

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 29	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2020 - * 011	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"/>
--	--

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 Equity 7, Section 118(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 * Marsha Last Name * Dixon
 Title * Assistant General Counsel
 E-mail * marsha.dixon@nasdaq.com
 Telephone * (301) 978-8183 Fax

Signature

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

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

(Title *)

Date 06/10/2020
 By John Zecca
 (Name *)

EVP and Chief Legal Counsel
 john.zecca@nasdaq.com

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

Add Remove View

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 *

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, 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

Add Remove View

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

Add Remove View

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

Add Remove View

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

Add Remove View

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

1. Text of the Proposed Rule Change

(a) Nasdaq BX, Inc. (“BX” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend the Exchange’s transaction fees, at Equity 7, Section 118(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 25, 2019. 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:

Marsha T. Dixon
Assistant General Counsel
Nasdaq, Inc.
(301) 978-8183

¹ 15 U.S.C. 78s(b)(1).

² 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 operates on the “taker-maker” model, whereby it generally pays credits to members that take liquidity and charges fees to members that provide liquidity. Currently, the Exchange has a schedule, at Equity 7, Section 118(a), which consists of several different credits that it provides for orders in securities priced at \$1 or more per share that access liquidity on the Exchange and several different charges that it assesses for orders in such securities that add liquidity on the Exchange.

Over the course of the last few months, the Exchange has experimented with various reformulations of its pricing schedule with the aim of increasing activity on the Exchange, improving market quality, and increasing market share.³ Although these changes have met with some success, the Exchange has yet to achieve the results it desires. Accordingly, the Exchange proposes to again revise its pricing schedule, in a further attempt to improve the attractiveness of the market to new and existing participants.

The Exchange proposes to amend its existing \$0.0028 per share executed charge for non-displayed orders (other than orders with Midpoint pegging) entered by a member

³ See e.g., Securities Exchange Act Release No. 34-87271 (October 10, 2019), 84 FR 55621 (October 17, 2019) (SR-BX-2019-035); Securities Exchange Act Release No. 34-87093 (September 24, 2019), 84 FR 57530 (October 25, 2019) (SR-BX-2019-031); Securities Exchange Act Release No. 34-86120 (June 17, 2019); 84 FR 29270 (June 21, 2019) (SR-BX-2019-019); Securities Exchange Act Release No. 34-85912 (May 22, 2019); 84 FR 24834 (May 29, 2019) (SR-BX-2019-013).

that adds liquidity equal to or exceeding 0.25% of total Consolidated Volume⁴ during a month. The Exchange proposes to reduce the percentage of total Consolidated Volume needed to qualify for this charge, from 0.25% to 0.225% of total Consolidated Volume. Additionally, the Exchange proposes to allow a member to achieve the new volume threshold by including the removal of liquidity. By easing the volume requirements for this charge, which represents a discount off of the standard \$0.0030 per share executed charge (for all other non-displayed orders), the Exchange intends to increase the number of members that seek to and do qualify for it, and thereby provide incentives for members to add liquidity to the Exchange.

The proposed changes to ease the qualifying volume threshold for obtaining the \$0.0028 per share executed charge and to include removing liquidity in the calculation of the new volume threshold, will benefit participants that are net adders and net takers of liquidity by enabling them to more easily qualify for the existing \$0.0028 per share executed discounted charge. Those participants that act as net adders of liquidity to the Exchange will benefit directly from the proposed change that would apply to orders that add liquidity to the Exchange. Those participants that act as net removers of liquidity will also benefit from the proposed amendment as their liquidity removal activity will be tied to achieving the \$0.0028 discounted charge. Any ensuing increase in liquidity

⁴ 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.

adding and removing activity will improve the overall quality of the market, to the benefit of all members. The Exchange notes that its proposal is not otherwise targeted at or expected to be limited in its applicability to a specific segment(s) of market participants nor will it apply differently to different types of market participants.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁶ 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.

The Proposal is Reasonable

The Exchange's proposed changes to its schedule of credits and fees are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities 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

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

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’”⁷

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.”⁸

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several taker-maker exchanges. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume

⁷ 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)).

⁸ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

thresholds.⁹

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules.¹⁰ Separately, the Exchange has provided the SEC staff with multiple examples of instances where pricing changes by BX and other exchanges have resulted in shifts in exchange market share. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange has designed its proposed changes to the schedule of charges to assist members in more easily qualifying for the discounted \$0.0028 charge by reducing the percentage threshold and including the removal of liquidity. The Exchange believes the proposal is reasonable because it adjusts the incentives to members in order to increase their liquidity adding and removing activity on the Exchange. An increase in liquidity adding and removing activity on the Exchange will, in turn, improve the quality of the Nasdaq BX market and increase its attractiveness to existing and prospective

⁹ See CBOE EDGA Fee Schedule, at https://markets.cboe.com/us/equities/membership/fee_schedule/edga/; NYSE National Fee Schedule, at https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_National_Schedule_of_Fees.pdf.

¹⁰ The Exchange perceives no regulatory, structural, or cost impediments to market participants shifting order flow away from it. In particular, the Exchange notes that these examples of shifts in liquidity and market share, along with many others, have occurred within the context of market participants' existing duties of Best Execution and obligations under the Order Protection Rule under Regulation NMS.

participants. Generally, the proposed amendments to the charges will be comparable to, if not favorable to, those that its competitors provide.¹¹

The Exchange notes that those participants that are dissatisfied with the proposed fees are free to shift their order flow to competing venues that offer them lower fees.

The Proposal is an Equitable Allocation of Fees

The Exchange believes its proposed amended qualification requirements for the discounted charge will be fairly allocated among its market participants. It is equitable for the Exchange to lower the volume threshold and increase the types of activities that count toward qualifying for discounted charges to participants whose orders add liquidity to the Exchange as a means of incentivizing increased liquidity adding activity on the Exchange. It is also equitable to tie the receipt of the discounted charge to the member engaging in a threshold volume of combined liquidity adding and removing activity on the Exchange. An increase in overall liquidity adding and removing activity on the Exchange will improve the quality of the Nasdaq BX market and increase its attractiveness to existing and prospective participants.

Any participant that is dissatisfied with the proposed amended fees is free to shift their order flow to competing venues that provide more favorable pricing or less stringent qualifying criteria.

The Proposed Fee is not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established

¹¹ See n. 9, supra.

and ubiquitous in today's economy among firms in various industries – from co-branded credit cards to grocery stores to cellular telephone data plans – that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

The Exchange intends for its proposal to improve market quality for all members on the Exchange and by extension attract more liquidity to the market, improving market wide quality and price discovery. Both net removers and net adders of liquidity to the Exchange stand to benefit directly from the proposed changes. Moreover, to the extent that the proposed changes increase liquidity adding and removing activity on the Exchange, this will improve market quality and the attractiveness of the Nasdaq BX market, to the benefit of all existing and prospective participants.

Furthermore, any participant that is dissatisfied with the proposed amended fees is free to shift their order flow to competing venues that provide more favorable pricing or less stringent qualifying criteria.

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.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage. As noted above, all members of the

Exchange will benefit from any increase in market activity that the proposal effectuates. Members may grow or modify their businesses so that they can receive the lower charge. Moreover, members are free to trade on other venues to the extent they believe that the credit provided or fees imposed are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. The Exchange notes that the tier structure is consistent with broker-dealer fee practices as well as the other industries, as described above.

Intermarket Competition

Addressing whether the proposal could impose a burden on competition on other SROs that is not necessary or appropriate, the Exchange believes that its proposed modifications to its schedule of credits and charges will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from the other 12 live exchanges and from off-exchange venues, which include 34 alternative trading systems. 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 and credit changes in this market may impose any burden on competition is extremely limited.

The proposed amendments to the schedule of charges is reflective of this competition because, as a threshold issue, the Exchange is a relatively small market so its ability to burden intermarket competition is limited. In this regard, even the largest U.S. equities exchange by volume has less than 17% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprised more than 41% of industry volume for the month of May 2020.

The Exchange intends for the proposed changes to its schedule of fees, in the aggregate, to increase member incentives to engage in the removal and addition of liquidity on the Exchange. These changes are procompetitive and reflective of the Exchange's efforts to make it an attractive and vibrant venue to market participants.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹² 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.

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-BX-2020-011)

June __, 2020

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Equity 7, Section 118

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on June 10, 2020, 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 make certain changes to the Exchange’s transaction fees, at Equity 7, Section 118(a).

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

¹ 15 U.S.C. 78s(b)(1).

² 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 Exchange operates on the “taker-maker” model, whereby it generally pays credits to members that take liquidity and charges fees to members that provide liquidity. Currently, the Exchange has a schedule, at Equity 7, Section 118(a), which consists of several different credits that it provides for orders in securities priced at \$1 or more per share that access liquidity on the Exchange and several different charges that it assesses for orders in such securities that add liquidity on the Exchange.

Over the course of the last few months, the Exchange has experimented with various reformulations of its pricing schedule with the aim of increasing activity on the Exchange, improving market quality, and increasing market share.³ Although these changes have met with some success, the Exchange has yet to achieve the results it desires. Accordingly, the Exchange proposes to again revise its pricing schedule, in a further attempt to improve the attractiveness of the market to new and existing participants.

³ See e.g., Securities Exchange Act Release No. 34-87271 (October 10, 2019), 84 FR 55621 (October 17, 2019) (SR-BX-2019-035); Securities Exchange Act Release No. 34-87093 (September 24, 2019), 84 FR 57530 (October 25, 2019) (SR-BX-2019-031); Securities Exchange Act Release No. 34-86120 (June 17, 2019); 84 FR 29270 (June 21, 2019) (SR-BX-2019-019); Securities Exchange Act Release No. 34-85912 (May 22, 2019); 84 FR 24834 (May 29, 2019) (SR-BX-2019-013).

The Exchange proposes to amend its existing \$0.0028 per share executed charge for non-displayed orders (other than orders with Midpoint pegging) entered by a member that adds liquidity equal to or exceeding 0.25% of total Consolidated Volume⁴ during a month. The Exchange proposes to reduce the percentage of total Consolidated Volume needed to qualify for this charge, from 0.25% to 0.225% of total Consolidated Volume. Additionally, the Exchange proposes to allow a member to achieve the new volume threshold by including the removal of liquidity. By easing the volume requirements for this charge, which represents a discount off of the standard \$0.0030 per share executed charge (for all other non-displayed orders), the Exchange intends to increase the number of members that seek to and do qualify for it, and thereby provide incentives for members to add liquidity to the Exchange.

The proposed changes to ease the qualifying volume threshold for obtaining the \$0.0028 per share executed charge and to include removing liquidity in the calculation of the new volume threshold, will benefit participants that are net adders and net takers of liquidity by enabling them to more easily qualify for the existing \$0.0028 per share executed discounted charge. Those participants that act as net adders of liquidity to the Exchange will benefit directly from the proposed change that would apply to orders that add liquidity to the Exchange. Those participants that act as net removers of liquidity

⁴ 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.

will also benefit from the proposed amendment as their liquidity removal activity will be tied to achieving the \$0.0028 discounted charge. Any ensuing increase in liquidity adding and removing activity will improve the overall quality of the market, to the benefit of all members. The Exchange notes that its proposal is not otherwise targeted at or expected to be limited in its applicability to a specific segment(s) of market participants nor will it apply differently to different types of market participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁶ 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.

The Proposal is Reasonable

The Exchange's proposed changes to its schedule of credits and fees are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities 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

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

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’”⁷

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.”⁸

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several taker-maker exchanges. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume

⁷ 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)).

⁸ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

thresholds.⁹

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules.¹⁰ Separately, the Exchange has provided the SEC staff with multiple examples of instances where pricing changes by BX and other exchanges have resulted in shifts in exchange market share. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange has designed its proposed changes to the schedule of charges to assist members in more easily qualifying for the discounted \$0.0028 charge by reducing the percentage threshold and including the removal of liquidity. The Exchange believes the proposal is reasonable because it adjusts the incentives to members in order to increase their liquidity adding and removing activity on the Exchange. An increase in liquidity adding and removing activity on the Exchange will, in turn, improve the quality of the Nasdaq BX market and increase its attractiveness to existing and prospective

⁹ See CBOE EDGA Fee Schedule, at https://markets.cboe.com/us/equities/membership/fee_schedule/edga/; NYSE National Fee Schedule, at https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_National_Schedule_of_Fees.pdf.

¹⁰ The Exchange perceives no regulatory, structural, or cost impediments to market participants shifting order flow away from it. In particular, the Exchange notes that these examples of shifts in liquidity and market share, along with many others, have occurred within the context of market participants' existing duties of Best Execution and obligations under the Order Protection Rule under Regulation NMS.

participants. Generally, the proposed amendments to the charges will be comparable to, if not favorable to, those that its competitors provide.¹¹

The Exchange notes that those participants that are dissatisfied with the proposed fees are free to shift their order flow to competing venues that offer them lower fees.

The Proposal is an Equitable Allocation of Fees

The Exchange believes its proposed amended qualification requirements for the discounted charge will be fairly allocated among its market participants. It is equitable for the Exchange to lower the volume threshold and increase the types of activities that count toward qualifying for discounted charges to participants whose orders add liquidity to the Exchange as a means of incentivizing increased liquidity adding activity on the Exchange. It is also equitable to tie the receipt of the discounted charge to the member engaging in a threshold volume of combined liquidity adding and removing activity on the Exchange. An increase in overall liquidity adding and removing activity on the Exchange will improve the quality of the Nasdaq BX market and increase its attractiveness to existing and prospective participants.

Any participant that is dissatisfied with the proposed amended fees is free to shift their order flow to competing venues that provide more favorable pricing or less stringent qualifying criteria.

The Proposed Fee is not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established

¹¹ See n. 9, supra.

and ubiquitous in today's economy among firms in various industries – from co-branded credit cards to grocery stores to cellular telephone data plans – that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

The Exchange intends for its proposal to improve market quality for all members on the Exchange and by extension attract more liquidity to the market, improving market wide quality and price discovery. Both net removers and net adders of liquidity to the Exchange stand to benefit directly from the proposed changes. Moreover, to the extent that the proposed changes increase liquidity adding and removing activity on the Exchange, this will improve market quality and the attractiveness of the Nasdaq BX market, to the benefit of all existing and prospective participants.

Furthermore, any participant that is dissatisfied with the proposed amended fees is free to shift their order flow to competing venues that provide more favorable pricing or less stringent qualifying criteria.

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.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage. As noted above, all members of the Exchange will benefit from any increase in market activity that the proposal effectuates. Members may grow or modify their businesses so that they can receive the lower charge. Moreover, members are free to trade on other venues to the extent they believe that the credit provided or fees imposed are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. The Exchange notes that the tier structure is consistent with broker-dealer fee practices as well as the other industries, as described above.

Intermarket Competition

Addressing whether the proposal could impose a burden on competition on other SROs that is not necessary or appropriate, the Exchange believes that its proposed modifications to its schedule of credits and charges will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from the other 12 live exchanges and from off-exchange venues, which include 34 alternative trading systems. 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 and credit changes in this market may impose any burden on competition is extremely limited.

The proposed amendments to the schedule of charges is reflective of this competition because, as a threshold issue, the Exchange is a relatively small market so its ability to burden intermarket competition is limited. In this regard, even the largest U.S. equities exchange by volume has less than 17% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprised more than 41% of industry volume for the month of May 2020.

The Exchange intends for the proposed changes to its schedule of fees, in the aggregate, to increase member incentives to engage in the removal and addition of liquidity on the Exchange. These changes are procompetitive and reflective of the Exchange's efforts to make it an attractive and vibrant venue to market participants.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹²

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

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2020-011 on the subject line.

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

Paper comments:

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

All submissions should refer to File Number SR-BX-2020-011. 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-2020-011 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

J. Matthew DeLesDernier
Assistant Secretary

¹³ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

Rules of Nasdaq BX

* * * * *

Equity 7 Pricing Schedule

* * * * *

Section 118. 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.

* * * * *

**Charge for providing liquidity
through the Nasdaq BX Equities
System:**

	Tape A	Tape B	Tape C
Displayed order entered by a member that adds liquidity equal to or exceeding 0.25% of total Consolidated Volume during a month:	\$0.0024 per share executed	\$0.0024 per share executed	\$0.0024 per share executed
Displayed order entered by a member that adds liquidity equal to or exceeding 0.175% of total Consolidated Volume during a month:	\$0.0025 per share executed	\$0.0025 per share executed	\$0.0025 per share executed
Displayed order entered by a member that adds liquidity equal to or exceeding 0.11% of total Consolidated Volume during a month:	\$0.0026 per share executed	\$0.0026 per share executed	\$0.0026 per share executed
Displayed order entered by a member that adds liquidity equal to or exceeding	\$0.0028 per share	\$0.0028 per share	\$0.0028 per share

0.07% of total Consolidated Volume during a month:	executed	executed	executed
Order with Midpoint pegging entered 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:	\$0.0005 per share executed	\$0.0005 per share executed	\$0.0005 per share executed
Order with Midpoint pegging entered by other member excluding a buy (sell) order that receives an execution price that is lower (higher) than the midpoint of the NBBO:	\$0.0015 per share executed	\$0.0015 per share executed	\$0.0015 per share executed
Buy (sell) order with Midpoint pegging that receives an execution price that is lower (higher) than the midpoint of the NBBO:	\$0.0030 per share executed	\$0.0030 per share executed	\$0.0030 per share executed
Non-displayed orders (other than orders with Midpoint pegging) entered by a member that adds <u>and removes</u> liquidity equal to or exceeding 0.225% total Consolidated Volume during a month:	\$0.0028 per share executed	\$0.0028 per share executed	\$0.0028 per share executed
All other non-displayed orders:	\$0.0030 per share executed	\$0.0030 per share executed	\$0.0030 per share executed
All other orders:	\$0.0030 per share executed	\$0.0030 per share executed	\$0.0030 per share executed

* * * * *