

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 28	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2019 - * 019 Amendment No. (req. for Amendments *)
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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"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	<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	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
	Section 3C(b)(2) * <input type="checkbox"/>

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposal to amend the Exchange credits at Equity 7, Section 118(a).

Contact Information

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 * Sean Last Name * Bennett
 Title * Principal Associate General Counsel
 E-mail * Sean.Bennett@nasdaq.com
 Telephone * (301) 978-8499 Fax

Signature

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 *)
Global Chief Legal and Policy Officer

Date 06/04/2019
By Edward S. Knight
(Name *)

edward.knight@nasdaq.com

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.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

Add Remove View

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 *

Add Remove View

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

Add Remove View

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

Add Remove View

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”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend the Exchange’s credits at Equity 7, Section 118(a), as described further below.

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:

T. Sean Bennett
Principal Associate General Counsel
Nasdaq, Inc.
(301) 978-8499

¹ 15 U.S.C. 78s(b)(1).

² 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

The Exchange operates on the “taker-maker” model, whereby it pays credits to members that take liquidity and charges fees to members that provide liquidity. Under Equity 7, Section 118(a), the Exchange describes the charges and credits applied for the use of the order execution and routing services of the Exchange System by members for all securities priced at \$1 or more per share that it trades. As described below, the Exchange is amending the qualification criteria of a credit provided to members for entering Orders that access liquidity in the BX System.

Description of the Change

The purpose of the proposed rule change is to reduce the qualification criteria required to receive a credit for entering an Order in a Tape A or C security that accesses liquidity in the BX System. Specifically, the Exchange currently provides a credit of \$0.0015 per share executed for Tape A and C securities for an Order that accesses liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member that accesses liquidity equal to or exceeding 0.070% of total Consolidated Volume during month. The Exchange is proposing to decrease the Consolidated Volume requirement from 0.070% to 0.065%.³

³ The Exchange calculates Consolidated Volume on a monthly basis to determine qualification for the credit. Because the Exchange is filing this on the second trading day of the month of June 2019, it will apply qualification for the tier based on 0.070% of total Consolidated Volume for the single trading day during which this proposed change was not in effect. The Exchange will apply the proposed 0.065% criteria for the remaining trading days during the month. As a consequence, qualification for the credit will be determined by a weighted

Applicability to and Impact on Participants⁴

The proposed reduction in the qualification criteria is not targeted at or expected to be limited in its applicability to a specific segment(s) of market participants nor will it apply differently to different types of market participants. Non-members cannot qualify for the credit.⁵ The proposed change will lower the threshold required to achieve a better remove rate and therefore will make it more achievable for more members.⁶

Consequently, the proposed change will not negatively impact members that do not qualify because their credit opportunities will remain unchanged. Moreover, the proposed fee is a reduction in costs for members that access quotes on the Exchange, because in the absence of the proposed change members would receive a lower rebate, resulting in a higher cost for transacting on the Exchange. Based on April 2019 volumes, the existing tier represents a minimum of 4.387 million shares removed. Based on past

combination of the two levels of Consolidated Volume based on the number of trading days the particular requirement is in effect.

⁴ On May 21, 2019, the SEC Division of Trading and Markets (the “Division”) issued fee filing guidance titled “Staff Guidance on SRO Rule Filings Relating to Fees” (“Guidance”). Within the Guidance, the Division noted, among other things, that the purpose discussion should address “how the fee may apply differently (e.g., additional cost vs. additional discount) to different types of market participants (e.g., market makers, institutional brokers, retail brokers, vendors, etc.) and different sizes of market participants.” See Guidance (available at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees>). The Guidance also suggests that the purpose discussion should include numerical examples. Where possible, the Exchange is including numerical examples. In addition, the Exchange is providing data to the Commission in support of its arguments herein. The Guidance covers all aspects of a fee filing, which the Exchange has addressed throughout this filing.

⁵ Id.

⁶ As substantiated by data provided to the Commission.

experience administering similar pricing proposals, the Exchange estimates that multiple members of various types would be reasonably positioned to meet the amended tier.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁸ 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 proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities. Moreover, the Exchange believes that its proposal complies with Commission guidance on SRO fee filings that the Commission Staff issued on May 21, 2019.⁹

The Proposal is Reasonable

The Exchange's proposed reduction to the qualification requirement is reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) and (5).

⁹ See Guidance, supra note 4. Although the Exchange believes that this filing complies with the Guidance, the Exchange does not concede that the standards set forth in the Guidance are consistent with the Exchange Act and reserves its right to challenge those standards through administrative and judicial review, as appropriate.

Commission, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”¹⁰

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several taker-maker exchanges. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds. These competing pricing schedules, moreover, are presently comparable to if not more generous than those that the Exchange provides.¹¹

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their

¹⁰ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

¹¹ The Exchange notes that NYSE National and CBOE EDGA offer higher rebates for their members accessing liquidity on their exchanges. CBOE EDGA provides a standard rebate for liquidity removers of \$0.0024 per share executed (or higher if a member qualifies for a volume tier), and NYSE National has a range from a fee of \$0.0005 per share executed to a rebate of \$0.0020 per share executed. In addition, CBOE BYX offers a similar pricing schedule to Nasdaq BX.

respective pricing schedules.¹² Separately, the Exchange has provided the SEC staff multiple examples of instances where pricing changes by BX and other exchanges have resulted in shifts in exchange market share.

Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors. The Exchange also believes that the particular adjustment that it proposes to its volume qualification criteria for the \$0.0015 per share executed credit is a reasonable attempt to achieve this end because this credit tier is particularly important to the Exchange's customers. That is, this credit is one for which several Exchange members presently qualify and whose orders comprise substantial remove volume on the Exchange. It is also a credit tier that has been endangered by the recent decline in the Exchange's market share insofar as this decline has made it more difficult for members to achieve and maintain its total Consolidated Volume requirement. Finally, the Exchange believes that adjusting the qualification criteria for this particular credit will not only help ensure that qualifying members will continue to qualify for the credit, but it also will render the credit readily achievable for a broader group of members. The Exchange estimates that the proposal will provide multiple members with a reasonable opportunity to meet the adjusted tier.

¹² The Exchange perceives no regulatory, structural, or cost impediments to market participants shifting order flow away from it. See Guidance, *supra* note 4. In particular, the Exchange notes that these examples of shifts in liquidity and market share, along with many others, have occurred within the context of market participants' existing duties of Best Execution and obligations under the Order Protection Rule under Regulation NMS.

The Proposal is an Equitable Allocation of Credits

The Exchange believes its proposal allocates its rebates fairly among its market participants. The Exchange is not proposing to adjust the amount of the credit, which will remain at the \$0.0015 per share executed level that the Commission has already approved. By proposing to lower the criteria to qualify for the credit, the Exchange intends to help ensure that those members that currently qualify for it will continue to do so even as the Exchange's market share has declined. It also intends to broaden the base of members who can qualify for it. Finally, the Exchange intends that its proposal will help to stem or reverse the loss in market share that the Exchange is experiencing.

The Exchange intends for the proposal to improve market quality for all members on the Exchange and by extension attract more liquidity to the market, improving market wide quality and price discovery. The proposal neither targets nor will it have a disparate impact on any particular category of market participant, and in fact, will allow more market participants to take advantage of the existing credit. The Exchange calibrated the proposal to impact a broad swath of members whose orders comprise substantial remove volume so that it would have a significant effect. The Exchange expects that the proposal will enable the multitude of members that currently qualify for the credit tier to continue to do so. Additionally, based on May 2019 volume, the Exchange estimates that the proposal will provide multiple members with a reasonable opportunity to meet the adjusted tier. As to those members that do not presently qualify for the credit tier, and will not qualify for the adjusted tier, the proposal will not adversely impact their existing pricing or their ability to qualify for other credit tiers.

The Proposed Fee is not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries – from co-branded credit cards to grocery stores to cellular telephone data plans – that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

Furthermore, the Exchange's proposal to adjust the qualification criteria for the \$0.0015 per share executed credit tier is not unfairly discriminatory. The Exchange intends for the proposal to improve market quality for all members on the Exchange and by extension attract more liquidity to the market, improving market wide quality and price discovery. The proposal neither targets nor will it have a disparate impact on any particular category of market participant. Instead, the Exchange calibrated the proposal to impact a broad swath of members whose orders comprise substantial remove volume so that it would have a significant effect. The Exchange expects that the proposal will enable the multitude of existing members that currently qualify for the credit tier to continue to do so. Additionally, based on May 2019 volume, the Exchange estimates that the proposal will provide multiple members with a reasonable opportunity to meet the adjusted tier. As to those members that do not presently qualify for the credit tier, and

will not qualify for the adjusted tier (although they might in the future as their business grows), the proposal will not adversely impact their existing pricing or their ability to qualify for other credit tiers.

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.

Intramarket Competition

Addressing whether the proposed change could place certain market participants at a relative disadvantage compared to other market participants, the Exchange does not believe that members that do not have the capacity to provide the level of Consolidated Volume required by the proposal are disadvantaged. As noted above, all members benefit from the removal of liquidity by those that choose to meet the tier qualification criteria. Members may grow their businesses so that they have the capacity to receive the credit. Moreover, members are free to trade on other venues to the extent they believe that the fees assessed and credits provided are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. The Exchange notes that the tier structure is consistent with broker-dealer fee practices as well as the other industries, as described above.

Intermarket Competition

Addressing whether the proposed fee could impose a burden on competition on other SROs that is not necessary or appropriate, the Exchange believes that the proposed change to the qualification criteria for the credit for accessing liquidity of Tape A and C

does not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from the other 12 live exchanges and from off-exchange venues, which include 32 alternative trading systems. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The proposed reduced criteria is reflective of this competition because, as a threshold issue, the Exchange is a relatively small market so its ability to burden intermarket competition is limited. In this regard, even the largest U.S. equities exchange by volume only has 17-18% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprised more than 38% of industry volume for the month of April 2019.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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.

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,¹³ 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.

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

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

Not applicable.

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

Not applicable.

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-2019-019)

June __, 2019

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to amend the Exchange's Credits at Equity 7, Section 118(a)

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 June 4, 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 the Exchange's credits at Equity 7, Section 118(a), as described further below.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqbx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The Exchange operates on the “taker-maker” model, whereby it pays credits to members that take liquidity and charges fees to members that provide liquidity. Under Equity 7, Section 118(a), the Exchange describes the charges and credits applied for the use of the order execution and routing services of the Exchange System by members for all securities priced at \$1 or more per share that it trades. As described below, the Exchange is amending the qualification criteria of a credit provided to members for entering Orders that access liquidity in the BX System.

Description of the Change

The purpose of the proposed rule change is to reduce the qualification criteria required to receive a credit for entering an Order in a Tape A or C security that accesses liquidity in the BX System. Specifically, the Exchange currently provides a credit of \$0.0015 per share executed for Tape A and C securities for an Order that accesses liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member that accesses liquidity equal to or exceeding 0.070% of total Consolidated

Volume during month. The Exchange is proposing to decrease the Consolidated Volume requirement from 0.070% to 0.065%.³

Applicability to and Impact on Participants⁴

The proposed reduction in the qualification criteria is not targeted at or expected to be limited in its applicability to a specific segment(s) of market participants nor will it apply differently to different types of market participants. Non-members cannot qualify for the credit.⁵ The proposed change will lower the threshold required to achieve a better remove rate and therefore will make it more achievable for more members.⁶

Consequently, the proposed change will not negatively impact members that do not

³ The Exchange calculates Consolidated Volume on a monthly basis to determine qualification for the credit. Because the Exchange is filing this on the second trading day of the month of June 2019, it will apply qualification for the tier based on 0.070% of total Consolidated Volume for the single trading day during which this proposed change was not in effect. The Exchange will apply the proposed 0.065% criteria for the remaining trading days during the month. As a consequence, qualification for the credit will be determined by a weighted combination of the two levels of Consolidated Volume based on the number of trading days the particular requirement is in effect.

⁴ On May 21, 2019, the SEC Division of Trading and Markets (the “Division”) issued fee filing guidance titled “Staff Guidance on SRO Rule Filings Relating to Fees” (“Guidance”). Within the Guidance, the Division noted, among other things, that the purpose discussion should address “how the fee may apply differently (e.g., additional cost vs. additional discount) to different types of market participants (e.g., market makers, institutional brokers, retail brokers, vendors, etc.) and different sizes of market participants.” See Guidance (available at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees>). The Guidance also suggests that the purpose discussion should include numerical examples. Where possible, the Exchange is including numerical examples. In addition, the Exchange is providing data to the Commission in support of its arguments herein. The Guidance covers all aspects of a fee filing, which the Exchange has addressed throughout this filing.

⁵ Id.

⁶ As substantiated by data provided to the Commission.

qualify because their credit opportunities will remain unchanged. Moreover, the proposed fee is a reduction in costs for members that access quotes on the Exchange, because in the absence of the proposed change members would receive a lower rebate, resulting in a higher cost for transacting on the Exchange. Based on April 2019 volumes, the existing tier represents a minimum of 4.387 million shares removed. Based on past experience administering similar pricing proposals, the Exchange estimates that multiple members of various types would be reasonably positioned to meet the amended tier.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁸ 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 proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities. Moreover, the Exchange believes that its proposal complies with Commission guidance on SRO fee filings that the Commission Staff issued on May 21, 2019.⁹

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) and (5).

⁹ See Guidance, supra note 4. Although the Exchange believes that this filing complies with the Guidance, the Exchange does not concede that the standards set forth in the Guidance are consistent with the Exchange Act and reserves its right to challenge those standards through administrative and judicial review, as appropriate.

The Proposal is Reasonable

The Exchange's proposed reduction to the qualification requirement is reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' ... As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'"¹⁰

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several taker-maker exchanges. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume

¹⁰ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

thresholds. These competing pricing schedules, moreover, are presently comparable to if not more generous than those that the Exchange provides.¹¹

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules.¹² Separately, the Exchange has provided the SEC staff multiple examples of instances where pricing changes by BX and other exchanges have resulted in shifts in exchange market share.

Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors. The Exchange also believes that the particular adjustment that it proposes to its volume qualification criteria for the \$0.0015 per share executed credit is a reasonable attempt to achieve this end because this credit tier is particularly important to the Exchange's customers. That is, this credit is one for which several Exchange members presently qualify and whose orders comprise substantial remove volume on the Exchange. It is also a credit tier that has been endangered by the recent decline in the Exchange's market share insofar as this decline has made it more difficult for members to achieve and maintain its total Consolidated Volume requirement. Finally, the Exchange believes that

¹¹ The Exchange notes that NYSE National and CBOE EDGA offer higher rebates for their members accessing liquidity on their exchanges. CBOE EDGA provides a standard rebate for liquidity removers of \$0.0024 per share executed (or higher if a member qualifies for a volume tier), and NYSE National has a range from a fee of \$0.0005 per share executed to a rebate of \$0.0020 per share executed. In addition, CBOE BYX offers a similar pricing schedule to Nasdaq BX.

¹² The Exchange perceives no regulatory, structural, or cost impediments to market participants shifting order flow away from it. See Guidance, supra note 4. In particular, the Exchange notes that these examples of shifts in liquidity and market share, along with many others, have occurred within the context of market participants' existing duties of Best Execution and obligations under the Order Protection Rule under Regulation NMS.

adjusting the qualification criteria for this particular credit will not only help ensure that qualifying members will continue to qualify for the credit, but it also will render the credit readily achievable for a broader group of members. The Exchange estimates that the proposal will provide multiple members with a reasonable opportunity to meet the adjusted tier.

The Proposal is an Equitable Allocation of Credits

The Exchange believes its proposal allocates its rebates fairly among its market participants. The Exchange is not proposing to adjust the amount of the credit, which will remain at the \$0.0015 per share executed level that the Commission has already approved. By proposing to lower the criteria to qualify for the credit, the Exchange intends to help ensure that those members that currently qualify for it will continue to do so even as the Exchange's market share has declined. It also intends to broaden the base of members who can qualify for it. Finally, the Exchange intends that its proposal will help to stem or reverse the loss in market share that the Exchange is experiencing.

The Exchange intends for the proposal to improve market quality for all members on the Exchange and by extension attract more liquidity to the market, improving market wide quality and price discovery. The proposal neither targets nor will it have a disparate impact on any particular category of market participant, and in fact, will allow more market participants to take advantage of the existing credit. The Exchange calibrated the proposal to impact a broad swath of members whose orders comprise substantial remove volume so that it would have a significant effect. The Exchange expects that the proposal will enable the multitude of members that currently qualify for the credit tier to continue to do so. Additionally, based on May 2019 volume, the Exchange estimates that the

proposal will provide multiple members with a reasonable opportunity to meet the adjusted tier. As to those members that do not presently qualify for the credit tier, and will not qualify for the adjusted tier, the proposal will not adversely impact their existing pricing or their ability to qualify for other credit tiers.

The Proposed Fee is not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries – from co-branded credit cards to grocery stores to cellular telephone data plans – that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

Furthermore, the Exchange's proposal to adjust the qualification criteria for the \$0.0015 per share executed credit tier is not unfairly discriminatory. The Exchange intends for the proposal to improve market quality for all members on the Exchange and by extension attract more liquidity to the market, improving market wide quality and price discovery. The proposal neither targets nor will it have a disparate impact on any particular category of market participant. Instead, the Exchange calibrated the proposal to impact a broad swath of members whose orders comprise substantial remove volume so that it would have a significant effect. The Exchange expects that the proposal will

enable the multitude of existing members that currently qualify for the credit tier to continue to do so. Additionally, based on May 2019 volume, the Exchange estimates that the proposal will provide multiple members with a reasonable opportunity to meet the adjusted tier. As to those members that do not presently qualify for the credit tier, and will not qualify for the adjusted tier (although they might in the future as their business grows), the proposal will not adversely impact their existing pricing or their ability to qualify for other credit tiers.

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.

Intramarket Competition

Addressing whether the proposed change could place certain market participants at a relative disadvantage compared to other market participants, the Exchange does not believe that members that do not have the capacity to provide the level of Consolidated Volume required by the proposal are disadvantaged. As noted above, all members benefit from the removal of liquidity by those that choose to meet the tier qualification criteria. Members may grow their businesses so that they have the capacity to receive the credit. Moreover, members are free to trade on other venues to the extent they believe that the fees assessed and credits provided are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. The Exchange notes that the tier structure is consistent with broker-dealer fee practices as well as the other industries, as described above.

Intermarket Competition

Addressing whether the proposed fee could impose a burden on competition on other SROs that is not necessary or appropriate, the Exchange believes that the proposed change to the qualification criteria for the credit for accessing liquidity of Tape A and C does not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from the other 12 live exchanges and from off-exchange venues, which include 32 alternative trading systems. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The proposed reduced criteria is reflective of this competition because, as a threshold issue, the Exchange is a relatively small market so its ability to burden intermarket competition is limited. In this regard, even the largest U.S. equities exchange by volume only has 17-18% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share

moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprised more than 38% of industry volume for the month of April 2019.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹³

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.

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2019-019 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-2019-019. 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-2019-019 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.¹⁴

Eduardo A. Aleman
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

Rules of Nasdaq BX

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Equity 7 Pricing Schedule

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Section 118. Nasdaq BX Equities System Order Execution and Routing

(a) The following charges and credits shall apply to the use of the order execution and routing services of the Nasdaq BX Equities System by members for all securities priced at \$1 or more per share that it trades. As used in this rule, the term "Consolidated Volume" shall mean the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity. As used in this rule, "price improvement" shall mean instances when the accepted price of an order differs from the executed price of an order.

Credit for entering order that accesses liquidity in the Nasdaq BX Equities System:

	Tape A	Tape B	Tape C
	* * * * *		
Order that accesses liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member that accesses liquidity equal to or exceeding 0.0 <u>65</u> [70]% of total Consolidated Volume during month:	\$0.0015 per share executed	N/A	\$0.0015 per share executed
	* * * * *		

(b) – (f) No change.

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