Proposed Change

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

**Section 806(e)(1)**

**Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934**

**Section 3C(b)(2)**

**Exhibit 2 Sent As Paper Document**

**Exhibit 3 Sent As Paper Document**

**Executive Vice President and General Counsel**

Sean Bennett

02/09/2017

Proposal to amend the Exchange port related fees at Rule 7015 and 7016(a) to eliminate prorated billing.

**Contact Information**

**Principal Associate General Counsel**

Sean Bennett

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**Signature**

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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.
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 the Exchange’s port-related fees at Rules 7015 and 7016(a) to eliminate prorated billing.

   While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on February 1, 2017.

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

   (b) Not applicable.

   (c) Not applicable.

2. **Procedures of the Self-Regulatory Organization**

   The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”) 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:

   T. Sean Bennett  
   Principal Associate General Counsel  
   Nasdaq, Inc.  
   (301) 978-8499

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

   a. **Purpose**

   The purpose of the proposed rule change\(^3\) is to harmonize the billing practices for subscription to BX ports and other services provided under Rules 7015\(^4\) and 7016(a)\(^5\) with those of the BX Options Market by no longer applying a prorated fee for subscriptions that are effective other than the first of any given month.\(^6\) The Exchange does not prorate BX Options Market connectivity subscriptions; thus, Options Participants\(^7\) are assessed a full month’s fee for a connectivity subscription if they direct the Exchange to make the subscribed connectivity live on any day of the month, including the last day thereof. The Exchange notes that the NASDAQ PHLX does not prorate port connectivity under both its equity and options rules.\(^8\)

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\(^3\) The Exchange initially filed the proposed pricing changes on February 1, 2017 (SR-BX-2017-003). On February 9, 2017, the Exchange withdrew that filing and submitted this filing.

\(^4\) Rule 7015 is titled “Ports and other Services” and provides the options for connecting to the BX equity market together with the fees associated with such connectivity.

\(^5\) Rule 7016(a) concerns the fees assessed for Pre-trade Risk Management service ports. Pre-trade Risk Management provides Members with the ability to set a wide range of parameters for orders to facilitate pre-trade protection for FIX, Rash, OUCH and FLITE ports.

\(^6\) See BX Options Market Rules Chapter XV, Section 3(b).

\(^7\) As defined by BX Options Market Rules Chapter I, Section 1(a)(41).

Currently, connectivity on BX’s equity market under Rules 7015 and 7016(a) is prorated based on the day that it is activated, with the BX Member only fee liable for the remaining days of the partial month. The Exchange has found that prorating billing has resulted in complexity and increased costs associated with the billing process. As a consequence, the Exchange is harmonizing the billing process with that of the Exchange’s Options market and is not permitting prorated billing effective February 1, 2017.

b. **Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act, 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that elimination of prorated fees under Rules 7015 and 7016(a) is reasonable because it will reduce complexity and costs associated with the billing process, and will harmonize it with the process applied to Options Participants. As noted above, Members are currently able to choose when they want a new connectivity subscription to become effective and thus make the determination of when they wish to become fee liable. Members will continue to choose when they become fee liable under the proposed change, but now the Exchange will assess the full month’s fee

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9 As defined by Rule 0120(i).
11 15 U.S.C. 78f(b)(4) and (5).
regardless of when the port is subscribed. Thus, Members must weigh whether subscription to a service covered by the rules for less than a full month is worth the full monthly fee.

The Exchange believes that elimination of prorated fees under Rules 7015 and 7016(a) is an equitable allocation and is not unfairly discriminatory because it will apply to all new subscribers to the port-related services under Rules 7015 and 7016(a), who are free to choose the date on which their subscription becomes active and thus fee liable. Moreover, the Exchange believes the proposed change is an equitable allocation and is not unfairly discriminatory because it will harmonize the billing process with that of the BX Options Market. Thus, the Exchange will apply the same process to both its Options Participants and Equities Members.

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. 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 this instance, although eliminating prorated fees for subscriptions under the rules may result in an increase in fees for new subscriptions to the extent a Member determines to subscribe to a service under Rules 7015 or 7016(a) on a day other than the first day of a given month, the Exchange notes that it is doing so to both simplify the process and harmonize it with the process applied to the Exchange’s Options Participants. Moreover, Members may choose the day on which such services become effective and may therefore choose the first day of a month, which would result in no fee increase. Last, the proposed change does not impose a burden on competition because the Exchange’s services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. In sum, 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.

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,\(^2\) 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.

or of the Commission

The proposed change is based on the changes made by NASDAQ PHLX LLC, as
described above.

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


5. Text of the proposed rule change.
Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on February 1, 2017, 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 the Exchange’s port-related fees at Rules 7015 and 7016(a) to eliminate prorated billing.

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

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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 purpose of the proposed rule change3 is to harmonize the billing practices for
subscription to BX ports and other services provided under Rules 70154 and 7016(a)5
with those of the BX Options Market by no longer applying a prorated fee for
subscriptions that are effective other than the first of any given month.6 The Exchange
does not prorate BX Options Market connectivity subscriptions; thus, Options
Participants7 are assessed a full month’s fee for a connectivity subscription if they direct
the Exchange to make the subscribed connectivity live on any day of the month,

3 The Exchange initially filed the proposed pricing changes on February 1, 2017 (SR-BX-2017-003). On February 9, 2017, the Exchange withdrew that filing and submitted this filing.

4 Rule 7015 is titled “Ports and other Services” and provides the options for connecting to the BX equity market together with the fees associated with such connectivity.

5 Rule 7016(a) concerns the fees assessed for Pre-trade Risk Management service ports. Pre-trade Risk Management provides Members with the ability to set a wide range of parameters for orders to facilitate pre-trade protection for FIX, Rash, OUCH and FLITE ports.

6 See BX Options Market Rules Chapter XV, Section 3(b).

7 As defined by BX Options Market Rules Chapter I, Section 1(a)(41).
including the last day thereof. The Exchange notes that the NASDAQ PHLX does not prorate port connectivity under both its equity and options rules.\(^8\)

Currently, connectivity on BX’s equity market under Rules 7015 and 7016(a) is prorated based on the day that it is activated, with the BX Member\(^9\) only fee liable for the remaining days of the partial month. The Exchange has found that prorating billing has resulted in complexity and increased costs associated with the billing process. As a consequence, the Exchange is harmonizing the billing process with that of the Exchange’s Options market and is not permitting prorated billing effective February 1, 2017.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,\(^10\) in general, and furthers the objectives of Sections 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that elimination of prorated fees under Rules 7015 and 7016(a) is reasonable because it will reduce complexity and costs associated with the billing process, and will harmonize it with the process applied to Options Participants.


\(^9\) As defined by Rule 0120(i).


\(^11\) 15 U.S.C. 78f(b)(4) and (5).
As noted above, Members are currently able to choose when they want a new connectivity subscription to become effective and thus make the determination of when they wish to become fee liable. Members will continue to choose when they become fee liable under the proposed change, but now the Exchange will assess the full month’s fee regardless of when the port is subscribed. Thus, Members must weigh whether subscription to a service covered by the rules for less than a full month is worth the full monthly fee.

The Exchange believes that elimination of prorated fees under Rules 7015 and 7016(a) is an equitable allocation and is not unfairly discriminatory because it will apply to all new subscribers to the port-related services under Rules 7015 and 7016(a), who are free to choose the date on which their subscription becomes active and thus fee liable. Moreover, the Exchange believes the proposed change is an equitable allocation and is not unfairly discriminatory because it will harmonize the billing process with that of the BX Options Market. Thus, the Exchange will apply the same process to both its Options Participants and Equities Members.

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. 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 this instance, although eliminating prorated fees for subscriptions under the rules may result in an increase in fees for new subscriptions to the extent a Member determines to subscribe to a service under Rules 7015 or 7016(a) on a day other than the first day of a given month, the Exchange notes that it is doing so to both simplify the process and harmonize it with the process applied to the Exchange’s Options Participants. Moreover, Members may choose the day on which such services become effective and may therefore choose the first day of a month, which would result in no fee increase. Last, the proposed change does not impose a burden on competition because the Exchange’s services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. In sum, 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.

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.\textsuperscript{12}

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 (\url{http://www.sec.gov/rules/sro.shtml}); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2017-010 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-2017-010. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (http://www.sec.gov/rules/sro.shtml).

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

All submissions should refer to File Number SR-BX-2017-010 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.13

Robert W. Errett
Deputy Secretary

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

Rules of NASDAQ BX
Equity Rules

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7015. Ports and other Services.†
The following charges are assessed by the Exchange for ports to establish connectivity to the NASDAQ BX Equities Market, as well as ports to receive data from the NASDAQ BX Equities Market:

OUCH $500/port/month
FIX Trading Port (FIX and FIX Lite (FLITE)) $500/port/month
RASH $500/port/month
Multicast TotalView-ITCH (software-based) $1,000/port/month
TCP ITCH data feed $750/port/month
DROP $500/port/month
Trading Ports used in Test Mode $100/port/month
Data Retransmission Port No charge
Disaster recovery port (OUCH, FIX Trading Port, RASH, and DROP) $25/port/month
Disaster recovery port (all other ports) No charge

• Remote Multicast ITCH Wave Ports:
  Mahwah, NJ: $5,000 for installation and then $7,500 per month;
  All others: $2,500 for installation and then $5,000 per month.
  These fees are subject to a 30-day testing period during which otherwise applicable fees are waived, and a one-year minimum purchase period.

• TradeInfo BX is available to Members for a fee of $95 per user per month.

† Fees are assessed in full month increments under this section, and thus are not prorated.

7016. BX Pre-Trade Risk Management
(a) Users of BX Pre-trade Risk Management (“PRM”) will be assessed a monthly fee based on the following table, and such fees will not exceed $25,000 per member firm, per month:
<table>
<thead>
<tr>
<th>Port Tiers</th>
<th>Number of PRM-Enabled Ports</th>
<th>Monthly Fee(^\d)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tier 1</td>
<td>50 or more</td>
<td>$400 per port, per month</td>
</tr>
<tr>
<td>Tier 2</td>
<td>20 to 49</td>
<td>$500 per port, per month</td>
</tr>
<tr>
<td>Tier 3</td>
<td>5 to 19</td>
<td>$550 per port, per month</td>
</tr>
<tr>
<td>Tier 4</td>
<td>1 to 4</td>
<td>$600 per port, per month</td>
</tr>
</tbody>
</table>

\(^\d\) Fees are assessed in full month increments under this section, and thus are not prorated.

(b) No change.