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Page 1 of * 37

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

File No. * SR 2023 - * 006

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"/>
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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 *).

Amend 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 * 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 03/01/2023


(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: 2023.03.01 11:14:44 -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 EFFS website.

Form 19b-4 Information *

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SR-BX-2023-006 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 *

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SR-BX-2023-006 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-2023-006 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

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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”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend its Pricing Schedule at Options 7, Section 2.

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”). 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

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, BX proposes to amend its BX Price Improvement Auction (“PRISM”)³ pricing to: (1) amend PRISM Order⁴ fees; and (2) specify the pricing related to unrelated market or marketable interest. Each change is described below.

PRISM Orders

The Exchange proposes to amend PRISM Order fees. Currently, a Customer is not assessed a PRISM Order fee and a Lead Market Maker,⁵ BX Options Market Maker⁶

³ A Participant may electronically submit for execution an order it represents as agent on behalf of a Public Customer, broker dealer, or any other entity (“PRISM Order”) against principal interest or against any other order (except as provided in sub-paragraph (i)(F) to Options 3, Section 13) it represents as agent (an “Initiating Order”) provided it submits the PRISM Order for electronic execution into the PRISM Auction (“Auction”) pursuant to Options 3, Section 13.

⁴ A PRISM Order is one-side of a PRISM Auction Order that represents an agency order on behalf a Public Customer, broker-dealer or other entity which is paired with an Initiating Order. A PRISM Auction Order is a two-sided, paired order comprised of a PRISM Order and an Initiating Order. See Options 7, Section 2(5).

⁵ 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). See Options 7, Section 1(a).

⁶ 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. See Options 7, Section 1(a).

and Non-Customer⁷ are assessed a \$0.30 per contract PRISM Order fee.⁸ At this time, the Exchange proposes to assess no market participant a PRISM Order fee. Therefore, Customers, Lead Market Makers, BX Options Market Makers and Non-Customers would pay a PRISM Order fee of \$0.00 per contract.

The Exchange also proposes to remove the current language in the Pricing Schedule which states, “BX will apply the rebate to market participants that submitted a PRISM Order pursuant to a PRISM Auction and the PRISM Order traded with PRISM Response. The PRISM Order fee for Submitted PRISM Order will be applicable to any contract(s) for which a rebate is provided for PRISM Order Traded with PRISM Response.” The first sentence is unnecessary as the pricing within Options 7, Section 2(5) clearly reflects the rebates. With this proposal, the second sentence is unnecessary as the Exchange proposes to assess no market participant a PRISM Order fee.

Unrelated Market or Marketable Interest

Next, the Exchange proposes to state the manner in which the Exchange assesses fees and pays rebates with respect to unrelated market or marketable interest received prior to the commencement of a PRISM Auction and during a PRISM Auction. Options 7, Section 2(5) does not currently detail such pricing.

Today, when a PRISM Order is a Customer order and executes against unrelated market or marketable interest received *during* a PRISM Auction, the Customer order will receive a rebate of \$0.35 per contract for Penny Classes and \$0.70 per contract for Non-

⁷ The term “Non-Customer” shall include a Professional, Broker-Dealer and Non-BX Options Market Maker. See Options 7, Section 1(a).

⁸ Today, the PRISM Order fee for Submitted PRISM Order is applicable to any contract(s) for which a rebate is provided for PRISM Order Traded with PRISM Response.

Penny Classes, which represents the pricing within Options 7, Section 2(5). In this case, the unrelated market or marketable interest received during a PRISM Auction would be assessed a \$0.49 per contract fee for Penny Classes or a \$0.94 per contract fee for Non-Penny Classes as described in Options 7, Section 2(5).

Likewise, today, when a PRISM Order is a Lead Market Maker, BX Options Market Maker or Non-Customer order and executes against unrelated market or marketable interest received *during* a PRISM Auction, the Lead Market Maker, BX Options Market Maker or Non-Customer order will pay no fee, which represents the proposed pricing within Options 7, Section 2(5). In this case, the unrelated market or marketable interest received during a PRISM Auction would be assessed a \$0.49 per contract fee for Penny Classes or a \$0.94 per contract fee for Non-Penny Classes as described in Options 7, Section 2(5).

In contrast, today, when a PRISM Order is a Customer, Lead Market Maker, BX Options Market Maker or Non-Customer order and executes against unrelated market or marketable interest received *prior* to a PRISM Auction, the Customer, Lead Market Maker, BX Options Market Maker or Non-Customer order would be subject to the Taker Fee within Options 7, Section 2(1).⁹ The unrelated market or marketable interest received prior to a PRISM Auction commenced would be paid the Maker Rebate within Options 7, Section 2(1).¹⁰

⁹ BX assesses the following Penny Symbol Taker Fees: \$0.50 per contract for a Lead Market Maker, Market Maker, Non-Customer, and Firm and \$0.46 per contract for a Customer. BX assesses the following Non-Penny Symbol Taker Fees: \$1.10 per contract for a Lead Market Maker, Market Maker, Non-Customer, and Firm and \$0.79 per contract for a Customer.

¹⁰ BX pays the following Penny Symbol Maker Rebates: \$0.29 per contract for a Lead Market Maker, \$0.25 per contract for a Market Maker (except that the

Interest resting on the Exchange's order book, whether received prior to the commencement of a PRISM auction or during a PRISM auction, would be allocated in accordance within the PRISM Auction in accordance with BX Options 3, Section 13(ii)(E) and (F).

The Exchange applies the order book pricing within Options 7, Section 2(1) to interest received *prior to* the PRISM Auction, which is considered unrelated market or marketable interest for purposes of the PRISM Auction, because the Exchange's order book pricing within Options 7, Section 2(1) seeks to pay rebates to Participants posting liquidity to the order book (makers of liquidity) and assess fees to Participants removing liquidity from the order book (takers of liquidity). Interest which rested on the order book *prior to* the commencement of a PRISM Auction will be paid a Maker Rebate because the BX Participant who submitted the interest, similar to other market participants who posted liquidity on the order book, would be considered a maker of liquidity. The BX Participant would have been aware¹¹ that no PRISM Auction was in progress at the time the interest was posted to the order book. The Exchange notes that at

Maker Rebate for Lead Market Makers and Market Makers will be \$0.22 per contract in SPY and \$0.42 per contract in AAPL and QQQ), \$0.12 per contract for a Non-Customer and Firm, and \$0.30 per contract for a Customer. BX pays the following Non-Penny Symbol Maker Rebates: \$0.45 per contract for a Lead Market Maker, \$0.40 per contract for a Market Maker, \$0.45 per contract for a Non-Customer and Firm, and \$0.90 per contract for a Customer (except that 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).

¹¹ BX Participants become aware of ongoing PRISM Auctions as BX disseminates a PRISM Auction Notification or "PAN" when the Exchange receives a PRISM Order for Auction processing. The PAN details the price, side, size, and options series of the PRISM Order over the BX Depth Feed and the Exchange's Specialized Quote Feed. See BX Options 3, Section 13(ii)(A)(2).

the time the interest was submitted to the order book, the BX Participant would have known¹² that there was no ongoing PRISM Auction and would not expect to be subject to the PRISM pricing. The Exchange seeks to reward BX Participants who provide liquidity to the order book by paying rebates. The Exchange's proposal to pay Maker Rebates to unrelated market or marketable interest that posted to the order book prior to the commencement of a PRISM Auction aligns with the Exchange's goals of attracting liquidity to the order book and uniformly pays similarly situated BX Participants a Maker Rebate. Further, in this scenario the PRISM Order that executes against the unrelated market or marketable interest that posted to the order book prior to the commencement of a PRISM Auction would be subject to the Taker Fee pricing within Options 7, Section 2(1) because the PRISM Order removed liquidity from the order book. This is consistent with the pricing assessed to any other Participant that removed liquidity from BX's order book as they would be similarly assessed the Taker Fee pricing within Options 7, Section 2(1).

In contrast, the Exchange applies PRISM pricing within Options 7, Section 2(5) to the unrelated market or marketable interest when interest arrived *during* a PRISM Auction. The Exchange seeks to incentivize Participants to submit PRISM Auction Orders to receive a guaranteed execution, potential price improvement, and Customer rebates. BX Participants submitting interest to the order book during a PRISM Auction are aware¹³ that they may be allocated in the PRISM Auction. The Exchange assesses the PRISM pricing in Options 7, Section 2(5) in the same manner that responders to the

¹² See note 10 above.

¹³ See note 10 above.

PRISM Auction are assessed fees for their PAN responses. The unrelated market or marketable interest that received an allocation within the PRISM Auction would be uniformly subject to the same fees as those BX Participants who submitted PAN responses and were allocated, thereby receiving a guaranteed execution and potential price improvement. The Exchange's PRISM pricing assesses fees to PRISM PAN responses and unrelated market or marketable interest that allocated in the PRISM Auction and rewards those BX Participants with a guaranteed execution and potential price improvement. The response fees assessed by the Exchange are intended to fund the Customer rebates paid by the Exchange which seek to incentivize increased Customer order flow to the PRISM Auction.

The Exchange's pricing models for the order book and PRISM Auction each seek to attract liquidity to BX and reward Participants differently for the order flow. To this end, the Exchange's pricing considers the manner in which orders interact with the PRISM Auction based on the timing of when the order entered the order book. The Exchange's pricing is consistent with its current practice of assigning the applicable pricing for auctions versus order book pricing depending on how and when the order was submitted to the Exchange.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁵ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4) and (5).

other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed changes to 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 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 Commission¹⁶ (“NetCoalition”), the D.C. Circuit stated, “[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’”¹⁷

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options 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. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to attract

¹⁶ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹⁷ Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

additional order flow to the Exchange and increase its market share relative to its competitors.

PRISM Orders

The Exchange's proposal to amend PRISM Order fees so that no market participant pays a PRISM Order fee is reasonable, equitable and not unfairly discriminatory as the Exchange proposes to assess no market participant a PRISM Order fee. Customers, Lead Market Makers, BX Options Market Makers and Non-Customers would uniformly pay no PRISM Order fees.

The Exchange's proposal to remove the current language in the Pricing Schedule which states, "BX will apply the rebate to market participants that submitted a PRISM Order pursuant to a PRISM Auction and the PRISM Order traded with PRISM Response. The PRISM Order fee for Submitted PRISM Order will be applicable to any contract(s) for which a rebate is provided for PRISM Order Traded with PRISM Response" is reasonable, equitable and not unfairly discriminatory as the language is not necessary specifically in light of the Exchange's proposal to assess no market participant a PRISM Order fee.

Unrelated Market or Marketable Interest

The Exchange's proposal to state the manner in which the Exchange prices unrelated market or marketable interest received *prior* to the commencement of a PRISM Auction is reasonable because the Exchange's order book pricing within Options 7, Section 2(1) seeks to pay rebates to Participants posting liquidity to the order book (makers of liquidity) and assesses fees to Participants removing liquidity from the order book (takers of liquidity). Interest which rested on the order book *prior* to the

commencement of a PRISM Auction will be paid a Maker Rebate because the BX Participant who submitted the interest, similar to other market participants who posted liquidity on the order book, would be considered a maker of liquidity. The BX Participant would have been aware that no PRISM Auction was in progress at the time the interest was posted to the order book.¹⁸ The Exchange notes that at the time the interest was submitted to the order book, the BX Participant would have known¹⁹ that there was no ongoing PRISM Auction and would not expect to be subject to the PRISM pricing. The Exchange seeks to reward BX Participants who provide liquidity to the order book by paying rebates. The Exchange's proposal to pay Maker Rebates to unrelated market or marketable interest that posted to the order book *prior* to the commencement of a PRISM Auction aligns with the Exchange's goals of attracting liquidity to the order book and uniformly pays similarly situated BX Participants a Maker Rebate. Further, in this scenario the Exchange believes that it is reasonable to assess the PRISM Order that executes against the unrelated market or marketable interest that posted to the order book *prior* to the commencement of a PRISM Auction the Taker Fee pricing within Options 7, Section 2(1) because the PRISM Order removed liquidity from the order book. This is consistent with the pricing assessed to any other Participant that removed liquidity from BX's order book as they would be uniformly assessed the Taker Fee pricing within Options 7, Section 2(1). The Taker Fee pricing within Options 7,

¹⁸ See note 5 above.

¹⁹ BX Participants become aware of ongoing PRISM Auctions as BX disseminates a PRISM Auction Notification or "PAN" when the Exchange receives a PRISM Order for Auction processing. The PAN details the price, side, size, and options series of the PRISM Order over the BX Depth Feed and the Exchange's Specialized Quote Feed. See BX Options 3, Section 13(ii)(A)(2).

Section 2(1) funds the Maker Rebates within Options 7, Section 2(1). BX pays Maker Rebates to attract order flow to BX and all Participants may interact with this order flow.

The Exchange's proposal to state the manner in which the Exchange prices unrelated market or marketable interest received *prior* to the commencement of a PRISM Auction is equitable and not unfairly discriminatory because all BX Participants who submitted unrelated market or marketable interest which rested on the order book *prior* to the commencement of a PRISM Auction will be uniformly paid a Maker Rebate. The Exchange's proposal would treat BX Participants who submitted unrelated market or marketable interest which rested on the order book *prior* to the commencement of a PRISM Auction in the same manner as other BX Participants who posted liquidity on the order book as they would both be considered makers of liquidity. Further, all Participants who submitted a PRISM Order that executed against the unrelated market or marketable interest that posted to the order book *prior* to the commencement of a PRISM Auction would be uniformly assessed a Taker Fee. The Exchange's proposal would treat BX Participants who submitted PRISM Order that executed against the unrelated market or marketable interest that posted to the order book *prior* to the commencement of a PRISM Auction in the same manner as other BX Participants who removed liquidity from the order book as they would both be considered takers of liquidity.

The Exchange's proposal to state the manner in which the Exchange prices unrelated market or marketable interest received during a PRISM Auction is reasonable because the Exchange seeks to incentivize Participants to submit PRISM Auction Orders to receive a guaranteed execution, potential price improvement, and Customer rebates. BX Participants submitting interest to the order book during a PRISM Auction are

aware²⁰ that they may be allocated in the PRISM Auction. The Exchange assesses the PRISM pricing in Options 7, Section 2(5) in the same manner that responders to the PRISM Auction are assessed fees for their PAN responses. The unrelated market or marketable interest that received an allocation within the PRISM Auction would be uniformly subject to the same fees as those BX Participants who submitted PAN responses and were allocated, thereby receiving a guaranteed execution and potential price improvement. The Exchange's PRISM pricing assesses fees to PRISM PAN responses and unrelated market or marketable interest that allocated in the PRISM Auction and rewards those BX Participants with a guaranteed execution and potential price improvement. The response fees assessed by the Exchange are intended to fund the Customer rebates paid by the Exchange which seek to incentivize increased Customer order flow to the PRISM Auction.

The Exchange's proposal to state the manner in which the Exchange prices unrelated market or marketable interest received during a PRISM Auction is equitable and not unfairly discriminatory because all BX Participants who submitted unrelated market or marketable interest which rested on the order book during a PRISM Auction would uniformly be assessed the same fees. The Exchange's proposal would treat BX Participants who submitted unrelated market or marketable interest which rested on the order book during a PRISM Auction in the same manner as other BX Participants who submitted PAN responses into the PRISM Auction and were provided with a guaranteed execution and potential price improvement. Further, paying a rebate of \$0.35 per contract for Penny Classes and \$0.70 per contract for Non-Penny Classes only to

²⁰ See note 10 above.

Customer PRISM Orders that executes against unrelated market or marketable interest received during a PRISM Auction is equitable and not unfairly discriminatory because Customer liquidity is the most sought after liquidity among 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, which may cause an additional corresponding increase in order flow from other market participants.

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.

Intermarket 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 to initiate a price improvement auction. 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 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.

Intramarket Competition

The Exchange's proposal to state the manner in which the Exchange prices unrelated market or marketable interest received *prior* to the commencement of a PRISM Auction does not impose an undue burden on competition because all BX Participants who submitted unrelated market or marketable interest which rested on the order book *prior* to the commencement of a PRISM Auction will be uniformly paid a Maker Rebate. The Exchange's proposal would treat BX Participants who submitted unrelated market or marketable interest which rested on the order book *prior* to the commencement of a PRISM Auction in the same manner as other BX Participants who posted liquidity on the order book as they would both be considered makers of liquidity. Further, all Participants who submitted a PRISM Order that executed against the unrelated market or marketable interest that posted to the order book *prior* to the commencement of a PRISM Auction would be uniformly assessed a Taker Fee. The Exchange's proposal would treat BX Participants who submitted PRISM Order that executed against the unrelated market or marketable interest that posted to the order book *prior* to the commencement of a PRISM Auction in the same manner as other BX Participants who removed liquidity from the order book as they would both be considered takers of liquidity.

The Exchange's proposal to state the manner in which the Exchange prices unrelated market or marketable interest received during a PRISM Auction does not impose an undue burden on competition because all BX Participants who submitted unrelated market or marketable interest which rested on the order book during a PRISM Auction would uniformly be assessed the same fees. The Exchange's proposal would treat BX Participants who submitted unrelated market or marketable interest which rested

on the order book during a PRISM Auction in the same manner as other BX Participants who submitted PAN responses into the PRISM Auction and were provided with a guaranteed execution and potential price improvement. Further, paying a rebate of \$0.35 per contract for Penny Classes and \$0.70 per contract for Non-Penny Classes only to Customer PRISM Orders that executes against unrelated market or marketable interest received during a PRISM Auction does not impose an undue burden on competition because Customer liquidity is the most sought after liquidity among 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, which may cause an additional corresponding increase in order flow from other market participants.

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,²¹ 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.

²¹ 15 U.S.C. 78s(b)(3)(A)(ii).

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

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

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

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-BX-2023-006)

March __, 2023

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

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 March 1, 2023, 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 its Pricing Schedule at Options 7, Section 2.

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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, BX proposes to amend its BX Price Improvement Auction (“PRISM”)³ pricing to: (1) amend PRISM Order⁴ fees; and (2) specify the pricing related to unrelated market or marketable interest. Each change is described below.

PRISM Orders

The Exchange proposes to amend PRISM Order fees. Currently, a Customer is not assessed a PRISM Order fee and a Lead Market Maker,⁵ BX Options Market Maker⁶

³ A Participant may electronically submit for execution an order it represents as agent on behalf of a Public Customer, broker dealer, or any other entity (“PRISM Order”) against principal interest or against any other order (except as provided in sub-paragraph (i)(F) to Options 3, Section 13) it represents as agent (an “Initiating Order”) provided it submits the PRISM Order for electronic execution into the PRISM Auction (“Auction”) pursuant to Options 3, Section 13.

⁴ A PRISM Order is one-side of a PRISM Auction Order that represents an agency order on behalf a Public Customer, broker-dealer or other entity which is paired with an Initiating Order. A PRISM Auction Order is a two-sided, paired order comprised of a PRISM Order and an Initiating Order. See Options 7, Section 2(5).

⁵ 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). See Options 7, Section 1(a).

⁶ 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

and Non-Customer⁷ are assessed a \$0.30 per contract PRISM Order fee.⁸ At this time, the Exchange proposes to assess no market participant a PRISM Order fee. Therefore, Customers, Lead Market Makers, BX Options Market Makers and Non-Customers would pay a PRISM Order fee of \$0.00 per contract.

The Exchange also proposes to remove the current language in the Pricing Schedule which states, “BX will apply the rebate to market participants that submitted a PRISM Order pursuant to a PRISM Auction and the PRISM Order traded with PRISM Response. The PRISM Order fee for Submitted PRISM Order will be applicable to any contract(s) for which a rebate is provided for PRISM Order Traded with PRISM Response.” The first sentence is unnecessary as the pricing within Options 7, Section 2(5) clearly reflects the rebates. With this proposal, the second sentence is unnecessary as the Exchange proposes to assess no market participant a PRISM Order fee.

Unrelated Market or Marketable Interest

Next, the Exchange proposes to state the manner in which the Exchange assesses fees and pays rebates with respect to unrelated market or marketable interest received prior to the commencement of a PRISM Auction and during a PRISM Auction. Options 7, Section 2(5) does not currently detail such pricing.

Today, when a PRISM Order is a Customer order and executes against unrelated

registered as a BX Options Market Maker in at least one security. See Options 7, Section 1(a).

⁷ The term “Non-Customer” shall include a Professional, Broker-Dealer and Non-BX Options Market Maker. See Options 7, Section 1(a).

⁸ Today, the PRISM Order fee for Submitted PRISM Order is applicable to any contract(s) for which a rebate is provided for PRISM Order Traded with PRISM Response.

market or marketable interest received *during* a PRISM Auction, the Customer order will receive a rebate of \$0.35 per contract for Penny Classes and \$0.70 per contract for Non-Penny Classes, which represents the pricing within Options 7, Section 2(5). In this case, the unrelated market or marketable interest received during a PRISM Auction would be assessed a \$0.49 per contract fee for Penny Classes or a \$0.94 per contract fee for Non-Penny Classes as described in Options 7, Section 2(5).

Likewise, today, when a PRISM Order is a Lead Market Maker, BX Options Market Maker or Non-Customer order and executes against unrelated market or marketable interest received *during* a PRISM Auction, the Lead Market Maker, BX Options Market Maker or Non-Customer order will pay no fee, which represents the proposed pricing within Options 7, Section 2(5). In this case, the unrelated market or marketable interest received during a PRISM Auction would be assessed a \$0.49 per contract fee for Penny Classes or a \$0.94 per contract fee for Non-Penny Classes as described in Options 7, Section 2(5).

In contrast, today, when a PRISM Order is a Customer, Lead Market Maker, BX Options Market Maker or Non-Customer order and executes against unrelated market or marketable interest received *prior* to a PRISM Auction, the Customer, Lead Market Maker, BX Options Market Maker or Non-Customer order would be subject to the Taker Fee within Options 7, Section 2(1).⁹ The unrelated market or marketable interest received prior to a PRISM Auction commenced would be paid the Maker Rebate within

⁹ BX assesses the following Penny Symbol Taker Fees: \$0.50 per contract for a Lead Market Maker, Market Maker, Non-Customer, and Firm and \$0.46 per contract for a Customer. BX assesses the following Non-Penny Symbol Taker Fees: \$1.10 per contract for a Lead Market Maker, Market Maker, Non-Customer, and Firm and \$0.79 per contract for a Customer.

Options 7, Section 2(1).¹⁰

Interest resting on the Exchange's order book, whether received prior to the commencement of a PRISM auction or during a PRISM auction, would be allocated in accordance within the PRISM Auction in accordance with BX Options 3, Section 13(ii)(E) and (F).

The Exchange applies the order book pricing within Options 7, Section 2(1) to interest received *prior to* the PRISM Auction, which is considered unrelated market or marketable interest for purposes of the PRISM Auction, because the Exchange's order book pricing within Options 7, Section 2(1) seeks to pay rebates to Participants posting liquidity to the order book (makers of liquidity) and assess fees to Participants removing liquidity from the order book (takers of liquidity). Interest which rested on the order book *prior to* the commencement of a PRISM Auction will be paid a Maker Rebate because the BX Participant who submitted the interest, similar to other market participants who posted liquidity on the order book, would be considered a maker of liquidity. The BX Participant would have been aware¹¹ that no PRISM Auction was in

¹⁰ BX pays the following Penny Symbol Maker Rebates: \$0.29 per contract for a Lead Market Maker, \$0.25 per contract for a Market Maker (except that the Maker Rebate for Lead Market Makers and Market Makers will be \$0.22 per contract in SPY and \$0.42 per contract in AAPL and QQQ), \$0.12 per contract for a Non-Customer and Firm, and \$0.30 per contract for a Customer. BX pays the following Non-Penny Symbol Maker Rebates: \$0.45 per contract for a Lead Market Maker, \$0.40 per contract for a Market Maker, \$0.45 per contract for a Non-Customer and Firm, and \$0.90 per contract for a Customer (except that 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).

¹¹ BX Participants become aware of ongoing PRISM Auctions as BX disseminates a PRISM Auction Notification or "PAN" when the Exchange receives a PRISM Order for Auction processing. The PAN details the price, side, size, and options

progress at the time the interest was posted to the order book. The Exchange notes that at the time the interest was submitted to the order book, the BX Participant would have known¹² that there was no ongoing PRISM Auction and would not expect to be subject to the PRISM pricing. The Exchange seeks to reward BX Participants who provide liquidity to the order book by paying rebates. The Exchange's proposal to pay Maker Rebates to unrelated market or marketable interest that posted to the order book prior to the commencement of a PRISM Auction aligns with the Exchange's goals of attracting liquidity to the order book and uniformly pays similarly situated BX Participants a Maker Rebate. Further, in this scenario the PRISM Order that executes against the unrelated market or marketable interest that posted to the order book prior to the commencement of a PRISM Auction would be subject to the Taker Fee pricing within Options 7, Section 2(1) because the PRISM Order removed liquidity from the order book. This is consistent with the pricing assessed to any other Participant that removed liquidity from BX's order book as they would be similarly assessed the Taker Fee pricing within Options 7, Section 2(1).

In contrast, the Exchange applies PRISM pricing within Options 7, Section 2(5) to the unrelated market or marketable interest when interest arrived *during* a PRISM Auction. The Exchange seeks to incentivize Participants to submit PRISM Auction Orders to receive a guaranteed execution, potential price improvement, and Customer rebates. BX Participants submitting interest to the order book during a PRISM Auction

series of the PRISM Order over the BX Depth Feed and the Exchange's Specialized Quote Feed. See BX Options 3, Section 13(ii)(A)(2).

¹² See note 10 above.

are aware¹³ that they may be allocated in the PRISM Auction. The Exchange assesses the PRISM pricing in Options 7, Section 2(5) in the same manner that responders to the PRISM Auction are assessed fees for their PAN responses. The unrelated market or marketable interest that received an allocation within the PRISM Auction would be uniformly subject to the same fees as those BX Participants who submitted PAN responses and were allocated, thereby receiving a guaranteed execution and potential price improvement. The Exchange's PRISM pricing assesses fees to PRISM PAN responses and unrelated market or marketable interest that allocated in the PRISM Auction and rewards those BX Participants with a guaranteed execution and potential price improvement. The response fees assessed by the Exchange are intended to fund the Customer rebates paid by the Exchange which seek to incentivize increased Customer order flow to the PRISM Auction.

The Exchange's pricing models for the order book and PRISM Auction each seek to attract liquidity to BX and reward Participants differently for the order flow. To this end, the Exchange's pricing considers the manner in which orders interact with the PRISM Auction based on the timing of when the order entered the order book. The Exchange's pricing is consistent with its current practice of assigning the applicable pricing for auctions versus order book pricing depending on how and when the order was submitted to the Exchange.

13

See note 10 above.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁵ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed changes to 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 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 Commission¹⁶ (“NetCoalition”), the D.C. Circuit stated, “[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’....”¹⁷

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4) and (5).

¹⁶ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹⁷ Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

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. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to attract additional order flow to the Exchange and increase its market share relative to its competitors.

PRISM Orders

The Exchange's proposal to amend PRISM Order fees so that no market participant pays a PRISM Order fee is reasonable, equitable and not unfairly discriminatory as the Exchange proposes to assess no market participant a PRISM Order fee. Customers, Lead Market Makers, BX Options Market Makers and Non-Customers would uniformly pay no PRISM Order fees.

The Exchange's proposal to remove the current language in the Pricing Schedule which states, "BX will apply the rebate to market participants that submitted a PRISM Order pursuant to a PRISM Auction and the PRISM Order traded with PRISM Response. The PRISM Order fee for Submitted PRISM Order will be applicable to any contract(s) for which a rebate is provided for PRISM Order Traded with PRISM Response" is reasonable, equitable and not unfairly discriminatory as the language is not necessary specifically in light of the Exchange's proposal to assess no market participant a PRISM Order fee.

Unrelated Market or Marketable Interest

The Exchange's proposal to state the manner in which the Exchange prices

unrelated market or marketable interest received *prior* to the commencement of a PRISM Auction is reasonable because the Exchange’s order book pricing within Options 7, Section 2(1) seeks to pay rebates to Participants posting liquidity to the order book (makers of liquidity) and assesses fees to Participants removing liquidity from the order book (takers of liquidity). Interest which rested on the order book *prior* to the commencement of a PRISM Auction will be paid a Maker Rebate because the BX Participant who submitted the interest, similar to other market participants who posted liquidity on the order book, would be considered a maker of liquidity. The BX Participant would have been aware that no PRISM Auction was in progress at the time the interest was posted to the order book.¹⁸ The Exchange notes that at the time the interest was submitted to the order book, the BX Participant would have known¹⁹ that there was no ongoing PRISM Auction and would not expect to be subject to the PRISM pricing. The Exchange seeks to reward BX Participants who provide liquidity to the order book by paying rebates. The Exchange’s proposal to pay Maker Rebates to unrelated market or marketable interest that posted to the order book *prior* to the commencement of a PRISM Auction aligns with the Exchange’s goals of attracting liquidity to the order book and uniformly pays similarly situated BX Participants a Maker Rebate. Further, in this scenario the Exchange believes that it is reasonable to assess the PRISM Order that executes against the unrelated market or marketable interest that

¹⁸ See note 5 above.

¹⁹ BX Participants become aware of ongoing PRISM Auctions as BX disseminates a PRISM Auction Notification or “PAN” when the Exchange receives a PRISM Order for Auction processing. The PAN details the price, side, size, and options series of the PRISM Order over the BX Depth Feed and the Exchange’s Specialized Quote Feed. See BX Options 3, Section 13(ii)(A)(2).

posted to the order book *prior* to the commencement of a PRISM Auction the Taker Fee pricing within Options 7, Section 2(1) because the PRISM Order removed liquidity from the order book. This is consistent with the pricing assessed to any other Participant that removed liquidity from BX's order book as they would be uniformly assessed the Taker Fee pricing within Options 7, Section 2(1). The Taker Fee pricing within Options 7, Section 2(1) funds the Maker Rebates within Options 7, Section 2(1). BX pays Maker Rebates to attract order flow to BX and all Participants may interact with this order flow.

The Exchange's proposal to state the manner in which the Exchange prices unrelated market or marketable interest received *prior* to the commencement of a PRISM Auction is equitable and not unfairly discriminatory because all BX Participants who submitted unrelated market or marketable interest which rested on the order book *prior* to the commencement of a PRISM Auction will be uniformly paid a Maker Rebate. The Exchange's proposal would treat BX Participants who submitted unrelated market or marketable interest which rested on the order book *prior* to the commencement of a PRISM Auction in the same manner as other BX Participants who posted liquidity on the order book as they would both be considered makers of liquidity. Further, all Participants who submitted a PRISM Order that executed against the unrelated market or marketable interest that posted to the order book *prior* to the commencement of a PRISM Auction would be uniformly assessed a Taker Fee. The Exchange's proposal would treat BX Participants who submitted PRISM Order that executed against the unrelated market or marketable interest that posted to the order book *prior* to the commencement of a PRISM Auction in the same manner as other BX Participants who removed liquidity from the order book as they would both be considered takers of liquidity.

The Exchange's proposal to state the manner in which the Exchange prices unrelated market or marketable interest received during a PRISM Auction is reasonable because the Exchange seeks to incentivize Participants to submit PRISM Auction Orders to receive a guaranteed execution, potential price improvement, and Customer rebates. BX Participants submitting interest to the order book during a PRISM Auction are aware²⁰ that they may be allocated in the PRISM Auction. The Exchange assesses the PRISM pricing in Options 7, Section 2(5) in the same manner that responders to the PRISM Auction are assessed fees for their PAN responses. The unrelated market or marketable interest that received an allocation within the PRISM Auction would be uniformly subject to the same fees as those BX Participants who submitted PAN responses and were allocated, thereby receiving a guaranteed execution and potential price improvement. The Exchange's PRISM pricing assesses fees to PRISM PAN responses and unrelated market or marketable interest that allocated in the PRISM Auction and rewards those BX Participants with a guaranteed execution and potential price improvement. The response fees assessed by the Exchange are intended to fund the Customer rebates paid by the Exchange which seek to incentivize increased Customer order flow to the PRISM Auction.

The Exchange's proposal to state the manner in which the Exchange prices unrelated market or marketable interest received during a PRISM Auction is equitable and not unfairly discriminatory because all BX Participants who submitted unrelated market or marketable interest which rested on the order book during a PRISM Auction would uniformly be assessed the same fees. The Exchange's proposal would treat BX

²⁰ See note 10 above.

Participants who submitted unrelated market or marketable interest which rested on the order book during a PRISM Auction in the same manner as other BX Participants who submitted PAN responses into the PRISM Auction and were provided with a guaranteed execution and potential price improvement. Further, paying a rebate of \$0.35 per contract for Penny Classes and \$0.70 per contract for Non-Penny Classes only to Customer PRISM Orders that executes against unrelated market or marketable interest received during a PRISM Auction is equitable and not unfairly discriminatory because Customer liquidity is the most sought after liquidity among 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, which may cause an additional corresponding increase in order flow from other market participants.

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.

Intermarket 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 to initiate a price improvement auction. 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 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.

Intramarket Competition

The Exchange's proposal to state the manner in which the Exchange prices unrelated market or marketable interest received *prior* to the commencement of a PRISM Auction does not impose an undue burden on competition because all BX Participants who submitted unrelated market or marketable interest which rested on the order book *prior* to the commencement of a PRISM Auction will be uniformly paid a Maker Rebate. The Exchange's proposal would treat BX Participants who submitted unrelated market or marketable interest which rested on the order book *prior* to the commencement of a PRISM Auction in the same manner as other BX Participants who posted liquidity on the order book as they would both be considered makers of liquidity. Further, all Participants who submitted a PRISM Order that executed against the unrelated market or marketable interest that posted to the order book *prior* to the commencement of a PRISM Auction would be uniformly assessed a Taker Fee. The Exchange's proposal would treat BX Participants who submitted PRISM Order that executed against the unrelated market or marketable interest that posted to the order book *prior* to the commencement of a PRISM Auction in the same manner as other BX Participants who removed liquidity from the order book as they would both be considered takers of liquidity.

The Exchange's proposal to state the manner in which the Exchange prices

unrelated market or marketable interest received during a PRISM Auction does not impose an undue burden on competition because all BX Participants who submitted unrelated market or marketable interest which rested on the order book during a PRISM Auction would uniformly be assessed the same fees. The Exchange's proposal would treat BX Participants who submitted unrelated market or marketable interest which rested on the order book during a PRISM Auction in the same manner as other BX Participants who submitted PAN responses into the PRISM Auction and were provided with a guaranteed execution and potential price improvement. Further, paying a rebate of \$0.35 per contract for Penny Classes and \$0.70 per contract for Non-Penny Classes only to Customer PRISM Orders that executes against unrelated market or marketable interest received during a PRISM Auction does not impose an undue burden on competition because Customer liquidity is the most sought after liquidity among 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, which may cause an additional corresponding increase in order flow from other market participants.

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.²¹

²¹ 15 U.S.C. 78s(b)(3)(A)(ii).

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

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2023-006 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-2023-006. 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-2023-006 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.²²

J. Matthew DeLesDernier
Assistant Secretary

²² 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

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

Fees and rebates (per contact)

Type of Market Participants	Submitted PRISM Auction Order fee		Response to PRISM Auction fee		PRISM Order Traded With PRISM Response rebate	
	PRISM Order	Initiating Order	Penny Classes	Non-Penny Classes	Penny Classes	Non-Penny Classes
Customer	\$0.00	\$0.00	\$0.49	\$0.94	\$0.35	\$0.70
Lead Market Maker	\$0. <u>[30]00</u>	\$0.05	\$0.49	\$0.94	\$0.00	\$0.00
BX Options Market Maker	\$0. <u>[30]00</u>	\$0.05	\$0.49	\$0.94	\$0.00	\$0.00
Non-Customer	\$0. <u>[30]00</u>	\$0.05	\$0.49	\$0.94	\$0.00	\$0.00

For purposes of Options 7, Section 2(5) PRISM pricing, the following terms shall apply:

- **PRISM Order** is one-side of a PRISM Auction Order that represents an agency order on behalf a Public Customer, broker-dealer or other entity which is paired with an Initiating Order.

- **Initiating Order** is one-side of a PRISM Auction Order that represents principal or other interest which is paired with a PRISM Order.
- **PRISM Auction Order** is a two-sided, paired order comprised of a PRISM Order and an Initiating Order.
- **PRISM Response** is interest that executed against the PRISM Order pursuant to Options 3, Section 13.

[BX will apply the rebate to market participants that submitted a PRISM Order pursuant to a PRISM Auction and the PRISM Order traded with PRISM Response. The PRISM Order fee for Submitted PRISM Order will be applicable to any contract(s) for which a rebate is provided for PRISM Order Traded with PRISM Response.]

Unrelated Market or Marketable Interest

- When the PRISM Order is a Customer order and executes against unrelated market or marketable interest received **during** a PRISM Auction, the Customer order will receive a rebate of \$0.35 per contract for Penny Classes and \$0.70 per contract for Non-Penny Classes. The unrelated market or marketable interest received during a PRISM Auction would be assessed a \$0.49 per contract fee for Penny Classes or a \$0.94 per contract fee for Non-Penny Classes.
- When the PRISM Order is a Lead Market Maker, BX Options Market Maker or Non-Customer order and executes against unrelated market or marketable interest received **during** a PRISM Auction, the Lead Market Maker, BX Options Market Maker or Non-Customer order will pay no fee. The unrelated market or marketable interest received during a PRISM Auction would be assessed a \$0.49 per contract fee for Penny Classes or a \$0.94 per contract fee for Non-Penny Classes.
- When the PRISM Order is a Customer, Lead Market Maker, BX Options Market Maker or Non-Customer order and executes against unrelated market or marketable interest received **prior** to the commencement of a PRISM Auction, the Customer, Lead Market Maker, BX Options Market Maker or Non-Customer order would be subject to the Taker Fee within Options 7, Section 2(1). The unrelated market or marketable interest received prior to the commencement of a PRISM Auction would be paid the Maker Rebate within Options 7, Section 2(1).

- **Request for PRISM Pricing:**

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