

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 21		SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2019 - * 027		Amendment No. (req. for Amendments *)	
Filing by NASDAQ BX, Inc. Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934							
Initial * <input checked="" type="checkbox"/>		Amendment * <input type="checkbox"/>		Withdrawal <input type="checkbox"/>		Section 19(b)(2) * <input type="checkbox"/>	
						Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	
						Section 19(b)(3)(B) * <input type="checkbox"/>	
						Rule	
Pilot <input type="checkbox"/>		Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>		<input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4)	
						<input checked="" type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5)	
						<input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)	
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010				Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934			
Section 806(e)(1) * <input type="checkbox"/>		Section 806(e)(2) * <input type="checkbox"/>		Section 3C(b)(2) * <input type="checkbox"/>			
Exhibit 2 Sent As Paper Document <input type="checkbox"/>		Exhibit 3 Sent As Paper Document <input type="checkbox"/>					
<b>Description</b>							
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).							
<input type="text" value="Proposal to amend BX pricing at Options 7, Section 3 titled BX Options Market -Ports and Other Services."/>							
<b>Contact Information</b>							
Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.							
First Name * <input type="text" value="Angela"/>		Last Name * <input type="text" value="Dunn"/>					
Title * <input type="text" value="Principal Associate General Counsel"/>							
E-mail * <input type="text" value="Angela.Dunn@nasdaq.com"/>							
Telephone * <input type="text" value="(215) 496-5692"/>		Fax <input type="text"/>					
<b>Signature</b>							
Pursuant to the requirements of the Securities Exchange Act of 1934,							
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.							
(Title *)							
Date <input type="text" value="07/15/2019"/>		<input type="text" value="Global Chief Legal and Policy Officer"/>					
By <input type="text" value="Edward S. Knight"/>		<input type="text"/>					
(Name *)							
NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.							
<input type="button" value="edward.knight@nasdaq.com"/>							

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

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

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

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

Add Remove View

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

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

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

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

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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**

Add Remove View

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 BX pricing at Options 7, Section 3 titled “BX Options Market –Ports and Other Services.” The amendment will describe the pricing with respect to an upcoming technology infrastructure migration.

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 26, 2018. 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:

Angela Saccomandi Dunn  
Principal Associate General Counsel  
Nasdaq, Inc.  
(215) 496-5692

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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 Exchange proposes to amend BX pricing at Options 7, Section 3 titled “BX Options Market –Ports and Other Services.” During the month of August 2019, BX Participants will be required to transition from current FIX Ports,<sup>3</sup> CTI Ports<sup>4</sup> and FIX DROP Ports<sup>5</sup> to new FIX Ports, CTI Ports and FIX DROP Ports in connection with an upcoming technology infrastructure migration.

***Description of Migration and Pricing Impact***

In connection with this migration, Participants will request new FIX Ports, CTI Ports and FIX DROP Ports during the month of August, which are duplicative of the type and quantity of their current ports, at no additional cost to allow for testing of the new

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<sup>3</sup> Financial Information eXchange” or “FIX” is an interface that allows Participants and their Sponsored Customers to connect, send, and receive messages related to orders to and from the Exchange. Features include the following: (1) execution messages; (2) order messages; and (3) risk protection triggers and cancel notifications. See Chapter VI, Section 21(a)(i)(A).

<sup>4</sup> Clearing Trade Interface (“CTI”) is a real-time clearing trade update message that is sent to a Participant after an execution has occurred and contains trade details specific to that Participant. The information includes, among other things, the following: (i) The Clearing Member Trade Agreement or “CMTA” or The Options Clearing Corporation or “OCC” number; (ii) Exchange badge or house number; (iii) the Exchange internal firm identifier; (iv) an indicator which will distinguish electronic and non-electronically delivered orders; (v) liquidity indicators and transaction type for billing purposes; and (vi) capacity. See Chapter VI, Section 19(b)(1).

<sup>5</sup> FIX DROP is a real-time order and execution update message that is sent to a Participant after an order been received/modified or an execution has occurred and contains trade details specific to that Participant. The information includes, among other things, the following: (i) executions; (ii) cancellations; (iii) modifications to an existing order; and (iv) busts or post-trade corrections. See Chapter VI, Section 19(b)(3).

ports and allow for continuous connection to the match engine during the transition period.<sup>6</sup> For example, a BX Participant with 3 FIX Ports, 1 CTI Port and 1 FIX DROP Port on August 1, 2019 could request 3 new FIX Ports, 1 CTI Port and 1 FIX DROP Port for the month of August 2019 at no additional cost. The BX Participant would be assessed only for the legacy market ports, in this case 3 FIX Ports, 1 CTI Port and 1 FIX DROP Port, for the month of August 2019 and would not be assessed for the new ports, which are duplicative of the current ports. A Participant may acquire any additional legacy ports during the month of August 2019 and would be assessed the charges indicated in the current Pricing Schedule. The migration does not require a Participant to acquire any additional ports, rather the migration requires a new port to replace any existing ports provided the Participant desired to maintain the same number of ports.<sup>7</sup> A Participant desiring to enter orders into BX is required to obtain 1 FIX Port. A Participant may also obtain order and execution ports, such as a CTI Port and/or a FIX DROP Port, to receive clearing and execution messages. The number of additional FIX or order and execution ports obtained by a Participant is dependent on the Participant's business needs.

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<sup>6</sup> Participants would contact Market Operations to acquire new duplicative FIX Ports, CTI Ports and FIX DROP Ports. See Options Technical Update #2019-3.

<sup>7</sup> The migration is 1:1 and therefore would not require a Participant to acquire new ports, nor would it reduce the number of ports needed to connect.

Applicability to and Impact on Participants<sup>8</sup>

The proposal is not intended to impose any additional fees on any BX Participants. All Participants may enter orders on BX. As noted above, a BX Participant may enter all orders on BX through one FIX Port. The Exchange does not require a BX Participant to obtain more than one FIX Port, however, a Participant may obtain multiple FIX Ports, a CTI Port or a FIX DROP Port to meet its individual business needs. This proposal is intended to permit a BX Participant to migrate its current FIX Ports, CTI Ports and FIX DROP Ports at no additional costs during the month of August 2019 to allow for continuous connection to the Exchange. Participants would only be assessed a fee for their current FIX Ports, CTI Ports and FIX DROP Ports and not be assessed a fee for any new duplicative ports they acquire in connection with the technology infrastructure migration. This proposal is not intended to have a pricing impact.

b. Statutory Basis

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

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<sup>8</sup> On May 21, 2019, the SEC Division of Trading and Markets (the “Division”) issued fee filing guidance titled “Staff Guidance on SRO Rule Filings Relating to Fees” (“Guidance”). Within the Guidance, the Division noted, among other things, that the purpose discussion should address “how the fee may apply differently (e.g., additional cost vs. additional discount) to different types of market participants (e.g., market makers, institutional brokers, retail brokers, vendors, etc.) and different sizes of market participants.” See Guidance (available at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees>). The Guidance also suggests that the purpose discussion should include numerical examples. Where possible, the Exchange is including numerical examples. In addition, the Exchange is providing data to the Commission in support of its arguments herein. The Guidance covers all aspects of a fee filing, which the Exchange has addressed throughout this filing.

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

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 proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities. Moreover, the Exchange believes that its proposal complies with Commission guidance on SRO fee filings that the Commission Staff issued on May 21, 2019.<sup>11</sup>

The Proposal is Reasonable

The Exchange's proposal is reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: “[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

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<sup>10</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>11</sup> See Guidance, supra note 8. Although the Exchange believes that this filing complies with the Guidance, the Exchange does not concede that the standards set forth in the Guidance are consistent with the Exchange Act and reserves its right to challenge those standards through administrative and judicial review, as appropriate.

granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ ....”<sup>12</sup>

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction services. The Exchange is one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. The Exchange believes its proposal is reasonable because it will not cause a pricing impact on any BX Participant, rather the proposal is intended to permit BX Participants to migrate their FIX Ports, CTI Ports and FIX DROP Ports to new technology at no additional cost during the month of August 2019. This proposal, which offers new duplicative ports to Participants at no cost, will allow Participants to test and maintain continuous connection to the Exchange during the month of August 2019.

The Proposal represents an Equitable Allocation and is not Unfairly Discriminatory

The Exchange believes its proposal allocates its fees fairly among its market participants. The proposal is equitable and not unfairly discriminatory. All Participants may enter orders on BX. As noted above, a BX Participant may enter all orders on BX through one FIX Port. The Exchange does not require a BX Participant to obtain more than one FIX Port, however, a Participant may obtain multiple FIX Ports, a CTI Port or a FIX DROP Port to meet its individual business needs. This proposal is not intended to have a pricing impact to any BX Participant.

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<sup>12</sup> NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

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.

Inter-market Competition

The proposal does not impose an undue burden on inter-market competition. This proposal does not amend pricing or functionality. Rather, this technology migration will enable BX Participants to continue to connect to BX, as is the case today, for the entry of orders.

Intra-market Competition

The proposal does not impose an undue burden on intra-market competition. All Participants may enter orders on BX. As noted above, a BX Participant may enter all orders on BX through one FIX Port. The Exchange does not require a BX Participant to obtain more than one FIX Port, however, a Participant may obtain multiple FIX Ports, a CTI Port or a FIX DROP Port to meet its individual business needs. This proposal is not intended to have a pricing impact to any BX Participant.

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>13</sup> 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.

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.

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-BX-2019-027)

July \_\_, 2019

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend BX Pricing at Options 7, Section 3 titled BX Options Market –Ports and Other Services

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 15, 2019, 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 BX pricing at Options 7, Section 3 titled “BX Options Market –Ports and Other Services.” The amendment will describe the pricing with respect to an upcoming technology infrastructure migration.

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.

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

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

## 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 BX pricing at Options 7, Section 3 titled “BX Options Market –Ports and Other Services.” During the month of August 2019, BX Participants will be required to transition from current FIX Ports,<sup>3</sup> CTI Ports<sup>4</sup> and FIX DROP Ports<sup>5</sup> to new FIX Ports, CTI Ports and FIX DROP Ports in connection with an upcoming technology infrastructure migration.

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<sup>3</sup> Financial Information eXchange” or “FIX” is an interface that allows Participants and their Sponsored Customers to connect, send, and receive messages related to orders to and from the Exchange. Features include the following: (1) execution messages; (2) order messages; and (3) risk protection triggers and cancel notifications. See Chapter VI, Section 21(a)(i)(A).

<sup>4</sup> Clearing Trade Interface (“CTI”) is a real-time clearing trade update message that is sent to a Participant after an execution has occurred and contains trade details specific to that Participant. The information includes, among other things, the following: (i) The Clearing Member Trade Agreement or “CMTA” or The Options Clearing Corporation or “OCC” number; (ii) Exchange badge or house number; (iii) the Exchange internal firm identifier; (iv) an indicator which will distinguish electronic and non-electronically delivered orders; (v) liquidity indicators and transaction type for billing purposes; and (vi) capacity. See Chapter VI, Section 19(b)(1).

<sup>5</sup> FIX DROP is a real-time order and execution update message that is sent to a Participant after an order been received/modified or an execution has occurred

### ***Description of Migration and Pricing Impact***

In connection with this migration, Participants will request new FIX Ports, CTI Ports and FIX DROP Ports during the month of August, which are duplicative of the type and quantity of their current ports, at no additional cost to allow for testing of the new ports and allow for continuous connection to the match engine during the transition period.<sup>6</sup> For example, a BX Participant with 3 FIX Ports, 1 CTI Port and 1 FIX DROP Port on August 1, 2019 could request 3 new FIX Ports, 1 CTI Port and 1 FIX DROP Port for the month of August 2019 at no additional cost. The BX Participant would be assessed only for the legacy market ports, in this case 3 FIX Ports, 1 CTI Port and 1 FIX DROP Port, for the month of August 2019 and would not be assessed for the new ports, which are duplicative of the current ports. A Participant may acquire any additional legacy ports during the month of August 2019 and would be assessed the charges indicated in the current Pricing Schedule. The migration does not require a Participant to acquire any additional ports, rather the migration requires a new port to replace any existing ports provided the Participant desired to maintain the same number of ports.<sup>7</sup> A Participant desiring to enter orders into BX is required to obtain 1 FIX Port. A Participant may also obtain order and execution ports, such as a CTI Port and/or a FIX DROP Port, to receive clearing and execution messages. The number of additional FIX

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and contains trade details specific to that Participant. The information includes, among other things, the following: (i) executions; (ii) cancellations; (iii) modifications to an existing order; and (iv) busts or post-trade corrections. See Chapter VI, Section 19(b)(3).

<sup>6</sup> Participants would contact Market Operations to acquire new duplicative FIX Ports, CTI Ports and FIX DROP Ports. See Options Technical Update #2019-3.

<sup>7</sup> The migration is 1:1 and therefore would not require a Participant to acquire new ports, nor would it reduce the number of ports needed to connect.

or order and execution ports obtained by a Participant is dependent on the Participant's business needs.

Applicability to and Impact on Participants<sup>8</sup>

The proposal is not intended to impose any additional fees on any BX Participants. All Participants may enter orders on BX. As noted above, a BX Participant may enter all orders on BX through one FIX Port. The Exchange does not require a BX Participant to obtain more than one FIX Port, however, a Participant may obtain multiple FIX Ports, a CTI Port or a FIX DROP Port to meet its individual business needs. This proposal is intended to permit a BX Participant to migrate its current FIX Ports, CTI Ports and FIX DROP Ports at no additional costs during the month of August 2019 to allow for continuous connection to the Exchange. Participants would only be assessed a fee for their current FIX Ports, CTI Ports and FIX DROP Ports and not be assessed a fee for any new duplicative ports they acquire in connection with the technology infrastructure migration. This proposal is not intended to have a pricing impact.

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<sup>8</sup> On May 21, 2019, the SEC Division of Trading and Markets (the "Division") issued fee filing guidance titled "Staff Guidance on SRO Rule Filings Relating to Fees" ("Guidance"). Within the Guidance, the Division noted, among other things, that the purpose discussion should address "how the fee may apply differently (e.g., additional cost vs. additional discount) to different types of market participants (e.g., market makers, institutional brokers, retail brokers, vendors, etc.) and different sizes of market participants." See Guidance (available at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees>). The Guidance also suggests that the purpose discussion should include numerical examples. Where possible, the Exchange is including numerical examples. In addition, the Exchange is providing data to the Commission in support of its arguments herein. The Guidance covers all aspects of a fee filing, which the Exchange has addressed throughout this filing.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>10</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 proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities. Moreover, the Exchange believes that its proposal complies with Commission guidance on SRO fee filings that the Commission Staff issued on May 21, 2019.<sup>11</sup>

### The Proposal is Reasonable

The Exchange's proposal is reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: “[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

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

<sup>10</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>11</sup> See Guidance, *supra* note 8. Although the Exchange believes that this filing complies with the Guidance, the Exchange does not concede that the standards set forth in the Guidance are consistent with the Exchange Act and reserves its right to challenge those standards through administrative and judicial review, as appropriate.

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>12</sup>

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction services. The Exchange is one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. The Exchange believes its proposal is reasonable because it will not cause a pricing impact on any BX Participant, rather the proposal is intended to permit BX Participants to migrate their FIX Ports, CTI Ports and FIX DROP Ports to new technology at no additional cost during the month of August 2019. This proposal, which offers new duplicative ports to Participants at no cost, will allow Participants to test and maintain continuous connection to the Exchange during the month of August 2019.

The Proposal represents an Equitable Allocation and is not Unfairly Discriminatory

The Exchange believes its proposal allocates its fees fairly among its market participants. The proposal is equitable and not unfairly discriminatory. All Participants may enter orders on BX. As noted above, a BX Participant may enter all orders on BX through one FIX Port. The Exchange does not require a BX Participant to obtain more than one FIX Port, however, a Participant may obtain multiple FIX Ports, a CTI Port or a FIX DROP Port to meet its individual business needs. This proposal is not intended to

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<sup>12</sup> NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

have a pricing impact to any BX Participant.

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.

Inter-market Competition

The proposal does not impose an undue burden on inter-market competition. This proposal does not amend pricing or functionality. Rather, this technology migration will enable BX Participants to continue to connect to BX, as is the case today, for the entry of orders.

Intra-market Competition

The proposal does not impose an undue burden on intra-market competition. All Participants may enter orders on BX. As noted above, a BX Participant may enter all orders on BX through one FIX Port. The Exchange does not require a BX Participant to obtain more than one FIX Port, however, a Participant may obtain multiple FIX Ports, a CTI Port or a FIX DROP Port to meet its individual business needs. This proposal is not intended to have a pricing impact to any BX Participant.

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>13</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-2019-027 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>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR-BX-2019-027. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

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

All submissions should refer to File Number SR-BX-2019-027 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

New text is underlined.

**Nasdaq BX, Inc. Rules**

\* \* \* \* \*

**Options 7 Pricing Schedule**

\* \* \* \* \*

**Section 3 BX Options Market - Ports and other Services**

The below charges are assessed by BX for connectivity to the BX Options Market.

A port is a logical connection or session that enables a market participant to send inbound messages and/or receive outbound messages from the Exchange using various communication protocols. Fees are assessed in full month increments and are not prorated.

An account number shall mean a number assigned to a Participant. Participants may have more than one account number.

(i) The following order and quote protocols are available on BX:

During the month of August 2019, BX Participants will be required to transition from current FIX Ports to new FIX Ports in conjunction with a technology infrastructure migration. BX will not assess a FIX Port Fee for any new duplicative FIX Ports acquired as part of the transition during the month of August 2019. BX will assess the FIX Port Fee to legacy FIX Ports during August 2019. BX will sunset legacy FIX Ports by August 31, 2019. In September 2019, BX will assess Participants the FIX Port Fee to new FIX Ports.

(1) <b>FIX Port Fee</b> <sup>1</sup>	\$650 per port, per month, per account number
(2) <b>SQF Port Fee</b>	\$500 per port, per month
(3) <b>SQF Purge Port Fee</b>	\$500 per port, per month

(ii) The following order and execution information is available to Participants.

During the month of August 2019, BX Participants will be required to transition from current CTI Ports and FIX DROP Ports to new CTI Ports and FIX DROP Ports in conjunction with a technology infrastructure migration. BX will not assess CTI Port and FIX DROP Port Fees for any new duplicative CTI Port or FIX DROP Ports acquired as part of the transition during the month of August 2019. BX will assess the CTI Port and FIX DROP Port Fees to legacy CTI Ports and FIX DROP Ports during August 2019. BX

will sunset legacy CTI Ports and FIX DROP Ports by August 31, 2019. In September 2019, BX will assess Participants CTI Port and FIX DROP Port Fees to new CTI Ports and FIX DROP Ports.

- |  |                           |
|--|---------------------------|
| <b>(1) CTI Port Fee<sup>1</sup></b>      | \$650 per port, per month |
| <b>(2) FIX DROP Port Fee<sup>1</sup></b> | \$650 per port, per month |
| <b>(3) TradeInfo BX Interface</b>        | \$95 per user, per month  |

**(iii)** The following data ports fees apply in connection with data subscriptions pursuant to BX Rules at Options 7, Section 4. The below port fees do not apply if the subscription is delivered via multicast. These ports are available to non-BX Participants and BX Participants.

- |  |                           |
|--|---------------------------|
| <b>(1) BX Depth Port Fee<sup>1</sup></b> | \$650 per port, per month |
| <b>(2) BX TOP Port Fee<sup>1</sup></b>   | \$650 per port, per month |

<sup>1</sup> The maximum monthly fees in the aggregate for FIX Port, CTI Port, FIX DROP Port, BX Depth Port and BX TOP Port Fees will be \$7,500.

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