and Order and Quote Protocols” so that it may align BX’s title to MRX Options 3, Section 7.

The Exchange proposes to amend BX Options 3, Section 7(a)(9) to add the word “Order” after “PRISM”. This is a non-substantive technical amendment to align the term to its usage within Options 3, Section 13.

The Exchange proposes to amend the rule text of BX Options 3, Section 7(a)(8), related to an Opening Sweep,¹² and (b)(1), related to Opening Only¹³ or “OPG” orders, to reflect a current System function. The Exchange proposes to specify that these order types are subject to the Market Wide Risk Protection within Options 3, Section 15. The Market Wide Risk Protection within Options 3, Section 15(a)(1)(C) automatically removes orders when certain firm-set thresholds are met. Specifically, the Market Wide Risk Protection requires all Participants to provide parameters for the order entry and execution rate protections. Today, the Market Wide Risk Protection applies to Opening Sweep Orders and OPG Orders, similar to other order types, and allows BX Participants to manage their exposure to risk in the Opening Process, described in Options 3, Section 8, as well as intra-day. The Market Wide Risk Protection is designed to reduce risk associated with System errors or market events that may cause Participants to send a large number of orders, or receive multiple, automatic executions, before

¹¹ Id.

¹² An Opening Sweep is a one-sided order entered by a Market Maker through SQF for execution against eligible interest in the System during the Opening Process.

¹³ An OPG order is entered with a TIF of “OPG.” This order can only be executed in the Opening Process pursuant to Options 3, Section 8. See Options 3, Section 7(b)(1).

they can adjust their exposure in the market. Specifically, the availability of Market Wide Risk Protection during the Opening Process assists Participants in managing their pre-open risk. The proposed amendments to BX Options 3, Section 7(a)(8) and (b)(1) will not result in a System change.

The Exchange proposes to amend the rule text at BX Options 3, Section 7(b)(2)(C) to add Block Orders¹⁴ and Customer Cross Orders¹⁵ to Options 3, Section 7(b)(2)(C) and replace the term “Price Improvement Auction (“PRISM”) Mechanism” with “PRISM Orders.” The proposed sentence would state that “Block Orders, Customer Cross Orders, and PRISM Orders are considered to have a TIF of IOC.” In 2020, BX adopted Block Orders and Customer Cross Orders in a technology migration.¹⁶ At that time, the Exchange should have added those order types to this list. At this time, the Exchange proposes to update this list to include these order types. Further, the Exchange proposes to state that, “By their terms, these orders will be: (1) executed either on entry or after the exposure period, or (2) cancelled.” The additional language is being added because Customer Cross Orders may be executed upon entry, provided all the terms are satisfied. This proposed change aligns BX’s rule text to MRX’s rule text at Supplementary Material .02(d)(3) of Options 3, Section 7. The proposed amendments to BX Options 3, Section 7(b)(2)(C) will not result in a System change.

Finally, the Exchange proposes to amend the description of Specialized Quote Feed or

¹⁴ A “Block Order” is an order entered into the Block Order Mechanism as described in Options 3, Section 11(a). See Options 3, Section 7(a)(11).

¹⁵ A “Customer Cross Order” is as described in Options 3, Section 12(a). See Options 3, Section 7(a)(10).

¹⁶ See Securities Exchange Act, Release No. 89759 (September 3, 2020), 85 FR 55886 (September 10, 2020) (SR-BX-2020-023) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Rules in Connection With a Technology Migration to Enhanced Nasdaq, Inc. Functionality) (“SR-BX-2020-023”). See also Securities Exchange Act, Release No. 89476 (August 4, 2020), 85 FR 482274 (August 10, 2020) (SR-BX-2020-017) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Various BX Rules in Connection With a Technology Migration) (“SR-BX-2020-017”).

“SQF” within BX Options 3, Section 7(e)(1)(B) to add rule text which states, “Immediate-or-Cancel Orders entered into SQF are not subject to the Order Price Protection, Market Order Spread Protection, or Size Limitation Protection in Options 3, Section 15(a)(1), (a)(2), and (b)(2) respectively.” This rule text is currently noted within Options 3, Section 7(b)(2) above. The Exchange is adding the same language into the description of SQF to provide a more complete description. The addition of this information would align the level of information of BX’s rule text to MRX’s rule text at Supplementary Material .03(c) to Options 3, Section 7. The proposed amendment to BX Options 3, Section 7(e)(1)(B) will not result in a System change.

The amendments proposed to Options 3, Section 7 do not change the current System functionality.

Options 3, Section 8

The Exchange proposes to amend BX Options 3, Section 8(h)(1), which currently describes how the Potential Opening Price would be calculated when there is more than one Potential Opening Price.¹⁷ Today, Section 8(h)(1) provides that when two or more Potential Opening Prices would satisfy the maximum quantity criterion and leave no contracts unexecuted, the System takes the highest and lowest of those prices and takes the mid-point; if such mid-point is not expressed as a permitted minimum price variation, it will be rounded to the minimum price variation that is closest to the closing price for the affected series from the immediately prior trading session. If there is no closing price from the immediately prior trading session, the System will round up to the minimum price variation to determine the Opening Price. BX began rounding up when the Exchange modified certain functionality during a technology migration.¹⁸ Various parts of the BX rules were amended to reflect that BX was rounding up.¹⁹ The

¹⁷ The Potential Opening Price indicates a price where the System may open once all other Opening Process criteria is met.

¹⁸ See SR-BX-2020-017.

¹⁹ Id.

Exchange inadvertently did not amend Options 3, Section 8(h)(1) to reflect that BX was rounding up. At this time, the Exchange proposes to amend the current language to reflect that it no longer rounds in the direction of the previous trading day's closing price. Instead, today, the System simply rounds up to the minimum price variation if the mid-point of the high/low is not expressed as a permitted minimum price variation. This proposed change is intended to bring greater transparency to the Opening Process, as market participants can now have a better sense of how the Potential Opening Price will be calculated without having to account for the closing price of each options series. This change is identical to a change recently made in MRX Options 3, Section 8(g).²⁰ The proposed amendment to BX Options 3, Section 8(h)(1) will not result in a System change.

The Exchange further proposes to amend BX Options 3, Section 8(j)(3), which currently describes the determination of Opening Quote Range ("OQR") boundaries in certain scenarios.²¹ Specifically, the Exchange proposes to replace "are marketable against the ABBO" with "cross the ABBO" to precisely describe the specified scenario within in this rule. The Exchange notes that this is not a System change, rather this amendment clarifies the applicability of the rule text. This change is identical to a change recently made on MRX at Options 3, Section 8(i)(3).²² The proposed amendment to BX Options 3, Section 8(j)(3) will not result in a System change.

The Exchange proposes to amend BX Options 3, Section 8(k), which currently describes the Price Discovery Mechanism.²³ First, the Exchange proposes to amend Options 3, Section 8(k)(1)(A) by removing the phrase "or (ii) internal quotes are crossing each other." Options 3,

²⁰ See SR-MRX-2022-18.

²¹ OQR is an additional type of boundary used in the Opening Process, and is intended to limit the opening price to a reasonable, middle ground price, thus reducing the potential for erroneous trades during the Opening Process.

²² See SR-MRX-2022-18.

²³ The Price Discovery Mechanism is a process that the Exchange will undergo in the instance where the Exchange has not Opened with a BBO or Trade. The Price Discovery Mechanism will attempt to identify an Opening Price by attempting to satisfy the maximum number of contracts possible.

Section 8(d)(3) provides that the Opening Process will stop and an option series will not open, if the ABBO becomes crossed. Once this condition no longer exists, the Opening Process in the affected option series will start again pursuant to paragraphs (f) - (k) below. Further, where the internal quotes are crossed, Options 8, Section 8(i) rules apply. At the time that Options 3, Section 8(k)(1)(A) is applicable, the BX System has sent an Imbalance Message and the System would disseminate an Imbalance Message showing “0” volume and “\$0.00” price if no executions are possible, but routable interest is priced at or through the ABBO. Internal quotes would not be crossing each other at this point in the Opening Process. The Exchange proposes to remove this language which describes a scenario involving crossed orders.²⁴ The proposed amendment to BX Options 3, Section 8(k)(1)(A) will not result in a System change.

Second, the Exchange proposes to amend BX Options 3, Section 8(k)(4) to align BX’s rule text with that of MRX Options 3, Section 8(j)(6)(i) by stating “Pursuant to Options 3, Section 8(k)(3)(F), the System will re-price Do Not Route Orders (that would otherwise have to be routed to the exchange(s) disseminating the ABBO for an opening to occur) to *the current away best offer (for bids) or the current away best bid (for offers) as non-displayed, and display at a price that is one minimum trading increment inferior to the ABBO, and disseminate the re-priced DNR Order as part of the new BBO.*” The proposed language more explicitly describes the manner in which the Exchange will re-price orders and would mirror rule text in BX Options 3, Section 4(b)(6). The proposed amendment to BX Options 3, Section 8(j)(6)(i) will not result in a System change.

Options 3, Section 11

The Exchange proposes to amend BX Options 3, Section 11 which describes the Block Order Mechanism. First, the Exchange proposes to amend the introductory paragraph to Options 3, Section 11 to add a new sentence which states, “Responses submitted by Participants shall not

²⁴ The Exchange also proposes to take out (i) earlier in the sentence as unnecessary with the removal of (ii).

be visible to other auction participants during the exposure period and can be modified or deleted before the exposure period has ended.” This rule text is intended to provide greater clarity regarding responses that are entered into the Exchange’s Block Order Mechanism. In 2020, BX adopted the Block Order Mechanism,²⁵ which it copied from Nasdaq ISE, LLC (“ISE”) Options 3, Section 11. The proposed rule text within ISE Options 3, Section 11 concerning responses should also have been adopted at that time as the functionalities are identical. The proposed amendment to the introductory paragraph to BX Options 3, Section 11 will not result in a System change.

Second, the Exchange proposes to adopt new rule text within BX Options 3, Section 11(a)(4) related to the Block Order Mechanism with respect to minimum increments. Specifically, the Exchange proposes to state that with respect to Penny Prices, orders and Responses may be entered into the Block Order Mechanism and receive executions at penny increments. Orders and quotes in the market that receive the benefit of the block execution price under paragraph (a)(2)(A) may also receive executions at penny increments. When BX copied MRX Options 3, Section 11 rule for Block Orders, this language should have been adopted as well.²⁶ The proposed amendment to the introductory paragraph to BX Options 3, Section 11(a)(4) will not result in a System change.

Options 3, Section 13

The Exchange proposes to amend BX Options 3, Section 13 related to its Price Improvement Auction or “PRISM” to include the concept of “internal BBO” within the order entry checks. Specifically, the Exchange proposes to amend Options 3, Section 13(i)(A)-(C) to add the words “internal BBO”²⁷ where the NBBO is described. MRX recently added the same language to its

²⁵ See SR-BX-2020-023.

²⁶ Id. MRX adopted this rule text in its Form 1 Application. See Securities Exchange Act Release No. 76998 (January 29, 2016), 81 FR 6066 (February 4, 2016) (File No. 10-221).

²⁷ The internal BBO refers to the Exchange’s non-displayed book.

Price Improvement Auction within Options 3. Section 13(b)(1) and (2).²⁸ The proposed changes will conform these order entry check to the concept of re-pricing at an internal BBO as described within Options 3, Sections 4(b)(6), 4(b)(7), 5(c) and 5(d), and will make clear that the PRISM Order measures the difference between the NBBO or the internal BBO to be \$0.01. Today, the Exchange utilizes the internal BBO to determine PRISM eligibility. The proposed amendment to the introductory paragraph of BX Options 3, Section 13(i)(A)-(C) will not result in a System change.

Additionally, the Exchange proposes to make a non-substantive amendment to replace the word “crosses” within BX Options 3, Section 13(ii)(B)(ii) with “improves beyond” to conform the word choice to Nasdaq PHLX LLC Options 3, Section 13(b)(2)(B) which similarly describes the interaction between Phlx’s Reference BBO and a stop price. The proposed amendment to Options 3, Section 13(ii)(B)(ii) will not result in a System change.

Options 3, Section 15

MRX recently amended its Order Price Protection (“OPP”)²⁹ rule to be functionally similar to the OPP functionality on BX.³⁰ MRX’s OPP rule utilized different rule text to explain the OPP functionality. At this time, the Exchange proposes to amend BX Options 3, Section 15(a)(1) to align BX’s rule text to MRX’s rule text within Options 3, Section 15(a)(1)(A). Specifically, the Exchange proposes to remove the references to “day limit, good til cancelled, and immediate or cancel orders” and, instead, simply refer to “limit” orders as that order type accurately captures the scope of the orders subject to OPP. This change would also make the sentence, “OPP applies to all options but does not apply to market orders,” unnecessary. The proposed amendment to Options 3, Section 15(a)(1) will not result in a System change.

²⁸ See SR-MRX-2022-16.

²⁹ OPP prevents the execution of Limit Orders at prices outside pre-set parameters.

³⁰ See SR-MRX-2022-18.

Additionally, the Exchange proposes to amend its Acceptable Trade Range (“ATR”) Rule within BX Options 3, Section 15(b)(1).³¹ MRX recently amended its ATR rule to harmonize the rule to BX Options 3, Section 15(b)(1).³² MRX’s ATR rule utilized different rule text to explain the ATR functionality. At this time, the Exchange proposes to amend BX Options 3, Section 15(b)(1) to align BX’s rule text to MRX’s rule text within Options 3, Section 15(b)(1). Specifically, like MRX, BX’s ATR rule applies to orders and quotes. BX’s rule only discusses quotes, but as noted in the title to Options 3, Section 15(b), the ATR risk protection is an order and quote risk protection. To that end, first, the Exchange proposes to add the term “quote” or “quotes” as applicable next to the term “order” or “orders” throughout the BX ATR rule. Second, the Exchange proposes to begin the ATR rule text with “After the Opening Process” as this risk protection does not apply during the Opening Process today. This additional rule text provides greater clarity to the rule. Today, the ATR risk protection is not available during the Opening Process. Third, the Exchange proposes to add the concept of “internal BBO” into the ATR rule. The Exchange proposes to update the reference price definition to provide that upon receipt of a new order or quote, the reference price will now be the better of the NBB or internal best bid for sell orders/quotes and the better of the NBO or internal best offer for buy orders/quotes or the last price at which the order/quote is posted, whichever is higher for a buy order/quote or lower for a sell order/quote.³³ The Exchange noted within the MRX rule change that its ATR reference price was functionally identical to BX’s ATR reference price.³⁴ Fourth, the Exchange proposes to amend Options 3, Section 15(b)(1)(A) to add the words “after the Posting Period” to explain when a new ATR would be calculated to provide more context to the

³¹ ATR is designed to guard against the System from experiencing dramatic price swings by preventing the immediate execution of quotes and orders beyond the thresholds set by the protection.

³² See SR-MRX-2022-16.

³³ The additions of “internal BBO” in this rule text are consistent with the addition of this term elsewhere in the rules.

³⁴ See SR-MRX-2022-16.

rule.³⁵ Fifth, similar to MRX Options 3, Section 15(a)(2)(A)(v) the Exchange proposes to add the following rule text within BX Options 3, Section 15(b)(1)(C),

There will be three categories of options for Acceptable Trade Range: (1) Penny Interval Program Options trading in one cent increments for options trading at less than \$3.00 and increments of five cents for options trading at \$3.00 or more, (2) Penny Interval Program Options trading in one-cent increments for all prices, and (3) Non-Penny Interval Program Options.

This is how BX operates today. This rule text makes clear the application of BX Options 3, Section 3 to the ATR rule by explicitly stating the Exchange's ability to set different ATR values by options category. These ATR values are set forth in BX's System Settings document which is posted online.³⁶ The Exchange believes this rule text will add greater clarity to the ATR rule. The proposed amendment to Options 3, Section 15(b)(1) will not result in a System change.

Options 3, Section 18

The Exchange proposes to amend Options 3, Section 18, Detection of Loss of Communication, to correct an error in a prior rule change. In 2019, BX relocated then Chapter VI, Section(e), Detection of Loss of Communication, to Chapter VI, Section 23.³⁷ BX noted in the rule change that it was not proposing to amend the Detection of Loss Communication rule.³⁸ In relocating the rule, it appears The Nasdaq Options Market, LLC's rule was inadvertently copied over instead of BX's rule. At the time, NOM did offer OTTO. BX has never offered OTTO. The Exchange proposes to reflect the absence of OTTO on BX by deleting rule text related to OTTO within Options 3, Sections 18(a)(1), (a)(3), 18(c), 18(f) and 18(g) and re-lettering the renaming items to reflect those deletions. The proposed amendment to Options 3, Section 18 will not result in a System change.

³⁵ The Exchange also proposes a technical amendment to add opening parentheses in two places.

³⁶ <https://www.nasdaq.com/docs/BXOptionsSystemSettings>.

³⁷ See Securities Exchange Act Release No. 87270 (October 10, 2019), 84 FR 55631 (October 17, 2019) (SR-BX-2019-033) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BX Rules at Chapter VI, Section 6).

³⁸ Id.

Options 5, Section 4

Options 5, Section 4 describes the manner in which BX routes orders. The Exchange proposes to amend BX Options 5, Section 4(a) to eliminate the following rule text,

The term “System routing table” refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. The Exchange reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice.

When ISE filed to amend its routing rules, it copied BX’s Options 5, Section 4 routing rule, except that it did not adopt the aforementioned rule text.³⁹ At this time, the Exchange proposes to remove this unnecessary term that is not utilized elsewhere within Options 5, Section 4. Removing this rule text will harmonize BX’s Options 5, Section 4 rule with ISE’s Options 5, Section 4. The proposed amendment to Options 5, Section 4(a) will not result in a System change.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁴⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁴¹ 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.

Option 3, Sections 4 and 5

The Exchange believes that its proposal to memorialize its bulk message functionality within Options 3, Section 4(b)(3) is consistent with the Act as it will codify existing functionality, thereby promoting transparency in the Exchange’s rules and reducing any potential

³⁹ See Securities Exchange Act Release No. 94894 (May 18, 2022), 87 FR 30294 (May 12, 2022) (SR-ISE-2022-11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Routing Functionality in Connection With a Technology Migration).

⁴⁰ 15 U.S.C. 78f(b).

⁴¹ 15 U.S.C. 78f(b)(5).

confusion.⁴² This functionality provides Market Makers with an additional tool to meet their various quoting obligations in a manner they deem appropriate, consistent with the purpose of the bulk message functionality to facilitate Market Makers' provision of liquidity. By providing Market Makers with additional control over the quotes they use to provide liquidity to the Exchange, this tool may benefit all investors through additional execution opportunities at potentially improved prices. Today, MRX offers this same functionality within Options 3, Section 4(b)(3). Further, the Exchange does not believe that the offering the bulk message functionality to only Market Makers would permit unfair discrimination. Market Makers play a unique and critical role in the options market by providing liquidity and active markets, and are subject to various quoting obligations which other market participants are not, including obligations to maintain active markets, update quotes in response to changed market conditions, to compete with other Market Makers in its appointed classes, and to provide intra-day quotes in its appointed classes.⁴³ Bulk message functionality provides Market Makers with a means to help them satisfy these obligations. The proposed amendment to the Rulebook to add BX Options 3, Section 4(b)(3) will not result in a System change.

The Exchange's proposal to amend Options 3, Section 4(b)(6) to make clear that the actual price remains non-displayed during re-pricing is consistent with the Act and removes impediments to and perfects the mechanism of a free and open market and a national market system because it displays a re-priced order that does not lock or cross an away market. The rule text clearly explains that the best bid or offer will be non-displayed and the re-priced order will be displayed. A similar change is proposed for BX Options 3, Section 5(d). MRX recently amended Options 3, Section 4(b)(6) and Options 3, Section 5(d) to include the same language.⁴⁴

⁴² As discussed above, this existing functionality is currently described in the Exchange's publicly available technical specifications. See supra note 3.

⁴³ See Options 2, Sections 4 and 5.

⁴⁴ See SR-MRX-2022-16.

The proposed change aligns BX's rule text to MRX's rule text. The proposed amendment to the Rulebook to add BX Options 3, Section 4(b)(6) will not result in a System change.

The Exchange's proposal to add a new Options 3, Section 4(b)(7) to clarify that, today, BX's System will automatically execute eligible quotes using the Exchange's displayed best bid and offer ("BBO") or the Exchange's non-displayed order book ("internal BBO") if the best bid and/or offer on the Exchange has been repriced pursuant to Options 3, Section 5(d) and Options 3, Section 4(b)(6) is consistent with the Act and protects investors and the public interest. This rule text seeks to codify the current System function and make clear that the internal BBO is comprised of both orders and quotes, both of which are considered for price checks. MRX recently amended Options 3, Section 4(b)(7) to include this language.⁴⁵ The proposed change aligns BX's rule text to MRX's rule text. The proposed amendment to the Rulebook to add BX Options 3, Section 4(b)(7) will not result in a System change.

Options 3, Section 7

The Exchange's proposal to amend the title of Options 3, Section 7 from "Types of Orders and Quote Protocols" to "Types of Orders and Order and Quote Protocols" aligns BX's title to MRX Options 3, Section 7. This change is non-substantive.

The Exchange's proposal to amend Options 3, Section 7(a)(9) to add the word "Order" after "PRISM" is a non-substantive amendment that aligns the term to its usage within BX Options 3, Section 13.

The Exchange's proposal to amend the rule text of Options 3, Section 7(a)(8), related to an Opening Sweep, and (b)(1) related to OPG orders, is consistent with the Act and protects investors and the general public because the availability of Market Wide Risk Protection during the Opening Process assists Participants in managing their pre-open risk. The Market Wide Risk Protection is designed to reduce risk associated with System errors or market events that may

cause Participants to send a large number of orders, or receive multiple, automatic executions, before they can adjust their exposure in the market. The proposed amendments to BX Options 3, Section 7(a)(8) and (b)(1) will not result in a System change.

The Exchange's proposal to amend the rule text of Options 3, Section 7(b)(2)(C) to add Block Orders and Customer Cross Orders to Options 3, Section 7(b)(2)(C) and replace the term "Price Improvement Auction ("PRISM") Mechanism" with "PRISM Orders" is consistent with the Act. In 2020, BX adopted Block Orders and Customer Cross Orders in a technology migration⁴⁶ and should have added those order types to this list. At this time, the Exchange proposes to update this rule to include these order types. Further, the Exchange proposes to state that "By their terms, these orders will be: (1) executed either on entry or after the exposure period, or (2) cancelled." The additional language is being added because Customer Cross Orders may be executed upon entry provided all the terms are satisfied. This proposed change aligns to MRX Supplementary Material .02(d)(3) of Options 3, Section 7. The proposed amendments to BX Options 3, Section 7(b)(2)(C) will not result in a System change.

The Exchange's proposal amends the description of SQF within Options 3, Section 7(e)(1)(B) is consistent with the Act as this rule text is currently noted within Options 3, Section 7(b)(2) above. The addition of this language into the description of SQF provides a more complete description of this protocol. The addition of this information also aligns the level of information with that offered on MRX for SQF within Supplementary Material .03(c) to Options 3, Section 7. The proposed amendment to BX Options 3, Section 7(e)(1)(B) will not result in a System change.

Options 3, Section 8

The Exchange's proposal to amend Options 3, Section 8(h)(1), which currently describes how the Potential Opening Price would be calculated when there is more than one Potential

⁴⁶ See supra note 16.

Opening Price, is consistent with the Act and protects investors and the public interest. BX began rounding up when the Exchange modified certain functionality during a technology migration.⁴⁷ Various parts of the BX rules were amended to reflect that BX was rounding up.⁴⁸ The Exchange inadvertently did not amend Options 3, Section 8(h)(1) to reflect that BX was rounding up. At this time, the Exchange proposes to amend the current language to reflect that it no longer rounds in the direction of the previous trading day's closing price. Today, the System simply rounds up to the minimum price variation if the mid-point of the high/low is not expressed as a permitted minimum price variation. This proposed change is intended to bring greater transparency to the Opening Process, as market participants can now have a better sense of how the Potential Opening Price will be calculated without having to account for the closing price of each options series. This change is identical to a change recently made in MRX Options 3, Section 8(g).⁴⁹ The proposed amendment to BX Options 3, Section 8(h)(1) will not result in a System change.

The Exchange's proposal to amend Options 3, Section 8(j)(3), which currently describes the determination of OQR boundaries in certain scenarios is consistent with the Act. Replacing the phrase "are marketable against the ABBO" with "cross the ABBO" serves to precisely describe the specified scenario within in this rule. The Exchange notes that this is not a System change, rather this amendment clarifies the applicability of the rule text. This change is identical to a change recently made on MRX at Options 3, Section 8(i)(3).⁵⁰ The proposed amendment to BX Options 3, Section 8(j)(3) will not result in a System change.

The proposal to amend Options 3, Section 8(k)(1)(A) by removing the phrase "or (ii) internal quotes are crossing each other" remove impediments to and perfect the mechanism of a

⁴⁷ See SR-BX-2020-017.

⁴⁸ Id.

⁴⁹ See SR-MRX-2022-18.

⁵⁰ Id.

free and open market and a national market system by removing a scenario from this section of the rule that is covered elsewhere. Options 3, Section 8(d)(3) provides that the Opening Process will stop and an option series will not open, if the ABBO becomes crossed. Once this condition no longer exists, the Opening Process in the affected option series will start again pursuant to paragraphs (f) - (k) below. Further, where the internal quotes are crossed, Options 8, Section 8(i) rules apply. At the time that Options 3, Section 8(k)(1)(A) is applicable, the BX System has sent an Imbalance Message and the System would disseminate an Imbalance Message showing “0” volume and “\$0.00” price if no executions are possible, but routable interest is priced at or through the ABBO. Internal quotes would not be crossing each other at this point in the Opening Process. The proposed amendment to BX Options 3, Section 8(k)(1)(A) will not result in a System change.

The Exchange’s proposal to amend Options 3, Section 8(k)(4) to align BX’s rule text with that of MRX Options 3, Section 8(j)(6)(i) is consistent with the Act because it explicitly describes the manner in which the Exchange will re-price orders and mirrors rule text similar to the language within Options 3, Section 4(b)(6). The proposed amendment to BX Options 3, Section 8(j)(6)(i) will not result in a System change.

Options 3, Section 11

The Exchange’s proposal to amend the introductory paragraph to Options 3, Section 11 to provide greater clarity regarding responses that are entered into the Exchange’s Block Order Mechanism is consistent with the Act and protects investors and the public interest. In 2020, BX adopted the Block Order Mechanism,⁵¹ which it copied from ISE Options 3, Section 11. This rule text concerning responses should also have been adopted at that time as the functionality on BX is identical to that on ISE. The proposed amendment to the introductory paragraph to BX Options 3, Section 11 will not result in a System change

⁵¹ See SR-BX-2020-023.

The Exchange’s proposal to adopt new rule text within BX Options 3, Section 11(a)(4) related to the Block Order Mechanism with respect to minimum increments is consistent with the Act as it will make clear the manner in which minimum increments apply within this mechanism. This language codifies current System behavior. When BX copied the MRX Options 3, Section 11 rule for Block Orders, this language should have been adopted as well.⁵² The proposed amendment to the introductory paragraph to BX Options 3, Section 11(a)(4) will not result in a System change.

Options 3, Section 13

The Exchange’s proposal to amend Options 3, Section 13 related to PRISM to include the concept of “internal BBO” within the order entry checks is consistent with the Act and protects investors and the public interest. The proposed changes will conform these order entry check to the concept of re-pricing at an internal BBO as described within BX Options 3, Sections 4(b)(6), 4(b)(7), 5(c) and 5(d), and will make clear that the PRISM Order measures the difference between the NBBO or the internal BBO to be \$0.01. MRX recently added the same language to its Price Improvement Auction within Options 3. Section 13.⁵³ The proposed amendment to the introductory paragraph of BX Options 3, Section 13(i)(A)-(C) will not result in a System change.

The Exchange’s proposal to replace the word “crosses” within Options 3, Section 13(ii)(B)(ii) with “improves beyond” conforms the word choice to Nasdaq PHLX LLC Options 3, Section 13(b)(2)(B) which similarly describes the interaction between Phlx’s Reference BBO and a stop price. The proposed amendment to Options 3, Section 13(ii)(B)(ii) will not result in a System change.

Options 3, Section 15

The Exchange’s proposal to amend BX Options 3, Section 15(a)(1) to align BX’s OPP rule text to MRX’s OPP rule text within Options 3, Section 15(a)(1)(A) is consistent with the

⁵² Id.

⁵³ See SR-MRX-2022-16.

Act⁵⁴ because removing the references to “day limit, good til cancelled, and immediate or cancel orders and, instead, referring to “limit” orders accurately captures the scope of the orders subject to OPP. This change would also make unnecessary the remainder of the rule text stating it does not apply to market orders. The proposed amendment to Options 3, Section 15(a)(1) will not result in a System change.

The Exchange’s proposal to amend the ATR Rule within Options 3, Section 15(b)(1) is consistent with the Act. MRX recently amended its ATR rule to harmonize the rule with BX Options 3, Section 15(b)(1).⁵⁵ MRX’s ATR rule utilized different rule text to explain the ATR functionality. Amending BX Options 3, Section 15(b)(1) to align BX’s rule text to MRX’s rule text within Options 3, Section 15(b)(1) is consistent with the Act because like MRX, BX’s ATR rule applies to orders and quotes. BX’s rule only discusses quotes, but as noted in the title to Options 3, Section 15(b), the ATR risk protection is an order and quote risk protection. The Exchange’s proposal to begin the rule text with “After the Opening Process” is consistent with the Act as this risk protection does not apply during the Opening Process today. This additional rule text provides greater clarity to the rule. The Exchange’s proposal to add the concept of “internal BBO” into the ATR rule is consistent with the Act and protects investors and the public interest by specifying that the reference price definition is the better of the NBB or internal best bid for sell orders/quotes and the better of the NBO or internal best offer for buy orders/quotes or the last price at which the order/quote is posted, whichever is higher for a buy order/quote or lower for a sell order/quote. The Exchange noted within the MRX rule change that the proposed additional functionality is identical to BX’s ATR reference price.⁵⁶ The Exchange’s proposal to amend Options 3, Section 15(b)(1)(A) to add the words “after the Posting Period” to explain

⁵⁴ MRX recently amended its Order Price Protection (“OPP”) rule to be functionally similar to the OPP functionality on BX. See SR-MRX-2022-18.

⁵⁵ See SR-MRX-2022-16.

⁵⁶ Id.

when a new ATR would be calculated provides more context to the rule. Adding rule text within BX Options 3, Section 15(b)(1)(C) to make clear the Exchange's ability to set different ATR values by options category is consistent with the Act because the ATR risk protection limits the range of prices at which an order and quote trades and would take into account the minimum increment. The ability for the Exchange to set the ATR based on the increment allows the Exchange to set appropriate limits. The Exchange believes this rule text will add greater clarity to the ATR rule. The proposed amendment to Options 3, Section 15(b)(1) will not result in a System change.

Options 3, Section 18

Amending Options 3, Section 18, Detection of Loss of Communication, to delete rule text related to OTTO within Options 3, Sections 18(a)(1), (a)(3), 18(c), 18(f) and 18(g) and re-lettering the renaming items to reflect those deletions is consistent with the Act because it corrects a prior error when this rule was relocated within the Rulebook by placing the replica of the original rule from SR-BX-2019-033 into its Rulebook. The proposed amendment to Options 3, Section 18 will not result in a System change.

Options 5, Section 4

Eliminating an unnecessary term in Options 5, Section 4(a) that is not utilized elsewhere within Options 5, Section 4 which is unnecessary is consistent with the Act as it will remove confusion. The proposed amendment to Options 5, Section 4(a) will not result in a System change.

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.

Option 3, Sections 4 and 5

The Exchange believes that its proposal to memorialize its bulk message functionality within Options 3, Section 4(b)(3) does not impose an undue burden on intra-market competition.

While the Exchange currently offers this functionality to Market Makers only, bulk messaging is intended to provide Market Makers with an additional tool to meet their various quoting obligations in a manner they deem appropriate. As such, the Exchange believes that this functionality may facilitate Market Makers' provision of liquidity, thereby benefiting all market participants through additional execution opportunities at potentially improved prices. Furthermore, while the Exchange will offer the proposed Post-Only Quote Configuration to Market Makers only, the proposed risk protection will enhance the ability of Market Makers to add liquidity and avoid removing liquidity from the Exchange's order book in the manner described above. Greater liquidity benefits all market participants by providing more trading opportunities and attracting greater participation by Market Makers. The Exchange believes that its proposal to memorialize its bulk message functionality within Options 3, Section 4(b)(3) does not impose an undue burden on inter-market competition as other options exchanges may adopt this functionality.

The Exchange's proposal to amend BX's rules at Options 3, Section 4(b)(6) and Options 3, Section 4(b)(7) do not impose an undue burden on competition because all options markets must not trade-through other orders on their markets as well as away markets. The proposed change aligns BX's rule text to MRX's rule text.

Options 3, Section 7

The Exchange's proposal to amend the rule text of BX Options 3, Section 7(a)(8), related to an Opening Sweep, and (b)(1), related to OPG orders, does not impose an undue burden on competition because the availability of Market Wide Risk Protection during the Opening Process assists all Participants in managing their pre-open risk.

The Exchange's proposal to amend the rule text at BX Options 3, Section 7(b)(2)(C) to add Block Orders and Customer Cross Orders to Options 3, Section 7(b)(2)(C) and replace the term "Price Improvement Auction ("PRISM") Mechanism" with "PRISM Orders" does not impose an undue burden on competition as these order types are well established and the manner

in which they trade is specified in each of the particular auction rules. This proposed change aligns to MRX Supplementary Material .02(d)(3) of Options 3, Section 7.

Options 3, Section 8

The Exchange's proposal to amend Options 3, Section 8(h)(1), which currently describes how the Potential Opening Price would be calculated when there is more than one Potential Opening Price, does not impose an undue burden on competition. BX began uniformly rounding up when the Exchange modified certain functionality during a technology migration, this amendment makes clear the System functionality.

The proposal to amend Options 3, Section 8(k)(1)(A) by removing the phrase "or (ii) internal quotes are crossing each other" does not impose an undue burden on intra-market competition because internal quotes would not be crossing each other at this point in the Opening Process. All Participants are subject to the Opening Process rule.

Options 3, Section 11

The Exchange's proposal to amend the introductory paragraph to Options 3, Section 11 does not impose an undue burden on competition, rather it provides greater clarity regarding responses that are entered into the Exchange's Block Order Mechanism. In 2020, BX adopted the Block Order Mechanism,⁵⁷ which it copied from ISE Options 3, Section 11. This rule text concerning responses should also have been adopted at that time as the functionality on BX is identical to that on ISE.

The Exchange's proposal to adopt new rule text within BX Options 3, Section 11(a)(4) related to the Block Order Mechanism with respect to minimum increments does not impose an undue burden on competition as it will make clear the manner in which minimum increments

⁵⁷ See SR-BX-2020-023.

apply within this mechanism. When BX copied the MRX Options 3, Section 11 rule for Block Orders, this language should have been adopted as well.⁵⁸

Options 3, Section 13

The Exchange's proposal to amend Options 3, Section 13 related to its Price Improvement Auction to include the concept of "internal BBO" within the order entry checks does not impose an undue burden on competition because all options markets must not trade-through other orders on their markets as well as away markets. The proposed change aligns BX's rule text to MRX's rule text.

Options 3, Section 15

The Exchange's proposal to amend BX Options 3, Section 15(a)(1) to align BX's OPP rule text to MRX's OPP rule text within Options 3, Section 15(a)(1)(A) does not impose an undue burden on competition because removing the references to "day limit, good til cancelled, and immediate or cancel orders and, instead, referring to "limit" orders accurately captures the scope of the orders subject to OPP. This change would also make unnecessary the remainder of the rule text stating it does not apply to market orders.

The Exchange's proposal to amend the ATR Rule within Options 3, Section 15(b)(1) does not impose an undue burden on competition. Like MRX, BX's ATR rule applies to orders and quotes as noted in the title to Options 3, Section 15(b), the ATR risk protection is an order and quote risk protection. Additionally, ATR does not apply during the Opening Process today. Further, adding the concept of "internal BBO" into the ATR rule because all options markets must not trade-through other orders on their markets as well as away markets. The proposed change aligns BX's rule text to MRX's rule text.

Adding rule text within BX Options 3, Section 15(b)(1)(C) to make clear the Exchange's ability to set different ATR values by options category does not impose an undue burden on

competition because the ability for the Exchange to set the ATR based on the increment allows the Exchange to set appropriate limits. The Exchange believes this rule text will add greater clarity to the ATR rule.

Options 3, Section 18

Amending Options 3, Section 18, Detection of Loss of Communication, to remove references to OTTO does not impose an undue burden on competition because it corrects a prior error when this rule was relocated within the Rulebook by placing the replica of the original rule from SR-BX-2019-033 into its Rulebook.

Options 5, Section 4

Eliminating an unnecessary reference within amend Options 5, Section 4(a) does not impose an undue burden on competition because the term is not utilized elsewhere within Options 5, Section 4.

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 Act⁵⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁶⁰

⁵⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

⁶⁰ 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.

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-2023-013 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-2023-013. 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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-BX-2023-013, and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶¹

Sherry R. Haywood,

Assistant Secretary.

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⁶¹ 17 CFR 200.30-3(a)(12).