

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="33"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2020"/> - * <input type="text" value="013"/> Amendment No. (req. for Amendments *) <input type="text"/>
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Filing by NASDAQ BX, Inc.
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" 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 checked="" type="checkbox"/>	Exhibit 3 Sent As Paper Document <input checked="" type="checkbox"/>
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Description

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

A proposal to amend Options 3, Section 3 to conform the rule to Section 3.1 of the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options

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 * Last Name *

Title *

E-mail *

Telephone * 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 By

(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.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS 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 *

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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

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

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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”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend Options 3, Section 3 to conform the rule to Section 3.1 of the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options (the “OLPP”).

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

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

Sun Kim
Associate General Counsel
Nasdaq, Inc.
646-420-7816

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 purpose of this rule change is to amend Options 3, Section 3 (Minimum Increments) to align the rule with the recently approved amendment to the OLPP.

Background

On January 23, 2007, the Commission approved on a limited basis a Penny Pilot in option classes in certain issues (“Penny Pilot”). The Penny Pilot was designed to determine whether investors would benefit from options being quoted in penny increments, and in which classes the benefits were most significant. The Penny Pilot was initiated at the then existing option exchanges in January 2007³ and was expanded and extended numerous times over the last 13 years.⁴ In each instance, these approvals relied upon the consideration of data periodically provided by the Exchanges that analyzed how quoting options in penny increments affects spreads, liquidity, quote traffic, and volume. Today, the Penny Pilot includes 363 option classes, which are among the most actively

³ See Securities Exchange Act Release Nos. 55154 (January 23, 2007), 72 FR 4743 (February 1, 2007) (SR-CBOE-2006-92); 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (SR-ISE-2006-62); 54886 (December 6, 2006), 71 FR 74979 (December 13, 2006) (SR-Phlx-2006-74); 54590 (October 12, 2006), 71 FR 61525 (October 18, 2006) (SR-NYSEArca-2006-73); and 54741 (November 9, 2006), 71 FR 67176 (November 20, 2006) (SR-Amex-2006-106).

⁴ The Penny Pilot was established on the Exchange in June 2012 and was last extended in December 2019. See Securities Exchange Act Release Nos. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR-BX-2012-030); and 87754 (December 16, 2019), 84 FR 70232 (December 20, 2019) (SR-BX-2019-046).

traded, multiply listed option classes. The Penny Pilot is scheduled to expire by its own terms on June 30, 2020.⁵

In light of the imminent expiration of the Penny Pilot on June 30, 2020, the Exchange, together with other participating exchanges, filed, on July 18, 2019 a proposal to amend the OLPP.⁶ On April 1, 2020 the Commission approved the amendment to the OLPP to make permanent the Pilot Program (the “OLPP Program”).⁷

The OLPP Program replaces the Penny Pilot by instituting a permanent program that would permit quoting in penny increments for certain option classes. Under the terms of the OLPP Program, designated option classes would continue to be quoted in \$0.01 and \$0.05 increments according to the same parameters for the Penny Pilot. In addition, the OLPP Program would: (i) establish an annual review process to add option classes to, or to remove option classes from, the OLPP Program; (ii) to allow an option class to be added to the OLPP Program if it is a newly listed option class and it meets certain criteria; (iii) to allow an option class to be added to the OLPP Program if it is an option class that has seen a significant growth in activity; (iv) to provide that if a corporate action involves one or more option classes in the OLPP Program, all adjusted and unadjusted series and classes emerging as a result of the corporate action will be included in the OLPP Program; and (v) to provide that any series in an option class participating in the OLPP Program that have been delisted, or are identified by OCC as ineligible for

⁵ See Securities Exchange Act Release No. 87754 (December 16, 2019), 84 FR 70232 (December 20, 2019) (SR-BX-2019-046).

⁶ See Securities Exchange Act Release No. 87681 (December 9, 2019), 84 FR 68960 (December 17, 2019) (“Notice”).

⁷ See Securities Exchange Act Release No. 88532 (April 1, 2020), 85 FR 19545 (April 7, 2020) (File No. 4-443) (“Approval Order”).

opening Customer transactions, will continue to trade pursuant to the OLPP Program until they expire.

To conform its Rules to the OLPP Program, the Exchange proposes to delete the current rule text in Supplementary Material.01 to Options 3, Section 3 (the “Penny Pilot Rule”), and replace it with the requirements for the proposed Penny Interval Program from the OLPP Program, which is described below. The Exchange also proposes to relocate the Exchange’s rules regarding the minimum price variations for options in the proposed Penny Interval Program, which are currently within Supplementary Material .01 to Options 3, Section 3, into new subparagraphs (a)(3)(A) – (C) of Options 3, Section 3. Specifically, the Exchange proposes to provide in new subparagraphs (a)(3)(A) – (C) that for options series traded pursuant to the proposed Penny Interval Program as described in Supplementary Material .01 to Options 3, Section 3, the following minimum quoting increments will apply: (A) one cent (\$0.01) for all options series in QQQ, SPY, and IWM; (B) one cent (\$0.01) for all other options series included in the Penny Interval Program that are trading at less than \$3.00; and (C) five cents (\$0.05) for all other options series included in the Penny Interval Program that are trading at or above \$3.00.

The Exchange also proposes to delete obsolete and superfluous language in Options 3, Section 3(a) regarding amendments to the minimum increments that may be established by the Board and designated as a stated policy, practice or interpretation within the meaning of the Act, and the process for such amendments by rule filing.⁸

⁸ See Options 3, Section 3(a), which specifically provides: “The Board may establish minimum quoting increments for options contracts traded on BX Options. Such minimum increments established by the Board will be designated as a stated policy, practice, or interpretation with respect to the administration of

Today, the Exchange may determine to establish a change to the minimum increments within its Rules and must submit proposed rule changes for such amendments to the Commission.⁹ Accordingly, Options 3, Section 3(a), as amended, will simply provide that the following minimum quoting increments (as enumerated within Options 3, Section 3(a)) shall apply to options contracts traded on the Exchange.

Penny Interval Program

The Exchange proposes to codify the OLPP Program in Supplementary Material .01 to Options 3, Section (Requirements for Penny Interval Program) (the “Penny Program”), which will replace the Penny Pilot Rule and permanently permit the Exchange to quote certain option classes in minimum increments of one cent (\$0.01) and five cents (\$0.05) (“penny increments”), as set forth in proposed subparagraphs (a)(3)(A) – (C) of Options 3, Section 3. As discussed above, the penny increments that currently apply under the Penny Pilot¹⁰ will continue to apply for options classes included in the Penny Program.¹¹

The Penny Program would initially apply to the 363 most actively traded multiply listed option classes, based on National Cleared Volume at The Options Clearing Corporation (“OCC”) in the six full calendar months ending in the month of approval

this Rule within the meaning of Section 19 of the Exchange Act and will be filed with the SEC as a rule change for effectiveness upon filing.”

⁹ Decisions to change the minimum increments relate to Exchange trading and operations, and thus are made by Exchange management via delegated authority from the Board, rather than the Board itself, which is generally not involved in determinations related to day-to-day operations of the Exchange.

¹⁰ See Supplementary Material .01 to Options 3, Section 3.

¹¹ See proposed subparagraphs (a)(3)(A) – (C) of Options 3, Section 3.

(i.e., November 2019 - April 2020) that currently quote in penny increments, or overlie securities priced below \$200, or any index at an index level below \$200. Eligibility for inclusion in the Penny Program will be determined at the close of trading on the monthly Expiration Friday of the second full month following April 1, 2020 (i.e., June 19, 2020).

Once in the Penny Program, an option class will remain included until it is no longer among the 425 most actively traded option classes at the time the annual review is conducted (described below), at which point it will be removed from the Penny Program. As described in more detail below, the removed class will be replaced by the next most actively traded multiply listed option class overlying securities priced below \$200 per share, or any index at an index level below \$200, and not yet in the Penny Program. Advanced notice regarding the option classes included, added, or removed from the Penny Program will be provided to the Exchange's membership via Options Trader Alert and published by the Exchange on its website.

Annual Review

The Penny Program would include an annual review process that applies objective criteria to determine option classes to be added to, or removed from, the Penny Program. Specifically, on an annual basis beginning in December 2020 and occurring every December thereafter, the Exchange will review and rank all multiply listed option classes based on National Cleared Volume at OCC for the six full calendar months from June 1st through November 30th for determination of the most actively traded option classes. Any option classes not yet in the Penny Program may be added to the Penny Program if the class is among the 300 most actively traded multiply listed option classes and priced below \$200 per share or any index at an index level below \$200.

Following the annual review, option classes to be added to the Penny Program would begin quoting in penny increments (i.e., \$0.01 if trading at less than \$3; and \$0.05 if trading at \$3 and above) on the first trading day of January. In addition, following the annual review, any option class in the Penny Program that falls outside of the 425 most actively traded option classes would be removed from the Penny Program. After the annual review, option classes that are removed from the Penny Program will be subject to the minimum trading increments set forth in Options 3, Section 3, effective on the first trading day of April.

Changes to the Composition of the Penny Program Outside of the Annual Review

Newly Listed Option Classes and Option Classes with Significant Growth in Activity

The Penny Program would specify a process and parameters for including option classes in the Penny Program outside the annual review process in two circumstances. These provisions are designed to provide objective criteria to add to the Penny Program new option classes in issues with the most demonstrated trading interest from market participants and investors on an expedited basis prior to the annual review, with the benefit that market participants and investors will then be able to trade these new option classes based upon quotes expressed in finer trading increments.

First, the Penny Program provides for certain newly listed option classes to be added to the Penny Program outside of the annual review process, provided that (i) the class is among the 300 most actively traded, multiply listed option classes, as ranked by National Cleared Volume at OCC, in its first full calendar month of trading; and (ii) the underlying security is priced below \$200 or the underlying index is at an index level

below \$200. Such newly listed option classes added to the Penny Program pursuant to this process would remain in the Penny Program for one full calendar year and then would be subject to the annual review process.

Second, the Penny Program would allow an option class to be added to the Penny Program outside of the annual review process if it is an option class that meets certain specific criteria. Specifically, new option classes may be added to the Penny Program if: (i) the option class is among the 75 most actively traded multiply listed option classes, as ranked by National Cleared Volume at OCC, in the prior six full calendar months of trading and (ii) the underlying security is priced below \$200 or the underlying index is at an index level below \$200. Any option class added under this provision will be added on the first trading day of the second full month after it qualifies and will remain in the Penny Program for the rest of the calendar year, after which it will be subject to the annual review process.

Corporate Actions

The Penny Program would also specify a process to address option classes in the Penny Program that undergo a corporate action and is designed to ensure continuous liquidity in the affected option classes. Specifically, if a corporate action involves one or more option classes in the Penny Program, all adjusted and unadjusted series of an option class would continue to be included in the Penny Program.¹² Furthermore, neither the trading volume threshold, nor the initial price test would apply to option classes added to

¹² For example, if Company A acquires Company B and Company A is not in the Penny Program but Company B is in the Penny Program, once the merger is consummated and an options contract adjustment is effective, then Company A would be added to the Penny Program and remain in the Penny Program for one calendar year.

the Penny Program as a result of the corporate action. Finally, the newly added adjusted and unadjusted series of the option class would remain in the Penny Program for one full calendar year and then would become subject to the annual review process.

Delisted or Ineligible Option Classes

Finally, the Penny Program would provide a mechanism to address option classes that have been delisted or those that are no longer eligible for listing. Specifically, any series in an option class participating in the Penny Program in which the underlying has been delisted, or is identified by OCC as ineligible for opening customer transactions, would continue to quote pursuant to the terms of the Penny Program until all options series have expired.

Implementation

The Exchange proposes to implement the Penny Program on July 1, 2020, which is the first trading day of the third month following the Approval Order issued on April 1, 2020 – i.e., July 1, 2020.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

In particular, the proposed rule change, which conforms the Exchange rules to the recently adopted OLPP Program, allows the Exchange to provide market participants with a permanent Penny Program for quoting options in penny increments, which maximizes the benefit of quoting in a finer quoting increment to investors while minimizing the burden that a finer quoting increment places on quote traffic.

Accordingly, the Exchange believes that the proposal is consistent with the Act because, in conforming the Exchange rules to the OLPP Program, the Penny Program would employ processes, based upon objective criteria, that would rebalance the composition of the Penny Program, thereby helping to ensure that the most actively traded option classes are included in the Penny Program, which helps facilitate the maintenance of a fair and orderly market.

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed Penny Program, which modifies the Exchange's rules to align them with the Commission approved OLPP Program, is not designed to be a competitive filing nor does it impose an undue burden on intermarket competition as the Exchange anticipates that the options exchanges will adopt substantially identical rules. Moreover, the Exchange believes that by conforming Exchange rules to the OLPP Program, the Exchange would promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. To the extent that there is a competitive burden on those option classes that do not qualify for the Penny Program, the Exchange believes that it is appropriate because the proposal should benefit all market participants and investors by maximizing the benefit of a finer quoting increment in those

option classes with the most trading interest while minimizing the burden of greater quote traffic in option classes with less trading interest. The Exchange believes that adopting rules, which it anticipates will likewise be adopted by all option exchanges that are participants in the OLPP, would allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges.

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)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)¹⁵ of the Act and Rule 19b-4(f)(6) thereunder¹⁶ in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

¹⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁶ 17 CFR 240.19b-4(f)(6).

The Exchange believes that the proposal is non-controversial, does not pose an undue burden on competition, and does not raise any novel issues as the proposed changes would allow the Exchange to conform its rules to the recently adopted OLPP Program to the benefit of market participants. The proposal allows the Exchange to provide market participants with a permanent Penny Program for quoting options in penny increments, and objective criteria for modifying the option classes included as Penny Program issues, which maximizes the benefit to investors while minimizing the burden that a finer quoting increment places on quote traffic. Further, the Exchange notes that this proposal does not propose any new policies or provisions, but instead seeks to modify Exchange rules to conform to the OLPP Program, which was approved on April 1, 2020. Accordingly, the proposal would allow the Exchange to modify its rules to be consistent with the OLPP Program as soon as possible.

The Exchange believes that proposed technical changes are non-controversial and does not impact competition but instead would benefit investors and the investing public by conforming Exchange rules to the OLPP Program. The Exchange believes that the proposed additional specificity would promote a free and open market for the benefit of investors and the investing public.

Furthermore, Rule 19b-4(f)(6)(iii)¹⁷ requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

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 necessary or appropriate in the public interest, for the protection of investors, or 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.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) so that the Exchange can implement the proposal without delay. This proposal would not pose an undue burden on competition and does not raise any novel issues but instead seeks to modify Exchange rules to conform to the recently approved OLPP Program. Thus, the waiver of the operative delay would be consistent with the protection of investors and the public interest because it would enable the Exchange to implement without delay the Penny Program, in conformance with the OLPP Program.

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

The proposed rule change is based on the proposal by NYSE Arca, Inc.¹⁸

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

Not applicable.

¹⁸ See Securities Exchange Act Release No. 88943 (May 26, 2020), 85 FR 33255 (June 1, 2020) (SR-NYSEArca-2020-50).

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

Not applicable.

11. Exhibits

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

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-BX-2020-013)

June __, 2020

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 3, Section 3

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 23, 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 amend Options 3, Section 3 to conform the rule to Section 3.1 of the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options (the “OLPP”).

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.

¹ 15 U.S.C. 78s(b)(1).

² 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 purpose of this rule change is to amend Options 3, Section 3 (Minimum Increments) to align the rule with the recently approved amendment to the OLPP.

Background

On January 23, 2007, the Commission approved on a limited basis a Penny Pilot in option classes in certain issues ("Penny Pilot"). The Penny Pilot was designed to determine whether investors would benefit from options being quoted in penny increments, and in which classes the benefits were most significant. The Penny Pilot was initiated at the then existing option exchanges in January 2007³ and was expanded and extended numerous times over the last 13 years.⁴ In each instance, these approvals relied

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⁴ The Penny Pilot was established on the Exchange in June 2012 and was last extended in December 2019. See Securities Exchange Act Release Nos. 67256

upon the consideration of data periodically provided by the Exchanges that analyzed how quoting options in penny increments affects spreads, liquidity, quote traffic, and volume. Today, the Penny Pilot includes 363 option classes, which are among the most actively traded, multiply listed option classes. The Penny Pilot is scheduled to expire by its own terms on June 30, 2020.⁵

In light of the imminent expiration of the Penny Pilot on June 30, 2020, the Exchange, together with other participating exchanges, filed, on July 18, 2019 a proposal to amend the OLPP.⁶ On April 1, 2020 the Commission approved the amendment to the OLPP to make permanent the Pilot Program (the “OLPP Program”).⁷

The OLPP Program replaces the Penny Pilot by instituting a permanent program that would permit quoting in penny increments for certain option classes. Under the terms of the OLPP Program, designated option classes would continue to be quoted in \$0.01 and \$0.05 increments according to the same parameters for the Penny Pilot. In addition, the OLPP Program would: (i) establish an annual review process to add option classes to, or to remove option classes from, the OLPP Program; (ii) to allow an option class to be added to the OLPP Program if it is a newly listed option class and it meets certain criteria; (iii) to allow an option class to be added to the OLPP Program if it is an option

(June 26, 2012), 77 FR 39277 (July 2, 2012) (SR-BX-2012-030); and 87754 (December 16, 2019), 84 FR 70232 (December 20, 2019) (SR-BX-2019-046).

⁵ See Securities Exchange Act Release No. 87754 (December 16, 2019), 84 FR 70232 (December 20, 2019) (SR-BX-2019-046).

⁶ See Securities Exchange Act Release No. 87681 (December 9, 2019), 84 FR 68960 (December 17, 2019) (“Notice”).

⁷ See Securities Exchange Act Release No. 88532 (April 1, 2020), 85 FR 19545 (April 7, 2020) (File No. 4-443) (“Approval Order”).

class that has seen a significant growth in activity; (iv) to provide that if a corporate action involves one or more option classes in the OLPP Program, all adjusted and unadjusted series and classes emerging as a result of the corporate action will be included in the OLPP Program; and (v) to provide that any series in an option class participating in the OLPP Program that have been delisted, or are identified by OCC as ineligible for opening Customer transactions, will continue to trade pursuant to the OLPP Program until they expire.

To conform its Rules to the OLPP Program, the Exchange proposes to delete the current rule text in Supplementary Material.01 to Options 3, Section 3 (the “Penny Pilot Rule”), and replace it with the requirements for the proposed Penny Interval Program from the OLPP Program, which is described below. The Exchange also proposes to relocate the Exchange’s rules regarding the minimum price variations for options in the proposed Penny Interval Program, which are currently within Supplementary Material .01 to Options 3, Section 3, into new subparagraphs (a)(3)(A) – (C) of Options 3, Section 3. Specifically, the Exchange proposes to provide in new subparagraphs (a)(3)(A) – (C) that for options series traded pursuant to the proposed Penny Interval Program as described in Supplementary Material .01 to Options 3, Section 3, the following minimum quoting increments will apply: (A) one cent (\$0.01) for all options series in QQQ, SPY, and IWM; (B) one cent (\$0.01) for all other options series included in the Penny Interval Program that are trading at less than \$3.00; and (C) five cents (\$0.05) for all other options series included in the Penny Interval Program that are trading at or above \$3.00.

The Exchange also proposes to delete obsolete and superfluous language in Options 3, Section 3(a) regarding amendments to the minimum increments that may be

established by the Board and designated as a stated policy, practice or interpretation within the meaning of the Act, and the process for such amendments by rule filing.⁸ Today, the Exchange may determine to establish a change to the minimum increments within its Rules and must submit proposed rule changes for such amendments to the Commission.⁹ Accordingly, Options 3, Section 3(a), as amended, will simply provide that the following minimum quoting increments (as enumerated within Options 3, Section 3(a)) shall apply to options contracts traded on the Exchange.

Penny Interval Program

The Exchange proposes to codify the OLPP Program in Supplementary Material .01 to Options 3, Section (Requirements for Penny Interval Program) (the “Penny Program”), which will replace the Penny Pilot Rule and permanently permit the Exchange to quote certain option classes in minimum increments of one cents (\$0.01) and five cents (\$0.05) (“penny increments”), as set forth in proposed subparagraphs (a)(3)(A) – (C) of Options 3, Section 3. As discussed above, the penny increments that currently

⁸ See Options 3, Section 3(a), which specifically provides: “The Board may establish minimum quoting increments for options contracts traded on BX Options. Such minimum increments established by the Board will be designated as a stated policy, practice, or interpretation with respect to the administration of this Rule within the meaning of Section 19 of the Exchange Act and will be filed with the SEC as a rule change for effectiveness upon filing.”

⁹ Decisions to change the minimum increments relate to Exchange trading and operations, and thus are made by Exchange management via delegated authority from the Board, rather than the Board itself, which is generally not involved in determinations related to day-to-day operations of the Exchange.

apply under the Penny Pilot¹⁰ will continue to apply for options classes included in the Penny Program.¹¹

The Penny Program would initially apply to the 363 most actively traded multiply listed option classes, based on National Cleared Volume at The Options Clearing Corporation (“OCC”) in the six full calendar months ending in the month of approval (i.e., November 2019 - April 2020) that currently quote in penny increments, or overlie securities priced below \$200, or any index at an index level below \$200. Eligibility for inclusion in the Penny Program will be determined at the close of trading on the monthly Expiration Friday of the second full month following April 1, 2020 (i.e., June 19, 2020).

Once in the Penny Program, an option class will remain included until it is no longer among the 425 most actively traded option classes at the time the annual review is conducted (described below), at which point it will be removed from the Penny Program. As described in more detail below, the removed class will be replaced by the next most actively traded multiply listed option class overlying securities priced below \$200 per share, or any index at an index level below \$200, and not yet in the Penny Program. Advanced notice regarding the option classes included, added, or removed from the Penny Program will be provided to the Exchange’s membership via Options Trader Alert and published by the Exchange on its website.

Annual Review

The Penny Program would include an annual review process that applies objective criteria to determine option classes to be added to, or removed from, the Penny

¹⁰ See Supplementary Material .01 to Options 3, Section 3.

¹¹ See proposed subparagraphs (a)(3)(A) – (C) of Options 3, Section 3.

Program. Specifically, on an annual basis beginning in December 2020 and occurring every December thereafter, the Exchange will review and rank all multiply listed option classes based on National Cleared Volume at OCC for the six full calendar months from June 1st through November 30th for determination of the most actively traded option classes. Any option classes not yet in the Penny Program may be added to the Penny Program if the class is among the 300 most actively traded multiply listed option classes and priced below \$200 per share or any index at an index level below \$200.

Following the annual review, option classes to be added to the Penny Program would begin quoting in penny increments (i.e., \$0.01 if trading at less than \$3; and \$0.05 if trading at \$3 and above) on the first trading day of January. In addition, following the annual review, any option class in the Penny Program that falls outside of the 425 most actively traded option classes would be removed from the Penny Program. After the annual review, option classes that are removed from the Penny Program will be subject to the minimum trading increments set forth in Options 3, Section 3, effective on the first trading day of April.

Changes to the Composition of the Penny Program Outside of the Annual Review

Newly Listed Option Classes and Option Classes with Significant Growth in Activity

The Penny Program would specify a process and parameters for including option classes in the Penny Program outside the annual review process in two circumstances. These provisions are designed to provide objective criteria to add to the Penny Program new option classes in issues with the most demonstrated trading interest from market participants and investors on an expedited basis prior to the annual review, with the

benefit that market participants and investors will then be able to trade these new option classes based upon quotes expressed in finer trading increments.

First, the Penny Program provides for certain newly listed option classes to be added to the Penny Program outside of the annual review process, provided that (i) the class is among the 300 most actively traded, multiply listed option classes, as ranked by National Cleared Volume at OCC, in its first full calendar month of trading; and (ii) the underlying security is priced below \$200 or the underlying index is at an index level below \$200. Such newly listed option classes added to the Penny Program pursuant to this process would remain in the Penny Program for one full calendar year and then would be subject to the annual review process.

Second, the Penny Program would allow an option class to be added to the Penny Program outside of the annual review process if it is an option class that meets certain specific criteria. Specifically, new option classes may be added to the Penny Program if: (i) the option class is among the 75 most actively traded multiply listed option classes, as ranked by National Cleared Volume at OCC, in the prior six full calendar months of trading and (ii) the underlying security is priced below \$200 or the underlying index is at an index level below \$200. Any option class added under this provision will be added on the first trading day of the second full month after it qualifies and will remain in the Penny Program for the rest of the calendar year, after which it will be subject to the annual review process.

Corporate Actions

The Penny Program would also specify a process to address option classes in the Penny Program that undergo a corporate action and is designed to ensure continuous

liquidity in the affected option classes. Specifically, if a corporate action involves one or more option classes in the Penny Program, all adjusted and unadjusted series of an option class would continue to be included in the Penny Program.¹² Furthermore, neither the trading volume threshold, nor the initial price test would apply to option classes added to the Penny Program as a result of the corporate action. Finally, the newly added adjusted and unadjusted series of the option class would remain in the Penny Program for one full calendar year and then would become subject to the annual review process.

Delisted or Ineligible Option Classes

Finally, the Penny Program would provide a mechanism to address option classes that have been delisted or those that are no longer eligible for listing. Specifically, any series in an option class participating in the Penny Program in which the underlying has been delisted, or is identified by OCC as ineligible for opening customer transactions, would continue to quote pursuant to the terms of the Penny Program until all options series have expired.

Implementation

The Exchange proposes to implement the Penny Program on July 1, 2020, which is the first trading day of the third month following the Approval Order issued on April 1, 2020 – i.e., July 1, 2020.

¹² For example, if Company A acquires Company B and Company A is not in the Penny Program but Company B is in the Penny Program, once the merger is consummated and an options contract adjustment is effective, then Company A would be added to the Penny Program and remain in the Penny Program for one calendar year.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the proposed rule change, which conforms the Exchange rules to the recently adopted OLPP Program, allows the Exchange to provide market participants with a permanent Penny Program for quoting options in penny increments, which maximizes the benefit of quoting in a finer quoting increment to investors while minimizing the burden that a finer quoting increment places on quote traffic.

Accordingly, the Exchange believes that the proposal is consistent with the Act because, in conforming the Exchange rules to the OLPP Program, the Penny Program would employ processes, based upon objective criteria, that would rebalance the composition of the Penny Program, thereby helping to ensure that the most actively traded option classes are included in the Penny Program, which helps facilitate the maintenance of a fair and orderly market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

Act. The proposed Penny Program, which modifies the Exchange's rules to align them with the Commission approved OLPP Program, is not designed to be a competitive filing nor does it impose an undue burden on intermarket competition as the Exchange anticipates that the options exchanges will adopt substantially identical rules. Moreover, the Exchange believes that by conforming Exchange rules to the OLPP Program, the Exchange would promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. To the extent that there is a competitive burden on those option classes that do not qualify for the Penny Program, the Exchange believes that it is appropriate because the proposal should benefit all market participants and investors by maximizing the benefit of a finer quoting increment in those option classes with the most trading interest while minimizing the burden of greater quote traffic in option classes with less trading interest. The Exchange believes that adopting rules, which it anticipates will likewise be adopted by all option exchanges that are participants in the OLPP, would allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed,

or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁵ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁶

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 necessary or appropriate in the public interest, for the protection of investors, or 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-2020-013 on the subject line.

¹⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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-2020-013. 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-2020-013 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.¹⁷

J. Matthew DeLesDernier
Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

Nasdaq BX, Inc. Rules

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Options 3 Options Trading Rules

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Section 3. Minimum Increments

(a) [The Board may establish minimum quoting increments for options contracts traded on BX Options. Such minimum increments established by the Board will be designated as a stated policy, practice, or interpretation with respect to the administration of this Rule within the meaning of Section 19 of the Exchange Act and will be filed with the SEC as a rule change for effectiveness upon filing. Until such time as the Board makes a change in the increments, t]The following [principles] minimum quoting increments shall apply to options contracts traded on the Exchange:

- (1) If the options series is trading at less than \$3.00, five (5) cents; [and]
- (2) If the options series is trading at \$3.00 or higher, ten (10) cents[.]; and
- (3) For options series traded pursuant to the Penny Interval Program as described in Supplementary Material .01 to Options 3, Section 3:
 - (A) one cent (\$0.01) for all options series in QQQ, SPY, and IWM;
 - (B) one cent (\$0.01) for all other options series included in the Penny Interval Program that are trading at less than \$3.00; and
 - (C) five cents (\$0.05) for all other options series included in the Penny Interval Program that are trading at or above \$3.00.

(b) No change.

Supplementary Material to Options 3, Section 3:

.01 [**Penny Pilot Program**: For a pilot period scheduled to expire on June 30, 2020 or the date of permanent approval, if earlier, if the options series is trading pursuant to the Penny Pilot program one (1) cent if the options series is trading at less than \$3.00, five (5) cents if the options series is trading at \$3.00 or higher, unless for QQQs, SPY and IWM where the minimum quoting increment will be one cent for all series regardless of price. A list of such options shall be communicated to membership via an Options Trader Alert ("OTA") posted on the Exchange's web site.

The Exchange may replace any pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the pilot, based on trading activity in the previous six months. The replacement issues may be added to the pilot on the second trading day in the first month of each quarter. **Requirements for Penny Interval Program.** The Exchange will list option classes for the Penny Interval Program (“Penny Program”) with minimum quoting requirements (“penny increments”) of one cent (\$0.01) and five cents (\$0.05), as set forth in Options 3, Section 3(a)(3)(A) - (C). The list of the option classes included in the Penny Program will be announced by the Exchange via Options Trader Alert and published by the Exchange on its website.

(a) Initial Selection. On the first trading day of the third full calendar month after April 1, 2020, the Penny Program will apply only to the 363 most actively traded multiply listed option classes, based on OCC’s National Cleared Volume in the six full calendar months ending in the month of approval, that (i) currently quote in penny increments, or (ii) overlie securities priced below \$200, or any index at an index level below \$200. Eligibility for inclusion in the Penny Program will be determined at the close of trading on the monthly Expiration Friday of the second full month following April 1, 2020.

(b) Annual Review. Commencing in December 2020 and each December thereafter, OCC will rank all multiply listed option classes based on National Cleared Volume for the six full calendar months from June 1 through November 30 for determination of the most actively traded option classes.

(1) Addition to the Penny Program. Based on the Annual Review, any option class not in the Penny Program that is among the 300 most actively traded multiply listed option classes overlying securities priced below \$200, or an index at an index level below \$200, will be added to the Penny Program on the first trading day of January.

(2) Removal from the Penny Program. Except as provided in (c), (d), (e) and (f) below, based on the Annual Review, any option class in the Penny Program that falls outside the 425 most actively traded multiply listed option classes will be removed from the Penny Program on the first trading day of April.

(c) Newly listed Option Classes. The Exchange may add to the Penny Program a newly listed option class provided that (i) it is among the 300 most actively traded multiply listed option classes, as ranked by National Cleared Volume at OCC, in its first full calendar month of trading and (ii) the underlying security is priced below \$200 or the underlying index is at an index level below \$200. Any option class added under this provision will be added on the first trading day of the month after it qualifies and will remain in the Penny Program for one full calendar year, after which it will be subject to the Annual Review stated in section (b) above.

(d) Classes with Significant Growth in Activity. The Exchange may add any option class to the Penny Program, provided that (i) it is among the 75 most actively traded multiply listed option classes, as ranked by National Cleared Volume at OCC, in the past six full calendar months of trading and (ii) the underlying security is priced below

\$200 or the underlying index is at an index level below \$200. Any option class added under this provision will be added on the first trading day of the second full month after it qualifies and will remain in the Penny Program for the rest of the calendar year, after which it will be subject to the Annual Review stated in section (b) above.

(e) Corporate Actions. If a corporate action involves one or more option classes in the Penny Program, all adjusted and unadjusted series of the option class will be included in the Penny Program. Any new option class added to the Penny Program under this provision will remain in the Penny Program for at least one full calendar year, after which it will be subject to the Annual Review stated in section (b) above.

(f) Delisted or Ineligible Option Classes. Any series in an option class participating in the Penny Program in which the underlying security has been delisted, or are identified by OCC as ineligible for opening customer transactions, will continue to quote pursuant to the terms of the Penny Program until all such options have expired.

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