

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 35	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2019 - * 001	Amendment No. (req. for Amendments *)	
Filing by NASDAQ BX, Inc. Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934					
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input checked="" type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)		
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/>			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>		
Exhibit 2 Sent As Paper Document <input checked="" type="checkbox"/>		Exhibit 3 Sent As Paper Document <input checked="" type="checkbox"/>			
<b>Description</b> Provide a brief description of the action (limit 250 characters, required when Initial is checked *).  A proposed rule change to amend Options 7, Section 2					
<b>Contact Information</b> Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.  First Name * Sun Last Name * Kim Title * Associate General Counsel E-mail * sun.kim@nasdaq.com Telephone * (212) 897-0238 Fax <input type="text"/>					
<b>Signature</b> Pursuant to the requirements of the Securities Exchange Act of 1934,  has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized. (Title *) Date 01/31/2019 Global Chief Legal and Policy Officer By Edward S. Knight (Name *) NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.  edward.knight@nasdaq.com					

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Nasdaq BX, Inc. (“BX” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend Options 7, Section 2, which sets forth fees and rebates for the Exchange’s options market (“BX Options”), to adopt language that allows the Exchange to remove a day from its options volume calculations for purposes of determining pricing tiers.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”) on September 26, 2018. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Sun Kim  
Associate General Counsel  
Nasdaq, Inc.  
212-231-5106

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

a. Purpose

Today, the Exchange offers a number of pricing incentives based on volume calculations that are designed to encourage participation in BX Options through rebates or reduced fees for Participants that trade on BX Options in increasingly higher volumes.<sup>3</sup> The Exchange now proposes to adopt language in Section 2 that would allow it to exclude certain days from such volume calculations for purposes of determining pricing tiers. The Exchange is standardizing its practice for removing a day from options volume calculations in its Pricing Schedule with its affiliated options market, Nasdaq Phlx ("Phlx").<sup>4</sup>

Specifically in Options 7, Section 2, the Exchange proposes to adopt new subsection (6) with the title "Removal of Days for Purposes of Pricing Tiers," which will provide:

**(i)(A)** Any day that the Exchange announces in advance that it will not be open for trading will be excluded from the options tier calculations set forth in its Pricing Schedule; and **(B)** any day with a scheduled early market close ("Scheduled Early Close") may be excluded from the options tier calculations only pursuant to paragraph (iii) below.

**(ii)** The Exchange may exclude the following days ("Unanticipated Events") from the options tier calculations only pursuant to paragraph (iii) below, specifically

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<sup>3</sup> For instance, the Exchange currently offers BX Options Market Makers and Customers tiered rebates and fees for adding or removing liquidity in Penny Pilot and Non-Penny Pilot Options that are based on average daily volume ("ADV") calculations. See Options 7, Section 2(1).

<sup>4</sup> See Phlx Pricing Schedule, Options 7, Section 1(b). The Exchange's other affiliated options markets, Nasdaq ISE, Nasdaq GEMX, Nasdaq MRX, and The Nasdaq Options Market will also file similar rule change proposals to conform to Phlx's rule.

any day that: **(A)** the market is not open for the entire trading day, **(B)** the Exchange instructs Participants in writing to route their orders to other markets, **(C)** the Exchange is inaccessible to Participants during the 30-minute period before the opening of trade due to an Exchange system disruption, or **(D)** the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours.

**(iii)** If a day is to be excluded as a result of paragraph (i)(B) or (ii) above, the Exchange will exclude the day from any Participant's monthly options tier calculations as follows:

**(A)** the Exchange may exclude from the ADV calculation any Scheduled Early Close or Unanticipated Event; and

**(B)** the Exchange may exclude from any other applicable options tier calculation provided for in its Pricing Schedule (together with (iii)(A), "Tier Calculations") any Scheduled Early Close or Unanticipated Event.

provided, in each case, that the Exchange will only remove the day for Participants that would have a lower Tier Calculation with the day included.

The proposed language would: (1) allow the Exchange to remove a day from its volume calculations in Options 7, Section 2<sup>5</sup> in a number of specified circumstances, which typically result in artificially low volume days, (2) categorize potential excluded days as those that are known in advance (i.e., days in proposed paragraph (i), including Scheduled Early Closes), and those that are not (i.e., Unanticipated Events in proposed paragraph (ii)), and (3) allow the Exchange to remove a day only when doing so would be beneficial for the Participant (i.e., only if the Participant would have a lower ADV calculation with the day included, hereinafter, the "better of rule"). As it relates to Unanticipated Events, the Exchange will inform all Participants if any such day will be excluded from its Tier Calculations via a system status message disseminated to all Participants. The Exchange notes that it is not proposing to amend the thresholds a

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<sup>5</sup> See note 3 above.

Participant must achieve to become eligible for, or the dollar amount associated with, the tiered rebates or fees.

Potential Excluded Days

As noted above, the proposal will allow the Exchange to remove days from Participants' volume calculations in a number of circumstances that generally result in artificially low volume days. First, the Exchange proposes to adopt language identical to Phlx providing that it will always exclude days where the Exchange announces in advance that it will not be open for trading (e.g., Thanksgiving) from all options tier calculations set forth in its Pricing Schedule.<sup>6</sup> This is also the case today since no trading activity occurs on those days, and the Exchange is only clarifying its current practice within the proposed rule. Second, the Exchange proposes to adopt language that would permit the Exchange to exclude any Scheduled Early Close from its volume calculations. The Exchange believes that Scheduled Early Closes, which typically are days before or after a holiday, may preclude some Participants from submitting orders to the Exchange at the same level as they might otherwise. This proposal is consistent with the treatment of such days on Phlx.<sup>7</sup>

Third, the Exchange proposes language allowing it to exclude days where the market is not open for the entire trading day, such as days where the Exchange declares a trading halt in all securities or honors a market-wide trading halt declared by another

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<sup>6</sup> See note 4 above at paragraph (1)(A).

<sup>7</sup> See id. at paragraph (1)(B).

market, because those days typically have lower trading volume. This is consistent with Phlx's practice for removing such days from its volume calculations.<sup>8</sup>

Fourth, Phlx adopted the language on instructing members to route away to prevent situations where days that have artificially lower volume could not be excluded, for example, because Phlx experienced an issue in the morning that ultimately did not carry over into the trading day.<sup>9</sup> Like Phlx, the Exchange believes that it should have the flexibility to exclude days if Participants have been instructed to send their orders elsewhere, regardless of whether the issue that resulted in this instruction ultimately impacts the availability of the Exchange for trading.

Fifth, the Exchange proposes to adopt identical language as Phlx to exclude days where the Exchange is inaccessible to Participants during the 30-minute period before the opening of trade (i.e., between 9:00 a.m. to 9:30 a.m. Eastern Time) due to an Exchange system disruption.<sup>10</sup> While the language proposed above on instructing Participants to route away may also cover Exchange system disruptions that occur before the market opens, the Exchange notes that it may not always instruct Participants to route away in such instances. For example, the Exchange may be inaccessible to Participants in the morning due to a systems disruption but the Exchange resolves the issue shortly before 9:30 a.m. and as a result, the Exchange does not instruct Participants to route away. In this instance, the Exchange would not be permitted to exclude the day from its volume calculations. The Exchange generally experiences a high volume of member

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<sup>8</sup> See id. at paragraph (2)(A).

<sup>9</sup> See id. at paragraph (2)(B).

<sup>10</sup> See id. at paragraph (2)(C).

participation within the 30-minute window leading up to the opening of trade from Participants who submit eligible interest to be included in the Exchange's opening process. As a result, days where Participants are precluded from submitting eligible interest during this 30-minute time period due to an Exchange systems disruption, even if the issue is ultimately resolved by the Exchange before the market opens (and Participants therefore are not instructed to route away), are likely to have lower trading volume. Including such days in calculations of ADV will therefore make it more difficult for Participants to achieve particular pricing tiers for that month. Accordingly, excluding such days from the monthly tier calculations will diminish the likelihood of a cost increase occurring because a Participant is not able to reach a pricing tier on that date that it would reach on other trading days during the month.

Sixth, the Exchange proposes to adopt language identical to Phlx to exclude days where there is an Exchange system disruption that lasts for more than 60 minutes during regular trading hours (i.e., 9:30 a.m. to 4:00 p.m. Eastern Time), even if such disruption would not be categorized as a complete outage of the Exchange's system.<sup>11</sup> Such a disruption may occur where a certain options series traded on the Exchange is unavailable for trading due to an Exchange systems issue, or where the Exchange may be able to perform certain functions with respect to accepting and processing orders, but may have a failure to another significant process, such as routing to other market centers, that would lead Participants who rely on such processes to avoid using the Exchange until the Exchange's entire system was operational. The Exchange believes that certain system disruptions that are not complete system outages could preclude some Participants

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<sup>11</sup> See id. at paragraph 2(D).



from submitting orders to the Exchange. The Exchange also notes that this proposal is consistent with the rules of other options exchanges.<sup>12</sup>

Because the potential excluded days proposed above generally have artificially lower trading volume, the Exchange believes it is reasonable and equitable to exclude such days in determining its fee and rebate tiers. The Exchange desires to avoid penalizing Participants that might otherwise qualify for certain tiered pricing but that, because of special circumstances on a particular day, did not participate on the Exchange to the extent that they might have otherwise participated. Absent the authority to exclude such days, Participants may experience an effective increase in the cost of trading on BX Options, a result that is both unintended and undesirable to the Exchange and to its Participants.

#### Categories of Excluded Days

In light of the foregoing proposal, the Exchange seeks to categorize the potential excluded days proposed above between days that are known in paragraph (i) and days that are not in paragraph (ii), and define the latter as Unanticipated Events. Specifically, paragraph (i) would set forth days that the Exchange announces in advance that it will not be open for trading in paragraph (i)(A), and Scheduled Early Closes in paragraph (ii)(B), as further described above. The Unanticipated Events in paragraph (ii) would cover the days where the Exchange is not open for the entire trading day (e.g., the Exchange

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<sup>12</sup> See BATS BZX Options Exchange Fee Schedule (defining an “Exchange System Disruption” as any day that the exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours); and NYSE Arca Options Fee Schedule (defining an “Exchange System Disruption” as a disruption affects an Exchange system that lasts for more than 60 minutes during regular trading hours).

declares a trading halt in all securities), days that the Exchange instructs Participants in writing to route away, and the two Exchange systems-related disruptions, each as described above. The foregoing proposal is consistent with how Phlx categorizes potential excluded days today.<sup>13</sup>

#### Better of Rule

Similar to Phlx, the proposed language also specifies how the potential excluded days will be removed from the Exchange's volume calculations. In particular, the language will allow the Exchange to exclude any Scheduled Early Close or Unanticipated Event from its calculations of ADV or any other applicable options volume tiers provided for in its Pricing Schedule, provided that the Exchange will only remove such days for Participants that would have a lower volume calculation with the day included (i.e., the better of rule).<sup>14</sup>

Phlx adopted the better of rule to avoid penalizing members that step up and trade on days with artificially low volume so that it only excludes such days for members that would have a lower volume calculation with the day included. This language would also be helpful on the Exchange as it would ensure that Participants that continue to execute a large volume of contracts are not inadvertently disadvantaged when the Exchange removes a day from its volume calculations. Furthermore, Phlx adopted the catch-all provision applying to other options tier calculations set forth in its pricing schedule, but

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<sup>13</sup> See note 4 above at paragraphs (1) and (2).

<sup>14</sup> Phlx similarly excludes Scheduled Early Closes and Unanticipated Events from its ADV calculations and other applicable volume calculations in its pricing schedule, subject in each case to the better of rule. See note 4 above at paragraph (3).

not specified within paragraph (3) of its rule, so that it would have flexibility to apply the better of rule going forward to all options pricing programs administered by the Exchange that are based on volume calculations.<sup>15</sup> The Exchange believes that adopting a similar principle-based approach for its options volume calculations would ensure that days are removed from such calculations only if doing so would be beneficial for the Participant. As such, the proposed language will not apply to straight volume accumulations as Participants do not benefit when a day is removed for such accumulations. Again, the Exchange believes that the approach of Phlx would be beneficial as it counts volume executed during an excluded day toward its members' straight volume accumulations.

In addition, the Exchange proposes to harmonize its language with Phlx's language by adding further detail throughout the proposed rule text to bring greater transparency as to how the Exchange will apply the better of rule when removing days from its tier calculations. Specifically, the Exchange proposes to make clear that it will only remove days pursuant to the better of rule by specifying in paragraphs (i)(B) and (ii) that such days may be excluded from the tier calculations only pursuant to paragraph (iii).<sup>16</sup> Paragraph (iii) will then provide that if a day is to be excluded as a result of paragraph (i)(B) or (ii), the Exchange will be required to exclude the day from any Participant's monthly options tier calculations as detailed within paragraph (iii).<sup>17</sup> With the proposed changes, the Exchange seeks to clarify that it will exclude days from any

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<sup>15</sup> See id. at paragraph (3)(C).

<sup>16</sup> See id. at paragraphs (1)(B) and (2) for similar language on Phlx.

<sup>17</sup> See id. at paragraph (3) for similar language on Phlx.

Participant's Tier Calculations in a uniform manner to ensure that days are removed only in situations where the Participant benefits. The Exchange will look at each potential excluded day in a month and determine for every Participant their ADV or other applicable volume calculation based on their trading volume on that day. If any Participant would have a lower volume calculation with the particular day included, the Exchange will exclude that day for that Participant. As such, the proposed changes specify that the Exchange will apply the better of rule in a uniform manner for all Participants, and that there is no arbitrary selection of "winners" or "losers" when the Exchange excludes days.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>18</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>19</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change is reasonable and equitable as it provides a new framework for removing days from the Exchange's volume calculations that the Exchange believes is beneficial to Participants and consistent with similar provisions already in place on Phlx. The proposed rule change would permit the Exchange to remove a day from its volume calculations in numerous circumstances as described above, and ensures that the Exchange will only do so when beneficial for the

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<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(4) and (5).

Participant. The Exchange believes that it is reasonable and equitable to exclude Scheduled Early Closes from its volume calculations because this preserves the Exchange's intent behind adopting volume-based pricing. Absent the authority to exclude Scheduled Early Closes, Participants may experience an effective increase in fees or decrease in rebates. The artificially low volumes of trading on such days typically reduce the trading activity of Participants. Accordingly, allowing the Exchange to exclude such days from its volume calculations will diminish the likelihood of an effective increase in the cost of trading on BX Options, a result that is unintended and undesirable to the Exchange and to its Participants.

The Exchange equally believes that it is reasonable and equitable to exclude a day when Participants are instructed to route their orders to other markets as this also preserves the Exchange's intent behind adopting volume-based pricing, and avoids penalizing Participants that follow this instruction. The Exchange likewise believes it is reasonable and equitable to exclude a day from its volume calculations when the Exchange's system experiences a disruption during the 30-minute period prior to the opening of trade which renders the Exchange inaccessible to Participants. Without this change, Participants that are precluded from submitting eligible interest during the 30-minute window before the opening of trade may be negatively impacted, even if the Exchange resolves the issue before the market opens and as a result, does not instruct Participants to route away. The proposed change to exclude such days will diminish the likelihood of a cost increase occurring because a Participant is not able to reach a volume tier calculation on that date that it would reach on other trading days during the month.

Similarly, excluding a day where the Exchange's system experiences a disruption that lasts for more than 60 minutes intra-day is reasonable and equitable because the proposal seeks to avoid penalizing Participants that might otherwise qualify for certain tiered pricing but that, because of an Exchange systems disruption, did not participate on the Exchange to the extent they might have otherwise participated. The Exchange believes that certain systems disruptions could preclude some Participants from submitting orders to the Exchange even if such issue is not actually a complete systems outage.

In addition, the Exchange believes that it is reasonable and equitable to only exclude a day from its volume calculations for Participants that would otherwise have a lower volume calculation with the day included. Without these changes, Participants that route away in accordance with the Exchange's instructions, or that step up and trade significant volume on excluded trading days, may be negatively impacted, resulting in an effective cost increase for those Participants. In addition, having a catch-all in paragraph (iii)(B) so that the better of rule applies to other options volume calculations than ADV to allow the Exchange to apply the rule going forward to all pricing programs based on volume calculations will further protect Participants. The Exchange notes that aberrant low volume days resulting from, for instance, an Unanticipated Event, impacts all volume calculations, and allowing the Exchange to exclude such days from any volume tier calculation if the Participant would have a lower tier calculation with the day included will further protect Participants from being inadvertently penalized.

Furthermore, the Exchange believes that categorizing the potential excluded days is reasonable and equitable because it will bring greater transparency to the application of

its rule. Specifically, the Exchange is distinguishing between planned and unplanned days in paragraphs (i) and (ii), defining the latter as Unanticipated Events, and stipulating how the Exchange will exclude such days pursuant to this rule. Categorizing days in this manner will clarify the application of its rule in light of the Exchange's proposal to adopt numerous days that may be excluded from its volume calculations. Providing in paragraph (i)(A) that the Exchange will always exclude from its tier calculations days that it announces in advance it will not be open for trading will clarify current practice. Furthermore, the Exchange believes that the proposed changes to specify how days in paragraphs (i)(B) and (ii) may be excluded from its volume calculations will bring greater transparency by delineating the various circumstances in which the better of rule will apply. Providing in paragraph (iii) that the Exchange may exclude any Scheduled Early Close or Unanticipated Event from the Tier Calculations, subject to the better of rule, will make clear that the Exchange will take a consistent approach when excluding days for purposes of its volume based pricing tiers. Furthermore, the proposed changes specifying that the days in paragraphs (i)(B) and (ii) may be excluded only pursuant to paragraph (iii), and requiring the Exchange to exclude such days pursuant to the specifications in paragraph (iii) will likewise make clear that the Exchange will take a consistent approach with respect to excluding days from its Tier Calculations. As discussed above, these modifications will clarify that the Exchange will apply the better of rule in a uniform manner to all Participants, and that there is no arbitrary selection of "winners" or "losers."

Finally, the Exchange believes that the proposed rule change is not unfairly discriminatory because it will apply equally to all Participants.

4. 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 designed to protect Participants from the possibility of a cost increase by excluding days when overall participation might be significantly lower than a typical trading day. The Exchange believes that the proposed modifications to its tier calculations are pro-competitive and will result in lower total costs to end users, a positive outcome of competitive markets. Furthermore, other options exchanges have adopted rules that are substantially similar to the Exchange's proposal.<sup>20</sup>

The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

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<sup>20</sup> See notes 4 and 12 above.



7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>21</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is based on the language in Phlx's Pricing Schedule.<sup>22</sup> In addition, the proposal with respect to the Exchange systems disruption that lasts for more than 60 minutes during regular trading hours is similar to language in the fee schedules of BATS BZX Options and NYSE Arca Options.<sup>23</sup>

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

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<sup>21</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>22</sup> See note 4 above.

<sup>23</sup> See note 12 above.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-BX-2019-001)

February \_\_, 2019

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to amend Options 7, Section 2

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 31, 2019, 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 7, Section 2, which sets forth fees and rebates for the Exchange’s options market (“BX Options”), to adopt language that allows the Exchange to remove a day from its options volume calculations for purposes of determining pricing tiers.

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.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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

Today, the Exchange offers a number of pricing incentives based on volume calculations that are designed to encourage participation in BX Options through rebates or reduced fees for Participants that trade on BX Options in increasingly higher volumes.<sup>3</sup> The Exchange now proposes to adopt language in Section 2 that would allow it to exclude certain days from such volume calculations for purposes of determining pricing tiers. The Exchange is standardizing its practice for removing a day from options volume calculations in its Pricing Schedule with its affiliated options market, Nasdaq Phlx ("Phlx").<sup>4</sup>

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<sup>3</sup> For instance, the Exchange currently offers BX Options Market Makers and Customers tiered rebates and fees for adding or removing liquidity in Penny Pilot and Non-Penny Pilot Options that are based on average daily volume ("ADV") calculations. See Options 7, Section 2(1).

<sup>4</sup> See Phlx Pricing Schedule, Options 7, Section 1(b). The Exchange's other affiliated options markets, Nasdaq ISE, Nasdaq GEMX, Nasdaq MRX, and The Nasdaq Options Market will also file similar rule change proposals to conform to Phlx's rule.

Specifically in Options 7, Section 2, the Exchange proposes to adopt new subsection (6) with the title “Removal of Days for Purposes of Pricing Tiers,” which will provide:

**(i)(A)** Any day that the Exchange announces in advance that it will not be open for trading will be excluded from the options tier calculations set forth in its Pricing Schedule; and **(B)** any day with a scheduled early market close (“Scheduled Early Close”) may be excluded from the options tier calculations only pursuant to paragraph (iii) below.

**(ii)** The Exchange may exclude the following days (“Unanticipated Events”) from the options tier calculations only pursuant to paragraph (iii) below, specifically any day that: **(A)** the market is not open for the entire trading day, **(B)** the Exchange instructs Participants in writing to route their orders to other markets, **(C)** the Exchange is inaccessible to Participants during the 30-minute period before the opening of trade due to an Exchange system disruption, or **(D)** the Exchange’s system experiences a disruption that lasts for more than 60 minutes during regular trading hours.

**(iii)** If a day is to be excluded as a result of paragraph (i)(B) or (ii) above, the Exchange will exclude the day from any Participant’s monthly options tier calculations as follows:

**(A)** the Exchange may exclude from the ADV calculation any Scheduled Early Close or Unanticipated Event; and

**(B)** the Exchange may exclude from any other applicable options tier calculation provided for in its Pricing Schedule (together with (iii)(A), “Tier Calculations”) any Scheduled Early Close or Unanticipated Event.

provided, in each case, that the Exchange will only remove the day for Participants that would have a lower Tier Calculation with the day included.

The proposed language would: (1) allow the Exchange to remove a day from its volume calculations in Options 7, Section 2<sup>5</sup> in a number of specified circumstances, which typically result in artificially low volume days, (2) categorize potential excluded days as those that are known in advance (i.e., days in proposed paragraph (i), including

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<sup>5</sup> See note 3 above.

Scheduled Early Closes), and those that are not (i.e., Unanticipated Events in proposed paragraph (ii)), and (3) allow the Exchange to remove a day only when doing so would be beneficial for the Participant (i.e., only if the Participant would have a lower ADV calculation with the day included, hereinafter, the “better of rule”). As it relates to Unanticipated Events, the Exchange will inform all Participants if any such day will be excluded from its Tier Calculations via a system status message disseminated to all Participants. The Exchange notes that it is not proposing to amend the thresholds a Participant must achieve to become eligible for, or the dollar amount associated with, the tiered rebates or fees.

#### Potential Excluded Days

As noted above, the proposal will allow the Exchange to remove days from Participants’ volume calculations in a number of circumstances that generally result in artificially low volume days. First, the Exchange proposes to adopt language identical to Phlx providing that it will always exclude days where the Exchange announces in advance that it will not be open for trading (e.g., Thanksgiving) from all options tier calculations set forth in its Pricing Schedule.<sup>6</sup> This is also the case today since no trading activity occurs on those days, and the Exchange is only clarifying its current practice within the proposed rule. Second, the Exchange proposes to adopt language that would permit the Exchange to exclude any Scheduled Early Close from its volume calculations. The Exchange believes that Scheduled Early Closes, which typically are days before or after a holiday, may preclude some Participants from submitting orders to the Exchange

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<sup>6</sup> See note 4 above at paragraph (1)(A).

at the same level as they might otherwise. This proposal is consistent with the treatment of such days on Phlx.<sup>7</sup>

Third, the Exchange proposes language allowing it to exclude days where the market is not open for the entire trading day, such as days where the Exchange declares a trading halt in all securities or honors a market-wide trading halt declared by another market, because those days typically have lower trading volume. This is consistent with Phlx's practice for removing such days from its volume calculations.<sup>8</sup>

Fourth, Phlx adopted the language on instructing members to route away to prevent situations where days that have artificially lower volume could not be excluded, for example, because Phlx experienced an issue in the morning that ultimately did not carry over into the trading day.<sup>9</sup> Like Phlx, the Exchange believes that it should have the flexibility to exclude days if Participants have been instructed to send their orders elsewhere, regardless of whether the issue that resulted in this instruction ultimately impacts the availability of the Exchange for trading.

Fifth, the Exchange proposes to adopt identical language as Phlx to exclude days where the Exchange is inaccessible to Participants during the 30-minute period before the opening of trade (i.e., between 9:00 a.m. to 9:30 a.m. Eastern Time) due to an Exchange system disruption.<sup>10</sup> While the language proposed above on instructing Participants to route away may also cover Exchange system disruptions that occur before the market

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<sup>7</sup> See id. at paragraph (1)(B).

<sup>8</sup> See id. at paragraph (2)(A).

<sup>9</sup> See id. at paragraph (2)(B).

<sup>10</sup> See id. at paragraph (2)(C).

opens, the Exchange notes that it may not always instruct Participants to route away in such instances. For example, the Exchange may be inaccessible to Participants in the morning due to a systems disruption but the Exchange resolves the issue shortly before 9:30 a.m. and as a result, the Exchange does not instruct Participants to route away. In this instance, the Exchange would not be permitted to exclude the day from its volume calculations. The Exchange generally experiences a high volume of member participation within the 30-minute window leading up to the opening of trade from Participants who submit eligible interest to be included in the Exchange's opening process. As a result, days where Participants are precluded from submitting eligible interest during this 30-minute time period due to an Exchange systems disruption, even if the issue is ultimately resolved by the Exchange before the market opens (and Participants therefore are not instructed to route away), are likely to have lower trading volume. Including such days in calculations of ADV will therefore make it more difficult for Participants to achieve particular pricing tiers for that month. Accordingly, excluding such days from the monthly tier calculations will diminish the likelihood of a cost increase occurring because a Participant is not able to reach a pricing tier on that date that it would reach on other trading days during the month.

Sixth, the Exchange proposes to adopt language identical to Phlx to exclude days where there is an Exchange system disruption that lasts for more than 60 minutes during regular trading hours (i.e., 9:30 a.m. to 4:00 p.m. Eastern Time), even if such disruption would not be categorized as a complete outage of the Exchange's system.<sup>11</sup> Such a disruption may occur where a certain options series traded on the Exchange is

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<sup>11</sup> See id. at paragraph 2(D).



unavailable for trading due to an Exchange systems issue, or where the Exchange may be able to perform certain functions with respect to accepting and processing orders, but may have a failure to another significant process, such as routing to other market centers, that would lead Participants who rely on such processes to avoid using the Exchange until the Exchange's entire system was operational. The Exchange believes that certain system disruptions that are not complete system outages could preclude some Participants from submitting orders to the Exchange. The Exchange also notes that this proposal is consistent with the rules of other options exchanges.<sup>12</sup>

Because the potential excluded days proposed above generally have artificially lower trading volume, the Exchange believes it is reasonable and equitable to exclude such days in determining its fee and rebate tiers. The Exchange desires to avoid penalizing Participants that might otherwise qualify for certain tiered pricing but that, because of special circumstances on a particular day, did not participate on the Exchange to the extent that they might have otherwise participated. Absent the authority to exclude such days, Participants may experience an effective increase in the cost of trading on BX Options, a result that is both unintended and undesirable to the Exchange and to its Participants.

#### Categories of Excluded Days

In light of the foregoing proposal, the Exchange seeks to categorize the potential excluded days proposed above between days that are known in paragraph (i) and days

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<sup>12</sup> See BATS BZX Options Exchange Fee Schedule (defining an "Exchange System Disruption" as any day that the exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours); and NYSE Arca Options Fee Schedule (defining an "Exchange System Disruption" as a disruption affects an Exchange system that lasts for more than 60 minutes during regular trading hours).

that are not in paragraph (ii), and define the latter as Unanticipated Events. Specifically, paragraph (i) would set forth days that the Exchange announces in advance that it will not be open for trading in paragraph (i)(A), and Scheduled Early Closes in paragraph (ii)(B), as further described above. The Unanticipated Events in paragraph (ii) would cover the days where the Exchange is not open for the entire trading day (e.g., the Exchange declares a trading halt in all securities), days that the Exchange instructs Participants in writing to route away, and the two Exchange systems-related disruptions, each as described above. The foregoing proposal is consistent with how Phlx categorizes potential excluded days today.<sup>13</sup>

#### Better of Rule

Similar to Phlx, the proposed language also specifies how the potential excluded days will be removed from the Exchange's volume calculations. In particular, the language will allow the Exchange to exclude any Scheduled Early Close or Unanticipated Event from its calculations of ADV or any other applicable options volume tiers provided for in its Pricing Schedule, provided that the Exchange will only remove such days for Participants that would have a lower volume calculation with the day included (i.e., the better of rule).<sup>14</sup>

Phlx adopted the better of rule to avoid penalizing members that step up and trade on days with artificially low volume so that it only excludes such days for members that would have a lower volume calculation with the day included. This language would also

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<sup>13</sup> See note 4 above at paragraphs (1) and (2).

<sup>14</sup> Phlx similarly excludes Scheduled Early Closes and Unanticipated Events from its ADV calculations and other applicable volume calculations in its pricing schedule, subject in each case to the better of rule. See note 4 above at paragraph (3).

be helpful on the Exchange as it would ensure that Participants that continue to execute a large volume of contracts are not inadvertently disadvantaged when the Exchange removes a day from its volume calculations. Furthermore, Phlx adopted the catch-all provision applying to other options tier calculations set forth in its pricing schedule, but not specified within paragraph (3) of its rule, so that it would have flexibility to apply the better of rule going forward to all options pricing programs administered by the Exchange that are based on volume calculations.<sup>15</sup> The Exchange believes that adopting a similar principle-based approach for its options volume calculations would ensure that days are removed from such calculations only if doing so would be beneficial for the Participant. As such, the proposed language will not apply to straight volume accumulations as Participants do not benefit when a day is removed for such accumulations. Again, the Exchange believes that the approach of Phlx would be beneficial as it counts volume executed during an excluded day toward its members' straight volume accumulations.

In addition, the Exchange proposes to harmonize its language with Phlx's language by adding further detail throughout the proposed rule text to bring greater transparency as to how the Exchange will apply the better of rule when removing days from its tier calculations. Specifically, the Exchange proposes to make clear that it will only remove days pursuant to the better of rule by specifying in paragraphs (i)(B) and (ii) that such days may be excluded from the tier calculations only pursuant to paragraph (iii).<sup>16</sup> Paragraph (iii) will then provide that if a day is to be excluded as a result of

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<sup>15</sup> See id. at paragraph (3)(C).

<sup>16</sup> See id. at paragraphs (1)(B) and (2) for similar language on Phlx.

paragraph (i)(B) or (ii), the Exchange will be required to exclude the day from any Participant's monthly options tier calculations as detailed within paragraph (iii).<sup>17</sup> With the proposed changes, the Exchange seeks to clarify that it will exclude days from any Participant's Tier Calculations in a uniform manner to ensure that days are removed only in situations where the Participant benefits. The Exchange will look at each potential excluded day in a month and determine for every Participant their ADV or other applicable volume calculation based on their trading volume on that day. If any Participant would have a lower volume calculation with the particular day included, the Exchange will exclude that day for that Participant. As such, the proposed changes specify that the Exchange will apply the better of rule in a uniform manner for all Participants, and that there is no arbitrary selection of "winners" or "losers" when the Exchange excludes days.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>18</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>19</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change is reasonable and equitable as it provides a new framework for removing days from the Exchange's volume

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<sup>17</sup> See id. at paragraph (3) for similar language on Phlx.

<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(4) and (5).

calculations that the Exchange believes is beneficial to Participants and consistent with similar provisions already in place on Phlx. The proposed rule change would permit the Exchange to remove a day from its volume calculations in numerous circumstances as described above, and ensures that the Exchange will only do so when beneficial for the Participant. The Exchange believes that it is reasonable and equitable to exclude Scheduled Early Closes from its volume calculations because this preserves the Exchange's intent behind adopting volume-based pricing. Absent the authority to exclude Scheduled Early Closes, Participants may experience an effective increase in fees or decrease in rebates. The artificially low volumes of trading on such days typically reduce the trading activity of Participants. Accordingly, allowing the Exchange to exclude such days from its volume calculations will diminish the likelihood of an effective increase in the cost of trading on BX Options, a result that is unintended and undesirable to the Exchange and to its Participants.

The Exchange equally believes that it is reasonable and equitable to exclude a day when Participants are instructed to route their orders to other markets as this also preserves the Exchange's intent behind adopting volume-based pricing, and avoids penalizing Participants that follow this instruction. The Exchange likewise believes it is reasonable and equitable to exclude a day from its volume calculations when the Exchange's system experiences a disruption during the 30-minute period prior to the opening of trade which renders the Exchange inaccessible to Participants. Without this change, Participants that are precluded from submitting eligible interest during the 30-minute window before the opening of trade may be negatively impacted, even if the Exchange resolves the issue before the market opens and as a result, does not instruct

Participants to route away. The proposed change to exclude such days will diminish the likelihood of a cost increase occurring because a Participant is not able to reach a volume tier calculation on that date that it would reach on other trading days during the month.

Similarly, excluding a day where the Exchange's system experiences a disruption that lasts for more than 60 minutes intra-day is reasonable and equitable because the proposal seeks to avoid penalizing Participants that might otherwise qualify for certain tiered pricing but that, because of an Exchange systems disruption, did not participate on the Exchange to the extent they might have otherwise participated. The Exchange believes that certain systems disruptions could preclude some Participants from submitting orders to the Exchange even if such issue is not actually a complete systems outage.

In addition, the Exchange believes that it is reasonable and equitable to only exclude a day from its volume calculations for Participants that would otherwise have a lower volume calculation with the day included. Without these changes, Participants that route away in accordance with the Exchange's instructions, or that step up and trade significant volume on excluded trading days, may be negatively impacted, resulting in an effective cost increase for those Participants. In addition, having a catch-all in paragraph (iii)(B) so that the better of rule applies to other options volume calculations than ADV to allow the Exchange to apply the rule going forward to all pricing programs based on volume calculations will further protect Participants. The Exchange notes that aberrant low volume days resulting from, for instance, an Unanticipated Event, impacts all volume calculations, and allowing the Exchange to exclude such days from any volume tier

calculation if the Participant would have a lower tier calculation with the day included will further protect Participants from being inadvertently penalized.

Furthermore, the Exchange believes that categorizing the potential excluded days is reasonable and equitable because it will bring greater transparency to the application of its rule. Specifically, the Exchange is distinguishing between planned and unplanned days in paragraphs (i) and (ii), defining the latter as Unanticipated Events, and stipulating how the Exchange will exclude such days pursuant to this rule. Categorizing days in this manner will clarify the application of its rule in light of the Exchange's proposal to adopt numerous days that may be excluded from its volume calculations. Providing in paragraph (i)(A) that the Exchange will always exclude from its tier calculations days that it announces in advance it will not be open for trading will clarify current practice. Furthermore, the Exchange believes that the proposed changes to specify how days in paragraphs (i)(B) and (ii) may be excluded from its volume calculations will bring greater transparency by delineating the various circumstances in which the better of rule will apply. Providing in paragraph (iii) that the Exchange may exclude any Scheduled Early Close or Unanticipated Event from the Tier Calculations, subject to the better of rule, will make clear that the Exchange will take a consistent approach when excluding days for purposes of its volume based pricing tiers. Furthermore, the proposed changes specifying that the days in paragraphs (i)(B) and (ii) may be excluded only pursuant to paragraph (iii), and requiring the Exchange to exclude such days pursuant to the specifications in paragraph (iii) will likewise make clear that the Exchange will take a consistent approach with respect to excluding days from its Tier Calculations. As discussed above, these modifications will clarify that the Exchange will apply the better of rule in a uniform

manner to all Participants, and that there is no arbitrary selection of “winners” or “losers.”

Finally, the Exchange believes that the proposed rule change is not unfairly discriminatory because it will apply equally to all Participants.

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 designed to protect Participants from the possibility of a cost increase by excluding days when overall participation might be significantly lower than a typical trading day. The Exchange believes that the proposed modifications to its tier calculations are pro-competitive and will result in lower total costs to end users, a positive outcome of competitive markets. Furthermore, other options exchanges have adopted rules that are substantially similar to the Exchange’s proposal.<sup>20</sup>

The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

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.

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<sup>20</sup> See notes 4 and 12 above.



III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>21</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2019-001 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.

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<sup>21</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR-BX-2019-001. 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 Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-BX-2019-001 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.<sup>22</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>22</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

Deleted text is [bracketed]. New text is underlined.

**Nasdaq BX, Inc. Rules**

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**Options 7 Pricing Schedule**

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**Section 2 BX Options Market—Fees and Rebates**

The following charges shall apply to the use of the order execution and routing services of the BX Options market for all securities.

**(1) – (5)** No change.

**(6) Removal of Days for Purposes of Pricing Tiers:**

(i) (A) Any day that the Exchange announces in advance that it will not be open for trading will be excluded from the options tier calculations set forth in its Pricing Schedule; and (B) any day with a scheduled early market close (“Scheduled Early Close”) may be excluded from the options tier calculations only pursuant to paragraph (iii) below.

(ii) The Exchange may exclude the following days (“Unanticipated Events”) from the options tier calculations only pursuant to paragraph (iii) below, specifically any day that: (A) the market is not open for the entire trading day, (B) the Exchange instructs Participants in writing to route their orders to other markets, (C) the Exchange is inaccessible to Participants during the 30-minute period before the opening of trade due to an Exchange system disruption, or (D) the Exchange’s system experiences a disruption that lasts for more than 60 minutes during regular trading hours.

(iii) If a day is to be excluded as a result of paragraph (i)(B) or (ii) above, the Exchange will exclude the day from any Participant’s monthly options tier calculations as follows:

(A) the Exchange may exclude from the ADV calculation any Scheduled Early Close or Unanticipated Event; and

(B) the Exchange may exclude from any other applicable options tier calculation provided for in its Pricing Schedule (together with (iii)(A), “Tier Calculations”) any Scheduled Early Close or Unanticipated Event.

provided, in each case, that the Exchange will only remove the day for Participants that would have a lower Tier Calculation with the day included.

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