

Required fields are shown with yellow backgrounds and asterisks.

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|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|--------------------------------------------------------------|-----------------------------------------------------------------------------------|--------------------------------------------------------------|
| Page 1 of * 23                                                                                                                                                                              | SECURITIES AND EXCHANGE COMMISSION<br>WASHINGTON, D.C. 20549<br>Form 19b-4      |                                                              | File No.* SR - 2021 - * 025                                                       | Amendment No. (req. for Amendments *)                        |
| Filing by NASDAQ BX, Inc.<br>Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934                                                                                               |                                                                                 |                                                              |                                                                                   |                                                              |
| Initial *<br><input checked="" type="checkbox"/>                                                                                                                                            | Amendment *<br><input type="checkbox"/>                                         | Withdrawal<br><input type="checkbox"/>                       | Section 19(b)(2) *<br><input type="checkbox"/>                                    | Section 19(b)(3)(A) *<br><input checked="" type="checkbox"/> |
|                                                                                                                                                                                             |                                                                                 |                                                              | Section 19(b)(3)(B) *<br><input type="checkbox"/>                                 |                                                              |
|                                                                                                                                                                                             |                                                                                 |                                                              | Rule                                                                              |                                                              |
| Pilot<br><input type="checkbox"/>                                                                                                                                                           | Extension of Time Period<br>for Commission Action *<br><input type="checkbox"/> | Date Expires *<br><input type="text"/>                       | <input type="checkbox"/> 19b-4(f)(1)                                              | <input type="checkbox"/> 19b-4(f)(4)                         |
|                                                                                                                                                                                             |                                                                                 |                                                              | <input checked="" type="checkbox"/> 19b-4(f)(2)                                   | <input type="checkbox"/> 19b-4(f)(5)                         |
|                                                                                                                                                                                             |                                                                                 |                                                              | <input type="checkbox"/> 19b-4(f)(3)                                              | <input type="checkbox"/> 19b-4(f)(6)                         |
| Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010                                                                                                     |                                                                                 |                                                              | Security-Based Swap Submission pursuant<br>to the Securities Exchange Act of 1934 |                                                              |
| Section 806(e)(1) *<br><input type="checkbox"/>                                                                                                                                             |                                                                                 | Section 806(e)(2) *<br><input type="checkbox"/>              | Section 3C(b)(2) *<br><input type="checkbox"/>                                    |                                                              |
| Exhibit 2 Sent As Paper Document<br><input type="checkbox"/>                                                                                                                                |                                                                                 | Exhibit 3 Sent As Paper Document<br><input type="checkbox"/> |                                                                                   |                                                              |
| <b>Description</b>                                                                                                                                                                          |                                                                                 |                                                              |                                                                                   |                                                              |
| Provide a brief description of the action (limit 250 characters, required when Initial is checked *).                                                                                       |                                                                                 |                                                              |                                                                                   |                                                              |
| <input type="text" value="A proposal to amend BX Options 7, Section 1 and Section 2."/>                                                                                                     |                                                                                 |                                                              |                                                                                   |                                                              |
| <b>Contact Information</b>                                                                                                                                                                  |                                                                                 |                                                              |                                                                                   |                                                              |
| Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.          |                                                                                 |                                                              |                                                                                   |                                                              |
| First Name *                                                                                                                                                                                | <input type="text" value="Angela"/>                                             | Last Name *                                                  | <input type="text" value="Dunn"/>                                                 |                                                              |
| Title *                                                                                                                                                                                     | <input type="text" value="Principal Associate General Counsel"/>                |                                                              |                                                                                   |                                                              |
| E-mail *                                                                                                                                                                                    | <input type="text" value="angela.dunn@nasdaq.com"/>                             |                                                              |                                                                                   |                                                              |
| Telephone *                                                                                                                                                                                 | <input type="text" value="(215) 496-5692"/>                                     | Fax                                                          | <input type="text"/>                                                              |                                                              |
| <b>Signature</b>                                                                                                                                                                            |                                                                                 |                                                              |                                                                                   |                                                              |
| Pursuant to the requirements of the Securities Exchange Act of 1934,                                                                                                                        |                                                                                 |                                                              |                                                                                   |                                                              |
| has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.                                                                                        |                                                                                 |                                                              |                                                                                   |                                                              |
| (Title *)                                                                                                                                                                                   |                                                                                 |                                                              |                                                                                   |                                                              |
| Date                                                                                                                                                                                        | <input type="text" value="05/24/2021"/>                                         | <input type="text" value="EVP and Chief Legal Counsel"/>     |                                                                                   |                                                              |
| By                                                                                                                                                                                          | <input type="text" value="John Zecca"/>                                         | <input type="text"/>                                         |                                                                                   |                                                              |
| (Name *)                                                                                                                                                                                    |                                                                                 |                                                              |                                                                                   |                                                              |
| NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed. |                                                                                 |                                                              |                                                                                   |                                                              |
| <input type="button" value="john.zecca@nasdaq.com"/>                                                                                                                                        |                                                                                 |                                                              |                                                                                   |                                                              |

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

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

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

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

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**

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Exhibit Sent As Paper Document

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

**Exhibit 4 - Marked Copies**

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**

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

1. Text of the Proposed Rule Change

(a) Nasdaq BX, Inc. (“BX” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend BX Options 7, Section 1, “General Provisions” and Section 2, “BX Options Market- Fees and Rebates.”

While changes pursuant to this proposal are effective upon filing, the Exchange has designated the proposed amendment to be operative on June 1, 2021.

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

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

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

a. Purpose

The Exchange proposes to amend BX’s Pricing Schedule at BX Options 7, Section 1, “General Provisions” and Section 2, “BX Options Market- Fees and Rebates.” Each change will be described below.

Options 7, Section 1

The Exchange proposes to relocate rule text, without change, related to the Removal of Days for Purposes of Pricing Tiers within Options 7, Section 2(6) into Options 7, Section 1, General Provisions. This proposed change is non-substantive. The Exchange believes that this rule text is more appropriate for Section 1 which describes general provisions.

Options 7, Section 2

The Exchange will begin offering its Block Order Mechanism<sup>3</sup> and Customer Cross Order<sup>4</sup> on June 1, 2021.<sup>5</sup> The Exchange proposes to assess no fees and pay no rebates for orders entered into the Block Order Mechanism or Customer Cross Orders. Specifically, the Exchange proposes to create a header within Options 7, Section 6 which

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<sup>3</sup> The Block Order Mechanism is for single leg transactions only. Block Orders are orders for fifty (50) contracts or more. See Securities Release Act No. 89759 (September 3, 2020), 85 FR 55877 (September 3, 2020) (SR-BX-2020-023).

<sup>4</sup> See Options Technical Update #2021-2.

<sup>5</sup> A Customer Cross Order is an order type within Options 3, Section 7(a)(10). A Customer Cross Order is comprised of two Public Customer Orders automatically executed upon entry provided that the execution is at or between the best bid and offer on the Exchange and (i) is not at the same price as a Public Customer Order on the Exchange's limit order book and (ii) will not trade through the NBBO. See Securities Release Act No.89476 (August 4, 2020), 85 FR 48274 (August 10, 2020) (SR-BX-2020-017).

states, “Block Order Mechanism per Options 3, Section 11 and Customer Cross Orders per to Options 3, Section 12” and note that “Orders executed in the Block Order Mechanism and Customer Cross Orders are not subject to fees or rebates.”

Also, the Exchange proposes to amend the rule text within Options 7, Section 2(1), which directs Participants to applicable pricing, to also provide that “Orders executed in the Block Order Mechanism and Customer Cross Orders are not subject to the pricing in Options 7, Section 2(1), instead, these orders are subject to the pricing within Options 7, Section 2(6).” The addition of this rule text will serve as a guidepost to Participants to easily locate the pricing for the Block Order Mechanism.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>7</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed changes to BX’s 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

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<sup>6</sup> 15 U.S.C. 78 f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4) and (5).

‘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’ ....”<sup>8</sup>

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.”<sup>9</sup>

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

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<sup>8</sup> 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)).

<sup>9</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

market share relative to its competitors.

Options 7, Section 1

The Exchange's proposal to relocate rule text related to the Removal of Days for Purposes of Pricing Tiers within Options 7, Section 2(6) into Options 7, Section 1, General Provisions, without change, is reasonable as the Exchange is simply relocating the rule text within a section which describes general provisions.

The Exchange's proposal to relocate rule text related to the Removal of Days for Purposes of Pricing Tiers within Options 7, Section 2(6) into Options 7, Section 1, General Provisions, without change, is equitable and not unfairly discriminatory as the rule text will continue to apply uniformly to all Participants.

Options 7, Section 2

The Exchange's proposal to adopt Block Order Mechanism and Customer Cross Order pricing is reasonable. On June 1, 2021, the Exchange will begin offering the Block Order Mechanism and Customer Cross Orders to Participants and assess no fees and not pay any rebates for orders entered into the Block Order Mechanism or Customer Cross Orders. The Exchange's proposal will provide Participants notification of its Block Order and Customer Cross Order pricing. The proposal to add rule text within Options 7, Section 2(1) will serve as a guidepost to Participants to easily locate the pricing for the Block Order Mechanism and Customer Cross Orders.

The Exchange's proposal to adopt Block Order Mechanism and Customer Cross Order pricing is equitable and not unfairly discriminatory as no Participant would be subject to any fees or be paid any rebates for orders executed into the Block Order Mechanism or Customer Cross Orders.

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 1

The Exchange's proposal to relocate rule text related to the Removal of Days for Purposes of Pricing Tiers within Options 7, Section 2(6) into Options 7, Section 1, General Provisions, without change, does not impose an undue burden on competition as the rule text will continue to apply uniformly to all Participants.



Options 7, Section 2

The Exchange's proposal to adopt Block Order Mechanism and Customer Cross Order pricing does not impose an undue burden on competition as no Participant would be subject to any fees or be paid any rebates for orders executed into the Block Order Mechanism or Customer Cross Orders.

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,<sup>10</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization which renders the proposed rule change effective upon filing.

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

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

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

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-BX-2021-025)

May \_\_, 2021

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend BX Options 7, Section 1, “General Provisions” and Section 2, “BX Options Market- Fees and Rebates.”

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 24, 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 1, “General Provisions” and Section 2, “BX Options Market- Fees and Rebates.”

While changes pursuant to this proposal are effective upon filing, the Exchange has designated the proposed amendment to be operative on June 1, 2021.

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.

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

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

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

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

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

1. Purpose

The Exchange proposes to amend BX’s Pricing Schedule at BX Options 7, Section 1, “General Provisions” and Section 2, “BX Options Market- Fees and Rebates.” Each change will be described below.

Options 7, Section 1

The Exchange proposes to relocate rule text, without change, related to the Removal of Days for Purposes of Pricing Tiers within Options 7, Section 2(6) into Options 7, Section 1, General Provisions. This proposed change is non-substantive. The Exchange believes that this rule text is more appropriate for Section 1 which describes general provisions.

Options 7, Section 2

The Exchange will begin offering its Block Order Mechanism<sup>3</sup> and Customer Cross Order<sup>4</sup> on June 1, 2021.<sup>5</sup> The Exchange proposes to assess no fees and pay no

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<sup>3</sup> The Block Order Mechanism is for single leg transactions only. Block Orders are orders for fifty (50) contracts or more. See Securities Release Act No. 89759 (September 3, 2020), 85 FR 55877 (September 3, 2020) (SR-BX-2020-023).

rebates for orders entered into the Block Order Mechanism or Customer Cross Orders. Specifically, the Exchange proposes to create a header within Options 7, Section 6 which states, “Block Order Mechanism per Options 3, Section 11 and Customer Cross Orders per to Options 3, Section 12” and note that “Orders executed in the Block Order Mechanism and Customer Cross Orders are not subject to fees or rebates.”

Also, the Exchange proposes to amend the rule text within Options 7, Section 2(1), which directs Participants to applicable pricing, to also provide that “Orders executed in the Block Order Mechanism and Customer Cross Orders are not subject to the pricing in Options 7, Section 2(1), instead, these orders are subject to the pricing within Options 7, Section 2(6).” The addition of this rule text will serve as a guidepost to Participants to easily locate the pricing for the Block Order Mechanism.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>7</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not

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<sup>4</sup> See Options Technical Update #2021-2.

<sup>5</sup> A Customer Cross Order is an order type within Options 3, Section 7(a)(10). A Customer Cross Order is comprised of two Public Customer Orders automatically executed upon entry provided that the execution is at or between the best bid and offer on the Exchange and (i) is not at the same price as a Public Customer Order on the Exchange's limit order book and (ii) will not trade through the NBBO. See Securities Release Act No.89476 (August 4, 2020), 85 FR 48274 (August 10, 2020) (SR-BX-2020-017).

<sup>6</sup> 15 U.S.C. 78 f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4) and (5).

designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed changes to BX's 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’ ....”<sup>8</sup>

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.”<sup>9</sup>

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<sup>8</sup> 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)).

<sup>9</sup> See 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 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 1

The Exchange's proposal to relocate rule text related to the Removal of Days for Purposes of Pricing Tiers within Options 7, Section 2(6) into Options 7, Section 1, General Provisions, without change, is reasonable as the Exchange is simply relocating the rule text within a section which describes general provisions.

The Exchange's proposal to relocate rule text related to the Removal of Days for Purposes of Pricing Tiers within Options 7, Section 2(6) into Options 7, Section 1, General Provisions, without change, is equitable and not unfairly discriminatory as the rule text will continue to apply uniformly to all Participants.

#### Options 7, Section 2

The Exchange's proposal to adopt Block Order Mechanism and Customer Cross Order pricing is reasonable. On June 1, 2021, the Exchange will begin offering the Block Order Mechanism and Customer Cross Orders to Participants and assess no fees and not pay any rebates for orders entered into the Block Order Mechanism or Customer Cross Orders. The Exchange's proposal will provide Participants notification of its Block

Order and Customer Cross Order pricing. The proposal to add rule text within Options 7, Section 2(1) will serve as a guidepost to Participants to easily locate the pricing for the Block Order Mechanism and Customer Cross Orders.

The Exchange's proposal to adopt Block Order Mechanism and Customer Cross Order pricing is equitable and not unfairly discriminatory as no Participant would be subject to any fees or be paid any rebates for orders executed into the Block Order Mechanism or Customer Cross Orders.

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 CompetitionOptions 7, Section 1

The Exchange's proposal to relocate rule text related to the Removal of Days for Purposes of Pricing Tiers within Options 7, Section 2(6) into Options 7, Section 1, General Provisions, without change, does not impose an undue burden on competition as the rule text will continue to apply uniformly to all Participants.

Options 7, Section 2

The Exchange's proposal to adopt Block Order Mechanism and Customer Cross Order pricing does not impose an undue burden on competition as no Participant would be subject to any fees or be paid any rebates for orders executed into the Block Order Mechanism or Customer Cross Orders.

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.<sup>10</sup>

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

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<sup>10</sup> 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.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2021-025 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-BX-2021-025. 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-2021-025 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

*New text is underlined; deleted text is in brackets.*

**Nasdaq BX, Inc. Rules**

\* \* \* \* \*

**Options Rules**

\* \* \* \* \*

**Options 7 Pricing Schedule****Section 1 General Provisions**

\* \* \* \* \*

The term "**Joint Back Office**" or "**JBO**" applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC and is identified with an origin code as a JBO. A JBO will be priced the same as a Broker-Dealer as of September 1, 2014. A JBO participant is a Participant that maintains a JBO arrangement with a clearing broker-dealer ("JBO Broker") subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System as further discussed in Options 6D, Section 4.

With respect to Options 7, Sections 2(1) and (2) the order that is received by the trading system first in time shall be considered an order adding liquidity and an order that trades against that order shall be considered an order removing liquidity.

**Removal of Days for Purposes of Pricing Tiers:**

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

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

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

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

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

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

### **Collection of Exchange Fees and Other Claims-BX Options**

Each BX Options Participant, and all applicants for registration, shall be required to provide a clearing account number for an account at the National Securities Clearing Corporation ("NSCC") for purposes of permitting the Exchange to debit any undisputed or final fees, fines, charges and/or other monetary sanctions or other monies due and owing to the Exchange or other charges related to General 2, Section 2. If a member disputes an invoice, the Exchange will not include the disputed amount in the debit if the member has disputed the amount in writing to the Exchange's designated staff by the 15th of the month, or the following business day if the 15th is not a business day, and the amount in dispute is at least \$10,000 or greater.

### **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**

| <b>Market Participant</b> | <b>Maker Rebate</b> | <b>Taker Fee</b>    |
|---------------------------|---------------------|---------------------|
| 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 <sup>1</sup> |

##### **Non-Penny Symbols**

| <b>Market Participant</b> | <b>Maker Rebate / Fee</b> | <b>Taker Fee</b> |
|---------------------------|---------------------------|------------------|
| Lead Market Maker         | (0.45)                    | \$1.10           |
| Market Maker              | (0.40)                    | \$1.10           |

| Market Participant | Maker Rebate / Fee    | Taker Fee |
|--------------------|-----------------------|-----------|
| Non-Customer       | \$0.45                | \$1.10    |
| Firm               | \$0.45                | \$1.10    |
| Customer           | (\$0.90) <sup>3</sup> | \$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. Orders executed in the Block Order Mechanism and Customer Cross Orders are not subject to the pricing in Options 7, Section 2(1), instead, these orders are subject to the pricing within Options 7, Section 2(6).

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.

\* \* \* \* \*

**(6) Block Order Mechanism per Options 3, Section 11 and Customer Cross Orders per Options 3, Section 12**

Orders executed in the Block Order Mechanism and Customer Cross Orders are not subject to fees or rebates.

**[Removal of Days for Purposes of Pricing Tiers:**

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

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

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

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

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

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

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