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

File No. * SR 2024 - * 034

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 *).

Proposal to Initiate Distributor fees for BX Options Trade Outline

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 * Daniel Last Name * Cantu

Title * Principal Associate General Counsel

E-mail * daniel.cantu@nasdaq.com

Telephone * (301) 978-8469 Fax

Signature

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

Date 09/03/2024


(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.

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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-2024-034 19b-4.docx

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-2024-034 Exhibit 1.docx

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

Add Remove View

SR-BX-2024-034 Exhibit 5.docx

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 initiate Distributor fees for BX Options Trade Outline. Separate fees will be proposed for End of Day, Intra-Day and Historical data, 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:

Daniel A. Cantu
AVP, Principal Associate General Counsel
Nasdaq, Inc.
(301) 978-8469

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 purpose of the proposed rule change is to initiate fees for the distribution of BX Trade Outline. Distributor fees will be \$750 per month for the End of Day product, and \$1,500 per month for the Intra-Day product.

Historical data will be available through ad hoc requests for information for \$500 per month of End of Day information, and \$750 per month for historical information. Current Distributors³ will also be able to purchase the most recent 36 months of historical data⁴ at the discounted price of \$6,000 for End of Day information, and \$9,000 for Intra-Day information. Historical information will be available starting in December 2014.

BX Options Trade Outline

BX Options Trade Outline will provide aggregate quantity and volume information for trades on the Exchange for all series⁵ during a trading session.⁶ Information is provided in the following categories: (i) total exchange volume for Intra-Day information and total exchange and industry volume for End of Day information for each reported series; (ii) open interest for the series; (iii) aggregate quantity of trades and

³ A “Current Distributor” is any firm that purchases either the End of Day Product for the current month, or the Intra-Day Product for the current month in the same month that the 36 months of historical End of Day or Intra-Day data is ordered.

⁴ The most recent 36 months is measured based on the date of purchase of the 36 months of data by a Current Distributor.

⁵ Every options series trades as a distinct symbol; the terms “series” and “symbol” are therefore synonyms.

⁶ See Securities Exchange Act Release No. 100792 (August 21, 2024), 89 FR 68676 (August 27, 2024) (SR-BX-2024-028).

aggregate trade volume effected to open a position,⁷ characterized by origin type (Customers,⁸ Broker-Dealers,⁹ BX Options Market Makers,¹⁰ Firms,¹¹ and Professionals¹²); and (iv) aggregate quantity of trades and aggregate trade volume effected to close a position,¹³ characterized by origin type (Customers, Broker-Dealers, BX Options Market Makers, Firms, and Professionals).¹⁴

Information will be provided on an End of Day, Intra-Day, and historical basis.

⁷ This would include the aggregate number of “opening purchase transactions,” defined as a BX Options Transaction that creates or increases a long position in an options contract, see Options 1, Section 1(a)(35), and the aggregate number of “opening writing transactions,” defined as a BX Options Transaction that creates or increases a short position in an options contract. See Options 1, Section 1(a)(36).

⁸ The term “Customer” applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (“OCC”) which is not for the account of broker or dealer or for the account of a “Professional” (as that term is defined in Options 1, Section 1(a)(48)). See Options 7, Section 1(a).

⁹ The term “Broker-Dealer” applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category. See Options 7, Section 1(a).

¹⁰ The term “BX Options Market Maker” is a Participant that has registered as a Market Maker on BX Options pursuant to Options 2, Section 1, and must also remain in good standing pursuant to Options 2, Section 9. In order to receive Market Maker pricing in all securities, the Participant must be registered as a BX Options Market Maker in at least one security. See Options 7, Section 1(a).

¹¹ The term “Firm” applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC. See Options 7, Section 1(a).

¹² The term “Professional” means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Options 1, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants. See Options 7, Section 1(a).

¹³ This would include the aggregate number of “closing purchase transactions” in the affected series, defined as a BX Options Transaction that reduces or eliminates a short position in an options contract, see Options 1, Section 1(a)(19), and the aggregate number of “closing writing transactions,” defined as a BX Options Transaction that reduces or eliminates a long position in an options contract. See Options 1, Section 1(a)(20).

¹⁴ These are the same types of information available on PHOTO, and the other trade outline products offered by Nasdaq exchanges.

End of Day Information

The BX Trade Outline End of Day file will provide opening buy, closing buy, opening sell and closing sell information, including option first trade price, option high trade price, option low trade price, and option last trade price.

The End of Day file will be updated during an overnight process with additional fields¹⁵ and will be available the following morning, providing aggregate data for the entire trading session.

Intra-Day Information

Intra-Day information will be released in scheduled “snapshots” available every 10 minutes for all options series over the course of the trading day. These snapshots will be updated to reflect whatever activity occurred, or to indicate that no activity occurred.¹⁶ This is the same schedule currently offered on PHLX, ISE, GEMX, and Nasdaq Options Market.¹⁷

Historical Information

Historical data will be available through ad hoc requests for information in both End of Day and Intra-Day formats for all option series traded for every calendar month after December 2014, based on specific request.¹⁸ Historical data is useful in analyzing

¹⁵ The additional fields are: First Trade Price, High Trade Price, Low Trade Price, Last Trade Price, Underlying Close, Moneyness, Total Exchange volume, Total Industry Volume for the Series, and Open Interest.

¹⁶ Subscribers will receive the first snapshot at 9:42 a.m. ET, representing data captured from 9:30 a.m. to 9:40 a.m., and the second calculation at 9:52 a.m., representing data from both the most recent snapshot and previous snapshots, and continuing over the course of the trading day. The final Intra-Day snapshot will be distributed at 4:15 p.m.

¹⁷ See Infra, notes 21 through 23.

¹⁸ Market participants generally use historical files for model testing and research, and the period of time required by a particular market participant will depend on its unique testing and research needs as well as whether it is using End of Day or Intra-Day information. Some customers, for

option trade and volume data, evaluating historical trends in the trading activity of a particular option series, and creating and testing trading models and analytical strategies. In Nasdaq's experience, historical information is often purchased concurrently with a new subscription to a trade outline product.

Patterned after PHLX Options Trade Outline "PHOTO,"¹⁹ BX Trade Options Outline replicates in substance²⁰ PHOTO and the other trade outline products currently offered by Nasdaq ISE, LLC ("ISE"),²¹ Nasdaq GEMX, LLC ("GEMX"),²² and the options market operated by the Nasdaq Stock Market LLC ("Nasdaq Options Market" or "NOM").²³ Similar products are also available from options markets not affiliated with Nasdaq such as Cboe Options Exchange ("Cboe"),²⁴ NYSE American Options ("NYSE

example, may request years of data, while others only months, or even a single month. The same principle applies to End of Day vs. Intra-Day information.

¹⁹ See PHLX Rules, Options 7, Section 10; Securities Exchange Act Release No. 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR-Phlx-2010-121) (introducing PHOTO on September 1, 2010).

²⁰ The underlying information for BX Options Trade Outline will be the same as the other trade outline products offered by the Nasdaq exchanges. Presentation will differ, however, in that data will not be subdivided into categories. For example, the trade outline products offered by PHLX, ISE, GEMX and NOM subdivide the aggregate volume traded for each reported series into categories according to the quantity of contracts (less than 100, 100-199, and greater than 200). BX Options Trade Outline will not separate this information into quantitative categories, but rather will provide the same aggregate volume information as PHOTO and the other Nasdaq exchanges without separating the information into categories according to the quantity of contracts.

²¹ See Nasdaq ISE Rules, Options 7, Section 10(A) and (B) (Nasdaq ISE Open/Close Trade Profile End of Day; Nasdaq ISE Open/Close Trade Profile Intraday).

²² See Nasdaq GEMX Rules, Options 7, Sections 7(D) (Nasdaq GEMX Open/Close End of Day Trade Profile) and 7(E) (Nasdaq GEMX Open/Close Intraday Trade Profile).

²³ See Nasdaq Rules, Options 7, Section 4 (Nasdaq Options Trade Outline ("NOTO")).

²⁴ See, e.g., Securities Exchange Act Release No. 94913 (May 13, 2022), 87 FR 30534 (May 19, 2022) (SR-Cboe-2022-023) (describing End of Day and Intra-Day Open-Close Data as a summary of trading activity on the exchange at the option level by origin, side of the market, price, and transaction type).

American”),²⁵ NYSE Arca Options (“NYSE Arca”),²⁶ BOX Options Market LLC (“BOX”),²⁷ MIAX Pearl Options Exchange (“Pearl”),²⁸ and others. BX Options Trade Outline, like all of these other trade outline products, provides data to help market participants understand market sentiment on the Exchange and to support the creation of trading models useful in both options and equities markets.

Nasdaq’s experience is that investment banks, market makers, asset managers and other buy-side investors purchase trade outline products. In general, the relative value of these products depends on the volume of transactions included; the greater the volume of transactions, the greater the value of the data.

BX Options Trade Outline will include proprietary Exchange trading data and will not disseminate any intra-day trading data from any other exchange.²⁹ The information provided, both in End of Day and Intra-Day formats, will not be a real-time data feed.

BX Options Trade Outline will be a completely voluntary product in that the Exchange is not required by any rule or regulation to make this data available and potential subscribers may purchase it only if they voluntarily choose to do so.

²⁵ See, e.g., Securities Exchange Act Release No. 93803 (December 16, 2021, 86 FR 72647 (December 22, 2021) (SR-NYSEAMER-2021-46) (describing the NYSE Options Open-Close Volume Summary as a volume summary of trading activity on the exchange at the option level by origin, side of the market, contract volume and transaction type).

²⁶ See, e.g., Securities Exchange Act Release No. 93132 (September 27, 2021), 86 FR 54499 (October 1, 2021) (SR-NYSEArca-2021-82) (describing the NYSE Options Open-Close Volume Summary as a volume summary of trading activity on the exchange at the option level by origin, side of the market, contract volume and transaction type).

²⁷ See, e.g., Securities Exchange Act Release No. 97174 (March 21, 2023), 88 FR 18201 (March 27, 2023) (SR-BOX-2023-09) (describing the BOX exchange Open-Close Data report as providing volume by origin, buying/selling, and opening/closing criteria).

²⁸ See, e.g., Securities Exchange Act Release No. 91964 (May 21, 2021), 86 FR 28667 (May 27, 2021) (SR-PEARL-2021-24) (introducing the Open-Close Report).

²⁹ The End of Day report includes a field that presents Total Industry Volume for the Series.

Proposed Fees

End of Day and Intra-Day Information

The Exchange proposes to offer the End of Day product for \$750 per month and the Intra-Day product at \$1,500 per month.

Historical Information

The Exchange proposes to offer historical data for \$500 per month for End of Day data, and \$750 per month for Intra-Day information based on ad hoc requests for particular months of information.

The Exchange also proposes to offer a discounted fee of \$9,000 in total for the most recent 36 months³⁰ of historical Intra-Day data for Current Distributors,³¹ and a discounted fee of \$6,000 in total for the most recent 36 months of End of Day data for Current Distributors.

This is a substantial discount from the proposed fees for ad hoc data requests. With respect to End of Day data, ad hoc requests are \$500 per month. Thirty-six months would cost a total of \$18,000. The proposed discounted fee of \$6,000 is two-thirds less than the standard rate. With respect to Intra-Day information, ad hoc requests are \$750 per month. Thirty-six months would cost a total of \$27,000. The proposed discounted fee of \$9,000 for Intra-Day information is also two-thirds less than the standard rate.

Eligibility for the discount will depend on the type of current subscription. A current purchaser of End of Day data would be eligible for the historical End of Day

³⁰ The most recent 36 months is measured based on the date of purchase of the 36 months of data by a Current Distributor.

³¹ A "Current Distributor" is any firm that purchases either the End of Day Product for the current month, or the Intra-Day Product for the current month in the same month that the 36 months of historical End of Day or Intra-Day data is ordered.

product at the reduced rate. A current purchaser of the Intra-Day product would similarly be able to purchase the historical Intra-Day product at the reduced rate. A purchaser of both the current End of Day and Intra-Day products would be entitled to purchase both types of history at the reduced rate. The fees for historical data are linked to the current product because effective historical testing requires a comparison of similar licenses. Effective testing of the End of Day product, for example, requires End of Day historical data, and the same would hold true for Intra-Day data.

The 36-month period will be based on the date of purchase of the 36 months of data by a Current Distributor. For example, a customer that buys the End of Day product for the first time in September 2024 would also be able to purchase historical End of Day data for the period September 2021 through September 2024 (inclusive) at the discounted rate. Similarly, a customer with an existing End of Day subscription in September 2024 would be able to purchase the historical End of Day data from September 2021 through September 2024 at the discounted rate. The same reasoning would apply to Intra-Day customers.³²

Many customers use historical data to test their strategies and models, and our discussions with current and former customers and experience indicate that 36 months of data is sufficient for most customer needs, and is an effective baseline for review.

For customers that request historical information outside of the three year period, end of day historical information can be purchased through ad hoc requests for monthly

³² A customer may use the proposed historical data discount more than once. For example, a Current Distributor that purchases 36 months of historical data at a discount, but later terminates that subscription, would be eligible to purchase another 36 months of historical data (based on the date of purchase) upon renewing that subscription. (Current Distributors that never terminate would have no need for a second purchase, as they would already possess the most recent months of historical data.).

information for \$500 per request per month, and Intra-Day information can be purchased at \$750 per request per month.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³³ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,³⁴ 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.

Equitable Allocation of Reasonable Dues, Fees and Other Charges

The proposed changes are an equitable allocation of reasonable dues, fees and other charges because: (i) the trade outline products offered by multiple exchanges are substitutes, and customers are free to choose which product they purchase; and (ii) the proposed fees are comparable to the fees charged by other exchanges, and customers are free to purchase other products if the Exchange has mistaken the value of its product.

Substitution

Trade outline products have been available on multiple exchanges for many years and are well known in the market and used by many market participants. PHLX Options Trade Outline, which is a model for BX Options Trade Outline, has been available for well over a decade.³⁵ Similar products available on other Nasdaq exchanges include ISE

³³ 15 U.S.C. 78f(b).

³⁴ 15 U.S.C. 78f(b)(4) and (5).

³⁵ See Securities Exchange Act Release No. 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR-Phlx-2010-121) (introducing PHOTO on September 1, 2010).

Trade Profile,³⁶ GEMX Trade Profile,³⁷ and Nasdaq Options Trade Outline.³⁸ Trade outline products are also offered by competitor exchanges such as Cboe,³⁹ NYSE American,⁴⁰ NYSE Arca,⁴¹ BOX,⁴² and MIAX PEARL.⁴³ The trade outline products offered by the Nasdaq-affiliated exchanges provide exactly the same information as BX Options Trade outline, and those offered by other exchanges provide substantially the same information, including both Intra-Day and End of Day data.

The information provided by one exchange in its trade outline product is generally similar to that provided by other exchanges for competing products because order flow can move from one exchange to another, and market sentiment trends that appear on one exchange are likely to be similar to the sentiment trends on other exchanges. The key differentiator in the quality of the data depends on the volume of transactions on a given exchange; the greater the volume of transactions, the greater the value of the data.

³⁶ See Nasdaq ISE Rules, Options 7, Section 10(A) and (B) (Nasdaq ISE Open/Close Trade Profile End of Day; Nasdaq ISE Open/Close Trade Profile Intraday).

³⁷ See Nasdaq GEMX Rules, Options 7, Sections 7(D) (Nasdaq GEMX Open/Close End of Day Trade Profile) and 7(E) (Nasdaq GEMX Open/Close Intraday Trade Profile).

³⁸ See Nasdaq Rules, Options 7, Section 4 (Nasdaq Options Trade Outline (“NOTO”)).

³⁹ See, e.g., Securities Exchange Act Release No. 94913 (May 13, 2022), 87 FR 30534 (May 19, 2022) (SR-Cboe-2022-023) (describing End-of-Day and Intraday Open-Close Data as a summary of trading activity on the exchange at the option level by origin, side of the market, price and transaction type).

⁴⁰ See, e.g., Securities Exchange Act Release No. 93803 (December 16, 2021, 86 FR 72647 (December 22, 2021) (SR-NYSEAMER-2021-46) (describing the NYSE Options Open-Close Volume Summary as a volume summary of trading activity on the exchange at the option level by origin, side of the market, contract volume and transaction type).

⁴¹ See, e.g., Securities Exchange Act Release No. 93132 (September 27, 2021), 86 FR 54499 (October 1, 2021) (SR-NYSEArca-2021-82) (describing the NYSE Options Open-Close Volume Summary as a volume summary of trading activity on the exchange at the option level by origin, side of the market, contract volume and transaction type).

⁴² See, e.g., Securities Exchange Act Release No. 97174 (March 21, 2023), 88 FR 18201 (March 27, 2023) (SR-BOX-2023-09) (describing the BOX exchange Open-Close Data report as providing volume by origin, buying/selling, and opening/closing criteria).

⁴³ See, e.g., Securities Exchange Act Release No. 91964 (May 21, 2021), 86 FR 28667 (May 27, 2021) (SR-PEARL-2021-24) (introducing the Open-Close Report).

Customers can choose not to purchase the trade outline product of one exchange and substitute it for that of another exchange. This applies to both current and historical data.

Customers can also choose not to purchase a trade outline product at all. Trade outline products are designed to help investors understand underlying market trends to improve the quality of investment decisions, but are not necessary to execute a trade. Customers may choose to forego the information from BX Options Trade Outline or any of its competitor products when making a trade.

Nasdaq and its affiliates have observed that customers purchase sufficient data to provide a view of the market, but not more, as the value of data from each additional exchange yields diminishing returns. As a result, all exchanges are limited in what they will be able to charge for Trade Outline.

As the Commission and courts⁴⁴ have recognized, “[i]f competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.”⁴⁵ Accordingly, “the existence of significant competition provides a substantial basis for finding that the terms of an exchange’s fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly

⁴⁴ The decision of the United States Court of Appeals for the District of Columbia Circuit in NetCoalition v. SEC 615 F.3d 525 (D.C. Cir. 2010). upheld the Commission’s reliance upon competitive markets to set reasonable and equitably allocated fees for market data. “In fact, the legislative history indicates that the Congress intended that the market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed and that the SEC wield its regulatory power in those situations where competition may not be sufficient, such as in the creation of a consolidated transactional reporting system.” NetCoalition I at 535. (quoting H.R. Rep. No. 94-229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323) (internal quotation marks omitted). The court agreed with the Commission’s conclusion that “Congress intended that competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.” Id. (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74771 (December 9, 2008) (SR-NYSEArca-2006-21)).

⁴⁵ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21).

discriminatory.”⁴⁶ 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.”⁴⁷ BX Options Trade Outline is in direct competition with multiple exchanges that offer similar products in end of day and intra-day formats.⁴⁸

The discounted fees for historical data, like the purchase of the end of day, Intra-Day and Derived Data licenses, is also subject to competition. Any exchange that wishes to provide discounts for historical data would be able to do so with an immediately effective fee filing in response.

Comparability

The proposed fees are comparable to the fees charged by similarly situated exchanges.

As explained above, the value of a trade outline product is determined in part by the number of underlying transactions reflected in the data. BX has a market share comparable to Cboe C2 and MIAX Emerald, in the range of approximately 2% to 4% at

⁴⁶ See id.

⁴⁷ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

⁴⁸ These substitute products include NOTO, ISE Trade Profile, GEMX Trade Profile data; open-close data from Cboe C1, C2, BZX, and EDGX; and Open Close Reports from MIAX Options, Pearl, and Emerald.

the time of this filing.⁴⁹ For intra-day products, MIAX Emerald charges \$2,000⁵⁰ and Cboe C2 charges \$1,000.⁵¹ The proposed fee of \$1,500 is within that range and comparable to those fees.

For End of Day products, MIAX Emerald charges \$600,⁵² and Cboe C2 charges \$500.⁵³ Although the proposed fees of \$750 are above that range, BX believes that the relative value of Intra-Day and End of Day fees should be in the ratio of 2:1, and therefore MIAX Emerald and Cboe C2 have somewhat undervalued their end of day products. If Nasdaq is incorrect in that assessment, customers will purchase the products of its competitors.

Nasdaq is not aware of another exchange that provides a discount for historical data other than its own affiliates. Volume on BX is comparable to volume on MRX and GEMX. The proposed discounted prices of \$6,000 for 36 months of historical End of Day data and \$9,000 for 36 months of historical Intra-Day data for BX are identical to the proposed discounts for the MRX exchange, submitted congruently with this filing. The proposed discounted prices for Intra-Day data for BX and MRX are also identical to that of GEMX. Although proposed fees for 36 months of End of Day data for BX and MRX

⁴⁹ See NasdaqTrader.com, “Options Market Statistics,” available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>

⁵⁰ See MIAX Emerald Options Exchange Fee Schedule as of April 18, 2024,” available at https://www.miaxglobal.com/sites/default/files/fee_schedule-files/MIAX_Emerald_Fee_Schedule_04182024.pdf.

⁵¹ See Cboe DataShop, “Cboe Open-Close Volume Summary,” available at <https://datashop.cboe.com/cboe-options-open-close-volume-summary>.

⁵² See MIAX Emerald Options Exchange Fee Schedule as of April 18, 2024,” available at https://www.miaxglobal.com/sites/default/files/fee_schedule-files/MIAX_Emerald_Fee_Schedule_04182024.pdf.

⁵³ See Cboe DataShop, “Cboe Open-Close Volume Summary,” available at <https://datashop.cboe.com/cboe-options-open-close-volume-summary>.

(\$6,000) are higher than those for GEMX (\$4,800), the overall pricing methodology of offering three years of historical data for the price of one year of ad hoc requests for information is consistent across all of these exchanges, and therefore comparable.⁵⁴

With respect to ad hoc requests for information, BX provides a discount from current requests. Current End of Day information is available for \$750 per month, while ad hoc requests for historical End of Day information is available for \$500 per month. Similarly, Current Intra-Day information is available for \$1,500 per month, while ad hoc requests for historical Intra-Day information is available for \$750 per month. This is identical to the fee structure proposed for the MRX exchange, and comparable to the fee structure for the GEMX exchange (which offers current End of Day data for \$575 per month and historical End of Day data for \$400 per month; current Intra-Day data is offered for \$1,500 per month, and historical Intra-Day data is offered for \$750 per month).

If the Exchange is incorrect in its assessments for any of these fees, current and prospective customers will elect not to purchase Trade Outline.

The Proposal Does Not Permit Unfair Discrimination

Nothing in the proposal treats any category of market participant any differently from any other category of market participant.

The proposed fees, including both current and historical information, apply equally to all current and potential distributors. Trade Outline is available to all market

⁵⁴ The fee for an ad hoc request for one month of End of Day data on the GEMX exchange is \$400, and the discounted fee for 12 months of data is $\$400 \times 12$, or \$4,800. The fee for an ad hoc request for one month of End of Day data on the BX and MRX exchanges is \$500, and the discounted fee for 12 months of data is $\$500 \times 12$, or \$6,000.

participants, including members and non-members, and all market participants receive the same information.

It is not unfair discrimination to provide a discount for 36 months of historical data to Current Distributors, but not former distributors or firms that have never purchased the product. Any firm would be able to become a Current Distributor at any time by subscribing to Trade Outline, and would be able to cancel the subscription at any time after receiving the 36 months of historical data for the proposed discounted fee. More specifically, a firm that is not a Current Distributor may obtain access to the 36 months of historical data at a discount by becoming a Current Distributor for a limited time and then terminating the subscription.

It is not unfair discrimination to limit the discount for 36 months of historical data to Current Distributors. Historical information is generally used by Current Distributors to test their strategies and trading models, and Current Distributors are therefore in the best position to benefit from the historical data. Outside of the 36 month period, all firms will have the opportunity to purchase historical data on an ad hoc basis.

For all of these reasons, the proposal does not permit unfair discrimination.

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. 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 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 fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intermarket Competition

Nothing in the proposal burdens inter-market competition (the competition among self-regulatory organizations).

As discussed above, Trade Outline is subject to direct competition from other options exchanges that offer substitutes. Any of these exchanges can replicate this proposal in full or in part, and nothing in the proposal would interfere with the ability of any exchange to do so.

Intra-market Competition

Nothing in the proposal burdens intra-market competition (the competition among consumers of exchange data). Trade Outline is available to any customer under the same fee schedule as any other customer, and any market participant that wishes to purchase these products can do so on a non-discriminatory basis.

Offering the 36 months of historical data to Current Distributors, but not former distributors or firms that have never purchased the product, will not burden competition because non-subscribers are free to purchase a current subscription. Moreover, a firm that is not a Current Distributor may become a Current Distributor and then cancel the product after receiving the historical discount. As such, firms that are not Current Distributors will have an opportunity to pay the same fees for the most recent 36 months

of historical data as Current Distributors. Outside of the 36 month period, all firms will have the opportunity to purchase historical data on an ad hoc basis.

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,⁵⁵ 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.

⁵⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2024-034)

September ____, 2024

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Initiate Distributor Fees for BX Options Trade Outline

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 September 3, 2024, 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 initiate Distributor fees for BX Options Trade Outline.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/bx/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to initiate fees for the distribution of BX Trade Outline. Distributor fees will be \$750 per month for the End of Day product, and \$1,500 per month for the Intra-Day product.

Historical data will be available through ad hoc requests for information for \$500 per month of End of Day information, and \$750 per month for historical information. Current Distributors³ will also be able to purchase the most recent 36 months of historical data⁴ at the discounted price of \$6,000 for End of Day information, and \$9,000 for Intra-Day information. Historical information will be available starting in December 2014.

BX Options Trade Outline

BX Options Trade Outline will provide aggregate quantity and volume information for trades on the Exchange for all series⁵ during a trading session.⁶ Information is provided in the following categories: (i) total exchange volume for Intra-Day information and total exchange and industry volume for End of Day information for each reported series; (ii) open interest for the series; (iii) aggregate quantity of trades and

³ A “Current Distributor” is any firm that purchases either the End of Day Product for the current month, or the Intra-Day Product for the current month in the same month that the 36 months of historical End of Day or Intra-Day data is ordered.

⁴ The most recent 36 months is measured based on the date of purchase of the 36 months of data by a Current Distributor.

⁵ Every options series trades as a distinct symbol; the terms “series” and “symbol” are therefore synonyms.

⁶ See Securities Exchange Act Release No. 100792 (August 21, 2024), 89 FR 68676 (August 27, 2024) (SR-BX-2024-028).

aggregate trade volume effected to open a position,⁷ characterized by origin type (Customers,⁸ Broker-Dealers,⁹ BX Options Market Makers,¹⁰ Firms,¹¹ and Professionals¹²); and (iv) aggregate quantity of trades and aggregate trade volume effected to close a position,¹³ characterized by origin type (Customers, Broker-Dealers, BX Options Market Makers, Firms, and Professionals).¹⁴

Information will be provided on an End of Day, Intra-Day, and historical basis.

⁷ This would include the aggregate number of “opening purchase transactions,” defined as a BX Options Transaction that creates or increases a long position in an options contract, see Options 1, Section 1(a)(35), and the aggregate number of “opening writing transactions,” defined as a BX Options Transaction that creates or increases a short position in an options contract. See Options 1, Section 1(a)(36).

⁸ The term “Customer” applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (“OCC”) which is not for the account of broker or dealer or for the account of a “Professional” (as that term is defined in Options 1, Section 1(a)(48)). See Options 7, Section 1(a).

⁹ The term “Broker-Dealer” applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category. See Options 7, Section 1(a).

¹⁰ The term “BX Options Market Maker” is a Participant that has registered as a Market Maker on BX Options pursuant to Options 2, Section 1, and must also remain in good standing pursuant to Options 2, Section 9. In order to receive Market Maker pricing in all securities, the Participant must be registered as a BX Options Market Maker in at least one security. See Options 7, Section 1(a).

¹¹ The term “Firm” applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC. See Options 7, Section 1(a).

¹² The term “Professional” means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Options 1, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants. See Options 7, Section 1(a).

¹³ This would include the aggregate number of “closing purchase transactions” in the affected series, defined as a BX Options Transaction that reduces or eliminates a short position in an options contract, see Options 1, Section 1(a)(19), and the aggregate number of “closing writing transactions,” defined as a BX Options Transaction that reduces or eliminates a long position in an options contract. See Options 1, Section 1(a)(20).

¹⁴ These are the same types of information available on PHOTO, and the other trade outline products offered by Nasdaq exchanges.

End of Day Information

The BX Trade Outline End of Day file will provide opening buy, closing buy, opening sell and closing sell information, including option first trade price, option high trade price, option low trade price, and option last trade price.

The End of Day file will be updated during an overnight process with additional fields¹⁵ and will be available the following morning, providing aggregate data for the entire trading session.

Intra-Day Information

Intra-Day information will be released in scheduled “snapshots” available every 10 minutes for all options series over the course of the trading day. These snapshots will be updated to reflect whatever activity occurred, or to indicate that no activity occurred.¹⁶ This is the same schedule currently offered on PHLX, ISE, GEMX, and Nasdaq Options Market.¹⁷

Historical Information

Historical data will be available through ad hoc requests for information in both End of Day and Intra-Day formats for all option series traded for every calendar month after December 2014, based on specific request.¹⁸ Historical data is useful in analyzing

¹⁵ The additional fields are: First Trade Price, High Trade Price, Low Trade Price, Last Trade Price, Underlying Close, Moneyness, Total Exchange volume, Total Industry Volume for the Series, and Open Interest.

¹⁶ Subscribers will receive the first snapshot at 9:42 a.m. ET, representing data captured from 9:30 a.m. to 9:40 a.m., and the second calculation at 9:52 a.m., representing data from both the most recent snapshot and previous snapshots, and continuing over the course of the trading day. The final Intra-Day snapshot will be distributed at 4:15 p.m.

¹⁷ See Infra, notes 21 through 23.

¹⁸ Market participants generally use historical files for model testing and research, and the period of time required by a particular market participant will depend on its unique testing and research needs as well as whether it is using End of Day or Intra-Day information. Some customers, for

option trade and volume data, evaluating historical trends in the trading activity of a particular option series, and creating and testing trading models and analytical strategies. In Nasdaq's experience, historical information is often purchased concurrently with a new subscription to a trade outline product.

Patterned after PHLX Options Trade Outline "PHOTO,"¹⁹ BX Trade Options Outline replicates in substance²⁰ PHOTO and the other trade outline products currently offered by Nasdaq ISE, LLC ("ISE"),²¹ Nasdaq GEMX, LLC ("GEMX"),²² and the options market operated by the Nasdaq Stock Market LLC ("Nasdaq Options Market" or "NOM").²³ Similar products are also available from options markets not affiliated with Nasdaq such as Cboe Options Exchange ("Cboe"),²⁴ NYSE American Options ("NYSE

example, may request years of data, while others only months, or even a single month. The same principle applies to End of Day vs. Intra-Day information.

¹⁹ See PHLX Rules, Options 7, Section 10; Securities Exchange Act Release No. 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR-Phlx-2010-121) (introducing PHOTO on September 1, 2010).

²⁰ The underlying information for BX Options Trade Outline will be the same as the other trade outline products offered by the Nasdaq exchanges. Presentation will differ, however, in that data will not be subdivided into categories. For example, the trade outline products offered by PHLX, ISE, GEMX and NOM subdivide the aggregate volume traded for each reported series into categories according to the quantity of contracts (less than 100, 100-199, and greater than 200). BX Options Trade Outline will not separate this information into quantitative categories, but rather will provide the same aggregate volume information as PHOTO and the other Nasdaq exchanges without separating the information into categories according to the quantity of contracts.

²¹ See Nasdaq ISE Rules, Options 7, Section 10(A) and (B) (Nasdaq ISE Open/Close Trade Profile End of Day; Nasdaq ISE Open/Close Trade Profile Intraday).

²² See Nasdaq GEMX Rules, Options 7, Sections 7(D) (Nasdaq GEMX Open/Close End of Day Trade Profile) and 7(E) (Nasdaq GEMX Open/Close Intraday Trade Profile).

²³ See Nasdaq Rules, Options 7, Section 4 (Nasdaq Options Trade Outline ("NOTO")).

²⁴ See, e.g., Securities Exchange Act Release No. 94913 (May 13, 2022), 87 FR 30534 (May 19, 2022) (SR-Cboe-2022-023) (describing End of Day and Intra-Day Open-Close Data as a summary of trading activity on the exchange at the option level by origin, side of the market, price, and transaction type).

American”),²⁵ NYSE Arca Options (“NYSE Arca”),²⁶ BOX Options Market LLC (“BOX”),²⁷ MIAX Pearl Options Exchange (“Pearl”),²⁸ and others. BX Options Trade Outline, like all of these other trade outline products, provides data to help market participants understand market sentiment on the Exchange and to support the creation of trading models useful in both options and equities markets.

Nasdaq’s experience is that investment banks, market makers, asset managers and other buy-side investors purchase trade outline products. In general, the relative value of these products depends on the volume of transactions included; the greater the volume of transactions, the greater the value of the data.

BX Options Trade Outline will include proprietary Exchange trading data and will not disseminate any intra-day trading data from any other exchange.²⁹ The information provided, both in End of Day and Intra-Day formats, will not be a real-time data feed.

BX Options Trade Outline will be a completely voluntary product in that the Exchange is not required by any rule or regulation to make this data available and potential subscribers may purchase it only if they voluntarily choose to do so.

²⁵ See, e.g., Securities Exchange Act Release No. 93803 (December 16, 2021, 86 FR 72647 (December 22, 2021) (SR-NYSEAMER-2021-46) (describing the NYSE Options Open-Close Volume Summary as a volume summary of trading activity on the exchange at the option level by origin, side of the market, contract volume and transaction type).

²⁶ See, e.g., Securities Exchange Act Release No. 93132 (September 27, 2021), 86 FR 54499 (October 1, 2021) (SR-NYSEArca-2021-82) (describing the NYSE Options Open-Close Volume Summary as a volume summary of trading activity on the exchange at the option level by origin, side of the market, contract volume and transaction type).

²⁷ See, e.g., Securities Exchange Act Release No. 97174 (March 21, 2023), 88 FR 18201 (March 27, 2023) (SR-BOX-2023-09) (describing the BOX exchange Open-Close Data report as providing volume by origin, buying/selling, and opening/closing criteria).

²⁸ See, e.g., Securities Exchange Act Release No. 91964 (May 21, 2021), 86 FR 28667 (May 27, 2021) (SR-PEARL-2021-24) (introducing the Open-Close Report).

²⁹ The End of Day report includes a field that presents Total Industry Volume for the Series.

Proposed Fees

End of Day and Intra-Day Information

The Exchange proposes to offer the End of Day product for \$750 per month and the Intra-Day product at \$1,500 per month.

Historical Information

The Exchange proposes to offer historical data for \$500 per month for End of Day data, and \$750 per month for Intra-Day information based on ad hoc requests for particular months of information.

The Exchange also proposes to offer a discounted fee of \$9,000 in total for the most recent 36 months³⁰ of historical Intra-Day data for Current Distributors,³¹ and a discounted fee of \$6,000 in total for the most recent 36 months of End of Day data for Current Distributors.

This is a substantial discount from the proposed fees for ad hoc data requests. With respect to End of Day data, ad hoc requests are \$500 per month. Thirty-six months would cost a total of \$18,000. The proposed discounted fee of \$6,000 is two-thirds less than the standard rate. With respect to Intra-Day information, ad hoc requests are \$750 per month. Thirty-six months would cost a total of \$27,000. The proposed discounted fee of \$9,000 for Intra-Day information is also two-thirds less than the standard rate.

Eligibility for the discount will depend on the type of current subscription. A current purchaser of End of Day data would be eligible for the historical End of Day

³⁰ The most recent 36 months is measured based on the date of purchase of the 36 months of data by a Current Distributor.

³¹ A "Current Distributor" is any firm that purchases either the End of Day Product for the current month, or the Intra-Day Product for the current month in the same month that the 36 months of historical End of Day or Intra-Day data is ordered.

product at the reduced rate. A current purchaser of the Intra-Day product would similarly be able to purchase the historical Intra-Day product at the reduced rate. A purchaser of both the current End of Day and Intra-Day products would be entitled to purchase both types of history at the reduced rate. The fees for historical data are linked to the current product because effective historical testing requires a comparison of similar licenses. Effective testing of the End of Day product, for example, requires End of Day historical data, and the same would hold true for Intra-Day data.

The 36-month period will be based on the date of purchase of the 36 months of data by a Current Distributor. For example, a customer that buys the End of Day product for the first time in September 2024 would also be able to purchase historical End of Day data for the period September 2021 through September 2024 (inclusive) at the discounted rate. Similarly, a customer with an existing End of Day subscription in September 2024 would be able to purchase the historical End of Day data from September 2021 through September 2024 at the discounted rate. The same reasoning would apply to Intra-Day customers.³²

Many customers use historical data to test their strategies and models, and our discussions with current and former customers and experience indicate that 36 months of data is sufficient for most customer needs, and is an effective baseline for review.

For customers that request historical information outside of the three year period, end of day historical information can be purchased through ad hoc requests for monthly

³² A customer may use the proposed historical data discount more than once. For example, a Current Distributor that purchases 36 months of historical data at a discount, but later terminates that subscription, would be eligible to purchase another 36 months of historical data (based on the date of purchase) upon renewing that subscription. (Current Distributors that never terminate would have no need for a second purchase, as they would already possess the most recent months of historical data.).

information for \$500 per request per month, and Intra-Day information can be purchased at \$750 per request per month.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³³ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,³⁴ 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.

Equitable Allocation of Reasonable Dues, Fees and Other Charges

The proposed changes are an equitable allocation of reasonable dues, fees and other charges because: (i) the trade outline products offered by multiple exchanges are substitutes, and customers are free to choose which product they purchase; and (ii) the proposed fees are comparable to the fees charged by other exchanges, and customers are free to purchase other products if the Exchange has mistaken the value of its product.

Substitution

Trade outline products have been available on multiple exchanges for many years and are well known in the market and used by many market participants. PHLX Options Trade Outline, which is a model for BX Options Trade Outline, has been available for well over a decade.³⁵ Similar products available on other Nasdaq exchanges include ISE

³³ 15 U.S.C. 78f(b).

³⁴ 15 U.S.C. 78f(b)(4) and (5).

³⁵ See Securities Exchange Act Release No. 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR-Phlx-2010-121) (introducing PHOTO on September 1, 2010).

Trade Profile,³⁶ GEMX Trade Profile,³⁷ and Nasdaq Options Trade Outline.³⁸ Trade outline products are also offered by competitor exchanges such as Cboe,³⁹ NYSE American,⁴⁰ NYSE Arca,⁴¹ BOX,⁴² and MIAX PEARL.⁴³ The trade outline products offered by the Nasdaq-affiliated exchanges provide exactly the same information as BX Options Trade outline, and those offered by other exchanges provide substantially the same information, including both Intra-Day and End of Day data.

The information provided by one exchange in its trade outline product is generally similar to that provided by other exchanges for competing products because order flow can move from one exchange to another, and market sentiment trends that appear on one exchange are likely to be similar to the sentiment trends on other exchanges. The key differentiator in the quality of the data depends on the volume of transactions on a given exchange; the greater the volume of transactions, the greater the value of the data.

³⁶ See Nasdaq ISE Rules, Options 7, Section 10(A) and (B) (Nasdaq ISE Open/Close Trade Profile End of Day; Nasdaq ISE Open/Close Trade Profile Intraday).

³⁷ See Nasdaq GEMX Rules, Options 7, Sections 7(D) (Nasdaq GEMX Open/Close End of Day Trade Profile) and 7(E) (Nasdaq GEMX Open/Close Intraday Trade Profile).

³⁸ See Nasdaq Rules, Options 7, Section 4 (Nasdaq Options Trade Outline (“NOTO”)).

³⁹ See, e.g., Securities Exchange Act Release No. 94913 (May 13, 2022), 87 FR 30534 (May 19, 2022) (SR-Cboe-2022-023) (describing End-of-Day and Intraday Open-Close Data as a summary of trading activity on the exchange at the option level by origin, side of the market, price and transaction type).

⁴⁰ See, e.g., Securities Exchange Act Release No. 93803 (December 16, 2021, 86 FR 72647 (December 22, 2021) (SR-NYSEAMER-2021-46) (describing the NYSE Options Open-Close Volume Summary as a volume summary of trading activity on the exchange at the option level by origin, side of the market, contract volume and transaction type).

⁴¹ See, e.g., Securities Exchange Act Release No. 93132 (September 27, 2021), 86 FR 54499 (October 1, 2021) (SR-NYSEArca-2021-82) (describing the NYSE Options Open-Close Volume Summary as a volume summary of trading activity on the exchange at the option level by origin, side of the market, contract volume and transaction type).

⁴² See, e.g., Securities Exchange Act Release No. 97174 (March 21, 2023), 88 FR 18201 (March 27, 2023) (SR-BOX-2023-09) (describing the BOX exchange Open-Close Data report as providing volume by origin, buying/selling, and opening/closing criteria).

⁴³ See, e.g., Securities Exchange Act Release No. 91964 (May 21, 2021), 86 FR 28667 (May 27, 2021) (SR-PEARL-2021-24) (introducing the Open-Close Report).

Customers can choose not to purchase the trade outline product of one exchange and substitute it for that of another exchange. This applies to both current and historical data.

Customers can also choose not to purchase a trade outline product at all. Trade outline products are designed to help investors understand underlying market trends to improve the quality of investment decisions, but are not necessary to execute a trade. Customers may choose to forego the information from BX Options Trade Outline or any of its competitor products when making a trade.

Nasdaq and its affiliates have observed that customers purchase sufficient data to provide a view of the market, but not more, as the value of data from each additional exchange yields diminishing returns. As a result, all exchanges are limited in what they will be able to charge for Trade Outline.

As the Commission and courts⁴⁴ have recognized, “[i]f competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.”⁴⁵ Accordingly, “the existence of significant competition provides a substantial basis for finding that the terms of an exchange’s fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly

⁴⁴ The decision of the United States Court of Appeals for the District of Columbia Circuit in NetCoalition v. SEC 615 F.3d 525 (D.C. Cir. 2010). upheld the Commission’s reliance upon competitive markets to set reasonable and equitably allocated fees for market data. “In fact, the legislative history indicates that the Congress intended that the market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed and that the SEC wield its regulatory power in those situations where competition may not be sufficient, such as in the creation of a consolidated transactional reporting system.” NetCoalition I at 535. (quoting H.R. Rep. No. 94-229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323) (internal quotation marks omitted). The court agreed with the Commission’s conclusion that “Congress intended that competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.” Id. (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74771 (December 9, 2008) (SR-NYSEArca-2006-21)).

⁴⁵ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21).

discriminatory.”⁴⁶ 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.”⁴⁷ BX Options Trade Outline is in direct competition with multiple exchanges that offer similar products in end of day and intra-day formats.⁴⁸

The discounted fees for historical data, like the purchase of the end of day, Intra-Day and Derived Data licenses, is also subject to competition. Any exchange that wishes to provide discounts for historical data would be able to do so with an immediately effective fee filing in response.

Comparability

The proposed fees are comparable to the fees charged by similarly situated exchanges.

As explained above, the value of a trade outline product is determined in part by the number of underlying transactions reflected in the data. BX has a market share comparable to Cboe C2 and MIAX Emerald, in the range of approximately 2% to 4% at

⁴⁶ See id.

⁴⁷ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

⁴⁸ These substitute products include NOTO, ISE Trade Profile, GEMX Trade Profile data; open-close data from Cboe C1, C2, BZX, and EDGX; and Open Close Reports from MIAX Options, Pearl, and Emerald.

the time of this filing.⁴⁹ For intra-day products, MIAX Emerald charges \$2,000⁵⁰ and Cboe C2 charges \$1,000.⁵¹ The proposed fee of \$1,500 is within that range and comparable to those fees.

For End of Day products, MIAX Emerald charges \$600,⁵² and Cboe C2 charges \$500.⁵³ Although the proposed fees of \$750 are above that range, BX believes that the relative value of Intra-Day and End of Day fees should be in the ratio of 2:1, and therefore MIAX Emerald and Cboe C2 have somewhat undervalued their end of day products. If Nasdaq is incorrect in that assessment, customers will purchase the products of its competitors.

Nasdaq is not aware of another exchange that provides a discount for historical data other than its own affiliates. Volume on BX is comparable to volume on MRX and GEMX. The proposed discounted prices of \$6,000 for 36 months of historical End of Day data and \$9,000 for 36 months of historical Intra-Day data for BX are identical to the proposed discounts for the MRX exchange, submitted congruently with this filing. The proposed discounted prices for Intra-Day data for BX and MRX are also identical to that of GEMX. Although proposed fees for 36 months of End of Day data for BX and MRX

⁴⁹ See NasdaqTrader.com, "Options Market Statistics," available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>

⁵⁰ See MIAX Emerald Options Exchange Fee Schedule as of April 18, 2024," available at https://www.miaxglobal.com/sites/default/files/fee_schedule-files/MIAX_Emerald_Fee_Schedule_04182024.pdf.

⁵¹ See Cboe DataShop, "Cboe Open-Close Volume Summary," available at <https://datashop.cboe.com/cboe-options-open-close-volume-summary>.

⁵² See MIAX Emerald Options Exchange Fee Schedule as of April 18, 2024," available at https://www.miaxglobal.com/sites/default/files/fee_schedule-files/MIAX_Emerald_Fee_Schedule_04182024.pdf.

⁵³ See Cboe DataShop, "Cboe Open-Close Volume Summary," available at <https://datashop.cboe.com/cboe-options-open-close-volume-summary>.

(\$6,000) are higher than those for GEMX (\$4,800), the overall pricing methodology of offering three years of historical data for the price of one year of ad hoc requests for information is consistent across all of these exchanges, and therefore comparable.⁵⁴

With respect to ad hoc requests for information, BX provides a discount from current requests. Current End of Day information is available for \$750 per month, while ad hoc requests for historical End of Day information is available for \$500 per month. Similarly, Current Intra-Day information is available for \$1,500 per month, while ad hoc requests for historical Intra-Day information is available for \$750 per month. This is identical to the fee structure proposed for the MRX exchange, and comparable to the fee structure for the GEMX exchange (which offers current End of Day data for \$575 per month and historical End of Day data for \$400 per month; current Intra-Day data is offered for \$1,500 per month, and historical Intra-Day data is offered for \$750 per month).

If the Exchange is incorrect in its assessments for any of these fees, current and prospective customers will elect not to purchase Trade Outline.

The Proposal Does Not Permit Unfair Discrimination

Nothing in the proposal treats any category of market participant any differently from any other category of market participant.

The proposed fees, including both current and historical information, apply equally to all current and potential distributors. Trade Outline is available to all market

⁵⁴ The fee for an ad hoc request for one month of End of Day data on the GEMX exchange is \$400, and the discounted fee for 12 months of data is $\$400 \times 12$, or \$4,800. The fee for an ad hoc request for one month of End of Day data on the BX and MRX exchanges is \$500, and the discounted fee for 12 months of data is $\$500 \times 12$, or \$6,000.

participants, including members and non-members, and all market participants receive the same information.

It is not unfair discrimination to provide a discount for 36 months of historical data to Current Distributors, but not former distributors or firms that have never purchased the product. Any firm would be able to become a Current Distributor at any time by subscribing to Trade Outline, and would be able to cancel the subscription at any time after receiving the 36 months of historical data for the proposed discounted fee. More specifically, a firm that is not a Current Distributor may obtain access to the 36 months of historical data at a discount by becoming a Current Distributor for a limited time and then terminating the subscription.

It is not unfair discrimination to limit the discount for 36 months of historical data to Current Distributors. Historical information is generally used by Current Distributors to test their strategies and trading models, and Current Distributors are therefore in the best position to benefit from the historical data. Outside of the 36 month period, all firms will have the opportunity to purchase historical data on an ad hoc basis.

For all of these reasons, the proposal does not permit unfair discrimination.

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. 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 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 fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intermarket Competition

Nothing in the proposal burdens inter-market competition (the competition among self-regulatory organizations).

As discussed above, Trade Outline is subject to direct competition from other options exchanges that offer substitutes. Any of these exchanges can replicate this proposal in full or in part, and nothing in the proposal would interfere with the ability of any exchange to do so.

Intra-market Competition

Nothing in the proposal burdens intra-market competition (the competition among consumers of exchange data). Trade Outline is available to any customer under the same fee schedule as any other customer, and any market participant that wishes to purchase these products can do so on a non-discriminatory basis.

Offering the 36 months of historical data to Current Distributors, but not former distributors or firms that have never purchased the product, will not burden competition because non-subscribers are free to purchase a current subscription. Moreover, a firm that is not a Current Distributor may become a Current Distributor and then cancel the product after receiving the historical discount. As such, firms that are not Current Distributors will have an opportunity to pay the same fees for the most recent 36 months

of historical data as Current Distributors. Outside of the 36 month period, all firms will have the opportunity to purchase historical data on an ad hoc basis.

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.⁵⁵

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

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission’s internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number

⁵⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

SR-BX-2024-034 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-2024-034. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-BX-2024-034 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁶

Sherry R. Haywood,

Assistant Secretary.

⁵⁶ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

NASDAQ BX, INC. RULES

Options Rules

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Options 7: Pricing Schedule

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Section 4 BX Options Market Data Distributor Fees

(a) The charges to be paid by recipients of BX Top and BX Depth options data feeds shall be:

	Monthly Internal Distributor Fee	Monthly External Distributor Fee	Monthly Non-Display Enterprise License Fee
BX Top and BX Depth [*]	\$1,500/firm	\$2,000/firm	\$2,500/firm

^{*} One Distributor fee allows access to both the BX Top and BX Depth data feeds.

Monthly Per Subscriber Fee

BX Top	\$5/professional Subscriber \$1/non-professional Subscriber
BX Depth	\$10 professional Subscriber \$1/non-professional Subscriber

(b) A "Distributor" of BX options market data is any entity that receives a feed or data file of BX data directly from the Exchange or indirectly through another entity and then distributes the data either internally (within that entity) or externally (outside that entity). All Distributors shall execute a Distributor agreement with the Exchange. BX itself is a vendor of its data feed(s) and has executed a Distributor agreement and pays the associated charges.

(c) An "Non-Display Enterprise License" entitles a Distributor to provide BX Top or BX Depth market data pursuant to this Section to an unlimited number of non-display devices within the firm without any per Subscriber charge associated with those devices.

(d) BX Top of Market (BX Top) is data that includes the BX Options Market ("BX") Best Bid and Offer and last sale information for trades executed on BX.

(e) BX Depth of Market (BX Depth) is data feed that includes quotation information for individual orders on the BX book, last sale information for trades executed on BX, and Order Imbalance Information as set forth in BX Rules Options 3, Section 8.

(f) The term "Non-Professional" shall have the same meaning as in BX Equity 7, Section 123(b)(2).

(g) 30-Day Free Trial Offer. BX may offer all new individual (non-firm) Subscribers and potential new individual Subscribers a 30-day waiver of the Subscriber fees for Nasdaq options market data pursuant to this Section. This fee waiver period shall be applied on a rolling basis, determined by the date on which a new individual Subscriber is first entitled by a Distributor to receive access to BX options market data. A Distributor may only provide this waiver to a specific individual Subscriber once.

(h) The charges to be paid by Distributors of BX Options Trade Outline shall be:

<u>Account Type</u>	<u>Monthly Charge</u>
<u>End of Day Product Distributor:</u>	<u>\$750</u>
<u>Intra-Day Product Distributor:</u>	<u>\$1,500</u>

BX Options Trade Outline Historical Data

<u>Account Type</u>	<u>Fee</u>
<u>End of Day Product Distributor:</u>	<u>\$500 per month</u>
<u>Historical Data for Current End of Day Product Distributors:</u>	<u>\$6,000 for the most recent 36 months</u>
<u>Intra-Day Product Distributor:</u>	<u>\$750 per month</u>
<u>Historical Data for Current Intra-Day Product Distributors:</u>	<u>\$9,000 for the most recent 36 months</u>

A "Current Distributor" is any firm that purchases either the End of Day Product for the current month, or the Intra-Day Product for the current month, in the same month that the 36 months of historical End of Day or Intra-Day data is ordered.

The most recent 36 months is measured based on the date of purchase of the 36 months of data by a Current Distributor.

Ad hoc requests for historical data are \$500 per month for End of Day data and \$750 per month for Intra-Day data. Historical information is available starting in September 2017.

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