

Required fields are shown with yellow backgrounds and asterisks.

Filing by **NASDAQ BX, Inc.**
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	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 *).

Proposal to amend 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.

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 * <input type="text" value="Jurij"/>	Last Name * <input type="text" value="Trypupenko"/>
Title * <input type="text" value="Associate General Counsel"/>	
E-mail * <input type="text" value="Jurij.Trypupenko@nasdaq.com"/>	
Telephone * <input type="text" value="(301) 978-8132"/>	Fax <input type="text"/>

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

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

(Title *)

Date <input type="text" value="05/19/2016"/>	Executive Vice President and General Counsel
By <input type="text" value="Edward S. Knight"/>	<input type="text"/>
(Name *)	

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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

Partial Amendment

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

1. Text of the Proposed Rule Change

(a) Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² NASDAQ BX, Inc. (“BX” or “Exchange”)³ 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 (per executed contract) applicable the Select Symbol Options Tier Schedule for certain Penny Pilot⁴ Options (each a “Select Symbol” and together the “Select Symbols”).

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 CFR 240.19b-4.

³ The Exchange notes that it has legally changed its name to NASDAQ BX, Inc. with the state of Delaware and filed Form 1 reflecting the change, and is in the process of changing its rules to reflect the new name.

⁴ 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. 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 the fees⁵ schedule to adopt a Fee to Add Liquidity in the Select Symbol Options⁶ Tier Schedule for certain Penny Pilot Options. The proposed Fee to Add Liquidity would apply to BX Options Market Maker⁷ trading with Non-Customer⁸ or BX Options Market Maker, or

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

⁶ Select Symbols represent some of the highest volume Penny Pilot Options traded on the Exchange and in the U.S. The following are Select Symbols: ASHR, DIA, DXJ, EEM, EFA, EWJ, EWT, EWW, EWY, EWZ, FAS, FAZ, FXE, FXI, FXP, GDX, GLD, HYG, IWM, IYR, KRE, OIH, QID, QLD, QQQ, RSX, SDS, SKF, SLV, SPY, SRS, SSO, TBT, TLT, TNA, TZA, UNG, URE, USO, UUP, UVXY, UYG, VXX, XHB, XLB, XLE, XLF, XLI, XLK, XLP, XLU, XLV, XLY, XME, XOP, XRT.

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.

Firm⁹.

Currently, Chapter XV, Section 2, subsection (1), contains a Select Symbols Options Tier Schedule that has four tiers; and one fee for BX Options Market Maker to add liquidity in Select Symbols Options in a footnote (the “footnote”).¹⁰ The Exchange proposes to delete the footnote and to add a Fee to Add Liquidity as a fifth column in the Select Symbols Options Tier Schedule. The proposed fees are reduced as the Tiers increase from Tier 1 through Tier 4, as discussed in detail below.

Change 1 - Penny Pilot Options: Add Fee to Add Liquidity Column to Select Symbols Options Tier Schedule

In Change 1, the Exchange proposes modifications to convert the current footnoted Fee to Add Liquidity to a fifth column in the Select Symbols Options Tier Schedule that is graduated per Tiers 1 through 4. The proposed change will not amend the criteria to qualify for the existing tiers. The proposed change keeps the \$0.04 fee that is in the current footnote and makes it applicable to Tier 3, while proposing new graduated fees for the other three Tiers.

Specifically, the Exchange proposes to add a fifth column, Fee to Add Liquidity, to the Select Symbols Options Tier Schedule when BX Options Market Maker trades

⁸ Note 1 to Chapter XV, Section 2, states: “¹A Non-Customer includes a Professional, Broker-Dealer and Non-BX Options Market Maker.”

⁹ 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.

¹⁰ The current footnote states: • BX Options Market Maker fee to add liquidity in Select Symbols Options will be \$0.04 when trading with Firm, Non-Customer, or BX Options Market Maker.

with Non-Customer or BX Options Market Maker, or Firm. This column will include graduated fees that range from \$0.14 for Tier 1 to \$0.00 for Tier 4,¹¹ as follows.

Tier 1 in the Select Symbols Options Tier Schedule is currently 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. Tier 1 ranges from a \$0.00 rebate to a \$0.44 fee, with a proposed \$0.14 Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm.¹²

Tier 2 in the Select Symbols Options Tier Schedule is currently where Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month. Tier 2 ranges from a \$0.25 rebate to a \$0.44 fee, with a proposed \$0.10 Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm.¹³

Tier 3 in the Select Symbols Options Tier Schedule is currently where Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month. Tier 3 ranges from a \$0.37 rebate to a \$0.40 fee, with a proposed \$0.04 Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX

¹¹ As discussed, Tier 4 requires bringing the highest amount of liquidity to the Exchange.

¹² Currently, there is also a \$0.44 Fee to Add Liquidity when BX Options Market Maker is trading with Customer. This fee remains unchanged.

¹³ Currently, there is also a \$0.44 Fee to Add Liquidity when BX Options Market Maker is trading with Customer. This fee remains unchanged.

Options Market Maker, or Firm.¹⁴ The proposed \$0.04 Fee to Add Liquidity is the same as the fee in the current footnote, except as proposed the fee is graduated according to the four Tiers.

Tier 4 in the Select Symbols Options Tier Schedule is currently where Participant executes more than 10,000 BX Price Improvement Auction (“PRISM”)¹⁵ Agency Contracts per month; or Participant executes BX Options Market Maker volume of 0.30% or more of total industry customer equity and ETF options ADV per month. If a Participant qualifies for Tier 4 the rates applicable to this tier will supersede any other Select Symbols tier rates that the Participant may qualify for. Tier 4 ranges from a \$0.37 rebate to a \$0.29 fee, with a proposed \$0.00 Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm.¹⁶

Chapter XV, Section 2 subsection (1) reflecting the proposed Select Symbols Options Tier Schedule, with a new Fee to Add Liquidity when BX Options Market Maker is trading

¹⁴ Currently, there is also a \$0.40 Fee to Add Liquidity when BX Options Market Maker is trading with Customer. This fee remains unchanged.

¹⁵ 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, 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. 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 PRISM on BX).

¹⁶ Currently, there is also a \$0.29 Fee to Add Liquidity when BX Options Market Maker is trading with Customer. This fee remains unchanged.

with Non-Customer or BX Options Market Maker, or Firm, will read as follows:

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:

* * * * *

Select Symbols Options Tier Schedule

		Rebate to Add Liquidity	Fee to Add Liquidity	Rebate to Remove Liquidity	Fee to Remove Liquidity	Fee to Add Liquidity
When:	Customer	BX Options Market Maker	Customer	BX Options Market Maker	BX Options Market Maker	BX Options Market Maker
Trading with:	Non-Customer or BX Options Market Maker, or Firm	Customer	Non-Customer, BX Options Market Maker, Customer, or Firm	Customer	Non-Customer or BX Options Market Maker, or Firm	Non-Customer or 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	\$0.44	\$0.00	\$0.42	\$0.14

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	\$0.44	\$0.25	\$0.42	\$0.10
Tier 3	Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month	\$0.20	\$0.40	\$0.37	\$0.39	\$0.04
Tier 4	Participant executes greater than 10,000 PRISM Agency Contracts per month; or Participant executes BX Options Market Maker volume of 0.30% or more of total industry customer equity and ETF options ADV per month	\$0.25	\$0.29	\$0.37	\$0.25	\$0.00

BX Options Select Symbol List

The following are Select Symbols: ASHR, DIA, DXJ, EEM, EFA, EWJ, EWT, EWW, EWY, EWZ, FAS, FAZ, FXE, FXI, FXP, GDX, GLD, HYG, IWM, IYR, KRE, OIH, QID, QLD, QQQ, RSX, SDS, SKF, SLV, SPY, SRS, SSO, TBT, TLT, TNA, TZA, UNG, URE, USO, UUP, UVXY, UYG, VXX, XHB, XLB, XLE, XLF, XLI, XLK, XLP, XLU, XLV, XLY, XME, XOP, XRT

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

* * * * *

The Exchange is proposing fees changes and adopting in the Select Symbols Options Tier Schedule a graduated Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm. The Exchange believes that this will provide incentives for execution of more contracts, and in particular Select Symbols Options contracts, on the BX Options Market. The proposed Fee to Add Liquidity incentivizes execution of Select Symbol Options Contracts on the Exchange by the fee being lower for each subsequent higher-level Tier.

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,¹⁷ in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act,¹⁸ 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.”¹⁹

Likewise, in NetCoalition v. Securities and Exchange Commission²⁰ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(4), (5).

¹⁹ Securities Exchange Act Release No. 51808 (June 29, 2005), 70 FR 37496 at 37499 (File No. S7-10-04) (“Regulation NMS Adopting Release”).

²⁰ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.²¹ 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.”²²

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’ . . .”²³ 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 certain fees to adopt Fee to Add Liquidity in the Select Symbol Options Tier Schedule for certain Penny Pilot Options. The proposed Fee to Add Liquidity in the Select Symbols Options Tier Schedule would, as discussed, apply where BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm. The Exchange believes that its proposal is reasonable, equitable, and not unfairly discriminatory and should provide

²¹ See id. at 534-535.

²² See id. at 537.

²³ See id. at 539 (quoting Securities Exchange Act Commission at Release No. 59039 (December 2, 2008), 73 FR 74770 at 74782-74783 (December 9, 2008) (SR-NYSEArca-2006-21)).

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: Add Fee to Add Liquidity Column to Select Symbols Options Tier Schedule

In Change 1, the Exchange proposes modifications to convert the current footnoted Fee to Add Liquidity²⁴ to a fifth column in the Select Symbols Options Tier Schedule. The proposed Fee to Add Liquidity is graduated according to Tiers 1 through 4 in the Select Symbols Options Tier Schedule. The proposed change keeps the current \$0.04 fee applicable to Tier 3, and indicates that the fee is reduced as additional liquidity is brought to the Exchange according to Tiers 1 through 4 in the Select Symbols Options Tier Schedule.

Specifically, the Exchange proposes four graduated fees that range from \$0.14 for Tier 1 to \$0.00 for Tier 4.

Tier 1²⁵ currently ranges from a \$0.00 rebate to a \$0.44 fee. The Exchange is proposing in Tier 1 the largest \$0.14 Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm. Tier 2 currently ranges from a \$0.25 rebate to a \$0.44 fee. The Exchange is proposing in Tier 2 a \$0.10 Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm. Tier 3 ranges from a \$0.37 rebate to a \$0.40 fee. The Exchange is proposing in Tier 3 a \$0.04 Fee to Add Liquidity when BX

²⁴ The current footnote states: • BX Options Market Maker fee to add liquidity in Select Symbols Options will be \$0.04 when trading with Firm, Non-Customer, or BX Options Market Maker.

²⁵ Each of the four applicable Tiers, which do not change, are described above.

Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm. The proposed \$0.04 Fee to Add Liquidity is the same as the fee in the current footnote, except as proposed the fee is graduated according to the four Tiers. Tier 4 currently ranges from a \$0.37 rebate to a \$0.29 fee. In Tier 4, the Exchange is proposing the smallest \$0.00 Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm.

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.²⁶ Converting the current footnote regarding Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm to the graduated Fee to Add Liquidity is reasonable because of the nature of Select Symbol options. These are the most heavily traded options on the Exchange as well as in the industry. By graduating the proposed Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm, the Exchange is promoting transactions in Select Symbol Options and further promoting options liquidity on the Exchange.

The Exchange believes that the proposed Fee to Add Liquidity in the Select Symbol Options Tier Schedule is reasonable because it is not a novel, untested structure. Rather, the proposed Fee to Add Liquidity is a graduated fees and rebate structure that is similar to what is offered by other options markets²⁷ and is similar to the Exchange's

²⁶ 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").

²⁷ See, e.g., MIAX Options Exchange ("MIAX").

existing Select Symbols Options Tier Schedule.²⁸ The proposed fee schedule is, as discussed, graduated according to four Tiers. Thus, the highest proposed Fee to Add Liquidity is applicable to Tier 1, which requires the least amount of liquidity, and the lowest proposed Fee to Add Liquidity is applicable to Tier 4, which requires the greatest amount of liquidity. The Exchange believes that the higher fees in Tier 1 and 2 (as opposed to the footnote fee of \$0.04, which is proposed in Tier 3) are reasonable because they continue to incentivize bringing liquidity to the Exchange while enabling the Exchange to recoup some of its costs.

The proposed Fee to Add Liquidity that varies according to Tiers in the Select Symbols Options Tier Schedule clearly reflects 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.

The Exchange is proposing changes to its fees schedule and adopting in the Select Symbols Options Tier Schedule a graduated Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm. The Exchange believes that this will provide incentives for execution of more contracts, and in particular Select Symbols Options contracts, on the BX Options Market. The proposed Fee to Add Liquidity incentivizes execution of Select Symbol Options Contracts on the Exchange by such fee being lower for each subsequent higher Tier.

²⁸ See, e.g., in the Exchange's current Select Symbols Options Tier Schedule: the Fee to Add Liquidity when BX Options Market Maker is trading with Customer, and the Rebate to Add Liquidity when Customer is trading with Non-Customer or BX Options Market Maker, or Firm. BX Chapter XV, Section 2(1).

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.

Establishing the proposed Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm is equitable and not unfairly discriminatory. This is because the Exchange's proposal to add the noted Fee to Add Liquidity in the Select Symbols Options Tier Schedule will apply uniformly to all similarly situated Participants. 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 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. All Market Makers are designated as specialists on BX Options for all purposes under the Exchange Act or Rules thereunder.²⁹

The Exchange believes that by making the proposed changes it is continuing to incentivize 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

²⁹ See Chapter VII, Section 5, entitled "Obligations of Market Makers." See also Chapter VII, Section 2.

Act. Specifically, the Exchange does not believe that its proposal to make changes to its Select Symbols Options Tiers Schedule to adopt the Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm 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 for Penny Pilot Options in the Select Symbols Options Tier Schedule, and is establishing a graduated Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm in 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 BX Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings.³⁰

In this instance, the proposed changes to the fees to establish a Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm in the Select Symbols Options Tiers Schedule, does not impose a

³⁰ See Chapter VII, Section 5.

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.

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,³¹ 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

³¹ 15 U.S.C. 78s(b)(3)(A)(ii).

the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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

Not applicable.³²

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

Not applicable.

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

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change.

³² Other options exchanges, such as for example MIAX, have similar select symbols in their fee schedules that reflect different fees and rebates.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-BX-2016-027)

May __, 2016

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Options Pricing at Chapter XV, Section 2

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 May 19, 2016, NASDAQ BX, Inc. (“BX” or “Exchange”)³ 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 (per executed contract) applicable the Select Symbol Options Tier

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange notes that it has legally changed its name to NASDAQ BX, Inc. with the state of Delaware and filed Form 1 reflecting the change, and is in the process of changing its rules to reflect the new name.

Schedule for certain Penny Pilot⁴ Options (each a “Select Symbol” and together the “Select Symbols”).

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 the fees⁵ schedule to adopt a Fee to Add Liquidity in the Select Symbol Options⁶ Tier Schedule for

⁴ 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 are per executed contract. BX Chapter XV, Section 2(1).

⁶ Select Symbols represent some of the highest volume Penny Pilot Options traded on the Exchange and in the U.S. The following are Select Symbols: ASHR, DIA, DXJ, EEM, EFA, EWJ, EWT, EWW, EWY, EWZ, FAS, FAZ, FXE, FXI, FXP, GDX, GLD, HYG, IWM, IYR, KRE, OIH, QID, QLD, QQQ, RSX, SDS, SKF,

certain Penny Pilot Options. The proposed Fee to Add Liquidity would apply to BX Options Market Maker⁷ trading with Non-Customer⁸ or BX Options Market Maker, or Firm⁹.

Currently, Chapter XV, Section 2, subsection (1), contains a Select Symbols Options Tier Schedule that has four tiers; and one fee for BX Options Market Maker to add liquidity in Select Symbols Options in a footnote (the “footnote”).¹⁰ The Exchange proposes to delete the footnote and to add a Fee to Add Liquidity as a fifth column in the Select Symbols Options Tier Schedule. The proposed fees are reduced as the Tiers increase from Tier 1 through Tier 4, as discussed in detail below.

Change 1 - Penny Pilot Options: Add Fee to Add Liquidity Column to Select Symbols Options Tier Schedule

In Change 1, the Exchange proposes modifications to convert the current footnoted Fee to Add Liquidity to a fifth column in the Select Symbols Options Tier

SLV, SPY, SRS, SSO, TBT, TLT, TNA, TZA, UNG, URE, USO, UUP, UVXY, UYG, VXX, XHB, XLB, XLE, XLF, XLI, XLK, XLP, XLU, XLV, XLY, XME, XOP, XRT.

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, Broker-Dealer and Non-BX Options Market Maker.”

⁹ 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.

¹⁰ The current footnote states: • BX Options Market Maker fee to add liquidity in Select Symbols Options will be \$0.04 when trading with Firm, Non-Customer, or BX Options Market Maker.

Schedule that is graduated per Tiers 1 through 4. The proposed change will not amend the criteria to qualify for the existing tiers. The proposed change keeps the \$0.04 fee that is in the current footnote and makes it applicable to Tier 3, while proposing new graduated fees for the other three Tiers.

Specifically, the Exchange proposes to add a fifth column, Fee to Add Liquidity, to the Select Symbols Options Tier Schedule when BX Options Market Maker trades with Non-Customer or BX Options Market Maker, or Firm. This column will include graduated fees that range from \$0.14 for Tier 1 to \$0.00 for Tier 4,¹¹ as follows.

Tier 1 in the Select Symbols Options Tier Schedule is currently 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. Tier 1 ranges from a \$0.00 rebate to a \$0.44 fee, with a proposed \$0.14 Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm.¹²

Tier 2 in the Select Symbols Options Tier Schedule is currently where Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month. Tier 2 ranges from a \$0.25 rebate to a \$0.44 fee, with a proposed \$0.10 Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm.¹³

¹¹ As discussed, Tier 4 requires bringing the highest amount of liquidity to the Exchange.

¹² Currently, there is also a \$0.44 Fee to Add Liquidity when BX Options Market Maker is trading with Customer. This fee remains unchanged.

¹³ Currently, there is also a \$0.44 Fee to Add Liquidity when BX Options Market Maker is trading with Customer. This fee remains unchanged.

Tier 3 in the Select Symbols Options Tier Schedule is currently where Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month. Tier 3 ranges from a \$0.37 rebate to a \$0.40 fee, with a proposed \$0.04 Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm.¹⁴ The proposed \$0.04 Fee to Add Liquidity is the same as the fee in the current footnote, except as proposed the fee is graduated according to the four Tiers.

Tier 4 in the Select Symbols Options Tier Schedule is currently where Participant executes more than 10,000 BX Price Improvement Auction (“PRISM”)¹⁵ Agency Contracts per month; or Participant executes BX Options Market Maker volume of 0.30% or more of total industry customer equity and ETF options ADV per month. If a Participant qualifies for Tier 4 the rates applicable to this tier will supersede any other Select Symbols tier rates that the Participant may qualify for. Tier 4 ranges from a \$0.37

¹⁴ Currently, there is also a \$0.40 Fee to Add Liquidity when BX Options Market Maker is trading with Customer. This fee remains unchanged.

¹⁵ 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, 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. 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 PRISM on BX).

rebate to a \$0.29 fee, with a proposed \$0.00 Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm.¹⁶

Chapter XV, Section 2 subsection (1) reflecting the proposed Select Symbols Options Tier Schedule, with a new Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm, will read as follows:

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:

* * * * *

Select Symbols Options Tier Schedule

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

¹⁶ Currently, there is also a \$0.29 Fee to Add Liquidity when BX Options Market Maker is trading with Customer. This fee remains unchanged.

Tier 1	Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month.	\$0.00	\$0.44	\$0.00	\$0.42	\$0.14
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	\$0.44	\$0.25	\$0.42	\$0.10
Tier 3	Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month	\$0.20	\$0.40	\$0.37	\$0.39	\$0.04
Tier 4	Participant executes greater than 10,000 PRISM Agency Contracts per month; or Participant executes BX	\$0.25	\$0.29	\$0.37	\$0.25	\$0.00

Options
Market Maker
volume of
0.30% or
more of total
industry
customer
equity and
ETF options
ADV per
month

BX Options Select Symbol List

The following are Select Symbols: ASHR, DIA, DXJ, EEM, EFA, EWJ, EWT, EWW, EWY, EWZ, FAS, FAZ, FXE, FXI, FXP, GDX, GLD, HYG, IWM, IYR, KRE, OIH, QID, QLD, QQQ, RSX, SDS, SKF, SLV, SPY, SRS, SSO, TBT, TLT, TNA, TZA, UNG, URE, USO, UUP, UVXY, UYG, VXX, XHB, XLB, XLE, XLF, XLI, XLK, XLP, XLU, XLV, XLY, XME, XOP, XRT

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

* * * * *

The Exchange is proposing fees changes and adopting in the Select Symbols Options Tier Schedule a graduated Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm. The Exchange believes that this will provide incentives for execution of more contracts, and

in particular Select Symbols Options contracts, on the BX Options Market. The proposed Fee to Add Liquidity incentivizes execution of Select Symbol Options Contracts on the Exchange by the fee being lower for each subsequent higher-level Tier.

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,¹⁷ in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act,¹⁸ 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

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(4), (5).

market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁹

Likewise, in NetCoalition v. Securities and Exchange Commission²⁰ (“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.²¹ 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.”²²

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’ . . .”²³ 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.

¹⁹ Securities Exchange Act Release No. 51808 (June 29, 2005), 70 FR 37496 at 37499 (File No. S7-10-04) (“Regulation NMS Adopting Release”).

²⁰ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

²¹ See id. at 534-535.

²² See id. at 537.

²³ See id. at 539 (quoting Securities Exchange Act Commission at Release No. 59039 (December 2, 2008), 73 FR 74770 at 74782-74783 (December 9, 2008) (SR-NYSEArca-2006-21)).

The Exchange proposes to amend its Chapter XV, Section 2, to modify certain fees to adopt Fee to Add Liquidity in the Select Symbol Options Tier Schedule for certain Penny Pilot Options. The proposed Fee to Add Liquidity in the Select Symbols Options Tier Schedule would, as discussed, apply where BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm. 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: Add Fee to Add Liquidity Column to Select Symbols Options Tier Schedule

In Change 1, the Exchange proposes modifications to convert the current footnoted Fee to Add Liquidity²⁴ to a fifth column in the Select Symbols Options Tier Schedule. The proposed Fee to Add Liquidity is graduated according to Tiers 1 through 4 in the Select Symbols Options Tier Schedule. The proposed change keeps the current \$0.04 fee applicable to Tier 3, and indicates that the fee is reduced as additional liquidity is brought to the Exchange according to Tiers 1 through 4 in the Select Symbols Options Tier Schedule.

Specifically, the Exchange proposes four graduated fees that range from \$0.14 for Tier 1 to \$0.00 for Tier 4.

²⁴ The current footnote states: • BX Options Market Maker fee to add liquidity in Select Symbols Options will be \$0.04 when trading with Firm, Non-Customer, or BX Options Market Maker.

Tier 1²⁵ currently ranges from a \$0.00 rebate to a \$0.44 fee. The Exchange is proposing in Tier 1 the largest \$0.14 Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm. Tier 2 currently ranges from a \$0.25 rebate to a \$0.44 fee. The Exchange is proposing in Tier 2 a \$0.10 Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm. Tier 3 ranges from a \$0.37 rebate to a \$0.40 fee. The Exchange is proposing in Tier 3 a \$0.04 Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm. The proposed \$0.04 Fee to Add Liquidity is the same as the fee in the current footnote, except as proposed the fee is graduated according to the four Tiers. Tier 4 currently ranges from a \$0.37 rebate to a \$0.29 fee. In Tier 4, the Exchange is proposing the smallest \$0.00 Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm.

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.²⁶ Converting the current footnote regarding Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm to the graduated Fee to Add Liquidity is reasonable because of the nature of Select Symbol options. These are the most heavily traded options on the Exchange as well as in the industry. By graduating the proposed Fee to

²⁵ Each of the four applicable Tiers, which do not change, are described above.

²⁶ 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”).

Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm, the Exchange is promoting transactions in Select Symbol Options and further promoting options liquidity on the Exchange.

The Exchange believes that the proposed Fee to Add Liquidity in the Select Symbol Options Tier Schedule is reasonable because it is not a novel, untested structure. Rather, the proposed Fee to Add Liquidity is a graduated fees and rebate structure that is similar to what is offered by other options markets²⁷ and is similar to the Exchange's existing Select Symbols Options Tier Schedule.²⁸ The proposed fee schedule is, as discussed, graduated according to four Tiers. Thus, the highest proposed Fee to Add Liquidity is applicable to Tier 1, which requires the least amount of liquidity, and the lowest proposed Fee to Add Liquidity is applicable to Tier 4, which requires the greatest amount of liquidity. The Exchange believes that the higher fees in Tier 1 and 2 (as opposed to the footnote fee of \$0.04, which is proposed in Tier 3) are reasonable because they continue to incentivize bringing liquidity to the Exchange while enabling the Exchange to recoup some of its costs.

The proposed Fee to Add Liquidity that varies according to Tiers in the Select Symbols Options Tier Schedule clearly reflects 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.

²⁷ See, e.g., MIA X Options Exchange (“MIA X”).

²⁸ See, e.g., in the Exchange's current Select Symbols Options Tier Schedule: the Fee to Add Liquidity when BX Options Market Maker is trading with Customer, and the Rebate to Add Liquidity when Customer is trading with Non-Customer or BX Options Market Maker, or Firm. BX Chapter XV, Section 2(1).

The Exchange is proposing changes to its fees schedule and adopting in the Select Symbols Options Tier Schedule a graduated Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm. The Exchange believes that this will provide incentives for execution of more contracts, and in particular Select Symbols Options contracts, on the BX Options Market. The proposed Fee to Add Liquidity incentivizes execution of Select Symbol Options Contracts on the Exchange by such fee being lower for each subsequent higher Tier.

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.

Establishing the proposed Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm is equitable and not unfairly discriminatory. This is because the Exchange's proposal to add the noted Fee to Add Liquidity in the Select Symbols Options Tier Schedule will apply uniformly to all similarly situated Participants. 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 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. All Market Makers are designated as specialists on BX Options for all purposes under the Exchange Act or Rules thereunder.²⁹

The Exchange believes that by making the proposed changes it is continuing to incentivize 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 Select Symbols Options Tiers Schedule to adopt the Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm 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 for Penny Pilot Options in the Select Symbols Options Tier Schedule, and is establishing a graduated Fee to Add Liquidity when BX Options Market Maker is trading with Non-

²⁹ See Chapter VII, Section 5, entitled "Obligations of Market Makers." See also Chapter VII, Section 2.

Customer or BX Options Market Maker, or Firm in 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 BX Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings.³⁰

In this instance, the proposed changes to the fees to establish a Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm in the Select Symbols Options Tiers Schedule, does 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.

³⁰ See Chapter VII, Section 5.

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,³¹ 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-2016-027 on the subject line.

³¹ 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-2016-027. 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-2016-027 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.³²

Robert W. Errett
Deputy Secretary

³² 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

Rules of NASDAQ OMX BX**Options Rules**

* * * * *

Chapter XV Options Pricing

* * * * *

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	Firm
Penny Pilot Options (Excluding Options in Select Symbols):				
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 Options 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 Select Symbols 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	\$0.00	\$0.39	\$0.00	\$0.39	\$0.46

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	\$0.39	\$0.25	\$0.39	\$0.46
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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	\$0.39	\$0.35	\$0.30	\$0.46
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Select Symbols Options Tier Schedule

	Rebate to Add Liquidity	Fee to Add Liquidity	Rebate to Remove Liquidity	Fee to Remove Liquidity	<u>Fee to Add Liquidity</u>
When:	Customer	BX Options Market Maker	Customer	BX Options Market Maker	<u>BX Options Market Maker</u>

	Trading with:	Non-Customer or BX Options Market Maker, or Firm	Customer	Non-Customer, BX Options Market Maker, Customer, or Firm	Customer	<u>Non-Customer or BX Options Market Maker, 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	\$0.44	\$0.00	\$0.42	<u>\$0.14</u>
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	\$0.44	\$0.25	\$0.42	<u>\$0.10</u>
Tier 3	Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month	\$0.20	\$0.40	\$0.37	\$0.39	<u>\$0.04</u>

Tier 4	Participant executes greater than 10,000 PRISM Agency Contracts per month; or Participant executes BX Options	\$0.25	\$0.29	\$0.37	\$0.25	<u>\$0.00</u>
	Market Maker volume of 0.30% or more of total industry customer equity and ETF options ADV per month					

BX Options Select Symbol List

The following are Select Symbols: ASHR, DIA, DXJ, EEM, EFA, EWJ, EWT, EWW, EWY, EWZ, FAS, FAZ, FXE, FXI, FXP, GDV, GLD, HYG, IWM, IYR, KRE, OIH, QID, QLD, QQQ, RSX, SDS, SKF, SLV, SPY, SRS, SSO, TBT, TLT, TNA, TZA, UNG, URE, USO, UUP, UVXY, UYG, VXX, XHB, XLB, XLE, XLF, XLI, XLK, XLP, XLU, XLV, XLY, XME, XOP, XRT

- [• BX Options Market Maker fee to add liquidity in Select Symbols Options will be \$0.04 when trading with Firm, Non-Customer, or BX Options Market Maker.]
- Firm fee to add liquidity and fee to remove liquidity in Select Symbols Options will be \$0.33 per contract, regardless of counterparty.
- Non-Customer fee to add liquidity and fee to remove liquidity in Select Symbols Options will be \$0.46 per contract, regardless of counterparty.
- BX Options Market Maker fee to remove liquidity in Select Symbols Options will be \$0.46 per contract when trading with Firm, Non-Customer, or BX Options Market Maker.
- Customer fee to add liquidity in Select Symbols Options when contra to another Customer is \$0.33 per contract.

- Volume from all products listed on BX Options will apply to the Select Symbols 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 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.					
	Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month					
Tier 3		\$0.20	\$0.85	\$0.80	\$0.60	\$0.89

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