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Page 1 of \* 28

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No.\* SR - 2018 - \* 032

Amendment No. (req. for Amendments \*)

Filing by NASDAQ BX, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pilot	Extension of Time Period for Commission Action *	Date Expires *	Rule		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	<input type="checkbox"/> 19b-4(f)(2)
			<input checked="" type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(5)	<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) *		Section 806(e)(2) *	Section 3C(b)(2) *		
<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>		

Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document



### Description

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

A proposal to amend the Exchanges transaction fees at Rule 7018(a)

### 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 *	Brett	Last Name *	Kitt
Title *	Senior Associate General Counsel		
E-mail *	brett.kitt@nasdaq.com		
Telephone *	(301) 978-8132	Fax	<input type="text"/>

### Signature

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

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

(Title \*)

Date 07/10/2018

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 EDDS website.

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

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

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

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

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

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

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

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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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend the Exchange’s transaction fees at Rule 7018(a), as described further below.

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 September 19, 2017. 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:

Brett Kitt  
Senior Associate General Counsel  
Nasdaq, Inc.  
(301) 978-8132

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

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

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 is to amend the Exchange's transaction fees at Rule 7018 to (i) adjust the volume threshold for a credit associated with orders that access liquidity that are entered by members that access liquidity equal to or in excess of a certain percentage of their total Consolidated Volume<sup>3</sup> for a month; (ii) establish two new credit tiers for orders that access liquidity equal to or exceeding 0.20% of total Consolidated Volume during a month and access 20% more liquidity as a percentage of Consolidated Volume than the member accessed in May 2018; and (iii) increase the fee applicable to buy (sell) orders with Midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the National Best Bid and Offer ("NBBO").

First Change

The Exchange operates on the "taker-maker" model, whereby it pays credits to members that take liquidity and charges fees to members that provide liquidity. Currently, the Exchange offers several different credits for orders that access liquidity on the Exchange. Among these credits, the Exchange pays a credit of \$0.0015 per share executed for an order that accesses liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member that accesses liquidity equal to or exceeding

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<sup>3</sup> Pursuant to Rule 7018(a), the term "Consolidated Volume" means the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot.

0.05% of total Consolidated Volume during a month. The Exchange proposes to increase the Consolidated Volume threshold applicable to this credit to 0.075% of total Consolidated Volume during a month. The Exchange proposes this changes to provide a greater incentive to member firms to remove liquidity from the Exchange.

### Second and Third Changes

The Exchange proposes to add two new categories of credit for members whose orders remove liquidity from the Exchange. First, the Exchange proposes to offer a \$0.0018 per share executed credit for orders that access liquidity in securities in Tapes A and C (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) that are entered by a member that: (i) accesses liquidity equal to or exceeding 0.20% of total Consolidated Volume during a month; and (ii) accesses 20% more liquidity as a percentage of Consolidated Volume than the member accessed in May 2018. Second, the Exchange proposes to offer a \$0.0019 per share executed credit for orders that access liquidity in securities in Tape B (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) that are entered by a member that: (i) accesses liquidity equal to or exceeding 0.20% of total Consolidated Volume during a month; and (ii) accesses 20% more liquidity as a percentage of Consolidated Volume than the member accessed in May 2018.

An example of how these credits will work is as follows. Firm X removes 0.19% of total Consolidated Volume in securities in Tape A in May 2018. In July 2018, Firm X removes 0.23% of total Consolidated Volume in securities in the same Tape. Firm X will

therefore qualify for a \$0.0018 per share executed credit for its orders that access liquidity in securities in Tape A (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) because, during July, Firm X removed more than 0.20% of total Consolidated Volume in securities in Tape A and it also removed 20% more liquidity in July (as a percentage of Consolidated Volume) than it did in May.

The Exchange proposes to add these credits to provide new and stronger incentive for members to remove and to increase their removal of liquidity from the Exchange. In particular, the Exchange proposes a higher credit for removing liquidity in Tape B than it does in Tapes A or C to specifically target Tape B securities, where the Exchange has seen less activity than it has in Tape A and C securities.

#### Fourth Change

Presently, the Exchange charges a baseline fee of \$0.0030 per share executed for each non-displayed order that adds liquidity. However, for certain types of non-displayed orders that add liquidity, the Exchange charges lower fees relative to the baseline fee as a means of incentivizing additional liquidity. For example, the Exchange charges \$0.0015 per share executed for orders with Midpoint pegging<sup>4</sup> or \$0.0005 if the order with Midpoint pegging is entered by a member that adds 0.02% of total Consolidated Volume of non-displayed liquidity.

In May 2018, the Exchange added a fee of \$0.0017 per share executed for buy (sell) orders with Midpoint pegging that receive execution prices that are lower (higher)

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<sup>4</sup> Pursuant to Rule 4703(d), an order with a “Midpoint pegging” attribute is a nondisplayed order whose price is determined with reference to midpoint between the Inside Bid and Inside Offer (the “Midpoint”).

than the midpoint of the NBBO.<sup>5</sup> In doing so, the Exchange explained that the \$0.0017 per share executed fee – which is higher than the fees that the Exchange charges to execute regular Midpoint pegging orders – is reasonable because orders that execute at prices better than the Midpoint of the NBBO receive better prices than regular Midpoint pegging orders.<sup>6</sup> The Exchange also explained that the fee is also reasonable because it is lower than the baseline \$0.0030 fee that the Exchange charges for non-display orders, and thus provides incentives for non-displayed orders that provide price improvement relative to the Midpoint.<sup>7</sup>

After having observed the impact of this fee over the past few months, the Exchange has determined to re-calibrate it so that it is better aligned with the Exchange's objectives in imposing it. Accordingly, the Exchange proposes to increase the fee from \$0.0017 per share executed to \$0.0024 per share executed. Even with this re-calibration, the Exchange believes that the fee remains reasonable for the same reasons it expressed upon establishing it.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>9</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and

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<sup>5</sup> See Release No. 34-83224 (May 14, 2018), 83 FR 23312 (May 18, 2018) (SR-BX-2018-018).

<sup>6</sup> See *id.*

<sup>7</sup> See *id.*

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

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 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.”<sup>10</sup>

Likewise, in NetCoalition v. Securities and Exchange Commission<sup>11</sup> (“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.<sup>12</sup> 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.”<sup>13</sup>

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

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<sup>10</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>11</sup> NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

<sup>12</sup> See NetCoalition, at 534 - 535.

<sup>13</sup> Id. at 537.

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' ...."<sup>14</sup> 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.

#### First Change

The Exchange believes that it is reasonable to increase the Consolidated Volume threshold on its credit for orders that access liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with Midpoint pegging) entered by members that access liquidity equal to or exceeding 0.05% of total Consolidated Volume during a month. The Exchange must, from time to time, assess the effectiveness of its credits in achieving their intended objectives and adjust the levels of such credits based on the Exchange's observations of market participant behavior. In this instance, the Exchange determined that the threshold percentage of Consolidated Volume that is necessary for members to qualify for the credits should be increased to provide stronger incentives to market participants to improve the market. The Exchange believes that the proposed increase is equitable and is not unfairly discriminatory because it will apply to all similarly situated member firms.

#### Second and Third Changes

Likewise, the Exchange believes that its proposal is reasonable to add new credits for orders that access liquidity (excluding orders with Midpoint pegging and those that receive price improvement and execute against an order with a non-displayed price) that

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<sup>14</sup> Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

are entered by members that access liquidity equal to or in excess of 0.20% of total Consolidated Volume during a month and that access 20% more liquidity as a percentage of Consolidated Volume than the member accessed in May 2018. This proposal is reasonable because it will provide new and stronger incentive for members to improve the market by removing liquidity from the Exchange. It will also incent them to increase the extent of this activity on the Exchange relative to their activity levels as of May 2018. The Exchange believes it is reasonable, equitable, and not unfairly discriminatory to propose a higher credit to members that remove liquidity in securities in Tape B than those that do so in securities in Tapes A and C because the Exchange has experienced less activity in Tape B securities relative to Tapes A and C securities and it wishes to specifically target increased activity with respect to Tape B securities. The Exchange also believes that these proposals are equitable and not unfairly discriminatory because they will apply to all similarly situated member firms.

#### Fourth Change

Finally, the Exchange believes that its proposal is reasonable to increase the fee it charges for Midpoint pegging buy (sell) orders that receive execution prices that are lower (higher) than the midpoint of the NBBO. A Midpoint pegging order that receives price improvement relative to the midpoint of the NBBO receives a better price than an order that executes at the midpoint of the NBBO, such that the fee that the Exchange charges for the former is higher than the latter. Notwithstanding the proposed fee increase, the Exchange notes that the \$0.0024 per share executed fee that it proposes to charge for Midpoint pegging orders that receive price improvement relative to the

midpoint of the NBBO remains lower than the baseline \$0.0030 per share executed fee that the Exchange charges for non-displayed orders.

The Exchange also notes that it is reasonable for it, from time to time, to adjust its mix of fees, rebates, and credits so as to ensure that the Exchange is allocating its limited resources efficiently and in a manner that best achieves its overarching objectives. The proposed fee change is function of that adjustment.

The Exchange believes that the proposed fee increase is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same fee to all similarly situated 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 and credits 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 and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee or credit changes in this market may impose any burden on competition is extremely limited.

In this instance, the Exchange's proposals to add to or modify its credits do not impose a burden on competition because these proposals are reflective of the Exchange's

overall efforts to provide greater incentives to market participants that it believes will improve the market, to the benefit of all participants. The Exchange does not believe that any of the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Moreover, because there are numerous competitive alternatives to the use of the Exchange, it is likely that BX will lose market share as a result of the changes if they are unattractive to market participants.

Likewise, the Exchange's proposed fee increase does not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. Again, if the proposed fee increase is 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 proposal 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,<sup>15</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-

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

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.

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-2018-032)

July \_\_, 2018

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Section 7018(a) of the Exchange's Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 10, 2018, 2018 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 transaction fees at Rule 7018(a), as described further below.

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

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

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 change is to amend the Exchange's transaction fees at Rule 7018 to (i) adjust the volume threshold for a credit associated with orders that access liquidity that are entered by members that access liquidity equal to or in excess of a certain percentage of their total Consolidated Volume<sup>3</sup> for a month; (ii) establish two new credit tiers for orders that access liquidity equal to or exceeding 0.20% of total Consolidated Volume during a month and access 20% more liquidity as a percentage of Consolidated Volume than the member accessed in May 2018; and (iii) increase the fee applicable to buy (sell) orders with Midpoint pegging that receive an execution price that is lower (higher) than the midpoint of the National Best Bid and Offer ("NBBO").

First Change

The Exchange operates on the "taker-maker" model, whereby it pays credits to members that take liquidity and charges fees to members that provide liquidity. Currently, the Exchange offers several different credits for orders that access liquidity on the Exchange. Among these credits, the Exchange pays a credit of \$0.0015 per share

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<sup>3</sup> Pursuant to Rule 7018(a), the term "Consolidated Volume" means the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot.

executed for an order that accesses liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member that accesses liquidity equal to or exceeding 0.05% of total Consolidated Volume during a month. The Exchange proposes to increase the Consolidated Volume threshold applicable to this credit to 0.075% of total Consolidated Volume during a month. The Exchange proposes this changes to provide a greater incentive to member firms to remove liquidity from the Exchange.

#### Second and Third Changes

The Exchange proposes to add two new categories of credit for members whose orders remove liquidity from the Exchange. First, the Exchange proposes to offer a \$0.0018 per share executed credit for orders that access liquidity in securities in Tapes A and C (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) that are entered by a member that: (i) accesses liquidity equal to or exceeding 0.20% of total Consolidated Volume during a month; and (ii) accesses 20% more liquidity as a percentage of Consolidated Volume than the member accessed in May 2018. Second, the Exchange proposes to offer a \$0.0019 per share executed credit for orders that access liquidity in securities in Tape B (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) that are entered by a member that: (i) accesses liquidity equal to or exceeding 0.20% of total Consolidated Volume during a month; and (ii) accesses 20% more liquidity as a percentage of Consolidated Volume than the member accessed in May 2018.

An example of how these credits will work is as follows. Firm X removes 0.19% of total Consolidated Volume in securities in Tape A in May 2018. In July 2018, Firm X removes 0.23% of total Consolidated Volume in securities in the same Tape. Firm X will therefore qualify for a \$0.0018 per share executed credit for its orders that access liquidity in securities in Tape A (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) because, during July, Firm X removed more than 0.20% of total Consolidated Volume in securities in Tape A and it also removed 20% more liquidity in July (as a percentage of Consolidated Volume) than it did in May.

The Exchange proposes to add these credits to provide new and stronger incentive for members to remove and to increase their removal of liquidity from the Exchange. In particular, the Exchange proposes a higher credit for removing liquidity in Tape B than it does in Tapes A or C to specifically target Tape B securities, where the Exchange has seen less activity than it has in Tape A and C securities.

#### Fourth Change

Presently, the Exchange charges a baseline fee of \$0.0030 per share executed for each non-displayed order that adds liquidity. However, for certain types of non-displayed orders that add liquidity, the Exchange charges lower fees relative to the baseline fee as a means of incentivizing additional liquidity. For example, the Exchange charges \$0.0015 per share executed for orders with Midpoint pegging<sup>4</sup> or \$0.0005 if the order with

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<sup>4</sup> Pursuant to Rule 4703(d), an order with a “Midpoint pegging” attribute is a nondisplayed order whose price is determined with reference to midpoint between the Inside Bid and Inside Offer (the “Midpoint”).

Midpoint pegging is entered by a member that adds 0.02% of total Consolidated Volume of non-displayed liquidity.

In May 2018, the Exchange added a fee of \$0.0017 per share executed for buy (sell) orders with Midpoint pegging that receive execution prices that are lower (higher) than the midpoint of the NBBO.<sup>5</sup> In doing so, the Exchange explained that the \$0.0017 per share executed fee – which is higher than the fees that the Exchange charges to execute regular Midpoint pegging orders – is reasonable because orders that execute at prices better than the Midpoint of the NBBO receive better prices than regular Midpoint pegging orders.<sup>6</sup> The Exchange also explained that the fee is also reasonable because it is lower than the baseline \$0.0030 fee that the Exchange charges for non-display orders, and thus provides incentives for non-displayed orders that provide price improvement relative to the Midpoint.<sup>7</sup>

After having observed the impact of this fee over the past few months, the Exchange has determined to re-calibrate it so that it is better aligned with the Exchange's objectives in imposing it. Accordingly, the Exchange proposes to increase the fee from \$0.0017 per share executed to \$0.0024 per share executed. Even with this re-calibration, the Exchange believes that the fee remains reasonable for the same reasons it expressed upon establishing it.

## 2. Statutory Basis

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<sup>5</sup> See Release No. 34-83224 (May 14, 2018), 83 FR 23312 (May 18, 2018) (SR-BX-2018-018).

<sup>6</sup> See id.

<sup>7</sup> See id.

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>9</sup> 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 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.”<sup>10</sup>

Likewise, in NetCoalition v. Securities and Exchange Commission<sup>11</sup> (“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.<sup>12</sup> 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

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>10</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>11</sup> NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

<sup>12</sup> See NetCoalition, at 534 - 535.

what cost.”<sup>13</sup>

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’....”<sup>14</sup> 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.

#### First Change

The Exchange believes that it is reasonable to increase the Consolidated Volume threshold on its credit for orders that access liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with Midpoint pegging) entered by members that access liquidity equal to or exceeding 0.05% of total Consolidated Volume during a month. The Exchange must, from time to time, assess the effectiveness of its credits in achieving their intended objectives and adjust the levels of such credits based on the Exchange’s observations of market participant behavior. In this instance, the Exchange determined that the threshold percentage of Consolidated Volume that is necessary for members to qualify for the credits should be increased to provide stronger incentives to market participants to

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<sup>13</sup> Id. at 537.

<sup>14</sup> Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

improve the market. The Exchange believes that the proposed increase is equitable and is not unfairly discriminatory because it will apply to all similarly situated member firms.

#### Second and Third Changes

Likewise, the Exchange believes that its proposal is reasonable to add new credits for orders that access liquidity (excluding orders with Midpoint pegging and those that receive price improvement and execute against an order with a non-displayed price) that are entered by members that access liquidity equal to or in excess of 0.20% of total Consolidated Volume during a month and that access 20% more liquidity as a percentage of Consolidated Volume than the member accessed in May 2018. This proposal is reasonable because it will provide new and stronger incentive for members to improve the market by removing liquidity from the Exchange. It will also incent them to increase the extent of this activity on the Exchange relative to their activity levels as of May 2018. The Exchange believes it is reasonable, equitable, and not unfairly discriminatory to propose a higher credit to members that remove liquidity in securities in Tape B than those that do so in securities in Tapes A and C because the Exchange has experienced less activity in Tape B securities relative to Tapes A and C securities and it wishes to specifically target increased activity with respect to Tape B securities. The Exchange also believes that these proposals are equitable and not unfairly discriminatory because they will apply to all similarly situated member firms.

#### Fourth Change

Finally, the Exchange believes that its proposal is reasonable to increase the fee it charges for Midpoint pegging buy (sell) orders that receive execution prices that are lower (higher) than the midpoint of the NBBO. A Midpoint pegging order that receives

price improvement relative to the midpoint of the NBBO receives a better price than an order that executes at the midpoint of the NBBO, such that the fee that the Exchange charges for the former is higher than the latter. Notwithstanding the proposed fee increase, the Exchange notes that the \$0.0024 per share executed fee that it proposes to charge for Midpoint pegging orders that receive price improvement relative to the midpoint of the NBBO remains lower than the baseline \$0.0030 per share executed fee that the Exchange charges for non-displayed orders.

The Exchange also notes that it is reasonable for it, from time to time, to adjust its mix of fees, rebates, and credits so as to ensure that the Exchange is allocating its limited resources efficiently and in a manner that best achieves its overarching objectives. The proposed fee change is function of that adjustment.

The Exchange believes that the proposed fee increase is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same fee to all similarly situated 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 and credits 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 and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee or credit changes in this market may impose any burden on competition is extremely limited.

In this instance, the Exchange's proposals to add to or modify its credits do not impose a burden on competition because these proposals are reflective of the Exchange's overall efforts to provide greater incentives to market participants that it believes will improve the market, to the benefit of all participants. The Exchange does not believe that any of the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Moreover, because there are numerous competitive alternatives to the use of the Exchange, it is likely that BX will lose market share as a result of the changes if they are unattractive to market participants.

Likewise, the Exchange's proposed fee increase does not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. Again, if the proposed fee increase is 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 proposal 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.<sup>15</sup>

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

**IV. Solicitation of Comments**

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

**Electronic comments:**

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2018-032 on the subject line.

**Paper comments:**

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

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

All submissions should refer to File Number SR-BX-2018-032. 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-2018-032 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

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

**Rules of Nasdaq BX**

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**7018. Nasdaq BX Equities System Order Execution and Routing**

(a) The following charges and credits shall apply to the use of the order execution and routing services of the Nasdaq BX Equities System by members for all securities priced at \$1 or more per share that it trades. As used in this rule, the term "Consolidated Volume" shall mean the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity. As used in this rule, "price improvement" shall mean instances when the accepted price of an order differs from the executed price of an order.

Credit for entering order that  
accesses liquidity in the Nasdaq BX  
Equities System:

Order that receives price  
improvement and executes against an  
order with a Non-displayed price:      \$0.0000 per share executed

Order with Midpoint pegging that  
removes liquidity:                        \$0.0000 per share executed

Order that accesses liquidity  
(excluding orders with Midpoint  
pegging and excluding orders that  
receive price improvement and  
execute against an order with a Non-  
displayed price) entered by a member  
that accesses liquidity equal to or  
exceeding 0.10 % of total  
Consolidated Volume during a  
month:

Order that accesses liquidity                \$0.0015 per share executed  
(excluding orders with Midpoint  
pegging and excluding orders that  
receive price improvement and

execute against an order with a Non-displayed price) entered by a member that accesses liquidity equal to or exceeding 0.075% of total Consolidated Volume during month:

Order that accesses liquidity in securities in Tapes A and C (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member that: (i) accesses liquidity equal to or exceeding 0.20% of total

Consolidated Volume during a month; and (ii) accesses 20% more liquidity as a percentage of Consolidated Volume than the member accessed in May 2018: \$0.0018 per share executed

Order that accesses liquidity in securities in Tape B (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member that: (i) accesses liquidity equal to or exceeding 0.20% of total

Consolidated Volume during a month; and (ii) accesses 20% more liquidity as a percentage of Consolidated Volume than the member accessed in May 2018: \$0.0019 per share executed

All other orders: \$0.0001 per share executed

Charge for providing liquidity through the Nasdaq BX Equities System:

Displayed order entered by a member \$0.0013 per share executed that adds liquidity equal to or exceeding 0.55% of total

Consolidated Volume during a month:

Displayed order entered by a member \$0.0014 per share executed

that adds liquidity equal to or exceeding 0.25% of total Consolidated Volume during a month:

Displayed order entered by a member \$0.0017 per share executed that adds liquidity equal to or exceeding 0.15% of total Consolidated Volume during a month:

Displayed order entered by a member \$0.0018 per share executed that adds liquidity equal to or exceeding the member's Growth Target. The Growth Target is the liquidity the member added in January 2017 as a percent of total Consolidated Volume plus 0.04% of total Consolidated Volume:

Order with Midpoint pegging entered \$0.0005 per share executed by a member that adds 0.02% of total Consolidated Volume of non-displayed liquidity excluding a buy (sell) order that receives an execution price that is lower (higher) than the midpoint of the NBBO:

Order with Midpoint pegging entered \$0.0015 per share executed by other member excluding a buy (sell) order that receives an execution price that is lower (higher) than the midpoint of the NBBO:

Buy (sell) order with Midpoint pegging that receives an execution price that is lower (higher) than the midpoint of the NBBO \$0.00[17]24 per share executed

Non-displayed orders (other than orders with Midpoint pegging) entered by a member that adds 0.06% of total Consolidated Volume of non-displayed liquidity: \$0.0024 per share executed

All other non-displayed orders: \$0.0030 per share executed

All other orders: \$0.0020 per share executed

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