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 2024 - * 054
Amendment No. (req. for Amendments *)

Filing by NASDAQ BX, Inc.

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

Initial * ☑ Amendment * ☐ Withdrawal ☐

Section 19(b)(2) * ☐ Section 19(b)(3)(A) * ☑ Section 19(b)(3)(B) * ☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☑ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐ Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

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

A proposal to amend its Pricing Schedule at Options 7, Section 5, Options Regulatory Fee.

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 duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 12/09/2024

By John Zecca
(Name *)

(Title *) EVP & 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.

John A. Zecca Date: 2024.12.09 16:32:08 -05'00'

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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-2024-054 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-2024-054 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-2024-054.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 its Pricing Schedule at Options 7, Section 5, Options Regulatory Fee.[3]

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments to be operative on January 1, 2025.

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

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

2 17 CFR 240.19b-4.

3 On October 31, 2024, SR-BX-2024-040 was filed to amend ORF. On December 9, 2024, SR-BX-2024-040 was withdrawn and this rule change was filed. The current proposal amends the ORF Rate for Local Customer "C" Origin Code transactions executed on BX, Local Firm "F" Origin Code transactions executed on BX, and Away ORF Rate Firm "F" Origin Code multi-list transactions executed on non-BX exchanges.

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

a. Purpose

BX proposes to amend its current ORF in several respects. BX proposes to amend its methodology of collection to: (1) exclude options transactions in proprietary products; and (2) assess ORF in all clearing ranges except market makers who clear as "M" at The Options Clearing Corporation ("OCC"). Additionally, BX will assess a different rate for trades executed on BX ("Local ORF Rate") and trades executed on non-BX exchanges ("Away ORF Rate").

Background on Current ORF

Today, BX assesses its ORF for each Customer[4] option transaction that is either: (1) executed by a Participant[5] on BX; or (2) cleared by a BX Participant at OCC in the Customer range,[6] even if the transaction was executed by a non-member of BX, regardless of the exchange on which the transaction occurs.[7] If the OCC clearing member is a BX Participant, ORF is assessed and collected on all ultimately cleared Customer contracts (after adjustment for CMTA[8]); and (2) if the OCC clearing member is not a BX Participant, ORF is collected only on the cleared Customer contracts

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4 Today, ORF is collected from Customers, Professionals and broker-dealers that are not affiliated with a clearing member that clear in the "C" range at OCC. See supra notes 13 and 14 for descriptions of Customers and Professionals.

5 The term "Options Participant" or "Participant" mean a firm, or organization that is registered with the Exchange pursuant to Options 2A of these Rules for purposes of participating in options trading on BX Options as a "BX Options Order Entry Firm" or "BX Options Market Maker." See Options 1, Section 1(a)(40).

6 Participants must record the appropriate account origin code on all orders at the time of entry of the order. The Exchange represents that it has surveillances in place to verify that Participants mark orders with the correct account origin code.

7 The Exchange uses reports from OCC when assessing and collecting the ORF.

8 CMTA or Clearing Member Trade Assignment is a form of "give-up" whereby the position will be assigned to a specific clearing firm at OCC.

executed at BX, taking into account any CMTA instructions which may result in collecting the ORF from a non-member.[9] The current BX ORF is $0.0005 per contract side.

Today, in the case where a Participant both executes a transaction and clears the transaction, the ORF will be assessed to and collected from that Participant. Today, in the case where a Participant executes a transaction and a different Participant clears the transaction, the ORF will be assessed to and collected from the Participant who clears the transaction and not the Participant who executes the transaction. Today, in the case where a non-member executes a transaction at an away market and a Participant clears the transaction, the ORF will be assessed to and collected from the Participant who clears the transaction. Today, in the case where a Participant executes a transaction on BX and a non-member clears the transaction, the ORF will be assessed to the Participant that executed the transaction on BX and collected from the non-member who cleared the transaction. Today, in the case where a Participant executes a transaction at an away market and a non-member ultimately clears the transaction, the ORF will not be assessed to the Participant who executed the transaction or collected from the non-member who cleared the transaction because the Exchange does not have access to the data to make absolutely certain that ORF should apply. Further, the data does not allow the Exchange to identify the Participant executing the trade at an away market.

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[9] By way of example, if Broker A, a BX Participant, routes a Customer order to CBOE and the transaction executes on CBOE and clears in Broker A's OCC Clearing account, ORF will be collected by BX from Broker A's clearing account at OCC via direct debit. While this transaction was executed on a market other than BX, it was cleared by a BX Participant in the member's OCC clearing account in the Customer range, therefore there is a regulatory nexus between BX and the transaction. If Broker A was not a BX Participant, then no ORF should be assessed and collected because there is no nexus; the transaction did not execute on BX nor was it cleared by a BX Participant.

ORF Revenue and Monitoring of ORF

Today, the Exchange monitors the amount of revenue collected from the ORF ("ORF Regulatory Revenue") to ensure that it, in combination with other regulatory fees and fines, does not exceed Options Regulatory Costs.[10] In determining whether an expense is considered an Options Regulatory Cost, the Exchange reviews all costs and makes determinations if there is a nexus between the expense and a regulatory function. The Exchange notes that fines collected by the Exchange in connection with a disciplinary matter offset Options Regulatory Cost.

ORF Regulatory Revenue, when combined with all of the Exchange's other regulatory fees and fines, is designed to recover a material portion of the Options Regulatory Costs to the Exchange of the supervision and regulation of member Customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. Options Regulatory Costs include direct regulatory expenses and certain indirect expenses in support of the regulatory function. The direct expenses include in-house and third-party service provider costs to support the day-to-day regulatory work such as surveillances, investigations, and examinations. The indirect expenses are only those expenses that are in support of the regulatory functions, such areas include Office of the General Counsel, technology, finance, and internal audit.

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[10] The regulatory costs for options comprise a subset of the Exchange's regulatory budget that is specifically related to options regulatory expenses and encompasses the cost to regulate all Participants' options activity ("Options Regulatory Cost").

Indirect expenses will not exceed 35% of the total Options Regulatory Costs. Thus, direct expenses would be 65% of total Options Regulatory Costs for 2024.[11]

The ORF is designed to recover a material portion of the Options Regulatory Costs to the Exchange of the supervision and regulation of its Participants, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities.

Proposal for January 1, 2025

BX has been reviewing it methodologies for the assessment and collection of ORF. As a result of this review, BX proposes to revamp the current process of assessing and collecting ORF in various ways. Below BX will explain the modelling it performed and the outcomes of the modelling which have led the Exchange to propose the below changes.

Effective January 1, 2025, BX proposes to assess ORF to each BX Participant for multi-listed options transactions, excluding options transactions in proprietary products,[12] cleared by OCC in all clearing ranges except market makers who clear as "M" at OCC ("Market Makers")[13] where: (1) the execution occurs on BX or (2) the execution occurs on another exchange and is cleared by a BX Participant. With this change, BX proposes

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11 Direct and indirect expenses are based on the Exchange's 2024 Regulatory Budget.

12 Proprietary products are products with intellectual property rights that are not multi-listed. BX has no proprietary products.

13 Capacity "M" covers Market Makers registered on BX and market makers registered at non-BX exchanges.

to amend its current ORF to assess ORF on Customer,[14] Professional,[15] Firm[16] and Broker-Dealer[17] transactions. All market participants, except Market Makers, would be subject to ORF.

The ORF would be collected by OCC on behalf of BX from (1) BX clearing members for all Customer, Professional, Firm and Broker-Dealer transactions they clear or (2) non-members for all Customer, Professional, Firm and Broker-Dealer transactions they clear that were executed on BX. This model collects ORF where there is a nexus with BX and does not collect ORF from a non-member where the transaction takes place away from the Exchange.

Further, effective January 1, 2025, the Exchange proposes to establish a different ORF for trades executed on BX ("Local ORF Rate") and trades executed on non-BX exchanges ("Away ORF Rate") by market participants. For Customer, Professional, and broker-dealer (not affiliated with a clearing member) transactions that clear in the "C" range at OCC (collectively "Customers") the Exchange proposes to assess a Local ORF Rate of $0.0203 per contract and an Away ORF Rate of $0.00 per contract. For Firm and Broker-Dealer transactions that clear in the "F" range at OCC (collectively "Firm and

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14 The term "Customer" or ("C") applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in Options 1, Section 1(a)(48)). See Options 7, Section 1(a).

15 The term "Professional" or ("P") means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Options 1, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants. See Options 7, Section 1(a).

16 The term "Firm" or ("F") applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC. See Options 7, Section 1(A).

17 The term "Broker-Dealer" or ("B") applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category. See Options 7, Section 1(a). A Broker-Dealer clears in the "F" range at OCC.

Broker-Dealer Transactions") the Exchange proposes to assess a Local ORF Rate of $0.00024 per contract and an Away ORF Rate of $0.00024 per contract. The combined amount of Local ORF and Away ORF collected may not exceed 88% of Options Regulatory Cost. BX will ensure that ORF Regulatory Revenue does not exceed Options Regulatory Cost. As is the case today, the Exchange will notify Participants via an Options Trader Alert of these changes at least 30 calendar days prior to January 1, 2025.

The Exchange utilized historical and current data from its affiliated options exchanges to create a new regression model that would tie expenses attributable to regulation to a respective source.[18] To that end, the Exchange plotted Customer volumes from each exchange[19] against Options Regulatory Cost from each exchange for the Time Period. Specifically, the Exchange utilized standard charting functionality to create a linear regression. The charting functionality yields a "slope" of the line, representing the marginal cost of regulation, as well as an "intercept," representing the fixed cost of regulation.[20] The Exchange considered using non-linear models, but concluded that the best R^2 ("R-Squared")[21] results came from a standard y = Mx +B format for regulatory expense. The R-Squared for the below charting method ranged from 85% to 95% historically. As noted, the plots below represent the Time Period. The X-axis reflects Customer volumes by exchange, by quarter and the Y-axis reflects regulatory expense by

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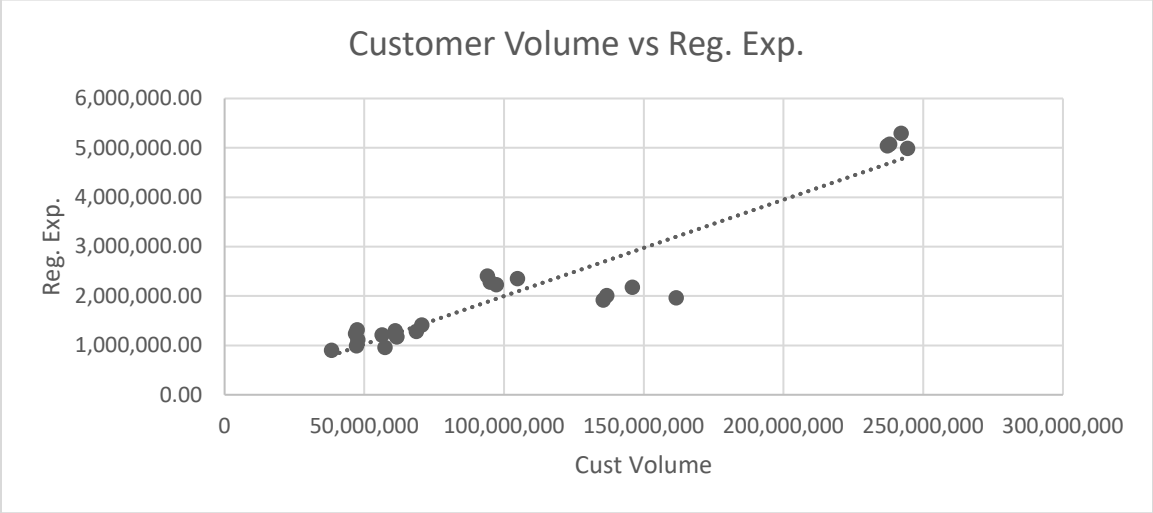
18 This new model seeks to provide a new approach to attributing Options Regulatory Cost to Options Regulatory Expense. In creating this model, the exchange did not rely on data from a single SRO as it had in the past.

19 The Exchange utilized data from all Nasdaq affiliated options exchanges to create this model from 2023 Q3 through 2024 Q2 ("Time Period").

20 The Exchange utilized data from 2023 Q1 to 2024 Q3 to calculate the slope and intercept.

21 R-Squared is a statistical measure that indicates how much of the variation of a dependent variable is explained by an independent variable in a regression model. The formula for calculating R-squared is: R2=1−Unexplained Variation/Total Variation.

exchange.



The results of this modelling indicated a high correlation and intercept for the baseline cost of regulating the options market as a whole. Specifically, the regression model indicated that (1) the marginal cost of regulation is easily measurable, and significantly attributable to Customer activity; and (2) the fixed cost of setting up a regulatory regime should arguably be dispersed across the industry so that all options exchanges have substantially similar revenue streams to satisfy the "intercept" element of cost. When seeking to offset the "set-up" cost of regulation, the Exchange attempted several levels of attribution. The most successful attribution was related to industry wide Firm and Broker-Dealer Transaction volume. Of note, through analysis of the results of this regression model, there was no positive correlation that could be established between Customer away volume and regulatory expense. This led the Exchange to utilize a model with a two-factor regression on a quarterly basis for the last four quarters of volumes relative to the pool of expense data for the six Nasdaq affiliated options exchanges. Once again, standard spreadsheet functionality (including the Data Analysis Packet) was used to determine the mathematics for this model. The results of this two-factor model, which

resulted in the attribution of Customer Local ORF and Firm and Broker-Dealer Transaction Local and Away ORF, typically increased the R-Squared (goodness of fit) to >97% across multiple historical periods.[22]

Utilizing the new regression model, and assumptions in the proposal, the model demonstrates that Customer volumes are directly attributable to marginal cost, and also shows that Firm and Broker-Dealer Transaction volumes industry-wide are a valid method (given the goodness of fit) to offset the fixed cost of regulation. Applying the regression coefficient values historically, the Exchange established a "normalization" by per options exchange. This "normalization" encompassed idiosyncratic exchange expense-volume relationships which served to tighten the attributions further while not deviating by more than 30% from the mean for any single options exchange in the model. The primary driver of this need for "normalization" are negotiated regulatory contracts that were negotiated at different points in time, yielding some differences in per contract regulatory costs by exchange. Normalization is therefore the average of a given exchange's historical (prior 4 quarters) ratio of regulatory expense to revenue when using the regressed values (for Customer Local ORF and Firm and Broker-Dealer Transaction Local and Away ORF) that yields an effective rate by exchange. The "normalization" was then multiplied to a "targeted collection rate" of approximately 88% to arrive at ORF rates for Customer, Firm and Broker-Dealer Transactions. Of note, when comparing the ORF rates generated from this method, historically, there appears to be a very tight relationship between the estimated modeled collection and actual expense and the

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22 The Exchange notes that various exchanges negotiate their respective contracts independently with FINRA creating some variability. Additionally, an exchange with a floor component would create some variability.

regulatory expenses for that same period. In summary, the model does not appear to increase marginal returns.

One other important aspect of this modeling is the input of Options Regulatory Costs. The Exchange notes that in defining Options Regulatory Costs it accounts for the nexus between the expense and options regulation. By way of example, the Exchange excludes certain indirect expenses such as payroll expenses, accounts receivable, accounts payable, marketing, executive level expenses and corporate systems.

The Exchange would continue to monitor the amount of Options Regulatory Revenue collected from the ORF to ensure that it, in combination with other regulatory fees and fines, does not exceed Options Regulatory Costs. In determining whether an expense is considered an Options Regulatory Cost, the Exchange would continue to review all costs and makes determinations if there is a nexus between the expense and a regulatory function. The Exchange notes that fines collected by the Exchange in connection with a disciplinary matter will continue to offset Options Regulatory Cost. Participants will continue to be provided with 30 calendar day notice of any change to ORF.

As is the case today, ORF Regulatory Revenue, when combined with all of the Exchange's other regulatory fees and fines, is designed to recover a material portion of the Options Regulatory Costs to the Exchange for the supervision and regulation of Participants' transactions, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. As discussed above, Options Regulatory Costs include direct

regulatory expenses[23] and certain indirect expenses in support of the regulatory function.[24]

Finally, the Exchange notes that this proposal will be sunset on July 1, 2025, at which point the Exchange would revert back to the ORF methodology and rate ($0.0005 per contract side) that was in effect prior to this rule change.[25]

b. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[26] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act[27], which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its members, and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[28] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Proposal for January 1, 2025

The Exchange believes the proposed ORF to be assessed on January 1, 2025, is

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23 The direct expenses include in-house and third-party service provider costs to support the day-to-day regulatory work such as surveillances, investigations, and examinations.

24 The indirect expenses include support from such areas as Office of the General Counsel, technology, finance, and internal audit.

25 The Exchange proposes to reconsider the sunset date in 2025 and determine whether to proceed with the proposed ORF structure at that time.

26 15 U.S.C. 78f(b).

27 15 U.S.C. 78f(b)(4).

28 15 U.S.C. 78f(b)(5).

reasonable, equitable and not unfairly discriminatory for various reasons. First, as of January 1, 2025, the Exchange would expand the collection of ORF to all clearing ranges, except Market Makers, provided the transaction was executed by an BX Participant or cleared by an BX Participant. With this amendment, BX would begin to assess Firm and Broker-Dealer Transactions an ORF, provided the transactions were executed by a BX Participant or cleared by a BX Participant, except transactions in proprietary products. Second, as of January 1, 2025, the Exchange would assess different rates to Customer transactions for the Local ORF Rate and Away ORF Rate as compared to Firms and Broker-Dealer Transactions. Third, as of January 1, 2025, the combined amount of Local ORF and Away ORF collected would not exceed 88% of Options Regulatory Cost as all Participants, except Market Makers, would be assessed ORF.

The Exchange believes that assessing all Participants, except Market Makers, an ORF is reasonable, equitable and not unfairly discriminatory. While the Exchange acknowledges that there is a cost to regulate Market Makers, unlike other market participants, Market Makers have various regulatory requirements with respect to quoting as provided for in Options 2, Section 4. Specifically, Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. Lead Market Makers are obligated to quote intra-day.[29] Additionally, Market Makers are required to quote intra-day.[30] Further, unlike other market participants, Lead Market Makers and Market Makers have obligations to compete with other Market Makers to improve the market in all series of options classes to which the

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29 See BX Options 2, Section 4(j).

30 See BX Options 2, Section 5(d).

Market Maker is appointed and to update market quotations in response to changed market conditions in all series of options classes to which the Market Maker is appointed.[31] Lead Market Makers and Market Makers are critical market participants in that they are the only market participants that are required to provide liquidity to BX and are necessary for opening the market. Excluding Market Maker transactions from ORF allows these market participants to manage their costs and consequently their business model more effectively thus enabling them to better allocate resources to other technologies that are necessary to manage risk and capacity to ensure that these market participants continue to compete effectively on BX in providing tight displayed quotes which in turn benefits markets generally and market participants specifically. Finally, the Exchange notes that Market Makers may transact orders in addition to submitting quotes on the Exchange. This proposal would except orders submitted by Market Makers, in addition to quotes, for purposes of ORF. Market Makers utilize orders in their assigned options series to sweep the order book. The Exchange believes the quantity of orders utilized by Market Makers in their assigned series is de minimis. In their unassigned options series, Market Makers utilize orders to hedge their risk or respond to auction. The Exchange notes that the number of orders submitted by Market Makers in their unassigned options series are far below the cap[32] and therefore de minimis.

The Exchange believes excluding options transactions in proprietary products is reasonable, equitable and not unfairly discriminatory because BX does not list any

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31 See BX Options 2, Section 4(a)(3) and (5).

32 See BX Options 2, Section 6(b). The total number of contracts executed by a Market Maker in options in which it is not registered as a Market Maker shall not exceed 25 percent of the total number of all contracts executed by the Market Maker in any calendar quarter.

proprietary products. The Exchange believes that only exchanges that list proprietary products should be able to collect a Local ORF for those products. BX notes that there are a small number of proprietary products transacted as compared to multi-list options. BX's focus is on surveillance related to multi-listed options. Should BX list a proprietary product in the future, BX would amend its ORF to collect a Local ORF on that proprietary product.

The Exchange believes that assessing different rates to Customer transactions for the Local ORF Rate and Away ORF Rate as compared to Firm and Broker-Dealer Transactions and collecting no more than 88% of Options Regulatory Cost is reasonable, equitable and not unfairly discriminatory. Customer transactions account for a material portion of BX's Options Regulatory Cost.[33] Customer transactions in combination with Firm and Broker-Dealer Transactions account for a large portion of the Exchange's surveillance expense. Therefore, the Exchange believes that 88% of Options Regulatory Cost is appropriate and correlates to the degree of regulatory responsibility and Options Regulatory Cost borne by the Exchange. With respect to Customer transactions, options volume continues to surpass volume from other options participants. Additionally, there are rules in the Exchange's Rulebook that deal exclusively with Customer transactions, such as rules involving doing business with a Customer, which would not apply to Firm

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[33] The Exchange notes that the regulatory costs relating to monitoring Participants with respect to Customer trading activity are generally higher than the regulatory costs associated with Participants that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating Participants that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the Participant's relationship with its Customers via more labor-intensive exam-based programs. As a result, the costs associated with administering the Customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-Customer component of the regulatory program.

and Broker-Dealer Transactions.[34] For these reasons, regulating Customer trading activity is "much more labor-intensive" and therefore, more costly. The Exchange believes that a large portion of the Options Regulatory Cost relates to Customer allocation because obtaining Customer information may be more time intensive. For example, non-Customer market participants are subject to various regulatory and reporting requirements which provides the Exchange certain data with respect to these market participants. In contrast, Customer information is known by Participants of the Exchange and is not readily available to BX.[35] The Exchange may have to take additional steps to understand the facts surrounding particular trades involving a Customer which may require requesting such information from a broker-dealer. Further, Customers require more Exchange regulatory services based on the amount of options business they conduct. For example, there are Options Regulatory Costs associated with main office and branch office examinations (e.g., staff expenses), as well as investigations into Customer complaints and the terminations of registered persons. As a result, the Options Regulatory Costs associated with administering the Customer component of the Exchange's overall regulatory program are materially higher than the Options Regulatory Costs associated with administering the non-Customer component when coupled with the amount of volume attributed to such Customer transactions. Utilizing the new regression model, and assumptions in the proposal, it appears that BX's Customer regulation occurs to a large extent on Exchange. Utilizing the new regression model, and assumptions in the proposal, the Exchange does not believe that significant

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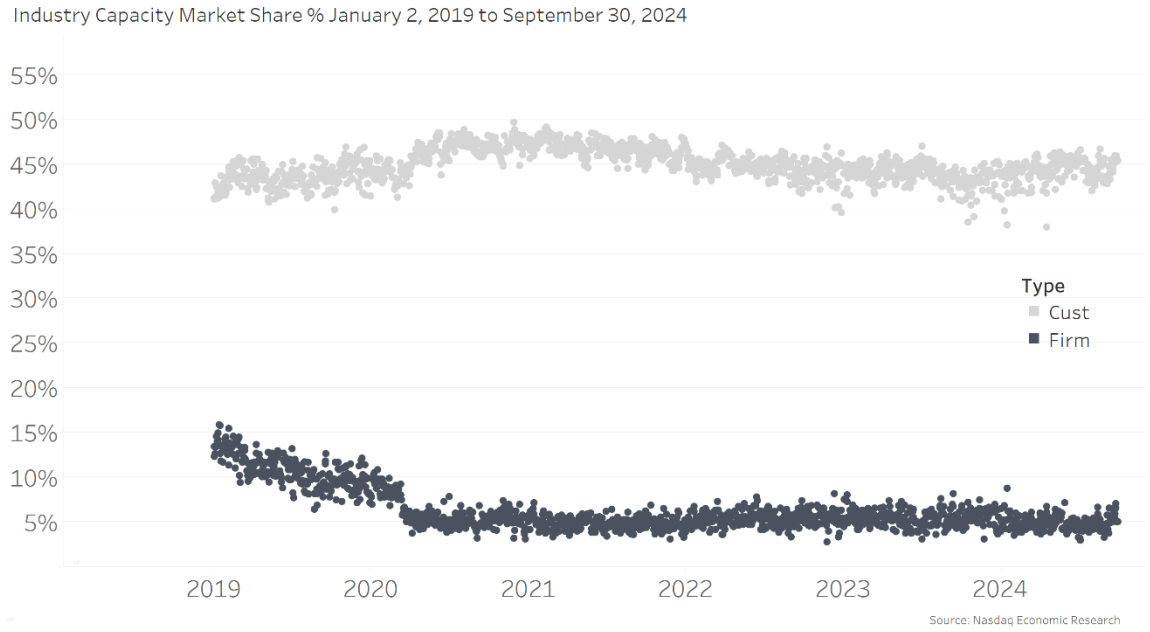
34 See BX Options 10 Rules.

35 The Know Your Customer or "KYC" provision is the obligation of the broker-dealer.

Options Regulatory Costs should be attributed to Customers for activity that may occur across options markets. To that end, with this proposal, the Exchange would assess Customers a Local ORF, but not an Away ORF rate.

In contrast, the Options Regulatory Cost of regulating Firm and Broker-Dealer Transactions is materially less than the Options Regulatory Costs of regulating Customer transactions, as explained above. The below chart derived from OCC data reflects the percentage of transactions by market participant.



With this model, the addition of Firm and Broker-Dealer Transactions to the collection of ORF does not entail significant volume when compared to Customer transactions. As these market participants are more sophisticated, the Exchange notes that there are not the same protections in place for Firm and Broker-Dealer Transactions as compared to Customer transactions. Therefore, with the proposed model, the regulation of Firm and Broker-Dealer Transactions is less resource intensive than the regulation of Customer

transactions. However, the Exchange notes that it appears from the new regression model and assumptions in the proposal, that unlike Customer transactions, the regulation of Firm and Broker-Dealer Transactions occurs both on the Exchange and across options markets. To that end, the Exchange proposes to assess Firm and Broker-Dealer Transactions both a Local ORF and an Away ORF in contrast to Customer transactions that would only be assessed a Local ORF. The Exchange believes that not assessing Market Maker transactions an ORF permits these market participants to utilize their resources to quote tighter in the market. Tighter quotes benefits Customers as well as other market participants who interact with that liquidity.

The Exchange's proposal to establish both a Local ORF Rate and an Away ORF Rate and allocate the portion of Options Regulatory Cost differently between the two separate rates, by market participant, ensures that the Local ORF Rate and Away ORF Rate reflect the amount of Options Regulatory Costs associated with different types of surveillances and are reasonable, equitable and not unfairly discriminatory. The Exchange is responsible for regulating activity on its market as well as activity that may occur across options markets. The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess only Firm and Broker-Dealer Transactions an Away ORF. With this model, while the regulation of Firm and Broker-Dealer Transactions is less resource intensive than the regulation of Customer transactions, it occurs both on the Exchange and across options markets.[36] The Exchange believes that assessing the Firm

[36] BX pays the Financial Industry Regulatory Authority ("FINRA") to perform certain cross-market surveillances on its behalf. In order to perform cross-market surveillances, Consolidated Audit Trail ("CAT") data is utilized to match options transactions to underlying equity transactions. This review is data intensive given the volumes of information that are being reviewed and analyzed.

and Broker-Dealer Transactions the same rate for Local ORF and Away ORF is appropriate given the lower volume that is attributed to these Participants combined with the activity that is required to be regulated both on the Exchange and across options markets. The Exchange notes that there are Exchange rules that involve cross market surveillances that relate to activities conducted by Firm and Broker-Dealer Participants.[37] While not large in number, when compared to the overall number of Exchange rules that are surveilled by BX for on-Exchange activity, the Away ORF that would be assessed to Firm and Broker-Dealer regulation would account for those costs. Additionally, the Exchange believes that limiting the amount of ORF assessed for activity that occurs on non-BX exchanges avoids overlapping ORFs that would otherwise be assessed by BX and other options exchanges that also assess an ORF. Also, the Exchange's proposal continues to ensure that Options Regulatory Revenue, in combination with other regulatory fees and fines, does not exceed Options Regulatory Costs. Fines collected by the Exchange in connection with a disciplinary matter will continue to offset Options Regulatory Cost.

Capping the combined amount of Local ORF and Away ORF collected at 88% of Options Regulatory Cost commencing January 1, 2025, is reasonable, equitable and not unfairly discriminatory as given these factors. The Exchange will review the ORF Regulatory Revenue at the end of January 2025 and would amend the ORF if it finds that its ORF Regulatory Revenue exceeds its projections.[38]

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37 BX conducts surveillances and enforces BX Rules, however only a subset of those rules is subject to cross-market surveillance, such as margin and position limits. Of note, some BX trading rules are automatically enforced by BX's System.

38 BX would submit a rule change to the Commission to amend ORF rates.

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 intra-market competition not necessary or appropriate in furtherance of the purposes of the Act.

The proposed changes to ORF do not impose an undue burden on inter-market competition because ORF is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange notes, however, the proposed change is not designed to address any competitive issues. The Exchange is obligated to ensure that the amount of ORF Regulatory Revenue, in combination with its other regulatory fees and fines, does not exceed ORF Regulatory Cost.

Proposal for January 1, 2025

Excluding Market Makers does not impose an undue burden on intra-market competition because, unlike other market participants, Market Makers have various regulatory requirements with respect to quoting as provided for in Options 2, Section 4. Specifically, Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. Lead Market Makers are obligated to quote intra-day.[39] Additionally, Market Makers are required to quote intra-day.[40] Further, unlike other market participants, Lead Market Makers and Market Makers have obligations to compete with other Market Makers to improve the market in all series of options classes to which the Market Maker is appointed and to update market quotations in response to changed market conditions in all series of options classes to

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[39] See BX Options 2, Section 4(j).

[40] See BX Options 2, Section 5(d).

which the Market Maker is appointed.[41] Lead Market Makers and Market Makers are critical market participants in that they are the only market participants that are required to provide liquidity to BX and are necessary for opening the market. Excluding Market Maker transactions from ORF does not impose an intra-market burden on competition, rather it allows these market participants to manage their costs and consequently their business model more effectively thus enabling them to better allocate resources to other technologies that are necessary to manage risk and capacity to ensure that these market participants continue to compete effectively on BX in providing tight displayed quotes which in turn benefits markets generally and market participants specifically. Finally, the Exchange notes that Market Makers may transact orders on the Exchange in addition to submitting quotes. The Exchange's proposal to except orders submitted by Market Makers, in addition to quotes, for purposes of ORF does not impose an undue burden on intra-market competition because Market Makers utilize orders in their assigned options series to sweep the order book. Further, the Exchange believes the quantity of orders utilized by Market Makers in their assigned series is de minimis. In their unassigned options series, Market Makers utilize orders to hedge their risk or respond to auction. The Exchange notes that the number of orders submitted by Market Makers in their unassigned options series are far below the cap[42] and therefore de minimis.

Uniformly excluding options transactions in proprietary products from ORF for all BX Participants does not impose an undue burden on intra-market competition. The

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41 See BX Options 2, Section 4(a)(3) and (5).

42 See BX Options 2, Section 6(b). The total number of contracts executed by a Market Maker in options in which it is not registered as a Market Maker shall not exceed 25 percent of the total number of all contracts executed by the Market Maker in any calendar quarter.

Exchange believes that only exchanges that list proprietary products should be able to collect a Local ORF for those products. There are a small number of proprietary products transacted as compared to multi-list options. Also, proprietary products are transacted on a limited number of options exchanges and would require a de minimis amount of cross market surveillance, for these reasons the Exchange believes that only a Local ORF should be applied to the extent that BX were to list a proprietary product. BX's focus is on surveillance related to multi-listed options. Should BX list a proprietary product in the future, BX would amend its ORF to collect a Local ORF on that proprietary product.

The Exchange's proposal to expand the clearing ranges to specifically include Firm and Broker-Dealer Transactions, in addition to Customer and Professional transactions, as of January 1, 2025, does not impose an undue burden on intra-market competition as Customer transactions account for a material portion of BX's Options Regulatory Cost.[43] Customer transactions in combination with Firm and Broker-Dealer Transactions account for a large portion of the Exchange's surveillance expense. With respect to Customer transactions, options volume continues to surpass volume from other options participants. Additionally, there are rules in the Exchange's Rulebook that deal exclusively with Customer transactions, such as rules involving doing business with a

[43] The Exchange notes that the regulatory costs relating to monitoring Participants with respect to Customer trading activity are generally higher than the regulatory costs associated with Participants that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating Participants that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the Participant's relationship with its Customers via more labor-intensive exam-based programs. As a result, the costs associated with administering the Customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-Customer component of the regulatory program.

Customer, which would not apply to Firm and Broker-Dealer Transactions.[44] For these reasons, regulating Customer trading activity is "much more labor-intensive" and therefore, more costly. Further, the Exchange believes that a large portion of the Options Regulatory Cost relates to Customer allocation because obtaining Customer information may be more time intensive. For example, non-Customer market participants are subject to various regulatory and reporting requirements which provides the Exchange certain data with respect to these market participants. In contrast, Customer information is known by Participants of the Exchange and is not readily available to BX.[45] The Exchange may have to take additional steps to understand the facts surrounding particular trades involving a Customer which may require requesting such information from a broker-dealer. Further, Customers require more Exchange regulatory services based on the amount of options business they conduct. For example, there are Options Regulatory Costs associated with main office and branch office examinations (e.g., staff expenses), as well as investigations into Customer complaints and the terminations of registered persons. As a result, the Options Regulatory Costs associated with administering the Customer component of the Exchange's overall regulatory program are materially higher than the Options Regulatory Costs associated with administering the non-Customer component when coupled with the amount of volume attributed to such Customer transactions. Not attributing significant Options Regulatory Costs to Customers for activity that may occur across options markets does not impose an undue burden on intra-

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44 See BX Options 10 Rules.

45 The Know Your Customer or "KYC" provision is the obligation of the broker-dealer.

market competition because the data in the regression model demonstrates that BX's Customer regulation occurs to a large extent on Exchange.

The Exchange believes that assessing Firm and Broker-Dealer Transactions a different ORF and assessing both a Local ORF and an Away ORF to these transactions does not impose an undue burden on intra-market competition because the regulation of Firm and Broker-Dealer Transactions is less resource intensive than the regulation of Customer transactions. With this model, the addition of Firm and Broker-Dealer Transactions to the collection of ORF does not entail significant volume when compared to Customer transactions. Unlike Customer transactions, the regulation of Firm and Broker-Dealer Transactions occurs both on the Exchange and across options markets. To that end, the Exchange proposes to assess Firm and Broker-Dealer Transactions both a Local ORF and an Away ORF.

The Exchange's proposal to allocate the portion of costs differently between the Local ORF and Away ORF does not create an undue burden on intra-market competition. The Exchange believes that each rate reflects the amount of Options Regulatory Costs associated with different types of surveillances and does not create an undue burden on competition as BX Participants, excluding except Market Makers, would be uniformly assessed either a Local ORF Rate or an Away ORF Rate depending on where the transaction occurred and whether the transaction was executed or cleared by an BX Participant. Also, the Exchange would uniformly assess the Local ORF Rate and an Away ORF Rate by market participant. The Exchange is responsible for regulating activity on its market as well as activity that may occur across options markets.

The Exchange believes that assessing only Firm and Broker-Dealer Transactions an Away ORF does not create an undue burden on intra-market competition because while the regulation of Firm and Broker-Dealer Transactions is less resource intensive than the regulation of Customer transactions, the regulation of Firm and Broker-Dealer Transactions occurs both on the Exchange and across options markets.[46] The Exchange believes that assessing Firm and Broker-Dealer Transactions the same rate for Local ORF and Away ORF is appropriate given the lower volume that is attributed to these Participants combined with the activity that is required to be regulated both on the Exchange and across options markets. There are Exchange rules that involve cross market surveillances that relate to activities conducted by Firm and Broker-Dealer Participants.[47] While not large in number, when compared to the overall number of Exchange rules that are surveilled by BX for on-Exchange activity, the Away ORF that would be assessed to Firm and Broker-Dealer Transactions would account for those Options Regulatory Costs. Additionally, the Exchange believes that limiting the amount of ORF assessed for activity that occurs on non-BX exchanges does not impose a burden on intra-market competition, rather it avoids overlapping ORFs that would otherwise be assessed by BX and other options exchanges that also assess an ORF. With this model, Customer transactions would be assessed a higher Local ORF, while not being assessed an Away ORF as compared to Firm and Broker-Dealer Transactions. The Exchange

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46 BX pays the Financial Industry Regulatory Authority ("FINRA") to perform certain cross-market surveillances on its behalf. In order to perform cross-market surveillances, Consolidated Audit Trail ("CAT") data is utilized to match options transactions to underlying equity transactions. This review is data intensive given the volumes of information that are being reviewed and analyzed.

47 BX conducts surveillances and enforces BX Rules, however only a subset of those rules is subject to cross-market surveillance, such as margin and position limits. Of note, some BX trading rules are automatically enforced by BX's System.

believes that this difference in allocation is appropriate and correlates to the degree of regulatory responsibility and Options Regulatory Costs borne by different Participants of the Exchange in light of the volume different Participants transact on the Exchange.

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,[48] 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.

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48 15 U.S.C. 78s(b)(3)(A)(ii).

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-2024-054)

December __, 2024

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

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 December 9, 2024, 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 5, Options Regulatory Fee.[3]

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments to be operative on January 1, 2025.

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

2 17 CFR 240.19b-4.

3 On October 31, 2024, SR-BX-2024-040 was filed to amend ORF. On December 9, 2024, SR-BX-2024-040 was withdrawn and this rule change was filed. The current proposal amends the ORF Rate for Local Customer "C" Origin Code transactions executed on BX, Local Firm "F" Origin Code transactions executed on BX, and Away ORF Rate Firm "F" Origin Code multi-list transactions executed on non-BX exchanges.

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.

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

1. Purpose

BX proposes to amend its current ORF in several respects. BX proposes to amend its methodology of collection to: (1) exclude options transactions in proprietary products; and (2) assess ORF in all clearing ranges except market makers who clear as "M" at The Options Clearing Corporation ("OCC"). Additionally, BX will assess a different rate for trades executed on BX ("Local ORF Rate") and trades executed on non-BX exchanges ("Away ORF Rate").

Background on Current ORF

Today, BX assesses its ORF for each Customer[4] option transaction that is either:

[4] Today, ORF is collected from Customers, Professionals and broker-dealers that are not affiliated with a clearing member that clear in the "C" range at OCC. See supra notes 13 and 14 for descriptions of Customers and Professionals.

(1) executed by a Participant[5] on BX; or (2) cleared by a BX Participant at OCC in the Customer range,[6] even if the transaction was executed by a non-member of BX, regardless of the exchange on which the transaction occurs.[7] If the OCC clearing member is a BX Participant, ORF is assessed and collected on all ultimately cleared Customer contracts (after adjustment for CMTA[8]); and (2) if the OCC clearing member is not a BX Participant, ORF is collected only on the cleared Customer contracts executed at BX, taking into account any CMTA instructions which may result in collecting the ORF from a non-member.[9] The current BX ORF is $0.0005 per contract side.

Today, in the case where a Participant both executes a transaction and clears the transaction, the ORF will be assessed to and collected from that Participant. Today, in the case where a Participant executes a transaction and a different Participant clears the transaction, the ORF will be assessed to and collected from the Participant who clears the transaction and not the Participant who executes the transaction. Today, in the case

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5 The term "Options Participant" or "Participant" mean a firm, or organization that is registered with the Exchange pursuant to Options 2A of these Rules for purposes of participating in options trading on BX Options as a "BX Options Order Entry Firm" or "BX Options Market Maker." See Options 1, Section 1(a)(40).

6 Participants must record the appropriate account origin code on all orders at the time of entry of the order. The Exchange represents that it has surveillances in place to verify that Participants mark orders with the correct account origin code.

7 The Exchange uses reports from OCC when assessing and collecting the ORF.

8 CMTA or Clearing Member Trade Assignment is a form of "give-up" whereby the position will be assigned to a specific clearing firm at OCC.

9 By way of example, if Broker A, a BX Participant, routes a Customer order to CBOE and the transaction executes on CBOE and clears in Broker A's OCC Clearing account, ORF will be collected by BX from Broker A's clearing account at OCC via direct debit. While this transaction was executed on a market other than BX, it was cleared by a BX Participant in the member's OCC clearing account in the Customer range, therefore there is a regulatory nexus between BX and the transaction. If Broker A was not a BX Participant, then no ORF should be assessed and collected because there is no nexus; the transaction did not execute on BX nor was it cleared by a BX Participant.

where a non-member executes a transaction at an away market and a Participant clears the transaction, the ORF will be assessed to and collected from the Participant who clears the transaction. Today, in the case where a Participant executes a transaction on BX and a non-member clears the transaction, the ORF will be assessed to the Participant that executed the transaction on BX and collected from the non-member who cleared the transaction. Today, in the case where a Participant executes a transaction at an away market and a non-member ultimately clears the transaction, the ORF will not be assessed to the Participant who executed the transaction or collected from the non-member who cleared the transaction because the Exchange does not have access to the data to make absolutely certain that ORF should apply. Further, the data does not allow the Exchange to identify the Participant executing the trade at an away market.

ORF Revenue and Monitoring of ORF

Today, the Exchange monitors the amount of revenue collected from the ORF ("ORF Regulatory Revenue") to ensure that it, in combination with other regulatory fees and fines, does not exceed Options Regulatory Costs.[10] In determining whether an expense is considered an Options Regulatory Cost, the Exchange reviews all costs and makes determinations if there is a nexus between the expense and a regulatory function. The Exchange notes that fines collected by the Exchange in connection with a disciplinary matter offset Options Regulatory Cost.

ORF Regulatory Revenue, when combined with all of the Exchange's other regulatory fees and fines, is designed to recover a material portion of the Options

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[10] The regulatory costs for options comprise a subset of the Exchange's regulatory budget that is specifically related to options regulatory expenses and encompasses the cost to regulate all Participants' options activity ("Options Regulatory Cost").

Regulatory Costs to the Exchange of the supervision and regulation of member Customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. Options Regulatory Costs include direct regulatory expenses and certain indirect expenses in support of the regulatory function. The direct expenses include in-house and third-party service provider costs to support the day-to-day regulatory work such as surveillances, investigations, and examinations. The indirect expenses are only those expenses that are in support of the regulatory functions, such areas include Office of the General Counsel, technology, finance, and internal audit. Indirect expenses will not exceed 35% of the total Options Regulatory Costs. Thus, direct expenses would be 65% of total Options Regulatory Costs for 2024.[11]

The ORF is designed to recover a material portion of the Options Regulatory Costs to the Exchange of the supervision and regulation of its Participants, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities.

Proposal for January 1, 2025

BX has been reviewing it methodologies for the assessment and collection of ORF. As a result of this review, BX proposes to revamp the current process of assessing and collecting ORF in various ways. Below BX will explain the modelling it performed and the outcomes of the modelling which have led the Exchange to propose the below changes.

Effective January 1, 2025, BX proposes to assess ORF to each BX Participant for

[11] Direct and indirect expenses are based on the Exchange's 2024 Regulatory Budget.

multi-listed options transactions, excluding options transactions in proprietary products,[12] cleared by OCC in all clearing ranges except market makers who clear as "M" at OCC ("Market Makers")[13] where: (1) the execution occurs on BX or (2) the execution occurs on another exchange and is cleared by a BX Participant. With this change, BX proposes to amend its current ORF to assess ORF on Customer,[14] Professional,[15] Firm[16] and Broker-Dealer[17] transactions. All market participants, except Market Makers, would be subject to ORF.

The ORF would be collected by OCC on behalf of BX from (1) BX clearing members for all Customer, Professional, Firm and Broker-Dealer transactions they clear or (2) non-members for all Customer, Professional, Firm and Broker-Dealer transactions they clear that were executed on BX. This model collects ORF where there is a nexus with BX and does not collect ORF from a non-member where the transaction takes place away from the Exchange.

Further, effective January 1, 2025, the Exchange proposes to establish a different

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12 Proprietary products are products with intellectual property rights that are not multi-listed. BX has no proprietary products.

13 Capacity "M" covers Market Makers registered on BX and market makers registered at non-BX exchanges.

14 The term "Customer" or ("C") applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in Options 1, Section 1(a)(48)). See Options 7, Section 1(a).

15 The term "Professional" or ("P") means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Options 1, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants. See Options 7, Section 1(a).

16 The term "Firm" or ("F") applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC. See Options 7, Section 1(A).

17 The term "Broker-Dealer" or ("B") applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category. See Options 7, Section 1(a). A Broker-Dealer clears in the "F" range at OCC.

ORF for trades executed on BX ("Local ORF Rate") and trades executed on non-BX exchanges ("Away ORF Rate") by market participants. For Customer, Professional, and broker-dealer (not affiliated with a clearing member) transactions that clear in the "C" range at OCC (collectively "Customers") the Exchange proposes to assess a Local ORF Rate of $0.0203 per contract and an Away ORF Rate of $0.00 per contract. For Firm and Broker-Dealer transactions that clear in the "F" range at OCC (collectively "Firm and Broker-Dealer Transactions") the Exchange proposes to assess a Local ORF Rate of $0.00024 per contract and an Away ORF Rate of $0.00024 per contract. The combined amount of Local ORF and Away ORF collected may not exceed 88% of Options Regulatory Cost. BX will ensure that ORF Regulatory Revenue does not exceed Options Regulatory Cost. As is the case today, the Exchange will notify Participants via an Options Trader Alert of these changes at least 30 calendar days prior to January 1, 2025.

The Exchange utilized historical and current data from its affiliated options exchanges to create a new regression model that would tie expenses attributable to regulation to a respective source.[18] To that end, the Exchange plotted Customer volumes from each exchange[19] against Options Regulatory Cost from each exchange for the Time Period. Specifically, the Exchange utilized standard charting functionality to create a linear regression. The charting functionality yields a "slope" of the line, representing the marginal cost of regulation, as well as an "intercept," representing the fixed cost of

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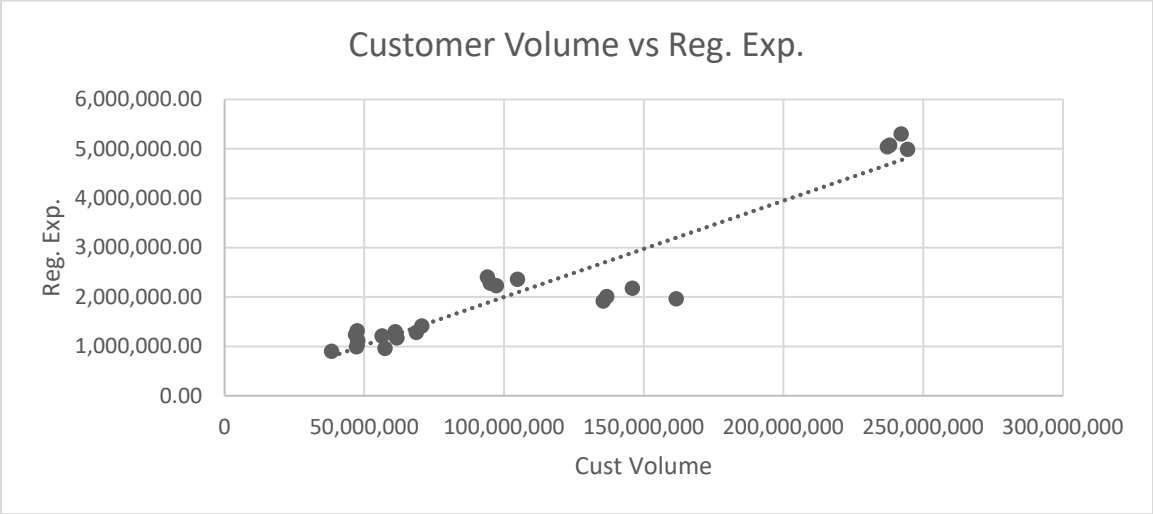
18 This new model seeks to provide a new approach to attributing Options Regulatory Cost to Options Regulatory Expense. In creating this model, the exchange did not rely on data from a single SRO as it had in the past.

19 The Exchange utilized data from all Nasdaq affiliated options exchanges to create this model from 2023 Q3 through 2024 Q2 ("Time Period").

regulation.[20] The Exchange considered using non-linear models, but concluded that the best R^2 ("R-Squared")[21] results came from a standard y = Mx +B format for regulatory expense. The R-Squared for the below charting method ranged from 85% to 95% historically. As noted, the plots below represent the Time Period. The X-axis reflects Customer volumes by exchange, by quarter and the Y-axis reflects regulatory expense by exchange.



The results of this modelling indicated a high correlation and intercept for the baseline cost of regulating the options market as a whole. Specifically, the regression model indicated that (1) the marginal cost of regulation is easily measurable, and significantly attributable to Customer activity; and (2) the fixed cost of setting up a regulatory regime should arguably be dispersed across the industry so that all options exchanges have substantially similar revenue streams to satisfy the "intercept" element of

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20 The Exchange utilized data from 2023 Q1 to 2024 Q3 to calculate the slope and intercept.

21 R-Squared is a statistical measure that indicates how much of the variation of a dependent variable is explained by an independent variable in a regression model. The formula for calculating R-squared is: R2=1−Unexplained Variation/Total Variation.

cost. When seeking to offset the "set-up" cost of regulation, the Exchange attempted several levels of attribution. The most successful attribution was related to industry wide Firm and Broker-Dealer Transaction volume. Of note, through analysis of the results of this regression model, there was no positive correlation that could be established between Customer away volume and regulatory expense. This led the Exchange to utilize a model with a two-factor regression on a quarterly basis for the last four quarters of volumes relative to the pool of expense data for the six Nasdaq affiliated options exchanges. Once again, standard spreadsheet functionality (including the Data Analysis Packet) was used to determine the mathematics for this model. The results of this two-factor model, which resulted in the attribution of Customer Local ORF and Firm and Broker-Dealer Transaction Local and Away ORF, typically increased the R-Squared (goodness of fit) to >97% across multiple historical periods.[22]

Utilizing the new regression model, and assumptions in the proposal, the model demonstrates that Customer volumes are directly attributable to marginal cost, and also shows that Firm and Broker-Dealer Transaction volumes industry-wide are a valid method (given the goodness of fit) to offset the fixed cost of regulation. Applying the regression coefficient values historically, the Exchange established a "normalization" by per options exchange. This "normalization" encompassed idiosyncratic exchange expense-volume relationships which served to tighten the attributions further while not deviating by more than 30% from the mean for any single options exchange in the model. The primary driver of this need for "normalization" are negotiated regulatory contracts

[22] The Exchange notes that various exchanges negotiate their respective contracts independently with FINRA creating some variability. Additionally, an exchange with a floor component would create some variability.

that were negotiated at different points in time, yielding some differences in per contract regulatory costs by exchange. Normalization is therefore the average of a given exchange's historical (prior 4 quarters) ratio of regulatory expense to revenue when using the regressed values (for Customer Local ORF and Firm and Broker-Dealer Transaction Local and Away ORF) that yields an effective rate by exchange. The "normalization" was then multiplied to a "targeted collection rate" of approximately 88% to arrive at ORF rates for Customer, Firm and Broker-Dealer Transactions. Of note, when comparing the ORF rates generated from this method, historically, there appears to be a very tight relationship between the estimated modeled collection and actual expense and the regulatory expenses for that same period. In summary, the model does not appear to increase marginal returns.

One other important aspect of this modeling is the input of Options Regulatory Costs. The Exchange notes that in defining Options Regulatory Costs it accounts for the nexus between the expense and options regulation. By way of example, the Exchange excludes certain indirect expenses such as payroll expenses, accounts receivable, accounts payable, marketing, executive level expenses and corporate systems.

The Exchange would continue to monitor the amount of Options Regulatory Revenue collected from the ORF to ensure that it, in combination with other regulatory fees and fines, does not exceed Options Regulatory Costs. In determining whether an expense is considered an Options Regulatory Cost, the Exchange would continue to review all costs and makes determinations if there is a nexus between the expense and a regulatory function. The Exchange notes that fines collected by the Exchange in connection with a disciplinary matter will continue to offset Options Regulatory Cost.

Participants will continue to be provided with 30 calendar day notice of any change to ORF.

As is the case today, ORF Regulatory Revenue, when combined with all of the Exchange's other regulatory fees and fines, is designed to recover a material portion of the Options Regulatory Costs to the Exchange for the supervision and regulation of Participants' transactions, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. As discussed above, Options Regulatory Costs include direct regulatory expenses[23] and certain indirect expenses in support of the regulatory function.[24]

Finally, the Exchange notes that this proposal will be sunset on July 1, 2025, at which point the Exchange would revert back to the ORF methodology and rate ($0.0005 per contract side) that was in effect prior to this rule change.[25]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[26] Specifically, the Exchange believes the proposed rule change is consistent with Section

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23 The direct expenses include in-house and third-party service provider costs to support the day-to-day regulatory work such as surveillances, investigations, and examinations.

24 The indirect expenses include support from such areas as Office of the General Counsel, technology, finance, and internal audit.

25 The Exchange proposes to reconsider the sunset date in 2025 and determine whether to proceed with the proposed ORF structure at that time.

26 15 U.S.C. 78f(b).

6(b)(4) of the Act[27], which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its members, and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[28] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Proposal for January 1, 2025

The Exchange believes the proposed ORF to be assessed on January 1, 2025, is reasonable, equitable and not unfairly discriminatory for various reasons. First, as of January 1, 2025, the Exchange would expand the collection of ORF to all clearing ranges, except Market Makers, provided the transaction was executed by an BX Participant or cleared by an BX Participant. With this amendment, BX would begin to assess Firm and Broker-Dealer Transactions an ORF, provided the transactions were executed by a BX Participant or cleared by a BX Participant, except transactions in proprietary products. Second, as of January 1, 2025, the Exchange would assess different rates to Customer transactions for the Local ORF Rate and Away ORF Rate as compared to Firms and Broker-Dealer Transactions. Third, as of January 1, 2025, the combined amount of Local ORF and Away ORF collected would not exceed 88% of Options Regulatory Cost as all Participants, except Market Makers, would be assessed ORF.

The Exchange believes that assessing all Participants, except Market Makers, an ORF is reasonable, equitable and not unfairly discriminatory. While the Exchange acknowledges that there is a cost to regulate Market Makers, unlike other market

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27 15 U.S.C. 78f(b)(4).

28 15 U.S.C. 78f(b)(5).

participants, Market Makers have various regulatory requirements with respect to quoting as provided for in Options 2, Section 4. Specifically, Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. Lead Market Makers are obligated to quote intra-day.[29] Additionally, Market Makers are required to quote intra-day.[30] Further, unlike other market participants, Lead Market Makers and Market Makers have obligations to compete with other Market Makers to improve the market in all series of options classes to which the Market Maker is appointed and to update market quotations in response to changed market conditions in all series of options classes to which the Market Maker is appointed.[31] Lead Market Makers and Market Makers are critical market participants in that they are the only market participants that are required to provide liquidity to BX and are necessary for opening the market. Excluding Market Maker transactions from ORF allows these market participants to manage their costs and consequently their business model more effectively thus enabling them to better allocate resources to other technologies that are necessary to manage risk and capacity to ensure that these market participants continue to compete effectively on BX in providing tight displayed quotes which in turn benefits markets generally and market participants specifically. Finally, the Exchange notes that Market Makers may transact orders in addition to submitting quotes on the Exchange. This proposal would except orders submitted by Market Makers, in addition to quotes, for purposes of ORF. Market Makers utilize orders in their assigned options series to sweep the order book. The Exchange believes the quantity of orders

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29 See BX Options 2, Section 4(j).

30 See BX Options 2, Section 5(d).

31 See BX Options 2, Section 4(a)(3) and (5).

utilized by Market Makers in their assigned series is de minimis. In their unassigned options series, Market Makers utilize orders to hedge their risk or respond to auction. The Exchange notes that the number of orders submitted by Market Makers in their unassigned options series are far below the cap[32] and therefore de minimis.

The Exchange believes excluding options transactions in proprietary products is reasonable, equitable and not unfairly discriminatory because BX does not list any proprietary products. The Exchange believes that only exchanges that list proprietary products should be able to collect a Local ORF for those products. BX notes that there are a small number of proprietary products transacted as compared to multi-list options. BX's focus is on surveillance related to multi-listed options. Should BX list a proprietary product in the future, BX would amend its ORF to collect a Local ORF on that proprietary product.

The Exchange believes that assessing different rates to Customer transactions for the Local ORF Rate and Away ORF Rate as compared to Firm and Broker-Dealer Transactions and collecting no more than 88% of Options Regulatory Cost is reasonable, equitable and not unfairly discriminatory. Customer transactions account for a material portion of BX's Options Regulatory Cost.[33] Customer transactions in combination with

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32 See BX Options 2, Section 6(b). The total number of contracts executed by a Market Maker in options in which it is not registered as a Market Maker shall not exceed 25 percent of the total number of all contracts executed by the Market Maker in any calendar quarter.

33 The Exchange notes that the regulatory costs relating to monitoring Participants with respect to Customer trading activity are generally higher than the regulatory costs associated with Participants that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating Participants that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the Participant's relationship with its Customers via more labor-intensive exam-based programs. As a result, the costs associated with administering the Customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-Customer component of the regulatory program.

Firm and Broker-Dealer Transactions account for a large portion of the Exchange's surveillance expense. Therefore, the Exchange believes that 88% of Options Regulatory Cost is appropriate and correlates to the degree of regulatory responsibility and Options Regulatory Cost borne by the Exchange. With respect to Customer transactions, options volume continues to surpass volume from other options participants. Additionally, there are rules in the Exchange's Rulebook that deal exclusively with Customer transactions, such as rules involving doing business with a Customer, which would not apply to Firm and Broker-Dealer Transactions.[34] For these reasons, regulating Customer trading activity is "much more labor-intensive" and therefore, more costly. The Exchange believes that a large portion of the Options Regulatory Cost relates to Customer allocation because obtaining Customer information may be more time intensive. For example, non-Customer market participants are subject to various regulatory and reporting requirements which provides the Exchange certain data with respect to these market participants. In contrast, Customer information is known by Participants of the Exchange and is not readily available to BX.[35] The Exchange may have to take additional steps to understand the facts surrounding particular trades involving a Customer which may require requesting such information from a broker-dealer. Further, Customers require more Exchange regulatory services based on the amount of options business they conduct. For example, there are Options Regulatory Costs associated with main office and branch office examinations (e.g., staff expenses), as well as investigations into Customer complaints and the terminations of registered persons. As a

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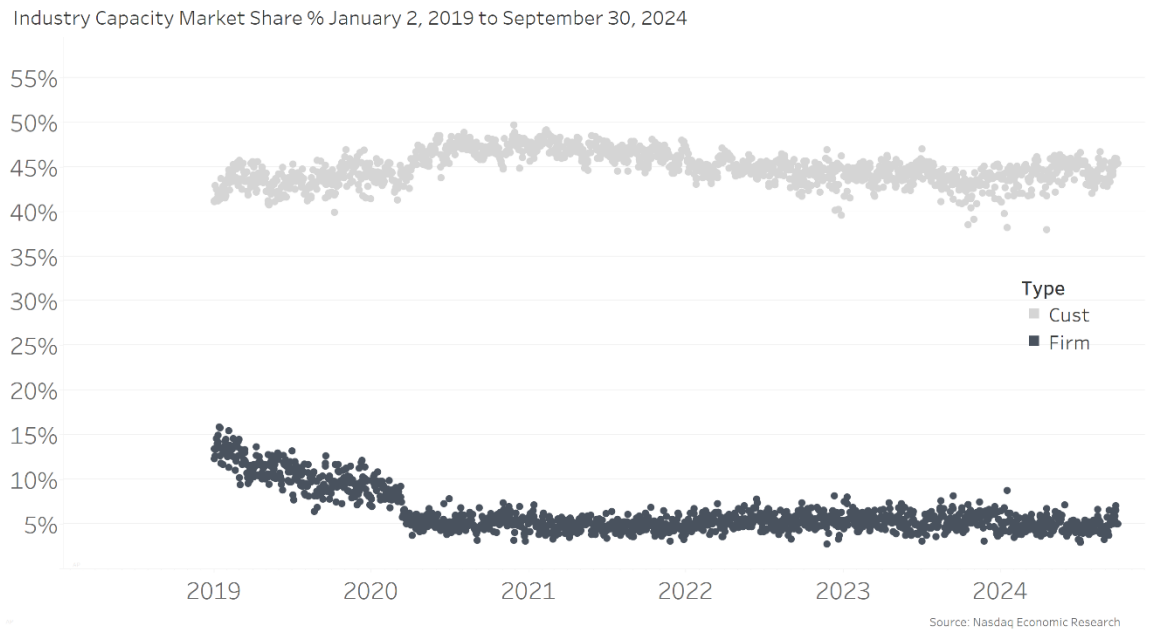
34 See BX Options 10 Rules.

35 The Know Your Customer or "KYC" provision is the obligation of the broker-dealer.

result, the Options Regulatory Costs associated with administering the Customer component of the Exchange's overall regulatory program are materially higher than the Options Regulatory Costs associated with administering the non-Customer component when coupled with the amount of volume attributed to such Customer transactions. Utilizing the new regression model, and assumptions in the proposal, it appears that BX's Customer regulation occurs to a large extent on Exchange. Utilizing the new regression model, and assumptions in the proposal, the Exchange does not believe that significant Options Regulatory Costs should be attributed to Customers for activity that may occur across options markets. To that end, with this proposal, the Exchange would assess Customers a Local ORF, but not an Away ORF rate.

In contrast, the Options Regulatory Cost of regulating Firm and Broker-Dealer Transactions is materially less than the Options Regulatory Costs of regulating Customer transactions, as explained above. The below chart derived from OCC data reflects the percentage of transactions by market participant.



With this model, the addition of Firm and Broker-Dealer Transactions to the collection of ORF does not entail significant volume when compared to Customer transactions. As these market participants are more sophisticated, the Exchange notes that there are not the same protections in place for Firm and Broker-Dealer Transactions as compared to Customer transactions. Therefore, with the proposed model, the regulation of Firm and Broker-Dealer Transactions is less resource intensive than the regulation of Customer transactions. However, the Exchange notes that it appears from the new regression model and assumptions in the proposal, that unlike Customer transactions, the regulation of Firm and Broker-Dealer Transactions occurs both on the Exchange and across options markets. To that end, the Exchange proposes to assess Firm and Broker-Dealer Transactions both a Local ORF and an Away ORF in contrast to Customer transactions that would only be assessed a Local ORF. The Exchange believes that not assessing Market Maker transactions an ORF permits these market participants to utilize their resources to quote tighter in the market. Tighter quotes benefits Customers as well as other market participants who interact with that liquidity.

The Exchange's proposal to establish both a Local ORF Rate and an Away ORF Rate and allocate the portion of Options Regulatory Cost differently between the two separate rates, by market participant, ensures that the Local ORF Rate and Away ORF Rate reflect the amount of Options Regulatory Costs associated with different types of surveillances and are reasonable, equitable and not unfairly discriminatory. The Exchange is responsible for regulating activity on its market as well as activity that may occur across options markets. The Exchange believes that it is reasonable, equitable and

not unfairly discriminatory to assess only Firm and Broker-Dealer Transactions an Away ORF. With this model, while the regulation of Firm and Broker-Dealer Transactions is less resource intensive than the regulation of Customer transactions, it occurs both on the Exchange and across options markets.[36] The Exchange believes that assessing the Firm and Broker-Dealer Transactions the same rate for Local ORF and Away ORF is appropriate given the lower volume that is attributed to these Participants combined with the activity that is required to be regulated both on the Exchange and across options markets. The Exchange notes that there are Exchange rules that involve cross market surveillances that relate to activities conducted by Firm and Broker-Dealer Participants.[37] While not large in number, when compared to the overall number of Exchange rules that are surveilled by BX for on-Exchange activity, the Away ORF that would be assessed to Firm and Broker-Dealer regulation would account for those costs. Additionally, the Exchange believes that limiting the amount of ORF assessed for activity that occurs on non-BX exchanges avoids overlapping ORFs that would otherwise be assessed by BX and other options exchanges that also assess an ORF. Also, the Exchange's proposal continues to ensure that Options Regulatory Revenue, in combination with other regulatory fees and fines, does not exceed Options Regulatory Costs. Fines collected by the Exchange in connection with a disciplinary matter will continue to offset Options Regulatory Cost.

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36 BX pays the Financial Industry Regulatory Authority ("FINRA") to perform certain cross-market surveillances on its behalf. In order to perform cross-market surveillances, Consolidated Audit Trail ("CAT") data is utilized to match options transactions to underlying equity transactions. This review is data intensive given the volumes of information that are being reviewed and analyzed.

37 BX conducts surveillances and enforces BX Rules, however only a subset of those rules is subject to cross-market surveillance, such as margin and position limits. Of note, some BX trading rules are automatically enforced by BX's System.

Capping the combined amount of Local ORF and Away ORF collected at 88% of Options Regulatory Cost commencing January 1, 2025, is reasonable, equitable and not unfairly discriminatory as given these factors. The Exchange will review the ORF Regulatory Revenue at the end of January 2025 and would amend the ORF if it finds that its ORF Regulatory Revenue exceeds its projections.[38]

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 intra-market competition not necessary or appropriate in furtherance of the purposes of the Act.

The proposed changes to ORF do not impose an undue burden on inter-market competition because ORF is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange notes, however, the proposed change is not designed to address any competitive issues. The Exchange is obligated to ensure that the amount of ORF Regulatory Revenue, in combination with its other regulatory fees and fines, does not exceed ORF Regulatory Cost.

Proposal for January 1, 2025

Excluding Market Makers does not impose an undue burden on intra-market competition because, unlike other market participants, Market Makers have various regulatory requirements with respect to quoting as provided for in Options 2, Section 4. Specifically, Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. Lead Market Makers are

[38] BX would submit a rule change to the Commission to amend ORF rates.

obligated to quote intra-day.[39] Additionally, Market Makers are required to quote intra-day.[40] Further, unlike other market participants, Lead Market Makers and Market Makers have obligations to compete with other Market Makers to improve the market in all series of options classes to which the Market Maker is appointed and to update market quotations in response to changed market conditions in all series of options classes to which the Market Maker is appointed.[41] Lead Market Makers and Market Makers are critical market participants in that they are the only market participants that are required to provide liquidity to BX and are necessary for opening the market. Excluding Market Maker transactions from ORF does not impose an intra-market burden on competition, rather it allows these market participants to manage their costs and consequently their business model more effectively thus enabling them to better allocate resources to other technologies that are necessary to manage risk and capacity to ensure that these market participants continue to compete effectively on BX in providing tight displayed quotes which in turn benefits markets generally and market participants specifically. Finally, the Exchange notes that Market Makers may transact orders on the Exchange in addition to submitting quotes. The Exchange's proposal to except orders submitted by Market Makers, in addition to quotes, for purposes of ORF does not impose an undue burden on intra-market competition because Market Makers utilize orders in their assigned options series to sweep the order book. Further, the Exchange believes the quantity of orders utilized by Market Makers in their assigned series is de minimis. In their unassigned options series, Market Makers utilize orders to hedge their risk or respond to auction.

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39 See BX Options 2, Section 4(j).

40 See BX Options 2, Section 5(d).

41 See BX Options 2, Section 4(a)(3) and (5).

The Exchange notes that the number of orders submitted by Market Makers in their unassigned options series are far below the cap[42] and therefore de minimis.

Uniformly excluding options transactions in proprietary products from ORF for all BX Participants does not impose an undue burden on intra-market competition. The Exchange believes that only exchanges that list proprietary products should be able to collect a Local ORF for those products. There are a small number of proprietary products transacted as compared to multi-list options. Also, proprietary products are transacted on a limited number of options exchanges and would require a de minimis amount of cross market surveillance, for these reasons the Exchange believes that only a Local ORF should be applied to the extent that BX were to list a proprietary product. BX's focus is on surveillance related to multi-listed options. Should BX list a proprietary product in the future, BX would amend its ORF to collect a Local ORF on that proprietary product.

The Exchange's proposal to expand the clearing ranges to specifically include Firm and Broker-Dealer Transactions, in addition to Customer and Professional transactions, as of January 1, 2025, does not impose an undue burden on intra-market competition as Customer transactions account for a material portion of BX's Options Regulatory Cost.[43] Customer transactions in combination with Firm and Broker-Dealer

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42 See BX Options 2, Section 6(b). The total number of contracts executed by a Market Maker in options in which it is not registered as a Market Maker shall not exceed 25 percent of the total number of all contracts executed by the Market Maker in any calendar quarter.

43 The Exchange notes that the regulatory costs relating to monitoring Participants with respect to Customer trading activity are generally higher than the regulatory costs associated with Participants that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating Participants that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the Participant's relationship with its Customers via more labor-intensive exam-based programs. As a result, the costs associated with administering the Customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-Customer component of the regulatory program.

Transactions account for a large portion of the Exchange's surveillance expense. With respect to Customer transactions, options volume continues to surpass volume from other options participants. Additionally, there are rules in the Exchange's Rulebook that deal exclusively with Customer transactions, such as rules involving doing business with a Customer, which would not apply to Firm and Broker-Dealer Transactions.[44] For these reasons, regulating Customer trading activity is "much more labor-intensive" and therefore, more costly. Further, the Exchange believes that a large portion of the Options Regulatory Cost relates to Customer allocation because obtaining Customer information may be more time intensive. For example, non-Customer market participants are subject to various regulatory and reporting requirements which provides the Exchange certain data with respect to these market participants. In contrast, Customer information is known by Participants of the Exchange and is not readily available to BX.[45] The Exchange may have to take additional steps to understand the facts surrounding particular trades involving a Customer which may require requesting such information from a broker-dealer. Further, Customers require more Exchange regulatory services based on the amount of options business they conduct. For example, there are Options Regulatory Costs associated with main office and branch office examinations (e.g., staff expenses), as well as investigations into Customer complaints and the terminations of registered persons. As a result, the Options Regulatory Costs associated with administering the Customer component of the Exchange's overall regulatory program are materially higher than the Options Regulatory Costs associated with administering the non-Customer

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44 See BX Options 10 Rules.

45 The Know Your Customer or "KYC" provision is the obligation of the broker-dealer.

component when coupled with the amount of volume attributed to such Customer transactions. Not attributing significant Options Regulatory Costs to Customers for activity that may occur across options markets does not impose an undue burden on intra-market competition because the data in the regression model demonstrates that BX's Customer regulation occurs to a large extent on Exchange.

The Exchange believes that assessing Firm and Broker-Dealer Transactions a different ORF and assessing both a Local ORF and an Away ORF to these transactions does not impose an undue burden on intra-market competition because the regulation of Firm and Broker-Dealer Transactions is less resource intensive than the regulation of Customer transactions. With this model, the addition of Firm and Broker-Dealer Transactions to the collection of ORF does not entail significant volume when compared to Customer transactions. Unlike Customer transactions, the regulation of Firm and Broker-Dealer Transactions occurs both on the Exchange and across options markets. To that end, the Exchange proposes to assess Firm and Broker-Dealer Transactions both a Local ORF and an Away ORF.

The Exchange's proposal to allocate the portion of costs differently between the Local ORF and Away ORF does not create an undue burden on intra-market competition. The Exchange believes that each rate reflects the amount of Options Regulatory Costs associated with different types of surveillances and does not create an undue burden on competition as BX Participants, excluding except Market Makers, would be uniformly assessed either a Local ORF Rate or an Away ORF Rate depending on where the transaction occurred and whether the transaction was executed or cleared by an BX Participant. Also, the Exchange would uniformly assess the Local ORF Rate and an

Away ORF Rate by market participant. The Exchange is responsible for regulating activity on its market as well as activity that may occur across options markets.

The Exchange believes that assessing only Firm and Broker-Dealer Transactions an Away ORF does not create an undue burden on intra-market competition because while the regulation of Firm and Broker-Dealer Transactions is less resource intensive than the regulation of Customer transactions, the regulation of Firm and Broker-Dealer Transactions occurs both on the Exchange and across options markets.[46] The Exchange believes that assessing Firm and Broker-Dealer Transactions the same rate for Local ORF and Away ORF is appropriate given the lower volume that is attributed to these Participants combined with the activity that is required to be regulated both on the Exchange and across options markets. There are Exchange rules that involve cross market surveillances that relate to activities conducted by Firm and Broker-Dealer Participants.[47] While not large in number, when compared to the overall number of Exchange rules that are surveilled by BX for on-Exchange activity, the Away ORF that would be assessed to Firm and Broker-Dealer Transactions would account for those Options Regulatory Costs. Additionally, the Exchange believes that limiting the amount of ORF assessed for activity that occurs on non-BX exchanges does not impose a burden on intra-market competition, rather it avoids overlapping ORFs that would otherwise be assessed by BX and other options exchanges that also assess an ORF. With this model,

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46 BX pays the Financial Industry Regulatory Authority ("FINRA") to perform certain cross-market surveillances on its behalf. In order to perform cross-market surveillances, Consolidated Audit Trail ("CAT") data is utilized to match options transactions to underlying equity transactions. This review is data intensive given the volumes of information that are being reviewed and analyzed.

47 BX conducts surveillances and enforces BX Rules, however only a subset of those rules is subject to cross-market surveillance, such as margin and position limits. Of note, some BX trading rules are automatically enforced by BX's System.

Customer transactions would be assessed a higher Local ORF, while not being assessed an Away ORF as compared to Firm and Broker-Dealer Transactions. The Exchange believes that this difference in allocation is appropriate and correlates to the degree of regulatory responsibility and Options Regulatory Costs borne by different Participants of the Exchange in light of the volume different Participants transact on the Exchange.

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.[48]

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

IV. Solicitation of Comments

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

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48 15 U.S.C. 78s(b)(3)(A)(ii).

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-2024-054 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-2024-054. 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-2024-054 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.[49]

Sherry R. Haywood,

Assistant Secretary.

[49] 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 5 BX Options Regulatory Fee

Effective January 1, 2025

[BX Participants will be assessed an Options Regulatory Fee of $0.0005 per contract side.]

The Options Regulatory Fee ("ORF") is assessed by BX to each BX Participant for multi-listed options transactions, excluding options transactions in proprietary products, cleared by The Options Clearing Corporation ("OCC") in [the Customer]all clearing ranges except market makers who clear as "M" at OCC where: (1) the execution occurs on BX or (2) the execution occurs on another exchange and is cleared by a BX Participant. The ORF is collected by OCC on behalf of BX from (1) BX clearing members for all Customer, Professional, Firm and Broker-Dealer transactions they clear or (2) non-members for all Customer, Professional, Firm and Broker-Dealer transactions they clear that were executed on BX. BX uses reports from OCC when assessing and collecting ORF. The Exchange will notify Participants via an Options Trader Alert of any change in the amount of the fee at least 30 calendar days prior to the effective date of the change. BX will assess a different rate for trades executed on BX ("Local ORF Rate") and trades executed on non-BX exchanges ("Away ORF Rate") as specified below.

Local ORF Rate for Customer "C" Origin Code transactions executed on BX (Local)	**Local ORF Rate for Firm "F" Origin Code transactions executed on BX (Local)**
$0.0203 per contract side	$0.00024 per contract side

Away ORF Rate for Customer "C" Origin Code multi-list transactions executed on non-BX exchanges	**Away ORF Rate for Firm "F" Origin Code multi-list transactions executed on non-BX exchanges**
$0.00 per contract side	$0.00024 per contract side

The ORF will sunset on July 1, 2025 at which point the Exchange would revert back to the ORF methodology and rate ($0.0005 per contract side) that was in effect prior to this rule change.

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