

Required fields are shown with yellow backgrounds and asterisks.

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

File No. * SR 2023 - * 024

Amendment No. (req. for Amendments *)

Filing by NASDAQ BX, Inc.

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

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>
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Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description

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

A proposal to amend the Exchange transaction fees at Equity 7, Section 118(e)

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 *	Katie	Last Name *	Hopkins
Title *	Associate General Counsel		
E-mail *	Katie.Hopkins@Nasdaq.com		
Telephone *	(301) 232-4067	Fax	

Signature

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

Date	09/29/2023	(Title *)
By	John Zecca (Name *)	EVP and Chief Legal Officer

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: 2023.09.29 13:48:17 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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SR-BX-2023-024 19b-4.docx

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-2023-024 Exhibit 1.docx

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-2023-024 Exhibit 5.docx

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

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

1. Text of the Proposed Rule Change

(a) Nasdaq BX, Inc. (“BX” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend the Exchange’s transaction fees at Equity 7, Section 118(e), as described further below.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on October 1, 2023.

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:

Katie Hopkins
Associate General Counsel
Nasdaq, Inc.
301-232-4067

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 operates on the “taker-maker” model, whereby it generally pays credits to members that take liquidity and charges fees to members that provide liquidity. Currently, the Exchange has a schedule, at Equity 7, Section 118(e), which consists of several different credits and fees for Retail Orders³ and Retail Price Improvement Orders⁴ under Rule 4780 (Retail Price Improvement Program).

The purpose of the proposed rule change is to amend the Exchange’s schedule of fees at Equity 7, Section 118(e). Specifically, the Exchange proposes to amend the qualifying criteria for two existing fees for RPI Orders and update a related sunset date for one of the aforementioned fees.

Currently, the Exchange charges a \$0.0018 per share executed fee for RPI Orders entered by a member that provides liquidity through RPI Orders equal to or exceeding an average daily volume of 2,500,000 shares. The Exchange proposes to amend the qualifying criteria for the \$0.0018 fee. Under the proposed change, a member could qualify for the \$0.0018 per share executed fee for RPI Orders if the member provides liquidity through RPI Orders equal to or exceeding 0.02% of total Consolidated Volume

³ Retail Orders shall mean an order type with a Non-Display Order Attribute submitted to the Exchange by a Retail Member Organization (as defined in Rule 4780). A Retail Order must be an agency Order, or riskless principal Order that satisfies the criteria of FINRA Rule 5320.03. The Retail Order must reflect trading interest of a natural person with no change made to the terms of the underlying order of the natural person with respect to price (except in the case of a market order that is changed to a marketable limit order) or side of market and that does not originate from a trading algorithm or any other computerized methodology. See Rule 4702(b)(6).

⁴ Retail Price Improving (“RPI”) Orders shall mean an Order Type with a Non- Display Order Attribute that is held on the Exchange Book in order to provide liquidity at a price at least \$0.001 better than the NBBO through a special execution process described in Rule 4780. A Retail Price Improving Order may be entered in price increments of \$0.001. RPI Orders collectively may be referred to as “RPI Interest.” See Rule 4702(b)(5).

during a month (rather than an average daily volume of 2,500,000 shares, as the current Rule provides).

The Exchange believes that by modifying the qualifying criteria for the \$0.0018 per share executed fee to require that a member provides liquidity through RPI Orders equal to or exceeding 0.02% of total Consolidated Volume during a month rather than an average daily volume of 2,500,000 shares in order to qualify, the criteria would be more representative of the overall volume trading in the market. In a fluctuating volume environment, the change to the qualifying criteria would ease the burden to qualify for the fee. The Exchange hopes that modifying the qualifying criteria for the \$0.0018 fee as described above will encourage members to increase liquidity providing activity in RPI Orders on the Exchange. If the proposal is effective in achieving this purpose, then the quality of the Exchange's market will improve, particularly with respect to RPI and Retail Orders to the benefit of all participants, especially those who submit RPI and Retail Orders.

Currently, the Exchange charges a \$0.0020 per share executed fee for RPI Orders entered by a member that (i) quotes RPI Orders in at least 1,200 symbols on average per day; (ii) provides liquidity through RPI Orders equal to or exceeding an average daily volume of 1,000,000 shares; and (iii) increases its average daily volume of liquidity provided in RPI Orders at least 10% relative to the month of March 2023. This fee is applicable through September 30, 2023. The Exchange proposes to amend the qualifying criteria for the \$0.0020 fee. First, the Exchange proposes to revise the criteria to require that a member provides liquidity through RPI Orders equal to or exceeding 0.01% of total Consolidated Volume during a month instead of the current criteria that a member

provides liquidity through RPI Orders equal to or exceeding an average daily volume of 1,000,000 shares. Second, the Exchange proposes to revise the criteria that a customer increases its average daily volume of liquidity provided in RPI Orders at least 10% relative to the month of March 2023 by modifying the reference month from March 2023 to April 2023. Additionally, the Exchange proposes to offer the fee through October 31, 2023. Specifically, the Exchange proposes to charge a \$0.0020 per share executed fee for RPI Orders entered by a member that (i) quotes RPI Orders in at least 1,200 symbols on average per day; (ii) provides liquidity through RPI Orders equal to or exceeding 0.01% of total Consolidated Volume during a month (rather than an average daily volume of 1,000,000 shares); and (iii) increases its average daily volume of liquidity provided in RPI Orders at least 10% relative to the month of April 2023 (rather than March 2023). The proposed rule change provides that such fee is applicable through October 31, 2023.

The Exchange believes that by modifying the qualifying criteria for the \$0.0020 per share executed fee to require that a member provides liquidity through RPI Orders equal to or exceeding 0.01% of total Consolidated Volume during a month rather than an average daily volume of 1,000,000 shares in order to qualify, the criteria would be more representative of the overall volume trading in the market. In a fluctuating volume environment, the change to the qualifying criteria would ease the burden to qualify for the fee. Additionally, the Exchange hopes that the proposed revision to the qualifying criteria to a more recent reference month, together with the change to require RPI Orders equal to or exceeding 0.01% of total Consolidated Volume, will encourage members to increase liquidity providing activity in RPI Orders on the Exchange relative to April 2023. If the proposal is effective in achieving this purpose, then the quality of the

Exchange's market will improve, particularly with respect to RPI and Retail Orders to the benefit of all participants, especially those who submit RPI and Retail Orders.

At this time, the Exchange proposes to amend the sunset date for the proposed fee of \$0.0020 per share executed. The fee will be available through October 31, 2023.⁵ By revising the reference month in the qualifying criteria and extending the sunset date, the Exchange intends to continue to encourage members to earn lower fees by increasing liquidity providing activity in RPI Orders on the Exchange. The Exchange will continue to evaluate the appropriate parameters going forward to encourage increasing liquidity providing activity in RPI Orders on the Exchange.

b. Statutory Basis

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

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

⁵ The proposed \$0.0020 per share executed fee would be available through October 31, 2023 but would not be available thereafter. For example, as of November 1, 2023, the Exchange would no longer offer the incentive as proposed.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4) and (5).

Commission, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”⁸

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁹

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

⁸ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

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

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

The Exchange believes it is reasonable and equitable to amend the qualifying criteria for the \$0.0018 per share executed fee for RPI Orders by requiring that a member provides liquidity through RPI Orders equal to or exceeding 0.02% of total Consolidated Volume during a month rather than requiring an average daily volume of 2,500,000 shares. Similarly, the Exchange believes it is reasonable and equitable to amend the qualifying criteria for the \$0.0020 per share executed fee for RPI Orders by requiring that a member provides liquidity through RPI Orders equal to or exceeding 0.01% of total Consolidated Volume rather than requiring an average daily volume of 1,000,000 shares. The Exchange's goal is to make the criteria more representative of the overall volume trading in the market and increase liquidity adding activity in RPI Orders on its platform. It is reasonable and equitable to address this need by modifying the qualification requirements as an incentive for members to increase their liquidity activity in RPI Orders on the Exchange. If the proposal is effective in achieving this purpose, then the quality of the Exchange's market will improve, particularly with respect to RPI and Retail Orders to the benefit of all participants, especially those who submit RPI and Retail Orders.

The Exchange also believes it is reasonable and equitable to amend the reference date in the qualifying criteria for the \$0.0020 per share executed fee for RPI Orders, to provide, in part, that in order to qualify for such fee, a member must increase its average

daily volume of liquidity provided in RPI Orders at least 10% relative to the month of April 2023 (instead of March 2023). The Exchange's goal is to continue to encourage an increase in liquidity adding activity in RPI Orders on its platform. It is reasonable and equitable to address this need by updating the requirement for a member to increase its average daily volume of liquidity provided in RPI Orders at least 10% relative to the month of April 2023, instead of March 2023, as an incentive for members to increase their liquidity activity in RPI Orders on the Exchange relative to a more current reference month. If the proposal is effective in achieving this purpose, then the quality of the Exchange's market will improve, particularly with respect to RPI and Retail Orders to the benefit of all participants, especially those who submit RPI and Retail Orders.

The Exchange's proposal to sunset the \$0.0020 fee at the end of October 2023 is also reasonable because the Exchange is updating the reference month in the qualifying criteria as discussed above and the Exchange believes that despite only offering this fee for a limited time, the incentive may continue to encourage members to earn lower fees by increasing liquidity providing activity in RPI Orders on the Exchange.

The Exchange believes that the proposal is not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries – from co-branded credit cards to grocery stores to cellular telephone data plans – that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the

Commission. It is fair because it incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

The Exchange intends for its proposal to improve market quality for all members that submit RPI and Retail Orders on the Exchange and by extension attract more liquidity to the market, improving market wide quality and price discovery. Although net adders of liquidity for RPI Orders will benefit most from the proposal, this result is fair insofar as increased liquidity adding activity in RPI Orders will help to improve market quality and the attractiveness of the Exchange to all existing and prospective retail participants. The Exchange's proposal to sunset the \$0.0020 fee incentive at the end of October 2023 is equitable and not unfairly discriminatory because the fee will be available to all members during the month it is offered.

Any participant that is dissatisfied with the proposal is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

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.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage. As described above, the proposal modifies the qualification requirements for the \$0.0018 per share executed fee and the \$0.0020 per share executed fee for RPI Orders and revises the sunset date for the \$0.0020 per share executed fee. Members may modify their businesses so that they can meet the

required threshold and pay lower charges. As noted above, all members of the Exchange will benefit from any increase in market activity that the proposal effectuates. The Exchange's proposal to sunset the fee at the end of October does not impose an undue burden on competition because any member can qualify for the fee during the month it is offered. Moreover, members are free to trade on other venues to the extent they believe that the fees assessed, and credits provided, are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes.

Intermarket Competition

The Exchange believes that its proposed modifications to its schedule of fees will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from the other live exchanges and from off-exchange venues, which include alternative trading systems that trade national market system stock. 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 and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to 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.

The proposed change is reflective of this competition because, as a threshold issue, the Exchange is a relatively small market so its ability to burden intermarket competition is limited. In this regard, even the largest U.S. equities exchange by volume has less than 20% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprises more than 40% of industry volume.

In sum, the Exchange intends for the proposed changes to its fees to increase member incentives to engage in the addition of liquidity on the Exchange. If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁰ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

5. Text of the proposed rule change.

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-BX-2023-024)

October __, 2023

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Its Transaction Fees at Equity 7, Section 118(e)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on September 29, 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 the Exchange’s transaction fees at Equity 7, Section 118(e), as described further below.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on October 1, 2023.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

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

1. Purpose

The Exchange operates on the “taker-maker” model, whereby it generally pays credits to members that take liquidity and charges fees to members that provide liquidity. Currently, the Exchange has a schedule, at Equity 7, Section 118(e), which consists of several different credits and fees for Retail Orders³ and Retail Price Improvement Orders⁴ under Rule 4780 (Retail Price Improvement Program).

The purpose of the proposed rule change is to amend the Exchange’s schedule of fees at Equity 7, Section 118(e). Specifically, the Exchange proposes to amend the

³ Retail Orders shall mean an order type with a Non-Display Order Attribute submitted to the Exchange by a Retail Member Organization (as defined in Rule 4780). A Retail Order must be an agency Order, or riskless principal Order that satisfies the criteria of FINRA Rule 5320.03. The Retail Order must reflect trading interest of a natural person with no change made to the terms of the underlying order of the natural person with respect to price (except in the case of a market order that is changed to a marketable limit order) or side of market and that does not originate from a trading algorithm or any other computerized methodology. See Rule 4702(b)(6).

⁴ Retail Price Improving (“RPI”) Orders shall mean an Order Type with a Non- Display Order Attribute that is held on the Exchange Book in order to provide liquidity at a price at least \$0.001 better than the NBBO through a special execution process described in Rule 4780. A Retail Price Improving Order may be entered in price increments of \$0.001. RPI Orders collectively may be referred to as “RPI Interest.” See Rule 4702(b)(5).

qualifying criteria for two existing fees for RPI Orders and update a related sunset date for one of the aforementioned fees.

Currently, the Exchange charges a \$0.0018 per share executed fee for RPI Orders entered by a member that provides liquidity through RPI Orders equal to or exceeding an average daily volume of 2,500,000 shares. The Exchange proposes to amend the qualifying criteria for the \$0.0018 fee. Under the proposed change, a member could qualify for the \$0.0018 per share executed fee for RPI Orders if the member provides liquidity through RPI Orders equal to or exceeding 0.02% of total Consolidated Volume during a month (rather than an average daily volume of 2,500,000 shares, as the current Rule provides).

The Exchange believes that by modifying the qualifying criteria for the \$0.0018 per share executed fee to require that a member provides liquidity through RPI Orders equal to or exceeding 0.02% of total Consolidated Volume during a month rather than an average daily volume of 2,500,000 shares in order to qualify, the criteria would be more representative of the overall volume trading in the market. In a fluctuating volume environment, the change to the qualifying criteria would ease the burden to qualify for the fee. The Exchange hopes that modifying the qualifying criteria for the \$0.0018 fee as described above will encourage members to increase liquidity providing activity in RPI Orders on the Exchange. If the proposal is effective in achieving this purpose, then the quality of the Exchange's market will improve, particularly with respect to RPI and Retail Orders to the benefit of all participants, especially those who submit RPI and Retail Orders.

Currently, the Exchange charges a \$0.0020 per share executed fee for RPI Orders entered by a member that (i) quotes RPI Orders in at least 1,200 symbols on average per day; (ii) provides liquidity through RPI Orders equal to or exceeding an average daily volume of 1,000,000 shares; and (iii) increases its average daily volume of liquidity provided in RPI Orders at least 10% relative to the month of March 2023. This fee is applicable through September 30, 2023. The Exchange proposes to amend the qualifying criteria for the \$0.0020 fee. First, the Exchange proposes to revise the criteria to require that a member provides liquidity through RPI Orders equal to or exceeding 0.01% of total Consolidated Volume during a month instead of the current criteria that a member provides liquidity through RPI Orders equal to or exceeding an average daily volume of 1,000,000 shares. Second, the Exchange proposes to revise the criteria that a customer increases its average daily volume of liquidity provided in RPI Orders at least 10% relative to the month of March 2023 by modifying the reference month from March 2023 to April 2023. Additionally, the Exchange proposes to offer the fee through October 31, 2023. Specifically, the Exchange proposes to charge a \$0.0020 per share executed fee for RPI Orders entered by a member that (i) quotes RPI Orders in at least 1,200 symbols on average per day; (ii) provides liquidity through RPI Orders equal to or exceeding 0.01% of total Consolidated Volume during a month (rather than an average daily volume of 1,000,000 shares); and (iii) increases its average daily volume of liquidity provided in RPI Orders at least 10% relative to the month of April 2023 (rather than March 2023). The proposed rule change provides that such fee is applicable through October 31, 2023.

The Exchange believes that by modifying the qualifying criteria for the \$0.0020 per share executed fee to require that a member provides liquidity through RPI Orders

equal to or exceeding 0.01% of total Consolidated Volume during a month rather than an average daily volume of 1,000,000 shares in order to qualify, the criteria would be more representative of the overall volume trading in the market. In a fluctuating volume environment, the change to the qualifying criteria would ease the burden to qualify for the fee. Additionally, the Exchange hopes that the proposed revision to the qualifying criteria to a more recent reference month, together with the change to require RPI Orders equal to or exceeding 0.01% of total Consolidated Volume, will encourage members to increase liquidity providing activity in RPI Orders on the Exchange relative to April 2023. If the proposal is effective in achieving this purpose, then the quality of the Exchange's market will improve, particularly with respect to RPI and Retail Orders to the benefit of all participants, especially those who submit RPI and Retail Orders.

At this time, the Exchange proposes to amend the sunset date for the proposed fee of \$0.0020 per share executed. The fee will be available through October 31, 2023.⁵ By revising the reference month in the qualifying criteria and extending the sunset date, the Exchange intends to continue to encourage members to earn lower fees by increasing liquidity providing activity in RPI Orders on the Exchange. The Exchange will continue to evaluate the appropriate parameters going forward to encourage increasing liquidity providing activity in RPI Orders on the Exchange.

⁵ The proposed \$0.0020 per share executed fee would be available through October 31, 2023 but would not be available thereafter. For example, as of November 1, 2023, the Exchange would no longer offer the incentive as proposed.

2. Statutory Basis

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

The Exchange's proposed changes to its schedule of credits are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”⁸

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4) and (5).

⁸ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁹

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

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

The Exchange believes it is reasonable and equitable to amend the qualifying criteria for the \$0.0018 per share executed fee for RPI Orders by requiring that a member provides liquidity through RPI Orders equal to or exceeding 0.02% of total Consolidated Volume during a month rather than requiring an average daily volume of 2,500,000 shares. Similarly, the Exchange believes it is reasonable and equitable to amend the qualifying criteria for the \$0.0020 per share executed fee for RPI Orders by requiring that a member provides liquidity through RPI Orders equal to or exceeding 0.01% of total

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

Consolidated Volume rather than requiring an average daily volume of 1,000,000 shares. The Exchange's goal is to make the criteria more representative of the overall volume trading in the market and increase liquidity adding activity in RPI Orders on its platform. It is reasonable and equitable to address this need by modifying the qualification requirements as an incentive for members to increase their liquidity activity in RPI Orders on the Exchange. If the proposal is effective in achieving this purpose, then the quality of the Exchange's market will improve, particularly with respect to RPI and Retail Orders to the benefit of all participants, especially those who submit RPI and Retail Orders.

The Exchange also believes it is reasonable and equitable to amend the reference date in the qualifying criteria for the \$0.0020 per share executed fee for RPI Orders, to provide, in part, that in order to qualify for such fee, a member must increase its average daily volume of liquidity provided in RPI Orders at least 10% relative to the month of April 2023 (instead of March 2023). The Exchange's goal is to continue to encourage an increase in liquidity adding activity in RPI Orders on its platform. It is reasonable and equitable to address this need by updating the requirement for a member to increase its average daily volume of liquidity provided in RPI Orders at least 10% relative to the month of April 2023, instead of March 2023, as an incentive for members to increase their liquidity activity in RPI Orders on the Exchange relative to a more current reference month. If the proposal is effective in achieving this purpose, then the quality of the Exchange's market will improve, particularly with respect to RPI and Retail Orders to the benefit of all participants, especially those who submit RPI and Retail Orders.

The Exchange's proposal to sunset the \$0.0020 fee at the end of October 2023 is also reasonable because the Exchange is updating the reference month in the qualifying criteria as discussed above and the Exchange believes that despite only offering this fee for a limited time, the incentive may continue to encourage members to earn lower fees by increasing liquidity providing activity in RPI Orders on the Exchange.

The Exchange believes that the proposal is not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries – from co-branded credit cards to grocery stores to cellular telephone data plans – that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

The Exchange intends for its proposal to improve market quality for all members that submit RPI and Retail Orders on the Exchange and by extension attract more liquidity to the market, improving market wide quality and price discovery. Although net adders of liquidity for RPI Orders will benefit most from the proposal, this result is fair insofar as increased liquidity adding activity in RPI Orders will help to improve market quality and the attractiveness of the Exchange to all existing and prospective retail participants. The Exchange's proposal to sunset the \$0.0020 fee incentive at the end of

October 2023 is equitable and not unfairly discriminatory because the fee will be available to all members during the month it is offered.

Any participant that is dissatisfied with the proposal is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

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.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage. As described above, the proposal modifies the qualification requirements for the \$0.0018 per share executed fee and the \$0.0020 per share executed fee for RPI Orders and revises the sunset date for the \$0.0020 per share executed fee. Members may modify their businesses so that they can meet the required threshold and pay lower charges. As noted above, all members of the Exchange will benefit from any increase in market activity that the proposal effectuates. The Exchange's proposal to sunset the fee at the end of October does not impose an undue burden on competition because any member can qualify for the fee during the month it is offered. Moreover, members are free to trade on other venues to the extent they believe that the fees assessed, and credits provided, are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes.

Intermarket Competition

The Exchange believes that its proposed modifications to its schedule of fees will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from the other live exchanges and from off-exchange venues, which include alternative trading systems that trade national market system stock. 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 and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to 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.

The proposed change is reflective of this competition because, as a threshold issue, the Exchange is a relatively small market so its ability to burden intermarket competition is limited. In this regard, even the largest U.S. equities exchange by volume has less than 20% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow

of order flow to and among off-exchange venues which comprises more than 40% of industry volume.

In sum, the Exchange intends for the proposed changes to its fees to increase member incentives to engage in the addition of liquidity on the Exchange. If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁰

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.

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-BX-2023-024 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-2023-024. 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 (<https://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 the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-BX-2023-024 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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

Sherry R. Haywood,

Assistant Secretary.

¹¹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Deleted text is [bracketed]. New text is underlined.

NASDAQ BX, INC. RULES

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Equity Rules

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Equity 7 Pricing Schedule

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Section 118. Nasdaq BX Equities System Order Execution and Routing

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(e) Retail Price Improvement Program Pricing for Retail Orders and Retail Price Improvement Orders

Notwithstanding the foregoing, the following fees and credits shall apply to execution of Retail Orders and Retail Price Improvement Orders under Rule 4780:

Charge for Retail Price Improvement Order that provides liquidity for accepted Retail Orders greater than or equal to \$10,000 \$0.0003 per share executed

Charge for Retail Price Improvement Order entered by a member that provides liquidity through Retail Price Improvement Orders equal to or exceeding [an average daily volume of 2,500,000 shares]0.02% of total Consolidated Volume during a month: \$0.0018 per share executed

The following fee is applicable through [September 30]October 31, 2023.

Charge for Retail Price Improvement Order entered by a member that (i) quotes Retail Price Improvement Orders in at \$0.0020 per share executed

least 1,200 symbols on average per day;
(ii) provides liquidity through Retail Price Improvement Orders equal to or exceeding [an average daily volume of 1,000,000 shares]0.01% of total Consolidated Volume; and (iii) increases its average daily volume of liquidity provided in Retail Price Improvement Orders at least 10% relative to the month of [March]April 2023:

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