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Page 1 of * 25

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

File No.* SR - 2021 - * 024
Amendment No. (req. for Amendments *)

Filing by NASDAQ BX, Inc.

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

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

Pilot	Extension of Time Period for Commission Action *	Date Expires *
☐	☐	

Rule

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

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

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

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

Section 3C(b)(2) * ☐

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

Description

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

A proposal to amend the Exchange’s transaction credits, at Equity 7, Section 118a.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Brett Last Name * Kitt

Title * AVP, Principal Associate General Counsel

E-mail * Brett.Kitt@nasdaq.com

Telephone * (301) 978-8132 Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 05/19/2021

By John Zecca

(Name *)

(Title *)

EVP and Chief Legal Counsel

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

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

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the "Board") on 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:

Brett M. Kitt
AVP, Principal Associate General Counsel
Nasdaq, Inc.
(301) 978-8132

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

The Exchange proposes to add a new credit to this schedule of $0.0018 per share executed for orders in securities in Tape B that access liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member that: (i) accesses at least 60% more liquidity in securities in Tape B, as a percentage of total Consolidated Volume during a month, than it did during April 2021; (ii) accesses liquidity in securities in Tape B equal to or exceeding 0.035% of total Consolidated Volume during a month; and (iii) adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month. Orders in securities in Tapes A and C will not be eligible for the new proposed credit.

The Exchange intends for this new credit to reward members that remove significant volumes of Tape B liquidity from the Exchange and to encourage such members to further grow the extent to which they remove Tape B liquidity from the Exchange. The Exchange believes that any ensuing increase in the removal of Tape B liquidity from the Exchange will improve the quality of the Exchange's market. In particular, the Exchange intends to encourage members to increase the extent to which they remove liquidity in securities in Tape B, as the Exchange believes that increased removal activity in securities in Tape B is most needed and likely to be most beneficial to market quality.

The Exchange also notes that, like its other removal credit tiers, it proposes to tie the new proposed credit to the addition of at least an average daily volume of 50,000 shares of liquidity during the month. Doing so will help to incent members, not only to remove a significant amount of liquidity from the Exchange, but also to add a significant amount of liquidity as well. Any increase in liquidity adding activity that ensues from this credit will improve market quality, to the benefit of all participants.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[3] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[4] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

The Proposal is Reasonable

The Exchange's proposed change to its schedule of credits is reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces

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[3] 15 U.S.C. 78f(b).

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

in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' … As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'…."[5]

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."[6]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market

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5 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)).

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

participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several taker-maker exchanges. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.[7]

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.[8] Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange believes that its proposal is reasonable to establish a new remove credit with a growth component tied to the removal of liquidity in securities in Tape B. The proposal will encourage members to increase the extent to which they remove Tape B liquidity from the Exchange, and it will reward members that do so in significant volumes. The Exchange believes that any ensuing increase in the removal of liquidity from the Exchange – and in particular, liquidity in securities in Tape B – will improve the quality of the Exchange's market, and it will cause the Exchange to become more

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7 See CBOE BYX Fee Schedule, at http://markets.cboe.com/us/equities/membership/fee_schedule/byx/; NYSE National Fee Schedule, at https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_National_Schedule_of_Fees.pdf.

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

attractive to existing and prospective participants. The Exchange notes that it selected April 2021 as the baseline for the growth requirements because it is the month immediately preceding the establishment of the new tier.

The Exchange also believes it is reasonable to tie the new proposed credit to the addition of at least an average daily volume of 50,000 shares of liquidity during the month. Doing so will help to incent members, not only to remove a significant amount of liquidity from the Exchange, but also to add a significant amount of liquidity as well. Any increase in liquidity adding activity that ensues from this credit will improve market quality, to the benefit of all participants. The Exchange notes that it includes the same criteria in several of its existing remove credit tiers.

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

<u>The Proposal is an Equitable Allocation of Credits and Charges</u>

The Exchange believes that it is an equitable allocation of its credits to establish a new remove credit tier that is tied to the growth in removal of liquidity in securities in Tape B. The addition of this new proposed credit tier will encourage members to increase the extent to which they remove Tape B liquidity from the Exchange, and it will reward members that do so in significant volumes. The Exchange believes that any increase in the removal of liquidity from the Exchange that follows from the introduction of this new credit – and in particular, liquidity in securities in Tape B – will improve the quality of the Exchange's market, and it will cause the Exchange to become more attractive to existing and prospective participants.

The Exchange also believes it is an equitable allocation to tie the new proposed credit to the addition of at least an average daily volume of 50,000 shares of liquidity during the month. Doing so will help to incent members, not only to remove a significant amount of liquidity from the Exchange, but also to add a significant amount of liquidity as well. Any increase in liquidity adding activity that ensues from this credit will improve market quality, to the benefit of all participants. The Exchange notes that it includes the same criteria in several of its existing remove credit tiers.

Any participant that is dissatisfied with the proposal is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

<u>The Proposed New Credit is not Unfairly Discriminatory</u>

The Exchange believes that its new proposed remove credit with a growth component is not unfairly discriminatory because it is aimed at encouraging the growth in removal of liquidity from the Exchange, which if successful, stands to improve the quality of the Exchange's market, to the benefit of all market participants. The Exchange notes that its proposal to offer the new credit to members with orders in securities in Tape B is fair because the Exchange observes that its market has a greater need for, and its market quality would benefit most from, growth in removal of liquidity in securities in Tape B. The Exchange has limited resources with which to apply to incentives, and it must allocate those limited resources in a manner that prioritizes areas of greatest need and potential effect.

Any participant that is dissatisfied with the proposal is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage. As noted above, all members of the Exchange will benefit from any increase in market activity that the proposal effectuates. Members may grow or modify their businesses so that they can receive the new proposed credit. Moreover, members are free to trade on other venues to the extent they believe that the credit proposed is not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes.

Intermarket Competition

In terms of inter-market competition, 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 credits and fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own credits and fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which credit changes in this market may impose any burden on competition is extremely limited.

The proposed new credit is reflective of this competition because, as a threshold issue, the Exchange is a relatively small market so its ability to burden intermarket competition is limited. In this regard, even the largest U.S. equities exchange by volume has less than 17% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprised more than 41% of industry volume for the month of March 2021.

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

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[9] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

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

Not applicable.

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

Not applicable.

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.

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[9] 15 U.S.C. 78s(b)(3)(A)(ii).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-BX-2021-024)

May __, 2020

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Equity 7, Section 118

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b-4 thereunder,[2] notice is hereby given that on May 19, 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: (i) the Exchange's transaction credits, at Equity 7, Section 118(a), as described further below.

The text of the proposed rule change is available on the Exchange's Website at 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

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

2 17 CFR 240.19b-4.

received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

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

The Exchange proposes to add a new credit to this schedule of $0.0018 per share executed for orders in securities in Tape B that access liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member that: (i) accesses at least 60% more liquidity in securities in Tape B, as a percentage of total Consolidated Volume during a month, than it did during April 2021; (ii) accesses liquidity in securities in Tape B equal to or exceeding 0.035% of total Consolidated Volume during a month; and (iii) adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month. Orders in securities in Tapes A and C will not be eligible for the new proposed credit.

The Exchange intends for this new credit to reward members that remove significant volumes of Tape B liquidity from the Exchange and to encourage such members to further grow the extent to which they remove Tape B liquidity from the Exchange. The Exchange believes that any ensuing increase in the removal of Tape B liquidity from the Exchange will improve the quality of the Exchange's market. In particular, the Exchange intends to encourage members to increase the extent to which they remove liquidity in securities in Tape B, as the Exchange believes that increased removal activity in securities in Tape B is most needed and likely to be most beneficial to market quality.

The Exchange also notes that, like its other removal credit tiers, it proposes to tie the new proposed credit to the addition of at least an average daily volume of 50,000 shares of liquidity during the month. Doing so will help to incent members, not only to remove a significant amount of liquidity from the Exchange, but also to add a significant amount of liquidity as well. Any increase in liquidity adding activity that ensues from this credit will improve market quality, to the benefit of all participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[3] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[4] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

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3 15 U.S.C. 78f(b).

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

The Proposal is Reasonable

The Exchange's proposed change to its schedule of credits is reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' … As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'…."[5]

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."[6]

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5 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)).

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

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several taker-maker exchanges. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.[7]

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.[8] Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange believes that its proposal is reasonable to establish a new remove credit with a growth component tied to the removal of liquidity in securities in Tape B. The proposal will encourage members to increase the extent to which they remove Tape B liquidity from the Exchange, and it will reward members that do so in significant

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7 See CBOE BYX Fee Schedule, at http://markets.cboe.com/us/equities/membership/fee_schedule/byx/; NYSE National Fee Schedule, at https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_National_Schedule_of_Fees.pdf.

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

volumes. The Exchange believes that any ensuing increase in the removal of liquidity from the Exchange – and in particular, liquidity in securities in Tape B – will improve the quality of the Exchange's market, and it will cause the Exchange to become more attractive to existing and prospective participants. The Exchange notes that it selected April 2021 as the baseline for the growth requirements because it is the month immediately preceding the establishment of the new tier.

The Exchange also believes it is reasonable to tie the new proposed credit to the addition of at least an average daily volume of 50,000 shares of liquidity during the month. Doing so will help to incent members, not only to remove a significant amount of liquidity from the Exchange, but also to add a significant amount of liquidity as well. Any increase in liquidity adding activity that ensues from this credit will improve market quality, to the benefit of all participants. The Exchange notes that it includes the same criteria in several of its existing remove credit tiers.

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

<u>The Proposal is an Equitable Allocation of Credits and Charges</u>

The Exchange believes that it is an equitable allocation of its credits to establish a new remove credit tier that is tied to the growth in removal of liquidity in securities in Tape B. The addition of this new proposed credit tier will encourage members to increase the extent to which they remove Tape B liquidity from the Exchange, and it will reward members that do so in significant volumes. The Exchange believes that any increase in the removal of liquidity from the Exchange that follows from the introduction of this new credit – and in particular, liquidity in securities in Tape B – will improve the quality of the Exchange's market, and it will cause the Exchange to become more attractive to existing and prospective participants.

The Exchange also believes it is an equitable allocation to tie the new proposed credit to the addition of at least an average daily volume of 50,000 shares of liquidity during the month. Doing so will help to incent members, not only to remove a significant amount of liquidity from the Exchange, but also to add a significant amount of liquidity as well. Any increase in liquidity adding activity that ensues from this credit will improve market quality, to the benefit of all participants. The Exchange notes that it includes the same criteria in several of its existing remove credit tiers.

Any participant that is dissatisfied with the proposal is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

<u>The Proposed New Credit is not Unfairly Discriminatory</u>

The Exchange believes that its new proposed remove credit with a growth component is not unfairly discriminatory because it is aimed at encouraging the growth in removal of liquidity from the Exchange, which if successful, stands to improve the quality of the Exchange's market, to the benefit of all market participants. The Exchange notes that its proposal to offer the new credit to members with orders in securities in Tape B is fair because the Exchange observes that its market has a greater need for, and its market quality would benefit most from, growth in removal of liquidity in securities in Tape B. The Exchange has limited resources with which to apply to incentives, and it must allocate those limited resources in a manner that prioritizes areas of greatest need and potential effect.

Any participant that is dissatisfied with the proposal is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage. As noted above, all members of the Exchange will benefit from any increase in market activity that the proposal effectuates. Members may grow or modify their businesses so that they can receive the new proposed credit. Moreover, members are free to trade on other venues to the extent they believe that the credit proposed is not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes.

Intermarket Competition

In terms of inter-market competition, 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 credits and fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own credits and fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which credit changes in this market may impose any burden on competition is extremely limited.

The proposed new credit is reflective of this competition because, as a threshold issue, the Exchange is a relatively small market so its ability to burden intermarket competition is limited. In this regard, even the largest U.S. equities exchange by volume has less than 17% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprised more than 41% of industry volume for the month of March 2021.

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

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[9]

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-2021-024 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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9 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR-BX-2021-024. 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-2021-024 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.[10]

J. Matthew DeLesDernier
Assistant Secretary

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10 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

Rules of Nasdaq BX

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Equity Rules

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Equity 7 Pricing Schedule

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Section 118. Nasdaq BX Equities System Order Execution and Routing

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

Credit for entering order that accesses liquidity in the Nasdaq BX Equities System:	Tape A	Tape B	Tape C
...			
Order that accesses liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member: (i) whose combined liquidity removing and adding activities equal or exceed	$0.0010 per share executed	$0.0010 per share executed	$0.0009 per share executed

0.05% of total Consolidated Volume during a month; and (ii) that adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month:			
Order that accesses liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member that: (i) accesses at least 60% more liquidity in Tape B securities, as a percentage of total Consolidated Volume during a month, than it did during April 2021; (ii) accesses liquidity in Tape B securities equal to or exceeding 0.035% of total Consolidated Volume during a month; and (iii) adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month:	N/A	$0.0018 per share executed	N/A

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