

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 25

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

File No. \* SR 2022 - \* 001

Amendment No. (req. for Amendments \*)

Filing by NASDAQ BX, Inc.

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

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule		
			<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

Section 806(e)(1) \*

Section 806(e)(2) \*

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

Section 3C(b)(2) \*

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

**Description**

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

Proposal to amend the BX Pricing Schedule at Options 7, Section 2

**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 \* Sun Last Name \* Kim

Title \* Associate General Counsel

E-mail \* sun.kim@nasdaq.com

Telephone \* (646) 420-7816 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 01/03/2022


(Title \*)

By John Zecca

EVP and Chief Legal Officer

(Name \*)

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.

 Date: 2022.01.03 11:58:13 -05'00'

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 EDFS website.

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

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SR-BX-2022-001 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-2022-001 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 \***

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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**

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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**

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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**

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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**

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SR-BX-2022-001 Exhibit 5.docx

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 its Pricing Schedule at BX Options 7, Section 2, as described further below.

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

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

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

Sun Kim  
Associate General Counsel  
Nasdaq, Inc.  
646-420-7816

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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 purpose of the proposed rule change is to amend the BX Pricing Schedule at Options 7, Section 2. Specifically, the Exchange proposes to: (1) increase the Taker Fees in Penny Symbols for all market participants except Customers<sup>3</sup> from \$0.46 to \$0.50 per contract, (2) increase the Customer Taker Fee in SPY from \$0.26 to \$0.31 per contract, and (3) remove the higher Maker Rebate of \$0.42 per contract currently offered to Lead Market Makers<sup>4</sup> and Market Makers<sup>5</sup> for IWM, GLD, SLV, and TSLA.

Penny Taker Fee

Today, the Exchange charges LMM, Market Maker, Non-Customer,<sup>6</sup> Firm,<sup>7</sup> and Customer orders in Penny Symbols a Taker Fee of \$0.46 per contract. For Customer orders in SPY, the Exchange charges a reduced Taker Fee of \$0.26 per contract.

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<sup>3</sup> The term "Customer" or ("C") applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in Options 1, Section 1(a)(48)).

<sup>4</sup> The term "Lead Market Maker" or ("LMM") applies to a registered BX Options Market Maker that is approved pursuant to Options 2, Section 3 to be the LMM in an options class (options classes).

<sup>5</sup> The term "BX Options Market Maker" or ("M") is a Participant that has registered as a Market Maker on BX Options pursuant to Options 2, Section 1, and must also remain in good standing pursuant to Options 2, Section 9. In order to receive Market Maker pricing in all securities, the Participant must be registered as a BX Options Market Maker in at least one security.

<sup>6</sup> The term "Non-Customer" shall include a Professional, Broker-Dealer and Non-BX Options Market Maker.

<sup>7</sup> The term "Firm" or ("F") applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

The Exchange now proposes to increase the Penny Taker Fees for all market participants except Customers from \$0.46 to \$0.50 per contract. The Exchange also proposes to increase the Customer Taker Fee in SPY from \$0.26 to \$0.31 per contract.

#### Penny Maker Rebate

The Exchange currently offers LMMs and Market Makers a Maker Rebate in Penny Symbols that is \$0.29 per contract (LMMs) and \$0.25 per contract (Market Makers). For AAPL, IWM, GLD, QQQ, SLV, and TSLA, both LMMs and Market Makers are currently offered a higher Maker Rebate of \$0.42 per contract.

The Exchange now proposes to remove IWM, GLD, SLV, and TSLA from the list of Penny Symbols eligible to receive the higher \$0.42 per contract Maker Rebate. While the Exchange will no longer offer the higher rebate for IWM, GLD, SLV, and TSLA, Participants will still receive the Penny Maker Rebate in these Penny Symbols, albeit at a lower rate of \$0.29 per contract (for LMMs) and \$0.25 per contract (for Market Makers). Furthermore, LMMs and Market Makers will continue to be provided the higher \$0.42 Maker Rebate for AAPL and QQQ orders under this proposal.

#### b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>9</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.

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

The Exchange’s proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ ....”<sup>10</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>11</sup>

Numerous indicia demonstrate the competitive nature of this market. For

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<sup>10</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>11</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow.

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

#### Penny Taker Fee

The Exchange believes that its proposal to increase the Penny Taker Fees for all market participants except Customers from \$0.46 to \$0.50 per contract is reasonable. While the Penny Taker Fees are increasing in this manner, the Exchange believes that its fees remain competitive with other options exchanges.<sup>12</sup> Accordingly, the Exchange believes that the proposed fees will continue to attract order flow to BX to the benefit of all market participants. The Exchange further believes that increasing the Penny Taker Fees from \$0.46 to \$0.50 per contract is equitable and not unfairly discriminatory because the proposed changes will apply uniformly to all similarly situated Participants.

The Exchange believes that its proposal to increase the Customer Taker Fee in SPY from \$0.26 to \$0.31 per contract is reasonable. While the Customer Taker Fee in SPY is increasing, Customers will continue to receive favorable pricing compared to all other market participants on BX. In particular, no other market participants except

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<sup>12</sup> For example, Nasdaq MRX, LLC (“MRX”) currently charges all market participants except Priority Customers a Penny Taker Fee of \$0.50 per contract. See MRX Options 7, Section 3. In addition, NYSE Arca Options similarly charges all market participants except Customers a take liquidity fee in Penny Issues of \$0.50 per contract. See NYSE Arca Options Fees and Charges, Transaction Fee for Electronic Executions – Per Contract.

Customers are currently eligible to receive this reduced Taker Fee in SPY. These market participants are instead assessed the Penny Taker Fee of \$0.46 per contract today (which is increasing to \$0.50 per contract under this proposal). The Exchange believes that offering the reduced Taker Fee in SPY of \$0.31 per contract to Customers is equitable and not unfairly discriminatory because the proposed pricing will apply uniformly to all similarly situated Participants. Customer liquidity benefits all market participants by providing more trading opportunities which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads and may cause an additional corresponding increase in order flow from other market participants.

#### Penny Maker Rebate

The Exchange believes that its proposal to remove IWM, GLD, SLV, and TSLA from the list of Penny Symbols eligible to receive the higher \$0.42 per contract Maker Rebate is reasonable. While the Exchange will no longer offer the higher rebate, Participants will still receive a Maker Rebate in these Penny Symbols, albeit at a lower rate of \$0.29 per contract (for LMMs) and \$0.25 per contract (for Market Makers). Other than the \$0.30 Penny Maker Rebate currently provided to Customers, these are still the highest Penny Maker Rebates provided to market participants today.<sup>13</sup> Accordingly, the Exchange believes that its rebate program for Penny Symbols will remain attractive for LMMs and Market Makers, and will continue to attract order flow to BX to the benefit of all market participants.

The Exchange believes that its proposal is equitable and not unfairly discriminatory as the changes will apply uniformly to all similarly situated Participants.

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<sup>13</sup> As a comparison, Non-Customers and Firms are currently provided a Penny Maker Rebate of \$0.12 per contract.



With the proposed changes, the Exchange will still provide LMMs and Market Makers some of the highest Penny Maker Rebates in IWM, GLD, SLV, and TSLA compared to other market participants.<sup>14</sup> Further, the Exchange believes that offering more favorable pricing for LMMs and Market Makers is equitable and not unfairly discriminatory.

Unlike other market participants, LMMs and Market Makers add value through continuous quoting and the commitment of capital. As it relates to the higher Penny Maker Rebate provided to LMMs compared to Market Makers, the Exchange believes that this differentiation is equitable and not unfairly discriminatory given that LMMs are subject to heightened quoting obligations compared to Market Makers.<sup>15</sup> The higher rebate therefore recognizes the differing contributions made to the liquidity and trading environment on the Exchange by LMMs. Overall, the Exchange believes that incentivizing both LMMs and Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction.

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.

In terms of intra-market competition, all pricing would be uniformly assessed to similarly situated market participants. Customers will continue to receive favorable pricing as compared to other market participants because Customer liquidity enhances

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<sup>14</sup> See supra note 13 with accompanying text.

<sup>15</sup> See Options 2, Section 4(j) (setting forth the 90% or higher quoting obligations for LMMs) and Section 5(d) (setting forth the 60% or higher quoting obligations for Market Makers).

market quality on the Exchange by providing more trading opportunities, which benefits all market participants. Furthermore, the proposed changes to the Penny Maker Rebate program for LMMs and Market Makers are designed to incentivize these market participants to provide greater liquidity, which benefits all market participants through the quality of order interaction.

In terms of inter-market competition, the Exchange believes that with the proposed changes, its pricing 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. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Participants or competing order execution venues to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>16</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.

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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<sup>16</sup> 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-2022-001)

January \_\_, 2022

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the BX Pricing Schedule at Options 7, Section 2

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 January 3, 2022, 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 the BX Pricing Schedule at Options 7, Section 2, as described further below.

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it

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

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

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

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

1. Purpose

The purpose of the proposed rule change is to amend the BX Pricing Schedule at Options 7, Section 2. Specifically, the Exchange proposes to: (1) increase the Taker Fees in Penny Symbols for all market participants except Customers<sup>3</sup> from \$0.46 to \$0.50 per contract, (2) increase the Customer Taker Fee in SPY from \$0.26 to \$0.31 per contract, and (3) remove the higher Maker Rebate of \$0.42 per contract currently offered to Lead Market Makers<sup>4</sup> and Market Makers<sup>5</sup> for IWM, GLD, SLV, and TSLA.

Penny Taker Fee

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<sup>3</sup> The term "Customer" or ("C") applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in Options 1, Section 1(a)(48)).

<sup>4</sup> The term "Lead Market Maker" or ("LMM") applies to a registered BX Options Market Maker that is approved pursuant to Options 2, Section 3 to be the LMM in an options class (options classes).

<sup>5</sup> The term "BX Options Market Maker" or ("M") is a Participant that has registered as a Market Maker on BX Options pursuant to Options 2, Section 1, and must also remain in good standing pursuant to Options 2, Section 9. In order to receive Market Maker pricing in all securities, the Participant must be registered as a BX Options Market Maker in at least one security.

Today, the Exchange charges LMM, Market Maker, Non-Customer,<sup>6</sup> Firm,<sup>7</sup> and Customer orders in Penny Symbols a Taker Fee of \$0.46 per contract. For Customer orders in SPY, the Exchange charges a reduced Taker Fee of \$0.26 per contract.

The Exchange now proposes to increase the Penny Taker Fees for all market participants except Customers from \$0.46 to \$0.50 per contract. The Exchange also proposes to increase the Customer Taker Fee in SPY from \$0.26 to \$0.31 per contract.

#### Penny Maker Rebate

The Exchange currently offers LMMs and Market Makers a Maker Rebate in Penny Symbols that is \$0.29 per contract (LMMs) and \$0.25 per contract (Market Makers). For AAPL, IWM, GLD, QQQ, SLV, and TSLA, both LMMs and Market Makers are currently offered a higher Maker Rebate of \$0.42 per contract.

The Exchange now proposes to remove IWM, GLD, SLV, and TSLA from the list of Penny Symbols eligible to receive the higher \$0.42 per contract Maker Rebate. While the Exchange will no longer offer the higher rebate for IWM, GLD, SLV, and TSLA, Participants will still receive the Penny Maker Rebate in these Penny Symbols, albeit at a lower rate of \$0.29 per contract (for LMMs) and \$0.25 per contract (for Market Makers). Furthermore, LMMs and Market Makers will continue to be provided the higher \$0.42 Maker Rebate for AAPL and QQQ orders under this proposal.

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<sup>6</sup> The term “Non-Customer” shall include a Professional, Broker-Dealer and Non-BX Options Market Maker.

<sup>7</sup> The term "Firm" or ("F") applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>9</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 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’ ....”<sup>10</sup>

The Commission and the courts have repeatedly expressed their preference for

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>10</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)).



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>11</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 market share relative to its competitors.

#### Penny Taker Fee

The Exchange believes that its proposal to increase the Penny Taker Fees for all market participants except Customers from \$0.46 to \$0.50 per contract is reasonable. While the Penny Taker Fees are increasing in this manner, the Exchange believes that its fees remain competitive with other options exchanges.<sup>12</sup> Accordingly, the Exchange

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<sup>11</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>12</sup> For example, Nasdaq MRX, LLC (“MRX”) currently charges all market participants except Priority Customers a Penny Taker Fee of \$0.50 per contract. See MRX Options 7, Section 3. In addition, NYSE Arca Options similarly charges all market participants except Customers a take liquidity fee in Penny

believes that the proposed fees will continue to attract order flow to BX to the benefit of all market participants. The Exchange further believes that increasing the Penny Taker Fees from \$0.46 to \$0.50 per contract is equitable and not unfairly discriminatory because the proposed changes will apply uniformly to all similarly situated Participants.

The Exchange believes that its proposal to increase the Customer Taker Fee in SPY from \$0.26 to \$0.31 per contract is reasonable. While the Customer Taker Fee in SPY is increasing, Customers will continue to receive favorable pricing compared to all other market participants on BX. In particular, no other market participants except Customers are currently eligible to receive this reduced Taker Fee in SPY. These market participants are instead assessed the Penny Taker Fee of \$0.46 per contract today (which is increasing to \$0.50 per contract under this proposal). The Exchange believes that offering the reduced Taker Fee in SPY of \$0.31 per contract to Customers is equitable and not unfairly discriminatory because the proposed pricing will apply uniformly to all similarly situated Participants. Customer liquidity benefits all market participants by providing more trading opportunities which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads and may cause an additional corresponding increase in order flow from other market participants.

#### Penny Maker Rebate

The Exchange believes that its proposal to remove IWM, GLD, SLV, and TSLA from the list of Penny Symbols eligible to receive the higher \$0.42 per contract Maker Rebate is reasonable. While the Exchange will no longer offer the higher rebate, Participants will still receive a Maker Rebate in these Penny Symbols, albeit at a lower

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Issues of \$0.50 per contract. See NYSE Arca Options Fees and Charges, Transaction Fee for Electronic Executions – Per Contract.

rate of \$0.29 per contract (for LMMs) and \$0.25 per contract (for Market Makers). Other than the \$0.30 Penny Maker Rebate currently provided to Customers, these are still the highest Penny Maker Rebates provided to market participants today.<sup>13</sup> Accordingly, the Exchange believes that its rebate program for Penny Symbols will remain attractive for LMMs and Market Makers, and will continue to attract order flow to BX to the benefit of all market participants.

The Exchange believes that its proposal is equitable and not unfairly discriminatory as the changes will apply uniformly to all similarly situated Participants. With the proposed changes, the Exchange will still provide LMMs and Market Makers some of the highest Penny Maker Rebates in IWM, GLD, SLV, and TSLA compared to other market participants.<sup>14</sup> Further, the Exchange believes that offering more favorable pricing for LMMs and Market Makers is equitable and not unfairly discriminatory. Unlike other market participants, LMMs and Market Makers add value through continuous quoting and the commitment of capital. As it relates to the higher Penny Maker Rebate provided to LMMs compared to Market Makers, the Exchange believes that this differentiation is equitable and not unfairly discriminatory given that LMMs are subject to heightened quoting obligations compared to Market Makers.<sup>15</sup> The higher rebate therefore recognizes the differing contributions made to the liquidity and trading environment on the Exchange by LMMs. Overall, the Exchange believes that

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<sup>13</sup> As a comparison, Non-Customers and Firms are currently provided a Penny Maker Rebate of \$0.12 per contract.

<sup>14</sup> See supra note 13 with accompanying text.

<sup>15</sup> See Options 2, Section 4(j) (setting forth the 90% or higher quoting obligations for LMMs) and Section 5(d) (setting forth the 60% or higher quoting obligations for Market Makers).

incentivizing both LMMs and Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction.

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.

In terms of intra-market competition, all pricing would be uniformly assessed to similarly situated market participants. Customers will continue to receive favorable pricing as compared to other market participants because Customer liquidity enhances market quality on the Exchange by providing more trading opportunities, which benefits all market participants. Furthermore, the proposed changes to the Penny Maker Rebate program for LMMs and Market Makers are designed to incentivize these market participants to provide greater liquidity, which benefits all market participants through the quality of order interaction.

In terms of inter-market competition, the Exchange believes that with the proposed changes, its pricing 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. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Participants or competing order execution venues to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>16</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 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:

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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-2022-001 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-2022-001. 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-2022-001 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>17</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>17</sup> 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**

<b>Market Participant</b>	<b>Maker Rebate</b>	<b>Taker Fee</b>
Lead Market Maker	(0.29) <sup>2</sup>	\$0.[46] <u>50</u>
Market Maker	(0.25) <sup>2</sup>	\$0.[46] <u>50</u>
Non-Customer	(0.12)	\$0.[46] <u>50</u>
Firm	(0.12)	\$0.[46] <u>50</u>
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
Non-Customer	\$0.45	\$1.10
Firm	\$0.45	\$1.10
Customer	(\$0.90) <sup>3</sup>	\$0.79



\*. 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~~31 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,] and QQQ[, SLV, and TSLA] will be \$0.42 per contract.

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