

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 21

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

File No. \* SR 2022 - \* 021

Amendment No. (req. for Amendments \*)

Filing by NASDAQ BX, Inc.

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

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

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010  
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 temporarily waive certain port-related fees at Equity 7, Section 115 and Equity 7, Section 130

### 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 \* Katie Last Name \* Hopkins

Title \* Associate General Counsel

E-mail \* Katie.Hopkins@nasdaq.com

Telephone \* (301) 232-4067 Fax

### Signature

Pursuant to the requirements of the Securities Exchange of 1934, NASDAQ BX, Inc. has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 10/24/2022

(Title \*)

By John Zecca

EVP and Chief Legal Officer

(Name \*)

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

 Date: 2022.10.24 13:23:44 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

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SR-BX-2022-021 19b-4.doc

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 \***

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SR-BX-2022-021 Exhibit 1.doc

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 Advanced Notice by Clearing Agencies \***

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

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

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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 Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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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 Sent As Paper Document

**Exhibit 4 - Marked Copies**

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

**Exhibit 5 - Proposed Rule Text**

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SR-BX-2022-021 Exhibit 5.doc

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

**Partial Amendment**

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

1. Text of the Proposed Rule Change

(a) Nasdaq BX, Inc. (“BX” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to temporarily waive certain port-related fees at Equity 7, Section 115 and Equity 7, Section 130, as described further below.

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

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

Katie Hopkins  
Associate General Counsel  
Nasdaq, Inc.  
301-232-4067

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

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

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

a. Purpose

The purpose of the proposed rule change is to amend Equity 7, Section 115 and Equity 7, Section 130 to provide a temporary fee waiver for newly added OUCH order entry ports (production and Testing Facility environments) with the updated version of the OUCH Order entry protocol,<sup>3</sup> referred to as “OUCH 5.0.” The Exchange has proposed<sup>4</sup> to introduce this new upgraded version of the OUCH Order entry protocol that will enable the Exchange to make functional enhancements and improvements to specific Order Types<sup>5</sup> and Order Attributes.<sup>6</sup>

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<sup>3</sup> The OUCH Order entry protocol is a proprietary protocol that allows subscribers to quickly enter orders into the System and receive executions. OUCH accepts limit Orders from members, and if there are matching Orders, they will execute. Non-matching Orders are added to the Limit Order Book, a database of available limit Orders, where they are matched in price-time priority. OUCH only provides a method for members to send Orders and receive status updates on those Orders. See <https://www.nasdaqtrader.com/Trader.aspx?id=OUCH>.

<sup>4</sup> See Securities Exchange Act Release No. 95695 (September 7, 2022), 87 FR 56122 (September 13, 2022).

<sup>5</sup> An “Order Type” is a standardized set of instructions associated with an Order that define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to Nasdaq. See Equity 1, Section 1(a)(11).

<sup>6</sup> An “Order Attribute” is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the Exchange. See *id.*

Temporary Fee Waiver Pursuant to Equity 7, Section 115

First, the Exchange proposes to amend Equity 7, Section 115 to provide a 30-day waiver of the OUCH production port fee for up to five<sup>7</sup> newly added OUCH ports with the updated version of the OUCH Order entry protocol, OUCH 5.0. The fee waiver would be offered for a three-month period, beginning on the date when OUCH 5.0 first becomes available on the Exchange, which such date the Exchange shall announce in an Equity Trader Alert. At the end of the three-month period, users would no longer be eligible for the waiver. A user may only receive the 30-day waiver once per port (up to a maximum of five ports) within the three-month window. The Exchange proposes to offer this temporary waiver to encourage new, prospective customers to adopt and returning customers to migrate to the updated version of the OUCH Order entry protocol.

Temporary Fee Waiver Pursuant to Equity 7, Section 130

Second, the Exchange proposes to amend Equity 7, Section 130 to provide a 30-day waiver of the \$300 Testing Facility fee in Section 130(d)(1)(B) for up to five<sup>8</sup> newly added OUCH Testing Facility ports with the updated version of the OUCH Order entry protocol, OUCH 5.0. This fee waiver would also be offered for a three-month period, beginning on a date specified by the Exchange in an Equity Trader Alert. At the end of the three-month period, users would no longer be eligible for the waiver. A user may only receive the 30-day waiver once per port (up to a maximum of five ports) within the three-month window. The Testing Facility provides subscribers with a virtual System

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<sup>7</sup> The fee waiver is limited to a maximum of five OUCH production ports per Web Central Registration Depository (“CRD”) membership.

<sup>8</sup> The fee waiver is limited to a maximum of five OUCH Testing Facility ports per CRD membership.

test environment that closely approximates the production environment on which they may test their automated systems that integrate with the Exchange. For example, the Testing Facility provides subscribers a virtual System environment for testing upcoming releases and product enhancements, as well as testing firm software prior to implementation. The Exchange proposes to offer this temporary waiver to encourage customers to test the updated version of the OUCH Order entry protocol free of charge.

b. 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's proposed changes to its fee schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful

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

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

in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>11</sup>

The Exchange believes that it is reasonable to provide temporary fee waivers for up to five newly added OUCH order entry ports (production and Testing Facility environments) with the updated version of the OUCH Order entry protocol, OUCH 5.0. The Exchange believes it is important to provide users an opportunity to test OUCH 5.0 free of charge. The temporary fee waivers would encourage users to test and adopt the enhanced OUCH Order entry protocol.

The Exchange believes that the proposed temporary fee waivers are an equitable allocation of reasonable dues, fees and other charges and not unfairly discriminatory because the Exchange will apply the same temporary fee waivers to all similarly situated members. The waivers will reduce fees for and benefit all users that add OUCH 5.0 order entry ports (production and Testing Facility environments) within the three-month window.

#### 4. Self-Regulatory Organization’s Statement on Burden on Competition

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

##### Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participants at a competitive disadvantage. The proposed change to

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<sup>11</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

temporarily waive fees for newly added OUCH 5.0 order entry ports (production and Testing Facility environments) will apply uniformly to all similarly situated participants. The temporary fee waivers are available to all users and would enable users to test the OUCH enhancements at no cost.

#### Intermarket Competition

The Exchange believes that the proposed temporary fee waivers will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from the other live exchanges and from off-exchange venues, which include alternative trading systems that trade national market system stock.

The proposed fee waivers are reflective of this competition because, as a threshold issue, the Exchange is a relatively small market so its ability to burden intermarket competition is limited. In this regard, even the largest U.S. equities exchange by volume only has 17-18% market share, which in most markets could hardly be categorized as having enough market power to burden competition. The proposed fee waivers would facilitate adoption of enhancements to the Exchange's System and Order entry protocols, which is pro-competitive because the enhancements bolster the efficiency, functionality, and overall attractiveness of the Exchange in an absolute sense and relative to its peers. Accordingly, the Exchange does not believe that the proposed change will impair the ability of members, participants, or competing order execution venues to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>12</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

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

The proposal is substantially similar to SR-Phlx-2022-037<sup>13</sup> and SR-NASDAQ-2022-054.<sup>14</sup>

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

Not applicable.

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

<sup>13</sup> Securities Exchange Act Release No. 95985 (October 5, 2022), 87 FR 61640 (October 12, 2022).

<sup>14</sup> Securities Exchange Act Release No. 96104 (October 19, 2022).

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

Not applicable.

11. Exhibits

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

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-BX-2022-021)

October \_\_, 2022

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Temporarily Waive Certain Port-related Fees at Equity 7, Section 115 and Equity 7, Section 130

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 24, 2022, 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 temporarily waive certain port-related fees at Equity 7, Section 115 and Equity 7, Section 130, as described further below. 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.

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

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to amend Equity 7, Section 115 and Equity 7, Section 130 to provide a temporary fee waiver for newly added OUCH order entry ports (production and Testing Facility environments) with the updated version of the OUCH Order entry protocol,<sup>3</sup> referred to as “OUCH 5.0.” The Exchange has proposed<sup>4</sup> to introduce this new upgraded version of the OUCH Order entry protocol that will enable the Exchange to make functional enhancements and improvements to specific Order Types<sup>5</sup> and Order Attributes.<sup>6</sup>

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<sup>3</sup> The OUCH Order entry protocol is a proprietary protocol that allows subscribers to quickly enter orders into the System and receive executions. OUCH accepts limit Orders from members, and if there are matching Orders, they will execute. Non-matching Orders are added to the Limit Order Book, a database of available limit Orders, where they are matched in price-time priority. OUCH only provides a method for members to send Orders and receive status updates on those Orders. See <https://www.nasdaqtrader.com/Trader.aspx?id=OUCH>.

<sup>4</sup> See Securities Exchange Act Release No. 95695 (September 7, 2022), 87 FR 56122 (September 13, 2022).

<sup>5</sup> An “Order Type” is a standardized set of instructions associated with an Order that define how it will behave with respect to pricing, execution, and/or posting to

Temporary Fee Waiver Pursuant to Equity 7, Section 115

First, the Exchange proposes to amend Equity 7, Section 115 to provide a 30-day waiver of the OUCH production port fee for up to five<sup>7</sup> newly added OUCH ports with the updated version of the OUCH Order entry protocol, OUCH 5.0. The fee waiver would be offered for a three-month period, beginning on the date when OUCH 5.0 first becomes available on the Exchange, which such date the Exchange shall announce in an Equity Trader Alert. At the end of the three-month period, users would no longer be eligible for the waiver. A user may only receive the 30-day waiver once per port (up to a maximum of five ports) within the three-month window. The Exchange proposes to offer this temporary waiver to encourage new, prospective customers to adopt and returning customers to migrate to the updated version of the OUCH Order entry protocol.

Temporary Fee Waiver Pursuant to Equity 7, Section 130

Second, the Exchange proposes to amend Equity 7, Section 130 to provide a 30-day waiver of the \$300 Testing Facility fee in Section 130(d)(1)(B) for up to five<sup>8</sup> newly added OUCH Testing Facility ports with the updated version of the OUCH Order entry protocol, OUCH 5.0. This fee waiver would also be offered for a three-month period,

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the Exchange Book when submitted to Nasdaq. See Equity 1, Section 1(a)(11).

<sup>6</sup> An “Order Attribute” is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the Exchange. See *id.*

<sup>7</sup> The fee waiver is limited to a maximum of five OUCH production ports per Web Central Registration Depository (“CRD”) membership.

<sup>8</sup> The fee waiver is limited to a maximum of five OUCH Testing Facility ports per CRD membership.

beginning on a date specified by the Exchange in an Equity Trader Alert. At the end of the three-month period, users would no longer be eligible for the waiver. A user may only receive the 30-day waiver once per port (up to a maximum of five ports) within the three-month window. The Testing Facility provides subscribers with a virtual System test environment that closely approximates the production environment on which they may test their automated systems that integrate with the Exchange. For example, the Testing Facility provides subscribers a virtual System environment for testing upcoming releases and product enhancements, as well as testing firm software prior to implementation. The Exchange proposes to offer this temporary waiver to encourage customers to test the updated version of the OUCH Order entry protocol free of charge.

## 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's proposed changes to its fee schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices,

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

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

products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>11</sup>

The Exchange believes that it is reasonable to provide temporary fee waivers for up to five newly added OUCH order entry ports (production and Testing Facility environments) with the updated version of the OUCH Order entry protocol, OUCH 5.0. The Exchange believes it is important to provide users an opportunity to test OUCH 5.0 free of charge. The temporary fee waivers would encourage users to test and adopt the enhanced OUCH Order entry protocol.

The Exchange believes that the proposed temporary fee waivers are an equitable allocation of reasonable dues, fees and other charges and not unfairly discriminatory because the Exchange will apply the same temporary fee waivers to all similarly situated members. The waivers will reduce fees for and benefit all users that add OUCH 5.0 order entry ports (production and Testing Facility environments) within the three-month window.

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<sup>11</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

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

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

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participants at a competitive disadvantage. The proposed change to temporarily waive fees for newly added OUCH 5.0 order entry ports (production and Testing Facility environments) will apply uniformly to all similarly situated participants. The temporary fee waivers are available to all users and would enable users to test the OUCH enhancements at no cost.

Intermarket Competition

The Exchange believes that the proposed temporary fee waivers will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from the other live exchanges and from off-exchange venues, which include alternative trading systems that trade national market system stock.

The proposed fee waivers are reflective of this competition because, as a threshold issue, the Exchange is a relatively small market so its ability to burden intermarket competition is limited. In this regard, even the largest U.S. equities exchange by volume only has 17-18% market share, which in most markets could hardly be categorized as having enough market power to burden competition. The proposed fee waivers would facilitate adoption of enhancements to the Exchange's System and Order entry protocols, which is pro-competitive because the enhancements bolster the

efficiency, functionality, and overall attractiveness of the Exchange in an absolute sense and relative to its peers. Accordingly, the Exchange does not believe that the proposed change will impair the ability of members, participants, or competing order execution venues to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or received.

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

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

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2022-021 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-2022-021. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-BX-2022-021 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.<sup>13</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

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

**Nasdaq BX, Inc. Rules**

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**Equity Rules**

\* \* \* \* \*

**Equity 7 Pricing Schedule**

\* \* \* \* \*

**Section 115. Ports and other Services.**

The following charges are assessed by the Exchange for ports to establish connectivity to the Nasdaq BX Equities Market, as well as ports to receive data from the Nasdaq BX Equities Market:

OUCH	\$500/port/month <sup>1</sup>
FIX Trading Port (FIX and FIX Lite (FLITE))	\$500/port/month
RASH	\$500/port/month
Multicast TotalView-ITCH (software-based)	\$1,000/port/month
TCP ITCH data feed	\$750/port/month
DROP	\$500/port/month
Trading Ports used in Test Mode	\$100/port/month
Data Retransmission Port	No charge
Disaster recovery port (OUCH, FIX Trading Port, RASH, and DROP)	\$25/port/month
Disaster recovery port (all other ports)	No charge

<sup>1</sup>Temporary 30-Day Fee Waiver for OUCH 5.0 Ports. The Exchange shall offer users a 30-day waiver of the OUCH port fee for up to five newly added OUCH ports with the updated version of the OUCH Order entry protocol, referred to as "OUCH 5.0." This fee waiver shall be offered for a three-month period, beginning on the date when OUCH 5.0 first becomes available on the Exchange, which such date the Exchange shall announce in an Equity Trader Alert.

- Remote Multicast ITCH Wave Ports:

Mahwah, NJ: \$5,000 for installation and then \$7,500 per month;

All others: \$2,500 for installation and then \$5,000 per month.

These fees are subject to a 30-day testing period during which otherwise applicable fees are waived, and a one-year minimum purchase period.

- TradeInfo BX is available to Members for a fee of \$95 per user per month.

† Fees are prorated for the first month of service under this section. Upon cancellation, participants are required to pay for service for the remainder of the month, regardless of whether it is the first month of service.

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### Section 130. Other Services

(a) – (c) No change.

(d) Testing Facilities

The Exchange operates two test environments. One is located in Ashburn, Virginia and the other in Carteret, New Jersey. Unless otherwise noted, reference to the "Testing Facility" applies to both environments.

(1) Subscribers that conduct tests of their Exchange access protocols connection or market data vendor feeds through the Exchange's Testing Facility (Testing Facility) shall pay \$300 per port, per month.<sup>1</sup> This fee will be waived for BX Options testing.

(2) Subscribers to the Testing Facility located in Carteret, New Jersey shall pay a fee of \$1,000 per hand-off, per month for connection to the Testing Facility. The handoff fee includes either a 1Gb or 10Gb switch port and a cross connect to the Testing Facility. Subscribers shall also pay a one-time installation fee of \$1,000 per hand-off.

The connectivity provided under this Section also provides connectivity to the other testing environments of The Nasdaq Stock Market LLC, Nasdaq PHLX LLC, Nasdaq ISE, LLC, Nasdaq MRX LLC, and Nasdaq GEMX, LLC.

<sup>1</sup>Temporary 30-Day Fee Waiver for OUCH 5.0 Testing Facility Ports. The Exchange shall offer subscribers a 30-day waiver of the \$300 Testing Facility fee in this paragraph (d)(1) of Section 130 for up to five newly added OUCH Testing Facility ports with the updated version of the OUCH Order entry protocol, referred to as "OUCH 5.0." This fee waiver shall be offered for a three-month period, beginning on a date to be specified by the Exchange in an Equity Trader Alert.

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