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

File No.* SR - 2021 - * 015
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 *).

Proposal to amend BX Options 7 Section 2 BX Options Market Fees and Rebates

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 * Angela
Last Name * Dunn
Title * Principal Associate General Counsel
E-mail * angela.dunn@nasdaq.com
Telephone * (215) 496-5692
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 04/13/2021

By John Zecca

(Name *)

(Title *)

EVP and 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 BX Options 7, Section 2, "BX Options Market- Fees and Rebates."

The Exchange originally filed the proposed pricing changes on March 29, 2021 (SR-BX-2021-010). On April 13, 2021, the Exchange withdrew that filing and submitted this filing.

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 November 5, 2020. 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:

Angela Saccomandi Dunn
Principal Associate General Counsel
Nasdaq, Inc.
215-496-5692

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[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 proposes to amend BX's Pricing Schedule at Options 7, Section 2, "BX Options Market-Fees and Rebates." The Exchange proposes to amend Options 7, Section 2(1) to qualify the Customer Non-Penny Symbol Maker Rebate and add certain rule text to make clear the manner in which Options 7, Section 2(1) pricing applies today. The Exchange also proposes to amend Options 7, Section 2(2) to amend the pricing for the Opening Cross. Each change will be described below.

Options 7, Section 2(1)

Today, Customers are paid a Non-Penny Symbol Maker Rebate of $0.90 per contract for adding liquidity in Non-Penny Symbols, regardless of contra-party. Customers are assessed a Non-Penny Symbol Taker Fee of $0.65 per contract for removing liquidity in Non-Penny Symbols, regardless of counterparty.

The Exchange proposes to amend the Customer Non-Penny Symbol Maker Rebate of $0.90 per contract. The Exchange proposes to continue to pay a Customer Non-Penny Symbol Maker Rebate of $0.90 per contract unless the contra-side is also a Customer, in which case the Exchange will pay a reduced Customer Non-Penny Symbol Market Rebate of $0.45 per contract if the quantity of transactions where the contra-side is also a Customer is greater than 25% of Participant's total Customer Non-Penny Symbol volume which adds liquidity in that month. The aforementioned calculation of 25% will not consider orders within the Opening Process[3] per Options 3, Section 8,

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[3] The Exchange proposes to rename "Opening Cross" within Options 7, Section 2(2) as 'Opening Process." Hereafter, the Exchange will refer to Options 7,

orders that generate an order exposure alert per Options 5, Section 4, or orders transacted in the Price Improvement Auction ("PRISM") per Options 3, Section 13. The Exchange proposes to add this rule text to Options 7, Section 2(1) at new note "3".

The Exchange also proposes to amend Options 7, Section 2(1) to add a new note "*" which makes clear that orders executed in the Opening Process per Options 3, Section 8, orders that generate an order exposure alert per Options 5, Section 4, and orders transacted in the Price Improvement Auction ("PRISM") per Options 3, Section 13 are not subject to Options 7, Section 2(1) pricing, instead, these orders are subject to the pricing within Options 7, Sections 2(2), (4) and (5), respectively. The Exchange believes that this note will guide Participants to the correct pricing within Options 7, Section 2. This new note "*" does not represent a substantive change. The proposed new note "*" is intended to serve as a guidepost to Participants referring to the BX Pricing Schedule.

<u>Options 7, Section 2(2)</u>

As noted above, the Exchange proposes to amend the title of Options 7, Section 2(2) to align with the title of Options 3, Section 8. The Exchange also proposes to add a citation to the rule for the Opening Process. The current title, "Opening Cross" would be amended to state "Opening Process per Options 3, Section 8." The Exchange also proposes to change the phrase "Opening Cross" to "Opening Process" throughout Options 7, Section 2(2) as well. These amendments are non-substantive.

Currently, Options 7, Section 2(2) provides,

All orders executed in the Opening Cross:

Customer orders will receive the Rebate to Remove Liquidity during the

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Section 2(2) as the Opening Process and the previous process as the Opening Cross throughout this rule change.

> Exchange's Opening Cross, unless the contra-side is also a Customer (in which case no Fee to Remove Liquidity is assessed and no Rebate to Remove Liquidity is received). Lead Market Makers, BX Options Market Makers,[4] Non-Customers, and Firms will be assessed the Fee to Remove Liquidity during the Exchange's Opening Cross.

The Exchange recently filed to amend the pricing within Options 7, Section 2(1) to remove the current fees, rebates and tier schedules applicable to Penny Symbols and Non-Penny Symbols and replace it with a new maker/taker fee structure.[5] Currently, Options 7, Section 2(2) continues to reference pricing which was removed with the Prior Fee Change. As the current pricing refers to Rebates to Remove Liquidity and Fees to Remove Liquidity which no longer exist on the Pricing Schedule within Options 7, Section 2(1), the Exchange did not assess any Participant a fee nor pay a rebate in March 2021 with respect to the Opening Cross.

At this time, the Exchange proposes to amend Options 7, Section 2(2) to provide,

> All orders executed in the Opening Process:
>
> Customer orders will receive the Maker Rebate during the Exchange's Opening Process, unless the contra-side is also a Customer, in which case a Maker Rebate will not be paid and a Taker Fee will not be assessed. Lead Market Makers, Market Makers, Non-Customers, and Firms will be assessed the Taker Fee during the Exchange's Opening Process and will receive Maker Rebates.

This proposed new rule text would continue to pay Customers a rebate during the Exchange's Opening Process, unless the Customer order is contra another Customer order as explained in greater detail below.

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4 The Prior Fee Change renamed "BX Options Market Maker" as "Market Maker."

5 See Securities Exchange Act Release No. 91473 (April 5, 2021) 86 FR 18562 (April 9, 2021) (April 9, 2021) (SR-BX-2021-009) ("Prior Fee Change").

Penny Symbols

Previously, during the Opening Cross, Customer orders received a Rebate to Remove Liquidity, unless the contra-side was also a Customer, in which case no Fee to Remove Liquidity was assessed and no Rebate to Remove Liquidity was received. Previously, during the Opening Cross, BX paid a Penny Symbol Rebate to Remove Liquidity when trading against a Non-Customer, Lead Market Maker, BX Options Market Maker, Customer or Firm which ranged from $0.00 to $0.35 per contract.[6] The proposed new pricing which would be applicable to the Exchange's Opening Process would pay Customers a Maker Rebate of $0.30 per contract, unless the contra-side is also a Customer, in which case a Maker Rebate would not be paid and a Taker Fee would not be assessed. The proposed new Penny Symbol Customer Maker Rebate of $0.30 per contract would pay Participants that previously qualified for now defunct Tiers 1 and 2[7] a higher Customer rebate than was previously paid. Participants that qualified for now defunct Tier 3 would receive a lower Customer rebate than was previously paid, provided the contra-side was not a Customer. Previously, during the Opening Cross, no Rebate was paid to Remove Liquidity when a Customer was contra another Customer. With the proposed pricing, during the Opening Process, when a Customer is contra another Customer a Maker Rebate would not be paid and a Taker Fee would not be assessed.

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6 Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month received no Penny Symbol Rebate to Remove Liquidity in Tier 1. Participants that executed 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month received a $0.25 per contract Penny Symbol Rebate to Remove Liquidity in Tier 2. Participants that executed 0.15% or more of total industry customer equity and ETF option ADV contracts per month received a $0.35 per contract Penny Symbol Rebate to Remove Liquidity in Tier 3.

7 The Prior Fee Change eliminated Tiers 1-3 described herein.

Previously, during the Opening Cross, Lead Market Makers and Options Market Makers were assessed the Fee to Remove Liquidity while Lead Market Makers and Market Makers paid the Penny Symbol Fee to Remove Liquidity when trading against a Customer that ranged from $0.39 to $0.30 per contract.[8] Previously, during the Opening Cross, Lead Market Makers and Market Makers paid a Penny Symbol Fee to Remove Liquidity when trading against a Non-Customer, Lead Market Maker, BX Options Market Maker or Firm of $0.46 per contract, regardless of tier.[9] With the proposed new Opening Process pricing, the Penny Symbol Taker Fee for Lead Market Maker and Market Maker orders of $0.46 per contract would be higher than the prior Lead Market Maker and Market Maker tiered Penny Symbol Fee to Remove Liquidity when trading against a Customer which ranged from $0.39 to $0.30 per contract and would be the same as the previous Lead Market Maker and Market Maker tiered Penny Symbol Fees to Remove Liquidity when trading against a Non-Customer, Lead Market Maker, Options Market Maker or Firm of $0.46 per contract regardless of tier. With the proposed new

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8 Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.39 per contract in Tier 1. Participants that execute 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.39 per contract in Tier 2. Participants that execute 0.15% or more of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.30 per contract in Tier 3.

9 Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.46 per contract in Tier 1. Participants that execute 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.46 per contract in Tier 2. Participants that execute 0.15% or more of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.46 per contract in Tier 3.

pricing, Lead Market Makers and Market Makers would not receive Maker Rebates during the Opening Process.

Previously, during the Opening Cross, Non-Customers and Firms were assessed the Fee to Remove Liquidity. The prior Penny Symbol Fee to Remove Liquidity was a flat fee of $0.46 per contract. The proposed new Penny Symbol Taker Fee of $0.46 per contract would be the same as the prior Penny Symbol Fee to Remove Liquidity of $0.46 per contract. With this pricing, Non-Customers and Firms would not receive Maker Rebates during the Opening Process.

Non-Penny Symbols

Previously, during the Opening Cross, Customer orders received a Rebate to Remove Liquidity, unless the contra-side was also a Customer, in which case no Fee to Remove Liquidity was assessed and no Rebate to Remove Liquidity was received. Previously, during the Opening Cross, BX paid a Non-Penny Symbol Customer Rebate to Remove Liquidity of $0.80 per contract,[10] regardless of the tier and regardless of the contra-party. The proposed new pricing would similarly pay Customers a Maker Rebate during the Exchange's Opening Process, unless the contra-side is also a Customer, in which case a Maker Rebate would not be paid and a Taker Fee would not be assessed. The proposed new Non-Penny Symbol Customer Maker Rebate of $0.90 per contract during the Opening Process would be higher than the prior rebates, provided the contra-

10 Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month received an $0.80 per contract Non-Penny Symbol Rebate to Remove Liquidity in Tier 1. Participants that executed 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month received an $0.80 per contract Non-Penny Symbol Rebate to Remove Liquidity in Tier 2. Participants that executed 0.15% or more of total industry customer equity and ETF option ADV contracts per month received an $0.80 per contract Non-Penny Symbol Rebate to Remove Liquidity in Tier 3.

side is not a Customer. During the Opening Process, no Rebate to Remove Liquidity was paid when a Customer was contra another Customer. With the proposed new pricing, during the Opening Process, when a Customer is contra another Customer a Maker Rebate would not be paid and a Taker Fee would not be assessed.

Previously, during the Opening Cross, Lead Market Makers and BX Options Market Makers were assessed the Fee to Remove Liquidity while Lead Market Makers and Market Makers paid an $0.89 per contract Non-Penny Fee to Remove Liquidity when the Lead Market Maker or Market Maker traded with any market participant other than a Customer.[11] Previously, during the Opening Cross, if the contra-party was a Customer, the Lead Market Maker and Market Maker were charged a Fee to Remove Liquidity that ranged from $0.89 to $0.60 per contract depending on the volume tier achieved.[12] The proposed new Taker Fee of $1.10 per contract for removing liquidity for Lead Market Makers and Market Makers in Non-Penny Symbols, during the Opening Process, regardless of contra-party would be higher than the prior fees assessed to Lead Market

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11 Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 1. Participants that executed 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 2. Participants that executed 0.15% or more of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 3.

12 Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 1. Participants that executed 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 2. Participants that executed 0.15% or more of total industry customer equity and ETF option ADV contracts per month paid an $0.60 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 3.

Makers and Market Makers for removing liquidity in Non-Penny Symbols. With the proposed new pricing, during the Opening Process, Lead Market Makers and Market Makers would not receive Maker Rebates.

Previously, during the Opening Cross, Non-Customers and Firms were assessed the Non-Penny Symbol Fee to Remove Liquidity. During the Opening Cross, the prior Non-Penny Symbol Fee to Remove Liquidity was a flat fee of $0.89 per contract. During the Opening Process, the proposed new Non-Penny Symbol Taker Fee of $1.10 per contract for removing liquidity for Non-Customers and Firms in Non-Penny Symbols, would be higher than the prior Fee to Remove Liquidity. With this pricing, Non-Customers and Firms would not receive Maker Rebates during the Opening Process.

Options 7, Section 2(5)

The Exchange proposes to add the words "per Options 3, Section 13" at the end of the title to Options 7, Section 2(5) to provide the citation to the BX Price Improvement Auction rule. This amendment is non-substantive.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[14] 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.

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13 15 U.S.C. 78 f(b).

14 15 U.S.C. 78f(b)(4) and (5).

The Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options 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'…."[15]

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."[16]

Numerous indicia demonstrate the competitive nature of this market. For

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15 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)).

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

example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. 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. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

Options 7, Section 2(1)

The Exchange's proposal to amend the Customer Non-Penny Symbol Maker Rebate of $0.90 per contract for adding liquidity in Non-Penny Symbols, regardless of contra-party and, instead, pay a $0.45 per contract Customer Non-Penny Symbol Maker Rebate if the quantity of transactions where the contra-side is also a Customer is greater than 25% of Participant's total Customer Non-Penny Symbol volume which adds liquidity[17] in that month is reasonable. BX's current $0.90 per contract flat Customer Non-Penny Symbol Maker Rebate is the highest simple order base rebate paid that does not consider volume or contra-party.[18] Other exchanges have higher simple order

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17 As proposed, the 25% calculation will not consider orders within the Opening Process per Options 3, Section 8, orders that generate an order exposure alert per BX Options 5, Section 4, or orders transacted in the Price Improvement Auction ("PRISM") per Options 3, Section 13.

18 BOX Exchange LLC ("BOX") pays no Non-Penny Interval Class Public Customer Maker Rebate. See BOX's Fee Schedule at Section I, A. Cboe Exchange, Inc. ("Cboe") pays a Non-Penny Class rebate to customers of $0.18 per contract only if the original order is < 100 contracts and removing liquidity. See Cboe's Fee Schedule. Cboe C2 Exchange, Inc. ("C2") pays a Non-Penny Class rebate to customers of $0.80 per contract to transactions which add liquidity. See C2's Fee Schedule. Cboe BZX Exchange, Inc. ("CboeBZX") pays Non-Penny Program Securities rebates to customers which range from $0.85 to $1.06 per contract to transactions which add liquidity. See CboeBZX's Fee

rebates, provided certain volume criteria are met.[19] The Exchange's proposal to add a volume consideration for the ratio of Customer to Customer orders as compared to total Participant volume which adds Non-Penny Symbol liquidity in order to receive the $0.90 per contract Customer Non-Penny Symbol rebate as compared to the reduced $0.45 per contract rebate is reasonable. The Exchange currently assess a $0.65 per contract Customer Non-Penny Taker Fee, the lowest BX Taker Fee for Non-Penny Symbols,[20] and, currently, the Exchange pays the highest Customer Maker Rebate of $0.90 per contract. The Exchange offers Customers the highest Non-Penny Maker Rebate on BX

Schedule. Cboe EDGX Exchange, Inc. ("CboeEDGX") pays Non-Penny Program Securities rebates to customers which range from $0.01 to $0.21 based on customer volume tiers. See CboeEDGX's Fee Schedule. Miami International Securities Exchange, LLC ("MIAX") pays no customer rebate for non-penny classes. See MIAX's Fee Schedule. MIAX PEARL, LLC ("PEARL") pays Priority Customer Non-Penny Classes Maker Rebates which range from $0.85 to $1.04 based on volume. See PEARL's Fee Schedule. MIAX Emerald, LLC ("EMERALD") pays Priority Customer Maker Rebates which range from $0.43 to $0.53, except that SPY, QQQ and IWM rebates are $0.45 and Priority Customer Simple Order rebates when contra is an Affiliated Market Maker are $0.49. See EMERALD's Fee Schedule. NYSE Arca, Inc. ("NYSEArca") pays a Customer a $0.75 rebate to post liquidity unless contra a lead market maker, in which case no rebate is paid. See NYSE Arca Options Fees and Charges. NYSE American LLC ("NYSEAmerican") pays no Customer rebates. See NYSE American Options Fee Schedule. The Nasdaq Stock Market LLC ("NOM") pays an $0.80 per contract Customer Non-Penny Symbol Rebate and in some cases $1.00, or $1.05 if other criteria are met. See NOM's Pricing Schedule. Nasdaq Phlx LLC ("Phlx") pays Customer Non-Penny rebates which range from $0.00 to $0.27. See Phlx's Pricing Schedule. Nasdaq ISE, LLC ('ISE") pays no Non-Penny Priority Customer rebates. See ISE's Pricing Schedule. Nasdaq GEMX, LLC ("GEMX") pays Priority Customer Non-Penny Symbol Maker Rebates which range from $0.25 to $0.70. See GEMX's Pricing Schedule. Nasdaq MRX, LLC ('MRX") pays no Priority Customer Non-Penny Symbol rebates. See MRX's Pricing Schedule.

19 Id.

20 Non-Customer orders are assessed a $1.10 Non-Penny Symbol Taker Fee.

by assessing higher Non-Penny Taker Fees to Non-Customers.[21] To the extent a Participant submits a Non-Penny Customer order to add liquidity which interacts with a Non-Penny Customer order that removes liquidity, both Participants benefit from the higher Non-Penny Maker Rebate and lower Non-Penny Taker Fee. The Exchange's intention for assessing Customer orders with the reduced Non-Penny Taker Fee was designed to bolster interaction with Non-Customer participants. Today, Non-Penny Customer orders which add liquidity have priority[22] ahead of Non-Penny Non-Customer orders and, therefore, the Exchange's intention to enhance Non-Customer liquidity is subverted when a Non-Penny Customer order transacts with another Non-Penny Customer order. As a result, when Non-Penny Customers interact with other Non-Penny Customer orders more than by happenstance, the Exchange believes it is reasonable to pay Customer orders which add liquidity a lower rebate. The Exchange notes that Participants do occasionally submit Non-Penny Customer orders which add liquidity in Non-Penny Symbols to the order book that trade against Non-Penny Customer orders that remove liquidity in Non-Penny Symbols. The Exchange believes that type of behavior occurs, by happenstance, a small percentage of the time in a given month. Therefore, the Exchange selected 25% as a number to demarcate the point at which a Participant should receive the lower Customer Non-Penny Symbol Maker Rebate of $0.45 per contract because it does not believe that the type of behavior outlined herein should occur more than 25% of a Participant's total Customer Non-Penny Symbol volume unless the trading behavior intended. Further, the Exchange believes that although Customer orders may

21 A Non-Customer includes a Professional, Broker-Dealer and Non-BX Options Market Maker. See BX Options 7, Section 1.

22 See Options 3, Section 10.

receive lower rebates if they transact the requisite number of Customer-to Customer trades, the Exchange's rebate of $0.45 per contract remains competitive and equal to or greater than the rebates that other Participants are afforded.[23] The Exchange's proposal to exclude orders executed in the Opening Process per Options 3, Section 8, orders that generate an order exposure alert per Options 5, Section 4, and orders transacted in the Price Improvement Auction ("PRISM") per Options 3, Section 13 from the aforementioned calculation of 25% is reasonable because orders executed in the Opening Process, orders that generate an order exposure alert, and orders transacted in PRISM have separate pricing within Options 7, Sections 2(2), (4) and (5), respectively. The Exchange's proposal to exclude orders executed in the Opening Process, orders that generate an order exposure alert, and orders transacted in PRISM from the aforementioned calculation of 25% is equitable and not unfairly discriminatory as the Exchange will uniformly exclude these orders from the aforementioned calculation of 25%.

The Exchange's proposal to amend the Customer Non-Penny Symbol Maker Rebate of $0.90 per contract for adding liquidity in Non-Penny Symbols, regardless of contra-party and, instead, pay a $0.45 per contract Customer Non-Penny Symbol Maker Rebate if the quantity of transactions where the contra-side is also a Customer is greater than 25% of Participant's total Customer Non-Penny Symbol volume which adds

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[23] Today, Lead Market Makers are paid $0.45 per contract Non-Penny Symbol Maker Rebates and Market Maker are paid $0.40 per contract Non-Penny Symbol Maker Rebates. Firms and Non-Customers are not eligible for Non-Penny Symbol Maker Rebates and instead are charged a Maker Fee of $0.45 per contract.

liquidity[24] in that month is equitable and not unfairly discriminatory. The Exchange would uniformly apply the criteria to all Customer orders to determine the applicable rebate.

The Exchange's proposal to pay a lower $0.45 per contract Customer Non-Penny Symbol Maker Rebate when a Participant executes against a Customer more than 25% of that Participant's total Customer Non-Penny Symbol volume which adds liquidity in a month is equitable and not unfairly discriminatory. The Exchange noted above that when Non-Penny Customers interact with other Non-Penny Customer orders more than by happenstance, the Exchange believes it is reasonable to pay Customer orders which add liquidity a lower rebate. The Exchange also noted that Participants do occasionally submit Non-Penny Customer orders which add liquidity in Non-Penny Symbols to the order book that trade against Non-Penny Customer orders that remove liquidity in Non-Penny Symbols. The Exchange believes that type of behavior occurs, by happenstance, a small percentage of the time in a given month. Therefore, the Exchange believes that it is equitable and not unfairly discriminatory to pay a lower rebate to Non-Penny Customer orders which interact with other Non-Penny Customer orders more than by happenstance, because the Exchange's intention to enhance Non-Customer liquidity is subverted. In addition, the Exchange notes that Customers may continue to receive the highest Non-Penny Symbol Maker Rebate paid by BX,[25] provided they do not execute greater than 25% of that Participant's total Customer Non-Penny Symbol volume which adds liquidity

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24 As proposed, the 25% calculation will not consider orders within the Opening Process per Options 3, Section 8, orders that generate an order exposure alert per BX Options 5, Section 4, or orders transacted in the Price Improvement Auction ("PRISM") per Options 3, Section 13.

25 Id.

in a month.

The Exchange's proposal to amend Options 7, Section 2(1) to add a new note "*" which makes clear that orders executed in the Opening Process per Options 3, Section 8, orders that generate an order exposure alert per Options 5, Section 4, and orders transacted in the Price Improvement Auction ("PRISM") per Options 3, Section 13 are not subject to Options 7, Section 2(1) pricing, rather, these orders are subject to the pricing within Options 7, Sections 2(2), (4) and (5), respectively, is reasonable, equitable and not unfairly discriminatory. The Exchange believes that this rule text will be informative in guiding Participants to the correct pricing within Options 7, Section 2 which applies to a specific transaction. This new note "*" does not represent a substantive change. The proposed new note "*" is intended to serve as a guidepost to Participants referring to the BX Pricing Schedule.

<u>Options 7, Section 2(2)</u>

The Exchange's proposal to amend the title of Options 7, Section 2(2) from "Opening Cross" to "Opening Process per Options 3, Section 8," as well as similar changes throughout Options 7, Section 2(2), is reasonable, equitable and not unfairly discriminatory. The amendment is non-substantive. The proposed title will align with the title of Options 3, Section 8.

The Exchange's proposal to amend the pricing within Options 7, Section 2(2) is reasonable, equitable and not unfairly discriminatory for the below reasons.

<u>Penny Symbols</u>

Customers

The Exchange believes that the proposed Opening Process Customer pricing in Penny Symbols is reasonable. Previously, during the Opening Cross, Customer orders received a Rebate to Remove Liquidity, unless the contra-side was also a Customer, in which case no Fee to Remove Liquidity was assessed and no Rebate to Remove Liquidity was received. Previously, during the Opening Cross, BX paid a Penny Symbol Rebate to Remove Liquidity when trading against a Non-Customer, Lead Market Maker, BX Options Market Maker, Customer or Firm which ranged from $0.00 to $0.35 per contract.[26] The proposed new pricing which would be applicable to the Exchange's Opening Process would pay Customers a Maker Rebate of $0.30 per contract, unless the contra-side is also a Customer, in which case a Maker Rebate would not be paid and a Taker Fee would not be assessed. The proposed new Penny Symbol Customer Maker Rebate of $0.30 per contract would pay Participants that previously qualified for now defunct Tiers 1 and 2[27] a higher Customer rebate than was previously paid. Participants that qualified for now defunct Tier 3 would receive a lower Customer rebate than was previously paid, provided the contra-side was not a Customer. Previously, during the Opening Cross, no Rebate was paid to Remove Liquidity when a Customer was contra another Customer. With the proposed pricing, during the Opening Process, when a Customer is contra another Customer a Maker Rebate would not be paid and a Taker Fee would not be assessed. The Exchange believes that the proposed pricing will continue to attract order flow to BX because, during the Opening Process, unlike other market

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26 Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month received no Penny Symbol Rebate to Remove Liquidity in Tier 1. Participants that executed 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month received a $0.25 per contract Penny Symbol Rebate to Remove Liquidity in Tier 2. Participants that executed 0.15% or more of total industry customer equity and ETF option ADV contracts per month received a $0.35 per contract Penny Symbol Rebate to Remove Liquidity in Tier 3.

27 The Prior Fee Change eliminated Tiers 1-3 described herein.

participants Customers will continue to receive rebates, except if the Customer order trades against another Customer order. Furthermore, Customers would not be assessed a fee during the Opening Process. During the Opening Process, the Exchange desires to attract Customer liquidity, similar to intra-day, and therefore continuing to pay Customer orders a rebate, provided the Customer order is not contra another customer order is reasonable. Also, during the Opening Process, when a Customer order is contra another Customer order, the Exchange notes that neither Customer order is assessed a Taker Fee. The Exchange believes that it is reasonable to not pay each Customer order a Maker Rebate in these circumstances when no Taker Fees are being assessed to those Customer orders. Finally, the Exchange notes that the Opening Process seeks liquidity for price discovery and therefore the incentives are distinct from trading intra-day, where Participants have an opportunity to interact with the order book. Also, the Exchange believes that the Non-Penny Symbol Customer pricing during the Opening Process remains competitive.[28]

Lead Market Makers and Market Makers

The Exchange believes that the proposed Opening Process Lead Market Maker and Market Maker pricing in Penny Symbols is reasonable. Previously, during the Opening Cross, Lead Market Makers and Options Market Makers were assessed the Fee to Remove Liquidity. During the Opening Cross, Lead Market Makers and Market Makers previously paid a Penny Symbol Fee to Remove Liquidity when trading against a

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28 NYSEArca currently assesses Customers a Take Liquidity fee of $0.49 per contract in Penny Issues. See NYSEArca Options Fees and Charges, Transaction Fee for Electronic Executions – Per Contract.

Customer which ranged from $0.39 to $0.30 per contract[29] and paid a Penny Symbol Fee to Remove Liquidity when trading against a Non-Customer, Lead Market Maker, BX Options Market Maker or Firm of $0.46 per contract, regardless of tier.[30] With the proposed new Opening Process pricing, the Penny Symbol Taker Fee for Lead Market Maker and Market Maker orders of $0.46 per contract would be higher than the prior Lead Market Maker and Market Maker tiered Penny Symbol Fee to Remove Liquidity when trading against a Customer which ranged from $0.39 to $0.30 per contract and would be the same as the current Lead Market Maker and Market Maker tiered Penny Symbol Fees to Remove Liquidity when trading against a Non-Customer, Lead Market Maker, Options Market Maker or Firm of $0.46 per contract regardless of tier. With the proposed new pricing, Lead Market Makers and Market Makers would not receive Maker Rebates during the Opening Process. The Exchange believes its proposed pricing will

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29 Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.39 per contract in Tier 1. Participants that execute 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.39 per contract in Tier 2. Participants that execute 0.15% or more of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.30 per contract in Tier 3.

30 Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.46 per contract in Tier 1. Participants that execute 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.46 per contract in Tier 2. Participants that execute 0.15% or more of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.46 per contract in Tier 3.

continue to attract liquidity because the pricing remains competitive with other pricing.[31]

Non-Customers and Firms

The Exchange believes that the proposed Opening Process Non-Customer and Firm pricing in Penny Symbols is reasonable. Previously, during the Opening Cross, Non-Customers and Firms were assessed the Fee to Remove Liquidity. The prior Penny Symbol Fee to Remove Liquidity was a flat fee of $0.46 per contract. The proposed new Penny Symbol Taker Fee of $0.46 per contract would be the same as the prior Penny Symbol Fee to Remove Liquidity of $0.46 per contract. With this pricing, Non-Customers and Firms would not receive Maker Rebates during the Opening Process. The Exchange believes its proposed pricing will continue to attract liquidity because the pricing remains competitive with other pricing.[32]

Non-Penny Symbols

Customers

The Exchange believes that the proposed Opening Process Customer pricing in Non-Penny Symbols is reasonable. Previously, during the Opening Cross, Customer orders received a Rebate to Remove Liquidity, unless the contra-side was also a Customer, in which case no Fee to Remove Liquidity was assessed and no Rebate to Remove Liquidity was received. Previously, during the Opening Cross, BX paid a Non-

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[31] NYSEArca currently assesses LMMs and NYSE Arca Maker Makers a Take Liquidity fee of $0.50 per contract in Penny Issues. See NYSEArca Options Fees and Charges, Transaction Fee for Electronic Executions – Per Contract.

[32] NYSEArca assesses all market participants except Customers a Take Liquidity fee of $0.50 per contract in Penny Issues. See NYSEArca's Options Fees and Charges, Transaction Fee for Electronic Executions – Per Contract.

Penny Symbol Customer Rebate to Remove Liquidity of $0.80 per contract,[33] regardless of the tier and regardless of the contra-party. The proposed new pricing would similarly pay Customers a Maker Rebate during the Exchange's Opening Process, unless the contra-side is also a Customer, in which case a Maker Rebate would not be paid and a Taker Fee would not be assessed. The proposed new Non-Penny Symbol Customer Maker Rebate of $0.90 per contract during the Opening Process would be higher than the prior rebates, provided the contra-side is not a Customer. Previously, during the Opening Cross, no Rebate to Remove Liquidity was paid when a Customer was contra another Customer. With the proposed new pricing, during the Opening Process, when a Customer is contra another Customer a Maker Rebate would not be paid and a Taker Fee would not be assessed. The Exchange believes that the proposed pricing will continue to attract order flow to BX because, during the Opening Process, unlike other market participants Customers will continue to receive rebates, except if the Customer is contra another Customer order, and Customers would not be assessed a fee during the Opening Process. The Exchange believes that it is reasonable to not pay a Customer a rebate during the Opening Process if the Customer is contra another Customer because unlike intra-day trading where Participants have the opportunity to interact with the order book, the Opening Process seeks liquidity for price discovery and therefore the incentives are distinct from the trading intra-day. Also, the Exchange believes that the Non-Penny

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33 Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month received an $0.80 per contract Non-Penny Symbol Rebate to Remove Liquidity in Tier 1. Participants that executed 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month received an $0.80 per contract Non-Penny Symbol Rebate to Remove Liquidity in Tier 2. Participants that executed 0.15% or more of total industry customer equity and ETF option ADV contracts per month received an $0.80 per contract Non-Penny Symbol Rebate to Remove Liquidity in Tier 3.

Symbol Customer pricing during the Opening Process remains competitive.[34]

Lead Market Makers and Market Makers

The Exchange believes that the proposed Opening Process Lead Market Maker and Market Maker pricing in Non-Penny Symbols is reasonable. Previously, during the Opening Cross, Lead Market Makers and BX Options Market Makers were assessed the Fee to Remove Liquidity. Previously, during the Opening Cross, Lead Market Makers and Market Makers paid an $0.89 per contract Non-Penny Fee to Remove Liquidity when the Lead Market Maker or Market Maker traded with any market participant other than a Customer.[35] Previously, during the Opening Cross, if the contra-party was a Customer, the Lead Market Maker and Market Maker were charged a Fee to Remove Liquidity that ranged from $0.89 to $0.60 per contract depending on the volume tier achieved.[36] The proposed new Taker Fee of $1.10 per contract for removing liquidity for Lead Market

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34 NYSEArca currently assesses Customers a Take Liquidity fee of $1.10 per contract in Non-Penny Issues. See NYSEArca Options Fees and Charges, Transaction Fee for Electronic Executions – Per Contract.

35 Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 1. Participants that executed 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 2. Participants that executed 0.15% or more of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 3.

36 Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 1. Participants that executed 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 2. Participants that executed 0.15% or more of total industry customer equity and ETF option ADV contracts per month paid a $0.60 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 3.

Makers and Market Makers in Non-Penny Symbols, during the Opening Process, regardless of contra-party would be higher than the prior fees assessed to Lead Market Makers and Market Makers for removing liquidity in Non-Penny Symbols. With the proposed new pricing, during the Opening Process, Lead Market Makers and Market Makers would not be subject to Maker Rebates. The Exchange believes that the Non-Penny Symbol Lead Market Maker and Market Maker pricing during the Opening Process remains competitive.[37]

Non-Customers and Firms

The Exchange believes that the proposed Opening Process Non-Customer and Firm pricing in Non-Penny Symbols is reasonable. Previously, during the Opening Cross, Non-Customers and Firms were assessed the Non-Penny Symbol Fee to Remove Liquidity. During the Opening Cross, the prior Non-Penny Symbol Fee to Remove Liquidity was a flat fee of $0.89 per contract. During the Opening Process, the proposed new Non-Penny Symbol Taker Fee of $1.10 per contract for removing liquidity for Non-Customers and Firms in Non-Penny Symbols would be higher than the prior Fee to Remove Liquidity. With this pricing, Non-Customers and Firms would not receive Maker Rebates during the Opening Process. The Exchange believes that the Non-Penny Symbol Non-Customer and Firm pricing during the Opening Process remains competitive.[38]

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37 NYSEArca assesses LMMs and NYSE Arca Market Makers a Take Liquidity fee of $1.10 per contract in Non-Penny Issues. See NYSEArca Options Fees and Charges.

38 NYSEArca assesses all market participants except Customers a Take Liquidity fee of $1.10 per contract in Non-Penny Issues. See NYSEArca Options Fees and Charges.

The Exchange's proposal to amend the Opening Process pricing is equitable and not unfairly discriminatory. During the Opening Process, Customers will continue to receive rebates, unlike other market participants, except if the Customer is contra another Customer order. Also, unlike other Participants, Customers would not be assessed a fee during the Opening Process. The Exchange believes that it is equitable and not unfairly discriminatory to pay rebates to Customers, provided they are not contra another customer, and not assess fees to Customers, because unlike other Participants, Customer liquidity benefits all market participants by offering additional trading opportunities. Additionally, Market Makers seeking to interact with Customer liquidity are incentivized to tighten quote spreads to interact with the order flow. With respect to Customer orders during the Opening Process that are contra other Customer orders, the Exchange would not pay the Customer a rebate, nor would the Customer be assessed a fee, unlike other Non-Customer Participants who would pay a fee during the Opening Process. While the Exchange desires to attract Customer liquidity during the Opening Process, unlike intra-day trading where Participants have the opportunity to interact with the order book, the Opening Process seeks liquidity for price discovery and therefore the incentives are distinct from the trading intra-day. Finally, the Exchange's proposal will uniformly assess all Non-Customers the same Taker Fee and pay no Maker Rebates to these Participants during the Opening Process.

Options 7, Section 2(5)

The Exchange's proposal to add the words "per Options 3, Section 13" at the end of the title to Options 7, Section 2(5) is reasonable, equitable and not unfairly discriminatory. This non-substantive amendment simply provides the citation to the BX Price Improvement Auction rule.

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.

Inter-market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. 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 options 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.

Intra-market Competition

Options 7, Section 2(1)

The Exchange's proposal to amend the Customer Non-Penny Symbol Maker Rebate of $0.90 per contract for adding liquidity in Non-Penny Symbols, regardless of contra-party and, instead, pay a $0.45 per contract Customer Non-Penny Symbol Maker

Rebate if the quantity of transactions where the contra-side is also a Customer is greater than 25% of Participant's total Customer Non-Penny Symbol volume which adds liquidity[39] in that month does not impose an undue burden on competition as the Exchange would uniformly apply the criteria to all Customer orders to determine the applicable rebate. The Exchange's proposal to exclude orders executed in the Opening Process, orders that generate an order exposure alert, and orders transacted in PRISM from the aforementioned calculation of 25% does not impose an undue burden on competition as the Exchange will uniformly exclude these orders from the aforementioned calculation of 25%.

The Exchange's proposal to pay a lower $0.45 per contract Customer Non-Penny Symbol Maker Rebate when a Participant executes against a Customer more than 25% of that Participant's total Customer Non-Penny Symbol volume which adds liquidity in a month does not impose an undue burden on competition. Customers may continue to be able to achieve the highest Non-Penny Symbol Maker Rebate paid by BX,[40] provided they do not execute greater than 25% of that Participant's total Customer Non-Penny Symbol volume which adds liquidity in a month.

The Exchange's proposal to amend Options 7, Section 2(1) to add a new note "*" which makes clear that orders executed in the Opening Process per Options 3, Section 8, orders that generate an order exposure alert per Options 5, Section 4, and orders transacted in the Price Improvement Auction ("PRISM") per Options 3, Section 13 are

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39 As proposed, the 25% calculation will not consider orders within the Opening Process per Options 3, Section 8, orders that generate an order exposure alert per BX Options 5, Section 4, or orders transacted in the Price Improvement Auction ("PRISM") per Options 3, Section 13.

40 Id.

not subject to Options 7, Section 2(1) pricing, rather these orders are subject to the pricing within Options 7, Sections 2(2), (4) and (5), respectively, does not impose an undue burden on competition. This amendment is non-substantive. The Exchange believes that this rule text will be informative in guiding Participants to the correct pricing within Options 7, Section 2 which applies to a specific transaction.

Options 7, Section 2(2)

The Exchange's proposal to amend the Opening Process pricing does not impose an undue burden on competition. During the Opening Process, Customers would continue to receive rebates, unlike other market participants, except if the Customer is contra another Customer order. Also, unlike other Participants, Customers would not be assessed a fee during the Opening Process. Paying rebates to Customers, provided they are not contra another customer, and not assessing fees to Customers does not impose an undue burden on competition, because unlike other Participants, Customer liquidity benefits all market participants by offering additional trading opportunities. Additionally, Market Makers seeking to interact with Customer liquidity are incentivized to tighten quote spreads to interact with the order flow. With respect to Customer orders during the Opening Process that are contra other Customer orders, the Exchange would not pay the Customer a rebate, nor would the Customer be assessed a fee, unlike other Non-Customer Participants who would pay a fee during the Opening Process. While the Exchange desires to attract Customer liquidity during the Opening Process, unlike intra-day trading where Participants have the opportunity to interact with the order book, the Opening Process seeks liquidity for price discovery and therefore the incentives are distinct from the trading intra-day. Finally, the Exchange's proposal will uniformly assess all Non-

Customers the same Taker Fee and pay no Maker Rebates to these Participants during the Opening Process.

Options 7, Section 2(5)

The Exchange's proposal to add the words "per Options 3, Section 13" at the end of the title to Options 7, Section 2(5) does not impose an undue burden on competition. This non-substantive rule change simply provides the citation to the BX Price Improvement Auction rule.

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,[41] 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

[41] 15 U.S.C. 78s(b)(3)(A)(ii).

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.

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-2021-015)

April__, 2021

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

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 April 13, 2021, 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 BX Options 7, Section 2, "BX Options Market- Fees and Rebates."

The Exchange originally filed the proposed pricing changes on March 29, 2021 (SR-BX-2021-010). On April 13, 2021, the Exchange withdrew that filing and submitted this filing.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on April 1, 2021.

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

2 17 CFR 240.19b-4.

The text of the proposed rule change is available on the Exchange's Website at https://listingcenter.nasdaq.com/rulebook/bx/rules, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to amend BX's Pricing Schedule at Options 7, Section 2, "BX Options Market-Fees and Rebates." The Exchange proposes to amend Options 7, Section 2(1) to qualify the Customer Non-Penny Symbol Maker Rebate and add certain rule text to make clear the manner in which Options 7, Section 2(1) pricing applies today. The Exchange also proposes to amend Options 7, Section 2(2) to amend the pricing for the Opening Cross. Each change will be described below.

Options 7, Section 2(1)

Today, Customers are paid a Non-Penny Symbol Maker Rebate of $0.90 per contract for adding liquidity in Non-Penny Symbols, regardless of contra-party. Customers are assessed a Non-Penny Symbol Taker Fee of $0.65 per contract for removing liquidity in Non-Penny Symbols, regardless of counterparty.

The Exchange proposes to amend the Customer Non-Penny Symbol Maker

Rebate of $0.90 per contract. The Exchange proposes to continue to pay a Customer Non-Penny Symbol Maker Rebate of $0.90 per contract unless the contra-side is also a Customer, in which case the Exchange will pay a reduced Customer Non-Penny Symbol Market Rebate of $0.45 per contract if the quantity of transactions where the contra-side is also a Customer is greater than 25% of Participant's total Customer Non-Penny Symbol volume which adds liquidity in that month. The aforementioned calculation of 25% will not consider orders within the Opening Process[3] per Options 3, Section 8, orders that generate an order exposure alert per Options 5, Section 4, or orders transacted in the Price Improvement Auction ("PRISM") per Options 3, Section 13. The Exchange proposes to add this rule text to Options 7, Section 2(1) at new note "3".

The Exchange also proposes to amend Options 7, Section 2(1) to add a new note "*" which makes clear that orders executed in the Opening Process per Options 3, Section 8, orders that generate an order exposure alert per Options 5, Section 4, and orders transacted in the Price Improvement Auction ("PRISM") per Options 3, Section 13 are not subject to Options 7, Section 2(1) pricing, instead, these orders are subject to the pricing within Options 7, Sections 2(2), (4) and (5), respectively. The Exchange believes that this note will guide Participants to the correct pricing within Options 7, Section 2. This new note "*" does not represent a substantive change. The proposed new note "*" is intended to serve as a guidepost to Participants referring to the BX Pricing Schedule.

<u>Options 7, Section 2(2)</u>

As noted above, the Exchange proposes to amend the title of Options 7, Section

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3 The Exchange proposes to rename "Opening Cross" within Options 7, Section 2(2) as 'Opening Process." Hereafter, the Exchange will refer to Options 7, Section 2(2) as the Opening Process and the previous process as the Opening Cross throughout this rule change.

2(2) to align with the title of Options 3, Section 8. The Exchange also proposes to add a citation to the rule for the Opening Process. The current title, "Opening Cross" would be amended to state "Opening Process per Options 3, Section 8." The Exchange also proposes to change the phrase "Opening Cross" to "Opening Process" throughout Options 7, Section 2(2) as well. These amendments are non-substantive.

Currently, Options 7, Section 2(2) provides,

> All orders executed in the Opening Cross:
>
> Customer orders will receive the Rebate to Remove Liquidity during the Exchange's Opening Cross, unless the contra-side is also a Customer (in which case no Fee to Remove Liquidity is assessed and no Rebate to Remove Liquidity is received). Lead Market Makers, BX Options Market Makers,[4] Non-Customers, and Firms will be assessed the Fee to Remove Liquidity during the Exchange's Opening Cross.

The Exchange recently filed to amend the pricing within Options 7, Section 2(1) to remove the current fees, rebates and tier schedules applicable to Penny Symbols and Non-Penny Symbols and replace it with a new maker/taker fee structure.[5] Currently, Options 7, Section 2(2) continues to reference pricing which was removed with the Prior Fee Change. As the current pricing refers to Rebates to Remove Liquidity and Fees to Remove Liquidity which no longer exist on the Pricing Schedule within Options 7, Section 2(1), the Exchange did not assess any Participant a fee nor pay a rebate in March

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[4] The Prior Fee Change renamed "BX Options Market Maker" as "Market Maker."

[5] See Securities Exchange Act Release No. 91473 (April 5, 2021) 86 FR 18562 (April 9, 2021) (April 9, 2021) (SR-BX-2021-009) ("Prior Fee Change").

2021 with respect to the Opening Cross.

At this time, the Exchange proposes to amend Options 7, Section 2(2) to provide,

> All orders executed in the Opening Process:
>
> Customer orders will receive the Maker Rebate during the Exchange's Opening Process, unless the contra-side is also a Customer, in which case a Maker Rebate will not be paid and a Taker Fee will not be assessed.
>
> Lead Market Makers, Market Makers, Non-Customers, and Firms will be assessed the Taker Fee during the Exchange's Opening Process and will receive Maker Rebates.

This proposed new rule text would continue to pay Customers a rebate during the Exchange's Opening Process, unless the Customer order is contra another Customer order as explained in greater detail below.

Penny Symbols

Previously, during the Opening Cross, Customer orders received a Rebate to Remove Liquidity, unless the contra-side was also a Customer, in which case no Fee to Remove Liquidity was assessed and no Rebate to Remove Liquidity was received. Previously, during the Opening Cross, BX paid a Penny Symbol Rebate to Remove Liquidity when trading against a Non-Customer, Lead Market Maker, BX Options Market Maker, Customer or Firm which ranged from \$0.00 to \$0.35 per contract.[6] The

[6] Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month received no Penny Symbol Rebate to Remove Liquidity in Tier 1. Participants that executed 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month received a \$0.25 per contract Penny Symbol Rebate to Remove Liquidity in Tier 2. Participants that executed 0.15% or more of total industry customer equity and

proposed new pricing which would be applicable to the Exchange's Opening Process would pay Customers a Maker Rebate of $0.30 per contract, unless the contra-side is also a Customer, in which case a Maker Rebate would not be paid and a Taker Fee would not be assessed. The proposed new Penny Symbol Customer Maker Rebate of $0.30 per contract would pay Participants that previously qualified for now defunct Tiers 1 and 2[7] a higher Customer rebate than was previously paid. Participants that qualified for now defunct Tier 3 would receive a lower Customer rebate than was previously paid, provided the contra-side was not a Customer. Previously, during the Opening Cross, no Rebate was paid to Remove Liquidity when a Customer was contra another Customer. With the proposed pricing, during the Opening Process, when a Customer is contra another Customer a Maker Rebate would not be paid and a Taker Fee would not be assessed.

Previously, during the Opening Cross, Lead Market Makers and Options Market Makers were assessed the Fee to Remove Liquidity while Lead Market Makers and Market Makers paid the Penny Symbol Fee to Remove Liquidity when trading against a Customer that ranged from $0.39 to $0.30 per contract.[8] Previously, during the Opening Cross, Lead Market Makers and Market Makers paid a Penny Symbol Fee to Remove

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ETF option ADV contracts per month received a $0.35 per contract Penny Symbol Rebate to Remove Liquidity in Tier 3.

7 The Prior Fee Change eliminated Tiers 1-3 described herein.

8 Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.39 per contract in Tier 1. Participants that execute 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.39 per contract in Tier 2. Participants that execute 0.15% or more of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.30 per contract in Tier 3.

Liquidity when trading against a Non-Customer, Lead Market Maker, BX Options Market Maker or Firm of $0.46 per contract, regardless of tier.[9] With the proposed new Opening Process pricing, the Penny Symbol Taker Fee for Lead Market Maker and Market Maker orders of $0.46 per contract would be higher than the prior Lead Market Maker and Market Maker tiered Penny Symbol Fee to Remove Liquidity when trading against a Customer which ranged from $0.39 to $0.30 per contract and would be the same as the previous Lead Market Maker and Market Maker tiered Penny Symbol Fees to Remove Liquidity when trading against a Non-Customer, Lead Market Maker, Options Market Maker or Firm of $0.46 per contract regardless of tier. With the proposed new pricing, Lead Market Makers and Market Makers would not receive Maker Rebates during the Opening Process.

Previously, during the Opening Cross, Non-Customers and Firms were assessed the Fee to Remove Liquidity. The prior Penny Symbol Fee to Remove Liquidity was a flat fee of $0.46 per contract. The proposed new Penny Symbol Taker Fee of $0.46 per contract would be the same as the prior Penny Symbol Fee to Remove Liquidity of $0.46 per contract. With this pricing, Non-Customers and Firms would not receive Maker Rebates during the Opening Process.

Non-Penny Symbols

Previously, during the Opening Cross, Customer orders received a Rebate to

[9] Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.46 per contract in Tier 1. Participants that execute 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.46 per contract in Tier 2. Participants that execute 0.15% or more of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.46 per contract in Tier 3.

Remove Liquidity, unless the contra-side was also a Customer, in which case no Fee to Remove Liquidity was assessed and no Rebate to Remove Liquidity was received. Previously, during the Opening Cross, BX paid a Non-Penny Symbol Customer Rebate to Remove Liquidity of $0.80 per contract,[10] regardless of the tier and regardless of the contra-party. The proposed new pricing would similarly pay Customers a Maker Rebate during the Exchange's Opening Process, unless the contra-side is also a Customer, in which case a Maker Rebate would not be paid and a Taker Fee would not be assessed. The proposed new Non-Penny Symbol Customer Maker Rebate of $0.90 per contract during the Opening Process would be higher than the prior rebates, provided the contra-side is not a Customer. During the Opening Process, no Rebate to Remove Liquidity was paid when a Customer was contra another Customer. With the proposed new pricing, during the Opening Process, when a Customer is contra another Customer a Maker Rebate would not be paid and a Taker Fee would not be assessed.

Previously, during the Opening Cross, Lead Market Makers and BX Options Market Makers were assessed the Fee to Remove Liquidity while Lead Market Makers and Market Makers paid an $0.89 per contract Non-Penny Fee to Remove Liquidity when the Lead Market Maker or Market Maker traded with any market participant other than a

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[10] Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month received an $0.80 per contract Non-Penny Symbol Rebate to Remove Liquidity in Tier 1. Participants that executed 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month received an $0.80 per contract Non-Penny Symbol Rebate to Remove Liquidity in Tier 2. Participants that executed 0.15% or more of total industry customer equity and ETF option ADV contracts per month received an $0.80 per contract Non-Penny Symbol Rebate to Remove Liquidity in Tier 3.

Customer.[11] Previously, during the Opening Cross, if the contra-party was a Customer, the Lead Market Maker and Market Maker were charged a Fee to Remove Liquidity that ranged from $0.89 to $0.60 per contract depending on the volume tier achieved.[12] The proposed new Taker Fee of $1.10 per contract for removing liquidity for Lead Market Makers and Market Makers in Non-Penny Symbols, during the Opening Process, regardless of contra-party would be higher than the prior fees assessed to Lead Market Makers and Market Makers for removing liquidity in Non-Penny Symbols. With the proposed new pricing, during the Opening Process, Lead Market Makers and Market Makers would not receive Maker Rebates.

Previously, during the Opening Cross, Non-Customers and Firms were assessed the Non-Penny Symbol Fee to Remove Liquidity. During the Opening Cross, the prior Non-Penny Symbol Fee to Remove Liquidity was a flat fee of $0.89 per contract. During the Opening Process, the proposed new Non-Penny Symbol Taker Fee of $1.10 per contract for removing liquidity for Non-Customers and Firms in Non-Penny Symbols,

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[11] Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 1. Participants that executed 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 2. Participants that executed 0.15% or more of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 3.

[12] Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 1. Participants that executed 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 2. Participants that executed 0.15% or more of total industry customer equity and ETF option ADV contracts per month paid an $0.60 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 3.

would be higher than the prior Fee to Remove Liquidity. With this pricing, Non-Customers and Firms would not receive Maker Rebates during the Opening Process.

Options 7, Section 2(5)

The Exchange proposes to add the words "per Options 3, Section 13" at the end of the title to Options 7, Section 2(5) to provide the citation to the BX Price Improvement Auction rule. This amendment is non-substantive.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[14] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options 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

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13 15 U.S.C. 78 f(b).

14 15 U.S.C. 78f(b)(4) and (5).

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'…."[15]

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."[16]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. 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. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

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[15] 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)).

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

Options 7, Section 2(1)

The Exchange's proposal to amend the Customer Non-Penny Symbol Maker Rebate of $0.90 per contract for adding liquidity in Non-Penny Symbols, regardless of contra-party and, instead, pay a $0.45 per contract Customer Non-Penny Symbol Maker Rebate if the quantity of transactions where the contra-side is also a Customer is greater than 25% of Participant's total Customer Non-Penny Symbol volume which adds liquidity[17] in that month is reasonable. BX's current $0.90 per contract flat Customer Non-Penny Symbol Maker Rebate is the highest simple order base rebate paid that does not consider volume or contra-party.[18] Other exchanges have higher simple order

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17 As proposed, the 25% calculation will not consider orders within the Opening Process per Options 3, Section 8, orders that generate an order exposure alert per BX Options 5, Section 4, or orders transacted in the Price Improvement Auction ("PRISM") per Options 3, Section 13.

18 BOX Exchange LLC ("BOX") pays no Non-Penny Interval Class Public Customer Maker Rebate. See BOX's Fee Schedule at Section I, A. Cboe Exchange, Inc. ("Cboe") pays a Non-Penny Class rebate to customers of $0.18 per contract only if the original order is < 100 contracts and removing liquidity. See Cboe's Fee Schedule. Cboe C2 Exchange, Inc. ("C2") pays a Non-Penny Class rebate to customers of $0.80 per contract to transactions which add liquidity. See C2's Fee Schedule. Cboe BZX Exchange, Inc. ("CboeBZX") pays Non-Penny Program Securities rebates to customers which range from $0.85 to $1.06 per contract to transactions which add liquidity. See CboeBZX's Fee Schedule. Cboe EDGX Exchange, Inc. ("CboeEDGX") pays Non-Penny Program Securities rebates to customers which range from $0.01 to $0.21 based on customer volume tiers. See CboeEDGX's Fee Schedule. Miami International Securities Exchange, LLC ("MIAX") pays no customer rebate for non-penny classes. See MIAX's Fee Schedule. MIAX PEARL, LLC ("PEARL") pays Priority Customer Non-Penny Classes Maker Rebates which range from $0.85 to $1.04 based on volume. See PEARL's Fee Schedule. MIAX Emerald, LLC ("EMERALD") pays Priority Customer Maker Rebates which range from $0.43 to $0.53, except that SPY, QQQ and IWM rebates are $0.45 and Priority Customer Simple Order rebates when contra is an Affiliated Market Maker are $0.49. See EMERALD's Fee Schedule. NYSE Arca, Inc. ("NYSEArca") pays a Customer a $0.75 rebate to post liquidity unless contra a lead market maker, in which case no rebate is paid. See NYSE Arca Options Fees and Charges. NYSE American LLC ("NYSEAmerican") pays no Customer rebates. See NYSE

rebates, provided certain volume criteria are met.[19] The Exchange's proposal to add a volume consideration for the ratio of Customer to Customer orders as compared to total Participant volume which adds Non-Penny Symbol liquidity in order to receive the $0.90 per contract Customer Non-Penny Symbol rebate as compared to the reduced $0.45 per contract rebate is reasonable. The Exchange currently assess a $0.65 per contract Customer Non-Penny Taker Fee, the lowest BX Taker Fee for Non-Penny Symbols,[20] and, currently, the Exchange pays the highest Customer Maker Rebate of $0.90 per contract. The Exchange offers Customers the highest Non-Penny Maker Rebate on BX by assessing higher Non-Penny Taker Fees to Non-Customers.[21] To the extent a Participant submits a Non-Penny Customer order to add liquidity which interacts with a Non-Penny Customer order that removes liquidity, both Participants benefit from the higher Non-Penny Maker Rebate and lower Non-Penny Taker Fee. The Exchange's intention for assessing Customer orders with the reduced Non-Penny Taker Fee was designed to bolster interaction with Non-Customer participants. Today, Non-Penny

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American Options Fee Schedule. The Nasdaq Stock Market LLC ("NOM") pays an $0.80 per contract Customer Non-Penny Symbol Rebate and in some cases $1.00, or $1.05 if other criteria are met. See NOM's Pricing Schedule. Nasdaq Phlx LLC ("Phlx") pays Customer Non-Penny rebates which range from $0.00 to $0.27. See Phlx's Pricing Schedule. Nasdaq ISE, LLC ('ISE") pays no Non-Penny Priority Customer rebates. See ISE's Pricing Schedule. Nasdaq GEMX, LLC ("GEMX") pays Priority Customer Non-Penny Symbol Maker Rebates which range from $0.25 to $0.70. See GEMX's Pricing Schedule. Nasdaq MRX, LLC ('MRX") pays no Priority Customer Non-Penny Symbol rebates. See MRX's Pricing Schedule.

19 Id.

20 Non-Customer orders are assessed a $1.10 Non-Penny Symbol Taker Fee.

21 A Non-Customer includes a Professional, Broker-Dealer and Non-BX Options Market Maker. See BX Options 7, Section 1.

Customer orders which add liquidity have priority[22] ahead of Non-Penny Non-Customer orders and, therefore, the Exchange's intention to enhance Non-Customer liquidity is subverted when a Non-Penny Customer order transacts with another Non-Penny Customer order. As a result, when Non-Penny Customers interact with other Non-Penny Customer orders more than by happenstance, the Exchange believes it is reasonable to pay Customer orders which add liquidity a lower rebate. The Exchange notes that Participants do occasionally submit Non-Penny Customer orders which add liquidity in Non-Penny Symbols to the order book that trade against Non-Penny Customer orders that remove liquidity in Non-Penny Symbols. The Exchange believes that type of behavior occurs, by happenstance, a small percentage of the time in a given month. Therefore, the Exchange selected 25% as a number to demarcate the point at which a Participant should receive the lower Customer Non-Penny Symbol Maker Rebate of $0.45 per contract because it does not believe that the type of behavior outlined herein should occur more than 25% of a Participant's total Customer Non-Penny Symbol volume unless the trading behavior intended. Further, the Exchange believes that although Customer orders may receive lower rebates if they transact the requisite number of Customer-to Customer trades, the Exchange's rebate of $0.45 per contract remains competitive and equal to or greater than the rebates that other Participants are afforded.[23] The Exchange's proposal to exclude orders executed in the Opening Process per Options 3, Section 8, orders that

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[22] See Options 3, Section 10.

[23] Today, Lead Market Makers are paid $0.45 per contract Non-Penny Symbol Maker Rebates and Market Maker are paid $0.40 per contract Non-Penny Symbol Maker Rebates. Firms and Non-Customers are not eligible for Non-Penny Symbol Maker Rebates and instead are charged a Maker Fee of $0.45 per contract.

generate an order exposure alert per Options 5, Section 4, and orders transacted in the Price Improvement Auction ("PRISM") per Options 3, Section 13 from the aforementioned calculation of 25% is reasonable because orders executed in the Opening Process, orders that generate an order exposure alert, and orders transacted in PRISM have separate pricing within Options 7, Sections 2(2), (4) and (5), respectively. The Exchange's proposal to exclude orders executed in the Opening Process, orders that generate an order exposure alert, and orders transacted in PRISM from the aforementioned calculation of 25% is equitable and not unfairly discriminatory as the Exchange will uniformly exclude these orders from the aforementioned calculation of 25%.

The Exchange's proposal to amend the Customer Non-Penny Symbol Maker Rebate of $0.90 per contract for adding liquidity in Non-Penny Symbols, regardless of contra-party and, instead, pay a $0.45 per contract Customer Non-Penny Symbol Maker Rebate if the quantity of transactions where the contra-side is also a Customer is greater than 25% of Participant's total Customer Non-Penny Symbol volume which adds liquidity[24] in that month is equitable and not unfairly discriminatory. The Exchange would uniformly apply the criteria to all Customer orders to determine the applicable rebate.

The Exchange's proposal to pay a lower $0.45 per contract Customer Non-Penny Symbol Maker Rebate when a Participant executes against a Customer more than 25% of that Participant's total Customer Non-Penny Symbol volume which adds liquidity in a

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24 As proposed, the 25% calculation will not consider orders within the Opening Process per Options 3, Section 8, orders that generate an order exposure alert per BX Options 5, Section 4, or orders transacted in the Price Improvement Auction ("PRISM") per Options 3, Section 13.

month is equitable and not unfairly discriminatory. The Exchange noted above that when Non-Penny Customers interact with other Non-Penny Customer orders more than by happenstance, the Exchange believes it is reasonable to pay Customer orders which add liquidity a lower rebate. The Exchange also noted that Participants do occasionally submit Non-Penny Customer orders which add liquidity in Non-Penny Symbols to the order book that trade against Non-Penny Customer orders that remove liquidity in Non-Penny Symbols. The Exchange believes that type of behavior occurs, by happenstance, a small percentage of the time in a given month. Therefore, the Exchange believes that it is equitable and not unfairly discriminatory to pay a lower rebate to Non-Penny Customer orders which interact with other Non-Penny Customer orders more than by happenstance, because the Exchange's intention to enhance Non-Customer liquidity is subverted. In addition, the Exchange notes that Customers may continue to receive the highest Non-Penny Symbol Maker Rebate paid by BX,[25] provided they do not execute greater than 25% of that Participant's total Customer Non-Penny Symbol volume which adds liquidity in a month.

The Exchange's proposal to amend Options 7, Section 2(1) to add a new note "*" which makes clear that orders executed in the Opening Process per Options 3, Section 8, orders that generate an order exposure alert per Options 5, Section 4, and orders transacted in the Price Improvement Auction ("PRISM") per Options 3, Section 13 are not subject to Options 7, Section 2(1) pricing, rather, these orders are subject to the pricing within Options 7, Sections 2(2), (4) and (5), respectively, is reasonable, equitable and not unfairly discriminatory. The Exchange believes that this rule text will be

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25 Id.

informative in guiding Participants to the correct pricing within Options 7, Section 2 which applies to a specific transaction. This new note "*" does not represent a substantive change. The proposed new note "*" is intended to serve as a guidepost to Participants referring to the BX Pricing Schedule.

Options 7, Section 2(2)

The Exchange's proposal to amend the title of Options 7, Section 2(2) from "Opening Cross" to "Opening Process per Options 3, Section 8," as well as similar changes throughout Options 7, Section 2(2), is reasonable, equitable and not unfairly discriminatory. The amendment is non-substantive. The proposed title will align with the title of Options 3, Section 8.

The Exchange's proposal to amend the pricing within Options 7, Section 2(2) is reasonable, equitable and not unfairly discriminatory for the below reasons.

Penny Symbols

Customers

The Exchange believes that the proposed Opening Process Customer pricing in Penny Symbols is reasonable. Previously, during the Opening Cross, Customer orders received a Rebate to Remove Liquidity, unless the contra-side was also a Customer, in which case no Fee to Remove Liquidity was assessed and no Rebate to Remove Liquidity was received. Previously, during the Opening Cross, BX paid a Penny Symbol Rebate to Remove Liquidity when trading against a Non-Customer, Lead Market Maker, BX Options Market Maker, Customer or Firm which ranged from $0.00 to $0.35 per contract.[26] The proposed new pricing which would be applicable to the Exchange's

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26 Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month received no Penny Symbol Rebate to

Opening Process would pay Customers a Maker Rebate of $0.30 per contract, unless the contra-side is also a Customer, in which case a Maker Rebate would not be paid and a Taker Fee would not be assessed. The proposed new Penny Symbol Customer Maker Rebate of $0.30 per contract would pay Participants that previously qualified for now defunct Tiers 1 and 2[27] a higher Customer rebate than was previously paid. Participants that qualified for now defunct Tier 3 would receive a lower Customer rebate than was previously paid, provided the contra-side was not a Customer. Previously, during the Opening Cross, no Rebate was paid to Remove Liquidity when a Customer was contra another Customer. With the proposed pricing, during the Opening Process, when a Customer is contra another Customer a Maker Rebate would not be paid and a Taker Fee would not be assessed. The Exchange believes that the proposed pricing will continue to attract order flow to BX because, during the Opening Process, unlike other market participants Customers will continue to receive rebates, except if the Customer order trades against another Customer order. Furthermore, Customers would not be assessed a fee during the Opening Process. During the Opening Process, the Exchange desires to attract Customer liquidity, similar to intra-day, and therefore continuing to pay Customer orders a rebate, provided the Customer order is not contra another customer order is reasonable. Also, during the Opening Process, when a Customer order is contra another Customer order, the Exchange notes that neither Customer order is assessed a Taker Fee.

Remove Liquidity in Tier 1. Participants that executed 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month received a $0.25 per contract Penny Symbol Rebate to Remove Liquidity in Tier 2. Participants that executed 0.15% or more of total industry customer equity and ETF option ADV contracts per month received a $0.35 per contract Penny Symbol Rebate to Remove Liquidity in Tier 3.

27 The Prior Fee Change eliminated Tiers 1-3 described herein.

The Exchange believes that it is reasonable to not pay each Customer order a Maker Rebate in these circumstances when no Taker Fees are being assessed to those Customer orders. Finally, the Exchange notes that the Opening Process seeks liquidity for price discovery and therefore the incentives are distinct from trading intra-day, where Participants have an opportunity to interact with the order book. Also, the Exchange believes that the Non-Penny Symbol Customer pricing during the Opening Process remains competitive.[28]

Lead Market Makers and Market Makers

The Exchange believes that the proposed Opening Process Lead Market Maker and Market Maker pricing in Penny Symbols is reasonable. Previously, during the Opening Cross, Lead Market Makers and Options Market Makers were assessed the Fee to Remove Liquidity. During the Opening Cross, Lead Market Makers and Market Makers previously paid a Penny Symbol Fee to Remove Liquidity when trading against a Customer which ranged from $0.39 to $0.30 per contract[29] and paid a Penny Symbol Fee to Remove Liquidity when trading against a Non-Customer, Lead Market Maker, BX

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28 NYSEArca currently assesses Customers a Take Liquidity fee of $0.49 per contract in Penny Issues. See NYSEArca Options Fees and Charges, Transaction Fee for Electronic Executions – Per Contract.

29 Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.39 per contract in Tier 1. Participants that execute 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.39 per contract in Tier 2. Participants that execute 0.15% or more of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.30 per contract in Tier 3.

Options Market Maker or Firm of $0.46 per contract, regardless of tier.[30] With the proposed new Opening Process pricing, the Penny Symbol Taker Fee for Lead Market Maker and Market Maker orders of $0.46 per contract would be higher than the prior Lead Market Maker and Market Maker tiered Penny Symbol Fee to Remove Liquidity when trading against a Customer which ranged from $0.39 to $0.30 per contract and would be the same as the current Lead Market Maker and Market Maker tiered Penny Symbol Fees to Remove Liquidity when trading against a Non-Customer, Lead Market Maker, Options Market Maker or Firm of $0.46 per contract regardless of tier. With the proposed new pricing, Lead Market Makers and Market Makers would not receive Maker Rebates during the Opening Process. The Exchange believes its proposed pricing will continue to attract liquidity because the pricing remains competitive with other pricing.[31]

Non-Customers and Firms

The Exchange believes that the proposed Opening Process Non-Customer and Firm pricing in Penny Symbols is reasonable. Previously, during the Opening Cross, Non-Customers and Firms were assessed the Fee to Remove Liquidity. The prior Penny Symbol Fee to Remove Liquidity was a flat fee of $0.46 per contract. The proposed new Penny Symbol Taker Fee of $0.46 per contract would be the same as the prior Penny

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30 Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.46 per contract in Tier 1. Participants that execute 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.46 per contract in Tier 2. Participants that execute 0.15% or more of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.46 per contract in Tier 3.

31 NYSEArca currently assesses LMMs and NYSE Arca Maker Makers a Take Liquidity fee of $0.50 per contract in Penny Issues. See NYSEArca Options Fees and Charges, Transaction Fee for Electronic Executions – Per Contract.

Symbol Fee to Remove Liquidity of $0.46 per contract. With this pricing, Non-Customers and Firms would not receive Maker Rebates during the Opening Process. The Exchange believes its proposed pricing will continue to attract liquidity because the pricing remains competitive with other pricing.[32]

Non-Penny Symbols

Customers

The Exchange believes that the proposed Opening Process Customer pricing in Non-Penny Symbols is reasonable. Previously, during the Opening Cross, Customer orders received a Rebate to Remove Liquidity, unless the contra-side was also a Customer, in which case no Fee to Remove Liquidity was assessed and no Rebate to Remove Liquidity was received. Previously, during the Opening Cross, BX paid a Non-Penny Symbol Customer Rebate to Remove Liquidity of $0.80 per contract,[33] regardless of the tier and regardless of the contra-party. The proposed new pricing would similarly pay Customers a Maker Rebate during the Exchange's Opening Process, unless the contra-side is also a Customer, in which case a Maker Rebate would not be paid and a Taker Fee would not be assessed. The proposed new Non-Penny Symbol Customer Maker Rebate of $0.90 per contract during the Opening Process would be higher than the

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32 NYSEArca assesses all market participants except Customers a Take Liquidity fee of $0.50 per contract in Penny Issues. See NYSEArca's Options Fees and Charges, Transaction Fee for Electronic Executions – Per Contract.

33 Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month received an $0.80 per contract Non-Penny Symbol Rebate to Remove Liquidity in Tier 1. Participants that executed 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month received an $0.80 per contract Non-Penny Symbol Rebate to Remove Liquidity in Tier 2. Participants that executed 0.15% or more of total industry customer equity and ETF option ADV contracts per month received an $0.80 per contract Non-Penny Symbol Rebate to Remove Liquidity in Tier 3.

prior rebates, provided the contra-side is not a Customer. Previously, during the Opening Cross, no Rebate to Remove Liquidity was paid when a Customer was contra another Customer. With the proposed new pricing, during the Opening Process, when a Customer is contra another Customer a Maker Rebate would not be paid and a Taker Fee would not be assessed. The Exchange believes that the proposed pricing will continue to attract order flow to BX because, during the Opening Process, unlike other market participants Customers will continue to receive rebates, except if the Customer is contra another Customer order, and Customers would not be assessed a fee during the Opening Process. The Exchange believes that it is reasonable to not pay a Customer a rebate during the Opening Process if the Customer is contra another Customer because unlike intra-day trading where Participants have the opportunity to interact with the order book, the Opening Process seeks liquidity for price discovery and therefore the incentives are distinct from the trading intra-day. Also, the Exchange believes that the Non-Penny Symbol Customer pricing during the Opening Process remains competitive.[34]

Lead Market Makers and Market Makers

The Exchange believes that the proposed Opening Process Lead Market Maker and Market Maker pricing in Non-Penny Symbols is reasonable. Previously, during the Opening Cross, Lead Market Makers and BX Options Market Makers were assessed the Fee to Remove Liquidity. Previously, during the Opening Cross, Lead Market Makers and Market Makers paid an $0.89 per contract Non-Penny Fee to Remove Liquidity when the Lead Market Maker or Market Maker traded with any market participant other than a

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34 NYSEArca currently assesses Customers a Take Liquidity fee of $1.10 per contract in Non-Penny Issues. See NYSEArca Options Fees and Charges, Transaction Fee for Electronic Executions – Per Contract.

Customer.[35] Previously, during the Opening Cross, if the contra-party was a Customer, the Lead Market Maker and Market Maker were charged a Fee to Remove Liquidity that ranged from $0.89 to $0.60 per contract depending on the volume tier achieved.[36] The proposed new Taker Fee of $1.10 per contract for removing liquidity for Lead Market Makers and Market Makers in Non-Penny Symbols, during the Opening Process, regardless of contra-party would be higher than the prior fees assessed to Lead Market Makers and Market Makers for removing liquidity in Non-Penny Symbols. With the proposed new pricing, during the Opening Process, Lead Market Makers and Market Makers would not be subject to Maker Rebates. The Exchange believes that the Non-Penny Symbol Lead Market Maker and Market Maker pricing during the Opening Process remains competitive.[37]

Non-Customers and Firms

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35 Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 1. Participants that executed 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 2. Participants that executed 0.15% or more of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 3.

36 Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 1. Participants that executed 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 2. Participants that executed 0.15% or more of total industry customer equity and ETF option ADV contracts per month paid a $0.60 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 3.

37 NYSEArca assesses LMMs and NYSE Arca Market Makers a Take Liquidity fee of $1.10 per contract in Non-Penny Issues. See NYSEArca Options Fees and Charges.

The Exchange believes that the proposed Opening Process Non-Customer and Firm pricing in Non-Penny Symbols is reasonable. Previously, during the Opening Cross, Non-Customers and Firms were assessed the Non-Penny Symbol Fee to Remove Liquidity. During the Opening Cross, the prior Non-Penny Symbol Fee to Remove Liquidity was a flat fee of $0.89 per contract. During the Opening Process, the proposed new Non-Penny Symbol Taker Fee of $1.10 per contract for removing liquidity for Non-Customers and Firms in Non-Penny Symbols would be higher than the prior Fee to Remove Liquidity. With this pricing, Non-Customers and Firms would not receive Maker Rebates during the Opening Process. The Exchange believes that the Non-Penny Symbol Non-Customer and Firm pricing during the Opening Process remains competitive.[38]

The Exchange's proposal to amend the Opening Process pricing is equitable and not unfairly discriminatory. During the Opening Process, Customers will continue to receive rebates, unlike other market participants, except if the Customer is contra another Customer order. Also, unlike other Participants, Customers would not be assessed a fee during the Opening Process. The Exchange believes that it is equitable and not unfairly discriminatory to pay rebates to Customers, provided they are not contra another customer, and not assess fees to Customers, because unlike other Participants, Customer liquidity benefits all market participants by offering additional trading opportunities. Additionally, Market Makers seeking to interact with Customer liquidity are incentivized to tighten quote spreads to interact with the order flow. With respect to Customer orders

38 NYSEArca assesses all market participants except Customers a Take Liquidity fee of $1.10 per contract in Non-Penny Issues. See NYSEArca Options Fees and Charges.

during the Opening Process that are contra other Customer orders, the Exchange would not pay the Customer a rebate, nor would the Customer be assessed a fee, unlike other Non-Customer Participants who would pay a fee during the Opening Process. While the Exchange desires to attract Customer liquidity during the Opening Process, unlike intra-day trading where Participants have the opportunity to interact with the order book, the Opening Process seeks liquidity for price discovery and therefore the incentives are distinct from the trading intra-day. Finally, the Exchange's proposal will uniformly assess all Non-Customers the same Taker Fee and pay no Maker Rebates to these Participants during the Opening Process.

Options 7, Section 2(5)

The Exchange's proposal to add the words "per Options 3, Section 13" at the end of the title to Options 7, Section 2(5) is reasonable, equitable and not unfairly discriminatory. This non-substantive amendment simply provides the citation to the BX Price Improvement Auction rule.

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.

Inter-market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. 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 options 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.

Intra-market Competition

Options 7, Section 2(1)

The Exchange's proposal to amend the Customer Non-Penny Symbol Maker Rebate of $0.90 per contract for adding liquidity in Non-Penny Symbols, regardless of contra-party and, instead, pay a $0.45 per contract Customer Non-Penny Symbol Maker Rebate if the quantity of transactions where the contra-side is also a Customer is greater than 25% of Participant's total Customer Non-Penny Symbol volume which adds liquidity[39] in that month does not impose an undue burden on competition as the Exchange would uniformly apply the criteria to all Customer orders to determine the applicable rebate. The Exchange's proposal to exclude orders executed in the Opening Process, orders that generate an order exposure alert, and orders transacted in PRISM from the aforementioned calculation of 25% does not impose an undue burden on competition as the Exchange will uniformly exclude these orders from the aforementioned calculation of 25%.

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39 As proposed, the 25% calculation will not consider orders within the Opening Process per Options 3, Section 8, orders that generate an order exposure alert per BX Options 5, Section 4, or orders transacted in the Price Improvement Auction ("PRISM") per Options 3, Section 13.

The Exchange's proposal to pay a lower $0.45 per contract Customer Non-Penny Symbol Maker Rebate when a Participant executes against a Customer more than 25% of that Participant's total Customer Non-Penny Symbol volume which adds liquidity in a month does not impose an undue burden on competition. Customers may continue to be able to achieve the highest Non-Penny Symbol Maker Rebate paid by BX,[40] provided they do not execute greater than 25% of that Participant's total Customer Non-Penny Symbol volume which adds liquidity in a month.

The Exchange's proposal to amend Options 7, Section 2(1) to add a new note "*" which makes clear that orders executed in the Opening Process per Options 3, Section 8, orders that generate an order exposure alert per Options 5, Section 4, and orders transacted in the Price Improvement Auction ("PRISM") per Options 3, Section 13 are not subject to Options 7, Section 2(1) pricing, rather these orders are subject to the pricing within Options 7, Sections 2(2), (4) and (5), respectively, does not impose an undue burden on competition. This amendment is non-substantive. The Exchange believes that this rule text will be informative in guiding Participants to the correct pricing within Options 7, Section 2 which applies to a specific transaction.

Options 7, Section 2(2)

The Exchange's proposal to amend the Opening Process pricing does not impose an undue burden on competition. During the Opening Process, Customers would continue to receive rebates, unlike other market participants, except if the Customer is contra another Customer order. Also, unlike other Participants, Customers would not be assessed a fee during the Opening Process. Paying rebates to Customers, provided they

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40 Id.

are not contra another customer, and not assessing fees to Customers does not impose an undue burden on competition, because unlike other Participants, Customer liquidity benefits all market participants by offering additional trading opportunities. Additionally, Market Makers seeking to interact with Customer liquidity are incentivized to tighten quote spreads to interact with the order flow. With respect to Customer orders during the Opening Process that are contra other Customer orders, the Exchange would not pay the Customer a rebate, nor would the Customer be assessed a fee, unlike other Non-Customer Participants who would pay a fee during the Opening Process. While the Exchange desires to attract Customer liquidity during the Opening Process, unlike intra-day trading where Participants have the opportunity to interact with the order book, the Opening Process seeks liquidity for price discovery and therefore the incentives are distinct from the trading intra-day. Finally, the Exchange's proposal will uniformly assess all Non-Customers the same Taker Fee and pay no Maker Rebates to these Participants during the Opening Process.

Options 7, Section 2(5)

The Exchange's proposal to add the words "per Options 3, Section 13" at the end of the title to Options 7, Section 2(5) does not impose an undue burden on competition. This non-substantive rule change simply provides the citation to the BX Price Improvement Auction rule.

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.[41]

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

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2021-015 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

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41 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR-BX-2021-015. 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-2021-015 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.[42]

J. Matthew DeLesDernier
Assistant Secretary

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[42] 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

NASDAQ BX, Inc. Rules

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Options Rules

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Options 7 Pricing Schedule

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Section 2 BX Options Market-Fees and Rebates

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

(1) Fees and rebates for Execution of Contracts on the BX Options Market:[*]

Penny Symbols

Market Participant	**Maker Rebate**	**Taker Fee**
Lead Market Maker	(0.29)[2]	$0.46
Market Maker	(0.25)[2]	$0.46
Non-Customer	(0.12)	$0.46
Firm	(0.12)	$0.46
Customer	($0.30)	$0.46[1]

Non-Penny Symbols

Market Participant	**Maker Rebate / Fee**	**Taker Fee**
Lead Market Maker	(0.45)	$1.10
Market Maker	(0.40)	$1.10
Non-Customer	$0.45	$1.10
Firm	$0.45	$1.10
Customer	($0.90)[3]	$0.65

*. Orders executed in the Opening Process per Options 3, Section 8, orders that generate an order exposure alert per Options 5, Section 4, and orders transacted in the Price Improvement Auction ("PRISM") per Options 3, Section 13 are not subject to Options 7, Section 2(1) pricing, instead, these orders are subject to the pricing within Options 7, Sections 2(2), (4) and (5), respectively.

1. Customer Taker Fee will be $0.26 per contract for trades which remove liquidity in SPY.

2. The Maker Rebate for Lead Market Makers and Market Makers in SPY will be $0.22 per contract. The Maker Rebate for Lead Market Makers and Market Makers in AAPL, IWM, GLD, QQQ, SLV, and TSLA will be $0.42 per contract.

3. Customer orders will receive a $0.45 per contract Non-Penny Symbol Maker Rebate if the quantity of transactions where the contra-side is also a Customer is greater than 25% of Participant's total Customer Non-Penny Symbol volume which adds liquidity in that month. The aforementioned calculation of 25% will not consider orders within the Opening Process per Options 3, Section 8, orders that generate an order exposure alert per BX Options 5, Section 4, or orders transacted in the Price Improvement Auction ("PRISM") per Options 3, Section 13.

(2) Opening [Cross]Process per Options 3, Section 8

All orders executed in the Opening [Cross]Process:

Customer orders will receive the Maker Rebate during the Exchange's Opening Process, unless the contra-side is also a Customer, in which case a Maker Rebate will not be paid and a Taker Fee will not be assessed. Lead Market Makers, Market Makers, Non-Customers, and Firms will be assessed the Taker Fee during the Exchange's Opening Process and will not receive Maker Rebates.[Customer orders will receive the Rebate to Remove Liquidity during the Exchange's Opening Cross, unless the contra-side is also a Customer (in which case no Fee to Remove Liquidity is assessed and no Rebate to Remove Liquidity is received). Lead Market Makers, BX Options Market Makers, Non-Customers, and Firms will be assessed the Fee to Remove Liquidity during the Exchange's Opening Cross.]

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(5) Fees and rebates for BX Price Improvement Auction ("PRISM") per Options 3, Section 13.

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