Required fields are shown with yellow backgrounds and asterisks.

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

File No. * SR 2023 - * 008
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 (i) adjust or eliminate several of the Exchanges transaction credits, at Equity 7, Section 118(a) and (ii) eliminate several of the Exchanges transaction fees, at Equity 7, Section 118(a).

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	04/03/2023	(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: 2023.04.03 11:46:15 -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 EFFS website.

Form 19b-4 Information *

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SR-BX-2023-008 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-2023-008 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-2023-008 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")[1] and Rule 19b-4 thereunder,[2] is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposal to (i) adjust or eliminate several of the Exchange's transaction credits, at Equity 7, Section 118(a); and (ii) eliminate several of the Exchange's transaction fees, at Equity 7, Section 118(a), 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

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 operates on the "taker-maker" model, whereby it generally pays credits to members that take liquidity and charges fees to members that provide liquidity. Currently, the Exchange has a schedule, at Equity 7, Section 118(a), which consists of several different credits that it provides for orders in securities priced at $1 or more per share that access liquidity on the Exchange and several different charges that it assesses for orders in such securities that add liquidity on the Exchange. The purpose of the proposed rule change is to amend this schedule of fees and credits, at Equity 7, Section 118(a) to: (i) adjust or eliminate several of the Exchange's transaction credits; and (ii) eliminate several of the Exchange's transaction fees.

Revision to and Elimination of Transaction Credits

The Exchange proposes to eliminate two of the Exchange's transaction credits and adjust three of the Exchange's transaction credits.

Currently, the Exchange provides $0.0015, $0.0015, and $0.0014 per share executed credits for securities in Tape A, Tape B, and Tape C, respectively, to a member accessing liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a non-displayed price): (i) whose combined liquidity removing and adding activities equal or exceed 0.075% of total Consolidated Volume during a month; and (ii) that adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month. The Exchange proposes to eliminate this credit because it has not been successful in accomplishing its objectives. That is, it has not induced members to materially grow liquidity removing and adding activity on the Exchange. The Exchange also seeks to simplify its schedule of credits. The Exchange has limited resources to allocate to incentive programs and it must, from time to time, reallocate resources to maximize their net impact on the Exchange, market quality, and participants.

Currently, the Exchange provides a $0.0018 per share executed credit for securities in Tape B to a member accessing liquidity that (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a non-displayed price): (i) accesses at least 60% more liquidity in Tape B securities, as a percentage of total Consolidated Volume during a month, than it did during April 2021; (ii) accesses liquidity in Tape B securities equal to or exceeding 0.035% of total Consolidated Volume during a month; and (iii) adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month. The Exchange proposes to eliminate this credit because the baseline month for the growth element of the credit – April 2021 – is no longer a relevant benchmark. As such, this credit no longer provides a growth incentive that is aligned with the Exchange’s needs. Again, the Exchange has limited resources to devote to incentive programs, and it is appropriate for the Exchange to reallocate these incentives periodically in a manner that best achieves the Exchange’s overall mix of objectives.

Presently, the Exchange provides a $0.0015 per share executed credit for securities in Tape C to a member accessing liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a non-displayed price): (i) whose combined liquidity removing and adding activities equal or exceed 0.10% of total Consolidated Volume during a month; (ii) that accesses liquidity equal to or exceeding 0.05% of total Consolidated Volume during a month; and (iii) that adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month. The Exchange proposes to increase the amount of this credit for securities in Tape C to $0.0016 per share executed.

Currently, the Exchange provides a $0.0009 per share executed credit for securities in Tape C to a member accessing liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a non-displayed price): (i) whose combined liquidity removing and adding activities equal or exceed 0.05% of total Consolidated Volume during a month; and (ii) that adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month. The Exchange proposes to increase the amount of this credit for securities in Tape C to $0.0010 per share executed.

Finally, the Exchange currently provides a $0.0004 per share executed credit for securities in Tape C to a member accessing liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a non-displayed price) that adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month. The Exchange proposes to increase the amount of this credit for securities in Tape C to $0.0005 per share executed.

The Exchange proposes to increase the three credits described above for securities in Tape C to make these credit amounts consistent with the credits offered for securities in Tapes A and B. These adjustments will align existing incentives for members to add liquidity or executions on the Exchange.

Elimination of Transaction Fees

In addition, the Exchange proposes to eliminate six of the Exchange's transaction fees.

Currently, the Exchange charges members providing liquidity $0.0012 per share executed for securities in Tapes A, B, and C for displayed orders entered by a member that adds liquidity equal to or exceeding 0.25% of total Consolidated Volume during a month. The Exchange charges members providing liquidity $0.0014 per share executed for securities in Tapes A, B, and C for displayed orders entered by a member that adds liquidity equal to or exceeding 0.15% of total Consolidated Volume during a month. The Exchange charges members providing liquidity $0.0017 per share executed for securities in Tapes A, B, and C for displayed orders entered by a member that adds liquidity equal to or exceeding 0.10% of total Consolidated Volume during a month. The Exchange proposes to eliminate these fees because they have not been successful in accomplishing their objectives. That is, they have not induced members to materially add liquidity on the Exchange. The Exchange also seeks to simplify its schedule of fees. The Exchange has limited resources to allocate to incentive programs and it must, from time to time, reallocate resources to maximize their net impact on the Exchange, market quality, and participants.

Presently, the Exchange charges members providing liquidity $0.0017 per share executed for securities in Tapes A, B, and C for displayed orders entered by a member that: (i) adds liquidity equal to or exceeding an average daily volume of 9,500,000 shares in a month; and (ii) adds at least 15% more liquidity relative to the member's March 2021 average daily volume of liquidity provided. The Exchange charges members providing liquidity $0.0020 per share executed for securities in Tapes A, B, and C for displayed orders that adds liquidity entered by a member that: (i) adds liquidity equal to or exceeding an average daily volume of 2,500,000 shares in a month; and (ii) adds at least 25% more liquidity relative to the member's March 2021 average daily volume of liquidity provided. The Exchange proposes to eliminate these fees because the baseline month for the growth element of the fees – March 2021 – is no longer a relevant benchmark. As such, this fee no longer provides a growth incentive that is aligned with the Exchange's needs. As noted, the Exchange has limited resources to devote to incentive programs, and it is appropriate for the Exchange to reallocate these incentives periodically in a manner that best achieves the Exchange's overall mix of objectives.

Finally, the Exchange also currently charges members providing liquidity $0.0024 per share executed for securities in Tapes A, B, and C for non-displayed orders (other than orders with Midpoint pegging) entered by a member that (i) adds and removes liquidity equal to or exceeding 0.15% total Consolidated Volume during a month; and (ii) achieves at least a 35% ratio of its displayed liquidity adding activity to its total liquidity adding activity during a month. The Exchange proposes to eliminate this fee because the fee has not been successful in accomplishing its objective and the Exchange seeks to streamline its fee schedule.

b. <u>Statutory Basis</u>

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[3] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[4] in

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[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4) and (5).

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 schedule of credits 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 fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' … As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'…."[5]

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

5 NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

broader forms that are most important to investors and listed companies."[6]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange believes it is reasonable, equitable, and not unfairly discriminatory to eliminate two of the Exchange's transaction credits, adjust three of the Exchange's transaction credits, and eliminate six of the Exchange's transaction fees. The Exchange seeks to simplify and streamline its schedule of credits and fees by: (i) eliminating credits and fees that have not been successful in inducing members to grow their liquidity adding or removing activity or that are no longer based on relevant benchmarks; and (ii) adjusting several credits to securities in Tape C to streamline such credits to those provided in Tapes A and B. The proposed changes are designed to better align with the Exchange's needs. The Exchange has limited resources to devote to incentive programs, and it is appropriate for the Exchange to reallocate these incentives periodically in a manner that best achieves the Exchange's overall mix of objectives.

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

Those participants that are dissatisfied with the eliminations and adjustments to the Exchange's schedule of credits and fees are free to shift their order flow to competing venues that provide more generous incentives or less stringent qualifying criteria.

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 proposals will place any category of Exchange participant at a competitive disadvantage.

The Exchange intends for its proposed changes to its credits and fees to reallocate its limited resources more efficiently and for optimized effect, to recalibrate them to reflect changing market behavior, and to align them with the Exchange's overall mix of objectives. The Exchange notes that its members are free to trade on other venues to the extent they believe that these proposals are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes.

Intermarket Competition

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

Even as one of the largest U.S. equities exchanges by volume, the Exchange has less than 20% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues, which comprises upwards of 50% of industry volume.

In sum, if the change proposed herein is unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed change will impair the ability of members 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,[7] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

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

5. Text of the proposed rule change.

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7 15 U.S.C. 78s(b)(3)(A)(ii).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-BX-2023-008)

April _, 2023

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Schedule of Fees and Credits at Equity 7, Section 118

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 3, 2023, 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 (i) adjust or eliminate several of the Exchange's transaction credits, at Equity 7, Section 118(a); and (ii) eliminate several of the Exchange's transaction fees, at Equity 7, Section 118(a), 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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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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

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

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

1. Purpose

The Exchange operates on the "taker-maker" model, whereby it generally pays credits to members that take liquidity and charges fees to members that provide liquidity. Currently, the Exchange has a schedule, at Equity 7, Section 118(a), which consists of several different credits that it provides for orders in securities priced at $1 or more per share that access liquidity on the Exchange and several different charges that it assesses for orders in such securities that add liquidity on the Exchange. The purpose of the proposed rule change is to amend this schedule of fees and credits, at Equity 7, Section 118(a) to: (i) adjust or eliminate several of the Exchange's transaction credits; and (ii) eliminate several of the Exchange's transaction fees.

Revision to and Elimination of Transaction Credits

The Exchange proposes to eliminate two of the Exchange's transaction credits and adjust three of the Exchange's transaction credits.

Currently, the Exchange provides $0.0015, $0.0015, and $0.0014 per share executed credits for securities in Tape A, Tape B, and Tape C, respectively, to a member accessing liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a non-displayed price): (i) whose combined liquidity removing and adding activities equal or exceed 0.075% of total Consolidated Volume during a month; and (ii) that adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month. The Exchange proposes to eliminate this credit because it has not been successful in accomplishing its objectives. That is, it has not induced members to materially grow liquidity removing and adding activity on the Exchange. The Exchange also seeks to simplify its schedule of credits. The Exchange has limited resources to allocate to incentive programs and it must, from time to time, reallocate resources to maximize their net impact on the Exchange, market quality, and participants.

Currently, the Exchange provides a \$0.0018 per share executed credit for securities in Tape B to a member accessing liquidity that (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a non-displayed price): (i) accesses at least 60% more liquidity in Tape B securities, as a percentage of total Consolidated Volume during a month, than it did during April 2021; (ii) accesses liquidity in Tape B securities equal to or exceeding 0.035% of total Consolidated Volume during a month; and (iii) adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month. The Exchange proposes to eliminate this credit because the baseline month for the growth element of the credit – April 2021 – is no longer a relevant benchmark. As such, this credit no longer provides a growth incentive that is aligned with the Exchange’s needs. Again, the Exchange has limited resources to devote to incentive programs, and it is appropriate for the Exchange to reallocate these incentives periodically in a manner that best achieves the Exchange's overall mix of objectives.

Presently, the Exchange provides a $0.0015 per share executed credit for securities in Tape C to a member accessing liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a non-displayed price): (i) whose combined liquidity removing and adding activities equal or exceed 0.10% of total Consolidated Volume during a month; (ii) that accesses liquidity equal to or exceeding 0.05% of total Consolidated Volume during a month; and (iii) that adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month. The Exchange proposes to increase the amount of this credit for securities in Tape C to $0.0016 per share executed.

Currently, the Exchange provides a $0.0009 per share executed credit for securities in Tape C to a member accessing liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a non-displayed price): (i) whose combined liquidity removing and adding activities equal or exceed 0.05% of total Consolidated Volume during a month; and (ii) that adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month. The Exchange proposes to increase the amount of this credit for securities in Tape C to $0.0010 per share executed.

Finally, the Exchange currently provides a $0.0004 per share executed credit for securities in Tape C to a member accessing liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a non-displayed price) that adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month. The Exchange proposes to increase the amount of this credit for securities in Tape C to $0.0005 per share executed.

The Exchange proposes to increase the three credits described above for securities in Tape C to make these credit amounts consistent with the credits offered for securities in Tapes A and B. These adjustments will align existing incentives for members to add liquidity or executions on the Exchange.

Elimination of Transaction Fees

In addition, the Exchange proposes to eliminate six of the Exchange's transaction fees.

Currently, the Exchange charges members providing liquidity $0.0012 per share executed for securities in Tapes A, B, and C for displayed orders entered by a member that adds liquidity equal to or exceeding 0.25% of total Consolidated Volume during a month. The Exchange charges members providing liquidity $0.0014 per share executed for securities in Tapes A, B, and C for displayed orders entered by a member that adds liquidity equal to or exceeding 0.15% of total Consolidated Volume during a month. The Exchange charges members providing liquidity $0.0017 per share executed for securities in Tapes A, B, and C for displayed orders entered by a member that adds liquidity equal to or exceeding 0.10% of total Consolidated Volume during a month. The Exchange proposes to eliminate these fees because they have not been successful in accomplishing their objectives. That is, they have not induced members to materially add liquidity on the Exchange. The Exchange also seeks to simplify its schedule of fees. The Exchange has limited resources to allocate to incentive programs and it must, from time to time, reallocate resources to maximize their net impact on the Exchange, market quality, and participants.

Presently, the Exchange charges members providing liquidity \$0.0017 per share executed for securities in Tapes A, B, and C for displayed orders entered by a member that: (i) adds liquidity equal to or exceeding an average daily volume of 9,500,000 shares in a month; and (ii) adds at least 15% more liquidity relative to the member's March 2021 average daily volume of liquidity provided. The Exchange charges members providing liquidity \$0.0020 per share executed for securities in Tapes A, B, and C for displayed orders that adds liquidity entered by a member that: (i) adds liquidity equal to or exceeding an average daily volume of 2,500,000 shares in a month; and (ii) adds at least 25% more liquidity relative to the member's March 2021 average daily volume of liquidity provided. The Exchange proposes to eliminate these fees because the baseline month for the growth element of the fees – March 2021 – is no longer a relevant benchmark. As such, this fee no longer provides a growth incentive that is aligned with the Exchange's needs. As noted, the Exchange has limited resources to devote to incentive programs, and it is appropriate for the Exchange to reallocate these incentives periodically in a manner that best achieves the Exchange's overall mix of objectives.

Finally, the Exchange also currently charges members providing liquidity \$0.0024 per share executed for securities in Tapes A, B, and C for non-displayed orders (other than orders with Midpoint pegging) entered by a member that (i) adds and removes liquidity equal to or exceeding 0.15% total Consolidated Volume during a month; and (ii) achieves at least a 35% ratio of its displayed liquidity adding activity to its total liquidity adding activity during a month. The Exchange proposes to eliminate this fee because the fee has not been successful in accomplishing its objective and the Exchange seeks to streamline its fee schedule.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[3] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[4] 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 schedule of credits 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 fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' … As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a

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[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4) and (5).

monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'…."[5]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[6]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

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5 NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

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

The Exchange believes it is reasonable, equitable, and not unfairly discriminatory to eliminate two of the Exchange's transaction credits, adjust three of the Exchange's transaction credits, and eliminate six of the Exchange's transaction fees. The Exchange seeks to simplify and streamline its schedule of credits and fees by: (i) eliminating credits and fees that have not been successful in inducing members to grow their liquidity adding or removing activity or that are no longer based on relevant benchmarks; and (ii) adjusting several credits to securities in Tape C to streamline such credits to those provided in Tapes A and B. The proposed changes are designed to better align with the Exchange's needs. The Exchange has limited resources to devote to incentive programs, and it is appropriate for the Exchange to reallocate these incentives periodically in a manner that best achieves the Exchange's overall mix of objectives.

Those participants that are dissatisfied with the eliminations and adjustments to the Exchange's schedule of credits and fees are free to shift their order flow to competing venues that provide more generous incentives or less stringent qualifying criteria.

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 proposals will place any category of Exchange participant at a competitive disadvantage.

The Exchange intends for its proposed changes to its credits and fees to reallocate its limited resources more efficiently and for optimized effect, to recalibrate them to reflect changing market behavior, and to align them with the Exchange's overall mix of objectives. The Exchange notes that its members are free to trade on other venues to the extent they believe that these proposals are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes.

Intermarket Competition

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

Even as one of the largest U.S. equities exchanges by volume, the Exchange has less than 20% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues, which comprises upwards of 50% of industry volume.

In sum, if the change proposed herein is unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed change will impair the ability of members 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.[7]

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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[7] 15 U.S.C. 78s(b)(3)(A)(ii).

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2023-008 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-2023-008. 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-2023-008 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.[8]

J. Matthew DeLesDernier
Assistant Secretary

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8 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

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Equity 7: Pricing Schedule

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Section 118. Nasdaq BX Equities System Order Execution and Routing

(a) The following charges and credits shall apply to the use of the order execution and routing services of the Nasdaq BX Equities System by members for all securities priced at $1 or more per share that it trades. As used in this rule, the term "Consolidated Volume" shall mean the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity. As used in this rule, "price improvement" shall mean instances when the accepted price of an order differs from the executed price of an order.

Credit for entering order that accesses liquidity in the Nasdaq BX Equities System:

	Tape A	Tape B	Tape C
Order that receives price improvement and executes against an order with a Non-displayed price:	$0.0000 per share executed	$0.0000 per share executed	$0.0000 per share executed
Order with Midpoint pegging that removes liquidity:	$0.0000 per share executed	$0.0000 per share executed	$0.0000 per share executed
Order that accesses liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and	$0.0018 per share executed	$0.0018 per share executed	$0.0018 per share executed

execute against an order with a Non-displayed price) entered by a member: (i) whose combined liquidity removing and adding activities equal or exceed 0.15% of total Consolidated Volume during a month; (ii) that accesses liquidity equal to or exceeding 0.05% of total Consolidated Volume during a month; and (iii) that adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month:			
Order that accesses liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member: (i) whose combined liquidity removing and adding activities equal or exceed 0.10% of total Consolidated Volume during a month; (ii) that accesses liquidity equal to or exceeding 0.05% of total Consolidated Volume during a month; and (iii)that adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month:	$0.0016 per share executed	$0.0016 per share executed	$0.00[15]16 per share executed
[Order that accesses liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member: (i) whose combined liquidity removing and adding activities equal or exceed 0.075% of total	[$0.0015 per share executed]	[$0.0015 per share executed]	[$0.0014 per share executed]

Consolidated Volume during a month; and (ii) that adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month:]			
Order that accesses liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member : (i) whose combined liquidity removing and adding activities equal or exceed 0.05% of total Consolidated Volume during a month; and (ii) that adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month:	$0.0010 per share executed	$0.0010 per share executed	$0.00[09]10 per share executed
[Order that accesses liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member that: (i) accesses at least 60% more liquidity in Tape B securities, as a percentage of total Consolidated Volume during a month, than it did during April 2021; (ii) accesses liquidity in Tape B securities equal to or exceeding 0.035% of total Consolidated Volume during a month; and (iii) adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month:]	[N/A]	[$0.0018 per share executed]	[N/A]
Order that accesses liquidity (excluding orders with Midpoint pegging and excluding orders that receive	$0.0005 per share executed	$0.0005 per share executed	$0.000[4]5 per share executed

price improvement and execute against an order with a Non-displayed price) entered by a member that adds liquidity equal to or exceeding an average daily volume of 50,000 shares in a month:			
Charge for entering order that accesses liquidity in the Nasdaq BX Equities System:			
	Tape A	Tape B	Tape C
Charge for order (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) that accesses liquidity entered by a member that does not add at least an average daily volume of 50,000 shares to the Exchange during a month:	$0.0007 per share executed	$0.0007 per share executed	$0.0007 per share executed
Charge for providing liquidity through the Nasdaq BX Equities System:			
	Tape A	Tape B	Tape C
[Displayed order entered by a member that adds liquidity equal to or exceeding 0.25% of total Consolidated Volume during a month:]	[$0.0012 per share executed]	[$0.0012 per share executed]	[$0.0012 per share executed]
[Displayed order entered by a member that adds liquidity equal to or exceeding 0.15% of total Consolidated Volume during a month:]	[$0.0014 per share executed]	[$0.0014 per share executed]	[$0.0014 per share executed]
[Displayed order entered by a member that adds liquidity equal to or exceeding 0.10% of total Consolidated Volume during a month:]	[$0.0017 per share executed]	[$0.0017 per share executed]	[$0.0017 per share executed]
[Displayed order entered by a member that: (i) adds liquidity equal to or exceeding an	[$0.0017 per share executed]	[$0.0017 per share executed]	[$0.0017 per share executed]

average daily volume of 9,500,000 shares in a month; and (ii) adds at least 15% more liquidity relative to the member's March 2021 average daily volume of liquidity provided:]			
Displayed order entered by a member that adds liquidity equal to or exceeding 0.05% of total Consolidated Volume during a month:	$0.0020 per share executed	$0.0020 per share executed	$0.0020 per share executed
[Displayed order that adds liquidity entered by a member that: (i) adds liquidity equal to or exceeding an average daily volume of 2,500,000 shares in a month; and (ii) adds at least 25% more liquidity relative to the member's March 2021 average daily volume of liquidity provided:]	[$0.0020 per share executed]	[$0.0020 per share executed]	[$0.0020 per share executed]
Order with Midpoint pegging entered by a member that adds 0.02% of total Consolidated Volume of non-displayed liquidity excluding a buy (sell) order that receives an execution price that is lower (higher) than the midpoint of the NBBO:	$0.0005 per share executed	$0.0005 per share executed	$0.0005 per share executed
Order with Midpoint pegging entered by other member excluding a buy (sell) order that receives an execution price that is lower (higher) than the midpoint of the NBBO:	$0.0010 per share executed	$0.0010 per share executed	$0.0010 per share executed
Buy (sell) order with Midpoint pegging that receives an execution price that is lower (higher) than the midpoint of the NBBO:	$0.0030 per share executed	$0.0030 per share executed	$0.0030 per share executed
[Non-displayed orders (other than orders with Midpoint	[$0.0024 per share	[$0.0024 per share	[$0.0024 per share executed]

pegging) entered by a member that (i) adds and removes liquidity equal to or exceeding 0.15% total Consolidated Volume during a month; and (ii) achieves at least a 35% ratio of its displayed liquidity adding activity to its total liquidity adding activity during a month:]	executed]	executed]	
All other non-displayed orders:	$0.0030 per share executed	$0.0030 per share executed	$0.0030 per share executed
All other orders:	$0.0030 per share executed	$0.0030 per share executed	$0.0030 per share executed
Other charges for entering orders in the Nasdaq BX Equities System:			
	Tape A	Tape B	Tape C
Charge for BSTG or BSCN order that executes in a venue other than the Nasdaq BX Equities System:	$0.0030 per share executed at NYSE	$0.0030 per share executed at NYSE	$0.0030 per share executed at NYSE
	$0.0030 per share executed at venues other than NYSE	$0.0030 per share executed at venues other than NYSE	$0.0030 per share executed at venues other than NYSE
Charge for BMOP order that executes in a venue other than the Nasdaq BX Equities System:	$0.0035 per share executed at NYSE	$0.0035 per share executed at NYSE	$0.0035 per share executed at NYSE
	$0.0035 per share executed at venues other than NYSE	$0.0035 per share executed at venues other than NYSE	$0.0035 per share executed at venues other than NYSE
Charge for BTFY order that executes in a venue other than the Nasdaq BX Equities System:	$0.0030 per share executed at NYSE	$0.0030 per share executed at NYSE	$0.0030 per share executed at NYSE
	$0.0030 per share	$0.0030 per share	$0.0030 per share executed

	executed at Nasdaq	executed at Nasdaq	at Nasdaq
	$0.0030 per share executed at Nasdaq PSX	$0.0030 per share executed at Nasdaq PSX	$0.0030 per share executed at Nasdaq PSX
	$0.0007 per share executed at venues other than NYSE, Nasdaq and Nasdaq PSX	$0.0007 per share executed at venues other than NYSE, Nasdaq and Nasdaq PSX	$0.0007 per share executed at venues other than NYSE, Nasdaq and Nasdaq PSX
Charge for BCRT order that executes in a venue other than the Nasdaq BX Equities System:	$0.0030 per share executed at Nasdaq PSX	$0.0030 per share executed at Nasdaq PSX	$0.0030 per share executed at Nasdaq PSX
	$0.0030 per share executed at Nasdaq	$0.0030 per share executed at Nasdaq	$0.0030 per share executed at Nasdaq
Charge for BDRK and BCST order that executes in a venue other than the Nasdaq BX Equities System:	$0.0010 per share executed	$0.0010 per share executed	$0.0010 per share executed
Charge for SCAR order that executes in a venue other than the Nasdaq BX Equities System:	$0.00295 per share executed at Nasdaq	$0.00295 per share executed at Nasdaq	$0.00295 per share executed at Nasdaq
	$0.0029 per share executed at Nasdaq PSX	$0.0029 per share executed at Nasdaq PSX	$0.0029 per share executed at Nasdaq PSX

(b) – (g) No changes.

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