

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"/>
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 type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description

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

Proposal to modify fees and rebates (per executed contract) for options overlying Standard and Poors Depository Receipts.

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 * Jurij Last Name * Trypupenko
 Title * Associate General Counsel
 E-mail * Jurij.Trypupenko@nasdaq.com
 Telephone * (301) 978-8132 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 08/31/2016 Executive Vice President and General Counsel
 By Edward S. Knight
 (Name *)

edward.knight@nasdaq.com

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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

Exhibit 1 - Notice of Proposed Rule Change *

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

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

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

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

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Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

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

Partial Amendment

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

1. Text of the Proposed Rule Change

(a) NASDAQ 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 fees and rebates (per executed contract) for options overlying Standard and Poor’s® Depository Receipts/SPDRs® (“SPY”)³ to: (a) adopt two additional rebate Tiers applicable to Rebate to Remove Liquidity, and modify the existing volume criteria and rebate amounts per Tier; and (b) modify Note 1 through Note 6; within the SPY Options Tier Schedule.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on September 1, 2016.

¹ 15 U.S.C. 78s (b) (1).

² 17 CFR 240.19b-4.

³ Options overlying SPY are based on the SPDR exchange-traded fund (“ETF”), and are Penny Pilot Options. The SPY ETF represents ownership in the SPDR S&P 500 Trust, a unit investment trust that generally corresponds to the price and yield performance of the SPDR S&P 500 Index. “SPDR®,” “Standard & Poor’s®,” “S&P®,” “S&P 500®,” and “Standard & Poor’s 500” are registered trademarks of Standard & Poor’s Financial Services LLC. The Penny Pilot was established in June 2012 and extended through 2016. 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 78036 (June 10, 2016), 81 FR 39308 (June 16, 2016) (SR-BX-2016-021) (notice of filing and immediate effectiveness extending the Penny Pilot through December 31, 2016).

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (the “Board”) on August 15, 2016. 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 Chapter XV, Section 2, to modify fees and rebates (per executed contract) for options overlying SPY to: (a) adopt two additional rebate Tiers applicable to Rebate to Remove Liquidity, and modify the existing volume criteria and rebate amounts per Tier; and (b) modify Note 1 through Note 6; within the SPY Options Tier Schedule. The Tiers, described below along with the Notes, together make up the “SPY Options Tier Schedule.” The proposed SPY Options Tier Schedule

rebates would apply to Customers⁴ that remove liquidity from Customers, Non-Customers,⁵ BX Options Market Makers,⁶ or Firms.⁷

Currently, Chapter XV, Section 2, subsection (1), has a SPY Options Tier Schedule that has three Tiers and six Notes. The Exchange proposes in the current filing to modify the Tiers and Notes to give BX Participants (“Participants”) additional rebate and fee options, and each specific change is described in detail below.

Change 1 - Penny Pilot Options: In SPY Options Tier Schedule Adopt Two Additional Rebate Tiers and Modify Existing Volume Criteria and Rebate Amounts per Tiers

In Change 1, the Exchange proposes modifications to its current SPY Options Tier Schedule⁸ to indicate that this particular schedule will have two additional tiers for the Rebate to Remove Liquidity, namely Tiers 4 and 5. The Exchange proposes also to modify existing Tiers 1 through 3. By doing so, the Exchange proposes to have a Rebate

⁴ 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. This is known as being marked in the Customer range.

⁵ Note 1 to Chapter XV, Section 2 states: “¹A Non-Customer includes a Professional, Broker-Dealer and Non-BX Options Market Maker.”

⁶ 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.

⁷ 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.

⁸ The Penny Pilot Options Tier Schedule, Select Symbols Options Tier Schedule, and Non-Penny Pilot Options Tier Schedule pricing will remain unchanged.

to Remove Liquidity of \$0.01 to \$0.52 per contract over five Tiers, whereas now the rebates are \$0.10 to \$0.51 per contract over three Tiers. The proposed five Tier structure for Rebate to Remove Liquidity offers a more graduated Tier structure to further incentivize Participants to bring SPY Options volume to the Exchange.

Today, Tier 1 to the Rebate to Remove Liquidity indicates that a Participant removes less than 1500 SPY Options contracts per day in the customer range can earn a rebate of \$0.10 per contract. The Exchange proposes to modify Tier 1 so that going forward a Participant that removes less than 500 SPY Options contracts per day in the customer range can earn a rebate of \$0.01 per contract.

Today, Tier 2 to the Rebate to Remove Liquidity indicates that a Participant removes 1500 to not more than 2999 SPY Options contracts per day in the customer range can earn a rebate of \$0.42 per contract. The Exchange proposes to modify Tier 2 to the Rebate to Remove Liquidity so that going forward a Participant that removes 500 to not more than 999 SPY Options contracts per day in the customer range can earn a rebate of \$0.10 per contract.

Today, Tier 3 to the Rebate to Remove Liquidity indicates that a Participant removes more than 2999 SPY Options contracts per day in the customer range can earn a rebate of \$0.51 per contract. The Exchange proposes to modify Tier 3 to the Rebate to Remove Liquidity so that going forward a Participant that removes 1000 to not more than 1999 SPY Options contracts per day in the customer range can earn a rebate of \$0.35 per contract.

The Exchange also proposes two new Tiers that are similar in structure to the existing Tiers. The Exchange proposes new Tier 4 applicable to Rebate to Remove

Liquidity so that a Participant that removes 2000 to not more than 3999 SPY Options contracts per day in the customer range can earn a rebate of \$0.43 per contract. The Exchange also proposes new Tier 5 applicable to Rebate to Remove Liquidity so that a Participant that removes more than 3999 SPY Options contracts per day in the customer range can earn a rebate of \$0.52 per contract. Thus, instead of offering Participants rebates of \$0.10 to \$0.51 per contract over three Tiers, as proposed Participants will be offered rebates of \$0.01 to \$0.52 per contract over five Tiers.

The Exchange believes that proposed Change 1 is reasonable because, by more finely tuning the rebates to volume (e.g., \$0.01 per contract rebate if remove less than 500 SPY Contracts per lowest Tier 1; and \$0.52 per contract if remove more than 3999 SPY Contracts per highest Tier 5), the proposed five Tier system will serve to incentivize Participants to remove more SPY Options contracts from the Exchange.

As proposed, the Rebate to Remove Liquidity, which is in the SPY Options Tier Schedule in Chapter XV, Section 2 subsection (1), will read as follows:

SPY Options Tier Schedule

		Rebate to Remove Liquidity (per contract)
		Applied to: Customer
		Non-Customer, BX Options Market Maker, Customer, or Trading with: Firm
Tier 1	Participant removes less than 500 SPY Options contracts per day in the customer range	\$0.01
Tier 2	Participant removes 500 to not more than 999 SPY Options contracts per day in the customer	\$0.10

range

Tier Participant removes 1000 to not more than 1999 \$0.35
3 SPY Options contracts per day in the customer range

Tier Participant removes 2000 to not more than 3999 \$0.43
4 SPY Options contracts per day in the customer range

Tier Participant removes more than 3999 SPY \$0.52
5 Options contracts per day in the customer range

Change 2 - Penny Pilot Options: SPY Option Tier Schedule Modify Note 1 Through Note 6

There are currently six Notes regarding certain fees to add and remove liquidity within the SPY Options Tier Schedule. The language of each of these Notes will remain the same, but commensurate with the above-discussed Tier modifications the Exchange proposes to modestly change the fees and rebates in the Notes.

Today, Note 1 indicates that Firm fee to add liquidity and fee to remove liquidity in SPY Options will be \$0.33 per contract, regardless of counterparty. The Exchange proposes to modify Note 1 so that going forward the Firm fee to add liquidity and fee to remove liquidity in SPY Options will be \$0.41 per contract, regardless of counterparty.

Today, Note 2 indicates that Non-Customer fee to add liquidity and fee to remove liquidity in SPY Options will be \$0.46 per contract, regardless of counterparty. The Exchange proposes to modify Note 2 so that going forward the Non-Customer fee to add liquidity and fee to remove liquidity in SPY Options will be \$0.44 per contract, regardless of counterparty.

Today, Note 3 indicates that 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. The Exchange proposes to modify Note 3 so that going forward the BX Options Market Maker fee to remove liquidity in SPY Options will be \$0.44 per contract when trading with Firm, Non-Customer, or BX Options Market Maker.

Today, Note 4 indicates that Customer fee to add liquidity in SPY Options when contra to another Customer will be \$0.33 per contract. There will be no fee or rebate for Customer SPY Options that add liquidity when contra to Firm, BX Options Market Maker or Non Customer.⁹ The Exchange proposes to modify Note 4 so that going forward the Customer fee to add liquidity in SPY Options when contra to another Customer will be \$0.38 per contract.

Today, Note 5 indicates that BX Options Market Maker fee to add liquidity and BX Options Market Maker fee to remove liquidity in SPY Options will each be \$0.44 per contract when trading with Customer. The Exchange proposes to modify Note 5 so that going forward the BX Options Market Maker fee to add liquidity and BX Options Market Maker fee to remove liquidity in SPY Options will each be \$0.39 per contract when trading with Customer.

Today, Note 6 indicates that BX Options Market Maker fee to add liquidity in SPY Options will be \$0.10 per contract when trading with Firm, BX Options Market Maker or Non Customer. The Exchange proposes to modify Note 6 so that going forward the BX Options Market Maker fee to add liquidity in SPY Options will be \$0.14 per contract when trading with Firm, BX Options Market Maker or Non Customer.

The Exchange believes that proposed Change 2, together with the effort in proposed Change 1 to more finely tune the Rebate to Remove Liquidity to volume Tiers,

⁹ This no fee or rebate language remains in Note 4 without change.

is reasonable in light of the overall Exchange effort to incentivize Participants to bring SPY Options liquidity to the Exchange.

As proposed, Notes 1 through 6 to the Rebates to Remove Liquidity, which are in the SPY Options Tier Schedule in Chapter XV, Section 2 subsection (1), will read as follows:

- Note 1: Firm fee to add liquidity and fee to remove liquidity in SPY Options will be \$0.41 per contract, regardless of counterparty.
- Note 2: Non-Customer fee to add liquidity and fee to remove liquidity in SPY Options will be \$0.44 per contract, regardless of counterparty.
- Note 3: BX Options Market Maker fee to remove liquidity in SPY Options will be \$0.44 per contract when trading with Firm, Non-Customer, or BX Options Market Maker.
- Note 4: Customer fee to add liquidity in SPY Options when contra to another Customer will be \$0.38 per contract. There will be no fee or rebate for Customer SPY Options that add liquidity when contra to Firm, BX Options Market Maker or Non Customer.
- Note 5: BX Options Market Maker fee to add liquidity and BX Options Market Maker fee to remove liquidity in SPY Options will each be \$0.39 per contract when trading with Customer.
- Note 6: BX Options Market Maker fee to add liquidity in SPY Options will be \$0.14 per contract when trading with Firm, BX Options Market Maker or Non Customer.

The Exchange is proposing the changes because it believes that they will provide even greater incentives for execution of SPY Options contracts on the BX Options Market. The Exchange believes that its proposal should provide increased opportunities for participation in SPY Options 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 the proposed rule change is consistent with Section 6 of the Act,¹⁰ in general, and with Section 6(b)(4) and 6(b)(5) of the Act,¹¹ 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. Attracting order flow to the Exchange benefits all Participants who have the opportunity to interact with this order flow.

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.”¹²

Likewise, in NetCoalition v. Securities and Exchange Commission¹³ (“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

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f (b) (4) and (5).

¹² Securities Exchange Act Release No. 51808 (June 29, 2005), 70 FR 37496 at 37499 (File No. S7-10-04) (“Regulation NMS Adopting Release”).

¹³ Net Coalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

Congress mandated a cost-based approach.¹⁴ 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.”¹⁵

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’ . . .”¹⁶ 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 believes that its proposal should provide increased opportunities for participation in SPY Options executions on the Exchange, facilitating the ability of the Exchange to bring together participants and encourage more robust competition for orders.

The Exchange believes that the proposed change is reasonable, equitable and not unfairly discriminatory for the following reasons.

¹⁴ See id. At 534-535.

¹⁵ See id. At 537.

¹⁶ 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)).

Change 1 - Penny Pilot Options: In SPY Options Tier Schedule Adopt Two Additional Rebate Tiers and Modify Existing Volume Criteria and Rebate Amounts per Tiers

In Change 1, the Exchange proposes modifications to its current SPY Options Tier Schedule to indicate that this particular schedule will have additional Tiers 4 and 5 to Rebate to Remove Liquidity. The Exchange proposes also to modify existing Tiers 1 through 3 to Rebate to Remove Liquidity. These proposed changes will enable rebates of \$0.01 to \$0.52 per contract over five Tiers in terms of Rebate to Remove Liquidity, whereas now the rebates are \$0.10 to \$0.51 per contract over three Tiers. The proposed five Tier structure for Rebate to Remove Liquidity is reasonable because it offers a more graduated Tier structure to further incentivize Participants to bring SPY Options volume to the Exchange. The Exchange believes it is equitable and not unfairly discriminatory to modify the Tiers because they will be applied uniformly to all similarly situated Participants. This is further discussed below.

Tier 1 would offer the smallest Rebate to Remove Liquidity (\$0.01 per contract) for removing the smallest number of SPY Options contracts, and the Tiers would be graduated so that Tier 5 would offer the largest Rebate to Remove Liquidity (\$0.52 per contract) for removing the largest number of SPY Options contracts. Going forward, as discussed in detail above, the proposed Tiers would be as follows: Tier 1 - a Participant that removes less than 500 (now 1,500) SPY Options contracts per day in the customer range can earn a rebate of \$0.01 per contract (now \$0.10 per contract); Tier 2 - a Participant that removes 500 to not more than 999 (now 1500 to not more than 2999) SPY Options contracts per day in the customer range can earn a rebate of \$0.10 per contract (now \$0.42 per contract); Tier 3 - a Participant that removes 1000 to not more

than 1999 (now more than 2999) SPY Options contracts per day in the customer range can earn a rebate of \$0.35 per contract (now \$0.51 per contract); new Tier 4 - a Participant that removes 2000 to not more than 3999 SPY Options contracts per day in the customer range can earn a rebate of \$0.43 per contract; and new Tier 5 - a Participant that removes more than 3999 SPY Options contracts per day in the customer range can earn a rebate of \$0.52 per contract. Thus, as proposed, Participants will be offered rebates of \$0.01 per contract to \$0.52 per contract over five Tiers.

The Exchange believes that proposed Change 1 is reasonable because, by more finely graduating the Customer Rebate to Remove Liquidity to volume (e.g., \$0.01 rebate per contract if remove less than 500 SPY Contracts per lowest Tier 1; and \$0.52 rebate per contract if remove more than 3999 SPY Contracts per highest Tier 5), the proposed five Tier system will serve to further incentivize Participants to remove more SPY Options order flow in the customer range on the Exchange. The Exchange believes that proposed Change 2 is equitable and not unfairly discriminatory because the new Tiers and graduated Tier modifications will be applied uniformly to all similarly situated Participants.

SPY Options are among the very highest volume options traded on the Exchange. The Exchange believes that the proposed new and modified Tiers to the Rebate to Remove Liquidity in the SPY Options Tier Schedule applicable to these high-volume options are reasonable because they continue to reflect a structure that is not novel in the options markets but rather is similar to that of other options markets and competitive with

what is offered by other exchanges.¹⁷ In addition, the Exchange believes that making changes to add Tiers applicable to the Customer in terms of Rebate to Remove Liquidity is reasonable because it encourages the desired Customer behavior by marking the Tier structure more graduated and 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.

Expanding SPY Option Tiers for Rebate to Remove Liquidity is reasonable because it encourages market participant behavior through progressive tiered fees and rebates using an accepted methodology among options exchanges.¹⁸ The proposed Tiers applicable to the Rebate to Remove Liquidity 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. That is, as discussed if a Participant removes more SPY Options contracts per day in the customer range, the Participant can earn higher rebates. For example, in the highest proposed SPY Options Tier 5 Rebate to Remove Liquidity, for which Participant must remove more than 3999 SPY Options contracts per day in the customer range, the Participant can earn the highest \$0.52 rebate

¹⁷ See, e.g., the MIAX fee schedule at <https://www.miaxoptions.com/content/fees>, the BATS EDGX fee schedule at http://www.bats.com/us/options/membership/fee_schedule/edgx/, and the BOX fee schedule at <http://boxoptions.com/fee-schedule/>.

¹⁸ 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”).

(per contract). And in the lowest proposed SPY Options Tier 1 Rebate to Remove Liquidity, for which Participant must remove less than 500 SPY Options contracts per day in the customer range, the Participant can earn the lowest \$0.01 rebate (per contract).

Change 2 - Penny Pilot Options: In SPY Option Tier Schedule Modify Note 1 Through Note 6

In Change 2 the Exchange proposes to modify six Notes regarding certain fees to add liquidity and fees to remove liquidity. The language of each of these Notes will remain the same, but the Exchange proposes to modestly increase or decrease the amount of the fees and rebates as discussed below. The Exchange believes that this is reasonable. The Exchange believes it is equitable and not unfairly discriminatory to update the Notes because they will be applied uniformly to all similarly situated Participants.

Going forward, as discussed in detail above, the proposed Notes would be as follows: Note 1 - Firm fee to add liquidity and fee to remove liquidity in SPY Options will be \$0.41 (now \$0.33) per contract, regardless of counterparty; Note 2 - Non-Customer fee to add liquidity and fee to remove liquidity in SPY Options will be \$0.44 (now \$0.46) per contract, regardless of counterparty; Note 3 - BX Options Market Maker fee to remove liquidity in SPY Options will be \$0.44 (now \$0.46) per contract when trading with Firm, Non-Customer, or BX Options Market Maker.; Note 4 - Customer fee to add liquidity in SPY Options when contra to another Customer will be \$0.38 (now \$0.33) per contract;¹⁹ Note 5 - BX Options Market Maker fee to add liquidity and BX Options Market Maker fee to remove liquidity in SPY Options will each be \$0.39 (today \$0.44) per contract when trading with Customer; and Note 6 - BX Options Market Maker

¹⁹ The following language in Note 4 remains without change: There will be no fee or rebate for Customer SPY Options that add liquidity when contra to Firm, BX Options Market Maker or Non Customer.

fee to add liquidity in SPY Options will be \$0.14 (now \$0.10) per contract when trading with Firm, BX Options Market Maker or Non Customer.

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, and notes that unlike others (e.g., Non-Customers) some market participants like BX Options Market Makers commit to various obligations. Despite the fact that certain BX Options Market Maker fees to add liquidity are proposed to be increased as discussed earlier, the BX Options Market Maker fees to add and remove will be lower as compared to other non-Customer market participants. Unlike other non-Customer market participants, BX Options Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.²⁰ A BX Options Market Maker has the obligation to make continuous markets, engage in course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with course of dealings. Customers will continue to be assessed the lowest fees because Customer liquidity 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,

²⁰ Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a Market Maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on BX for all purposes under the Act or rules thereunder. See Chapter VII, Section 5.”

which may cause an additional corresponding increase in order flow from other market participants.

The Exchange believes that proposed Change 2, together with the effort in proposed Change 1 to more finely tune the Rebate to Remove Liquidity to volume Tiers, is reasonable in light of the overall Exchange effort to incentivize Participants to bring SPY Options liquidity to the Exchange. The Exchange believes that proposed Change 2 to modify the Notes applicable to SPY Options Tier Schedule is equitable and not unfairly discriminatory because it will be applied uniformly to all similarly situated Participants.²¹

The Exchange believes that by making the proposed changes it is incentivizing Participants to trade more SPY Options volume to 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 SPY Options fees and rebates to add new Tiers 4 and 5 and modify existing Tiers 1, 2, and 3 to Rebate to Remove Liquidity, and to adjust applicable Notes 1 through 6, 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

²¹ Because the Notes are in the Rebate to Remove Liquidity section of the SPY Options Tier Schedule, the additional reasonable, equitable, and not unfairly discriminatory arguments immediately above in respect of proposed Change 1 are likewise applicable to proposed Change 2.

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 enhancing Tiers with Notes applicable to Rebate to Remove Liquidity for SPY Options in order to attract trading such options on the Exchange and 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, BX Options Market Maker, and

Non-Customer) 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 (e.g., Non-Customers) 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.

In this instance, the proposed changes to the fees and rebates for execution of contracts on the Exchange, and establishing SPY Options Tiers with Notes for such fees and rebates, do not impose a burden on competition because the Exchange's execution and routing services are completely voluntary and subject to extensive competition from other exchanges.. 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,²² the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

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

Not applicable

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

Not applicable.

²² 15 U.S.C. 78s (b)(3)(A)(ii).

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

Not applicable.

11. Exhibits

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

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-BX-2016-049)

September __, 2016

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Regarding Tiers Related to SPY Options

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 August 31, 2016, NASDAQ BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its 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 fees and rebates (per executed contract) for options overlying Standard and Poor’s® Depository Receipts/SPDRs® (“SPY”)³ to: (a) adopt two additional rebate Tiers

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Options overlying SPY are based on the SPDR exchange-traded fund (“ETF”), and are Penny Pilot Options. The SPY ETF represents ownership in the SPDR S&P 500 Trust, a unit investment trust that generally corresponds to the price and yield performance of the SPDR S&P 500 Index. “SPDR®,” “Standard & Poor’s®,” “S&P®,” “S&P 500®,” and “Standard & Poor’s 500” are registered trademarks of Standard & Poor’s Financial Services LLC. The Penny Pilot was established in June 2012 and extended through 2016. See Securities Exchange

applicable to Rebate to Remove Liquidity, and modify the existing volume criteria and rebate amounts per Tier; and (b) modify Note 1 through Note 6; within the SPY Options Tier Schedule.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on September 1, 2016.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqbx.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 Chapter XV, Section 2, to modify fees and rebates (per executed contract) for options overlying SPY to: (a) adopt two additional

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 78036 (June 10, 2016), 81 FR 39308 (June 16, 2016) (SR-BX-2016-021) (notice of filing and immediate effectiveness extending the Penny Pilot through December 31, 2016).

rebate Tiers applicable to Rebate to Remove Liquidity, and modify the existing volume criteria and rebate amounts per Tier; and (b) modify Note 1 through Note 6; within the SPY Options Tier Schedule. The Tiers, described below along with the Notes, together make up the “SPY Options Tier Schedule.” The proposed SPY Options Tier Schedule rebates would apply to Customers⁴ that remove liquidity from Customers, Non-Customers,⁵ BX Options Market Makers,⁶ or Firms.⁷

Currently, Chapter XV, Section 2, subsection (1), has a SPY Options Tier Schedule that has three Tiers and six Notes. The Exchange proposes in the current filing to modify the Tiers and Notes to give BX Participants (“Participants”) additional rebate and fee options, and each specific change is described in detail below.

⁴ 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. This is known as being marked in the Customer range.

⁵ Note 1 to Chapter XV, Section 2 states: “¹A Non-Customer includes a Professional, Broker-Dealer and Non-BX Options Market Maker.”

⁶ 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.

⁷ 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.

Change 1 - Penny Pilot Options: In SPY Options Tier Schedule Adopt Two Additional Rebate Tiers and Modify Existing Volume Criteria and Rebate Amounts per Tiers

In Change 1, the Exchange proposes modifications to its current SPY Options Tier Schedule⁸ to indicate that this particular schedule will have two additional tiers for the Rebate to Remove Liquidity, namely Tiers 4 and 5. The Exchange proposes also to modify existing Tiers 1 through 3. By doing so, the Exchange proposes to have a Rebate to Remove Liquidity of \$0.01 to \$0.52 per contract over five Tiers, whereas now the rebates are \$0.10 to \$0.51 per contract over three Tiers. The proposed five Tier structure for Rebate to Remove Liquidity offers a more graduated Tier structure to further incentivize Participants to bring SPY Options volume to the Exchange.

Today, Tier 1 to the Rebate to Remove Liquidity indicates that a Participant removes less than 1500 SPY Options contracts per day in the customer range can earn a rebate of \$0.10 per contract. The Exchange proposes to modify Tier 1 so that going forward a Participant that removes less than 500 SPY Options contracts per day in the customer range can earn a rebate of \$0.01 per contract.

Today, Tier 2 to the Rebate to Remove Liquidity indicates that a Participant removes 1500 to not more than 2999 SPY Options contracts per day in the customer range can earn a rebate of \$0.42 per contract. The Exchange proposes to modify Tier 2 to the Rebate to Remove Liquidity so that going forward a Participant that removes 500 to not more than 999 SPY Options contracts per day in the customer range can earn a rebate of \$0.10 per contract.

⁸ The Penny Pilot Options Tier Schedule, Select Symbols Options Tier Schedule, and Non-Penny Pilot Options Tier Schedule pricing will remain unchanged.

Today, Tier 3 to the Rebate to Remove Liquidity indicates that a Participant removes more than 2999 SPY Options contracts per day in the customer range can earn a rebate of \$0.51 per contract. The Exchange proposes to modify Tier 3 to the Rebate to Remove Liquidity so that going forward a Participant that removes 1000 to not more than 1999 SPY Options contracts per day in the customer range can earn a rebate of \$0.35 per contract.

The Exchange also proposes two new Tiers that are similar in structure to the existing Tiers. The Exchange proposes new Tier 4 applicable to Rebate to Remove Liquidity so that a Participant that removes 2000 to not more than 3999 SPY Options contracts per day in the customer range can earn a rebate of \$0.43 per contract. The Exchange also proposes new Tier 5 applicable to Rebate to Remove Liquidity so that a Participant that removes more than 3999 SPY Options contracts per day in the customer range can earn a rebate of \$0.52 per contract. Thus, instead of offering Participants rebates of \$0.10 to \$0.51 per contract over three Tiers, as proposed Participants will be offered rebates of \$0.01 to \$0.52 per contract over five Tiers.

The Exchange believes that proposed Change 1 is reasonable because, by more finely tuning the rebates to volume (e.g., \$0.01 per contract rebate if remove less than 500 SPY Contracts per lowest Tier 1; and \$0.52 per contract if remove more than 3999 SPY Contracts per highest Tier 5), the proposed five Tier system will serve to incentivize Participants to remove more SPY Options contracts from the Exchange.

As proposed, the Rebate to Remove Liquidity, which is in the SPY Options Tier Schedule in Chapter XV, Section 2 subsection (1), will read as follows:

SPY Options Tier Schedule

		Rebate to Remove Liquidity (per contract)
Applied to: Customer		
Non-Customer, BX Options Market Maker, Customer, or Trading with: Firm		
Tier 1	Participant removes less than 500 SPY Options contracts per day in the customer range	\$0.01
Tier 2	Participant removes 500 to not more than 999 SPY Options contracts per day in the customer range	\$0.10
Tier 3	Participant removes 1000 to not more than 1999 SPY Options contracts per day in the customer range	\$0.35
Tier 4	Participant removes 2000 to not more than 3999 SPY Options contracts per day in the customer range	\$0.43
Tier 5	Participant removes more than 3999 SPY Options contracts per day in the customer range	\$0.52

Change 2 - Penny Pilot Options: SPY Option Tier Schedule Modify Note 1 Through Note 6

There are currently six Notes regarding certain fees to add and remove liquidity within the SPY Options Tier Schedule. The language of each of these Notes will remain the same, but commensurate with the above-discussed Tier modifications the Exchange proposes to modestly change the fees and rebates in the Notes.

Today, Note 1 indicates that Firm fee to add liquidity and fee to remove liquidity in SPY Options will be \$0.33 per contract, regardless of counterparty. The Exchange

proposes to modify Note 1 so that going forward the Firm fee to add liquidity and fee to remove liquidity in SPY Options will be \$0.41 per contract, regardless of counterparty.

Today, Note 2 indicates that Non-Customer fee to add liquidity and fee to remove liquidity in SPY Options will be \$0.46 per contract, regardless of counterparty. The Exchange proposes to modify Note 2 so that going forward the Non-Customer fee to add liquidity and fee to remove liquidity in SPY Options will be \$0.44 per contract, regardless of counterparty.

Today, Note 3 indicates that 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. The Exchange proposes to modify Note 3 so that going forward the BX Options Market Maker fee to remove liquidity in SPY Options will be \$0.44 per contract when trading with Firm, Non-Customer, or BX Options Market Maker.

Today, Note 4 indicates that Customer fee to add liquidity in SPY Options when contra to another Customer will be \$0.33 per contract. There will be no fee or rebate for Customer SPY Options that add liquidity when contra to Firm, BX Options Market Maker or Non Customer.⁹ The Exchange proposes to modify Note 4 so that going forward the Customer fee to add liquidity in SPY Options when contra to another Customer will be \$0.38 per contract.

Today, Note 5 indicates that BX Options Market Maker fee to add liquidity and BX Options Market Maker fee to remove liquidity in SPY Options will each be \$0.44 per contract when trading with Customer. The Exchange proposes to modify Note 5 so that going forward the BX Options Market Maker fee to add liquidity and BX Options Market

⁹ This no fee or rebate language remains in Note 4 without change.

Maker fee to remove liquidity in SPY Options will each be \$0.39 per contract when trading with Customer.

Today, Note 6 indicates that BX Options Market Maker fee to add liquidity in SPY Options will be \$0.10 per contract when trading with Firm, BX Options Market Maker or Non Customer. The Exchange proposes to modify Note 6 so that going forward the BX Options Market Maker fee to add liquidity in SPY Options will be \$0.14 per contract when trading with Firm, BX Options Market Maker or Non Customer.

The Exchange believes that proposed Change 2, together with the effort in proposed Change 1 to more finely tune the Rebate to Remove Liquidity to volume Tiers, is reasonable in light of the overall Exchange effort to incentivize Participants to bring SPY Options liquidity to the Exchange.

As proposed, Notes 1 through 6 to the Rebates to Remove Liquidity, which are in the SPY Options Tier Schedule in Chapter XV, Section 2 subsection (1), will read as follows:

- Note 1: Firm fee to add liquidity and fee to remove liquidity in SPY Options will be \$0.41 per contract, regardless of counterparty.
- Note 2: Non-Customer fee to add liquidity and fee to remove liquidity in SPY Options will be \$0.44 per contract, regardless of counterparty.
- Note 3: BX Options Market Maker fee to remove liquidity in SPY Options will be \$0.44 per contract when trading with Firm, Non-Customer, or BX Options Market Maker.
- Note 4: Customer fee to add liquidity in SPY Options when contra to another Customer will be \$0.38 per contract. There will be no fee or rebate for Customer SPY Options that add liquidity when contra to Firm, BX Options Market Maker or Non Customer.
- Note 5: BX Options Market Maker fee to add liquidity and BX Options Market Maker fee to remove liquidity in SPY Options will each be \$0.39 per contract when trading with Customer.

- Note 6: BX Options Market Maker fee to add liquidity in SPY Options will be \$0.14 per contract when trading with Firm, BX Options Market Maker or Non Customer.

The Exchange is proposing the changes because it believes that they will provide even greater incentives for execution of SPY Options contracts on the BX Options Market. The Exchange believes that its proposal should provide increased opportunities for participation in SPY Options 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 the proposed rule change is consistent with Section 6 of the Act,¹⁰ in general, and with Section 6(b)(4) and 6(b)(5) of the Act,¹¹ 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. Attracting order flow to the Exchange benefits all Participants who have the opportunity to interact with this order flow.

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

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f (b) (4) and (5).

market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹²

Likewise, in NetCoalition v. Securities and Exchange Commission¹³ (“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.¹⁴ 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.”¹⁵

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’ . . .”¹⁶ 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.

¹² Securities Exchange Act Release No. 51808 (June 29, 2005), 70 FR 37496 at 37499 (File No. S7-10-04) (“Regulation NMS Adopting Release”).

¹³ Net Coalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹⁴ See id. At 534-535.

¹⁵ See id. At 537.

¹⁶ 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 believes that its proposal should provide increased opportunities for participation in SPY Options executions on the Exchange, facilitating the ability of the Exchange to bring together participants and encourage more robust competition for orders.

The Exchange believes that the proposed change is reasonable, equitable and not unfairly discriminatory for the following reasons.

Change 1 - Penny Pilot Options: In SPY Options Tier Schedule Adopt Two Additional Rebate Tiers and Modify Existing Volume Criteria and Rebate Amounts per Tiers

In Change 1, the Exchange proposes modifications to its current SPY Options Tier Schedule to indicate that this particular schedule will have additional Tiers 4 and 5 to Rebate to Remove Liquidity. The Exchange proposes also to modify existing Tiers 1 through 3 to Rebate to Remove Liquidity. These proposed changes will enable rebates of \$0.01 to \$0.52 per contract over five Tiers in terms of Rebate to Remove Liquidity, whereas now the rebates are \$0.10 to \$0.51 per contract over three Tiers. The proposed five Tier structure for Rebate to Remove Liquidity is reasonable because it offers a more graduated Tier structure to further incentivize Participants to bring SPY Options volume to the Exchange. The Exchange believes it is equitable and not unfairly discriminatory to modify the Tiers because they will be applied uniformly to all similarly situated Participants. This is further discussed below.

Tier 1 would offer the smallest Rebate to Remove Liquidity (\$0.01 per contract) for removing the smallest number of SPY Options contracts, and the Tiers would be graduated so that Tier 5 would offer the largest Rebate to Remove Liquidity (\$0.52 per contract) for removing the largest number of SPY Options contracts. Going forward, as

discussed in detail above, the proposed Tiers would be as follows: Tier 1 - a Participant that removes less than 500 (now 1,500) SPY Options contracts per day in the customer range can earn a rebate of \$0.01 per contract (now \$0.10 per contract); Tier 2 - a Participant that removes 500 to not more than 999 (now 1500 to not more than 2999) SPY Options contracts per day in the customer range can earn a rebate of \$0.10 per contract (now \$0.42 per contract); Tier 3 - a Participant that removes 1000 to not more than 1999 (now more than 2999) SPY Options contracts per day in the customer range can earn a rebate of \$0.35 per contract (now \$0.51 per contract); new Tier 4 - a Participant that removes 2000 to not more than 3999 SPY Options contracts per day in the customer range can earn a rebate of \$0.43 per contract; and new Tier 5 - a Participant that removes more than 3999 SPY Options contracts per day in the customer range can earn a rebate of \$0.52 per contract. Thus, as proposed, Participants will be offered rebates of \$0.01 per contract to \$0.52 per contract over five Tiers.

The Exchange believes that proposed Change 1 is reasonable because, by more finely graduating the Customer Rebate to Remove Liquidity to volume (e.g., \$0.01 rebate per contract if remove less than 500 SPY Contracts per lowest Tier 1; and \$0.52 rebate per contract if remove more than 3999 SPY Contracts per highest Tier 5), the proposed five Tier system will serve to further incentivize Participants to remove more SPY Options order flow in the customer range on the Exchange. The Exchange believes that proposed Change 2 is equitable and not unfairly discriminatory because the new Tiers and graduated Tier modifications will be applied uniformly to all similarly situated Participants.

SPY Options are among the very highest volume options traded on the Exchange. The Exchange believes that the proposed new and modified Tiers to the Rebate to Remove Liquidity in the SPY Options Tier Schedule applicable to these high-volume options are reasonable because they continue to reflect a structure that is not novel in the options markets but rather is similar to that of other options markets and competitive with what is offered by other exchanges.¹⁷ In addition, the Exchange believes that making changes to add Tiers applicable to the Customer in terms of Rebate to Remove Liquidity is reasonable because it encourages the desired Customer behavior by marking the Tier structure more graduated and 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.

Expanding SPY Option Tiers for Rebate to Remove Liquidity is reasonable because it encourages market participant behavior through progressive tiered fees and rebates using an accepted methodology among options exchanges.¹⁸ The proposed Tiers applicable to the Rebate to Remove Liquidity in the SPY Options Tier Schedule clearly reflect the progressively increasing nature of Participant executions structured for the

¹⁷ See, e.g., the MIAX fee schedule at <https://www.miaxoptions.com/content/fees>, the BATS EDGX fee schedule at http://www.bats.com/us/options/membership/fee_schedule/edgx/, and the BOX fee schedule at <http://boxoptions.com/fee-schedule/>.

¹⁸ 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”).

purpose of attracting order flow to the Exchange. That is, as discussed if a Participant removes more SPY Options contracts per day in the customer range, the Participant can earn higher rebates. For example, in the highest proposed SPY Options Tier 5 Rebate to Remove Liquidity, for which Participant must remove more than 3999 SPY Options contracts per day in the customer range, the Participant can earn the highest \$0.52 rebate (per contract). And in the lowest proposed SPY Options Tier 1 Rebate to Remove Liquidity, for which Participant must remove less than 500 SPY Options contracts per day in the customer range, the Participant can earn the lowest \$0.01 rebate (per contract).

Change 2 - Penny Pilot Options: In SPY Option Tier Schedule Modify Note 1 Through Note 6

In Change 2 the Exchange proposes to modify six Notes regarding certain fees to add liquidity and fees to remove liquidity. The language of each of these Notes will remain the same, but the Exchange proposes to modestly increase or decrease the amount of the fees and rebates as discussed below. The Exchange believes that this is reasonable. The Exchange believes it is equitable and not unfairly discriminatory to update the Notes because they will be applied uniformly to all similarly situated Participants.

Going forward, as discussed in detail above, the proposed Notes would be as follows: Note 1 - Firm fee to add liquidity and fee to remove liquidity in SPY Options will be \$0.41 (now \$0.33) per contract, regardless of counterparty; Note 2 - Non-Customer fee to add liquidity and fee to remove liquidity in SPY Options will be \$0.44 (now \$0.46) per contract, regardless of counterparty; Note 3 - BX Options Market Maker fee to remove liquidity in SPY Options will be \$0.44 (now \$0.46) per contract when trading with Firm, Non-Customer, or BX Options Market Maker.; Note 4 - Customer fee to add liquidity in SPY Options when contra to another Customer will be \$0.38 (now

\$0.33) per contract;¹⁹ Note 5 - BX Options Market Maker fee to add liquidity and BX Options Market Maker fee to remove liquidity in SPY Options will each be \$0.39 (today \$0.44) per contract when trading with Customer; and Note 6 - BX Options Market Maker fee to add liquidity in SPY Options will be \$0.14 (now \$0.10) per contract when trading with Firm, BX Options Market Maker or Non Customer.

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, and notes that unlike others (e.g., Non-Customers) some market participants like BX Options Market Makers commit to various obligations. Despite the fact that certain BX Options Market Maker fees to add liquidity are proposed to be increased as discussed earlier, the BX Options Market Maker fees to add and remove will be lower as compared to other non-Customer market participants. Unlike other non-Customer market participants, BX Options Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.²⁰ A BX Options Market Maker has the obligation to make continuous markets, engage in course of dealings reasonably calculated to

¹⁹ The following language in Note 4 remains without change: There will be no fee or rebate for Customer SPY Options that add liquidity when contra to Firm, BX Options Market Maker or Non Customer.

²⁰ Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a Market Maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on BX for all purposes under the Act or rules thereunder. See Chapter VII, Section 5.”

contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with course of dealings. Customers will continue to be assessed the lowest fees because Customer liquidity 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 Exchange believes that proposed Change 2, together with the effort in proposed Change 1 to more finely tune the Rebate to Remove Liquidity to volume Tiers, is reasonable in light of the overall Exchange effort to incentivize Participants to bring SPY Options liquidity to the Exchange. The Exchange believes that proposed Change 2 to modify the Notes applicable to SPY Options Tier Schedule is equitable and not unfairly discriminatory because it will be applied uniformly to all similarly situated Participants.²¹

The Exchange believes that by making the proposed changes it is incentivizing Participants to trade more SPY Options volume to 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

²¹ Because the Notes are in the Rebate to Remove Liquidity section of the SPY Options Tier Schedule, the additional reasonable, equitable, and not unfairly discriminatory arguments immediately above in respect of proposed Change 1 are likewise applicable to proposed Change 2.

SPY Options fees and rebates to add new Tiers 4 and 5 and modify existing Tiers 1, 2, and 3 to Rebate to Remove Liquidity, and to adjust applicable Notes 1 through 6, 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 enhancing Tiers with Notes applicable to Rebate to Remove Liquidity for SPY Options in order to attract trading such options on the Exchange and 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, BX Options Market Maker, and Non-Customer) 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 (e.g., Non-Customers) 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.

In this instance, the proposed changes to the fees and rebates for execution of contracts on the Exchange, and establishing SPY Options Tiers with Notes for such fees and rebates, do not impose a burden on competition because the Exchange's execution and routing services are completely voluntary and subject to extensive competition from other exchanges.. 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.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.²²

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:

²² 15 U.S.C. 78s(b)(3)(A)(ii).

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-2016-049 on the subject line.

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-2016-049. 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-2016-049 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.²³

Robert W. Errett
Deputy Secretary

²³ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

NASDAQ 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:

* * * * *

SPY Options Tier Schedule

		Rebate to Remove Liquidity (per contract)
		Applied to: Customer
		Non-Customer, BX Options Market Maker, Customer, or Trading with: Firm
Tier 1	Participant removes less than [1]500 SPY Options contracts per day in the customer range	\$0.[10]0 <u>1</u>
Tier 2	Participant removes [1]500 to not more than [2]999 SPY Options contracts per day in the customer range	\$0.[42]1 <u>0</u>
Tier 3	Participant removes <u>1000</u> to <u>not</u> more than [2]1999 SPY Options contracts per day in the customer range	\$0.[51]3 <u>5</u>

Tier Participant removes 2000 to not more than 3999 \$0.43
4 SPY Options contracts per day in the customer range

Tier Participant removes more than 3999 SPY \$0.52
5 Options contracts per day in the customer range

- Note 1: Firm fee to add liquidity and fee to remove liquidity in SPY Options will be \$0.[33]41 per contract, regardless of counterparty.
- Note 2: Non-Customer fee to add liquidity and fee to remove liquidity in SPY Options will be \$0.4[6]4 per contract, regardless of counterparty.
- Note 3: BX Options Market Maker fee to remove liquidity in SPY Options will be \$0.4[6]4 per contract when trading with Firm, Non-Customer, or BX Options Market Maker.
- Note 4: Customer fee to add liquidity in SPY Options when contra to another Customer will be \$0.3[3]8 per contract. There will be no fee or rebate for Customer SPY Options that add liquidity when contra to Firm, BX Options Market Maker or Non Customer.
- Note 5: BX Options Market Maker fee to add liquidity and BX Options Market Maker fee to remove liquidity in SPY Options will each be \$0.[44]39 per contract when trading with Customer.
- Note 6: BX Options Market Maker fee to add liquidity in SPY Options will be \$0.1[0]4 per contract when trading with Firm, BX Options Market Maker or Non Customer.

* 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,	Customer	Non-Customer,	Customer	Non-Customer,

		BX Options Market Maker, or Firm		BX Options Market Maker, Customer, or Firm		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
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

(2) - (5) No Change.

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