

## 2. Statutory Basis

FINRA believes that the proposed revisions to the Series 86/87 exam program are consistent with the provisions of Section 15A(b)(6) of the Exchange Act,<sup>19</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(g)(3) of the Exchange Act,<sup>20</sup> which authorizes FINRA to prescribe standards of training, experience, and competence for persons associated with FINRA members. FINRA believes that the proposed revisions will further these purposes by updating the exam program to incorporate the functions and associated tasks currently performed by a Research Analyst and to reflect the most relevant laws, rules and regulations covered by the exams.

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

FINRA does not believe that the proposed revisions will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The updated exam program aligns with the functions and associated tasks currently performed by Research Analysts and tests knowledge of the most relevant laws, rules, regulations and skills relevant to those functions and tasks. As such, the proposed revisions would make the exams more efficient and effective.

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

Written comments were neither solicited nor 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) of the Act<sup>21</sup> and paragraph (f)(1) of Rule 19b-4 thereunder.<sup>22</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 necessary or appropriate in the public interest, for the protection of investors, or 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2023-004 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-FINRA-2023-004. This file number should be included on the subject line if email 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 website (<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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2023-004 and should be submitted on or before April 6, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2023-05335 Filed 3-15-23; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97109; File No. SR-BX-2023-006]

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

March 10, 2023.

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 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 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.

<sup>23</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>19</sup> 15 U.S.C. 78o-3(b)(6).

<sup>20</sup> 15 U.S.C. 78o-3(g)(3).

<sup>21</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>22</sup> 17 CFR 240.19b-4(f)(1).

*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")<sup>3</sup> pricing to: (1) amend PRISM Order<sup>4</sup> 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,<sup>5</sup> BX Options Market Maker<sup>6</sup> and Non-Customer<sup>7</sup> are assessed a \$0.30 per contract PRISM Order fee.<sup>8</sup> 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

<sup>3</sup> 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 subparagraph (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.

<sup>4</sup> 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).

<sup>5</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). See Options 7, Section 1(a).

<sup>6</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. See Options 7, Section 1(a).

<sup>7</sup> The term "Non-Customer" shall include a Professional, Broker-Dealer and Non-BX Options Market Maker. See Options 7, Section 1(a).

<sup>8</sup> 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.

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-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).<sup>9</sup> The unrelated market or

<sup>9</sup> 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

marketable interest received prior to a PRISM Auction commenced would be paid the Maker Rebate within Options 7, Section 2(1).<sup>10</sup>

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 aware<sup>11</sup> that no PRISM Auction was in 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 known<sup>12</sup> that there was no ongoing PRISM Auction and would not expect to be subject to the PRISM

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.

<sup>10</sup> 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).

<sup>11</sup> 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).

<sup>12</sup> See note 10 above.

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 aware<sup>13</sup> 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.

## 2. Statutory Basis

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

The proposed changes to 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 Commission*<sup>16</sup> ("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' . . ."<sup>17</sup>

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 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.<sup>18</sup> The Exchange notes that at the time the interest was submitted to the order book, the BX Participant would have

<sup>14</sup> 15 U.S.C. 78f(b).

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

<sup>16</sup> *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

<sup>17</sup> *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)).

<sup>18</sup> See note 5 above.

<sup>13</sup> See note 10 above.

known<sup>19</sup> 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, 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

<sup>19</sup> 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).

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 aware<sup>20</sup> 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

<sup>20</sup> See note 10 above.

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.<sup>21</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:

*Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto: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 email 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 website (<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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment 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 April 6, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**J. Matthew DeLesDernier,**  
*Deputy Secretary.*

[FR Doc. 2023-05336 Filed 3-15-23; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-97106; File No. SR-NYSEARCA-2023-21]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges**

March 10, 2023.

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 March 1, 2023, NYSE Arca, Inc. ("NYSE Arca" or the "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 NYSE Arca Equities Fees and Charges ("Fee Schedule") by (i) lowering the credit applicable to Tape B securities for

<sup>22</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>21</sup> 15 U.S.C. 78s(b)(3)(A)(ii).