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

File No.* SR - 2021 - * 013

Amendment No. (req. for Amendments *)

Filing by NASDAQ BX, Inc.

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

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
☑	☐	☐	☐	☑	☐

Pilot	Extension of Time Period for Commission Action *	Date Expires *
☐	☐	

Rule

☐ 19b-4(f)(1)	☐ 19b-4(f)(4)
☐ 19b-4(f)(2)	☐ 19b-4(f)(5)
☐ 19b-4(f)(3)	☑ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) *	Section 806(e)(2) *
☐	☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document	Exhibit 3 Sent As Paper Document
☐	☐

Description

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

A proposal to amend Options 3, Section 10, Order Book Allocation.

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	04/07/2021	EVP and Chief Legal Counsel
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.

john.zecca@nasdaq.com

Required fields are shown with yellow backgrounds and asterisks.

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 * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications Add Remove View Exhibit Sent As Paper Document ☐	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
Exhibit 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.
Exhibit 4 - Marked Copies Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) NASDAQ BX, Inc. ("BX" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposal to amend Options 3, Section 10, Order Book Allocation.

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 November 5, 2020. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

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

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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 Options 3, Section 10, Order Book Allocation. Today, pursuant to Options 3, Section 10, BX determines for each option whether to apply the Price/Time[3] or the Size Pro-Rata execution algorithm.[4] This proposal seeks to amend BX's Price/Time execution algorithm.

Price/Time Execution Algorithm

Today, there are 5 priority overlays for the Price/Time execution algorithm: (1) Public Customer Priority; (2) Lead Market Maker ("LMM") Priority; (3) Entitlement for Orders of 5 contracts or fewer; (4) Directed Market Maker ("DMM") Priority; and (5) All Other Remaining Interest. The Exchange proposes to amend the LMM Priority overlay with this proposal.

Today, Public Customer orders shall have priority over non-Public Customer orders at the same price.[5] Public Customer Priority is always in effect when the

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3 The System shall execute trading interest within the System in price/time priority, meaning it will execute all trading interest at the best price level within the System before executing trading interest at the next best price. Within each price level, if there are two or more quotes or orders at the best price, trading interest will be executed in time priority. See Options 3, Section 10(a)(1)(A).

4 The System shall execute trading interest within the System in price priority, meaning it will execute all trading interest at the best price level within the System before executing trading interest at the next best price. Within each price level, if there are two or more quotes or orders at the best price, trading interest will be executed based on the size of each Participant's quote or order as a percentage of the total size of all orders and quotes resting at that price. If the result is not a whole number, it will be rounded up to the nearest whole number. See Options 3, Section 10(a)(1)(B).

5 If there are two or more Public Customer orders for the same options series at the same price, priority shall be afforded to such Public Customer orders in the

Price/Time execution algorithm is in effect. The LMM participant entitlements shall only be in effect when the Public Customer Priority Overlay is also in effect.[6]

Today, Options 3, Section 10(a)(1)(C)(1)(b) provides, in part,

> After all Public Customer orders have been fully executed, upon receipt of an order, provided the LMM's bid/offer is at or improves on the Exchange's disseminated price, the LMM will be afforded a participation entitlement. The LMM shall not be entitled to receive a number of contracts that is greater than the displayed size associated with such LMM. LMM participation entitlements will be considered after the Opening Process. The LMM participation entitlement is as follows:
>
> (1) A BX Options LMM shall receive the greater of:
>
> (a) contracts the LMM would receive if the allocation was based on time priority pursuant to subparagraph (C)(1)(a) above with Public Customer priority;
>
> (b) 50% of remaining interest if there is one or no other Market Maker at that price;
>
> (c) 40% of remaining interest if there is two other Market Makers at that price;
>
> (d) 30% of remaining interest if there are more than two other Market Makers at that price; or
>
> (e) the Directed Market Maker ("DMM") participation entitlement, if any, set forth in subsection (C)(1)(c) below (if the order is a Directed Order and the LMM is also the DMM).[7]

The Exchange notes that the System does not operate as provided for above today.[8] At

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sequence in which they are received by the System. See Options 3, Section 10(a)(1)(C)(1)(a).

6 See Options 3, Section 10(a)(1)(C)(1)(b).

7 Rounding will be up to the nearest integer. Notwithstanding the foregoing, when a Directed Order is received and the DMM's bid/offer is at or improves on the NBBO and the LMM is at the same price level and is not the DMM, the LMM participation entitlement set forth in this subsection (C)(1)(b)(1) will not apply with respect to such Directed Order. See Options 3, Section 10(a)(1)(C)(1).

this time, the Exchange proposes to amend the LMM Priority to instead provide the following:

> …The LMM participation entitlement is as follows:
>
> (1) A BX Options LMM shall receive the greater of:
>
> (a) contracts the LMM would receive if the allocation was based on time priority pursuant to subparagraph (C)(1)(a) above with Public Customer priority;
>
> (b) 50% of remaining interest if there is one other **non-Public Customer Order or** Market Maker order or quote at that price;
>
> (c) 40% of remaining interest if there are two other **non-Public Customer Order or** Market Maker orders or quotes at that price;
>
> (d) 30% of remaining interest if there are more than two other **non-Public Customer Order or** Market Maker orders or quotes at that price; or
>
> (e) the Directed Market Maker ("DMM") participation entitlement, if any, set forth in subsection (C)(1)(c) below (if the order is a Directed Order and the LMM is also the DMM).

Specifically, the Exchange proposes to determine an LMM's allocation percentage (50%/40%/30%), if applicable, by how many Market Maker orders and quotes and non-Public Customer orders are present at the best price. After all Public Customer orders have been satisfied, the System would allocate to an LMM the applicable percentage based on non-Public Customer orders and Market Maker quotes and orders at the best price at the time the incoming order was received by the System. This proposed change would align the System with the rule. This amendment differs from the manner in which the LMM was allocated prior to the Migration. Prior to the

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8 As of September 14, 2020 and September 21, 2021 (depending on the options symbol) the LMM allocation operated as described in the proposed rule text. The migration occurred in two stages as symbols were made available on the new BX platform ("Migration") on the two days noted.

Migration, only other Market Maker orders or quotes present at the same price would have determined the percentage of allocation for an LMM. With this amendment, non-Public Customers orders present at the same price would also be considered in determining the percentage. The proposed amendment is similar to functionality on Nasdaq ISE, LLC ("ISE"), Nasdaq GEMX, LLC ("GEMX"), Nasdaq MRX, LLC ("MRX") and the Cboe Exchange, Inc ("Cboe").[9]

The Exchange is not considering Public Customer orders in determining the LMM allocation because, as noted above, Public Customer orders shall have priority over all other interest at the same price and those orders would have been executed prior to any LMM allocation.

With respect to LMMS, unlike other market participants, LMMs have unique obligations[10] to the market which include, among other things, quoting obligations.[11] However, similar to other market participants, an LMM cannot receive any portion of an allocation, regardless of its participation rights, unless it is quoting at the best price at the time the executable order is received by the System. With this proposal LMM's would continue to be entitled to an enhanced allocation, once Public Customer orders have been satisfied, except that allocation would be subject to the amount of other Market Maker interest as well as non-Public Customer orders. The Exchange seeks to consider non-Public Customer orders in its LMM allocation to recognize other market participant interest, except for Public Customer, that was present in the Order Book at the same price

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9 See ISE, GEMX and MRX Options 3, Section 10(c)(1)(B)(i) and Cboe Rule 5.32(a)(2)(B).

10 See Options 2, Section 4.

11 See Options 2, Section 5.

at the time of execution. By considering this interest, non-Public Customers allocated in the "All Other Remaining Interest" category would be entitled to potentially higher allocations. The Exchange's proposal is intended to encourage LMMs to continue to quote at or improve the NBBO in order to be afforded the highest allocation attainable. The proposal also seeks to recognize other non-Public Customer interest that was at the same price at the time of execution by permitting those market participants to capture a potentially higher allocation. Below are some examples.

LMM Allocation Example –Which Only Considers Market Maker interest

Assume the option below is open and away markets are wider than BX's interest that arrives in sequence as specified below:

- LMM Quote: 1.00 (10) x 2.00 (10)
- Priority Customer Order Firm A to Sell 2 @ 1.95 arrives (BX BBO updates to 1.00 x 1.95)
- Broker Dealer Order to Sell 10 @ 1.95 arrives
- LMM Updates Quote: 1.00 (10) x 1.95 (10)
- Priority Customer Order Firm B to buy 12 @ 1.95 arrives

Allocation

In this scenario, Priority Customer Firm A is allocated 2 @ 1.95 and the LMM is allocated remaining 10 @ 1.95.

LMM Allocation Example Which Considers Market Maker and non-Public Customer interest

Assume the option below is open and any away markets are wider than BX's interest that arrives in sequence as specified below:

- LMM Quote: 1.00 (10) x 2.00 (10)
- Priority Customer Order Firm A to Sell 2 @ 1.95 arrives (BX BBO updates to 1.00 x 1.95)
- Broker Dealer Order to Sell 10 @ 1.95 arrives
- LMM Updates Quote: 1.00 (10) x 1.95 (10)
- Priority Customer Order Firm B to buy 12 @ 1.95 arrives

Allocation

In this scenario, Priority Customer Firm A is allocated 2 @ 1.95, the LMM is allocated 5 @ 1.95 (1 other non-public customer = 50%) and the Broker Dealer is allocated 5 @ 1.95.

At this time, a similar proposed change is not being made to BX's Size Pro-Rata execution algorithm, which today only considers Market Maker quotes and orders within the LMM Priority, and has an additional Market Maker Priority allocation within the Size Pro-Rata execution algorithm as compared to the Price/Time execution algorithm. If BX were to consider non-Public Customer Orders in the LMM Priority for BX's Size Pro-Rata execution algorithm, because there is a Market Maker Priority allocation in this model, which does not exist in the Price/Time execution algorithm, the Market Maker Priority would benefit. In the Price/Time execution algorithm, the All Other Remaining Interest allocation benefits because there is no Market Maker Priority in that model. In the Price/Time execution algorithm all Participants are on parity after the LMM Priority. This is not the case with the Size Pro-Rata execution algorithm because Market Makers have priority ahead of All Other Remaining Interest being allocated; there is not the same concept of parity. Therefore, making a similar change to BX's Size Pro-Rata execution algorithm would only serve to advantage other Market Makers at the expense of the

LMM. Of note, the Lead Market Maker has higher quoting obligations both intra-day and during the Opening Process as compared to the Market Maker.[12] See below example for illustration.

LMM Size Pro-Rata Allocation Example With Market Maker Overlay

Assume the option below is open and any away markets are wider than BX's interest that arrives in sequence as specified below:

- LMM Quote: 1.00 (10) x 2.00 (10)
- Priority Customer Order Firm A to Sell 2 @ 1.95 arrives (BX BBO updates to 1.00 x 1.95)
- Broker Dealer Order to Sell 10 @ 1.95 arrives
- Market Maker B Quotes 1.05 x 1.95 (10)
- Market Maker C Quotes 1.05 x 1.95 (10)
- LMM Updates Quote: 1.00 (20) x 1.95 (20)
- Priority Customer Order Firm B to buy 12 @ 1.95 arrives

Allocation

In this scenario, Priority Customer Firm A is allocated 2 contracts @ 1.95, the LMM is allocated 4 contracts @ 1.95 (2 other Market Maker quotes present = 40% LMM allocation), both Market Makers B and C are allocated 3 contracts at @ 1.95, and Broker Dealer is not allocated any contracts. In this example, the Broker Dealer order cannot be allocated. If the Exchange were to consider the Broker Dealer order within the LMM Priority, as proposed for the Price/Time execution algorithm, it would have resulted in a higher allocation for one of the Market Makers, to the detriment of the LMM.

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12 See Options 2, Section 5 and Options 3, Section 8, respectively.

The Exchange notes that all symbols on BX are currently designated as Price/Time. In the event that the Exchange determines to designate options symbols as eligible for Size Pro-Rata allocation, a similar change would be considered by the Exchange and, if the Exchange determines to amend its rule, a proposed rule change would be submitted to the Commission.

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 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.

The Exchange's proposal to amend the Price/Time LMM execution algorithm to consider non-Public Customer orders in addition to Market Maker quotes and orders when allocating a percentage to an LMM is consistent with the Act. The Exchange is not considering Public Customer orders in determining the LMM allocation because, as noted above, Public Customer orders shall have priority over non-Public Customer orders at the same price and those orders would have been executed prior to any LMM allocation. With respect to LMMs, unlike other market participants, LMMs have unique obligations[15] to the market which include, among other things, quoting obligations.[16]

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13 15 U.S.C. 78f(b).

14 15 U.S.C. 78f(b)(5).

15 See note 10 above.

16 See note 11 above.

However, similar to other market participants, an LMM cannot receive any portion of an allocation, regardless of its participation rights, unless it is quoting at the best price at the time the executable order is received by the System.

With this proposal LMM's would continue to be entitled to an enhanced allocation, once Public Customer orders have been satisfied, except that allocation would be subject to the amount of other Market Maker interest as well as non-Public Customer orders. The Exchange seeks to consider non-Public Customer orders in its LMM allocation to recognize other market participant interest, except for Public Customer, that was present in the Order Book at the same price at the time of execution. By considering this interest, non-Public Customers allocated in the "All Other Remaining Interest" category would be entitled to potentially higher allocations. The Exchange believes that this amendment will encourage other non-Public Customers to submit interest into the Order Book, at the same price, in order to receive a potentially higher allocation after all Maker Makers have been allocated.[17] With this proposal LMMs would be encouraged to quote at or improve the NBBO in more cases in order to be afforded the highest allocation attainable. Creating competition which rewards Participants that continuously add liquidity to the Order Book benefits all market participants. T

The Exchange notes that at this time a similar proposed change is not being made to the Size Pro-Rata execution algorithm, which today only considers Market Maker quotes and orders within the LMM Enhancement. The Exchange notes that all symbols on BX are currently designated as Price/Time. Unlike the Price/Time execution

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17 There are 5 priority overlays for the Price/Time execution algorithm: (1) Public Customer Priority; (2) LMM Priority; (3) Entitlement for Orders of 5 contracts or fewer; (4) DMM Priority; and (5) All Other Remaining Interest.

algorithm, the Size Pro-Rata execution algorithm has 6 overlays: (1) Public Customer Priority; (2) LMM Priority; (3) Entitlement for Orders of 5 contracts or fewer; (4) Directed Market Maker Priority; (5) Market Maker Priority; and (6) All Other Remaining Interest. The Price/Time execution algorithm does not have a Market Maker Priority allocation similar to the Size Pro-Rata execution algorithm. The current Market Maker Priority considers all other Participant orders at the same price and, therefore, rewards Participants at that price in a similar fashion as proposed for the Price/Time execution algorithm, albeit at the Market Maker allocation instead of the LMM allocation. The Exchange believes that the proposal would serve to align the two allocation models and reward Participants at the same price by considering non-Public Customer interest as well as Market Maker interest before non-Public Customers are allocated. An example of how the same scenario presented above for the Price/Time model would allocated within the current Size Pro Rata model is below.

LMM Allocation Example –Size Pro-Rata Overlay example

Assume the option below is open and away markets are wider than BX's interest that arrives in sequence as specified below:

- LMM Quote: 1.00 (10) x 2.00 (10)
- Priority Customer Order Firm A to Sell 2 @ 1.95 arrives (BX BBO updates to 1.00 x 1.95)
- Broker Dealer Order to Sell 10 @ 1.95 arrives
- Market Maker B quote 1.00 (10) x 1.95 (10) arrives
- Market Maker C quote 1.00 (10) x 1.95 (10) arrives
- LMM Updates Quote: 1.00 (10) x 1.95 (10)

▪ Priority Customer Order Firm B to buy 22 @ 1.95 arrives

Allocation

In this scenario:

- Priority Customer Firm A is allocated 2 @ 1.95
- Lead Market Maker is allocated 8 @ 1.95 (40% of remaining 20 contracts after priority customer overlay)
- Market Maker B is allocated 6 @ 1.95 (50% of remaining 12 contracts after LMM overlay)
- Market Maker C is allocated 6 @ 1.95 (50% of remaining 12 contracts after LMM overlay)

In this scenario, the Broker Dealer is not allocated as the Market Maker was allocated the remaining 12 contracts. Even if the LMM overlay considered the Broker Dealer in its allocation, the Broker Dealer will still not be allocated. The LMM would get 6 contracts (30% of 20 contracts), and each of the Market Makers would get 7 contracts, which only reduces the LMM allocation as the LMM was quoting at the same price as the other Market Makers.

The Exchange notes that the System does not operate as provided for above today.[18] This proposed change would align the System with the rule. The proposed amendment is similar to functionality on Nasdaq ISE, LLC ("ISE"), Nasdaq GEMX, LLC ("GEMX"), Nasdaq MRX, LLC ("MRX") and the Cboe Exchange, Inc ("Cboe").[19]

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18 See note 8 above.

19 See ISE, GEMX and MRX Options 3, Section 10(c)(1)(B)(i) and Cboe Rule 5.32(a)(2)(B).

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 Exchange is not considering Public Customer orders in determining the LMM allocation because, as noted above, Public Customer orders shall have priority over non-Public Customer orders at the same price and those orders would have been executed prior to any LMM allocation.

The Exchange seeks to consider non-Public Customer orders in its LMM allocation to recognize other market participant interest, except for Public Customer, that was present in the Order Book at the same price at the time of execution. By considering this interest, non-Public Customers allocated in the “All Other Remaining Interest” category would be entitled to potentially higher allocations. The amendment will encourage other non-Public Customers to submit interest into the Order Book, at the same price, in order to receive a potentially higher allocation after all Maker Makers have been allocated. With this proposal LMMs would be encouraged to quote at or improve the NBBO in more cases in order to be afforded the highest allocation attainable. Creating competition which rewards Participants that continuously add liquidity to the Order Book benefits all market participants. . The Exchange does not believe its proposal imposes an undue burden on competition because with this change, non-Public Customer orders would be entitled to potentially higher allocations.

With respect to LMMs, unlike other market participants, LMMs have unique obligations[20] to the market which include, among other things, quoting obligations.[21]

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20 See note 10 above.

However, similar to other market participants, an LMM cannot receive any portion of an allocation, regardless of its participation rights, unless it is quoting at the best price at the time the executable order is received by the System. LMM's would continue to be entitled to an enhanced allocation, once Public Customer orders have been satisfied, except that allocation would be subject to the amount of other Market Maker interest as well as non-Public Customer orders.

Today, LMMs may receive higher allocations as only other Market Maker interest is considered when allocating to an LMM. With this proposal, the Exchange would consider not only other Market Maker interest but also non-Public Customer orders. Considering all other interest, except Public Customer interest, that was at the same price at the time of execution results in LMMs potentially receiving lower allocations. LMMs add value through continuous quoting[22] and are subject to additional requirements and obligations[23] unlike other market participants. The Exchange incentivizes LMMs to provide liquidity on BX through enhanced allocations and pricing. The Exchange believes that this proposal will continue to incentivize LMMs to add liquidity while also benefitting all market participants through the quality of order interaction.

Unlike the Price/Time execution algorithm, the Size Pro-Rata execution algorithm has 6 overlays: (1) Public Customer Priority; (2) LMM Priority; (3) Entitlement for Orders of 5 contracts or fewer; (4) DMM Priority; (5) Market Maker Priority; and (6) All Other Remaining Interest. The Price/Time execution algorithm does not have a Market

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[21] See note 11 above.

[22] See Options 2, Section 5.

[23] See Options 2, Section 4.

Maker Priority allocation similar to the Size Pro-Rata execution algorithm. The current Market Maker Priority considers all other Participant orders at the same price and, therefore, rewards Participants at that price in a similar fashion as proposed for the Price/Time execution algorithm, albeit at the Market Maker allocation instead of the LMM allocation. The Exchange believes that the proposal does not impose an undue burden on competition as it aligns the two models and reward Participants at the same price by considering non-Public Customer interest as well as Market Maker interest before non-Public Customers are allocated.

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)[24] of the Act and Rule 19b-4(f)(6) thereunder[25] 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.

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[24] 15 U.S.C. 78s(b)(3)(A)(iii).

[25] 17 CFR 240.19b-4(f)(6).

The Exchange's proposal to amend Options 3, Section 10 does not significantly affect the protection of investors or the public interest. With this proposal LMM's would continue to be entitled to an enhanced allocation, once Public Customer orders have been satisfied, except that allocation would be subject to the amount of other Market Maker interest as well as non-Public Customer orders. The Exchange seeks to consider non-Public Customer orders in its LMM allocation to recognize other market participant interest, except for Public Customer, that was present in the Order Book at the same price at the time of execution. By considering this interest, non-Public Customers allocated in the "All Other Remaining Interest" category would be entitled to potentially higher allocations. The Exchange's proposal is intended to encourage LMMs to continue to quote at or improve the NBBO in order to be afforded the highest allocation attainable. The proposal also seeks to recognize other non-Public Customer interest that was at the same price at the time of execution by permitting those market participants to capture a potentially higher allocation. The Exchange notes that the System does not operate as provided for above today.[26] This proposed change would align the System with the rule. The proposed amendment is similar to functionality on Nasdaq ISE, LLC ("ISE"), Nasdaq GEMX, LLC ("GEMX"), Nasdaq MRX, LLC ("MRX") and the Cboe Exchange, Inc ("Cboe").[27]

The Exchange's proposal to amend Options 3, Section 10 does not impose any significant burden on competition as the amendment is non-substantive. The Exchange is not considering Public Customer orders in determining the LMM allocation because, as

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26 See note 8 above.

27 See ISE, GEMX and MRX Options 3, Section 10(c)(1)(B)(i) and Cboe Rule 5.32(a)(2)(B).

noted above, Public Customer orders shall have priority over non-Public Customer orders at the same price and those orders would have been executed prior to any LMM allocation. With respect to LMMs, unlike other market participants, LMMs have unique obligations[28] to the market which include, among other things, quoting obligations.[29] However, similar to other market participants, an LMM cannot receive any portion of an allocation, regardless of its participation rights, unless it is quoting at the best price at the time the executable order is received by the System. LMM's would continue to be entitled to an enhanced allocation, once Public Customer orders have been satisfied, except that allocation would be subject to the amount of other Market Maker interest as well as non-Public Customer orders. The Exchange seeks to consider non-Public Customer orders in its LMM allocation to recognize other market participant interest, except for Public Customer, that was present in the Order Book at the same price at the time of execution. By considering this interest, non-Public Customers allocated in the "All Other Remaining Interest" category would be entitled to potentially higher allocations. The Exchange's proposal is intended to encourage LMMs to continue to quote at or improve the NBBO in order to be afforded the highest allocation attainable. The proposal also seeks to recognize other non-Public Customer interest that was at the same price at the time of execution by permitting those market participants to capture a potentially higher allocation. The Exchange believes that the proposal does not impose an undue burden on competition as it aligns the two models and reward Participants at the same price by considering non-Public Customer interest as well as Market Maker interest

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[28] See note 10 above.

[29] See note 11 above.

before non-Public Customers are allocated.

Furthermore, Rule 19b-4(f)(6)(iii) 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.

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.

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 it may immediately amend the rule text of Options 3, Section 10 to accurately reflect the manner in which LLM allocation is allocated in the System when symbols are allocated utilizing the Price/Time execution algorithm. This proposed change is intended to bring greater clarity and transparency to BX's allocation rule for the protection of investors and the general public.

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

The proposed amendment is similar to functionality on Nasdaq ISE, LLC ("ISE"), Nasdaq GEMX, LLC (“GEMX”), Nasdaq MRX, LLC (“MRX”) and the Cboe Exchange, Inc (“Cboe”).[30]

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

Not applicable.

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

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

5. Text of the proposed rule change.

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30 See ISE, GEMX and MRX Options 3, Section 10(c)(1)(B)(i) and Cboe Rule 5.32(a)(2)(B).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-BX-2021-013)

April __, 2021

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 3, Section 10, Order Book Allocation.

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 April 7, 2021, 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 10, Order Book Allocation.

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

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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 Options 3, Section 10, Order Book Allocation. Today, pursuant to Options 3, Section 10, BX determines for each option whether to apply the Price/Time[3] or the Size Pro-Rata execution algorithm.[4] This proposal seeks to amend BX's Price/Time execution algorithm.

Price/Time Execution Algorithm

Today, there are 5 priority overlays for the Price/Time execution algorithm: (1) Public Customer Priority; (2) Lead Market Maker ("LMM") Priority; (3) Entitlement for Orders of 5 contracts or fewer; (4) Directed Market Maker ("DMM") Priority; and (5) All Other Remaining Interest. The Exchange proposes to amend the LMM Priority overlay with this proposal.

Today, Public Customer orders shall have priority over non-Public Customer

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[3] The System shall execute trading interest within the System in price/time priority, meaning it will execute all trading interest at the best price level within the System before executing trading interest at the next best price. Within each price level, if there are two or more quotes or orders at the best price, trading interest will be executed in time priority. See Options 3, Section 10(a)(1)(A).

[4] The System shall execute trading interest within the System in price priority, meaning it will execute all trading interest at the best price level within the System before executing trading interest at the next best price. Within each price level, if there are two or more quotes or orders at the best price, trading interest will be executed based on the size of each Participant's quote or order as a percentage of the total size of all orders and quotes resting at that price. If the result is not a whole number, it will be rounded up to the nearest whole number. See Options 3, Section 10(a)(1)(B).

orders at the same price.[5] Public Customer Priority is always in effect when the Price/Time execution algorithm is in effect. The LMM participant entitlements shall only be in effect when the Public Customer Priority Overlay is also in effect.[6]

Today, Options 3, Section 10(a)(1)(C)(1)(b) provides, in part,

> After all Public Customer orders have been fully executed, upon receipt of an order, provided the LMM's bid/offer is at or improves on the Exchange's disseminated price, the LMM will be afforded a participation entitlement. The LMM shall not be entitled to receive a number of contracts that is greater than the displayed size associated with such LMM. LMM participation entitlements will be considered after the Opening Process. The LMM participation entitlement is as follows:
>
> (1) A BX Options LMM shall receive the greater of:
>
> (a) contracts the LMM would receive if the allocation was based on time priority pursuant to subparagraph (C)(1)(a) above with Public Customer priority;
>
> (b) 50% of remaining interest if there is one or no other Market Maker at that price;

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5 If there are two or more Public Customer orders for the same options series at the same price, priority shall be afforded to such Public Customer orders in the sequence in which they are received by the System. See Options 3, Section 10(a)(1)(C)(1)(a).

6 See Options 3, Section 10(a)(1)(C)(1)(b).

(c) 40% of remaining interest if there is two other Market Makers at that price;

(d) 30% of remaining interest if there are more than two other Market Makers at that price; or

(e) the Directed Market Maker ("DMM") participation entitlement, if any, set forth in subsection (C)(1)(c) below (if the order is a Directed Order and the LMM is also the DMM).[7]

The Exchange notes that the System does not operate as provided for above today.[8] At this time, the Exchange proposes to amend the LMM Priority to instead provide the following:

…The LMM participation entitlement is as follows:

(1) A BX Options LMM shall receive the greater of:

(a) contracts the LMM would receive if the allocation was based on time priority pursuant to subparagraph (C)(1)(a) above with Public Customer priority;

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7 Rounding will be up to the nearest integer. Notwithstanding the foregoing, when a Directed Order is received and the DMM's bid/offer is at or improves on the NBBO and the LMM is at the same price level and is not the DMM, the LMM participation entitlement set forth in this subsection (C)(1)(b)(1) will not apply with respect to such Directed Order. See Options 3, Section 10(a)(1)(C)(1).

8 As of September 14, 2020 and September 21, 2021 (depending on the options symbol) the LMM allocation operated as described in the proposed rule text. The migration occurred in two stages as symbols were made available on the new BX platform ("Migration") on the two days noted.

(b) 50% of remaining interest if there is one other **non-Public Customer Order or** Market Maker order or quote at that price;

(c) 40% of remaining interest if there are two other **non-Public Customer Order or** Market Maker orders or quotes at that price;

(d) 30% of remaining interest if there are more than two other **non-Public Customer Order or** Market Maker orders or quotes at that price; or

(e) the Directed Market Maker ("DMM") participation entitlement, if any, set forth in subsection (C)(1)(c) below (if the order is a Directed Order and the LMM is also the DMM).

Specifically, the Exchange proposes to determine an LMM's allocation percentage (50%/40%/30%), if applicable, by how many Market Maker orders and quotes and non-Public Customer orders are present at the best price. After all Public Customer orders have been satisfied, the System would allocate to an LMM the applicable percentage based on non-Public Customer orders and Market Maker quotes and orders at the best price at the time the incoming order was received by the System. This proposed change would align the System with the rule. This amendment differs from the manner in which the LMM was allocated prior to the Migration. Prior to the Migration, only other Market Maker orders or quotes present at the same price would have determined the percentage of allocation for an LMM. With this amendment, non-Public Customers orders present at the same price would also be considered in determining the percentage. The proposed amendment is similar to functionality on

Nasdaq ISE, LLC ("ISE"), Nasdaq GEMX, LLC ("GEMX"), Nasdaq MRX, LLC ("MRX") and the Cboe Exchange, Inc ("Cboe").[9]

The Exchange is not considering Public Customer orders in determining the LMM allocation because, as noted above, Public Customer orders shall have priority over all other interest at the same price and those orders would have been executed prior to any LMM allocation.

With respect to LMMS, unlike other market participants, LMMs have unique obligations[10] to the market which include, among other things, quoting obligations.[11] However, similar to other market participants, an LMM cannot receive any portion of an allocation, regardless of its participation rights, unless it is quoting at the best price at the time the executable order is received by the System. With this proposal LMM's would continue to be entitled to an enhanced allocation, once Public Customer orders have been satisfied, except that allocation would be subject to the amount of other Market Maker interest as well as non-Public Customer orders. The Exchange seeks to consider non-Public Customer orders in its LMM allocation to recognize other market participant interest, except for Public Customer, that was present in the Order Book at the same price at the time of execution. By considering this interest, non-Public Customers allocated in the "All Other Remaining Interest" category would be entitled to potentially higher allocations. The Exchange's proposal is intended to encourage LMMs to continue to quote at or improve the NBBO in order to be afforded the highest allocation attainable.

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9 See ISE, GEMX and MRX Options 3, Section 10(c)(1)(B)(i) and Cboe Rule 5.32(a)(2)(B).

10 See Options 2, Section 4.

11 See Options 2, Section 5.

The proposal also seeks to recognize other non-Public Customer interest that was at the same price at the time of execution by permitting those market participants to capture a potentially higher allocation. Below are some examples.

LMM Allocation Example –Which Only Considers Market Maker interest

Assume the option below is open and away markets are wider than BX's interest that arrives in sequence as specified below:

- LMM Quote: 1.00 (10) x 2.00 (10)
- Priority Customer Order Firm A to Sell 2 @ 1.95 arrives (BX BBO updates to 1.00 x 1.95)
- Broker Dealer Order to Sell 10 @ 1.95 arrives
- LMM Updates Quote: 1.00 (10) x 1.95 (10)
- Priority Customer Order Firm B to buy 12 @ 1.95 arrives

Allocation

In this scenario, Priority Customer Firm A is allocated 2 @ 1.95 and the LMM is allocated remaining 10 @ 1.95.

LMM Allocation Example Which Considers Market Maker and non-Public Customer interest

Assume the option below is open and any away markets are wider than BX's interest that arrives in sequence as specified below:

- LMM Quote: 1.00 (10) x 2.00 (10)
- Priority Customer Order Firm A to Sell 2 @ 1.95 arrives (BX BBO

updates to 1.00 x 1.95)

- Broker Dealer Order to Sell 10 @ 1.95 arrives
- LMM Updates Quote: 1.00 (10) x 1.95 (10)
- Priority Customer Order Firm B to buy 12 @ 1.95 arrives

Allocation

In this scenario, Priority Customer Firm A is allocated 2 @ 1.95, the LMM is allocated 5 @ 1.95 (1 other non-public customer = 50%) and the Broker Dealer is allocated 5 @ 1.95.

At this time, a similar proposed change is not being made to BX's Size Pro-Rata execution algorithm, which today only considers Market Maker quotes and orders within the LMM Priority, and has an additional Market Maker Priority allocation within the Size Pro-Rata execution algorithm as compared to the Price/Time execution algorithm. If BX were to consider non-Public Customer Orders in the LMM Priority for BX's Size Pro-Rata execution algorithm, because there is a Market Maker Priority allocation in this model, which does not exist in the Price/Time execution algorithm, the Market Maker Priority would benefit. In the Price/Time execution algorithm, the All Other Remaining Interest allocation benefits because there is no Market Maker Priority in that model. In the Price/Time execution algorithm all Participants are on parity after the LMM Priority. This is not the case with the Size Pro-Rata execution algorithm because Market Makers have priority ahead of All Other Remaining Interest being allocated; there is not the same concept of parity. Therefore, making a similar change to BX's Size Pro-Rata execution algorithm would only serve to advantage other Market Makers at the expense of the LMM. Of note, the Lead Market Maker has higher quoting obligations both intra-day and during the Opening Process as compared to the Market Maker.[12] See below example for illustration.

LMM Size Pro-Rata Allocation Example With Market Maker Overlay

Assume the option below is open and any away markets are wider than BX's interest that arrives in sequence as specified below:

- LMM Quote: 1.00 (10) x 2.00 (10)
- Priority Customer Order Firm A to Sell 2 @ 1.95 arrives (BX BBO updates to 1.00 x 1.95)
- Broker Dealer Order to Sell 10 @ 1.95 arrives
- Market Maker B Quotes 1.05 x 1.95 (10)
- Market Maker C Quotes 1.05 x 1.95 (10)
- LMM Updates Quote: 1.00 (20) x 1.95 (20)
- Priority Customer Order Firm B to buy 12 @ 1.95 arrives

Allocation

In this scenario, Priority Customer Firm A is allocated 2 contracts @ 1.95, the LMM is allocated 4 contracts @ 1.95 (2 other Market Maker quotes present = 40% LMM allocation), both Market Makers B and C are allocated 3 contracts at @ 1.95, and Broker Dealer is not allocated any contracts. In this example, the Broker Dealer order cannot be allocated. If the Exchange were to consider the Broker Dealer order within the LMM Priority, as proposed for the Price/Time execution algorithm, it would have resulted in a higher allocation for one of the Market Makers, to the detriment of the LMM.

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12 See Options 2, Section 5 and Options 3, Section 8, respectively.

The Exchange notes that all symbols on BX are currently designated as Price/Time. In the event that the Exchange determines to designate options symbols as eligible for Size Pro-Rata allocation, a similar change would be considered by the Exchange and, if the Exchange determines to amend its rule, a proposed rule change would be submitted to the Commission.

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 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.

The Exchange's proposal to amend the Price/Time LMM execution algorithm to consider non-Public Customer orders in addition to Market Maker quotes and orders when allocating a percentage to an LMM is consistent with the Act. The Exchange is not considering Public Customer orders in determining the LMM allocation because, as noted above, Public Customer orders shall have priority over non-Public Customer orders at the same price and those orders would have been executed prior to any LMM allocation. With respect to LMMs, unlike other market participants, LMMs have unique obligations[15] to the market which include, among other things, quoting obligations.[16]

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13 15 U.S.C. 78f(b).

14 15 U.S.C. 78f(b)(5).

15 See note 10 above.

16 See note 11 above.

However, similar to other market participants, an LMM cannot receive any portion of an allocation, regardless of its participation rights, unless it is quoting at the best price at the time the executable order is received by the System.

With this proposal LMM's would continue to be entitled to an enhanced allocation, once Public Customer orders have been satisfied, except that allocation would be subject to the amount of other Market Maker interest as well as non-Public Customer orders. The Exchange seeks to consider non-Public Customer orders in its LMM allocation to recognize other market participant interest, except for Public Customer, that was present in the Order Book at the same price at the time of execution. By considering this interest, non-Public Customers allocated in the "All Other Remaining Interest" category would be entitled to potentially higher allocations. The Exchange believes that this amendment will encourage other non-Public Customers to submit interest into the Order Book, at the same price, in order to receive a potentially higher allocation after all Maker Makers have been allocated.[17] With this proposal LMMs would be encouraged to quote at or improve the NBBO in more cases in order to be afforded the highest allocation attainable. Creating competition which rewards Participants that continuously add liquidity to the Order Book benefits all market participants. T

The Exchange notes that at this time a similar proposed change is not being made to the Size Pro-Rata execution algorithm, which today only considers Market Maker quotes and orders within the LMM Enhancement. The Exchange notes that all symbols on BX are currently designated as Price/Time. Unlike the Price/Time execution

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[17] There are 5 priority overlays for the Price/Time execution algorithm: (1) Public Customer Priority; (2) LMM Priority; (3) Entitlement for Orders of 5 contracts or fewer; (4) DMM Priority; and (5) All Other Remaining Interest.

algorithm, the Size Pro-Rata execution algorithm has 6 overlays: (1) Public Customer Priority; (2) LMM Priority; (3) Entitlement for Orders of 5 contracts or fewer; (4) Directed Market Maker Priority; (5) Market Maker Priority; and (6) All Other Remaining Interest. The Price/Time execution algorithm does not have a Market Maker Priority allocation similar to the Size Pro-Rata execution algorithm. The current Market Maker Priority considers all other Participant orders at the same price and, therefore, rewards Participants at that price in a similar fashion as proposed for the Price/Time execution algorithm, albeit at the Market Maker allocation instead of the LMM allocation. The Exchange believes that the proposal would serve to align the two allocation models and reward Participants at the same price by considering non-Public Customer interest as well as Market Maker interest before non-Public Customers are allocated. An example of how the same scenario presented above for the Price/Time model would allocated within the current Size Pro Rata model is below.

LMM Allocation Example –Size Pro-Rata Overlay example

Assume the option below is open and away markets are wider than BX's interest that arrives in sequence as specified below:

- LMM Quote: 1.00 (10) x 2.00 (10)
- Priority Customer Order Firm A to Sell 2 @ 1.95 arrives (BX BBO updates to 1.00 x 1.95)

- Broker Dealer Order to Sell 10 @ 1.95 arrives
- Market Maker B quote 1.00 (10) x 1.95 (10) arrives
- Market Maker C quote 1.00 (10) x 1.95 (10) arrives

▪ LMM Updates Quote: 1.00 (10) x 1.95 (10)

▪ Priority Customer Order Firm B to buy 22 @ 1.95 arrives

Allocation

In this scenario:

- Priority Customer Firm A is allocated 2 @ 1.95
- Lead Market Maker is allocated 8 @ 1.95 (40% of remaining 20 contracts after priority customer overlay)
- Market Maker B is allocated 6 @ 1.95 (50% of remaining 12 contracts after LMM overlay)
- Market Maker C is allocated 6 @ 1.95 (50% of remaining 12 contracts after LMM overlay)

In this scenario, the Broker Dealer is not allocated as the Market Maker was allocated the remaining 12 contracts. Even if the LMM overlay considered the Broker Dealer in its allocation, the Broker Dealer will still not be allocated. The LMM would get 6 contracts (30% of 20 contracts), and each of the Market Makers would get 7 contracts, which only reduces the LMM allocation as the LMM was quoting at the same price as the other Market Makers.

The Exchange notes that the System does not operate as provided for above today.[18] This proposed change would align the System with the rule. The proposed amendment is similar to functionality on Nasdaq ISE, LLC ("ISE"), Nasdaq GEMX,

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[18] See note 8 above.

LLC ("GEMX"), Nasdaq MRX, LLC ("MRX") and the Cboe Exchange, Inc ("Cboe").[19]

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. The Exchange is not considering Public Customer orders in determining the LMM allocation because, as noted above, Public Customer orders shall have priority over non-Public Customer orders at the same price and those orders would have been executed prior to any LMM allocation.

The Exchange seeks to consider non-Public Customer orders in its LMM allocation to recognize other market participant interest, except for Public Customer, that was present in the Order Book at the same price at the time of execution. By considering this interest, non-Public Customers allocated in the "All Other Remaining Interest" category would be entitled to potentially higher allocations. The amendment will encourage other non-Public Customers to submit interest into the Order Book, at the same price, in order to receive a potentially higher allocation after all Maker Makers have been allocated. With this proposal LMMs would be encouraged to quote at or improve the NBBO in more cases in order to be afforded the highest allocation attainable. Creating competition which rewards Participants that continuously add liquidity to the Order Book benefits all market participants. . The Exchange does not believe its proposal imposes an undue burden on competition because with this change, non-Public Customer orders would be entitled to potentially higher allocations.

With respect to LMMs, unlike other market participants, LMMs have unique

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19 See ISE, GEMX and MRX Options 3, Section 10(c)(1)(B)(i) and Cboe Rule 5.32(a)(2)(B).

obligations[20] to the market which include, among other things, quoting obligations.[21] However, similar to other market participants, an LMM cannot receive any portion of an allocation, regardless of its participation rights, unless it is quoting at the best price at the time the executable order is received by the System. LMM's would continue to be entitled to an enhanced allocation, once Public Customer orders have been satisfied, except that allocation would be subject to the amount of other Market Maker interest as well as non-Public Customer orders.

Today, LMMs may receive higher allocations as only other Market Maker interest is considered when allocating to an LMM. With this proposal, the Exchange would consider not only other Market Maker interest but also non-Public Customer orders. Considering all other interest, except Public Customer interest, that was at the same price at the time of execution results in LMMs potentially receiving lower allocations. LMMs add value through continuous quoting[22] and are subject to additional requirements and obligations[23] unlike other market participants. The Exchange incentivizes LMMs to provide liquidity on BX through enhanced allocations and pricing. The Exchange believes that this proposal will continue to incentivize LMMs to add liquidity while also benefitting all market participants through the quality of order interaction.

Unlike the Price/Time execution algorithm, the Size Pro-Rata execution algorithm has 6 overlays: (1) Public Customer Priority; (2) LMM Priority; (3) Entitlement for

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20 See note 10 above.

21 See note 11 above.

22 See Options 2, Section 5.

23 See Options 2, Section 4.

Orders of 5 contracts or fewer; (4) DMM Priority; (5) Market Maker Priority; and (6) All Other Remaining Interest. The Price/Time execution algorithm does not have a Market Maker Priority allocation similar to the Size Pro-Rata execution algorithm. The current Market Maker Priority considers all other Participant orders at the same price and, therefore, rewards Participants at that price in a similar fashion as proposed for the Price/Time execution algorithm, albeit at the Market Maker allocation instead of the LMM allocation. The Exchange believes that the proposal does not impose an undue burden on competition as it aligns the two models and reward Participants at the same price by considering non-Public Customer interest as well as Market Maker interest before non-Public Customers are allocated.

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 Act[24] and subparagraph (f)(6) of Rule 19b-4 thereunder.[25]

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24 15 U.S.C. 78s(b)(3)(A)(iii).

25 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

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-2021-013 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-2021-013. 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

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proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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-2021-013 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.[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 3 Options Trading Rules

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Section 10. Order Book Allocation

(a) System Orders shall be executed through the BX Book Process set forth below:

(1) Execution Algorithm - The Exchange will determine to apply, for each option, one of the following execution algorithms described in paragraphs (A) or (B). The Exchange will issue an Options Alert specifying which execution algorithm will govern which options any time it is modified.

(A) Price/Time - The System shall execute trading interest within the System in price/time priority, meaning it will execute all trading interest at the best price level within the System before executing trading interest at the next best price. Within each price level, if there are two or more quotes or orders at the best price, trading interest will be executed in time priority.

(B) Size Pro-Rata - The System shall execute trading interest within the System in price priority, meaning it will execute all trading interest at the best price level within the System before executing trading interest at the next best price. Within each price level, if there are two or more quotes or orders at the best price, trading interest will be executed based on the size of each Participant's quote or order as a percentage of the total size of all orders and quotes resting at that price. If the result is not a whole number, it will be rounded up to the nearest whole number.

(C) **Priority Overlays**

(1) Priority Overlays Applicable to Price/Time Execution Algorithm: the Exchange may apply the following designated Participant priority overlays, when the Price/Time execution algorithm is in effect:

* * * * *

(b) **Lead Market Maker ("LMM") Priority**: An LMM may be assigned by the Exchange in each option class in accordance with Options 2, Section 3. LMM participant entitlements shall only be in effect when the

Public Customer Priority Overlay is also in effect. After all Public Customer orders have been fully executed, upon receipt of an order, provided the LMM's quote is at or improves on the better of the NBBO or internal BBO, the LMM will be afforded a participation entitlement. The LMM shall not be entitled to receive a number of contracts that is greater than the displayed size associated with such LMM. LMM participation entitlements will be considered after the Opening Process. The LMM participation entitlement is as follows:

(1) A BX Options LMM shall receive the greater of:

(a) contracts the LMM would receive if the allocation was based on time priority pursuant to subparagraph (C)(1)(a) above with Public Customer priority;

(b) 50% of remaining interest if there is one other <u>non-Public Customer Order or</u> Market Maker order or quote at that price;

(c) 40% of remaining interest if there are two other <u>non-Public Customer Order or</u> Market Maker orders or quotes at that price;

(d) 30% of remaining interest if there are more than two other <u>non-Public Customer Order or</u> Market Maker orders or quotes at that price; or

(e) the Directed Market Maker ("DMM") participation entitlement, if any, set forth in subsection (C)(1)(d) below (if the order is a Directed Order and the LMM is also the DMM).

Rounding will be up to the nearest integer.

Notwithstanding the foregoing, when a Directed Order is received and the DMM's quote is at or improves on the better of the NBBO or internal BBO and the LMM is at the same price level and is not the DMM, the LMM participation entitlement set forth in this subsection (C)(1)(b)(1) will not apply with respect to such Directed Order.

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