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

File No. * SR 2024 - * 038
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)(2)
- ☐ 19b-4(f)(3)
- ☐ 19b-4(f)(4)
- ☐ 19b-4(f)(5)
- ☐ 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 *).

Amend BX Options 7, Section 2

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Angela
Last Name * Dunn
Title * Principal Associate General Counsel
E-mail * Angela.Dunn@Nasdaq.com
Telephone * (215) 496-5692
Fax

Signature

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

Date 09/27/2024

By John Zecca
(Name *)

EVP and Chief Legal Officer
(Title *)

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: 2024.09.27 12:28:29 -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 * Add Remove View SR-BX-2024-038 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 * Add Remove View SR-BX-2024-038 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 * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2- Notices, Written Comments, Transcripts, Other Communications Add Remove View	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 Add Remove View	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 Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View SR-BX-2024-038 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 Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Nasdaq BX, Inc. ("BX" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposal to amend the Exchange's Pricing Schedule at Options 7, Section 2(1).

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on October 1, 2024.

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:

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

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

2 17 CFR 240.19b-4.

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

a. Purpose

The Exchange proposes to amend a number of incentives for Lead Market Makers ("LMMs"),[3] Market Makers ("MMs"),[4] and Customers[5] at BX Options 7, Section 2(1).

Today, in Penny Symbols, the Exchange pays the following Maker Rebates: Lead Market Makers a Maker Rebate of $0.24 per contract; Market Makers a Maker Rebate of $0.20 per contract; Non-Customer[6] and Firm[7] a Maker Rebate of $0.12 per contract; and Customer a Maker Rebate of $0.30 per contract. Today, in Penny Symbols, the Exchange pays the following Taker Fees: Lead Market Makers, Market Makers, Non-Customer and Firm a Taker Fee of $0.50 per contract; and Customer a Taker Fee of $0.40 per contract.

Today, in Non-Penny Symbols, the Exchange pays the following Maker Rebates/Fees: Lead Market Makers a Maker Rebate of $0.45 per contract; Market Makers a Maker Rebate of $0.40 per contract; Non-Customer and Firm a Maker Fee of

3 The term "Lead Market Maker" or ("LMM") applies to a registered BX Options Market Maker that is approved pursuant to Options 2, Section 3 to be the LMM in an options class (options classes). See Options 7, Section 1(c).

4 The term "BX Options Market Maker" or ("M") 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(c).

5 The term "Customer" or ("C") 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(c).

6 The term "Non-Customer" applies to transactions for the accounts of Lead Market Makers, Market Makers, Firms, Professionals, Broker-Dealers and JBOs. See Options 7, Section 1(c).

7 The term "Firm" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC. See Options 7, Section 1(c).

$0.45 per contract; and Customer a Maker Rebate of $1.10 per contract. Today, in Non-Penny Symbols, the Exchange pays the following Taker Fees: Lead Market Makers, Market Makers, Non-Customer and Firm a Taker Fee of $1.25 per contract; and Customer a Taker Fee of $0.79 per contract.

<u>Note 2 Incentive</u>

The Exchange proposes to amend the incentives in note 2 of Options 7, Section 2(1) that currently provide:

> Lead Market Makers and Market Makers that **either** (1) execute more than 0.45% Customer Total Consolidated Volume ("TCV") per day which adds liquidity in a given month (excluding Lead Market Maker and Market Maker volume which adds liquidity in SPY), **or** (2) increase their combined Lead Market Maker and Market Maker volume which adds liquidity in a given month by at least 70% above their March 2024 volume as measured by a percentage of TCV (excluding Lead Market Maker and Market Maker volume which adds liquidity in SPY), will receive the following incentives: (i) an additional $0.05 per contract Maker Rebate in Penny Symbols excluding SPY, (ii) an additional $0.01 per contract Maker Rebate in SPY, and (iii) an additional $0.24 per contract Maker Rebate in Non-Penny Symbols. Lead Market Makers and Market Makers with no volume in the add liquidity segment for the month of March 2024 may qualify for the additional Maker Rebates by having any new volume (excluding SPY volume) considered as added volume. This note 2 incentive will be available through September 30, 2024.

Proposed note 2 provides LMMs and MMs two separate paths to receive the additional Maker Rebates described above. The first path is based on liquidity adding volume on BX as a percentage of Customer Total Consolidated Volume, which is defined as the total national volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month.[8] The first path is based on a percentage of

[8] <u>See</u> Options 7, Section 1(a).

industry volume in recognition of the fact that the volume executed by a Member may rise or fall with industry volume.

The second path is a growth incentive aimed at rewarding LMMs and MMs to grow the extent of their liquidity adding activity on the Exchange over time, relative to a benchmark month. Currently, LMMs and MMs who did not have any combined Lead Market Maker and Market Maker add liquidity volume for the month of March 2024 (and therefore lack March 2024 baseline volume against which to measure subsequent growth) would meet the proposed growth requirement through whatever volume of LMM and MM add liquidity activity (excluding in SPY) during the first month of use.[9] Growth incentives in general are designed to further encourage Members to increase their order flow to the Exchange, which contributes to a deeper, more liquid market and provides even more execution opportunities for market participants. Increased overall order flow benefits all market participants by contributing towards a robust and well-balanced market ecosystem. Other options exchanges have utilized substantially similar growth incentives.[10] The Exchange notes that it excludes LMM and MM liquidity adding volume in SPY from both paths because SPY is the most actively traded symbol on BX, and the Exchange believes that LMMs and MMs are incentivized to bring SPY liquidity adding volume on BX despite the exclusion of SPY volume from the note 2

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9 As discussed below, the note 2 incentives sunset on September 30, 2024 (including the growth incentive). Today, the Exchange uses this time period to evaluate the proposed growth incentive criteria to determine whether the parameters are appropriately designed to incentivize LMMs and MMs in the intended manner.

10 See, e.g., Securities Exchange Act Release Nos. 97148 (March 15, 2023), 88 FR 17068 (March 21, 2023) (SR-MRX-2023-07) (establishing growth incentive for MRX Market Makers); and 97440 (May 5, 2023), 88 FR 30370 (May 11, 2023) (SR-MRX-2023-08) (adding an expiration date for the MRX growth incentive). MRX subsequently eliminated this growth incentive upon reaching the expiration date. See Securities Exchange Act Release No. 97800 (June 26, 2023), 88 FR 42409 (June 30, 2023) (SR-MRX-2023-11).

qualifications. Further, today, the Exchange is encouraging SPY liquidity adding volume separately through the proposed additional $0.01 per contract Maker Rebate in SPY described above. Currently, the proposed note 2 incentives are through September 30, 2024. The Exchange believes that this ensures that the note 2 incentives–notably the growth incentive using the benchmark month (i.e., March 2024) against which LMM and MM growth would be measured–are timely and meet the intended purpose of encouraging increased order flow and liquidity adding activity.

At this time, the Exchange proposes to amend note 2 to change the March 2024 baseline volume against which to measure subsequent growth to September 2024. Similar to the prior note incentive, the Exchange will sunset the proposed note 2 incentives after six months, in this case April 30, 2025. The Exchange believes that the note 2 incentives will continue to encourage Members to send order flow to BX.

Note 4 Incentive

The Exchange proposes to amend the incentives in note 4 in Options 7, Section 2(1) that currently provide:

> Participants that increase their executed Customer volume which removes liquidity in a given month by at least 70% above their March 2024 volume as measured by a percentage of TCV will receive a Taker Fee discount of $0.05 per contract in Penny Symbols excluding AAPL, SPY, QQQ, and IWM. Participants with no Customer volume in the remove liquidity segment for the month of March 2024 may qualify for the Taker Fee discount by having any new volume considered as added volume. This note 4 incentive will be available through April 30, 2025.

Currently, the growth incentives in note 4 of Options 7, Section 2(1) have similar qualifications as the growth incentive in note 2 in that Members are measured relative to a benchmark month. Specifically, Members that increase their executed Customer volume which removes liquidity in a given month by at least 70% above their March

2024 volume as measured by a percentage of TCV receive a Taker Fee discount of $0.05 per contract in Penny Symbols excluding AAPL, SPY, QQQ, and IWM. Accordingly, qualifying Members are paid a Customer Taker Fee of $0.35 (instead of $0.40) per contract in Penny Symbols. The Exchange excludes AAPL, SPY, QQQ, and IWM from the note 4 incentive because Members are already paying lower Customer Taker Fees of $0.33 per contract for those symbols today.[11] The note 4 incentive Members to grow the extent of their Customer liquidity removing activity on the Exchange over time, relative to a benchmark month. Members with no Customer volume in the remove liquidity segment for the month of March 2024 may qualify for the Taker Fee discount by having any new volume considered as added volume. Similar to the note 2 incentive proposed above, Members who did not have the requisite volume for the month of March 2024 (and therefore lack March 2024 baseline volume against which to measure subsequent growth) would meet the proposed growth requirement through whatever volume in the required segment during the first month of use. The Exchange believes that the growth incentive in note 4 encourages increased Customer order flow to the Exchange, which contributes to a deeper, more liquid market and provides even more execution opportunities for market participants. Similar to the note 2 incentive above, the note 4 incentive sunsets on September 30, 2024.

At this time, the Exchange proposes to amend note 4 to change the March 2024 baseline volume against which to measure subsequent growth to September 2024. Similar to the prior note incentive, the Exchange will sunset the proposed note 4 incentives after six months, in this case April 30, 2025. The Exchange believes that the

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[11] See Options 7, Section 2(1), note 1.

note 4 incentives, as amended, would ensure that the proposed growth incentive is timely and meets the intended purpose of encouraging increased order flow and Customer liquidity removing activity.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[13] 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 options 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

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'…."[14]

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."[15]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of eighteen options exchanges to which market participants may direct their order flow. 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.

Note 2 Incentive

The Exchange believes that the amended note 2 incentives are reasonable for several reasons. As discussed above, note 2 would continue to provide LMMs and MMs

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14 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)).

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

two separate paths to receive the proposed additional Maker Rebates of (i) $0.05 per contract in Penny Symbols excluding SPY,[16] (ii) $0.01 per contract in SPY,[17] and (iii) $0.24 per contract in Non-Penny Symbols.[18] The first path would be based on liquidity adding volume on BX as a percentage of Customer Total Consolidated Volume (i.e., TCV).[19] The Exchange believes that the total industry percentage threshold is reasonable in order to align with increasing LMM and MM activity on BX over time. The Exchange is proposing to base the first path on a percentage of industry volume in recognition of the fact that the volume executed by a Member may rise or fall with industry volume. A percentage of industry volume calculation allows the proposed qualifications in note 2 to be calibrated to current market volumes rather than requiring a static amount of volume regardless of market conditions. The proposed threshold of 0.45% Customer Total Consolidated Volume is generally intended to reward LMMs and MMs for executing more liquidity adding volume on BX. To the extent such activity is increased by this proposal, market participants may increasingly compete for the opportunity to trade on Exchange to the benefit of all market participants. As noted above, total industry percentage thresholds are established concepts within the Pricing Schedules of BX's affiliates.[20]

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16 Accordingly, qualifying LMMs and MMs would receive a total of $0.29 per contract (LMMs) and $0.25 per contract (MMs) in Penny Symbols excluding SPY.

17 Accordingly, qualifying LMMs and MMs would receive a total of $0.25 per contract (LMMs) and $0.21 per contract (MMs) in SPY.

18 Accordingly, qualifying LMMs and MMs would receive a total of $0.69 per contract (LMMs) and $0.64 per contract (MMs) in Non-Penny Symbols.

19 In particular, LMMs and MMs that execute more than 0.45% Customer Total Consolidated Volume ("TCV") per day which adds liquidity in a given month (excluding Lead Market Maker and Market Maker volume which adds liquidity in SPY) would receive the proposed note 2 incentives.

20 See supra note 10.

As discussed above, the second path would continue to be a growth incentive that would provide LMMs and MMs with the additional Maker Rebates outlined above if they increase their combined LMM and MM volume which adds liquidity in a given month by at least 70% above their September 2024 volume as measured by a percentage of TCV (excluding LMM and MM volume which adds liquidity in SPY). The Exchange believes that its proposal is reasonable because it will provide extra incentives to LMMs and MMs to engage in substantial amounts of liquidity adding activity on the Exchange, as well as to substantially grow the extent to which they do so relative to a recent benchmark month. The Exchange believes that if the proposed growth incentive is effective, any ensuing increase in liquidity adding activity on BX will improve the quality of the market overall, to the benefit of all market participants. The Exchange also believes that it is reasonable to consider any new add liquidity volume (excluding SPY volume) for LMMs and MMs with no such volume for the month of September 2024 in order for those market participants to receive the proposed additional Maker Rebates in note 2. The proposed growth incentive is designed to attract additional liquidity from new LMMs and MMs as well as existing LMMs and MMs who may not have a large footprint on BX today. To the extent this proposal attracts such LMM and MM add liquidity volume to BX, all market participants should benefit through more trading opportunities and tighter spreads. An overall increase in activity would deepen the Exchange's liquidity pool, support the quality of price discovery, promote market transparency and improve market quality for all investors. As discussed above, the Exchange intends for the proposed note 2 incentives, including the growth incentive, to sunset on April 30, 2025, and will use this time to evaluate suitable parameters for such market participants in the targeted segment.

The Exchange believes that this will ensure that the proposed incentives are timely and meet the intended purpose of encouraging increased order flow and liquidity adding activity. As noted above, other options exchanges (including the Exchange's affiliate) have previously adopted substantially similar growth incentives.[21]

The Exchange further believes that it is reasonable to exclude LMM and MM liquidity adding volume in SPY from both paths because SPY is the most actively traded symbol on BX, and Exchange believes that LMMs and MMs will continue to be incentivized to bring SPY liquidity adding volume on BX despite the exclusion of SPY volume from the note 2 qualifications. Further, the Exchange is encouraging SPY liquidity adding volume separately through the proposed additional $0.01 per contract Maker Rebate in SPY described above.

The Exchange believes that the proposed note 2 incentives are equitable and not unfairly discriminatory for the reasons that follow. As a general matter, the Exchange believes that it is equitable and not unfairly discriminatory to provide the note 2 incentives to only LMMs and MMs because these market participants have different requirements and additional obligations to the Exchange that other market participants do not (such as quoting requirements). As noted above, LMMs would ultimately receive higher Maker Rebates than MMs when combining the current base rebates with the proposed additional rebates.[22] Nevertheless, the Exchange continues to believe that it is equitable and not unfairly discriminatory to provide more favorable pricing to LMMs compared to MMs given that LMMs are subject to heightened quoting obligations

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21 See supra note 10.

22 See supra notes 16 - 18.

compared to Market Makers.[23] The higher rebates therefore recognize the differing contributions made to the liquidity and trading environment on the Exchange by LMMs. Overall, the Exchange believes that incentivizing both LMMs and MMs to provide greater liquidity benefits all market participants through the quality of order interaction.

The Exchange also believes that it is equitable and not unfairly discriminatory to consider any new add liquidity volume (excluding SPY volume) for LMMs and MMs with no such volume in September 2024 in order for those market participants to receive the proposed additional Maker Rebates because this is designed to attract additional liquidity and order flow from new and existing LMMs and MMs to the Exchange, as discussed above. In turn, this additional liquidity should benefit all market participants through increased liquidity and order interaction. Furthermore, the proposed growth incentive will be temporary and sunset on April 30, 2025, to ensure that the incentive is timely and meets the intended purpose of encouraging increased order flow and liquidity adding activity.

Note 4 Incentive

The Exchange believes that the proposed growth incentive in new note 4 of Options 7, Section 2(1) is reasonable for the reasons that follow. As discussed above, Members that increase their executed Customer volume which removes liquidity in a given month by at least 70% above their September 2024 volume as measured by a percentage of TCV will receive a Taker Fee discount of $0.05 per contract in Penny Symbols excluding AAPL, SPY, QQQ, and IWM. Accordingly, qualifying Members would pay a Customer Taker Fee of $0.35 (instead of $0.40) per contract in Penny

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[23] See Options 2, Section 4(j) (setting forth the 90% or higher quoting obligations for LMMs) and Section 5(d) (setting forth the 60% or higher quoting obligations for MMs).

Symbols excluding AAPL, SPY, QQQ, and IWM. The Exchange believes it is reasonable to exclude AAPL, SPY, QQQ, and IWM from the note 4 incentive because Members are already paying lower Customer Taker Fees of $0.33 per contract for those symbols today.[24]

The Exchange believes that the proposed growth incentive is reasonable because it will provide extra incentives to Members to engage in substantial amounts of Customer liquidity removing activity on the Exchange, as well as to substantially grow the extent to which they do so relative to a recent benchmark month. The Exchange believes that if the proposed growth incentive is effective, any ensuing increase in liquidity removing activity on BX will increase trading opportunities for all market participants. The Exchange also believes that it is reasonable to consider any new Customer remove liquidity volume for Members with no such volume for the month of September 2024 in order for those Members to receive the proposed Taker Fee discount in note 4. The proposed growth incentive is designed to attract additional Customer order flow from new Members as well as existing Members who may not have a large footprint on BX today. To the extent this proposal attracts such order flow to BX, all market participants should benefit through more trading opportunities. As discussed above, the Exchange intends for the proposed growth incentive in note 4 to sunset on April 30, 2025, and will use this time to evaluate suitable parameters for such market participants in the targeted segment. The Exchange believes that this will ensure that the proposed incentive is timely and meets the intended purpose of encouraging increased order flow and Customer

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[24] See Options 7, Section 2(1), note 1.

liquidity removing activity. As noted above, other options exchanges (including the Exchange's affiliate) have previously adopted similar growth incentives.[25]

Further, the Exchange believes that the proposed note 4 incentive is equitable and not unfairly discriminatory for the reasons that follow. As a general matter, the Exchange believes that it is equitable and not unfairly discriminatory to provide the note 4 incentive to only Customer orders because the proposed changes are intended to increase Customer order follow, particularly Customer remove liquidity order flow, to BX. An increase in Customer order flow enhances liquidity on the Exchange to the benefit of all market participants by providing more trading opportunities, which in turn attracts other market participants that may interact with this order flow.

The Exchange also believes that it is equitable and not unfairly discriminatory to consider any new Customer remove liquidity volume for Members with no such volume in September 2024 in order for those Members to receive the proposed Taker Fee discount because this is designed to attract additional liquidity and order flow from new and existing Members to the Exchange, as discussed above. In turn, this additional liquidity should benefit all market participants through increased liquidity and order interaction. Furthermore, the proposed growth incentive will be temporary and sunset on April 30, 2025, to ensure that the incentive is timely and meets the intended purpose of encouraging increased Customer order flow and liquidity removing activity.

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25 See supra note 10.

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 intra-market competition, the Exchange does not believe that its proposal will place any category of market participant at a competitive disadvantage. As it relates to the proposed note 2 incentives offered to LMMs and MMs, the Exchange believes that the additional Maker Rebates should encourage the provision of liquidity from both existing and new LMMs and MMs that enhances the quality of the Exchange's market and increases the number of trading opportunities on the Exchange for all market participants who will be able to compete for such opportunities. Similarly, for the proposed note 4 incentive offered to Customers, the Exchange likewise believes that the Taker Fee discount should encourage additional Customer order flow from both existing and new Members, which would enhance BX's market quality and increase trading opportunities to the benefit of all market participants.

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 options 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. In sum, if the changes proposed herein are 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 changes 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,[26] 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.

[26] 15 U.S.C. 78s(b)(3)(A)(ii).

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.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-BX-2024-038)

September __, 2024

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend BX Options 7, Section 2

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 27, 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 amend the Exchange's Pricing Schedule at Options 7, Section 2(1).

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on October 1, 2024.

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.

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 proposes to amend a number of incentives for Lead Market Makers ("LMMs"),[3] Market Makers ("MMs"),[4] and Customers[5] at BX Options 7, Section 2(1).

Today, in Penny Symbols, the Exchange pays the following Maker Rebates: Lead Market Makers a Maker Rebate of $0.24 per contract; Market Makers a Maker Rebate of $0.20 per contract; Non-Customer[6] and Firm[7] a Maker Rebate of $0.12 per contract; and Customer a Maker Rebate of $0.30 per contract. Today, in Penny Symbols, the

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3 The term "Lead Market Maker" or ("LMM") applies to a registered BX Options Market Maker that is approved pursuant to Options 2, Section 3 to be the LMM in an options class (options classes). See Options 7, Section 1(c).

4 The term "BX Options Market Maker" or ("M") 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(c).

5 The term "Customer" or ("C") 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(c).

6 The term "Non-Customer" applies to transactions for the accounts of Lead Market Makers, Market Makers, Firms, Professionals, Broker-Dealers and JBOs. See Options 7, Section 1(c).

7 The term "Firm" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC. See Options 7, Section 1(c).

Exchange pays the following Taker Fees: Lead Market Makers, Market Makers, Non-Customer and Firm a Taker Fee of $0.50 per contract; and Customer a Taker Fee of $0.40 per contract.

Today, in Non-Penny Symbols, the Exchange pays the following Maker Rebates/Fees: Lead Market Makers a Maker Rebate of $0.45 per contract; Market Makers a Maker Rebate of $0.40 per contract; Non-Customer and Firm a Maker Fee of $0.45 per contract; and Customer a Maker Rebate of $1.10 per contract. Today, in Non-Penny Symbols, the Exchange pays the following Taker Fees: Lead Market Makers, Market Makers, Non-Customer and Firm a Taker Fee of $1.25 per contract; and Customer a Taker Fee of $0.79 per contract.

Note 2 Incentive

The Exchange proposes to amend the incentives in note 2 of Options 7, Section 2(1) that currently provide:

> Lead Market Makers and Market Makers that **either** (1) execute more than 0.45% Customer Total Consolidated Volume ("TCV") per day which adds liquidity in a given month (excluding Lead Market Maker and Market Maker volume which adds liquidity in SPY), **or** (2) increase their combined Lead Market Maker and Market Maker volume which adds liquidity in a given month by at least 70% above their March 2024 volume as measured by a percentage of TCV (excluding Lead Market Maker and Market Maker volume which adds liquidity in SPY), will receive the following incentives: (i) an additional $0.05 per contract Maker Rebate in Penny Symbols excluding SPY, (ii) an additional $0.01 per contract Maker Rebate in SPY, and (iii) an additional $0.24 per contract Maker Rebate in Non-Penny Symbols. Lead Market Makers and Market Makers with no volume in the add liquidity segment for the month of March 2024 may qualify for the additional Maker Rebates by having any new volume (excluding SPY volume) considered as added volume. This note 2 incentive will be available through September 30, 2024.

Proposed note 2 provides LMMs and MMs two separate paths to receive the additional Maker Rebates described above. The first path is based on liquidity adding volume on

BX as a percentage of Customer Total Consolidated Volume, which is defined as the total national volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month.[8] The first path is based on a percentage of industry volume in recognition of the fact that the volume executed by a Member may rise or fall with industry volume.

The second path is a growth incentive aimed at rewarding LMMs and MMs to grow the extent of their liquidity adding activity on the Exchange over time, relative to a benchmark month. Currently, LMMs and MMs who did not have any combined Lead Market Maker and Market Maker add liquidity volume for the month of March 2024 (and therefore lack March 2024 baseline volume against which to measure subsequent growth) would meet the proposed growth requirement through whatever volume of LMM and MM add liquidity activity (excluding in SPY) during the first month of use.[9] Growth incentives in general are designed to further encourage Members to increase their order flow to the Exchange, which contributes to a deeper, more liquid market and provides even more execution opportunities for market participants. Increased overall order flow benefits all market participants by contributing towards a robust and well-balanced market ecosystem. Other options exchanges have utilized substantially similar growth incentives.[10] The Exchange notes that it excludes LMM and MM liquidity adding

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8 See Options 7, Section 1(a).

9 As discussed below, the note 2 incentives sunset on September 30, 2024 (including the growth incentive). Today, the Exchange uses this time period to evaluate the proposed growth incentive criteria to determine whether the parameters are appropriately designed to incentivize LMMs and MMs in the intended manner.

10 See, e.g., Securities Exchange Act Release Nos. 97148 (March 15, 2023), 88 FR 17068 (March 21, 2023) (SR-MRX-2023-07) (establishing growth incentive for MRX Market Makers); and 97440 (May 5, 2023), 88 FR 30370 (May 11, 2023) (SR-MRX-2023-08) (adding an expiration date for the MRX growth incentive). MRX subsequently eliminated this growth incentive upon

volume in SPY from both paths because SPY is the most actively traded symbol on BX, and the Exchange believes that LMMs and MMs are incentivized to bring SPY liquidity adding volume on BX despite the exclusion of SPY volume from the note 2 qualifications. Further, today, the Exchange is encouraging SPY liquidity adding volume separately through the proposed additional $0.01 per contract Maker Rebate in SPY described above. Currently, the proposed note 2 incentives are through September 30, 2024. The Exchange believes that this ensures that the note 2 incentives–notably the growth incentive using the benchmark month (i.e., March 2024) against which LMM and MM growth would be measured–are timely and meet the intended purpose of encouraging increased order flow and liquidity adding activity.

At this time, the Exchange proposes to amend note 2 to change the March 2024 baseline volume against which to measure subsequent growth to September 2024. Similar to the prior note incentive, the Exchange will sunset the proposed note 2 incentives after six months, in this case April 30, 2025. The Exchange believes that the note 2 incentives will continue to encourage Members to send order flow to BX.

Note 4 Incentive

The Exchange proposes to amend the incentives in note 4 in Options 7, Section 2(1) that currently provide:

> Participants that increase their executed Customer volume which removes liquidity in a given month by at least 70% above their March 2024 volume as measured by a percentage of TCV will receive a Taker Fee discount of $0.05 per contract in Penny Symbols excluding AAPL, SPY, QQQ, and IWM. Participants with no Customer volume in the remove liquidity segment for the month of March 2024 may qualify for the Taker Fee

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reaching the expiration date. See Securities Exchange Act Release No. 97800 (June 26, 2023), 88 FR 42409 (June 30, 2023) (SR-MRX-2023-11).

> discount by having any new volume considered as added volume. This note 4 incentive will be available through April 30, 2025.

Currently, the growth incentives in note 4 of Options 7, Section 2(1) have similar qualifications as the growth incentive in note 2 in that Members are measured relative to a benchmark month. Specifically, Members that increase their executed Customer volume which removes liquidity in a given month by at least 70% above their March 2024 volume as measured by a percentage of TCV receive a Taker Fee discount of $0.05 per contract in Penny Symbols excluding AAPL, SPY, QQQ, and IWM. Accordingly, qualifying Members are paid a Customer Taker Fee of $0.35 (instead of $0.40) per contract in Penny Symbols. The Exchange excludes AAPL, SPY, QQQ, and IWM from the note 4 incentive because Members are already paying lower Customer Taker Fees of $0.33 per contract for those symbols today.[11] The note 4 incentive Members to grow the extent of their Customer liquidity removing activity on the Exchange over time, relative to a benchmark month. Members with no Customer volume in the remove liquidity segment for the month of March 2024 may qualify for the Taker Fee discount by having any new volume considered as added volume. Similar to the note 2 incentive proposed above, Members who did not have the requisite volume for the month of March 2024 (and therefore lack March 2024 baseline volume against which to measure subsequent growth) would meet the proposed growth requirement through whatever volume in the required segment during the first month of use. The Exchange believes that the growth incentive in note 4 encourages increased Customer order flow to the Exchange, which contributes to a deeper, more liquid market and provides even more execution

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11 See Options 7, Section 2(1), note 1.

opportunities for market participants. Similar to the note 2 incentive above, the note 4 incentive sunsets on September 30, 2024.

At this time, the Exchange proposes to amend note 4 to change the March 2024 baseline volume against which to measure subsequent growth to September 2024. Similar to the prior note incentive, the Exchange will sunset the proposed note 4 incentives after six months, in this case April 30, 2025. The Exchange believes that the note 4 incentives, as amended, would ensure that the proposed growth incentive is timely and meets the intended purpose of encouraging increased order flow and Customer liquidity removing activity.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[13] 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 options 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

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12 15 U.S.C. 78f(b).

13 15 U.S.C. 78f(b)(4) and (5).

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'…."[14]

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."[15]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of eighteen options exchanges to which market participants may direct their order flow. 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

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[14] 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)).

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

market share relative to its competitors.

Note 2 Incentive

The Exchange believes that the amended note 2 incentives are reasonable for several reasons. As discussed above, note 2 would continue to provide LMMs and MMs two separate paths to receive the proposed additional Maker Rebates of (i) \$0.05 per contract in Penny Symbols excluding SPY,[16] (ii) \$0.01 per contract in SPY,[17] and (iii) \$0.24 per contract in Non-Penny Symbols.[18] The first path would be based on liquidity adding volume on BX as a percentage of Customer Total Consolidated Volume (i.e., TCV).[19] The Exchange believes that the total industry percentage threshold is reasonable in order to align with increasing LMM and MM activity on BX over time. The Exchange is proposing to base the first path on a percentage of industry volume in recognition of the fact that the volume executed by a Member may rise or fall with industry volume. A percentage of industry volume calculation allows the proposed qualifications in note 2 to be calibrated to current market volumes rather than requiring a static amount of volume regardless of market conditions. The proposed threshold of 0.45% Customer Total Consolidated Volume is generally intended to reward LMMs and MMs for executing more liquidity adding volume on BX. To the extent such activity is increased by this proposal, market participants may increasingly compete for the opportunity to trade on

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16 Accordingly, qualifying LMMs and MMs would receive a total of \$0.29 per contract (LMMs) and \$0.25 per contract (MMs) in Penny Symbols excluding SPY.

17 Accordingly, qualifying LMMs and MMs would receive a total of \$0.25 per contract (LMMs) and \$0.21 per contract (MMs) in SPY.

18 Accordingly, qualifying LMMs and MMs would receive a total of \$0.69 per contract (LMMs) and \$0.64 per contract (MMs) in Non-Penny Symbols.

19 In particular, LMMs and MMs that execute more than 0.45% Customer Total Consolidated Volume ("TCV") per day which adds liquidity in a given month (excluding Lead Market Maker and Market Maker volume which adds liquidity in SPY) would receive the proposed note 2 incentives.

Exchange to the benefit of all market participants. As noted above, total industry percentage thresholds are established concepts within the Pricing Schedules of BX's affiliates.[20]

As discussed above, the second path would continue to be a growth incentive that would provide LMMs and MMs with the additional Maker Rebates outlined above if they increase their combined LMM and MM volume which adds liquidity in a given month by at least 70% above their September 2024 volume as measured by a percentage of TCV (excluding LMM and MM volume which adds liquidity in SPY). The Exchange believes that its proposal is reasonable because it will provide extra incentives to LMMs and MMs to engage in substantial amounts of liquidity adding activity on the Exchange, as well as to substantially grow the extent to which they do so relative to a recent benchmark month. The Exchange believes that if the proposed growth incentive is effective, any ensuing increase in liquidity adding activity on BX will improve the quality of the market overall, to the benefit of all market participants. The Exchange also believes that it is reasonable to consider any new add liquidity volume (excluding SPY volume) for LMMs and MMs with no such volume for the month of September 2024 in order for those market participants to receive the proposed additional Maker Rebates in note 2. The proposed growth incentive is designed to attract additional liquidity from new LMMs and MMs as well as existing LMMs and MMs who may not have a large footprint on BX today. To the extent this proposal attracts such LMM and MM add liquidity volume to BX, all market participants should benefit through more trading opportunities and tighter spreads. An overall increase in activity would deepen the Exchange's liquidity pool,

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[20] See supra note 10.

support the quality of price discovery, promote market transparency and improve market quality for all investors. As discussed above, the Exchange intends for the proposed note 2 incentives, including the growth incentive, to sunset on April 30, 2025, and will use this time to evaluate suitable parameters for such market participants in the targeted segment. The Exchange believes that this will ensure that the proposed incentives are timely and meet the intended purpose of encouraging increased order flow and liquidity adding activity. As noted above, other options exchanges (including the Exchange's affiliate) have previously adopted substantially similar growth incentives.[21]

The Exchange further believes that it is reasonable to exclude LMM and MM liquidity adding volume in SPY from both paths because SPY is the most actively traded symbol on BX, and Exchange believes that LMMs and MMs will continue to be incentivized to bring SPY liquidity adding volume on BX despite the exclusion of SPY volume from the note 2 qualifications. Further, the Exchange is encouraging SPY liquidity adding volume separately through the proposed additional $0.01 per contract Maker Rebate in SPY described above.

The Exchange believes that the proposed note 2 incentives are equitable and not unfairly discriminatory for the reasons that follow. As a general matter, the Exchange believes that it is equitable and not unfairly discriminatory to provide the note 2 incentives to only LMMs and MMs because these market participants have different requirements and additional obligations to the Exchange that other market participants do not (such as quoting requirements). As noted above, LMMs would ultimately receive higher Maker Rebates than MMs when combining the current base rebates with the

[21] See supra note 10.

proposed additional rebates.[22] Nevertheless, the Exchange continues to believe that it is equitable and not unfairly discriminatory to provide more favorable pricing to LMMs compared to MMs given that LMMs are subject to heightened quoting obligations compared to Market Makers.[23] The higher rebates therefore recognize the differing contributions made to the liquidity and trading environment on the Exchange by LMMs. Overall, the Exchange believes that incentivizing both LMMs and MMs to provide greater liquidity benefits all market participants through the quality of order interaction.

The Exchange also believes that it is equitable and not unfairly discriminatory to consider any new add liquidity volume (excluding SPY volume) for LMMs and MMs with no such volume in September 2024 in order for those market participants to receive the proposed additional Maker Rebates because this is designed to attract additional liquidity and order flow from new and existing LMMs and MMs to the Exchange, as discussed above. In turn, this additional liquidity should benefit all market participants through increased liquidity and order interaction. Furthermore, the proposed growth incentive will be temporary and sunset on April 30, 2025, to ensure that the incentive is timely and meets the intended purpose of encouraging increased order flow and liquidity adding activity.

Note 4 Incentive

The Exchange believes that the proposed growth incentive in new note 4 of Options 7, Section 2(1) is reasonable for the reasons that follow. As discussed above, Members that increase their executed Customer volume which removes liquidity in a

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22 See supra notes 16 - 18.

23 See Options 2, Section 4(j) (setting forth the 90% or higher quoting obligations for LMMs) and Section 5(d) (setting forth the 60% or higher quoting obligations for MMs).

given month by at least 70% above their September 2024 volume as measured by a percentage of TCV will receive a Taker Fee discount of $0.05 per contract in Penny Symbols excluding AAPL, SPY, QQQ, and IWM. Accordingly, qualifying Members would pay a Customer Taker Fee of $0.35 (instead of $0.40) per contract in Penny Symbols excluding AAPL, SPY, QQQ, and IWM. The Exchange believes it is reasonable to exclude AAPL, SPY, QQQ, and IWM from the note 4 incentive because Members are already paying lower Customer Taker Fees of $0.33 per contract for those symbols today.[24]

The Exchange believes that the proposed growth incentive is reasonable because it will provide extra incentives to Members to engage in substantial amounts of Customer liquidity removing activity on the Exchange, as well as to substantially grow the extent to which they do so relative to a recent benchmark month. The Exchange believes that if the proposed growth incentive is effective, any ensuing increase in liquidity removing activity on BX will increase trading opportunities for all market participants. The Exchange also believes that it is reasonable to consider any new Customer remove liquidity volume for Members with no such volume for the month of September 2024 in order for those Members to receive the proposed Taker Fee discount in note 4. The proposed growth incentive is designed to attract additional Customer order flow from new Members as well as existing Members who may not have a large footprint on BX today. To the extent this proposal attracts such order flow to BX, all market participants should benefit through more trading opportunities. As discussed above, the Exchange intends for the proposed growth incentive in note 4 to sunset on April 30, 2025, and will

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24 See Options 7, Section 2(1), note 1.

use this time to evaluate suitable parameters for such market participants in the targeted segment. The Exchange believes that this will ensure that the proposed incentive is timely and meets the intended purpose of encouraging increased order flow and Customer liquidity removing activity. As noted above, other options exchanges (including the Exchange's affiliate) have previously adopted similar growth incentives.[25]

Further, the Exchange believes that the proposed note 4 incentive is equitable and not unfairly discriminatory for the reasons that follow. As a general matter, the Exchange believes that it is equitable and not unfairly discriminatory to provide the note 4 incentive to only Customer orders because the proposed changes are intended to increase Customer order follow, particularly Customer remove liquidity order flow, to BX. An increase in Customer order flow enhances liquidity on the Exchange to the benefit of all market participants by providing more trading opportunities, which in turn attracts other market participants that may interact with this order flow.

The Exchange also believes that it is equitable and not unfairly discriminatory to consider any new Customer remove liquidity volume for Members with no such volume in September 2024 in order for those Members to receive the proposed Taker Fee discount because this is designed to attract additional liquidity and order flow from new and existing Members to the Exchange, as discussed above. In turn, this additional liquidity should benefit all market participants through increased liquidity and order interaction. Furthermore, the proposed growth incentive will be temporary and sunset on April 30, 2025, to ensure that the incentive is timely and meets the intended purpose of encouraging increased Customer order flow and liquidity removing activity.

[25] See supra note 10.

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 intra-market competition, the Exchange does not believe that its proposal will place any category of market participant at a competitive disadvantage. As it relates to the proposed note 2 incentives offered to LMMs and MMs, the Exchange believes that the additional Maker Rebates should encourage the provision of liquidity from both existing and new LMMs and MMs that enhances the quality of the Exchange's market and increases the number of trading opportunities on the Exchange for all market participants who will be able to compete for such opportunities. Similarly, for the proposed note 4 incentive offered to Customers, the Exchange likewise believes that the Taker Fee discount should encourage additional Customer order flow from both existing and new Members, which would enhance BX's market quality and increase trading opportunities to the benefit of all market participants.

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 options 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. In sum, if the changes proposed herein are 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 changes 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.[26]

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:

[26] 15 U.S.C. 78s(b)(3)(A)(ii).

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 SR-BX-2024-038 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-2024-038. 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-2024-038 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.[27]

Sherry R. Haywood,

Assistant Secretary.

[27] 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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OPTIONS 7 PRICING SCHEDULE

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Section 2 BX Options Market-Fees and Rebates

The following pricing shall apply to the use of the order execution and routing services of the BX Options market for all securities.

(1) Fees and rebates for Execution of Contracts on the BX Options Market:*

Penny Symbols

Market Participant	**Maker Rebate**	**Taker Fee**
Lead Market Maker	($0.24)(2)	$0.50
Market Maker	($0.20)(2)	$0.50
Non-Customer	($0.12)	$0.50
Firm	($0.12)	$0.50
Customer	($0.30)	$0.40(1)(4)

Non-Penny Symbols

Market Participant	**Maker Rebate / Fee**	**Taker Fee**
Lead Market Maker	($0.45)(2)	$1.25
Market Maker	($0.40)(2)	$1.25
Non-Customer	$0.45	$1.25
Firm	$0.45	$1.25
Customer	($1.10)(3)	$0.79

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2. Lead Market Makers and Market Makers that **either** (1) execute more than 0.45% Customer Total Consolidated Volume ("TCV") per day which adds liquidity in a given month (excluding Lead Market Maker and Market Maker volume which adds liquidity in SPY), **or** (2) increase their combined Lead Market Maker and Market Maker volume which adds liquidity in a given month by at least 70% above their [March]<u>September</u> 2024 volume as measured by a percentage of TCV (excluding Lead Market Maker and Market Maker volume which adds liquidity in SPY), will receive the following incentives: (i) an additional $0.05 per contract Maker Rebate in Penny Symbols excluding SPY, (ii) an additional $0.01 per contract Maker Rebate in SPY, and (iii) an additional $0.24 per contract Maker Rebate in Non-Penny Symbols. Lead Market Makers and Market Makers with no volume in the add liquidity segment for the month of [March]<u>September</u> 2024 may qualify for the additional Maker Rebates by having any new volume (excluding SPY volume) considered as added volume. This note 2 incentive will be available through [September 30, 2024]<u>April 30, 2025</u>.

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4. Participants that increase their executed Customer volume which removes liquidity in a given month by at least 70% above their [March]<u>September</u> 2024 volume as measured by a percentage of TCV will receive a Taker Fee discount of $0.05 per contract in Penny Symbols excluding AAPL, SPY, QQQ, and IWM. Participants with no Customer volume in the remove liquidity segment for the month of [March]<u>September</u> 2024 may qualify for the Taker Fee discount by having any new volume considered as added volume. This note 4 incentive will be available through [September 30, 2024]<u>April 30, 2025</u>.

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