

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="70"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2016"/> - * <input type="text" value="010"/> Amendment No. (req. for Amendments *) <input type="text"/>
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Filing by **NASDAQ OMX BX, Inc.**
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

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

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 * Last Name *
 Title *
 E-mail *
 Telephone * Fax

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 By

(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 *

Add Remove View

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

Add Remove View

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 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 Options Pricing at Chapter XV Section 2, entitled “BX Options Market – Fees and Rebates,” which governs pricing for BX members using the BX Options Market (“BX Options”). The Exchange proposes to modify certain fees and rebates (per executed contract) to: (1) adopt fees and rebates applicable to Firm³ and (2) adopt tiers applicable to options overlying Standard and Poor's Depository Receipts/SPDRs (“SPY”).⁴

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.

¹ 15 U.S.C. § 78s(b)(1).

² 17 C.F.R. § 240.19b-4.

³ The term "Firm" or ("F") applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC. BX Chapter XV.

⁴ SPY options are based on the SPDR exchange-traded fund (“ETF”), which is designed to track the performance of the S&P 500 Index, and are Penny Pilot Options. The Penny Pilot was established in June 2012 and extended in 2015. See Securities Exchange Act Release Nos. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR-BX-2012-030) (order approving BX option rules and establishing Penny Pilot); and 75326 (June 29, 2015), 80 FR 38481 (July 6, 2015) (SR-BX-2015-037) (notice of filing and immediate effectiveness extending the Penny Pilot through June 30, 2016).

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 (the “Board”) on July 1, 2015. 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:

Jurij Trypupenko
Associate General Counsel
Nasdaq, Inc.
(301) 978-8132.

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

a. Purpose

The Exchange proposes to amend its Chapter XV, Section 2 to modify subsection (1) regarding certain fees and rebates⁵ (known as “fees and rebates”) to (1) adopt fees and rebates applicable to Firm; and (2) adopt tiers applicable to options overlying SPY (the “SPY Option Tier Schedule”). The proposed modified fees and rebates (per executed contract) and new SPY Option Tier Schedule would apply to Customers,⁶ BX Options Market Makers,⁷ Non-Customers⁸ and Firms.

⁵ Fees and rebates are per executed contract. Chapter XV, Section 2(1).

⁶ 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 Chapter I, Section 1(a)(48)). BX Chapter XV.

⁷ BX Options Market Makers may also be referred to as “Market Makers”. The term “BX Options Market Maker” or (“M”) means a Participant that has registered as a Market Maker on BX Options pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In

Each specific change is described in detail below.

Currently, Chapter XV, Section 2 subsection (1) reads as follows:

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

Fees and Rebates (per executed contract)			
	Customer	BX Options Market Maker	Non-Customer¹
Penny Pilot Options:			
Rebate to Add Liquidity	#	\$0.10 ²	N/A
Fee to Add Liquidity	#	\$0.39 ³	\$0.45
Rebate to Remove Liquidity	#	N/A	N/A
Fee to Remove Liquidity	N/A	#	\$0.46
Non-Penny Pilot Options:			
Rebate to Add Liquidity	*	N/A	N/A
Fee to Add Liquidity	*	\$0.50/\$0.95 ⁵	\$0.98
Rebate to Remove Liquidity	*	N/A	N/A
Fee to Remove Liquidity	N/A	*	\$0.89

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

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

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

⁴Reserved

⁵The higher Fee to Add Liquidity will be assessed to a BX Options Market Maker only when the BX Options Market Maker is contra to a Customer.

order to receive Market Maker pricing in all securities, the Participant must be registered as a BX Options Market Maker in at least one security. BX Chapter XV.

⁸ Note 1 to Chapter XV, Section 2 states: “¹A Non-Customer includes a Professional, Firm, Broker-Dealer and Non-BX Options Market Maker.” Firm is proposed to be removed from the note.

Penny Pilot Options Tier Schedule

		Rebate to Add Liquidity	Fee to Add Liquidity	Rebate to Remove Liquidity	Fee to Remove Liquidity	Fee To Remove Liquidity
When:	Customer	Customer	Customer	Customer	BX Options Market Maker	BX Options Market Maker
Trading with:	Non-Customer or BX Options Market Maker	Customer	Non-Customer, BX Options Market Maker, or Customer	Customer	Non-Customer or BX Options Market Maker	Non-Customer or BX Options Market Maker
Tier 1	Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month.	\$0.00	\$0.39	\$0.00	\$0.39	\$0.46
Tier 2	Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month.	\$0.10	\$0.39	\$0.25	\$0.39	\$0.46
Tier 3	Participant executes	\$0.20	\$0.39	\$0.35	\$0.30	\$0.46

0.15% or more of total industry customer equity and ETF option ADV contracts per month

* Non-Penny Pilot Options Tier Schedule

		Rebate to Add Liquidity	Fee to Add Liquidity	Rebate to Remove Liquidity	Fee to Remove Liquidity	Fee To Remove Liquidity
When:	Customer	Customer	Customer	Customer	BX Options Market Maker	BX Options Market Maker
Trading with:	Non-Customer or BX Options Market Maker	Customer	Non-Customer, BX Options Market Maker, or Customer	Customer	Non-Customer or BX Options Market Maker	Non-Customer or BX Options Market Maker
Tier 1	Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month.	\$0.00	\$0.85	\$0.80	\$0.89	\$0.89
Tier 2	Participant executes 0.05% to less than 0.15% of total	\$0.10	\$0.85	\$0.80	\$0.89	\$0.89

	industry customer equity and ETF option ADV contracts per month.					
Tier 3	Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month	\$0.20	\$0.85	\$0.80	\$0.60	\$0.89

Change 1 - Penny Pilot Options: Modify Fees and Rebates To Add Firm Column

In Change 1, the Exchange proposes modifications to its fees and rebates for Penny Pilot Options⁹ and for Non-Penny Pilot Options to add a new Firm column. The proposed Firm column would have exactly the same assessments or rates as the current Non-Customer column, which now includes Firm.¹⁰ The Exchange notes that by adding the new Firm column it is not changing any fees and rebates for Firm. Rather, all fees and rebates applicable to Firm are now in the new Firm column but remain exactly the same as they are currently for Firm when it is part of the Non-Customer column.

Commensurate with the proposed Firm column, the Exchange also proposes to change

⁹ The greatest volume options traded on the Exchange and in the options market are Penny Pilot Options, and in particular SPY Options, and the Exchange has taken this into account when structuring and modifying its fee and rebate schedule.

¹⁰ Currently, note 1 states: “A Non-Customer includes a Professional, Firm, Broker-Dealer and Non-BX Options Market Maker.”

notes 1 and 2 so that these notes read properly. The Exchange proposes to take out “Firm” in note 1 and to add “Firm” in note 2.

The proposed change keeps current fees and rebates assessments intact. Thus, for Penny Pilot Options: the Rebate to Add Liquidity would remain at N/A for Non-Customer and would be the same for Firm; the Fee to Add Liquidity would remain at \$0.45 for Non-Customer and would be the same for Firm; the Rebate to Remove Liquidity would remain at N/A for Non-Customer and would be the same for Firm; and the Fee to Remove Liquidity would remain at \$0.46 for non-Customer and would be the same for Firm. Thus, for Non-Penny Pilot Options: the Rebate to Add Liquidity would remain at N/A for Non-Customer and would be the same for Firm; the Fee to Add Liquidity would remain at \$0.98 for non-Customer and would be the same for Firm; the Rebate to Remove Liquidity would remain at N/A for Non-Customer and would be the same for Firm; and the Fee to Add Liquidity would remain at \$0.89 for non-Customer and would be the same for Firm.

Chapter XV, Section 2 subsection (1) reflecting the proposed new Firm column is set forth below.

Change 2 - Penny Pilot Options: Modify Fees and Rebates To Add SPY Options Tiers

In Change 2, the Exchange proposes modifications to its current Penny Pilot Options Tier Schedule to indicate that this particular schedule does not apply to SPY Options and that for SPY Options pricing there will be a separate SPY Options Tier Schedule. The Exchange proposes new The Tier 1, Tier 2, and Tier 3 requirements which will be similar to tiers in the current Penny Pilot Options Tier Schedule; and a new Tier 4.

Specifically, the Exchange proposes to add SPY Options Tiers 1 – 4 for Rebate to Add Liquidity for Customer (when trading with Non-Customer, BX Options Market Maker, or Firm¹¹), Fee to Add Liquidity for BX Market Maker (when trading with Customer), Rebate to Remove Liquidity for Customer (when trading with Non-Customer, BX Options Market Maker, Customer, or Firm), and Fee to Remove Liquidity for BX Options Market Maker (when trading with Customer). The Exchange also proposes several explanatory notes applicable to the SPY Option Tier Schedule.

Proposed Tier 1 in the SPY Options Tier Schedule will be where a BX Participant (“Participant”) executes less than 0.05% of total industry customer equity and exchange traded fund (“ETF”) option average daily volume (“ADV”) contracts per month.

Proposed Tier 1 will range from a \$0.00 rebate to a \$0.42 fee:

- the new Rebate to Add Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Firm will be \$0.00 (no rebate will be paid);¹²
- the new Fee to Add Liquidity when BX Options Market Maker trading with Customer will be \$0.42;¹³

¹¹ Commensurate with establishing a Firm column, and in particular indicating Firm in the new SPY Options Tier Schedule, the Exchange proposes to add Firm in the Non-Penny Pilot Options Tier Schedule (e.g., Rebate to Add Liquidity, Rebate to Remove Liquidity, Fee to Remove Liquidity).

¹² The new Rebate to Add Liquidity is similar to what is in the current Penny Pilot Options Tier Schedule. However, in the new rebate the Exchange proposes to add that the rebate is also applicable when trading with Firm, which is proposed to be separate from Non-Customer. For purposes of conformity, Firm is proposed to be added to the Rebate to Add Liquidity for Customer in the Penny Pilot Tier Schedule, the SPY Options Tier Schedule, and the Non-Penny Pilot Tier Schedule.

¹³ There is no similar fee in the current Penny Pilot Options Tier Schedule.

- the new Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, Customer, or Firm will be \$0.00;¹⁴ and
- the new Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be \$0.42.¹⁵

Proposed Tier 2 in the SPY Options Tier Schedule will be where Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month. Proposed Tier 2 will range from a \$0.25 rebate to a \$0.42 fee:

- the new Rebate to Add Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Firm will be \$0.10.¹⁶
- the new Fee to Add Liquidity when BX Options Market Maker trading with Customer will be \$0.42;¹⁷
- the new Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, Customer, or Firm will be \$0.25;¹⁸ and

¹⁴ The new Rebate to Remove Liquidity is similar to what is in the current Penny Pilot Options Tier Schedule. However, in the new rebate the Exchange proposes to add that the rebate is also applicable when trading with Firm, which is proposed to be separate from Non-Customer. For purposes of conformity, Firm is proposed to be added to the Rebate to Add Liquidity for Customer in the Penny Pilot Tier Schedule, the SPY Options Tier Schedule, and the Non-Penny Pilot Tier Schedule.

¹⁵ The Fee to Remove Liquidity is \$0.39 in the current Penny Pilot Options Tier Schedule. However, in the new rebate the Exchange proposes to add that the rebate is also applicable when trading with Firm, which is proposed to be separate from Non-Customer. For purposes of conformity, Firm is proposed to be added to the Rebate to Add Liquidity for Customer in the Penny Pilot Tier Schedule, the SPY Options Tier Schedule, and the Non-Penny Pilot Tier Schedule.

¹⁶ The new Rebate to Add Liquidity is similar to what is in the current Penny Pilot Options Tier Schedule.

¹⁷ There is no similar fee in the current Penny Pilot Options Tier Schedule.

- the new Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be \$0.42.¹⁹

Proposed Tier 3 in the SPY Options Tier Schedule will be where Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month. Proposed Tier 3 will range from a \$0.37 rebate to a \$0.39 fee:

- the new Rebate to Add Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Firm will be \$0.20.²⁰
- the new Fee to Add Liquidity when BX Options Market Maker trading with Customer will be \$0.39;²¹
- the new Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, Customer, or Firm will be \$0.37;²² and
- the new Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be \$0.39.²³

Proposed Tier 4 in the SPY Options Tier Schedule, which has no equivalent in the Penny Pilot Options Tier Schedule, will be where Participant executes greater than 5,000

¹⁸ The new Rebate to Remove Liquidity is similar to what is in the current Penny Pilot Options Tier Schedule.

¹⁹ The Fee to Remove Liquidity is \$0.39 in the current Penny Pilot Options Tier Schedule.

²⁰ The Rebate to Add Liquidity is similar to what is in the current Penny Pilot Options Tier Schedule.

²¹ There is no similar fee in the current Penny Pilot Options Tier Schedule.

²² The Rebate to Remove Liquidity is \$0.35 in the current Penny Pilot Options Tier Schedule.

²³ The Fee to Remove Liquidity is \$0.30 in the current Penny Pilot Options Tier Schedule.

ADV in BX Price Improvement Auction (“PRISM”) Agency Contracts.²⁴ If a Participant qualifies for Tier 4 the rates applicable to this tier will supersede any other SPY tier rates that the Participant may that qualify for. Proposed Tier 4 will range from a \$0.37 rebate to a \$0.32 fee:

- the new Rebate to Add Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Firm will be \$0.25.
- the new Fee to Add Liquidity when BX Options Market Maker trading with Customer will be \$0.32;
- the new Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, Customer, or Firm will be \$0.37; and
- the new Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be \$0.25.

In addition, the Exchange proposes several explanatory notes at the end of the SPY Options Tier Schedule:

- BX Options Market Maker fee to add liquidity in SPY Options will be \$0.00 when trading with Firm, Non-Customer, or BX Options Market Maker;

²⁴ PRISM is a Price Improvement Mechanism for all-electronic BX Options whereby a buy and sell order may be submitted in one order message to initiate an auction at a stop price and seek potential price improvement. Options are traded electronically on BX Options, and all options participants may respond to a PRISM Auction, the duration of which is set at 200 milliseconds. PRISM includes auto-match functionality in which a Participant (an "Initiating Participant") may electronically submit for execution an order it represents as agent on behalf of customer, n6 broker dealer, or any other entity ("PRISM Order") against principal interest or against any other order it represents as agent (an "Initiating Order") provided it submits the PRISM Order for electronic execution into the PRISM Auction pursuant. See Chapter VI, Section 9; and Securities Exchange Act Release No. 76301 (October 29, 2015), 80 FR 68347 (November 4, 2015) (SR-BX-2015-032) (order approving BX PRISM).

- Firm fee to add liquidity and fee to remove liquidity in SPY Options will be \$0.33 per contract, regardless of counterparty;
- Non-Customer fee to add liquidity and fee to remove liquidity in SPY Options will be \$0.46 per contract, regardless of counterparty;
- BX Options Market Maker fee to remove liquidity in SPY Options will be \$0.46 per contract when trading with Firm, Non-Customer, or BX Options Market Maker;
- Customer fee to add liquidity in SPY Options when contra to another Customer is \$0.33 per contract; and
- Volume from all products listed on BX Options will apply to the SPY Options Tiers.

Chapter XV, Section 2 subsection (1) reflecting all proposed changes will read as follows:

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

Fees and Rebates (per executed contract)				
	Customer	BX Options Market Maker	Non-Customer¹	Firm
Penny Pilot Options (Excluding Options in SPY):				
Rebate to Add Liquidity	#	\$0.10 ²	N/A	N/A
Fee to Add Liquidity	#	\$0.39 ³	\$0.45	\$0.45
Rebate to Remove Liquidity	#	N/A	N/A	N/A
Fee to Remove Liquidity	N/A	#	\$0.46	\$0.46

Non-Penny Pilot Options:

Rebate to Add Liquidity	*	N/A	N/A	N/A
Fee to Add Liquidity	*	\$0.50/\$0.95 ⁵	\$0.98	\$0.98
Rebate to Remove Liquidity	*	N/A	N/A	N/A
Fee to Remove Liquidity	N/A	*	\$0.89	\$0.89

¹A Non-Customer includes a Professional, Broker-Dealer and Non-BX Options Market Maker.

²The Rebate to Add Liquidity will be paid to a BX Options Market Maker only when the BX Option Market Maker is contra to a Non-Customer, Firm, or BX Options Market Maker.

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

⁴Reserved

⁵The higher Fee to Add Liquidity will be assessed to a BX Options Market Maker only when the BX Options Market Maker is contra to a Customer.

Penny Pilot Options Tier Schedule (excluding SPY Options)

	Rebate to Add Liquidity	Fee to Add Liquidity	Rebate to Remove Liquidity	Fee to Remove Liquidity	Fee To Remove Liquidity
When:	Customer	Customer	Customer	BX Options Market Maker	BX Options Market Maker
Trading with:	Non-Customer, BX Options Market Maker, or	Customer	Non-Customer, BX Options Market Maker, Customer,	Customer	Non-Customer, BX Options Market Maker, or Firm

		Firm		or Firm		
Tier 1	Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month.	\$0.00	\$0.39	\$0.00	\$0.39	\$0.46
Tier 2	Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month.	\$0.10	\$0.39	\$0.25	\$0.39	\$0.46
Tier 3	Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts	\$0.20	\$0.39	\$0.35	\$0.30	\$0.46

per month

SPY Options Tier Schedule

		Rebate to Add Liquidity	Fee to Add Liquidity	Rebate to Remove Liquidity	Fee to Remove Liquidity
When:	Customer		BX Options Market Maker	Customer	BX Options Market Maker
Trading with:	Non- Customer, BX Options Market Maker, or Firm		Customer	Non- Customer, BX Options Market Maker, Customer, or Firm	Customer
Tier 1	Participant executes less than 0.05% of total industry customer equity and ETF option ADV	\$0.00	\$0.42	\$0.00	\$0.42

	contracts per month.				
	Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month.	\$0.10	\$0.42	\$0.25	\$0.42
Tier 2					
	Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month	\$0.20	\$0.39	\$0.37	\$0.39
Tier 3					
	Participant executes greater than 5,000 ADV in PRISM Agency Contracts	\$0.25	\$0.32	\$0.37	\$0.25
Tier 4					

- BX Options Market Maker fee to add liquidity in SPY Options will be \$0.00 when trading with Firm, Non-Customer, or BX Options Market Maker.
- Firm fee to add liquidity and fee to remove liquidity in SPY Options will be \$0.33 per contract, regardless of counterparty.
- Non-Customer fee to add liquidity and fee to remove liquidity in SPY Options will be \$0.46 per contract, regardless of counterparty.
- BX Options Market Maker fee to remove liquidity in SPY Options will be \$0.46 per contract when trading with Firm, Non-Customer, or BX Options Market Maker.
- Customer fee to add liquidity in SPY Options when contra to another Customer is \$0.33 per contract.
- Volume from all products listed on BX Options will apply to the SPY Options Tiers.

* Non-Penny Pilot Options Tier Schedule

		Rebate to Add Liquidity	Fee to Add Liquidity	Rebate to Remove Liquidity	Fee to Remove Liquidity	Fee To Remove Liquidity
	When:	Customer	Customer	Customer	BX Options Market Maker	BX Options Market Maker
	Trading with:	Non-Customer, BX Options Market Maker, or Firm	Customer	Non-Customer, BX Options Market Maker, Customer, or Firm,	Customer	Non-Customer, BX Options Market Maker, or Firm
Tier 1	Participant executes	\$0.00	\$0.85	\$0.80	\$0.89	\$0.89

	less than 0.05% of total industry customer equity and ETF option ADV contracts per month.					
Tier 2	Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month.	\$0.10	\$0.85	\$0.80	\$0.89	\$0.89
Tier 3	Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month.	\$0.20	\$0.85	\$0.80	\$0.60	\$0.89

The Exchange is proposing fees and rebate changes and adopting the SPY Options Tier Schedule at this time because it believes that this will provide incentives for

execution of contracts, and in particular SPY Options contracts, on the BX Options Market.

The Exchange also believes that its proposal should provide increased opportunities for participation in executions on the Exchange, facilitating the ability of the Exchange to bring together participants and encourage more robust competition for orders.

b. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act,²⁵ in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act,²⁶ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues* and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies..”²⁷ Likewise,

²⁵ 15 U.S.C. 78f(b).

²⁶ 15 U.S.C. § 78f(b)(4), (5).

²⁷ Securities Exchange Act Release No. 51808 at 37499 (June 9, 2005) (“Regulation NMS Adopting Release”).

in NetCoalition v. Securities and Exchange Commission²⁸ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.²⁹ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”³⁰

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”³¹ Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange proposes to amend its Chapter XV, Section 2 to modify subsection (1) to adopt fees and rebates applicable to Firm, and to adopt a new SPY Option Tier Schedule. The proposed modified fees and rebates and new SPY Option Tier Schedule would, as discussed, apply to Customers, BX Options Market Makers, Non-Customers,

²⁸ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

²⁹ See id. at 534-535.

³⁰ See id. at 537.

³¹ Id. at 539 (quoting Securities Exchange Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21) at 73 FR at 74782-74783).

and Firms. The Exchange believes that its proposal is reasonable, equitable, and not unfairly discriminatory and should provide increased opportunities for participation in executions on the Exchange, facilitating the ability of the Exchange to bring together participants and encourage more robust competition for orders.

Change 1 - Penny Pilot Options: Modify Fees and Rebates To Add Firm Column

In Change 1, the Exchange proposes modifications to its fees and rebates for Penny Pilot Options and for Non-Penny Pilot Options to add a new Firm column; and to make changes to notes to properly reflect the use of the new Firm column. The proposed Firm column would have exactly the same assessments or rates as the current Non-Customer column, which now includes Firm.

The proposed change is reasonable because it simply establishes a new Firm column but keeps current fees and rebate assessments intact. The proposed rule change is reasonable because it continues to encourage market participant behavior through the fees and rebates system, which is an accepted methodology among options exchanges.³² The proposed change is also reasonable because it continues, through the fees and rebates schedule, to incentivize Participants to direct Penny Pilot Options liquidity³³ and Non-Penny Pilot Options liquidity to the Exchange.

³² See, e.g., fee and rebate schedules of other options exchanges, including, but not limited to, NASDAQ Options Market (“NOM”), NASDAQ PHLX LLC (“Phlx”), and Chicago Board Options Exchange (“CBOE”).

³³ Penny Pilot Options, and in particular SPY Options, represent the greatest volume options traded on the Exchange and in the options market and the Exchange has taken this into account when structuring and modifying its fee and rebate schedule.

The proposed rule change to fees and rebates for Penny Pilot Options and for Non-Penny Pilot Options to add a new Firm column, and to make changes to notes to properly reflect the use of the new Firm column, is equitable and not unfairly discriminatory. This is because the Exchange's proposal keeps current fees and rebate assessments intact, and the fees and rebates schedule will continue to apply uniformly to all similarly situated Participants.

The fees and rebates schedule as proposed continues to reflect differentiation among different market participants. The Exchange believes that the differentiation is equitable and not unfairly discriminatory, as well as reasonable, and notes that some market participants like BX Options Market Makers commit to various obligations. For example, transactions of a BX Options Market Maker must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and BX Options Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all BX Options Market Makers are designated as specialists on BX for all purposes under the Act or rules thereunder.³⁴

The Exchange believes that by making the proposed Firm column change, it is continuing to incentivize Participants to execute more volume on the Exchange to further enhance liquidity in this market.

Change 2 - Penny Pilot Options: Modify Fees and Rebates To Add SPY Options Tiers

In Change 2, the Exchange proposes modifications to its current Penny Pilot Options Tier Schedule to indicate that this particular schedule does not apply to SPY

³⁴ See Chapter VII, Section 5, entitled "Obligations of Market Makers."

Options, and that for SPY Options pricing there will be a separate SPY Options Tier Schedule. The Tier 1, Tier 2, and Tier 3 requirements in the proposed SPY Options Tier Schedule will be similar to the current Penny Pilot Options Tier Schedule. The Exchange also proposes a new Tier 4 for the SPY Options Tier Schedule. Specifically, the Exchange proposes to add SPY Options Tiers 1 – 4 for Rebate to Add Liquidity for Customer (when trading with Non-Customer, BX Options Market Maker, or Firm), Fee to Add Liquidity for BX Market Maker (when trading with Customer), Rebate to Remove Liquidity for Customer (when trading with Non-Customer, BX Options Market Maker, Customer, or Firm), and Fee to Remove Liquidity for BX Options Market Maker (when trading with Customer). The Exchange also proposes several explanatory notes applicable to the SPY Option Tier Schedule.

The Exchange believes that excluding SPY Options pricing from the Penny Pilot Options Tier Schedule and establishing a separate SPY Options Tier Schedule is reasonable because of the nature of SPY options. These are most heavily traded options on the Exchange as well as in the industry.

The Exchange believes that the proposed SPY Options Tier Schedule is reasonable because it is not a novel, untested structure but rather is similar to what is offered by other options markets,³⁵ and, is based on the Exchange's Penny Pilot Options Tier Schedule. The proposed Tiers in the SPY Options Tier Schedule clearly reflect the progressively increasing nature of Participant executions structured for the purpose of attracting order flow to the Exchange. This encourages market participant behavior through progressive tiered fees and rebates using an accepted methodology among

³⁵ See, e.g., the pricing schedule of Phlx. See also, e.g., the pricing schedule of NASDAQ Options Market ("NOM").

options exchanges.³⁶ Tier 1 in the SPY Options Tier Schedule is, similarly to Tier 1 in the Penny Pilot Options Tier Schedule, set up to enable a Participant to earn a Rebate to Add Liquidity or pay a Fee to Add Liquidity in SPY where the Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month. Tier 2 in the SPY Options Tier Schedule is, similarly to Tier 2 in the Penny Pilot Options Tier Schedule, set up to enable a Participant to earn a Rebate to Add Liquidity or pay a Fee to Add Liquidity in SPY where the Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month. And Tier 3 in the SPY Options Tier Schedule is, similarly to Tier 3 in the Penny Pilot Options Tier Schedule, set up to Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month. The fees and rebates that BX Options Market Makers and Customers are assessed are, as has been discussed at length, comparable to the fees and rebates in the Penny Pilot Options Tier Schedule. The Exchange believes that it is reasonable to also establish Tier 4 in the in the SPY Options Tier Schedule in order to enable a Participant to earn a Rebate to Add Liquidity or pay a Fee to Add Liquidity in SPY where the Participant executes greater than 5,000 ADV in certain PRISM Contracts. By so doing, the Exchange encourages Participants to trade Prism Contracts, which have been recently approved for trading.³⁷

In addition, the Exchange believes that making changes to add the SPY Options Tier Schedule in terms of Rebate to Add Liquidity and Fee to Add Liquidity, and Rebate

³⁶ See, e.g., fee and rebate schedules of other options exchanges, including, but not limited to, NOM, Phlx, and Chicago Board Options Exchange (“CBOE”).

³⁷ See Securities Exchange Act Release No. 76301 (October 29, 2015), 80 FR 68347 (November 4, 2015) (SR-BX-2015-032) (order approving BX PRISM).

to Remove Liquidity and Fee to Remove Liquidity, is reasonable because it encourages the desired Customer behavior by attracting Customer interest to the Exchange.

Customer activity enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The SPY Options Tier Schedule is reasonable in that it is, like the Penny Pilot Options Tier Schedule, set up to incentivize Participants to direct liquidity to the Exchange; using volume from all products listed on BX Options will further incentivize Participants. As Participants execute more of total industry customer equity and ETF option ADV contracts per month on the Exchange, they can in certain categories earn higher rebates and be assessed lower fees. For example, in the SPY Options Tier Schedule the Tier 3 Rebate to Add Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Firm is higher (\$0.20) than the Penny Pilot Tier 1 Rebate to Add Liquidity (\$0.00); and the Tier 3 Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, Customer, or Firm is higher (\$0.37) than the Tier 2 Rebate to Remove Liquidity (\$0.25). Similarly, the Fee to Add Liquidity when BX Option Market Maker trading with Customer is lesser for Tier 3 (\$0.39) than for Tier 1 (\$0.42); and the Fee to Remove Liquidity when BX Option Market Maker trading with Customer is less for Tier 3 (\$0.39) than for Tier 1 (\$0.42).

The Exchange believes that it is reasonable to add notes to the SPY Options Tier Schedule as they are explanatory in nature. Five such notes explain that unlike how new

Tiers 1-4 function, certain fees (e.g. BX Options Market Maker, Firm, Non-Customer, and Customer) remain the same regardless of counterparty. The Exchange believes that it is also reasonable for conformity to indicate Firm across fees and rebates, the new SPY Options Tier Schedule, the Penny Pilot Options Tier Schedule, and the Non-Penny Pilot Options Tier Schedule.

Establishing the SPY Options Tier Schedule, which includes new Tiers 1-4, is equitable and not unfairly discriminatory. This is because the Exchange's proposal to assess fees and pay rebates according to Tiers 1, 2, 3, and 4 will apply uniformly to all similarly situated Participants. Customers would earn a Rebate to Add Liquidity and be assessed a Fee to Add Liquidity according to the Tiers, and BX Market Makers would earn a Rebate to Remove Liquidity and a Fee to Remove Liquidity according to the same Tiers per the SPY Options Tier Schedule; and certain fees would be the same regardless of counterparty. The fee and rebate schedule as proposed continues to reflect differentiation among different market participants. The Exchange believes that the differentiation is equitable and not unfairly discriminatory, as well as reasonable, because some market participants like BX Options Market Makers commit to obligations such as that transactions must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and BX Options Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings.

The Exchange believes that by making the proposed Penny Pilot Options changes it is incentivizing Participants to execute more volume on the Exchange to further enhance liquidity in this market.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange does not believe that its proposal to make changes to its Penny Pilot Options and Non-Penny Pilot Options fees and rebates and to establish a SPY Options Tiers Schedule will impose any undue burden on competition, as discussed below.

The Exchange operates in a highly competitive market in which many sophisticated and knowledgeable market participants can readily and do send order flow to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. Additionally, new competitors have entered the market and still others are reportedly entering the market shortly. These market forces ensure that the Exchange's fees and rebates remain competitive with the fee structures at other trading platforms. In that sense, the Exchange's proposal is actually pro-competitive because the Exchange is simply continuing its fees and rebates and for Penny Pilot Options and Non-Penny Pilot Options and establishing a SPY Options Tiers Schedule in order to remain competitive in the current environment.

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with

alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In terms of intra-market competition, the Exchange notes that price differentiation among different market participants operating on the Exchange (e.g., Customer and BX Options Market Maker) is reasonable. Customer activity, for example, enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Moreover, unlike others market participants each BX Options Market Maker commits to various obligations. These obligations include, for example, transactions of a BX Market Maker 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.³⁸

In this instance, the proposed changes to the fees and rebates for Penny Pilot Options and for Non-Penny Pilot Options to add a new Firm column, and establishing a SPY Options Tiers Schedule, do not impose a burden on competition because the

³⁸ See Chapter VII, Section 5, entitled “Obligations of Market Makers”.

Exchange's execution and routing services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Additionally, the changes proposed herein are pro-competitive to the extent that they continue to allow the Exchange to promote and maintain order executions.

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,³⁹ 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

³⁹ 15 U.S.C. § 78s(b)(3)(A)(ii).

the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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

Not applicable

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

Not applicable.

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

Not applicable.

11. Exhibits

1. Completed 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-2016-010)

February __, 2016

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fees and Rebates Applicable to Firm and to Adopt Tiers Applicable to Options Overlying SPY

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 February 1, 2016, 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 its Options Pricing at Chapter XV Section 2, entitled “BX Options Market – Fees and Rebates,” which governs pricing for BX members using the BX Options Market (“BX Options”). The Exchange proposes to modify certain fees and rebates (per executed contract) to: (1) adopt fees and rebates applicable to Firm³ and (2) adopt tiers applicable to options overlying Standard and Poor's Depository Receipts/SPDRs (“SPY”).⁴

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term "Firm" or ("F") applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC. BX Chapter XV.

⁴ SPY options are based on the SPDR exchange-traded fund (“ETF”), which is designed to track the performance of the S&P 500 Index, and are Penny Pilot

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqomxbx.cchwallstreet.com/>, 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

The Exchange proposes to amend its Chapter XV, Section 2 to modify subsection (1) regarding certain fees and rebates⁵ (known as "fees and rebates") to (1) adopt fees and rebates applicable to Firm; and (2) adopt tiers applicable to options overlying SPY (the "SPY Option Tier Schedule"). The proposed modified fees and rebates (per executed

Options. The Penny Pilot was established in June 2012 and extended in 2015. See Securities Exchange Act Release Nos. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR-BX-2012-030) (order approving BX option rules and establishing Penny Pilot); and 75326 (June 29, 2015), 80 FR 38481 (July 6, 2015) (SR-BX-2015-037) (notice of filing and immediate effectiveness extending the Penny Pilot through June 30, 2016).

⁵ Fees and rebates are per executed contract. Chapter XV, Section 2(1).

contract) and new SPY Option Tier Schedule would apply to Customers,⁶ BX Options Market Makers,⁷ Non-Customers⁸ and Firms.

Each specific change is described in detail below.

Currently, Chapter XV, Section 2 subsection (1) reads as follows:

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

Fees and Rebates (per executed contract)			
	Customer	BX Options Market Maker	Non-Customer¹
Penny Pilot Options:			
Rebate to Add Liquidity	#	\$0.10 ²	N/A
Fee to Add Liquidity	#	\$0.39 ³	\$0.45
Rebate to Remove Liquidity	#	N/A	N/A
Fee to Remove Liquidity	N/A	#	\$0.46
Non-Penny Pilot Options:			
Rebate to Add Liquidity	*	N/A	N/A
Fee to Add Liquidity	*	\$0.50/\$0.95 ⁵	\$0.98
Rebate to Remove Liquidity	*	N/A	N/A
Fee to Remove Liquidity	N/A	*	\$0.89

⁶ 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 Chapter I, Section 1(a)(48)). BX Chapter XV.

⁷ BX Options Market Makers may also be referred to as “Market Makers”. The term “BX Options Market Maker” or (“M”) means a Participant that has registered as a Market Maker on BX Options pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive Market Maker pricing in all securities, the Participant must be registered as a BX Options Market Maker in at least one security. BX Chapter XV.

⁸ Note 1 to Chapter XV, Section 2 states: “¹A Non-Customer includes a Professional, Firm, Broker-Dealer and Non-BX Options Market Maker.” Firm is proposed to be removed from the note.

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

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

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

⁴Reserved

⁵The higher Fee to Add Liquidity will be assessed to a BX Options Market Maker only when the BX Options Market Maker is contra to a Customer.

Penny Pilot Options Tier Schedule

		Rebate to Add Liquidity	Fee to Add Liquidity	Rebate to Remove Liquidity	Fee to Remove Liquidity	Fee To Remove Liquidity
	When:	Customer	Customer	Customer	BX Options Market Maker	BX Options Market Maker
	Trading with:	Non-Customer or BX Options Market Maker	Customer	Non-Customer, BX Options Market Maker, or Customer	Customer	Non-Customer or BX Options Market Maker
Tier 1	Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month.	\$0.00	\$0.39	\$0.00	\$0.39	\$0.46
Tier 2	Participant executes	\$0.10	\$0.39	\$0.25	\$0.39	\$0.46

	0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month.					
Tier 3	Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month	\$0.20	\$0.39	\$0.35	\$0.30	\$0.46

* Non-Penny Pilot Options Tier Schedule

		Rebate to Add Liquidity	Fee to Add Liquidity	Rebate to Remove Liquidity	Fee to Remove Liquidity	Fee To Remove Liquidity
	When:	Customer	Customer	Customer	BX Options Market Maker	BX Options Market Maker
	Trading with:	Non-Customer or BX Options Market Maker	Customer	Non-Customer, BX Options Market Maker, or Customer	Customer	Non-Customer or BX Options Market Maker
Tier 1	Participant executes less than 0.05% of total	\$0.00	\$0.85	\$0.80	\$0.89	\$0.89

	industry customer equity and ETF option ADV contracts per month.					
Tier 2	Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month.	\$0.10	\$0.85	\$0.80	\$0.89	\$0.89
Tier 3	Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month	\$0.20	\$0.85	\$0.80	\$0.60	\$0.89

Change 1 - Penny Pilot Options: Modify Fees and Rebates To Add Firm Column

In Change 1, the Exchange proposes modifications to its fees and rebates for Penny Pilot Options⁹ and for Non-Penny Pilot Options to add a new Firm column. The

⁹ The greatest volume options traded on the Exchange and in the options market are Penny Pilot Options, and in particular SPY Options, and the Exchange has taken this into account when structuring and modifying its fee and rebate schedule.

proposed Firm column would have exactly the same assessments or rates as the current Non-Customer column, which now includes Firm.¹⁰ The Exchange notes that by adding the new Firm column it is not changing any fees and rebates for Firm. Rather, all fees and rebates applicable to Firm are now in the new Firm column but remain exactly the same as they are currently for Firm when it is part of the Non-Customer column.

Commensurate with the proposed Firm column, the Exchange also proposes to change notes 1 and 2 so that these notes read properly. The Exchange proposes to take out “Firm” in note 1 and to add “Firm” in note 2.

The proposed change keeps current fees and rebates assessments intact. Thus, for Penny Pilot Options: the Rebate to Add Liquidity would remain at N/A for Non-Customer and would be the same for Firm; the Fee to Add Liquidity would remain at \$0.45 for Non-Customer and would be the same for Firm; the Rebate to Remove Liquidity would remain at N/A for Non-Customer and would be the same for Firm; and the Fee to Remove Liquidity would remain at \$0.46 for non-Customer and would be the same for Firm. Thus, for Non-Penny Pilot Options: the Rebate to Add Liquidity would remain at N/A for Non-Customer and would be the same for Firm; the Fee to Add Liquidity would remain at \$0.98 for non-Customer and would be the same for Firm; the Rebate to Remove Liquidity would remain at N/A for Non-Customer and would be the same for Firm; and the Fee to Add Liquidity would remain at \$0.89 for non-Customer and would be the same for Firm.

Chapter XV, Section 2 subsection (1) reflecting the proposed new Firm column is set forth below.

¹⁰ Currently, note 1 states: “A Non-Customer includes a Professional, Firm, Broker-Dealer and Non-BX Options Market Maker.”

Change 2 - Penny Pilot Options: Modify Fees and Rebates To Add SPY Options Tiers

In Change 2, the Exchange proposes modifications to its current Penny Pilot Options Tier Schedule to indicate that this particular schedule does not apply to SPY Options and that for SPY Options pricing there will be a separate SPY Options Tier Schedule. The Exchange proposes new The Tier 1, Tier 2, and Tier 3 requirements which will be similar to tiers in the current Penny Pilot Options Tier Schedule; and a new Tier 4.

Specifically, the Exchange proposes to add SPY Options Tiers 1 – 4 for Rebate to Add Liquidity for Customer (when trading with Non-Customer, BX Options Market Maker, or Firm¹¹), Fee to Add Liquidity for BX Market Maker (when trading with Customer), Rebate to Remove Liquidity for Customer (when trading with Non-Customer, BX Options Market Maker, Customer, or Firm), and Fee to Remove Liquidity for BX Options Market Maker (when trading with Customer). The Exchange also proposes several explanatory notes applicable to the SPY Option Tier Schedule.

Proposed Tier 1 in the SPY Options Tier Schedule will be where a BX Participant (“Participant”) executes less than 0.05% of total industry customer equity and exchange traded fund (“ETF”) option average daily volume (“ADV”) contracts per month.

Proposed Tier 1 will range from a \$0.00 rebate to a \$0.42 fee:

¹¹ Commensurate with establishing a Firm column, and in particular indicating Firm in the new SPY Options Tier Schedule, the Exchange proposes to add Firm in the Non-Penny Pilot Options Tier Schedule (e.g., Rebate to Add Liquidity, Rebate to Remove Liquidity, Fee to Remove Liquidity).

- the new Rebate to Add Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Firm will be \$0.00 (no rebate will be paid);¹²
- the new Fee to Add Liquidity when BX Options Market Maker trading with Customer will be \$0.42;¹³
- the new Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, Customer, or Firm will be \$0.00;¹⁴ and
- the new Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be \$0.42.¹⁵

Proposed Tier 2 in the SPY Options Tier Schedule will be where Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month. Proposed Tier 2 will range from a \$0.25 rebate to a \$0.42 fee:

¹² The new Rebate to Add Liquidity is similar to what is in the current Penny Pilot Options Tier Schedule. However, in the new rebate the Exchange proposes to add that the rebate is also applicable when trading with Firm, which is proposed to be separate from Non-Customer. For purposes of conformity, Firm is proposed to be added to the Rebate to Add Liquidity for Customer in the Penny Pilot Tier Schedule, the SPY Options Tier Schedule, and the Non-Penny Pilot Tier Schedule.

¹³ There is no similar fee in the current Penny Pilot Options Tier Schedule.

¹⁴ The new Rebate to Remove Liquidity is similar to what is in the current Penny Pilot Options Tier Schedule. However, in the new rebate the Exchange proposes to add that the rebate is also applicable when trading with Firm, which is proposed to be separate from Non-Customer. For purposes of conformity, Firm is proposed to be added to the Rebate to Add Liquidity for Customer in the Penny Pilot Tier Schedule, the SPY Options Tier Schedule, and the Non-Penny Pilot Tier Schedule.

¹⁵ The Fee to Remove Liquidity is \$0.39 in the current Penny Pilot Options Tier Schedule. However, in the new rebate the Exchange proposes to add that the rebate is also applicable when trading with Firm, which is proposed to be separate from Non-Customer. For purposes of conformity, Firm is proposed to be added to the Rebate to Add Liquidity for Customer in the Penny Pilot Tier Schedule, the SPY Options Tier Schedule, and the Non-Penny Pilot Tier Schedule.

- the new Rebate to Add Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Firm will be \$0.10.¹⁶
- the new Fee to Add Liquidity when BX Options Market Maker trading with Customer will be \$0.42;¹⁷
- the new Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, Customer, or Firm will be \$0.25;¹⁸ and
- the new Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be \$0.42.¹⁹

Proposed Tier 3 in the SPY Options Tier Schedule will be where Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month. Proposed Tier 3 will range from a \$0.37 rebate to a \$0.39 fee:

- the new Rebate to Add Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Firm will be \$0.20.²⁰
- the new Fee to Add Liquidity when BX Options Market Maker trading with Customer will be \$0.39;²¹

¹⁶ The new Rebate to Add Liquidity is similar to what is in the current Penny Pilot Options Tier Schedule.

¹⁷ There is no similar fee in the current Penny Pilot Options Tier Schedule.

¹⁸ The new Rebate to Remove Liquidity is similar to what is in the current Penny Pilot Options Tier Schedule.

¹⁹ The Fee to Remove Liquidity is \$0.39 in the current Penny Pilot Options Tier Schedule.

²⁰ The Rebate to Add Liquidity is similar to what is in the current Penny Pilot Options Tier Schedule.

²¹ There is no similar fee in the current Penny Pilot Options Tier Schedule.

- the new Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, Customer, or Firm will be \$0.37;²² and
- the new Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be \$0.39.²³

Proposed Tier 4 in the SPY Options Tier Schedule, which has no equivalent in the Penny Pilot Options Tier Schedule, will be where Participant executes greater than 5,000 ADV in BX Price Improvement Auction ("PRISM") Agency Contracts.²⁴ If a Participant qualifies for Tier 4 the rates applicable to this tier will supersede any other SPY tier rates that the Participant may that qualify for. Proposed Tier 4 will range from a \$0.37 rebate to a \$0.32 fee:

- the new Rebate to Add Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Firm will be \$0.25.

²² The Rebate to Remove Liquidity is \$0.35 in the current Penny Pilot Options Tier Schedule.

²³ The Fee to Remove Liquidity is \$0.30 in the current Penny Pilot Options Tier Schedule.

²⁴ PRISM is a Price Improvement Mechanism for all-electronic BX Options whereby a buy and sell order may be submitted in one order message to initiate an auction at a stop price and seek potential price improvement. Options are traded electronically on BX Options, and all options participants may respond to a PRISM Auction, the duration of which is set at 200 milliseconds. PRISM includes auto-match functionality in which a Participant (an "Initiating Participant") may electronically submit for execution an order it represents as agent on behalf of customer, n6 broker dealer, or any other entity ("PRISM Order") against principal interest or against any other order it represents as agent (an "Initiating Order") provided it submits the PRISM Order for electronic execution into the PRISM Auction pursuant. See Chapter VI, Section 9; and Securities Exchange Act Release No. 76301 (October 29, 2015), 80 FR 68347 (November 4, 2015) (SR-BX-2015-032) (order approving BX PRISM).

- the new Fee to Add Liquidity when BX Options Market Maker trading with Customer will be \$0.32;
- the new Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, Customer, or Firm will be \$0.37; and
- the new Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be \$0.25.

In addition, the Exchange proposes several explanatory notes at the end of the SPY Options Tier Schedule:

- BX Options Market Maker fee to add liquidity in SPY Options will be \$0.00 when trading with Firm, Non-Customer, or BX Options Market Maker;
- Firm fee to add liquidity and fee to remove liquidity in SPY Options will be \$0.33 per contract, regardless of counterparty;
- Non-Customer fee to add liquidity and fee to remove liquidity in SPY Options will be \$0.46 per contract, regardless of counterparty;
- BX Options Market Maker fee to remove liquidity in SPY Options will be \$0.46 per contract when trading with Firm, Non-Customer, or BX Options Market Maker;
- Customer fee to add liquidity in SPY Options when contra to another Customer is \$0.33 per contract; and
- Volume from all products listed on BX Options will apply to the SPY Options Tiers.

Chapter XV, Section 2 subsection (1) reflecting all proposed changes will read as follows:

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

Fees and Rebates (per executed contract)				
	Customer	BX Options Market Maker	Non- Customer¹	Firm
Penny Pilot Options (Excluding Options in SPY):				
Rebate to Add Liquidity	#	\$0.10 ²	N/A	N/A
Fee to Add Liquidity	#	\$0.39 ³	\$0.45	\$0.45
Rebate to Remove Liquidity	#	N/A	N/A	N/A
Fee to Remove Liquidity	N/A	#	\$0.46	\$0.46
Non-Penny Pilot Options:				
Rebate to Add Liquidity	*	N/A	N/A	N/A
Fee to Add Liquidity	*	\$0.50/\$0.95 ⁵	\$0.98	\$0.98
Rebate to Remove Liquidity	*	N/A	N/A	N/A
Fee to Remove Liquidity	N/A	*	\$0.89	\$0.89

¹A Non-Customer includes a Professional, Broker-Dealer and Non-BX Options Market Maker.

²The Rebate to Add Liquidity will be paid to a BX Options Market Maker only when the BX Option Market Maker is contra to a Non-Customer, Firm, or BX Options Market Maker.

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

⁴Reserved

⁵The higher Fee to Add Liquidity will be assessed to a BX Options Market Maker only when the BX Options Market Maker is contra to a Customer.

Penny Pilot Options Tier Schedule (excluding SPY Options)

		Rebate to Add Liquidity	Fee to Add Liquidity	Rebate to Remove Liquidity	Fee to Remove Liquidity	Fee To Remove Liquidity
When:		Customer	Customer	Customer	BX Options Market Maker	BX Options Market Maker
Trading with:		Non- Customer, BX Options Market Maker, or Firm	Customer	Non- Customer, BX Options Market Maker, Customer, or Firm	Customer	Non- Customer, BX Options Market Maker, or Firm
Tier 1	Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month.	\$0.00	\$0.39	\$0.00	\$0.39	\$0.46
Tier 2	Participant executes 0.05% to less than 0.15% of total industry customer	\$0.10	\$0.39	\$0.25	\$0.39	\$0.46

	equity and ETF option ADV contracts per month.					
	Participant executes 0.15% or more of total industry customer	\$0.20	\$0.39	\$0.35	\$0.30	\$0.46
Tier 3	equity and ETF option ADV contracts per month					

SPY Options Tier Schedule

		Rebate to Add Liquidity	Fee to Add Liquidity	Rebate to Remove Liquidity	Fee to Remove Liquidity
When:	Customer	BX Options Market Maker	Customer	BX Options Market Maker	
Trading with:	Non- Customer,	Customer	Non- Customer,	Customer	

		BX Options Market Maker, or Firm		BX Options Market Maker, Customer, or Firm	
Tier 1	Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month.	\$0.00	\$0.42	\$0.00	\$0.42
Tier 2	Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month.	\$0.10	\$0.42	\$0.25	\$0.42
Tier 3	Participant executes 0.15% or more of total industry customer equity and	\$0.20	\$0.39	\$0.37	\$0.39

ETF
option
ADV
contracts
per month

Tier 4	Participant executes greater than 5,000 ADV in PRISM Agency Contracts	\$0.25	\$0.32	\$0.37	\$0.25
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- BX Options Market Maker fee to add liquidity in SPY Options will be \$0.00 when trading with Firm, Non-Customer, or BX Options Market Maker.
- Firm fee to add liquidity and fee to remove liquidity in SPY Options will be \$0.33 per contract, regardless of counterparty.
- Non-Customer fee to add liquidity and fee to remove liquidity in SPY Options will be \$0.46 per contract, regardless of counterparty.
- BX Options Market Maker fee to remove liquidity in SPY Options will be \$0.46 per contract when trading with Firm, Non-Customer, or BX Options Market Maker.
- Customer fee to add liquidity in SPY Options when contra to another Customer is \$0.33 per contract.
- Volume from all products listed on BX Options will apply to the SPY Options Tiers.

* Non-Penny Pilot Options Tier Schedule

Rebate to Add Liquidity	Fee to Add Liquidity	Rebate to Remove Liquidity	Fee to Remove Liquidity	Fee To Remove Liquidity
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	When:	Customer	Customer	Customer	BX Options Market Maker	BX Options Market Maker
	Trading with:	Non- Customer, BX Options Market Maker, or Firm	Customer	Non- Customer, BX Options Market Maker, Customer, or Firm,	Customer	Non- Customer, BX Options Market Maker, or Firm
Tier 1	Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month.	\$0.00	\$0.85	\$0.80	\$0.89	\$0.89
Tier 2	Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month.	\$0.10	\$0.85	\$0.80	\$0.89	\$0.89

	Participant executes 0.15% or more of total industry customer	\$0.20	\$0.85	\$0.80	\$0.60	\$0.89
Tier 3	equity and ETF option ADV contracts per month					

The Exchange is proposing fees and rebate changes and adopting the SPY Options Tier Schedule at this time because it believes that this will provide incentives for execution of contracts, and in particular SPY Options contracts, on the BX Options Market.

The Exchange also believes that its proposal should provide increased opportunities for participation in executions on the Exchange, facilitating the ability of the Exchange to bring together participants and encourage more robust competition for orders.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act,²⁵ in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act,²⁶ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons

²⁵ 15 U.S.C. 78f(b).

²⁶ 15 U.S.C. § 78f(b)(4), (5).

using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues* and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies..”²⁷ Likewise, in NetCoalition v. Securities and Exchange Commission²⁸ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.²⁹ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”³⁰

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market

²⁷ Securities Exchange Act Release No. 51808 at 37499 (June 9, 2005) (“Regulation NMS Adopting Release”).

²⁸ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

²⁹ See id. at 534-535.

³⁰ See id. at 537.

share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'"³¹ Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange proposes to amend its Chapter XV, Section 2 to modify subsection (1) to adopt fees and rebates applicable to Firm, and to adopt a new SPY Option Tier Schedule. The proposed modified fees and rebates and new SPY Option Tier Schedule would, as discussed, apply to Customers, BX Options Market Makers, Non-Customers, and Firms. The Exchange believes that its proposal is reasonable, equitable, and not unfairly discriminatory and should provide increased opportunities for participation in executions on the Exchange, facilitating the ability of the Exchange to bring together participants and encourage more robust competition for orders.

Change 1 - Penny Pilot Options: Modify Fees and Rebates To Add Firm Column

In Change 1, the Exchange proposes modifications to its fees and rebates for Penny Pilot Options and for Non-Penny Pilot Options to add a new Firm column; and to make changes to notes to properly reflect the use of the new Firm column. The proposed Firm column would have exactly the same assessments or rates as the current Non-Customer column, which now includes Firm.

The proposed change is reasonable because it simply establishes a new Firm column but keeps current fees and rebate assessments intact. The proposed rule change is reasonable because it continues to encourage market participant behavior through the fees

³¹ Id. at 539 (quoting Securities Exchange Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21) at 73 FR at 74782-74783).

and rebates system, which is an accepted methodology among options exchanges.³² The proposed change is also reasonable because it continues, through the fees and rebates schedule, to incentivize Participants to direct Penny Pilot Options liquidity³³ and Non-Penny Pilot Options liquidity to the Exchange.

The proposed rule change to fees and rebates for Penny Pilot Options and for Non-Penny Pilot Options to add a new Firm column, and to make changes to notes to properly reflect the use of the new Firm column, is equitable and not unfairly discriminatory. This is because the Exchange's proposal keeps current fees and rebate assessments intact, and the fees and rebates schedule will continue to apply uniformly to all similarly situated Participants.

The fees and rebates schedule as proposed continues to reflect differentiation among different market participants. The Exchange believes that the differentiation is equitable and not unfairly discriminatory, as well as reasonable, and notes that some market participants like BX Options Market Makers commit to various obligations. For example, transactions of a BX Options Market Maker must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and BX Options Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all BX Options

³² See, e.g., fee and rebate schedules of other options exchanges, including, but not limited to, NASDAQ Options Market (“NOM”), NASDAQ PHLX LLC (“Phlx”), and Chicago Board Options Exchange (“CBOE”).

³³ Penny Pilot Options, and in particular SPY Options, represent the greatest volume options traded on the Exchange and in the options market and the Exchange has taken this into account when structuring and modifying its fee and rebate schedule.

Market Makers are designated as specialists on BX for all purposes under the Act or rules thereunder.³⁴

The Exchange believes that by making the proposed Firm column change, it is continuing to incentivize Participants to execute more volume on the Exchange to further enhance liquidity in this market.

Change 2 - Penny Pilot Options: Modify Fees and Rebates To Add SPY Options Tiers

In Change 2, the Exchange proposes modifications to its current Penny Pilot Options Tier Schedule to indicate that this particular schedule does not apply to SPY Options, and that for SPY Options pricing there will be a separate SPY Options Tier Schedule. The Tier 1, Tier 2, and Tier 3 requirements in the proposed SPY Options Tier Schedule will be similar to the current Penny Pilot Options Tier Schedule. The Exchange also proposes a new Tier 4 for the SPY Options Tier Schedule. Specifically, the Exchange proposes to add SPY Options Tiers 1 – 4 for Rebate to Add Liquidity for Customer (when trading with Non-Customer, BX Options Market Maker, or Firm), Fee to Add Liquidity for BX Market Maker (when trading with Customer), Rebate to Remove Liquidity for Customer (when trading with Non-Customer, BX Options Market Maker, Customer, or Firm), and Fee to Remove Liquidity for BX Options Market Maker (when trading with Customer). The Exchange also proposes several explanatory notes applicable to the SPY Option Tier Schedule.

The Exchange believes that excluding SPY Options pricing from the Penny Pilot Options Tier Schedule and establishing a separate SPY Options Tier Schedule is

³⁴ See Chapter VII, Section 5, entitled “Obligations of Market Makers.”

reasonable because of the nature of SPY options. These are most heavily traded options on the Exchange as well as in the industry.

The Exchange believes that the proposed SPY Options Tier Schedule is reasonable because it is not a novel, untested structure but rather is similar to what is offered by other options markets,³⁵ and, is based on the Exchange's Penny Pilot Options Tier Schedule. The proposed Tiers in the SPY Options Tier Schedule clearly reflect the progressively increasing nature of Participant executions structured for the purpose of attracting order flow to the Exchange. This encourages market participant behavior through progressive tiered fees and rebates using an accepted methodology among options exchanges.³⁶ Tier 1 in the SPY Options Tier Schedule is, similarly to Tier 1 in the Penny Pilot Options Tier Schedule, set up to enable a Participant to earn a Rebate to Add Liquidity or pay a Fee to Add Liquidity in SPY where the Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month. Tier 2 in the SPY Options Tier Schedule is, similarly to Tier 2 in the Penny Pilot Options Tier Schedule, set up to enable a Participant to earn a Rebate to Add Liquidity or pay a Fee to Add Liquidity in SPY where the Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month. And Tier 3 in the SPY Options Tier Schedule is, similarly to Tier 3 in the Penny Pilot Options Tier Schedule, set up to Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month. The fees and rebates that BX Options Market

³⁵ See, e.g., the pricing schedule of Phlx. See also, e.g., the pricing schedule of NASDAQ Options Market ("NOM").

³⁶ See, e.g., fee and rebate schedules of other options exchanges, including, but not limited to, NOM, Phlx, and Chicago Board Options Exchange ("CBOE").

Makers and Customers are assessed are, as has been discussed at length, comparable to the fees and rebates in the Penny Pilot Options Tier Schedule. The Exchange believes that it is reasonable to also establish Tier 4 in the in the SPY Options Tier Schedule in order to enable a Participant to earn a Rebate to Add Liquidity or pay a Fee to Add Liquidity in SPY where the Participant executes greater than 5,000 ADV in certain PRISM Contracts. By so doing, the Exchange encourages Participants to trade Prism Contracts, which have been recently approved for trading.³⁷

In addition, the Exchange believes that making changes to add the SPY Options Tier Schedule in terms of Rebate to Add Liquidity and Fee to Add Liquidity, and Rebate to Remove Liquidity and Fee to Remove Liquidity, is reasonable because it encourages the desired Customer behavior by attracting Customer interest to the Exchange.

Customer activity enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The SPY Options Tier Schedule is reasonable in that it is, like the Penny Pilot Options Tier Schedule, set up to incentivize Participants to direct liquidity to the Exchange; using volume from all products listed on BX Options will further incentivize Participants. As Participants execute more of total industry customer equity and ETF option ADV contracts per month on the Exchange, they can in certain categories earn higher rebates and be assessed lower fees. For example, in the SPY Options Tier

³⁷ See Securities Exchange Act Release No. 76301 (October 29, 2015), 80 FR 68347 (November 4, 2015) (SR-BX-2015-032) (order approving BX PRISM).

Schedule the Tier 3 Rebate to Add Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Firm is higher (\$0.20) than the Penny Pilot Tier 1 Rebate to Add Liquidity (\$0.00); and the Tier 3 Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, Customer, or Firm is higher (\$0.37) than the Tier 2 Rebate to Remove Liquidity (\$0.25). Similarly, the Fee to Add Liquidity when BX Option Market Maker trading with Customer is lesser for Tier 3 (\$0.39) than for Tier 1 (\$0.42); and the Fee to Remove Liquidity when BX Option Market Maker trading with Customer is less for Tier 3 (\$0.39) than for Tier 1 (\$0.42).

The Exchange believes that it is reasonable to add notes to the SPY Options Tier Schedule as they are explanatory in nature. Five such notes explain that unlike how new Tiers 1-4 function, certain fees (e.g. BX Options Market Maker, Firm, Non-Customer, and Customer) remain the same regardless of counterparty. The Exchanges believes that it is also reasonable for conformity to indicate Firm across fees and rebates, the new SPY Options Tier Schedule, the Penny Pilot Options Tier Schedule, and the Non-Penny Pilot Options Tier Schedule.

Establishing the SPY Options Tier Schedule, which includes new Tiers 1-4, is equitable and not unfairly discriminatory. This is because the Exchange's proposal to assess fees and pay rebates according to Tiers 1, 2, 3, and 4 will apply uniformly to all similarly situated Participants. Customers would earn a Rebate to Add Liquidity and be assessed a Fee to Add Liquidity according to the Tiers, and BX Market Makers would earn a Rebate to Remove Liquidity and a Fee to Remove Liquidity according to the same Tiers per the SPY Options Tier Schedule; and certain fees would be the same regardless of counterparty. The fee and rebate schedule as proposed continues to reflect

differentiation among different market participants. The Exchange believes that the differentiation is equitable and not unfairly discriminatory, as well as reasonable, because some market participants like BX Options Market Makers commit to obligations such as that transactions must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and BX Options Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings.

The Exchange believes that by making the proposed Penny Pilot Options changes it is incentivizing Participants to execute more volume on the Exchange to further enhance liquidity in this market.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange does not believe that its proposal to make changes to its Penny Pilot Options and Non-Penny Pilot Options fees and rebates and to establish a SPY Options Tiers Schedule will impose any undue burden on competition, as discussed below.

The Exchange operates in a highly competitive market in which many sophisticated and knowledgeable market participants can readily and do send order flow to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. Additionally, new competitors have entered the market and still others are reportedly entering the market shortly. These market forces ensure that the Exchange's fees and rebates remain competitive with the fee structures at other trading platforms. In that sense, the Exchange's proposal is actually pro-

competitive because the Exchange is simply continuing its fees and rebates and for Penny Pilot Options and Non-Penny Pilot Options and establishing a SPY Options Tiers Schedule in order to remain competitive in the current environment.

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In terms of intra-market competition, the Exchange notes that price differentiation among different market participants operating on the Exchange (e.g., Customer and BX Options Market Maker) is reasonable. Customer activity, for example, enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Moreover, unlike others market participants each BX Options Market Maker commits to various obligations. These obligations include, for example, transactions of a BX Market Maker 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.³⁸

In this instance, the proposed changes to the fees and rebates for Penny Pilot Options and for Non-Penny Pilot Options to add a new Firm column, and establishing a SPY Options Tiers Schedule, do not impose a burden on competition because the Exchange's execution and routing services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Additionally, the changes proposed herein are pro-competitive to the extent that they continue to allow the Exchange to promote and maintain order executions.

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.

³⁸ See Chapter VII, Section 5, entitled "Obligations of Market Makers".

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,³⁹ 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.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2016-010 on the subject line.

³⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2016-010. 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-2016-010 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.⁴⁰

Robert W. Errett
Deputy Secretary

⁴⁰ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

NASDAQ OMX BX Rules**Options Rules**

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Chapter XV Options Pricing

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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:

Fees and Rebates (per executed contract)				
	Customer	BX Options Market Maker	Non- Customer¹	<u>Firm</u>
Penny Pilot Options (Excluding Options in SPY):				
Rebate to Add Liquidity	#	\$0.10 ²	N/A	<u>N/A</u>
Fee to Add Liquidity	#	\$0.39 ³	\$0.45	<u>\$0.45</u>
Rebate to Remove Liquidity	#	N/A	N/A	<u>N/A</u>
Fee to Remove Liquidity	N/A	#	\$0.46	<u>\$0.46</u>
Non-Penny Pilot Options:				
Rebate to Add Liquidity	*	N/A	N/A	<u>N/A</u>
Fee to Add Liquidity	*	\$0.50/\$0.95 ⁵	\$0.98	<u>\$0.98</u>
Rebate to Remove Liquidity	*	N/A	N/A	<u>N/A</u>
Fee to Remove Liquidity	N/A	*	\$0.89	<u>\$0.89</u>

¹A Non-Customer includes a Professional, [Firm,]Broker-Dealer and Non-BX Options Market Maker.

²The Rebate to Add Liquidity will be paid to a BX Options Market Maker only when the BX Option Market Maker is contra to a Non-Customer, Firm, or BX Options Market Maker.

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

⁴Reserved

⁵The higher Fee to Add Liquidity will be assessed to a BX Options Market Maker only when the BX Options Market Maker is contra to a Customer.

Penny Pilot Options Tier Schedule (excluding SPY Options)

	Rebate to Add Liquidity	Fee to Add Liquidity	Rebate to Remove Liquidity	Fee to Remove Liquidity	Fee To Remove Liquidity
When:	Customer	Customer	Customer	BX Options Market Maker	BX Options Market Maker
Trading with:	Non-Customer, [or]BX Options Market Maker, <u>or Firm</u>	Customer	Non-Customer, BX Options Market Maker, [or]Customer, <u>or Firm</u>	Customer	Non-Customer, [or]BX Options Market Maker, <u>or Firm</u>
Tier 1 Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month.	\$0.00	\$0.39	\$0.00	\$0.39	\$0.46
Tier 2 Participant executes 0.05% to	\$0.10	\$0.39	\$0.25	\$0.39	\$0.46

less than
0.15% of
total
industry
customer
equity and
ETF option
ADV
contracts
per month.

Tier 3	Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month	\$0.20	\$0.39	\$0.35	\$0.30	\$0.46
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SPY Options Tier Schedule

	<u>Rebate to Add Liquidity</u>	<u>Fee to Add Liquidity</u>	<u>Rebate to Remove Liquidity</u>	<u>Fee to Remove Liquidity</u>
<u>When:</u>	<u>Customer</u>	<u>BX Options Market Maker</u>	<u>Customer</u>	<u>BX Options Market Maker</u>
<u>Trading with:</u>	<u>Non- Customer, BX Options Market</u>	<u>Customer</u>	<u>Non- Customer, BX Options Market Maker,</u>	<u>Customer</u>

		<u>Maker, or Firm</u>		<u>Customer, or Firm</u>	
Tier 1	Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month.	\$0.00	\$0.42	\$0.00	\$0.42
Tier 2	Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month.	\$0.10	\$0.42	\$0.25	\$0.42
Tier 3	Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month.	\$0.20	\$0.39	\$0.37	\$0.39
Tier 4	Participant executes greater	\$0.25	\$0.32	\$0.37	\$0.25

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- BX Options Market Maker fee to add liquidity in SPY Options will be \$0.00 when trading with Firm, Non-Customer, or BX Options Market Maker.
- Firm fee to add liquidity and fee to remove liquidity in SPY Options will be \$0.33 per contract, regardless of counterparty.
- Non-Customer fee to add liquidity and fee to remove liquidity in SPY Options will be \$0.46 per contract, regardless of counterparty.
- BX Options Market Maker fee to remove liquidity in SPY Options will be \$0.46 per contract when trading with Firm, Non-Customer, or BX Options Market Maker.
- Customer fee to add liquidity in SPY Options when contra to another Customer is \$0.33 per contract.
- Volume from all products listed on BX Options will apply to the SPY Options Tiers.

* Non-Penny Pilot Options Tier Schedule

	Rebate to Add Liquidity	Fee to Add Liquidity	Rebate to Remove Liquidity	Fee to Remove Liquidity	Fee To Remove Liquidity
When:	Customer	Customer	Customer	BX Options Market Maker	BX Options Market Maker
Trading with:	Non-Customer, [or]BX Options Market Maker, <u>or Firm</u>	Customer	Non-Customer, BX Options Market Maker, [or]Customer, <u>or Firm,</u>	Customer	Non-Customer, [or]BX Options Market Maker, <u>or Firm</u>

Tier 1	Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month.	\$0.00	\$0.85	\$0.80	\$0.89	\$0.89
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Tier 2	Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month.	\$0.10	\$0.85	\$0.80	\$0.89	\$0.89
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Tier 3	Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month.	\$0.20	\$0.85	\$0.80	\$0.60	\$0.89
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(2) - (5) No Change.

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