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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2019 - * 045
Amendment No. (req. for Amendments *)

Filing by NASDAQ BX, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * ☑ Amendment * ☐ Withdrawal ☐

Section 19(b)(2) * ☐ Section 19(b)(3)(A) * ☑ Section 19(b)(3)(B) * ☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☑ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐ Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document ☐ Exhibit 3 Sent As Paper Document ☐

Description

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

A proposal to amend: the Exchange transaction fees and credits, at Equity 7, Section 118(a); and its Qualified Market Maker Program, at Equity 7, Section 118(f)

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 * Brett Last Name * Kitt
Title * Senior Associate General Counsel
E-mail * brett.kitt@nasdaq.com
Telephone * (301) 978-8132 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.

Date 12/11/2019

By John Zecca
(Name *)

(Title *)
EVP & Chief Legal Officer

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.

john.zecca@nasdaq.com

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS 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 * 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, 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 Add Remove View 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 Add Remove View	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 Add Remove View	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: (i) the Exchange's transaction fees and credits, at Equity 7, Section 118(a); and (ii) its Qualified Market Maker Program, at Equity 7, Section 118(f), 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 25, 2019. 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:

Brett Kitt
Senior Associate General Counsel
Nasdaq, Inc.
(301) 978-8132

[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 generally pays credits to members that take liquidity and charges fees to members that provide liquidity. Currently, the Exchange has a schedule, at Equity 7, Section 118(a), which consists of several different credits that it provides for orders in securities priced at $1 or more per share that access liquidity on the Exchange and several different charges that it assesses for orders in such securities that add liquidity on the Exchange. It also has a program, at Equity 7, Section 118(f), to reward those of its members that make significant contributions to the market.

Over the course of the last few months, the Exchange has experimented with various reformulations of its pricing schedule with the aim of increasing activity on the Exchange, improving market quality, and increasing market share.[3] Although these changes have met with some success, the Exchange has yet to achieve the results it desires. Accordingly, the Exchange proposes to again restate its pricing schedule, in large part, in a further attempt to improve the attractiveness of the market to new and existing participants.

Description of the Changes

Credits for Accessing Liquidity through the Exchange

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[3] See Securities Exchange Act Release No. 34-87271 (October 10, 2019), 84 FR 55621 (October 17, 2019) (SR-BX-2019-035); Securities Exchange Act Release No. 34-87093 (September 24, 2019), 84 FR 57530 (October 25, 2019) (SR-BX-2019-031); Securities Exchange Act Release No. 34–86447 (July 24, 2019); 84 FR 36989 (July 30, 2019) (SR-BX-2019-026); Securities Exchange Act Release No. 34-85912 (May 22, 2019); 84 FR 24834 (May 29, 2019) (SR-BX-2019-013).

The Exchange proposes to eliminate its schedule of existing credits (except as described below) and replace it with a new schedule of credits for orders in securities that remove liquidity from the Exchange (the "New Credits"). Generally speaking, the proposed New Credits will be higher than the existing credits for orders in Tape C and lower than the existing credits for orders in securities in Tapes A and B.[4] The proposed New Credits for orders in securities in all Tapes also will no longer be tied to threshold levels of liquidity removal activity in securities in Tape C. The Exchange believes that higher overall credits for orders in securities in Tape C will incentivize members to increase their liquidity removal activity in securities in Tape C. Meanwhile, eliminating the Tape C removal activity requirement from the qualifying criteria for credits for orders in securities in all Tapes will render those credits easier for members to attain, even as the amounts of those credits decrease for securities in Tapes A and B.

Specifically, the Exchange proposes to adopt the following New Credits:

- A $0.0029 per share executed credit for orders in securities in Tapes A and B and a $0.0028 per share executed credit for orders in securities in Tape C that access liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an

4 Whereas the highest credit under the existing schedule (for a member that adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month) is $0.0031 per share executed for orders in securities in Tapes A and B and the lowest credit is $0.0018 per share executed, the top such credit in the proposed schedule will be $0.0029 per share executed and the lowest credit will be $0.0015 per share executed. And whereas the highest credit under the existing schedule (for a member that adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month) is $0.0017 per share executed for orders in securities in Tape C and the lowest credit is $0.0005 per share executed, the top such credit in the proposed schedule will be $0.0028 per share executed and the lowest will be $0.0014 per share executed.

order with a Non-displayed price) entered by a member: (i) whose combined liquidity removing and adding activities equal to or exceed 0.225% of total Consolidated Volume during a month; and (ii) adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month.

- A $0.0026 per share executed credit for orders in securities in Tapes A and B and a $0.0025 per share executed credit for orders in securities in Tape C that access 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: (i) accesses liquidity equal to or exceeding 0.08% of total Consolidated Volume during a month; and (ii) adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month.
- A $0.0021 per share executed credit for orders in securities in Tapes A and B and a $0.0020 per share executed credit for orders in securities in Tape C that access 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: (i) accesses liquidity equal to or exceeding 0.05% of total Consolidated Volume during a month; and (ii) adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month.
- A $0.0015 per share executed credit for orders in securities in Tapes A and B and a $0.0014 per share executed credit for orders in securities in Tape

C that access 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 adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month.

As noted above, the proposed New Credits will not supplant all of the existing provisions. Instead, the Exchange proposes that the following existing provisions will continue to apply to orders in securities in all Tapes:

- $0.0000 per share executed for an order that receives price improvement and executes against an order with a Non-displayed price; and
- $0.0000 per share executed for an order with Midpoint pegging that removes liquidity.

The Exchange also proposes to continue charging a fee for orders in securities in any Tape (excluding an order with midpoint pegging and excluding an order that receives price improvement and executes against an order with a non-displayed price) that removes liquidity from the Exchange and that is entered by a member that does not add at least an average daily volume of 50,000 shares to the Exchange during a month. However, the Exchange proposes to increase that fee for orders in securities in all Tapes from $0.0005 to $0.0007 per share executed.

Charges for Adding Liquidity to the Exchange

In addition to the above, the Exchange proposes to replace its existing schedule of charges for adding displayed liquidity to the Exchange (the “New Charges”). Generally speaking, the range of the proposed New Charges will be lower than the existing charges for orders in Tapes A and B and higher for orders in Tape C.[5] The proposed New Charges for displayed orders in securities in Tapes A and B also will no longer be tied to threshold levels of liquidity adding activity in securities in Tape B and the proposed New Charges for displayed orders in securities in Tape C will no longer be tied to threshold levels of liquidity adding activity in securities in Tape C. The Exchange believes that lower overall charges for orders in securities in Tapes A and B will incentivize members to increase their liquidity adding activity in securities in Tapes A and B. Higher charges for orders that add liquidity in Tape C will help to offset the costs of providing higher credits to members with orders in securities in Tape C that remove liquidity from the Exchange.

Specifically, the Exchange proposes to delete all of the existing charges for providing liquidity in displayed orders through the Exchange (except as provided below) and replace them with the following New Charges:

- A $0.0024 per share executed charge for displayed orders entered by a member that adds liquidity equal to or exceeding 0.25% of total Consolidated Volume during a month.
- A $0.0026 per share executed charge for displayed orders entered by a member that adds liquidity equal to or exceeding 0.15% of total Consolidated Volume during a month.

5 Whereas under the existing pricing schedule, the Exchange charges between $0.0025 and $0.0029 per share executed for displayed orders in securities in Tapes A and B, and between $0.0012 and $0.0017 per share executed for displayed orders in securities in Tape C, that add liquidity to the Exchange equal to or exceeding certain volume thresholds each month, the proposed schedule will charge fees for such displayed orders in securities in all three Tapes ranging from $0.0024 to $0.0028 per share executed.

- A $0.0028 per share executed charge for displayed orders entered by a member that adds liquidity equal to or exceeding 0.07% of total Consolidated Volume during a month.
- Although the Exchange will continue to charge $0.0030 per share executed for all other orders in securities in Tapes A and B, it will increase its charge for all other orders in securities in Tape C from $0.0020 to $0.0030 per share executed.

The Exchange proposes that following existing charges will continue to apply to orders in securities in all Tapes:

- A $0.0005 per share executed charge for orders with Midpoint pegging entered by a member that adds 0.02% of total Consolidated Volume of non-displayed liquidity excluding a buy (sell) order that receives an execution price that is lower (higher) than the midpoint of the NBBO.
- A $0.0015 per share executed charge for orders with Midpoint pegging entered by other member excluding a buy (sell) order that receives an execution price that is lower (higher) than the midpoint of the NBBO.
- A $0.0030 per share executed charge for a buy (sell) order with Midpoint pegging entered by a member that receives an execution price that is lower (higher) than the midpoint of the NBBO.
- A $0.0028 per share executed charge for non-displayed orders (other than orders with Midpoint pegging) entered by a member that adds liquidity equal to or exceeding 0.25% total Consolidated Volume during a month.
- A $0.0030 per share executed charge for all other non-displayed orders.

- Charges for entering BSTG, BSCN, BMOP, BTFY, BCRT, BDRK, BCST, and SCAR orders that execute in a venue other than the Nasdaq BX Equities System.

Changes to Qualified Market Maker Program

The Exchange presently has a Qualified Market Maker ("QMM") program, at Equity 7, Section 118(f), which rewards members that make significant contributions to market quality by providing liquidity at the national best bid and offer ("NBBO") in a large number of securities for a significant portion of the day. In particular, the existing QMM program provides a member with a reduced transaction fee of $0.0016 per share executed for all of its displayed orders in securities priced at $1 or more if the member: (i) quotes at the NBBO at least 25% of the time during market hours in an average of at least 400 securities per day during a month; and (ii) provides add volume during a month of at least 0.125% of total Consolidated Volume.

The Exchange now proposes to replace the existing QMM program with one that will provide QMMs with two tiers of discounts off of their regular fees for displayed orders priced at $1 or more that add liquidity to the Exchange. The amount of the new discounts will vary depending upon the number of securities in which the QMM quotes at the NBBO and the extent to which the QMM adds liquidity as a percentage of total Consolidated Volume. First, if a QMM quotes at the NBBO at least 25% of the time during market hours in an average of at least 400 securities per day, and if it provides add volume of at least 0.07% of total Consolidated Volume during a month, then the QMM will be entitled to receive a discount of $0.0001 per share executed. Second, if a QMM quotes at the NBBO at least 25% of the time during market hours in an average of at least

750 securities per day, and if it provides add volume of at least 0.15% of total Consolidated Volume during a month, then the QMM will be entitled to receive a discount of $0.0002 per share executed. These discounts will not be cumulative. The Exchange intends for its new QMM program to provide greater incentives to members to increase their contributions to market quality.

Applicability to and Impact on Participants

The proposed rule change is a broad restatement of the Exchange's schedule of credits and charges. The Exchange has designed the restated schedule to specifically increase liquidity removal activity on the Exchange for orders in securities in Tape C, to increase liquidity adding activity in Tapes A and B, and to thereby improve the overall quality and attractiveness of the Nasdaq BX market. The Exchange intends to accomplish this objective by providing overall higher credits to those participants that engage in large volumes of liquidity removal activity on the Exchange in securities in Tape C and by charging lower overall fees to those participants that add liquidity to the Exchange in securities in Tapes A and B. The Exchange also intends to provide greater incentives to members to act as QMMs and to contribute significantly to the improvement of the market.

Those participants that act as net removers of liquidity from the Exchange in securities in Tape C will benefit directly from the proposed rule change through the receipts of higher credits. Those participants that act as net adders of liquidity to the Exchange in securities in Tapes A and B will also benefit from lower charges and indirectly from any improvement in the overall quality of the market. However, net liquidity adders in securities in Tape C and net removers of liquidity in securities in

Tapes A and B will bear the costs of these proposals. The Exchange notes that its proposal is not otherwise 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.

Members will not be impacted directly by the replacement of the existing QMM program because no member currently qualifies for that program.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[7] 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.

The Proposal is Reasonable

The Exchange's proposed change to its schedule of credits and charges 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

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6 15 U.S.C. 78f(b).

7 15 U.S.C. 78f(b)(4) and (5).

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'…."[8]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[9]

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

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8 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)).

9 Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

thresholds.[10]

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.[11] Separately, the Exchange has provided the SEC staff with 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 has designed its proposed schedule of credits and charges to provide increased overall incentives to members to increase their liquidity removal and adding activity on the Exchange. An increase in liquidity removal and adding activity on the Exchange will, in turn, improve the quality of the Nasdaq BX market and increase its attractiveness to existing and prospective participants. Generally, the proposed New

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10 CBOE EDGA provides a standard rebate for liquidity removers of \$0.00180 per share executed (or between \$0.0022 and \$0.0028 per share executed if a member qualifies for a volume tier), and a standard charge of \$0.0030 per share executed for liquidity adders (or between \$0.0022 and \$0.0026 if a member qualifies for a volume tier). NYSE National has a standard charge of \$0.0005 per share executed for liquidity removers (\$0.0025 and \$0.0030 rebate if a member qualifies for a volume tier) and a standard charge of \$0.0028 per share executed for liquidity adders (and a range of charges from \$0.0020-\$0.0026 if a member qualifies for a volume tier).

11 The Exchange perceives no regulatory, structural, or cost impediments to market participants shifting order flow away from it. 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.

Credits and Charges will be comparable to, if not favorable to, those that its competitors provide.[12]

Moreover, the Exchange believes that it is reasonable to bolster its QMM program as a means of incentivizing members to act as QMMs and to increase their contributions to the improvement of the quality of the Nasdaq BX Exchange.

The Exchange notes that those participants that are dissatisfied with the New Charges or New Credits are free to shift their order flow to competing venues that offer them lower charges or higher credits.

The Proposal is an Equitable Allocation of Credits and Charges

The Exchange believes its proposal will allocate its New Credits and New Charges fairly among its market participants. It is equitable for the Exchange to increase its credits to participants whose orders remove liquidity from the Exchange as a means of incentivizing increased liquidity removal activity. Likewise, it is equitable for the Exchange to reduce charges to participants whose orders add liquidity to the Exchange as a means of incentivizing liquidity adding activity. An increase in overall liquidity removal and addition activity on the Exchange will improve the quality of the Nasdaq BX market and increase its attractiveness to existing and prospective participants.

Likewise, it is equitable for the Exchange to specifically increase credits for orders that remove liquidity from the Exchange in Tape C as a means of increasing liquidity removal activity in that Tape, and to specifically lower overall charges for orders that add liquidity to the Exchange in Tapes A and B as a means of increasing

12 See n. 10, supra.

liquidity adding activity in Tapes A and B. Again, the Exchange intends for these changes to improve the overall quality and attractiveness of the Nasdaq BX market.

For similar reasons, the Exchange believes that it is equitable to increase the discounts it offers to members that qualify as QMMs if such members, in turn, increase the extent of their market improving behavior by quoting at the NBBO for a larger number of securities than is required now and by adding a higher percentage of total Consolidated Volume.

Although under the proposal, certain market participants will pay higher charges or attain lower credits than they do now, those participants will also benefit from any improvements in the quality and attractiveness of the market that the New Credits and New Charges and amended QMM program will provide. Moreover, any participant that wishes to avoid paying higher charges or receiving lower credits is free to shift their order flow to competing venues that provide more favorable pricing.

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.

The Exchange intends for its 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. Although net removers of liquidity in Tape C and net adders of liquidity in Tapes A and B will benefit most from the proposal, this result is fair insofar as increased activity in securities in these Tapes will help to improve market quality and the attractiveness of the Nasdaq BX market to all existing and prospective participants. And although certain participants will bear the costs of the proposed rule change through higher charges or lower credits, this too is fair because these participants will also benefit from improvements in market quality. Moreover, any participant that does not wish to pay higher charges or receive lower credits is free to shift its order flow to a competing venue.

Finally, the Exchange believes that its proposed amendments to its QMM program are not unfairly discriminatory because the new program will be available to any member that chooses to meet its requirements. The Exchange notes that none of its members will be affected directly by the proposed amendments insofar as no member currently qualifies as a QMM under the existing program.

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

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage. As noted above, all members of the Exchange will benefit from any increase in market activity that the proposal effectuates. Members may grow or modify their businesses so that they can receive the higher credits or pay lower charges. 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 its proposed modifications to its schedule of credits and charges will 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 restated schedule of credits and charges 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 has less than 20% 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 37% of industry volume for the month of July 2019.

The Exchange intends for the proposed changes to its schedule of fees and credits, in the aggregate, to increase member incentives to engage in the removal and addition of liquidity on the Exchange. Similarly, the Exchange intends for its proposal to amend its QMM Program to increase incentives for members to improve the market by quoting at the NBBO meaningfully in a large number of securities and by adding a significant amount of liquidity. These changes are procompetitive and reflective of the Exchange's efforts to make it an attractive and vibrant venue to market participants.

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.

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.

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13 15 U.S.C. 78s(b)(3)(A)(ii).

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-2019-045)

December__, 2019

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the Exchange's Transaction Fees and Credits and Qualified Market Maker Program, at Equity 7, Section 118

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 December 11, 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: (i) the Exchange's transaction fees and credits, at Equity 7, Section 118(a); and (ii) its Qualified Market Maker Program, at Equity 7, Section 118(f), 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.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange operates on the "taker-maker" model, whereby it generally pays credits to members that take liquidity and charges fees to members that provide liquidity. Currently, the Exchange has a schedule, at Equity 7, Section 118(a), which consists of several different credits that it provides for orders in securities priced at $1 or more per share that access liquidity on the Exchange and several different charges that it assesses for orders in such securities that add liquidity on the Exchange. It also has a program, at Equity 7, Section 118(f), to reward those of its members that make significant contributions to the market.

Over the course of the last few months, the Exchange has experimented with various reformulations of its pricing schedule with the aim of increasing activity on the Exchange, improving market quality, and increasing market share.[3] Although these

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[3] See Securities Exchange Act Release No. 34-87271 (October 10, 2019), 84 FR 55621 (October 17, 2019) (SR-BX-2019-035); Securities Exchange Act Release No. 34-87093 (September 24, 2019), 84 FR 57530 (October 25, 2019) (SR-BX-2019-031); Securities Exchange Act Release No. 34–86447 (July 24, 2019); 84 FR 36989 (July 30, 2019) (SR-BX-2019-026); Securities Exchange Act Release No. 34-85912 (May 22, 2019); 84 FR 24834 (May 29, 2019) (SR-BX-2019-013).

changes have met with some success, the Exchange has yet to achieve the results it desires. Accordingly, the Exchange proposes to again restate its pricing schedule, in large part, in a further attempt to improve the attractiveness of the market to new and existing participants.

Description of the Changes

Credits for Accessing Liquidity through the Exchange

The Exchange proposes to eliminate its schedule of existing credits (except as described below) and replace it with a new schedule of credits for orders in securities that remove liquidity from the Exchange (the "New Credits"). Generally speaking, the proposed New Credits will be higher than the existing credits for orders in Tape C and lower than the existing credits for orders in securities in Tapes A and B.[4] The proposed New Credits for orders in securities in all Tapes also will no longer be tied to threshold levels of liquidity removal activity in securities in Tape C. The Exchange believes that higher overall credits for orders in securities in Tape C will incentivize members to increase their liquidity removal activity in securities in Tape C. Meanwhile, eliminating the Tape C removal activity requirement from the qualifying criteria for credits for orders

4 Whereas the highest credit under the existing schedule (for a member that adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month) is \$0.0031 per share executed for orders in securities in Tapes A and B and the lowest credit is \$0.0018 per share executed, the top such credit in the proposed schedule will be \$0.0029 per share executed and the lowest credit will be \$0.0015 per share executed. And whereas the highest credit under the existing schedule (for a member that adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month) is \$0.0017 per share executed for orders in securities in Tape C and the lowest credit is \$0.0005 per share executed, the top such credit in the proposed schedule will be \$0.0028 per share executed and the lowest will be \$0.0014 per share executed.

in securities in all Tapes will render those credits easier for members to attain, even as the amounts of those credits decrease for securities in Tapes A and B.

Specifically, the Exchange proposes to adopt the following New Credits:

- A $0.0029 per share executed credit for orders in securities in Tapes A and B and a $0.0028 per share executed credit for orders in securities in Tape C that access 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: (i) whose combined liquidity removing and adding activities equal to or exceed 0.225% of total Consolidated Volume during a month; and (ii) adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month.
- A $0.0026 per share executed credit for orders in securities in Tapes A and B and a $0.0025 per share executed credit for orders in securities in Tape C that access 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: (i) accesses liquidity equal to or exceeding 0.08% of total Consolidated Volume during a month; and (ii) adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month.
- A $0.0021 per share executed credit for orders in securities in Tapes A and B and a $0.0020 per share executed credit for orders in securities in Tape C that access 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: (i) accesses liquidity equal to or exceeding 0.05% of total Consolidated Volume during a month; and (ii) adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month.

- A $0.0015 per share executed credit for orders in securities in Tapes A and B and a $0.0014 per share executed credit for orders in securities in Tape C that access 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 adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month.

As noted above, the proposed New Credits will not supplant all of the existing provisions. Instead, the Exchange proposes that the following existing provisions will continue to apply to orders in securities in all Tapes:

- $0.0000 per share executed for an order that receives price improvement and executes against an order with a Non-displayed price; and
- $0.0000 per share executed for an order with Midpoint pegging that removes liquidity.

The Exchange also proposes to continue charging a fee for orders in securities in any Tape (excluding an order with midpoint pegging and excluding an order that receives price improvement and executes against an order with a non-displayed price) that removes liquidity from the Exchange and that is entered by a member that does not add at least an average daily volume of 50,000 shares to the Exchange during a month. However, the Exchange proposes to increase that fee for orders in securities in all Tapes from $0.0005 to $0.0007 per share executed.

Charges for Adding Liquidity to the Exchange

In addition to the above, the Exchange proposes to replace its existing schedule of charges for adding displayed liquidity to the Exchange (the "New Charges"). Generally speaking, the range of the proposed New Charges will be lower than the existing charges for orders in Tapes A and B and higher for orders in Tape C.[5] The proposed New Charges for displayed orders in securities in Tapes A and B also will no longer be tied to threshold levels of liquidity adding activity in securities in Tape B and the proposed New Charges for displayed orders in securities in Tape C will no longer be tied to threshold levels of liquidity adding activity in securities in Tape C. The Exchange believes that lower overall charges for orders in securities in Tapes A and B will incentivize members to increase their liquidity adding activity in securities in Tapes A and B. Higher charges for orders that add liquidity in Tape C will help to offset the costs of providing higher credits to members with orders in securities in Tape C that remove liquidity from the Exchange.

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5 Whereas under the existing pricing schedule, the Exchange charges between $0.0025 and $0.0029 per share executed for displayed orders in securities in Tapes A and B, and between $0.0012 and $0.0017 per share executed for displayed orders in securities in Tape C, that add liquidity to the Exchange equal to or exceeding certain volume thresholds each month, the proposed schedule will charge fees for such displayed orders in securities in all three Tapes ranging from $0.0024 to $0.0028 per share executed.

Specifically, the Exchange proposes to delete all of the existing charges for providing liquidity in displayed orders through the Exchange (except as provided below) and replace them with the following New Charges:

- A $0.0024 per share executed charge for displayed orders entered by a member that adds liquidity equal to or exceeding 0.25% of total Consolidated Volume during a month.
- A $0.0026 per share executed charge for displayed orders entered by a member that adds liquidity equal to or exceeding 0.15% of total Consolidated Volume during a month.
- A $0.0028 per share executed charge for displayed orders entered by a member that adds liquidity equal to or exceeding 0.07% of total Consolidated Volume during a month.
- Although the Exchange will continue to charge $0.0030 per share executed for all other orders in securities in Tapes A and B, it will increase its charge for all other orders in securities in Tape C from $0.0020 to $0.0030 per share executed.

The Exchange proposes that following existing charges will continue to apply to orders in securities in all Tapes:

- A $0.0005 per share executed charge for orders with Midpoint pegging entered by a member that adds 0.02% of total Consolidated Volume of non-displayed liquidity excluding a buy (sell) order that receives an execution price that is lower (higher) than the midpoint of the NBBO.

- A $0.0015 per share executed charge for orders with Midpoint pegging entered by other member excluding a buy (sell) order that receives an execution price that is lower (higher) than the midpoint of the NBBO.
- A $0.0030 per share executed charge for a buy (sell) order with Midpoint pegging entered by a member that receives an execution price that is lower (higher) than the midpoint of the NBBO.
- A $0.0028 per share executed charge for non-displayed orders (other than orders with Midpoint pegging) entered by a member that adds liquidity equal to or exceeding 0.25% total Consolidated Volume during a month.
- A $0.0030 per share executed charge for all other non-displayed orders.
- Charges for entering BSTG, BSCN, BMOP, BTFY, BCRT, BDRK, BCST, and SCAR orders that execute in a venue other than the Nasdaq BX Equities System.

Changes to Qualified Market Maker Program

The Exchange presently has a Qualified Market Maker ("QMM") program, at Equity 7, Section 118(f), which rewards members that make significant contributions to market quality by providing liquidity at the national best bid and offer ("NBBO") in a large number of securities for a significant portion of the day. In particular, the existing QMM program provides a member with a reduced transaction fee of $0.0016 per share executed for all of its displayed orders in securities priced at $1 or more if the member: (i) quotes at the NBBO at least 25% of the time during market hours in an average of at least 400 securities per day during a month; and (ii) provides add volume during a month of at least 0.125% of total Consolidated Volume.

The Exchange now proposes to replace the existing QMM program with one that will provide QMMs with two tiers of discounts off of their regular fees for displayed orders priced at $1 or more that add liquidity to the Exchange. The amount of the new discounts will vary depending upon the number of securities in which the QMM quotes at the NBBO and the extent to which the QMM adds liquidity as a percentage of total Consolidated Volume. First, if a QMM quotes at the NBBO at least 25% of the time during market hours in an average of at least 400 securities per day, and if it provides add volume of at least 0.07% of total Consolidated Volume during a month, then the QMM will be entitled to receive a discount of $0.0001 per share executed. Second, if a QMM quotes at the NBBO at least 25% of the time during market hours in an average of at least 750 securities per day, and if it provides add volume of at least 0.15% of total Consolidated Volume during a month, then the QMM will be entitled to receive a discount of $0.0002 per share executed. These discounts will not be cumulative. The Exchange intends for its new QMM program to provide greater incentives to members to increase their contributions to market quality.

Applicability to and Impact on Participants

The proposed rule change is a broad restatement of the Exchange's schedule of credits and charges. The Exchange has designed the restated schedule to specifically increase liquidity removal activity on the Exchange for orders in securities in Tape C, to increase liquidity adding activity in Tapes A and B, and to thereby improve the overall quality and attractiveness of the Nasdaq BX market. The Exchange intends to accomplish this objective by providing overall higher credits to those participants that engage in large volumes of liquidity removal activity on the Exchange in securities in

Tape C and by charging lower overall fees to those participants that add liquidity to the Exchange in securities in Tapes A and B. The Exchange also intends to provide greater incentives to members to act as QMMs and to contribute significantly to the improvement of the market.

Those participants that act as net removers of liquidity from the Exchange in securities in Tape C will benefit directly from the proposed rule change through the receipts of higher credits. Those participants that act as net adders of liquidity to the Exchange in securities in Tapes A and B will also benefit from lower charges and indirectly from any improvement in the overall quality of the market. However, net liquidity adders in securities in Tape C and net removers of liquidity in securities in Tapes A and B will bear the costs of these proposals. The Exchange notes that its proposal is not otherwise 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.

Members will not be impacted directly by the replacement of the existing QMM program because no member currently qualifies for that program.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[7] 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

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

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.

The Proposal is Reasonable

The Exchange's proposed change to its schedule of credits and charges 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'…."[8]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the

8 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)).

market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[9]

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.[10]

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.[11] Separately, the Exchange has provided the SEC staff with

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9 Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

10 CBOE EDGA provides a standard rebate for liquidity removers of $0.00180 per share executed (or between $0.0022 and $0.0028 per share executed if a member qualifies for a volume tier), and a standard charge of $0.0030 per share executed for liquidity adders (or between $0.0022 and $0.0026 if a member qualifies for a volume tier). NYSE National has a standard charge of $0.0005 per share executed for liquidity removers ($0.0025 and $0.0030 rebate if a member qualifies for a volume tier) and a standard charge of $0.0028 per share executed for liquidity adders (and a range of charges from $0.0020-$0.0026 if a member qualifies for a volume tier).

11 The Exchange perceives no regulatory, structural, or cost impediments to market participants shifting order flow away from it. 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.

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 has designed its proposed schedule of credits and charges to provide increased overall incentives to members to increase their liquidity removal and adding activity on the Exchange. An increase in liquidity removal and adding activity on the Exchange will, in turn, improve the quality of the Nasdaq BX market and increase its attractiveness to existing and prospective participants. Generally, the proposed New Credits and Charges will be comparable to, if not favorable to, those that its competitors provide.[12]

Moreover, the Exchange believes that it is reasonable to bolster its QMM program as a means of incentivizing members to act as QMMs and to increase their contributions to the improvement of the quality of the Nasdaq BX Exchange.

The Exchange notes that those participants that are dissatisfied with the New Charges or New Credits are free to shift their order flow to competing venues that offer them lower charges or higher credits.

The Proposal is an Equitable Allocation of Credits and Charges

The Exchange believes its proposal will allocate its New Credits and New Charges fairly among its market participants. It is equitable for the Exchange to increase its credits to participants whose orders remove liquidity from the Exchange as a means of incentivizing increased liquidity removal activity. Likewise, it is equitable for the

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12 See n. 10, supra.

Exchange to reduce charges to participants whose orders add liquidity to the Exchange as a means of incentivizing liquidity adding activity. An increase in overall liquidity removal and addition activity on the Exchange will improve the quality of the Nasdaq BX market and increase its attractiveness to existing and prospective participants.

Likewise, it is equitable for the Exchange to specifically increase credits for orders that remove liquidity from the Exchange in Tape C as a means of increasing liquidity removal activity in that Tape, and to specifically lower overall charges for orders that add liquidity to the Exchange in Tapes A and B as a means of increasing liquidity adding activity in Tapes A and B. Again, the Exchange intends for these changes to improve the overall quality and attractiveness of the Nasdaq BX market.

For similar reasons, the Exchange believes that it is equitable to increase the discounts it offers to members that qualify as QMMs if such members, in turn, increase the extent of their market improving behavior by quoting at the NBBO for a larger number of securities than is required now and by adding a higher percentage of total Consolidated Volume.

Although under the proposal, certain market participants will pay higher charges or attain lower credits than they do now, those participants will also benefit from any improvements in the quality and attractiveness of the market that the New Credits and New Charges and amended QMM program will provide. Moreover, any participant that wishes to avoid paying higher charges or receiving lower credits is free to shift their order flow to competing venues that provide more favorable pricing.

<u>The Proposed Fee is not Unfairly Discriminatory</u>

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.

The Exchange intends for its 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. Although net removers of liquidity in Tape C and net adders of liquidity in Tapes A and B will benefit most from the proposal, this result is fair insofar as increased activity in securities in these Tapes will help to improve market quality and the attractiveness of the Nasdaq BX market to all existing and prospective participants. And although certain participants will bear the costs of the proposed rule change through higher charges or lower credits, this too is fair because these participants will also benefit from improvements in market quality. Moreover, any participant that does not wish to pay higher charges or receive lower credits is free to shift its order flow to a competing venue.

Finally, the Exchange believes that its proposed amendments to its QMM program are not unfairly discriminatory because the new program will be available to any member that chooses to meet its requirements. The Exchange notes that none of its members will be affected directly by the proposed amendments insofar as no member currently qualifies as a QMM under the existing program.

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

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage. As noted above, all members of the Exchange will benefit from any increase in market activity that the proposal effectuates. Members may grow or modify their businesses so that they can receive the higher credits or pay lower charges. 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 its proposed modifications to its schedule of credits and charges will 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 restated schedule of credits and charges 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 has less than 20% 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 37% of industry volume for the month of July 2019.

The Exchange intends for the proposed changes to its schedule of fees and credits, in the aggregate, to increase member incentives to engage in the removal and addition of liquidity on the Exchange. Similarly, the Exchange intends for its proposal to amend its QMM Program to increase incentives for members to improve the market by quoting at the NBBO meaningfully in a large number of securities and by adding a significant amount of liquidity. These changes are procompetitive and reflective of the Exchange's efforts to make it an attractive and vibrant venue to market participants.

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-2019-045 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-2019-045. 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-2019-045 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]

Jill M. Peterson
Assistant Secretary

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[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 receives price improvement and executes against an order with a Non-displayed price:	$0.0000 per share executed	$0.0000 per share executed	$0.0000 per share executed
Order with Midpoint pegging that removes liquidity:	$0.0000 per share executed	$0.0000 per share executed	$0.0000 per share executed
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: (i) whose combined liquidity removing and adding	$0.0029 per share executed	$0.0029 per share executed	$0.0028 per share executed

activities equal or exceed 0.225% of total Consolidated Volume during a month; and (ii) adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month:			
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: (i) accesses liquidity equal to or exceeding 0.08% of total Consolidated Volume during a month; and (ii) adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month:	$0.0026 per share executed	$0.0026 per share executed	$0.0025 per share executed
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: (i) accesses liquidity equal to or exceeding 0.05% of total Consolidated Volume during a month; and (ii) adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month:	$0.0021 per share executed	$0.0021 per share executed	$0.0020 per share executed
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 adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month:	$0.0015 per share executed	$0.0015 per share executed	$0.0014 per share executed
[Order that accesses liquidity (excluding orders with Midpoint pegging and excluding orders that	[$0.0031 per share executed]	[$0.0031 per share executed]	[$0.0017 per share executed]

receive price improvement and execute against an order with a Non-displayed price) entered by a member that: (i) accesses liquidity equal to or exceeding 0.225% of total Consolidated Volume during a month; (ii) accesses liquidity in Securities in Tape C equal to or exceeding 0.045% of total Consolidated Volume during a month; and (iii) adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month:]			
[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: (i) accesses liquidity equal to or exceeding 0.11% of total Consolidated Volume during a month; (ii) accesses liquidity in Securities in Tape C equal to or exceeding 0.025% of total Consolidated Volume during a month; and (iii) adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month:]	[$0.0028 per share executed]	[$0.0028 per share executed]	[$0.0015 per share executed]
[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: (i) accesses liquidity equal to or exceeding 0.08% of total Consolidated Volume during a month; (ii) accesses liquidity in Securities in Tape C equal to or exceeding 0.020% of total Consolidated Volume during a month; and (iii) adds liquidity equal to or exceeding an average	[$0.0026 per share executed]	[$0.0026 per share executed]	[$0.0010 per share executed]

daily volume of 50,000 shares in a month:]			
[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 adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month:]	[$0.0018 per share executed]	[$0.0018 per share executed]	[$0.0005 per share executed]
Charge for entering order that accesses liquidity in the Nasdaq BX Equities System:			
	Tape A	Tape B	Tape C
Charge for order (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) that accesses liquidity entered by a member that does not add at least an average daily volume of 50,000 shares to the Exchange during a month:	$0.000[5]7 per share executed	$0.000[5]7 per share executed	$0.000[5]7per share executed
Charge for providing liquidity through the Nasdaq BX Equities System:			
	Tape A	Tape B	Tape C
Displayed order entered by a member that adds liquidity equal to or exceeding 0.25% of total Consolidated Volume during a month:	$0.0024 per share executed	$0.0024 per share executed	$0.0024 per share executed
Displayed order entered by a member that adds liquidity equal to or exceeding 0.15% of total Consolidated Volume during a month:	$0.0026 per share executed	$0.0026 per share executed	$0.0026 per share executed
Displayed order entered by a member that adds liquidity equal to or exceeding 0.07% of total Consolidated Volume during a	$0.0028 per share executed	$0.0028 per share executed	$0.0028 per share executed

<u>month:</u>			
[Displayed order entered by a member that: (i) adds liquidity equal to or exceeding 0.17% of total Consolidated Volume and (ii) adds liquidity equal to or exceeding 0.025% of total Consolidated Volume in securities in Tape B during a month:]	[$0.0025 per share executed]	[$0.0025 per share executed]	[N/A]
[Displayed order entered by a member that: (i) adds liquidity equal to or exceeding 0.08% of total Consolidated Volume and (ii) adds liquidity equal to or exceeding 0.020% of total Consolidated Volume in securities in Tape B during a month:]	[$0.0029 per share executed]	[$0.0029 per share executed]	[N/A]
[Displayed order entered by a member that: (i) adds liquidity equal to or exceeding 0.17% of total Consolidated Volume and (ii) adds liquidity equal to or exceeding 0.12% of total Consolidated Volume in securities in Tape C during a month:]	[N/A]	[N/A]	[$0.0012 per share executed]
[Displayed order entered by a member that: (i) adds liquidity equal to or exceeding 0.12% of total Consolidated Volume and (ii) adds liquidity equal to or exceeding 0.07% of total Consolidated Volume in securities in Tape C during a month:]	[N/A]	[N/A]	[$0.0014 per share executed]
[Displayed order entered by a member that: (i) adds liquidity equal to or exceeding 0.08% of total Consolidated Volume and (ii) adds liquidity equal to or exceeding 0.025% of total Consolidated Volume in securities in Tape C during a month:]	[N/A]	[N/A]	[$0.0017 per share executed]
Order with Midpoint pegging entered by a member that adds 0.02% of total Consolidated Volume of non-displayed	$0.0005 per share executed	$0.0005 per share executed	$0.0005 per share executed

liquidity excluding a buy (sell) order that receives an execution price that is lower (higher) than the midpoint of the NBBO:			
Order with Midpoint pegging entered by other member excluding a buy (sell) order that receives an execution price that is lower (higher) than the midpoint of the NBBO:	$0.0015 per share executed	$0.0015 per share executed	$0.0015 per share executed
Buy (sell) order with Midpoint pegging that receives an execution price that is lower (higher) than the midpoint of the NBBO:	$0.0030 per share executed	$0.0030 per share executed	$0.0030 per share executed
Non-displayed orders (other than orders with Midpoint pegging) entered by a member that adds liquidity equal to or exceeding 0.25% total Consolidated Volume during a month:	$0.0028 per share executed	$0.0028 per share executed	$0.0028 per share executed
All other non-displayed orders:	$0.0030 per share executed	$0.0030 per share executed	$0.0030 per share executed
All other orders:	$0.0030 per share executed	$0.0030 per share executed	$0.00[2]30 per share executed

…

(b) – (e) No change.

(f) Qualified Market Maker ("QMM") Program

(1) General QMM Requirements. A member may be designated as a QMM if the member (i) quotes at the NBBO at least [25%]a specified percentage of the time (as set forth in subsection (f)(2)) during Market Hours in an average of at least [400]a specified number of securities (as set forth in subsection (f)(2)) per day during a month , and (ii) provides add volume of at least [0.125%]a specified percentage (as set forth in subsection (f)(2)) of total Consolidated Volume during a month. For purposes of this rule, a member is considered to be quoting at the NBBO if one of its MPIDs has a displayed order at either the national best bid or the national best offer or both the national best bid and offer. On a daily basis, the Exchange will determine the number of securities in which each of a member's MPIDs satisfied the [25%] NBBO quoting requirement. The Exchange will aggregate all of a member's MPIDs to determine the number of securities for purposes of the [25%] NBBO quoting requirement. To qualify for QMM designation,

the member must meet the requirement for an average of [400]the specified number of securities (as set forth in subsection (f)(2)) per day over the course of the month.

[(2) The Exchange will charge a fee of $0.0016 per share executed with respect to all displayed orders of a QMM in securities priced at $1 or more per share that provide liquidity.]

(2) Discounts Applicable to QMMs

(i) To the extent that the Exchange designates a member to be a QMM because it quotes at the NBBO at least 25% of the time during Market Hours in an average of at least 400 securities per day during a month and provides add volume of at least 0.07% of total Consolidated Volume during a month, then the Exchange will provide the QMM with a discount of $0.0001 per share executed with respect to the fees that the QMM otherwise incurs, pursuant to Section 118(a) herein, for entering displayed orders in securities priced at $1 or more that provide liquidity to the Exchange.

(ii) To the extent that the Exchange designates a member to be a QMM because it quotes at the NBBO at least 25% of the time during Market Hours in an average of at least 750 securities per day during a month and provides add volume of at least 0.15% of total Consolidated Volume during a month, then the Exchange will provide the QMM with a discount of $0.0002 per share executed with respect to the fees that the QMM otherwise incurs, pursuant to Section 118(a) herein, for entering displayed orders in securities priced at $1 or more that provide liquidity to the Exchange. This discount will be in lieu of the QMM discount described above in subparagraph (f)(2)(i) of this section.

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