Required fields are shown with yellow backgrounds and asterisks.

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

File No. * SR 2021 - * 040
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 *).

Amending BX Options 7, Section 2 BX Options Market Fees and Rebates.

Contact Information

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

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

Signature

Pursuant to the requirements of the Securities Exchange of 1934, NASDAQ BX, Inc.
has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 09/09/2021

By John A. Zecca (Name *)

(Title *) EVP and Chief Legal Counsel

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

John A. Zecca

Date: 2021.09.10 10:16:54 -04'00'

Required fields are shown with yellow backgrounds and astericks.

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 SR-BX-2021-040 19b-4.doc	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 SR-BX-2021-040 Exhibit 1.doc	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 Advanced 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 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	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 Sent As Paper Document
Exhibit 3 - Form, Report, or Questionnaire Add Remove View	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 Sent As Paper Document
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 SR-BX-2021-040 Exhibit 5.doc	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Nasdaq BX, Inc. ("BX" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposal to amend BX Options 7, Section 2, "BX Options Market- Fees and Rebates."

The Exchange originally filed the proposed pricing changes on August 27, 2021 (SR-BX-2021-036). On September 10, 2021, the Exchange withdrew that filing and submitted this filing.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the "Board") on November 5, 2020. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

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

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

2 17 CFR 240.19b-4.

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

a. Purpose

The Exchange proposes to amend BX's Pricing Schedule at Options 7, Section 2, "BX Options Market-Fees and Rebates." Specifically, within Options 7, Section 2(1), the Exchange proposes to: (1) increase the Non-Penny Symbol Customer Taker Fee; and (2) amend note 3 of that section that reduces the Non-Penny Symbol Customer Maker Rebate in certain circumstances.

Today, Customers are assessed a Non-Penny Symbol Taker Fee of $0.65 per contract for removing liquidity and paid a Non-Penny Symbol Maker Rebate of $0.90 per contract for adding liquidity. Today, with respect to the Customer Non-Penny Symbol Maker Rebate, Customer orders receive a $0.45 per contract Non-Penny Symbol Maker Rebate, instead of the aforementioned $0.90 per contract 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.[3]

The Exchange proposes to increase the Customer Non-Penny Symbol Taker Fee from $0.65 to $0.79 per contract. The Exchange also proposes to amend the percentage within note 3, related to the quantity of transactions where the contra-side is also a Customer, from 25% to 50%. Proposed note 3 would provide, "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 50% of Participant's

3 See Options 7, Section 2(1) note 3. The 25% calculation does 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.

total Customer Non-Penny Symbol volume which adds liquidity in that month. The aforementioned calculation of 50% will not consider orders within the Opening Process per Options 3, Section 8, orders that generate an order exposure alert per BX Options 5, Section 4, or orders transacted in the Price Improvement Auction ("PRISM") per Options 3, Section 13."

The Exchange would continue to pay a Customer Non-Penny Symbol Maker Rebate of $0.90 per contract. Also, the Exchange would continue to pay the lower Non-Penny Symbol Maker Rebate of $0.45 per contract if the quantity of transactions where the contra-side is also a Customer is greater than the proposed 50% of Participant's total Customer Non-Penny Symbol volume which adds liquidity in that month.

b. Statutory Basis

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

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

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

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

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'…."[6]

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."[7]

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,

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6 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)).

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

the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange's proposal to increase the Customer Non-Penny Symbol Taker Fee from $0.65 to $0.79 per contract is reasonable. While the Exchange's Customer Non-Penny Symbol Taker Fee is increasing, the Exchange believes its fees remain competitive with other options exchanges.[8] Also, BX continues to offer the highest base rebate of $0.90 per contract prior to taking into account volume or contra-party.[9] Of note, other

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8 NYSE Arca, Inc. ("NYSEArca Options Fees") currently assesses customers a Take Liquidity fee of $0.85 per contract in Non-Penny Issues (or $0.67 per contract if the Customer is trading against a lead market maker). See NYSEArca Options Fees and Charges, Transaction Fee for Electronic Executions – Per Contract.

9 The examples which follow represent options fees. BOX Exchange LLC ("BOX") pays no Non-Penny Interval Class Public customer Maker Rebate. See BOX's Fee Schedule at Section I, A. Cboe Exchange, Inc. ("Cboe") pays a Non-Penny Class rebate to customers of $0.18 per contract only if the original order is greater than or equal to 100 contracts and removes liquidity. See Cboe's Fee Schedule. Cboe C2 Exchange, Inc. ("C2") pays a Non-Penny Class rebate to customers of $0.80 per contract to transactions which add liquidity. See C2's Fee Schedule. Cboe BZX Exchange, Inc. ("CboeBZX") pays Non-Penny Program Securities rebates to customers which range from $0.85 to $1.06 per contract to transactions which add liquidity. See CboeBZX's Fee Schedule. Cboe EDGX Exchange, Inc. ("CboeEDGX") pays Non-Penny Program Securities rebates to customers which range from $0.01 to $0.21 based on customer volume tiers. See CboeEDGX's Fee Schedule. Miami International Securities Exchange, LLC ("MIAX") pays no customer rebate for non-penny classes. See MIAX's Fee Schedule. MIAX PEARL, LLC ("PEARL") pays Priority Customer Non-Penny Classes Maker Rebates which range from $0.85 to $1.04 based on volume. See PEARL's Fee Schedule. MIAX Emerald, LLC ("EMERALD") pays Priority Customer Maker Rebates which range from $0.43 to $0.53, except that SPY, QQQ and IWM rebates are $0.45 and Priority Customer Simple Order rebates when contra is an Affiliated Market Maker are $0.49. See EMERALD's Fee Schedule. NYSEArca pays a Customer a $0.75 rebate to post liquidity unless contra a lead market maker, in which case no rebate is paid. See NYSE Arca Options Fees and Charges. NYSE American LLC ("NYSEAmerican") pays no Customer rebates. See NYSE American Options Fee Schedule. The Nasdaq Stock Market LLC ("NOM") pays an $0.80 per contract Customer Non-Penny Symbol Rebate and in some cases $1.00, or $1.05 if other criteria are met. See

exchanges have higher simple order rebates, provided certain volume criteria are met.[10] Accordingly, the Exchange believes that the proposed Customer Non-Penny Symbol Taker Fee remains competitive and will continue to attract order flow to BX to the benefit of all market participants.

The Exchange's proposal to increase the Customer Non-Penny Symbol Taker Fee from $0.65 to $0.79 per contract is equitable and not unfairly discriminatory because the proposed pricing will apply uniformly to all similarly situated Participants for Non-Penny Symbols. Customers would continue to receive favorable pricing as compared to other market participants because Customer liquidity enhances liquidity on the Exchange for the benefit of all market participants. Specifically, Customer liquidity benefits all market participants by providing more trading opportunities which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to amend the percentage within note 3 related to the volume consideration for the ratio of Customer to Customer orders as compared to total Participant volume which adds Non-Penny Symbol liquidity in order to receive the $0.90 per contract Customer Non-Penny Symbol rebate as compared to the reduced $0.45 per

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NOM's Pricing Schedule. Nasdaq Phlx LLC ("Phlx") pays Customer Non-Penny rebates which range from $0.00 to $0.27. See Phlx's Pricing Schedule. Nasdaq ISE, LLC ('ISE") pays no Non-Penny Priority Customer rebates. See ISE's Pricing Schedule. Nasdaq GEMX, LLC ("GEMX") pays Priority Customer Non-Penny Symbol Maker Rebates which range from $0.75 to $1.05. See GEMX's Pricing Schedule. Nasdaq MRX, LLC ('MRX") pays no Priority Customer Non-Penny Symbol rebates. See MRX's Pricing Schedule.

10 Id.

contract rebate is reasonable. With this proposal, the Exchange would assess a $0.79 per contract Customer Non-Penny Taker Fee, the lowest BX Taker Fee for Non-Penny Symbols,[11] and, currently, the Exchange pays the highest Customer Maker Rebate of $0.90 per contract that does not consider volume or contra-party. The Exchange continues to offer Customers the highest Non-Penny Maker Rebate on BX by assessing higher Non-Penny Taker Fees to Non-Customers.[12] To the extent a Participant submits a Non-Penny Customer order to add liquidity which interacts with a Non-Penny Customer order that removes liquidity, both Participants benefit from the higher Non-Penny Maker Rebate and lower Non-Penny Taker Fee. The Exchange's intention for assessing Customer orders with the reduced Non-Penny Taker Fee was designed to bolster interaction with Non-Customer participants. Today, Non-Penny Customer orders which add liquidity have priority[13] ahead of Non-Penny Non-Customer orders and, therefore, the Exchange's intention to enhance Non-Customer liquidity is subverted when a Non-Penny Customer order transacts with another Non-Penny Customer order. As a result, when Non-Penny Customers interact with other Non-Penny Customer orders more than by happenstance, the Exchange believes it is reasonable to pay Customer orders which add liquidity a lower rebate. The Exchange notes that Participants do occasionally submit Non-Penny Customer orders which add liquidity in Non-Penny Symbols to the order book that trade against Non-Penny Customer orders that remove liquidity in Non-Penny Symbols. The Exchange believes that type of behavior occurs, by happenstance, a

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

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

13 See Options 3, Section 10.

small percentage of the time in a month. The Exchange initially determined that 25% was the proper percentage which represented the quantity of transactions that would demarcate the point at which a Participant should receive the lower Customer Non-Penny Symbol Maker Rebate of $0.45 per contract because it does not believe that the type of behavior outlined herein should occur more than a certain percentage of the time (in this case 25% of a Participant's total Customer Non-Penny Symbol volume) unless the trading behavior was intended. After reviewing the trading behavior for a period of time since the adoption of the 25% threshold, the Exchange believes that a percentage of 50% would be a more accurate demarcation. The Exchange has monitored Customer to Customer trading behavior transacted on BX since the inception of the 25% threshold. The Exchange believes that the addition of the threshold deterred certain intended Customer to Customer transactions, and the Exchange observed an expansion of counter parties on Customer to Customer trades after the threshold was introduced. The Exchange believes that increasing the percentage to 50% will more reasonably account for inadvertent Customer to Customer trades while still deterring those Customer to Customer transactions which occur more than by happenstance given the number of Non-Penny Symbol Customer to Customer orders transacted on BX.

While this proposal would continue to provide Customer orders with lower rebates if they transact the requisite number of Customer-to Customer trades, the Exchange continues to believe that the $0.45 per contract rebate remains competitive and equal to or greater than the rebates that other Participants are afforded.[14]

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14 Today, Lead Market Makers are paid $0.45 per contract Non-Penny Symbol Maker Rebates and Market Maker are paid $0.40 per contract Non-Penny Symbol Maker Rebates. Firms and Non-Customers are not eligible for Non-Penny

The Exchange's proposal to amend the percentage within note 3 related to the volume consideration for the ratio of Customer to Customer orders as compared to total Participant volume which adds Non-Penny Symbol liquidity in order to receive the $0.90 per contract Customer Non-Penny Symbol rebate as compared to the reduced $0.45 per contract rebate is equitable and not unfairly discriminatory. The Exchange would uniformly apply the criteria to all Customer orders to determine the applicable rebate.

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.

Symbol Maker Rebates and instead are charged a Maker Fee of $0.45 per contract.

Intra-market Competition

The Exchange's proposal to increase the Customer Non-Penny Symbol Taker Fee from \$0.65 to \$0.79 per contract does not impose an undue burden on competition because the proposed pricing will apply uniformly to all similarly situated Participants for Non-Penny Symbols. Customers would continue to receive favorable pricing as compared to other market participants because Customer liquidity enhances liquidity on the Exchange for the benefit of all market participants. Specifically, Customer liquidity benefits all market participants by providing more trading opportunities which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to pay a \$0.45 per contract Customer Non-Penny Symbol Maker Rebate if the quantity of transactions where the contra-side is also a Customer is greater than 50% of Participant's total Customer Non-Penny Symbol volume which adds liquidity[15] in that month does not impose an undue burden on competition as the Exchange would uniformly apply the criteria to all Customer orders to determine the applicable rebate.

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.

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

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,[16] 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.

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16 15 U.S.C. 78s(b)(3)(A)(ii).

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-BX-2021-040)

September__, 2021

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b-4 thereunder,[2] notice is hereby given that on September 10, 2021, Nasdaq BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BX Options 7, Section 2, "BX Options Market- Fees and Rebates."

The Exchange originally filed the proposed pricing changes on August 27, 2021 (SR-BX-2021-036). On September 10, 2021, the Exchange withdrew that filing and submitted this filing.

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

2 17 CFR 240.19b-4.

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

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

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

1. Purpose

The Exchange proposes to amend BX's Pricing Schedule at Options 7, Section 2, "BX Options Market-Fees and Rebates." Specifically, within Options 7, Section 2(1), the Exchange proposes to: (1) increase the Non-Penny Symbol Customer Taker Fee; and (2) amend note 3 of that section that reduces the Non-Penny Symbol Customer Maker Rebate in certain circumstances.

Today, Customers are assessed a Non-Penny Symbol Taker Fee of $0.65 per contract for removing liquidity and paid a Non-Penny Symbol Maker Rebate of $0.90 per contract for adding liquidity. Today, with respect to the Customer Non-Penny Symbol Maker Rebate, Customer orders receive a $0.45 per contract Non-Penny Symbol Maker Rebate, instead of the aforementioned $0.90 per contract 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.[3]

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3 See Options 7, Section 2(1) note 3. The 25% calculation does not consider orders within the Opening Process per Options 3, Section 8, orders that generate an order exposure alert per BX Options 5, Section 4, or orders transacted in the Price Improvement Auction ("PRISM") per Options 3, Section 13.

The Exchange proposes to increase the Customer Non-Penny Symbol Taker Fee from $0.65 to $0.79 per contract. The Exchange also proposes to amend the percentage within note 3, related to the quantity of transactions where the contra-side is also a Customer, from 25% to 50%. Proposed note 3 would provide, "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 50% of Participant's total Customer Non-Penny Symbol volume which adds liquidity in that month. The aforementioned calculation of 50% will not consider orders within the Opening Process per Options 3, Section 8, orders that generate an order exposure alert per BX Options 5, Section 4, or orders transacted in the Price Improvement Auction ("PRISM") per Options 3, Section 13."

The Exchange would continue to pay a Customer Non-Penny Symbol Maker Rebate of $0.90 per contract. Also, the Exchange would continue to pay the lower Non-Penny Symbol Maker Rebate of $0.45 per contract if the quantity of transactions where the contra-side is also a Customer is greater than the proposed 50% of Participant's total Customer Non-Penny Symbol volume which adds liquidity in that month.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[5] 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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4 15 U.S.C. 78 f(b).

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

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

The Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' … As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no 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'…."[6]

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."[7]

6 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)).

7 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.

The Exchange's proposal to increase the Customer Non-Penny Symbol Taker Fee from $0.65 to $0.79 per contract is reasonable. While the Exchange's Customer Non-Penny Symbol Taker Fee is increasing, the Exchange believes its fees remain competitive with other options exchanges.[8] Also, BX continues to offer the highest base rebate of $0.90 per contract prior to taking into account volume or contra-party.[9] Of note, other

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8 NYSE Arca, Inc. ("NYSEArca Options Fees") currently assesses customers a Take Liquidity fee of $0.85 per contract in Non-Penny Issues (or $0.67 per contract if the Customer is trading against a lead market maker). See NYSEArca Options Fees and Charges, Transaction Fee for Electronic Executions – Per Contract.

9 The examples which follow represent options fees. BOX Exchange LLC ("BOX") pays no Non-Penny Interval Class Public customer Maker Rebate. See BOX's Fee Schedule at Section I, A. Cboe Exchange, Inc. ("Cboe") pays a Non-Penny Class rebate to customers of $0.18 per contract only if the original order is greater than or equal to 100 contracts and removes liquidity. See Cboe's Fee Schedule. Cboe C2 Exchange, Inc. ("C2") pays a Non-Penny Class rebate to customers of $0.80 per contract to transactions which add liquidity. See C2's Fee Schedule. Cboe BZX Exchange, Inc. ("CboeBZX") pays Non-Penny Program Securities rebates to customers which range from $0.85 to $1.06 per contract to transactions which add liquidity. See CboeBZX's Fee Schedule. Cboe EDGX Exchange, Inc. ("CboeEDGX") pays Non-Penny Program Securities rebates to customers which range from $0.01 to $0.21 based on customer volume tiers. See CboeEDGX's Fee Schedule. Miami International Securities Exchange, LLC ("MIAX") pays no customer rebate for non-penny classes. See MIAX's Fee

exchanges have higher simple order rebates, provided certain volume criteria are met.[10] Accordingly, the Exchange believes that the proposed Customer Non-Penny Symbol Taker Fee remains competitive and will continue to attract order flow to BX to the benefit of all market participants.

The Exchange's proposal to increase the Customer Non-Penny Symbol Taker Fee from $0.65 to $0.79 per contract is equitable and not unfairly discriminatory because the proposed pricing will apply uniformly to all similarly situated Participants for Non-Penny Symbols. Customers would continue to receive favorable pricing as compared to other market participants because Customer liquidity enhances liquidity on the Exchange for the benefit of all market participants. Specifically, Customer liquidity benefits all market participants by providing more trading opportunities which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in

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

10 Id.

turn facilitates tighter spreads which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to amend the percentage within note 3 related to the volume consideration for the ratio of Customer to Customer orders as compared to total Participant volume which adds Non-Penny Symbol liquidity in order to receive the $0.90 per contract Customer Non-Penny Symbol rebate as compared to the reduced $0.45 per contract rebate is reasonable. With this proposal, the Exchange would assess a $0.79 per contract Customer Non-Penny Taker Fee, the lowest BX Taker Fee for Non-Penny Symbols,[11] and, currently, the Exchange pays the highest Customer Maker Rebate of $0.90 per contract that does not consider volume or contra-party. The Exchange continues to offer Customers the highest Non-Penny Maker Rebate on BX by assessing higher Non-Penny Taker Fees to Non-Customers.[12] To the extent a Participant submits a Non-Penny Customer order to add liquidity which interacts with a Non-Penny Customer order that removes liquidity, both Participants benefit from the higher Non-Penny Maker Rebate and lower Non-Penny Taker Fee. The Exchange's intention for assessing Customer orders with the reduced Non-Penny Taker Fee was designed to bolster interaction with Non-Customer participants. Today, Non-Penny Customer orders which add liquidity have priority[13] ahead of Non-Penny Non-Customer orders and, therefore, the Exchange's intention to enhance Non-Customer liquidity is subverted when a Non-Penny Customer order transacts with another Non-Penny Customer order. As a result,

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

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

13 See Options 3, Section 10.

when Non-Penny Customers interact with other Non-Penny Customer orders more than by happenstance, the Exchange believes it is reasonable to pay Customer orders which add liquidity a lower rebate. The Exchange notes that Participants do occasionally submit Non-Penny Customer orders which add liquidity in Non-Penny Symbols to the order book that trade against Non-Penny Customer orders that remove liquidity in Non-Penny Symbols. The Exchange believes that type of behavior occurs, by happenstance, a small percentage of the time in a month. The Exchange initially determined that 25% was the proper percentage which represented the quantity of transactions that would demarcate the point at which a Participant should receive the lower Customer Non-Penny Symbol Maker Rebate of $0.45 per contract because it does not believe that the type of behavior outlined herein should occur more than a certain percentage of the time (in this case 25% of a Participant's total Customer Non-Penny Symbol volume) unless the trading behavior was intended. After reviewing the trading behavior for a period of time since the adoption of the 25% threshold, the Exchange believes that a percentage of 50% would be a more accurate demarcation. The Exchange has monitored Customer to Customer trading behavior transacted on BX since the inception of the 25% threshold. The Exchange believes that the addition of the threshold deterred certain intended Customer to Customer transactions, and the Exchange observed an expansion of counter parties on Customer to Customer trades after the threshold was introduced. The Exchange believes that increasing the percentage to 50% will more reasonably account for inadvertent Customer to Customer trades while still deterring those Customer to Customer transactions which occur more than by happenstance given the number of Non-Penny Symbol Customer to Customer orders transacted on BX.

While this proposal would continue to provide Customer orders with lower rebates if they transact the requisite number of Customer-to Customer trades, the Exchange continues to believe that the $0.45 per contract rebate remains competitive and equal to or greater than the rebates that other Participants are afforded.[14]

The Exchange's proposal to amend the percentage within note 3 related to the volume consideration for the ratio of Customer to Customer orders as compared to total Participant volume which adds Non-Penny Symbol liquidity in order to receive the $0.90 per contract Customer Non-Penny Symbol rebate as compared to the reduced $0.45 per contract rebate is equitable and not unfairly discriminatory. The Exchange would uniformly apply the criteria to all Customer orders to determine the applicable rebate.

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

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

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

The Exchange's proposal to increase the Customer Non-Penny Symbol Taker Fee from $0.65 to $0.79 per contract does not impose an undue burden on competition because the proposed pricing will apply uniformly to all similarly situated Participants for Non-Penny Symbols. Customers would continue to receive favorable pricing as compared to other market participants because Customer liquidity enhances liquidity on the Exchange for the benefit of all market participants. Specifically, Customer liquidity benefits all market participants by providing more trading opportunities which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to pay a $0.45 per contract Customer Non-Penny Symbol Maker Rebate if the quantity of transactions where the contra-side is also a Customer is greater than 50% of Participant's total Customer Non-Penny Symbol volume which adds liquidity[15] in that month does not impose an undue burden on competition as

15 As proposed, the 25% calculation will not consider orders within the Opening Process per Options 3, Section 8, orders that generate an order exposure alert per

the Exchange would uniformly apply the criteria to all Customer orders to determine the applicable rebate.

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.[16]

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

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BX Options 5, Section 4, or orders transacted in the Price Improvement Auction ("PRISM") per Options 3, Section 13.

16 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2021-040 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-2021-040. 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-2021-040 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.[17]

J. Matthew DeLesDernier
Assistant Secretary

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

EXHIBIT 5

New text is underlined; deleted text is in brackets.

NASDAQ BX, Inc. Rules

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Options Rules

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Options 7 Pricing Schedule

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Section 2 BX Options Market-Fees and Rebates

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

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

Penny Symbols

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

Non-Penny Symbols

Market Participant	Maker Rebate / Fee	Taker Fee
Lead Market Maker	(0.45)	$1.10
Market Maker	(0.40)	$1.10
Non-Customer	$0.45	$1.10
Firm	$0.45	$1.10
Customer	($0.90)[3]	$0.[65]<u>79</u>

*. 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]<u>50</u>% of Participant's total Customer Non-Penny Symbol volume which adds liquidity in that month. The aforementioned calculation of [25]<u>50</u>% 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.

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