

Required fields are shown with yellow backgrounds and asterisks.

Filing by NASDAQ OMX 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) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
			Rule		
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) <input checked="" type="checkbox"/> Section 806(e)(2) <input checked="" type="checkbox"/>	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) <input checked="" type="checkbox"/>
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Exhibit 2 Sent As Paper Document <input checked="" type="checkbox"/>	Exhibit 3 Sent As Paper Document <input checked="" type="checkbox"/>
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**Description**  
Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

**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 *	Associate General Counsel		
E-mail *	angela.dunn@nasdaqomx.com		
Telephone *	(215) 496-5692	Fax	<input type="text"/>

**Signature**  
Pursuant to the requirements of the Securities Exchange Act of 1934,  
  
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.  
(Title \*)

Date	12/18/2012	Executive Vice President and General Counsel
By	Edward S. Knight	<input style="width: 100%; height: 40px;" type="text"/>
	(Name *)	

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

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

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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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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 Advance 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, security-based swap submission, or advance notice 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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Exhibit Sent As Paper Document

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 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

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 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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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 OMX BX, Inc. (“BX” or “Exchange”), pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> proposes to amend BX Options Rules, Chapter XV, Section 2 entitled “BX Options Market – Fees and Rebates” to adopt fees and rebates for Non-Penny Pilot Options.<sup>3</sup>

While the changes proposed herein are effective upon filing, the Exchange has designated these changes to be operative on January 2, 2013.

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

(b) Inapplicable.

(c) Inapplicable.

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 of the Exchange on July 10, 2012. Exchange staff will advise the Board of Directors of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to Angela Saccomandi Dunn, Associate General Counsel, at (215) 496-5692.

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

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

<sup>3</sup> Non-Penny Pilot refers to options classes not in the Penny Pilot.

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

a. Purpose

BX proposes to amend Chapter XV, Section 2(1) to adopt fees and rebates for Customers, BX Options Market Makers<sup>4</sup> and Non-Customers<sup>5</sup> trading in Non-Penny Pilot Options on its options market. The Exchange believes the addition of Non-Penny Pilot Options fees and rebates will allow the Exchange to compete more effectively with other exchanges that have similarly adopted such pricing. The Exchange plans to list Non-Penny Pilot Options on January 2, 2013.

The Exchange proposes to adopt a Fee to Add Liquidity, a Rebate to Remove Liquidity and a Fee to Remove Liquidity in Non-Penny Pilot Options. Specifically, the Exchange proposes to assess the following Fees to Add Liquidity in Non-Penny Pilot Options: Customers a \$0.25 per contract, BX Options Market Maker \$0.50 per contract and Non-Customer \$0.88 per contract. The Exchange proposes to assess a higher Fee to Add Liquidity in Non-Penny Pilot Options of \$0.85 per contract to Customers and BX Options Market Makers when the Customer or BX Options Market Maker is contra to a Customer. Therefore, depending on the contra-party to the transaction, a Customer would be assessed either a \$0.25 or \$0.85 per contract Fee to Add Liquidity in Non-Penny Pilot Options and a BX Options Market Maker would be assessed either a \$0.50 or \$0.85 per contract Fee to Add Liquidity in Non-Penny Pilot Options. The Exchange

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<sup>4</sup> A BX Options Market Maker must be registered as such pursuant to Chapter VII, Section 2 of the BX Options Rules, and must also remain in good standing pursuant to Chapter VII, Section 4.

<sup>5</sup> A Non-Customer includes a Professional, Firm, Broker-Dealer and Non-BX Options Market Maker.

proposes to add a note 4 to Section 2 of Chapter XV to indicate that the higher Fee to Add Liquidity would be assessed to a Customer or BX Options Market Maker when these market participants are contra to a Customer.

The Exchange proposes to pay a Customer a \$0.70 per contract Rebate to Remove Liquidity in Non-Penny Pilot Options. The Exchange would not pay a rebate to a BX Options Market Maker or Non-Customer. Finally, the Exchange proposes to assess a Fee to Remove Liquidity in Non-Penny Pilot Options of \$0.88 per contract to a BX Options Market Maker and a Non-Customer. A Customer would not be assessed a Fee to Remove Liquidity in Non-Penny Pilot Options.

The Exchange is not proposing any other changes to Section 2 of Chapter XV.

b. Statutory Basis

BX believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,<sup>6</sup> in general, and with Section 6(b)(4) of the Act,<sup>7</sup> in particular, in that they provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which BX operates or controls.

The Exchange believes that its proposal to assess fees and pay rebates in Non-Penny Pilot Options, which pricing differs from Penny Pilot Options,<sup>8</sup> is consistent with

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<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> The Penny Pilot on BX Options was established in June 2012. See Securities Exchange Act Release No. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR-BX-2012-030) (order approving BX Options rules and establishing Penny Pilot). The Exchange filed to extend the Penny Pilot through December 31, 2012.

pricing at other options markets that also assess different fees and pay different rebates for Penny Pilot Options as compared to Non-Penny Pilot Options.<sup>9</sup> The Exchange today assesses fees and pay rebates in Penny Pilot Options. The Exchange plans to list Non-Penny Pilot Options on January 2, 2013. The Exchange believes that establishing different pricing for Penny Pilot and Non-Penny Pilot Options is reasonable, equitable and not unfairly discriminatory because Penny Pilot Options are more liquid options as compared to Non-Penny Pilot Options. Additionally, other options exchanges differentiate pricing by security today.<sup>10</sup>

The Exchange believes that the proposed Customer Rebate to Remove Liquidity in Non-Penny Pilot Options is reasonable because this rebate will attract Customer order flow to the Exchange to the benefit of all market participants through increased liquidity. Today, the Exchange pays a Customer Rebate to Remove Liquidity in Penny Pilot Options. Further, the Exchange also believes it is equitable and not unfairly discriminatory to only offer the Rebate to Remove Liquidity to Customers and not offer the rebate to other market participants because the Exchange is offering the rebate to incentivize NOM Participants to send Customer order flow to the Exchange. It is an

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See Securities Exchange Act Release No. 67342 (July 3, 2012), 77 FR 40666 (July 10, 2012) (SR-BX-2012-046).

<sup>9</sup> NASDAQ OMX PHLX LLC (“Phlx”) assesses fees and pays rebates in Non-Penny Pilot Options. See Phlx’s Pricing Schedule. The Chicago Board Options Exchange Incorporated (“CBOE”) assess fees and pays rebates in Non-Penny Pilot Options. See CBOE’s Fees Schedule. The NASDAQ Options Market LLC (“NOM”) assesses fees and pays rebates in Non-Penny Pilot Options. See NOM’s Rules at Chapter XV, Section 2. The International Securities Exchange LLC (“ISE”) assesses fees and pays rebates in Non-Penny Pilot Symbols. See ISE’s Fee Schedule.

<sup>10</sup> See supra note 8.

important Exchange function to provide an opportunity to all market participants to trade against Customer orders. Customer order flow benefits all market participants by improving liquidity, the quality of order interaction and executions at the Exchange.

With respect to the Fee to Add Liquidity, the Exchange believes that assessing Customers and BX Options Market Makers a lower Fee to Add Liquidity in Non-Penny Pilot Options, when they are not contra to a Customer, as compared to Non-Customers is reasonable because the Exchange seeks to incentivize these critical market participants to add liquidity. Increased liquidity benefits all market participants. The Exchange also believes that the lower Fees to Add Liquidity in Non-Penny Pilot Options for Customers and BX Options Market Makers as compared to Non-Customers are equitable and not unfairly discriminatory because Customer order flow benefits all market participants by improving liquidity, the quality of order interaction and executions at the Exchange. Also, BX Options Market Makers have obligations to the market and regulatory requirements,<sup>11</sup> which normally do not apply to other market participants. A BX Options Market Maker has the obligation to make continuous markets, engage in course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with course of dealings. The proposed differentiation as between Customers and BX Options

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<sup>11</sup> Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a Market Maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on BX for all purposes under the Act or rules thereunder. See Chapter VII, Section 5.

Market Makers and Non-Customers recognizes the differing contributions made to the liquidity and trading environment on the Exchange by Customers and BX Options Market Makers, as well as the differing mix of orders entered.

With respect to the Fee to Add Liquidity, the Exchange believes that assessing Customers and BX Options Market Makers a higher Fee to Add Liquidity in Non-Penny Pilot Options, when they are contra to a Customer is reasonable because the Customer is being paid a Rebate to Remove Liquidity of \$0.70 per contract pursuant to this proposal and the Exchange believes that the increased fee allows the Exchange to offer that incentive to Customers to attract liquidity to the market. The Exchange also believes that the increased Customer and BX Options Market Maker Fees to Add Liquidity in Non-Penny Pilot Options are equitable and not unfairly discriminatory because the fees for Customers and BX Options Market Makers when contra to a Customer order are lower as compared to Non-Customers (\$0.85 as compared to \$0.88 per contract). For the reasons previously mentioned, the Exchange believes the fees are equitable and not unfairly discriminatory because these critical market participants add liquidity and have obligations to the market which differentiates them from Non-Customers.

The Exchange believes that not assessing a Fee to Remove Liquidity in Non-Penny Pilot Options to Customers is reasonable because the Exchange seeks to incentivize NOM Participants to send Customer order flow to the Exchange. In addition, the Exchange does not assess a Customer Fee to Remove Liquidity in Penny Pilot Options. The Exchange believes that not assessing a Fee to Remove Liquidity in Non-Penny Pilot Options to Customers is equitable and not unfairly discriminatory because Customer order flow brings liquidity to the market which benefits all market participants.



The Exchange believes that assessing a Fee to Remove Liquidity in Non-Penny Pilot Options of \$0.88 per contract to BX Options Market Makers and Non-Customers is reasonable because the fee allows the Exchange to reward Customers that remove liquidity with a rebate. The advantage of increased Customer order flow benefits all market participants. In addition, the proposed Fees to Remove Liquidity in Non-Penny Pilot Options are in the range of fees assessed by other options exchanges.<sup>12</sup> The Exchange believes that assessing a Fee to Remove Liquidity in Non-Penny Pilot Options of \$0.88 per contract to BX Options Market Makers and Non-Customers is equitable and not unfairly discriminatory because all market participants, BX Options Market Makers, Professionals, Firms, Broker-Dealers and Non-BX Options Market Makers, excluding Customers, would be assessed the same Fee to Remove Liquidity in Non-Penny Pilot Options on every transaction.

In the current U.S. options market, many of the contracts are quoted in pennies. Under this pricing structure, the minimum penny tick increment equates to a \$1.00 economic value difference per contract, given that a single standardized U.S. option contract covers 100 shares of the underlying stock. Where contracts are quoted in \$0.05 increments (non-pennies), the value per tick is \$5.00 in proceeds to the investor transacting in these contracts. Liquidity rebate and access fee structures on the make-take exchanges for securities quoted in penny increments are commonly in the \$0.30 to \$0.45

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<sup>12</sup> NOM assesses Professionals, Firms, non-NOM Market Makers and NOM Market Makers Non-Penny Pilot Options Fees to Remove Liquidity of \$0.89 per contract. See NOM Chapter XV, Section 2. The BATS Exchange, Inc. (“BATS”) assesses Professional, Firms and Market Makers \$0.84 per contract to remove liquidity in Non-Penny Pilot Options. See also BATS BZX Exchange Fee Schedule. NYSE Arca, Inc. (“NYSE Arca”) assesses Firms and Broker Dealers an \$0.85 per contract Take Liquidity Fee and NYSE Arca Market Makers are assessed an \$0.80 take liquidity fee. See NYSE Arca Options Fee Schedule.

per contract range. A \$0.30 per contract rebate in a penny quoted security is a rebate equivalent to 30% of the value of the minimum tick. A \$0.45 per contract fee in a penny quoted security is a charge equivalent to 45% of the value of that minimum tick. In other words, in penny quoted securities, where the price is improved by one tick with an access fee of \$0.45 per contract, an investor paying to access that quote is still \$0.55 better off than trading at the wider spread, even without the access fee (\$1.00 of price improvement - \$0.45 access fee = \$0.55 better economics). This computation is equally true for securities quoted in wider increments. By comparison, rebates and access fees near the \$0.88 per contract level equate to only 17.6% of the value of the minimum tick in Non-Penny Pilot Options, less than the experience today in Penny Pilot Options. Accordingly, the Exchange believes that the proposed Fees to Add Liquidity and Fees to Remove Liquidity in Non-Penny Pilot Options are reasonable, equitable and not unfairly discriminatory.

The Exchange operates in a highly competitive market comprised of eleven U.S. options exchanges in which sophisticated and knowledgeable market participants can and do send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the proposed fee and rebate scheme for Non-Penny Pilot Options is competitive and similar to other fees and rebates in place on other exchanges. The Exchange believes that this competitive marketplace materially impacts the fees and rebates present on the Exchange today and substantially influences the proposal set forth above.

4. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, BX has designed its fees and rebates to compete effectively for the execution and routing of options contracts. The Exchange believes that the proposed fee/rebate pricing structure for Non-Penny Pilot Options would attract liquidity to and benefit order interaction at the Exchange to the benefit of all market participants.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>13</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed 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.

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

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

9. Exhibits

1. Notice of proposed rule for publication in the Federal Register.
5. Applicable Exchange Rules.

Exhibit 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-BX-2012-074)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX BX, Inc. Relating to Non-Penny Pilot Options Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 18, 2012, NASDAQ OMX 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 BX Options Rules, Chapter XV, Section 2 entitled “BX Options Market – Fees and Rebates” to adopt fees and rebates for Non-Penny Pilot Options.<sup>3</sup>

While the changes proposed herein are effective upon filing, the Exchange has designated these changes to be operative on January 2, 2013.

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

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

<sup>3</sup> Non-Penny Pilot refers to options classes not in the Penny Pilot.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/>, 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 Chapter XV, Section 2(1) to adopt fees and rebates for Customers, BX Options Market Makers<sup>4</sup> and Non-Customers<sup>5</sup> trading in Non-Penny Pilot Options on its options market. The Exchange believes the addition of Non-Penny Pilot Options fees and rebates will allow the Exchange to compete more effectively with other exchanges that have similarly adopted such pricing. The Exchange plans to list Non-Penny Pilot Options on January 2, 2013.

The Exchange proposes to adopt a Fee to Add Liquidity, a Rebate to Remove Liquidity and a Fee to Remove Liquidity in Non-Penny Pilot Options. Specifically, the

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<sup>4</sup> A BX Options Market Maker must be registered as such pursuant to Chapter VII, Section 2 of the BX Options Rules, and must also remain in good standing pursuant to Chapter VII, Section 4.

<sup>5</sup> A Non-Customer includes a Professional, Firm, Broker-Dealer and Non-BX Options Market Maker.

Exchange proposes to assess the following Fees to Add Liquidity in Non-Penny Pilot Options: Customers a \$0.25 per contract, BX Options Market Maker \$0.50 per contract and Non-Customer \$0.88 per contract. The Exchange proposes to assess a higher Fee to Add Liquidity in Non-Penny Pilot Options of \$0.85 per contract to Customers and BX Options Market Makers when the Customer or BX Options Market Maker is contra to a Customer. Therefore, depending on the contra-party to the transaction, a Customer would be assessed either a \$0.25 or \$0.85 per contract Fee to Add Liquidity in Non-Penny Pilot Options and a BX Options Market Maker would be assessed either a \$0.50 or \$0.85 per contract Fee to Add Liquidity in Non-Penny Pilot Options. The Exchange proposes to add a note 4 to Section 2 of Chapter XV to indicate that the higher Fee to Add Liquidity would be assessed to a Customer or BX Options Market Maker when these market participants are contra to a Customer.

The Exchange proposes to pay a Customer a \$0.70 per contract Rebate to Remove Liquidity in Non-Penny Pilot Options. The Exchange would not pay a rebate to a BX Options Market Maker or Non-Customer. Finally, the Exchange proposes to assess a Fee to Remove Liquidity in Non-Penny Pilot Options of \$0.88 per contract to a BX Options Market Maker and a Non-Customer. A Customer would not be assessed a Fee to Remove Liquidity in Non-Penny Pilot Options.

The Exchange is not proposing any other changes to Section 2 of Chapter XV.2.

## 2. Statutory Basis

BX believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,<sup>6</sup> in general, and with Section 6(b)(4) of the Act,<sup>7</sup> in particular, in

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<sup>6</sup> 15 U.S.C. 78f.

that they provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which BX operates or controls.

The Exchange believes that its proposal to assess fees and pay rebates in Non-Penny Pilot Options, which pricing differs from Penny Pilot Options,<sup>8</sup> is consistent with pricing at other options markets that also assess different fees and pay different rebates for Penny Pilot Options as compared to Non-Penny Pilot Options.<sup>9</sup> The Exchange today assesses fees and pay rebates in Penny Pilot Options. The Exchange plans to list Non-Penny Pilot Options on January 2, 2013. The Exchange believes that establishing different pricing for Penny Pilot and Non-Penny Pilot Options is reasonable, equitable and not unfairly discriminatory because Penny Pilot Options are more liquid options as compared to Non-Penny Pilot Options. Additionally, other options exchanges differentiate pricing by security today.<sup>10</sup>

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<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> The Penny Pilot on BX Options was established in June 2012. See Securities Exchange Act Release No. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR-BX-2012-030) (order approving BX Options rules and establishing Penny Pilot). The Exchange filed to extend the Penny Pilot through December 31, 2012. See Securities Exchange Act Release No. 67342 (July 3, 2012), 77 FR 40666 (July 10, 2012) (SR-BX-2012-046).

<sup>9</sup> NASDAQ OMX PHLX LLC (“Phlx”) assesses fees and pays rebates in Non-Penny Pilot Options. See Phlx’s Pricing Schedule. The Chicago Board Options Exchange Incorporated (“CBOE”) assess fees and pays rebates in Non-Penny Pilot Options. See CBOE’s Fees Schedule. The NASDAQ Options Market LLC (“NOM”) assesses fees and pays rebates in Non-Penny Pilot Options. See NOM’s Rules at Chapter XV, Section 2. The International Securities Exchange LLC (“ISE”) assesses fees and pays rebates in Non-Penny Pilot Symbols. See ISE’s Fee Schedule.

<sup>10</sup> See supra note 8.



The Exchange believes that the proposed Customer Rebate to Remove Liquidity in Non-Penny Pilot Options is reasonable because this rebate will attract Customer order flow to the Exchange to the benefit of all market participants through increased liquidity. Today, the Exchange pays a Customer Rebate to Remove Liquidity in Penny Pilot Options. Further, the Exchange also believes it is equitable and not unfairly discriminatory to only offer the Rebate to Remove Liquidity to Customers and not offer the rebate to other market participants because the Exchange is offering the rebate to incentivize NOM Participants to send Customer order flow to the Exchange. It is an important Exchange function to provide an opportunity to all market participants to trade against Customer orders. Customer order flow benefits all market participants by improving liquidity, the quality of order interaction and executions at the Exchange.

With respect to the Fee to Add Liquidity, the Exchange believes that assessing Customers and BX Options Market Makers a lower Fee to Add Liquidity in Non-Penny Pilot Options, when they are not contra to a Customer, as compared to Non-Customers is reasonable because the Exchange seeks to incentivize these critical market participants to add liquidity. Increased liquidity benefits all market participants. The Exchange also believes that the lower Fees to Add Liquidity in Non-Penny Pilot Options for Customers and BX Options Market Makers as compared to Non-Customers are equitable and not unfairly discriminatory because Customer order flow benefits all market participants by improving liquidity, the quality of order interaction and executions at the Exchange. Also, BX Options Market Makers have obligations to the market and regulatory requirements,<sup>11</sup> which normally do not apply to other market participants. A BX Options

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<sup>11</sup> Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market

Market Maker has the obligation to make continuous markets, engage in course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with course of dealings. The proposed differentiation as between Customers and BX Options Market Makers and Non-Customers recognizes the differing contributions made to the liquidity and trading environment on the Exchange by Customers and BX Options Market Makers, as well as the differing mix of orders entered.

With respect to the Fee to Add Liquidity, the Exchange believes that assessing Customers and BX Options Market Makers a higher Fee to Add Liquidity in Non-Penny Pilot Options, when they are contra to a Customer is reasonable because the Customer is being paid a Rebate to Remove Liquidity of \$0.70 per contract pursuant to this proposal and the Exchange believes that the increased fee allows the Exchange to offer that incentive to Customers to attract liquidity to the market. The Exchange also believes that the increased Customer and BX Options Market Maker Fees to Add Liquidity in Non-Penny Pilot Options are equitable and not unfairly discriminatory because the fees for Customers and BX Options Market Makers when contra to a Customer order are lower as compared to Non-Customers (\$0.85 as compared to \$0.88 per contract). For the reasons previously mentioned, the Exchange believes the fees are equitable and not unfairly

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Makers), in registering as a Market Maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on BX for all purposes under the Act or rules thereunder. See Chapter VII, Section 5.

discriminatory because these critical market participants add liquidity and have obligations to the market which differentiates them from Non-Customers.

The Exchange believes that not assessing a Fee to Remove Liquidity in Non-Penny Pilot Options to Customers is reasonable because the Exchange seeks to incentivize NOM Participants to send Customer order flow to the Exchange. In addition, the Exchange does not assess a Customer Fee to Remove Liquidity in Penny Pilot Options. The Exchange believes that not assessing a Fee to Remove Liquidity in Non-Penny Pilot Options to Customers is equitable and not unfairly discriminatory because Customer order flow brings liquidity to the market which benefits all market participants.

The Exchange believes that assessing a Fee to Remove Liquidity in Non-Penny Pilot Options of \$0.88 per contract to BX Options Market Makers and Non-Customers is reasonable because the fee allows the Exchange to reward Customers that remove liquidity with a rebate. The advantage of increased Customer order flow benefits all market participants. In addition, the proposed Fees to Remove Liquidity in Non-Penny Pilot Options are in the range of fees assessed by other options exchanges.<sup>12</sup> The Exchange believes that assessing a Fee to Remove Liquidity in Non-Penny Pilot Options of \$0.88 per contract to BX Options Market Makers and Non-Customers is equitable and not unfairly discriminatory because all market participants, BX Options Market Makers, Professionals, Firms, Broker-Dealers and Non-BX Options Market Makers, excluding

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<sup>12</sup> NOM assesses Professionals, Firms, non-NOM Market Makers and NOM Market Makers Non-Penny Pilot Options Fees to Remove Liquidity of \$0.89 per contract. See NOM Chapter XV, Section 2. The BATS Exchange, Inc. (“BATS”) assesses Professional, Firms and Market Makers \$0.84 per contract to remove liquidity in Non-Penny Pilot Options. See also BATS BZX Exchange Fee Schedule. NYSE Arca, Inc. (“NYSE Arca”) assesses Firms and Broker Dealers an \$0.85 per contract Take Liquidity Fee and NYSE Arca Market Makers are assessed an \$0.80 take liquidity fee. See NYSE Arca Options Fee Schedule.

Customers, would be assessed the same Fee to Remove Liquidity in Non-Penny Pilot Options on every transaction.

In the current U.S. options market, many of the contracts are quoted in pennies. Under this pricing structure, the minimum penny tick increment equates to a \$1.00 economic value difference per contract, given that a single standardized U.S. option contract covers 100 shares of the underlying stock. Where contracts are quoted in \$0.05 increments (non-pennies), the value per tick is \$5.00 in proceeds to the investor transacting in these contracts. Liquidity rebate and access fee structures on the make-take exchanges for securities quoted in penny increments are commonly in the \$0.30 to \$0.45 per contract range. A \$0.30 per contract rebate in a penny quoted security is a rebate equivalent to 30% of the value of the minimum tick. A \$0.45 per contract fee in a penny quoted security is a charge equivalent to 45% of the value of that minimum tick. In other words, in penny quoted securities, where the price is improved by one tick with an access fee of \$0.45 per contract, an investor paying to access that quote is still \$0.55 better off than trading at the wider spread, even without the access fee (\$1.00 of price improvement - \$0.45 access fee = \$0.55 better economics). This computation is equally true for securities quoted in wider increments. By comparison, rebates and access fees near the \$0.88 per contract level equate to only 17.6% of the value of the minimum tick in Non-Penny Pilot Options, less than the experience today in Penny Pilot Options. Accordingly, the Exchange believes that the proposed Fees to Add Liquidity and Fees to Remove Liquidity in Non-Penny Pilot Options are reasonable, equitable and not unfairly discriminatory.

The Exchange operates in a highly competitive market comprised of eleven U.S. options exchanges in which sophisticated and knowledgeable market participants can and do send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the proposed fee and rebate scheme for Non-Penny Pilot Options is competitive and similar to other fees and rebates in place on other exchanges. The Exchange believes that this competitive marketplace materially impacts the fees and rebates present on the Exchange today and substantially influences the proposal set forth above.

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

BX does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, BX has designed its fees and rebates to compete effectively for the execution and routing of options contracts. The Exchange believes that the proposed fee/rebate pricing structure for Non-Penny Pilot Options would attract liquidity to and benefit order interaction at the Exchange to the benefit of all market participants.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>13</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

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

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2012-074 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2012-074. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The

Commission will post all comments on the Commission's Internet Web site

(<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-BX-2012-074 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

Kevin M O'Neill  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

*New text is underlined; deleted text is in brackets.*

**Chapter XV Options Pricing**

BX Options Participants may be subject to the Charges for Membership, Services and Equipment in the Rule 7000 Series as well as the fees in this Chapter XV.

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**Sec. 2 BX Options Market—Fees and Rebates**

The following charges shall apply to the use of the order execution and routing services of the BX Options market for all securities.

(1) Fees for Execution of Contracts on the BX Options Market:

	<b>Fees and Rebates (per executed contract)</b>		
	<b>Customer</b>	<b>BX Options Market Maker</b>	<b>Non-Customer<sup>1</sup></b>
<b>IWM, QQQ and SPY:</b>			
<b>Rebate to Add Liquidity</b>	\$0.00 <sup>2</sup>	\$0.15 <sup>2</sup>	N/A
<b>Fee to Add Liquidity</b>	\$0.18 <sup>3</sup>	\$0.18 <sup>3</sup>	\$0.45
<b>Rebate to Remove Liquidity</b>	\$0.12	N/A	N/A
<b>Fee to Remove Liquidity</b>	N/A	\$0.45	\$0.45
<b>All Other Penny Pilot Options:</b>			
<b>Rebate to Add Liquidity</b>	\$0.00 <sup>2</sup>	\$0.10 <sup>2</sup>	N/A
<b>Fee to Add Liquidity</b>	\$0.40 <sup>3</sup>	\$0.40 <sup>3</sup>	\$0.45
<b>Rebate to Remove Liquidity</b>	\$0.32	N/A	N/A
<b>Fee to Remove Liquidity</b>	N/A	\$0.45	\$0.45
<b><u>Non-Penny Pilot Options:</u></b>			
<b><u>Fee to Add Liquidity</u></b>	<u>\$0.25/\$0.85<sup>4</sup></u>	<u>\$0.50/\$0.85<sup>4</sup></u>	<u>\$0.88</u>
<b><u>Rebate to Remove Liquidity</u></b>	<u>\$0.70</u>	<u>N/A</u>	<u>N/A</u>
<b><u>Fee to Remove Liquidity</u></b>	<u>N/A</u>	<u>\$0.88</u>	<u>\$0.88</u>

<sup>1</sup>A Non-Customer includes a Professional, Firm, Broker-Dealer and Non-BX Options Market Maker.

<sup>2</sup>The Rebate to Add Liquidity will be paid to a Customer or BX Options Market Maker only when the Customer or BX Options Market Maker is contra to a Non-Customer or BX Options Market Maker.



<sup>3</sup>The Fee to Add Liquidity will be assessed to a Customer or BX Options Market Maker only when the Customer or BX Options Market Maker is contra to a Customer.

<sup>4</sup>The higher Fee to Add Liquidity will be assessed to a Customer or BX Options Market Maker only when the Customer or BX Options Market Maker is contra to a Customer.

**(2) - (4) No Change**

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