

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

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Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93587; File No. SR-BX-2021-052]

### Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend FINRA Fees

November 16, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 8, 2021, Nasdaq BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II 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 Equity 7, Section 30, Regulatory, Registration and Processing Fees, to reflect adjustments to FINRA Registration Fees, Fingerprinting Fees, and Continuing Education Fees.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on January 2, 2022.<sup>3</sup>

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

This proposal amends BX’s Pricing Schedule at Equity 7, Section 30, Regulatory, Registration and Processing Fees, to reflect adjustments to FINRA Registration Fees, Fingerprinting Fees, and Continuing Education Fees.<sup>4</sup> The FINRA fees are collected and retained by FINRA via Web CRD for the registration of employees of BX members that are not FINRA members (“Non-FINRA members”). The Exchange is merely listing these fees on its Pricing Schedule. The Exchange does not collect or retain these fees.

Today, BX Equity 7, Section 30, provides a list of FINRA Fees. The Exchange proposes to amend the introductory paragraph to: (1) Indicate “CRD” is the “Central Registration Depository” or “CRD”; (2) add a sentence to make clear that FINRA collects the fees listed within Equity 7, Section 30 on behalf of the Exchange; (3) add the title “General Registration Fees:”; and (4) remove the numbering from (1) to (3).

With respect to the General Registration Fees, the Exchange proposes to increase the \$100 fee to \$125 for each initial Form U4 filed for the registration of a representative or principal. This amendment is made in accordance with a recent FINRA rule change to adjust to its fees.<sup>5</sup> The Exchange also proposes to amend the description of the \$45 registration fee from “annually for each of the member’s registered representatives and principals for system processing” to “FINRA Annual System Processing Fee Assessed only during Renewals.” The proposed new title is more precise.

With respect to the fingerprint processing fees, the Exchange notes that

the current fees do not reflect the fees assessed by FINRA today. The Exchange proposes to amend the current fees to reflect the current fees that are assessed by FINRA. The proposed new rule text, with the title, “Fingerprint Processing Fees:” added, would provide,

#### Fingerprint Processing Fees:

\$29.50—Initial Submission (Electronic)  
\$44.50—Initial Submission (Paper)  
\$15.00—Second Submission (Electronic)  
\$30.00—Second Submission (Paper)  
\$29.50—Third Submission (Electronic)  
\$44.50—Third Submission (Paper)  
\$30.00—FINRA Processing Fee for Fingerprint Results Submitted by Self-Regulatory Organizations other than FINRA.

In 2012, FINRA only offered one set of fees (\$27.50 for the initial submission, \$13.00 for the second submission, and \$27.50 for the third submission). In 2013, FINRA amended its fingerprint fees and offered two sets of fees. For fingerprints submitted on paper card, the fees are \$44.50 per initial submission, \$30.00 per second submission, and \$44.50 per third submission. For fingerprints submitted electronically, the fees are \$29.50 per initial submission, \$15.00 per second submission, and \$29.50 per third submission.<sup>6</sup> By updating the fingerprinting fees, the Exchange would properly reflect the fees assessed today by FINRA.<sup>7</sup>

The Exchange is deleting the fees noted within current Equity 7, Section 9C [sic] at (4)–(6) and (8).<sup>8</sup> These

<sup>6</sup> See Securities Exchange Act Release No. 67247 (June 25, 2012) 77 FR 38866 (June 29, 2012) (SR-FINRA-2012-030) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Sections 4 and 6 of Schedule A to the FINRA By-Laws Regarding Fees Relating to the Central Registration Depository). FINRA notes in this rule change that it is proposing a two-tiered fingerprint processing fee structure in part to reflect that the costs associated with processing fingerprints submitted via a hard copy fingerprint card are much higher than those that are submitted electronically. Specifically, fingerprints submitted by a hard copy card require additional processing by FINRA, including adding a barcode, if necessary, to the card for tracking purposes; scanning the fingerprints and converting them to a digital image for submission to the FBI; and, for first-time registrants, entering the individual’s personal and demographic information into the CRD system. FINRA noted that members will be able to choose how they submit their associated persons’ fingerprints and therefore will have some control over the fees they incur for fingerprint processing. FINRA also noted an FBI Fee of \$11.25 is assessed as well.

<sup>7</sup> See <https://www.finra.org/registration-exams-ce/classic-crd/fingerprints/fingerprint-fees>.

<sup>8</sup> The Exchange proposes to delete the following rule text:

(4) \$15 for processing and posting to the CRD system each set of fingerprints submitted electronically by the member, plus a pass-through of any other charge imposed by the United States Department of Justice for processing each set of fingerprints;

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

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

<sup>3</sup> See Securities Exchange Act Release No. 90176 (October 14, 2020), 85 FR 66592 (October 20, 2020) (SR-FINRA-2020-032) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adjust FINRA Fees To Provide Sustainable Funding for FINRA’s Regulatory Mission).

<sup>4</sup> FINRA operates Web CRD, the central licensing and registration system for the U.S. securities industry. FINRA uses Web CRD to maintain the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.

<sup>5</sup> *Id.* FINRA noted in its rule change that it was adjusting its fees to provide sustainable funding for FINRA’s regulatory mission.

fingerprint fees, which are proposed to be deleted, were superseded by the FINRA fingerprinting fees which were adopted in 2013.

Finally, the Exchange proposes to add a new title, "Continuing Education Fee:" and proposes to provide an introductory paragraph to those fees that states, "The Continuing Education Fee will be assessed as to each individual who is required to complete the Regulatory Element of the Continuing Education Requirements pursuant to Exchange General 4, Section 1240. This fee is paid directly to FINRA." The incorrect citation to Rule 1120 is being removed from the current rule text.

The FINRA Web CRD Fees are user-based and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA member. Accordingly, the proposed fees mirror those currently assessed by FINRA.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>10</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes it is reasonable to increase the \$100 fee for each initial Form U4 filed for the registration of a representative or principal to \$125 in accordance with an adjustment to FINRA's fees.<sup>11</sup> The Exchange's rule text will reflect the current registration rate that will be assessed by FINRA as of January 2, 2022. Additionally, making clear that FINRA, on behalf of the Exchange, will bill and collect these fees will bring greater transparency to its fees. Amending the title of the \$45 fee to be more precise will provide greater transparency to this fee. Updating

<sup>(5)</sup> \$30 for processing and posting to the CRD system each set of fingerprint cards submitted in non-electronic format by the member to FINRA, plus any other charge that may be imposed by the United States Department of Justice for processing each set of fingerprints;

<sup>(6)</sup> \$30 for processing and posting to the CRD system each set of fingerprint results and identifying information that has been processed through a self-regulatory organization other than FINRA; and

<sup>(8)</sup> \$110 for the additional processing of each initial or amended Form BD that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings.

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

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

<sup>11</sup> See note 3 above.

FINRA's fingerprint processing fees to reflect the current charges will bring greater transparency to these charges that are currently assessed and collected by FINRA. Also, referencing the rule which governs the Regulatory Element of the Continuing Education Requirements and, noting that the fee is paid directly to FINRA, will provide more information to members regarding the fees for Continuing Education. The proposed fees are identical to those adopted by FINRA for use of Web CRD for disclosure and the registration of FINRA members and their associated persons. These costs are borne by FINRA when a Non-FINRA member uses Web CRD.

The Exchange believes that its proposal to increase the \$100 fee for each initial Form U4 filed for the registration of a representative or principal to \$125 is equitable and not unfairly discriminatory as the amendment will reflect the current fee that will be assessed by FINRA to all members who require Form U4 filings as of January 2, 2022. Amending the title of the \$45 fee to be more precise will provide greater transparency to this fee. Updating the fingerprint processing fees to reflect the current fees is equitable and not unfairly discriminatory as FINRA currently assesses these rates to all members. Finally, making clear that FINRA, on behalf of the Exchange, will bill and collect these fees and referencing the rule which governs the Continuing Education Requirements will bring greater transparency to FINRA's fees. Further, the proposal is also equitable and not unfairly discriminatory because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

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

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 believes that its proposal to increase the \$100 fee for each initial Form U4 filed for the registration of a representative or principal to \$125 does not impose an undue burden on competition as the amendment will reflect the current fee that will be assessed by FINRA to all members who require Form U4 filings as of January 2, 2022. Amending the title of the \$45 fee to be more precise will provide greater transparency to this fee. Updating the fingerprint processing fees to reflect the current fees does not

impose an undue burden on competition as FINRA currently assesses these rates to all members. Finally, making clear that FINRA, on behalf of the Exchange, will bill and collect these fees and referencing the rule which governs the Continuing Education Requirements will bring greater transparency to FINRA's fees. Further, the proposal does not impose an undue burden on competition because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

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

No written comments were either solicited or received.

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

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

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

## IV. Solicitation of Comments

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

### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2021-052 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.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR–BX–2021–052. This file number should be included on the subject line if email 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 website (<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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2021–052, and should be submitted on or before December 13, 2021.

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

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93592; File No. SR–NYSENAT–2021–22]

### Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update the Procedures for the Allocation of Cabinets and Power to Its Colocated Users

November 16, 2021.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the

“Act”)<sup>2</sup> and Rule 19b–4 thereunder,<sup>3</sup> notice is hereby given that on November 3, 2021, NYSE National, Inc. (“NYSE National” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 update the procedures for the allocation of cabinets and power to its colocated Users. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization 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 those 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 parts of such statements.

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

###### 1. Purpose

The Exchange proposes to establish<sup>4</sup> procedures for the allocation of power to its co-located<sup>5</sup> Users.<sup>6</sup>

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b–4.

<sup>4</sup> The Commission notes that the Exchange proposes to update previously established procedures for allocation of cabinets and power to its colocated Users.

<sup>5</sup> The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (“Commission”) in 2018. See Securities Exchange Act Release No. 83351 (May 31, 2018), 83 FR 26314 (June 6, 2018) (SR–NYSENAT–2018–07).

<sup>6</sup> For purposes of the Exchange’s co-location services, a “User” means any market participant that requests to receive co-location services directly from the Exchange. See *id.*, at note 9. As specified in the Exchange’s Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the

In December 2020, the Exchange established procedures for the allocation of cabinets in colocation should it become needed.<sup>7</sup> In April 2021, the Exchange added procedures for the allocation of power in colocation (together with the cabinet procedures, the “Existing Procedures”).<sup>8</sup>

#### Proposed Changes to the Waitlist Procedures

Pursuant to the Existing Procedures, a Combined Waitlist is currently in effect. To be placed on the Combined Waitlist, a User must submit an order that complies with the Combined Limits—that is, the order must be for no more than 32 kW, and no more than four dedicated cabinets with standard power allocations of 4 kW or 8 kW as part of the 32 kW total.<sup>9</sup>

The Existing Procedures provide that “[a] User may only have one order for new cabinets and/or additional power on the Combined Waitlist at a time . . . .”<sup>10</sup> The Exchange has become aware that some Users are attempting to circumvent this provision by submitting additional orders in the names of entities affiliated with the User.<sup>11</sup>

The Exchange believes that such actions by Users are contrary to the objectives of the Existing Procedures, which were intended to foreclose Users from obtaining a greater portion of the cabinets and power available than the portion defined by the Cabinet Limits and Combined Limits. Such actions by Users could result in a distribution of

Exchange’s affiliates New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and NYSE Chicago, Inc. (together, the “Affiliate SROs”). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. See SR–NYSE–2021–66; SR–NYSEAMER–2021–42; SR–NYSEArca–2021–96; SR–NYSECHX–2021–16.

<sup>7</sup> See Securities Exchange Act Release No. 90732 (December 18, 2020), 85 FR 84443 (December 28, 2020) (SR–NYSE–2020–73, SR–NYSEAMER–2020–66, SR–NYSEArca–2020–82, SR–NYSECHX–2020–26, and SR–NYSENAT–2020–28).

<sup>8</sup> See Securities Exchange Act Release No. 91515 (April 8, 2021), 86 FR 19674 (April 14, 2021) (SR–NYSE–2021–12, SR–NYSEAMER–2021–08, SR–NYSENAT–2021–03, SR–NYSEArca–2021–11, and SR–NYSECHX–2021–02). The Existing Procedures are set forth in General Notes 7 and 8 under “Co-location Fees” in the Fee Schedule.

<sup>9</sup> See Fee Schedule, Co-Location Fees, General Notes 7 and 8.

<sup>10</sup> See Fee Schedule, Co-Location Fees, General Note 8(b).

<sup>11</sup> For example, a User that wants 64 kW could submit an order for 32 kW to the Combined Waitlist, and then have an affiliated entity submit a second order to the Combined Waitlist for an additional 32 kW. Once the affiliated entity obtained its 32 kW, it could assign the power to the User. As a result, the User would obtain two times more power than the Combined Limit would allow. The Exchange has been informed that at least one User has contemplated informing affiliates for this purpose.

<sup>13</sup> 17 CFR 200.30–3(a)(12).

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