

Required fields are shown with yellow backgrounds and asterisks.

Filing by NASDAQ BX, Inc.
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

Exhibit 2 Sent As Paper Document	Exhibit 3 Sent As Paper Document
<input type="checkbox"/>	<input type="checkbox"/>

Description

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

Proposal to amend BX Pricing Schedule at Options 7, Section 2, and Options 7, Section 3

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 * Angela	Last Name * Dunn
Title * Principal Associate General Counsel	
E-mail * angela.dunn@nasdaq.com	
Telephone * (215) 496-5692	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 08/12/2020	EVP and Chief Legal Officer
By John Zecca	
(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 EFFF website.

Form 19b-4 Information *

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

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

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

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

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

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

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

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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 BX’s Pricing Schedule at Options 7, Section 2, “BX Options Market Fees and Rebates” and Options 7, Section 3, “BX Options Market - Ports and other Services.”

The Exchange originally filed the proposed pricing changes on August 6, 2020 (SR-BX-2020-021). On August 12, 2020, the Exchange withdrew that filing and submitted this filing.

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:

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

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 proposes to amend BX’s Pricing Schedule at Options 7, Section 2, “BX Options Market Fees and Rebates” and Options 7, Section 3, “BX Options Market - Ports and other Services.” Each change is described below.

Options 7, Section 2

The Exchange proposes to replace the term “Penny Pilot Options” or “Non-Penny Pilot Options” with “Penny Symbols” or “Non-Penny Symbols.” On April 1, 2020 the Commission approved the amendment to the OLPP to make permanent the Pilot Program (the “OLPP Program”).³ The Exchange recently filed a proposal to amend BX 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”).⁴ The Exchange’s proposal amended BX Options 3, Section 3 to refer to a Penny Interval Program instead of a Penny Pilot Program.

Options 7, Section 3

In connection with a technology migration, Participants may request new SQF Ports,⁵ SQF Purge Ports,⁶ FIX DROP Port,⁷ CTI Ports,⁸ BX Depth Ports⁹ and BX TOP

³ See Securities Exchange Act Release No. 88532 (April 1, 2020), 85 FR 19545 (April 7, 2020) (File No. 4-443) (“Approval Order”).

⁴ See Securities Exchange Act Release No. 89169 (June 26, 2020), 85 FR 39949 (July 2, 2020) (SR-BX-2020-013).

⁵ “Specialized Quote Feed” or “SQF” is an interface that allows Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses into and from the Exchange. Features include the following: (1) options symbol directory messages (e.g. underlying instruments); (2) system event messages (e.g., start of trading hours messages and start of

Ports¹⁰ from August 10, 2020 through September 30, 2020, which are duplicative of the

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- opening); (3) trading action messages (e.g., halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge request from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series. See Options 3, Section 7(d)(1)(B).
- ⁶ The SQF Purge Interface only receives and notifies of purge request from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series. See Options 3, Section 7(d)(1)(B).
- ⁷ FIX DROP is a real-time order and execution update message that is sent to a Participant after an order been received/modified or an execution has occurred and contains trade details specific to that Participant. The information includes, among other things, the following: (i) executions; (ii) cancellations; (iii) modifications to an existing order and (iv) busts or post-trade corrections. See Options 3, Section 23(b)(3).
- ⁸ Clearing Trade Interface (“CTI”) is a real-time clearing trade update message that is sent to a Participant after an execution has occurred and contains trade details specific to that Participant. The information includes, among other things, the following: (i) The Clearing Member Trade Agreement or “CMTA” or The Options Clearing Corporation or “OCC” number; (ii) Exchange badge or house number; (iii) the Exchange internal firm identifier; (iv) an indicator which will distinguish electronic and non-electronically delivered orders; (v) liquidity indicators and transaction type for billing purposes; and (vi) capacity. See Option 3, Section 23(b)(1).
- ⁹ BX Depth of Market (“BX Depth”) is a data feed that provides full order and quote depth information for individual orders and quotes on the BX Options book, last sale information for trades executed on BX Options, and Order Imbalance Information as set forth in BX Options Rules Options 3, Section 8. The data provided for each options series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on BX and identifies if the series is available for closing transactions only. See Options 3, Section 23(a)(1).
- ¹⁰ BX Top of Market (“BX Top”) is a data feed that provides the BX Options Best Bid and Offer and last sale information for trades executed on BX Options. The data provided for each options series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on BX and identifies if the series is available for closing transactions only. See Options 3, Section 23(a)(1).

type and quantity of their current ports, at no additional cost to allow for testing of the new ports and allow for continuous connection to the match engine during the transition period.¹¹ For example, a BX Participant with 3 SQF Ports, 1 SQF Purge Port, 1 FIX DROP Port, 1 CTI Port, 2 BX Depth Ports and 1 BX TOP Port on October 1, 2020 could request 3 new SQF Ports, 1 new SQF Purge Port, 1 new FIX DROP Port, 1 new CTI Port, 2 new BX Depth Ports and 1 new BX TOP Port from August 10, 2020 through September 30, 2020 at no additional cost. The BX Participant would be assessed only for the legacy market ports, in this case 3 SQF Ports, 1 SQF Purge Port, 1 FIX DROP Port, 1 CTI Port, 2 BX Depth Ports and 1 BX TOP Port from August 10, 2020 through September 30, 2020 and would not be assessed for the new ports, which are duplicative of the current ports. A Participant may acquire any additional legacy ports from August 10, 2020 through September 30, 2020 and would be assessed the charges indicated in the current Pricing Schedule. The migration does not require a Participant to acquire any additional ports, rather the migration requires a new port to replace any existing ports provided the Participant desired to maintain the same number of ports.¹² A BX Market Maker quoting on BX only requires 1 SQF Port.¹³ A Participant may also obtain any number of order and execution ports, such as a SQF Purge Ports, FIX DROP Ports and CTI Ports and any number of data ports, such as BX Depth and BX TOP Ports. The number of ports obtained by a Participant is dependent on Participant's business needs.

¹¹ Participants would contact Market Operations to acquire new duplicative ports.

¹² The migration is 1:1 and therefore would not require a Participant to acquire new ports, nor would it reduce the number of ports needed to connect.

¹³ SQF Ports are utilized solely by Market Makers who are the only Participants permitted to quote on BX.

The proposal is not intended to impose any additional fees on any BX Participant. This proposal is intended to permit a BX Participant to migrate its current SQF Ports, SQF Purge Ports, FIX DROP Ports, CTI Ports, BX Depth Ports and BX TOP Ports at no additional cost from August 10, 2020 through September 30, 2020 to allow for continuous connection to the Exchange. BX will sunset legacy ports by October 1, 2020. BX will assess Participants new SQF Ports, SQF Purge Ports, FIX DROP Ports, CTI Ports, BX Depth Ports and BX TOP Ports in October 2020.

Currently, there is obsolete rule text within Options 7, Sections 3(i) and 3(ii), which the Exchange proposes to replace with new rule text related to its current proposal to migrate technology. The obsolete rule text concerned a prior technology migration in 2019 which has already occurred and, therefore, the current rule text is no longer necessary.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁵ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4) and (5).

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.”¹⁶

Likewise, in NetCoalition v. Securities and Exchange Commission¹⁷ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.¹⁸ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”¹⁹

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . .”²⁰ Although the court

¹⁶ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹⁷ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹⁸ See NetCoalition, at 534 - 535.

¹⁹ Id. at 537.

²⁰ Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

Options 7, Section 2

The Exchange's proposal to replace the term "Penny Pilot Options" or "Non-Penny Pilot Options" with "Penny Symbols" or "Non-Penny Symbols" is reasonable, equitable and not unfairly discriminatory. This amendment seeks to conform the name of the program which governs the listing of certain standardized options.

Options 7, Section 3

The proposed amendments to Options 7, Section 3 are reasonable because they will permit BX Participants to migrate to new technology without a pricing impact. Specifically, the proposal is intended to permit BX Participants to migrate their SQF Ports, SQF Purge Ports, FIX DROP Ports, CTI Ports, BX Depth Ports and BX TOP Ports to new technology at no additional cost from August 10, 2020 through September 30, 2020. This proposal, which offers duplicative ports to Participants at no cost, will allow Participants to test and maintain continuous connection to the Exchange from August 10, 2020 through September 30, 2020. BX will sunset legacy ports by October 1, 2020. BX will assess Participants new SQF Ports, SQF Purge Ports, FIX DROP Ports, CTI Ports, BX Depth Ports and BX TOP Ports in October 2020.

The proposed amendments to Options 7, Section 3 are equitable and not unfairly discriminatory. The Exchange does not require a BX Participant to obtain more than one SQF Port.²¹ In addition, a BX Participant may also obtain any number of order and execution ports, such as a SQF Purge Ports, FIX DROP Ports and CTI Ports and any

²¹ See note 12 above. One SQF Port would allow a BX Market Maker to quote in all of its assigned options series.

number of data ports, such as BX Depth and BX TOP Ports to meet its individual business needs.²² This proposal is not intended to have a pricing impact to any BX Participant.

The Exchange's proposal to remove current rule text and replace it with new rule text is reasonable, equitable and not unfairly discriminatory, as the current rule text refers to a technology migration from 2019 and is obsolete.

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.

Intermarket Competition

The proposal does not impose an undue burden on intermarket competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may

²²

See note 11 above.

impose any burden on competition is extremely limited.

Intramarket Competition

Options 7, Section 2

The Exchange's proposal to replace the term "Penny Pilot Options" or "Non-Penny Pilot Options" with "Penny Symbols" or "Non-Penny Symbols" does not impose an undue burden on competition. This amendment seeks to conform the name of the program which governs the listing of certain standardized options.

Options 7, Section 3

The proposal does not impose an undue burden on intra-market competition. The Exchange does not require a BX Participant to obtain more than one SQF Port.²³ In addition, a BX Participant may also obtain any number of order and execution ports, such as a SQF Purge Ports, FIX DROP Ports and CTI Ports and any number of data ports, such as BX Depth Ports and BX TOP Ports to meet its individual business needs.²⁴ This proposal is not intended to have a pricing impact to any BX Participant.

The Exchange's proposal to remove current rule text and replace it with new rule text does not impose an undue burden on competition, as the current rule text refers to a technology migration from 2019 and is obsolete.

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.

²³ See note 12 above. One SQF Port would allow a BX Market Maker to quote in all of its assigned options series.

²⁴ See note 11 above.

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,²⁵ 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.

²⁵ 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-2020-022)

August __, 2020

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend BX Pricing Schedule at Options 7, Section 2, and Options 7, 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 August 12, 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 BX’s Pricing Schedule at Options 7, Section 2, “BX Options Market Fees and Rebates” and Options 7, Section 3, “BX Options Market - Ports and other Services.”

The Exchange originally filed the proposed pricing changes on August 6, 2020 (SR-BX-2020-021). On August 12, 2020, the Exchange withdrew that filing and submitted this filing.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is available on the Exchange's Website at <https://listingcenter.nasdaq.com/rulebook/bx/rules>, 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 received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend BX's Pricing Schedule at Options 7, Section 2, "BX Options Market Fees and Rebates" and Options 7, Section 3, "BX Options Market - Ports and other Services." Each change is described below.

Options 7, Section 2

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³ See Securities Exchange Act Release No. 88532 (April 1, 2020), 85 FR 19545 (April 7, 2020) (File No. 4-443) ("Approval Order").

Standardized Options (the “OLPP”).⁴ The Exchange’s proposal amended BX Options 3, Section 3 to refer to a Penny Interval Program instead of a Penny Pilot Program.

Options 7, Section 3

In connection with a technology migration, Participants may request new SQF Ports,⁵ SQF Purge Ports,⁶ FIX DROP Port,⁷ CTI Ports,⁸ BX Depth Ports⁹ and BX TOP

⁴ See Securities Exchange Act Release No. 89169 (June 26, 2020), 85 FR 39949 (July 2, 2020) (SR-BX-2020-013).

⁵ “Specialized Quote Feed” or “SQF” is an interface that allows Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses into and from the Exchange. Features include the following: (1) options symbol directory messages (e.g. underlying instruments); (2) system event messages (e.g., start of trading hours messages and start of opening); (3) trading action messages (e.g., halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge request from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series. See Options 3, Section 7(d)(1)(B).

⁶ The SQF Purge Interface only receives and notifies of purge request from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series. See Options 3, Section 7(d)(1)(B).

⁷ FIX DROP is a real-time order and execution update message that is sent to a Participant after an order been received/modified or an execution has occurred and contains trade details specific to that Participant. The information includes, among other things, the following: (i) executions; (ii) cancellations; (iii) modifications to an existing order and (iv) busts or post-trade corrections. See Options 3, Section 23(b)(3).

⁸ Clearing Trade Interface (“CTI”) is a real-time clearing trade update message that is sent to a Participant after an execution has occurred and contains trade details specific to that Participant. The information includes, among other things, the following: (i) The Clearing Member Trade Agreement or “CMTA” or The Options Clearing Corporation or “OCC” number; (ii) Exchange badge or house number; (iii) the Exchange internal firm identifier; (iv) an indicator which will distinguish electronic and non-electronically delivered orders; (v) liquidity indicators and transaction type for billing purposes; and (vi) capacity. See Option 3, Section 23(b)(1).

Ports¹⁰ from August 10, 2020 through September 30, 2020, which are duplicative of the type and quantity of their current ports, at no additional cost to allow for testing of the new ports and allow for continuous connection to the match engine during the transition period.¹¹ For example, a BX Participant with 3 SQF Ports, 1 SQF Purge Port, 1 FIX DROP Port, 1 CTI Port, 2 BX Depth Ports and 1 BX TOP Port on October 1, 2020 could request 3 new SQF Ports, 1 new SQF Purge Port, 1 new FIX DROP Port, 1 new CTI Port, 2 new BX Depth Ports and 1 new BX TOP Port from August 10, 2020 through September 30, 2020 at no additional cost. The BX Participant would be assessed only for the legacy market ports, in this case 3 SQF Ports, 1 SQF Purge Port, 1 FIX DROP Port, 1 CTI Port, 2 BX Depth Ports and 1 BX TOP Port from August 10, 2020 through September 30, 2020 and would not be assessed for the new ports, which are duplicative of the current ports. A Participant may acquire any additional legacy ports from August 10, 2020 through September 30, 2020 and would be assessed the charges indicated in the current Pricing Schedule. The migration does not require a Participant to acquire any

⁹ BX Depth of Market (“BX Depth”) is a data feed that provides full order and quote depth information for individual orders and quotes on the BX Options book, last sale information for trades executed on BX Options, and Order Imbalance Information as set forth in BX Options Rules Options 3, Section 8. The data provided for each options series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on BX and identifies if the series is available for closing transactions only. See Options 3, Section 23(a)(1).

¹⁰ BX Top of Market (“BX Top”) is a data feed that provides the BX Options Best Bid and Offer and last sale information for trades executed on BX Options. The data provided for each options series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on BX and identifies if the series is available for closing transactions only. See Options 3, Section 23(a)(1).

¹¹ Participants would contact Market Operations to acquire new duplicative ports.

additional ports, rather the migration requires a new port to replace any existing ports provided the Participant desired to maintain the same number of ports.¹² A BX Market Maker quoting on BX only requires 1 SQF Port.¹³ A Participant may also obtain any number of order and execution ports, such as a SQF Purge Ports, FIX DROP Ports and CTI Ports and any number of data ports, such as BX Depth and BX TOP Ports. The number of ports obtained by a Participant is dependent on Participant's business needs.

The proposal is not intended to impose any additional fees on any BX Participant. This proposal is intended to permit a BX Participant to migrate its current SQF Ports, SQF Purge Ports, FIX DROP Ports, CTI Ports, BX Depth Ports and BX TOP Ports at no additional cost from August 10, 2020 through September 30, 2020 to allow for continuous connection to the Exchange. BX will sunset legacy ports by October 1, 2020. BX will assess Participants new SQF Ports, SQF Purge Ports, FIX DROP Ports, CTI Ports, BX Depth Ports and BX TOP Ports in October 2020.

Currently, there is obsolete rule text within Options 7, Sections 3(i) and 3(ii), which the Exchange proposes to replace with new rule text related to its current proposal to migrate technology. The obsolete rule text concerned a prior technology migration in 2019 which has already occurred and, therefore, the current rule text is no longer necessary.

¹² The migration is 1:1 and therefore would not require a Participant to acquire new ports, nor would it reduce the number of ports needed to connect.

¹³ SQF Ports are utilized solely by Market Makers who are the only Participants permitted to quote on BX.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁵ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁶

Likewise, in NetCoalition v. Securities and Exchange Commission¹⁷ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.¹⁸ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4) and (5).

¹⁶ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹⁷ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹⁸ See NetCoalition, at 534 - 535.

play a role in determining the market data . . . to be made available to investors and at what cost.”¹⁹

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”²⁰ Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

Options 7, Section 2

The Exchange’s proposal to replace the term “Penny Pilot Options” or “Non-Penny Pilot Options” with “Penny Symbols” or “Non-Penny Symbols” is reasonable, equitable and not unfairly discriminatory. This amendment seeks to conform the name of the program which governs the listing of certain standardized options.

Options 7, Section 3

The proposed amendments to Options 7, Section 3 are reasonable because they will permit BX Participants to migrate to new technology without a pricing impact. Specifically, the proposal is intended to permit BX Participants to migrate their SQF Ports, SQF Purge Ports, FIX DROP Ports, CTI Ports, BX Depth Ports and BX TOP Ports to new technology at no additional cost from August 10, 2020 through September 30,

¹⁹ Id. at 537.

²⁰ Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

2020. This proposal, which offers duplicative ports to Participants at no cost, will allow Participants to test and maintain continuous connection to the Exchange from August 10, 2020 through September 30, 2020. BX will sunset legacy ports by October 1, 2020. BX will assess Participants new SQF Ports, SQF Purge Ports, FIX DROP Ports, CTI Ports, BX Depth Ports and BX TOP Ports in October 2020.

The proposed amendments to Options 7, Section 3 are equitable and not unfairly discriminatory. The Exchange does not require a BX Participant to obtain more than one SQF Port.²¹ In addition, a BX Participant may also obtain any number of order and execution ports, such as a SQF Purge Ports, FIX DROP Ports and CTI Ports and any number of data ports, such as BX Depth and BX TOP Ports to meet its individual business needs.²² This proposal is not intended to have a pricing impact to any BX Participant.

The Exchange's proposal to remove current rule text and replace it with new rule text is reasonable, equitable and not unfairly discriminatory, as the current rule text refers to a technology migration from 2019 and is obsolete.

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.

Intermarket Competition

The proposal does not impose an undue burden on intermarket competition. The

²¹ See note 12 above. One SQF Port would allow a BX Market Maker to quote in all of its assigned options series.

²² See note 11 above.

Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intramarket Competition

Options 7, Section 2

The Exchange's proposal to replace the term "Penny Pilot Options" or "Non-Penny Pilot Options" with "Penny Symbols" or "Non-Penny Symbols" does not impose an undue burden on competition. This amendment seeks to conform the name of the program which governs the listing of certain standardized options.

Options 7, Section 3

The proposal does not impose an undue burden on intra-market competition. The Exchange does not require a BX Participant to obtain more than one SQF Port.²³ In addition, a BX Participant may also obtain any number of order and execution ports, such as a SQF Purge Ports, FIX DROP Ports and CTI Ports and any number of data ports, such

²³ See note 12 above. One SQF Port would allow a BX Market Maker to quote in all of its assigned options series.

as BX Depth Ports and BX TOP Ports to meet its individual business needs.²⁴ This proposal is not intended to have a pricing impact to any BX Participant.

The Exchange's proposal to remove current rule text and replace it with new rule text does not impose an undue burden on competition, as the current rule text refers to a technology migration from 2019 and is obsolete.

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.²⁵

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:

²⁴ See note 11 above.

²⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2020-022 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-BX-2020-022. 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-2020-022 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.²⁶

J. Matthew DeLesDernier
Assistant Secretary

²⁶ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

Nasdaq BX, Inc. Rules

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Options Rules

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Options 7 Pricing Schedule

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Section 2 BX Options Market Fees and Rebates

The following charges shall apply to the use of the order execution and routing services of the BX Options market for all securities.

(1) Fees for Execution of Contracts on the BX Options Market:

Fees and Rebates (per executed contract)

		Customer BX Options Market Maker	Non- Customer ¹	Firm
Penny [Pilot Options]<u>Symbols</u> (Excluding Options in Select Symbols):				
Rebate to Add Liquidity	#	\$0.10 ²	N/A	N/A
Fee to Add Liquidity	#	\$0.39 ³	\$0.45	\$0.45
Rebate to Remove Liquidity	#	N/A	N/A	N/A
Fee to Remove Liquidity	N/A	#	\$0.46	\$0.46
Non-Penny [Pilot Options]<u>Symbols</u>:				
Rebate to Add Liquidity	*	N/A	N/A	N/A
Fee to Add Liquidity	*	\$0.50/\$0.95 ⁵	\$0.98	\$0.98
Rebate to Remove Liquidity	*	N/A	N/A	N/A
Fee to Remove Liquidity	N/A	*	\$0.89	\$0.89

* * * * *

Penny [Pilot Options]Symbols Tier Schedule (excluding Select Symbols Options)

* * * * *

* Non-Penny [Pilot Options]Symbols Tier Schedule

* * * * *

(2) Opening Cross

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Fees and Rebates (per executed contract)

	Customer	BX Options Market Maker	Non- Customer ¹
Penny [Pilot Options] <u>Symbols:</u>			
Rebate for Order triggering order exposure alert:	\$0.34	\$0.00	\$0.00
Fee for Order responding to order exposure alert:	\$0.39	\$0.39	\$0.45
Non-Penny [Pilot Option] <u>Symbols:</u>			
Rebate for Order triggering order exposure alert:	\$0.70	\$0.00	\$0.00
Fee for Order responding to order exposure alert:	\$0.85	\$0.85	\$0.89

* * * * *

Section 3 BX Options Market - Ports and other Services

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

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

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

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

[During the month of August 2019] From August 10, 2020 through September 30, 2020, BX Participants will be required to transition from current [FIX]SQF Ports and SQF Purge Ports to new [FIX Ports] SQF Ports and SQF Purge Ports in conjunction with a technology infrastructure migration. BX will not assess [a FIX Port]SQF Port and SQF Purge Port Fees for any new duplicative [FIX Ports]SQF Ports and SQF Purge Ports acquired as part of the transition [during the month of August 2019] from August 10, 2020 through September 30, 2020. BX will assess the [FIX Port Fee]SQF Port and SQF Purge Port Fees to legacy [FIX Ports]SQF Ports and SQF Purge Ports [during August 2019] from August 10, 2020 through September 30, 2020. BX will sunset legacy [FIX Ports]SQF Ports and SQF Purge Ports by [August 31, 2019] October 1, 2020. [In September 2019,]BX will assess Participants the [FIX Port Fee]SQF Port and SQF Purge Port Fees to new [FIX]SQF Port and SQF Purge Ports in October 2020.

- | | |
|-------------------------------------|---|
| (1) FIX Port Fee¹ | \$650 per port, per month, per account number |
| (2) SQF Port Fee | \$500 per port, per month |
| (3) SQF Purge Port Fee | \$500 per port, per month |

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

[During the month of August 2019]From August 10, 2020 through September 30, 2020, BX Participants will be required to transition from current CTI Ports and FIX DROP Ports to new CTI Ports and FIX DROP Ports in conjunction with a technology infrastructure migration. BX will not assess CTI Port and FIX DROP Port Fees for any new duplicative CTI Port or FIX DROP Ports acquired as part of the transition [during the month of August 2019]from August 10, 2020 through September 30, 2020. BX will assess the CTI Port and FIX DROP Port Fees to legacy CTI Ports and FIX DROP Ports [during August 2019]from August 10, 2020 through September 30, 2020. BX will sunset legacy CTI Ports and FIX DROP Ports by [August 31, 2019]October 1, 2020. [In September 2019,]BX will assess Participants CTI Port and FIX DROP Port Fees to new CTI Ports and FIX DROP Ports in October 2020.

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|--|---------------------------|
| (1) CTI Port Fee¹ | \$650 per port, per month |
| (2) FIX DROP Port Fee¹ | \$650 per port, per month |
| (3) TradeInfo BX Interface | \$95 per user, per month |

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

From August 10, 2020 through September 30, 2020, BX Participants will be required to transition from current BX Depth and BX TOP Ports to new BX Depth and BX TOP Ports in conjunction with a technology infrastructure migration. BX will not assess BX Depth and BX TOP Port Fees for any new duplicative BX Depth and BX TOP Ports acquired as part of the transition from August 10, 2020 through September 30, 2020. BX will assess the BX Depth and BX TOP Port Fees to legacy BX Depth and BX TOP Ports from August 10, 2020 through September 30, 2020. BX will sunset legacy BX Depth and BX TOP Ports by October 1, 2020. BX will assess Participants BX Depth and BX TOP Port Fees to new BX Depth and BX TOP Ports in October 2020.

- | | |
|--|---------------------------|
| (1) BX Depth Port Fee¹ | \$650 per port, per month |
| (2) BX TOP Port Fee¹ | \$650 per port, per month |

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

(iv) Other ports:

Disaster Recovery Port Fee for ports in subsections (i) - (iii) - \$0 per port, per month

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