

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 31

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

File No. \* SR 2024 - \* 058

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"/>	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)		
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Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>
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Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

A proposal to amend certain fees based on the rate of inflation.

**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 12/23/2024 (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.

 Date: 2024.12.23 15:54:54 -05'00'

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-2024-058 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-2024-058 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**

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SR-BX-2024-058 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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend certain fees based on the rate of inflation, as described further below.

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

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on January 1, 2025.

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  
Principal Associate General Counsel  
Nasdaq, Inc.  
(301) 978-8469

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

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

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

a. Purpose

The purpose of the proposed rule change is to adjust market data fees for inflation, to be operative on January 1, 2025.

Many market data fees have not changed for years. As such, the fees have fallen substantially in real terms. The Exchange proposes to restore fees to the real amount intended in the original filings in a one-time inflationary adjustment. This adjustment will become operative in three parts: 45 percent in 2025; 30 percent in 2026; and the final 25 percent in 2027. The Exchange believes that it is necessary to spread the impact of this one-time adjustment for past inflation to prevent any undue impact that execution in a single tranche may have on our customers.<sup>3</sup>

The proposed fee increases will apply to BX Top and BX Depth distributor fees and per subscriber fees. A detailed list of fee adjustments is set forth below. The Exchange is not proposing to adjust fees for non-professional usage, administrative fees, extranet fees, or certain categories of Non-Display usage. The Exchange plans to use this inflationary adjustment to support continued investment in innovative, high-quality data products.

**Investments in Nasdaq Data Products**

The Exchange has continuously invested in its products in the period after the current fees were first instituted to accommodate the increasing amount of information processed and the changes in technology over time. It is reasonable and consistent with

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<sup>3</sup> This proposal will adjust for inflation up to August 2024. Depending on inflation thereafter, further adjustments may, or may not, be necessary.

the Act for the Exchange to recoup its investments, at least in part, by adjusting its fees. Continuing to operate at fees frozen in time impacts the Exchange's ability to enhance its offerings and the interests of market participants and investors.

These investments have been necessary in part because of increases in the amount of information processed, coupled with the need to maintain infrastructure in a high fixed cost environment. The following message rate metrics for depth of book data illustrate changes in system demand over time:

- Peak Rate by Millisecond: up approximately 14%
- Average Rate per Millisecond: up approximately 136%
- Peak Rate per Second: up approximately 241%
- Average Rate per Second: up approximately 206%
- Peak Total Messages: up approximately 766%
- Average Total Messages: up approximately 866%
- Average Daily Volume: up approximately 919%
- Maximum Message Count: up approximately 766%

With this increase in message traffic and need to maintain infrastructure, the Exchange expended significant resources to improve its market data products to meet customer expectations, including continued investment in all aspects of the technology ecosystem (e.g., software, hardware, and network), and the Exchange continues to invest in enhancing its technology for the benefit and often at the behest of its customers. Yet the Exchange has not adjusted any of the fees included in this proposal for many years (as set forth below), to even partially offset the costs of maintaining and enhancing its market data offerings.

### **Inflationary Index**

The fee increases the Exchange proposes are based on an industry-specific Producer Price Index (PPI), which is a tailored measure of inflation.<sup>4</sup> As a general matter, the Producer Price Index is a family of indexes that measures the average change over time in selling prices received by domestic producers of goods and services, measuring price change from the perspective of the seller. This contrasts with other metrics, such as the Consumer Price Index (CPI), that measure price change from the purchaser's perspective.<sup>5</sup>

About 10,000 PPIs for individual products and groups of products are tracked and released each month.<sup>6</sup> PPIs are available for the output of nearly all industries in the goods-producing sectors of the U.S. economy—mining, manufacturing, agriculture, fishing, and forestry—as well as natural gas, electricity, and construction, among others. The PPI program covers approximately 69 percent of the service sector's output, as measured by revenue reported in the 2017 Economic Census.

For purposes of this proposal, the relevant industry-specific PPI is the Data Processing and Related Services PPI (“Data Processing PPI”), which is an industry net-output PPI that measures the average change in selling prices received by companies that provide data processing services. The Data Processing PPI was introduced in January 2002 by the Bureau of Labor Statistics (BLS) as part of an ongoing effort to expand Producer Price Index coverage of the services sector of the U.S. economy and is

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<sup>4</sup> See <https://fred.stlouisfed.org/series/PCU51825182#0>.

<sup>5</sup> See <https://www.bls.gov/ppi/overview.htm>.

<sup>6</sup> See <https://www.bls.gov/ppi/overview.htm>.

identified as NAICS - 518210 in the North American Industry Classification System.<sup>7</sup>

According to the BLS “[t]he primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology. The processing services market consists of vendors who use their own computer systems—often utilizing proprietary software—to process customers’ transactions and data. Companies that offer processing services collect, organize, and store a customer’s transactions and other data for record-keeping purposes. Price movements for the NAICS 518210 index are based on changes in the revenue received by companies that provide data processing services. Each month, companies provide net transaction prices for a specified service. The transaction is an actual contract selected by probability, where the price-determining characteristics are held constant while the service is repriced. The prices used in index calculation are the actual prices billed for the selected service contract.”<sup>8</sup>

The Exchange believes the Data Processing PPI is an adequate measure to for adjusting fees for its proprietary market data products because the Exchange uses its “own computer systems” and “proprietary software,” i.e., its own data center and proprietary matching engine software, respectively, to collect, organize, store and report customers’ transactions in U.S. equity securities.<sup>9</sup>

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<sup>7</sup> NAICS appears in table 5 of the PPI Detailed Report and is available at <https://data.bls.gov/timeseries/PCU518210518210>.

<sup>8</sup> See <https://www.bls.gov/ppi/factsheets/producer-price-index-for-the-data-processing-and-related-servicesindustry-naics-518210.htm>.

<sup>9</sup> The Exchange notes that the Bureau of Labor Statistics uses a number of measures of inflation that may apply to Exchange market data. For example, there is also an inflation measure related to PPI industry data for data processing, hosting, and related services: Hosting, ASP, and other IT infrastructure provisioning services. This other measure has been used by other SROs in determining price changes and may provide an alternative point of reference.

The Exchange furthermore notes that the Data Processing PPI is a stable metric with limited volatility, unlike other consumer-side inflation metrics. The Data Processing PPI has not experienced a greater than 2.16% increase for any one calendar year period since Data Processing PPI was introduced into the PPI in January 2002. The average calendar year change from January 2002 to December 2023 was 0.62%, with a cumulative increase of 15.67% over this 21-year period.

The Exchange notes that other exchanges have filed for increases in certain fees, based in part on the rate of inflation.<sup>10</sup>

### **Calculation and Proposed Fee Changes**

The proposed inflationary adjustments are based on a comparison of the Data Processing PPI index on the last date that the relevant fee was adjusted with the level of the Data Processing PPI index on August 1, 2024. For example, for a fee that was last changed on September 1, 2010, the Exchange divided the difference between the Data Processing PPI index on August 2024 (116.022) and the Data Processing PPI index in September 2010 (101.7) by the Data Processing PPI index in September 2010 (101.7), to calculate a total inflationary adjustment of 14 percent to obtain the percentage increase. That percentage increase was then applied to the prior fee to determine the proposed fee, and then rounding the result.<sup>11</sup> This calculation was repeated for each market data fee.

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<sup>10</sup> See, e.g., Securities Exchange Act Release Nos. 34-100004 (April 22, 2024), 89 FR 32465 (April 26, 2024) (SR-CboeBYX-2024-012); and 34-100398 (June 21, 2024), 89 FR 53676 (June 27, 2024) (SR-BOX-2024-16); Securities Exchange Act Release No. 100994 (September 10, 2024), 89 FR 75612 (September 16, 2024) (SR-NYSEARCA-2024-79).

<sup>11</sup> The Exchange rounded fees as follows: fee values over \$999.99 were rounded to the nearest \$10; fees between \$99.99 and \$999.99 were rounded to the nearest dollar; fees between \$9.99 and \$99.99 were rounded to the nearest \$0.50; fees less than \$9.99 were rounded to the nearest \$0.10. Where rounding would have caused the proposed fee to exceed the rate of inflation, the Exchange rounded downward.



As noted above, the Exchange proposes to adjust fees through a one-time inflationary adjustment to be executed in three tranches: one in 2025 that will cover 45 percent of the adjustment, another in 2026 to cover an additional 30 percent, and a final tranche in 2027 for the final 25 percent of the adjustment.

Table 1 below shows the proposed changes for 2025, 2026 and 2027, the date of the last fee change, and the overall adjustment:

**Table 1: Proposed Inflationary Adjustment**

Product	Current	2025	2026	2027	Last Change	Overall Percent Change
<b>BX Top and BX Depth Distributor Fees</b>						
Internal Distributor Fee	\$1,500	\$1,588	\$1,657	\$1,696	7/1/2013 <sup>12</sup>	13.1%
External Distributor Fee	\$2,000	\$2,117	\$2,209	\$2,261	7/1/2013 <sup>13</sup>	13.1%
Non-Display Enterprise License	\$2,500	\$2,647	\$2,761	\$2,827	7/1/2013 <sup>14</sup>	13.1%
<b>BX Top and BX Per Subscriber Fees</b>						
BX Top	\$5.00	\$5.30	\$5.50	\$5.65	7/1/2013 <sup>15</sup>	13.1%
BX Depth	\$10	\$10.55	\$11.05	\$11.30	7/1/2013 <sup>16</sup>	13.0% <sup>17</sup>

<sup>12</sup> See Securities Exchange Act Release No. 69821 (June 21, 2013), 78 FR 38757 (June 27, 2013) (SR-BX-2013-040).

<sup>13</sup> See *id.*

<sup>14</sup> See *id.*

<sup>15</sup> See *id.*

<sup>16</sup> See *id.*

<sup>17</sup> The change as calculated by the Data Processing PPI index is 13.1%. The actual change is 13.0% due to rounding of the fee.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>18</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>19</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

This belief is based on two factors. First, the current fees do not properly reflect the quality of the services and products, as fees for the services and products in question have been static in nominal terms, and therefore falling in real terms due to inflation. Second, the Exchange believes that investments made in enhancing the capacity of Exchange systems have increased the performance of the services and products notwithstanding fees having remained static in nominal terms.

**Equitable Allocation of Reasonable Dues, Fees, and Other Charges**

The proposed changes are an equitable allocation of reasonable dues, fees, and other charges because, as noted above, the Exchange has not increased any of the fees included in the proposal since the dates indicated in Table 1. In the years following the last fee increase, the Exchange has made significant investments in upgrades to Exchange systems and enhancing the quality of its services as measured by, among other things, increased throughput. As such, Exchange customers have benefitted while the Exchange's ability to recoup its investments has been hampered, and Exchange fees have fallen in real terms during the relevant period.

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<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(4) and (5).

Between 2018 and 2023, for example, the overall inflation rate was an average of 3.93% per year, producing a cumulative inflation rate of 21.28%.<sup>20</sup> Using the more targeted inflation number of Data Processing PPI, the cumulative inflation rate was 8.07%.<sup>21</sup> The Exchange believes the Data Processing PPI is a reasonable metric for this fee increase because it is targeted to producer-side increases in the data processing industry, which, based on the definition adopted by BLS, would include the Exchange's market data products. Notwithstanding this inflation, the Exchange has not increased its fees for the subject services for the period of time indicated in Table 1, and therefore the proposed fee changes represent a reasonable increase from the current fees.

The Exchange believes the proposed fee increase is reasonable in light of the Exchange's continued expenditure in maintaining a robust technology ecosystem. The Exchange continues to invest in maintaining and enhancing its market data products for the benefit and often at the behest of its customers and global investors. Such enhancements include refreshing all aspects of the technology ecosystem including software, hardware, and network while introducing new and innovative products. The goal of these enhancements, among other things, is to provide faster and more consistent market data products. The Exchange continues to expend resources to innovate and modernize technology so that it may benefit its members in offering its market data products.

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<sup>20</sup> See <https://www.officialdata.org/us/inflation/2019?endYear=2023&amount=1>

<sup>21</sup> See <https://data.bls.gov/timeseries/PCU518210518210>.

### **The Proposal Does Not Permit Unfair Discrimination**

The proposed fee increases are not unfairly discriminatory because they would apply to all data recipients that choose to purchase the market data products identified above. Any person that chooses to purchase any of these products would be subject to the same fee schedule, regardless of what type of business they operate or the use they plan to make of the data feed. Additionally, the fee increase would be applied uniformly to subscribers without regard to Exchange membership status or the extent of any other business with the Exchange or affiliated entities.

The proposed changes are also not unfairly discriminatory because the fees would be assessed uniformly across all market participants that purchase these products in the same manner they are today, and all products will remain available for purchase by all market participants.

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

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

### **Intramarket Competition**

The proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As noted above, the fee schedule would continue to apply to all customers of the market data products identified above in the same manner as it does today, albeit at inflation-adjusted rates for certain fees, and customers may choose whether to subscribe to the feed at all. The Exchange also believes that the level of the proposed fees neither favors nor penalizes any one or more categories of market participants in a manner that would impose an undue burden on competition.

### **Intermarket Competition**

The proposed fees do not impose a burden on competition or on other Self Regulatory Organizations that is not necessary or appropriate. In determining the proposed fees, the Exchange utilized an objective and stable metric with limited volatility. Utilizing Data Processing PPI over a specified period of time is a reasonable means of recouping the Exchange's investment in maintaining and enhancing the market data products identified above. The Exchange believes utilizing Data Processing PPI, a tailored measure of inflation, to increase certain market data fees to recoup the Exchange's investment in maintaining and enhancing its market data products would not impose a burden on competition.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>22</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the

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<sup>22</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

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

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-BX-2024-058)

December 23, 2024

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Certain Fees Based on the Rate of Inflation

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 23, 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 fees of the following options market data products based on the rate of inflation: BX Top and BX Depth fees (internal and external distribution and Non-Display enterprise license) and BX Top and BX Depth per subscriber fees. Each fee will be adjusted for the inflation that has occurred since that specific fee was last changed.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on January 1, 2025.

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

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

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

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

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

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

1. Purpose

The purpose of the proposed rule change is to adjust market data fees for inflation, to be operative on January 1, 2025.

Many market data fees have not changed for years. As such, the fees have fallen substantially in real terms. The Exchange proposes to restore fees to the real amount intended in the original filings in a one-time inflationary adjustment. This adjustment will become operative in three parts: 45 percent in 2025; 30 percent in 2026; and the final 25 percent in 2027. The Exchange believes that it is necessary to spread the impact of this one-time adjustment for past inflation to prevent any undue impact that execution in a single tranche may have on our customers.<sup>3</sup>

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<sup>3</sup> This proposal will adjust for inflation up to August 2024. Depending on inflation thereafter, further adjustments may, or may not, be necessary.



The proposed fee increases will apply to BX Top and BX Depth distributor fees and per subscriber fees. A detailed list of fee adjustments is set forth below. The Exchange is not proposing to adjust fees for non-professional usage, administrative fees, extranet fees, or certain categories of Non-Display usage. The Exchange plans to use this inflationary adjustment to support continued investment in innovative, high-quality data products.

### **Investments in Nasdaq Data Products**

The Exchange has continuously invested in its products in the period after the current fees were first instituted to accommodate the increasing amount of information processed and the changes in technology over time. It is reasonable and consistent with the Act for the Exchange to recoup its investments, at least in part, by adjusting its fees. Continuing to operate at fees frozen in time impacts the Exchange's ability to enhance its offerings and the interests of market participants and investors.

These investments have been necessary in part because of increases in the amount of information processed, coupled with the need to maintain infrastructure in a high fixed cost environment. The following message rate metrics for depth of book data illustrate changes in system demand over time:

- Peak Rate by Millisecond: up approximately 14%
- Average Rate per Millisecond: up approximately 136%
- Peak Rate per Second: up approximately 241%
- Average Rate per Second: up approximately 206%
- Peak Total Messages: up approximately 766%
- Average Total Messages: up approximately 866%

- Average Daily Volume: up approximately 919%
- Maximum Message Count: up approximately 766%

With this increase in message traffic and need to maintain infrastructure, the Exchange expended significant resources to improve its market data products to meet customer expectations, including continued investment in all aspects of the technology ecosystem (e.g., software, hardware, and network), and the Exchange continues to invest in enhancing its technology for the benefit and often at the behest of its customers. Yet the Exchange has not adjusted any of the fees included in this proposal for many years (as set forth below), to even partially offset the costs of maintaining and enhancing its market data offerings.

### **Inflationary Index**

The fee increases the Exchange proposes are based on an industry-specific Producer Price Index (PPI), which is a tailored measure of inflation.<sup>4</sup> As a general matter, the Producer Price Index is a family of indexes that measures the average change over time in selling prices received by domestic producers of goods and services, measuring price change from the perspective of the seller. This contrasts with other metrics, such as the Consumer Price Index (CPI), that measure price change from the purchaser's perspective.<sup>5</sup>

About 10,000 PPIs for individual products and groups of products are tracked and released each month.<sup>6</sup> PPIs are available for the output of nearly all industries in the goods-producing sectors of the U.S. economy—mining, manufacturing, agriculture,

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<sup>4</sup> See <https://fred.stlouisfed.org/series/PCU51825182#0>.

<sup>5</sup> See <https://www.bls.gov/ppi/overview.htm>.

<sup>6</sup> See <https://www.bls.gov/ppi/overview.htm>.

fishing, and forestry—as well as natural gas, electricity, and construction, among others. The PPI program covers approximately 69 percent of the service sector's output, as measured by revenue reported in the 2017 Economic Census.

For purposes of this proposal, the relevant industry-specific PPI is the Data Processing and Related Services PPI (“Data Processing PPI”), which is an industry net-output PPI that measures the average change in selling prices received by companies that provide data processing services. The Data Processing PPI was introduced in January 2002 by the Bureau of Labor Statistics (BLS) as part of an ongoing effort to expand Producer Price Index coverage of the services sector of the U.S. economy and is identified as NAICS - 518210 in the North American Industry Classification System.<sup>7</sup> According to the BLS “[t]he primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology. The processing services market consists of vendors who use their own computer systems—often utilizing proprietary software—to process customers’ transactions and data. Companies that offer processing services collect, organize, and store a customer’s transactions and other data for record-keeping purposes. Price movements for the NAICS 518210 index are based on changes in the revenue received by companies that provide data processing services. Each month, companies provide net transaction prices for a specified service. The transaction is an actual contract selected by probability, where the price-determining characteristics are

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<sup>7</sup> NAICS appears in table 5 of the PPI Detailed Report and is available at <https://data.bls.gov/timeseries/PCU518210518210>.

held constant while the service is repriced. The prices used in index calculation are the actual prices billed for the selected service contract.”<sup>8</sup>

The Exchange believes the Data Processing PPI is an adequate measure to for adjusting fees for its proprietary market data products because the Exchange uses its “own computer systems” and “proprietary software,” i.e., its own data center and proprietary matching engine software, respectively, to collect, organize, store and report customers’ transactions in U.S. equity securities.<sup>9</sup>

The Exchange furthermore notes that the Data Processing PPI is a stable metric with limited volatility, unlike other consumer-side inflation metrics. The Data Processing PPI has not experienced a greater than 2.16% increase for any one calendar year period since Data Processing PPI was introduced into the PPI in January 2002. The average calendar year change from January 2002 to December 2023 was 0.62%, with a cumulative increase of 15.67% over this 21-year period.

The Exchange notes that other exchanges have filed for increases in certain fees, based in part on the rate of inflation.<sup>10</sup>

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<sup>8</sup> See <https://www.bls.gov/ppi/factsheets/producer-price-index-for-the-data-processing-and-related-servicesindustry-naics-518210.htm>.

<sup>9</sup> The Exchange notes that the Bureau of Labor Statistics uses a number of measures of inflation that may apply to Exchange market data. For example, there is also an inflation measure related to PPI industry data for data processing, hosting, and related services: Hosting, ASP, and other IT infrastructure provisioning services. This other measure has been used by other SROs in determining price changes and may provide an alternative point of reference.

<sup>10</sup> See, e.g., Securities Exchange Act Release Nos. 34-100004 (April 22, 2024), 89 FR 32465 (April 26, 2024) (SR-CboeBYX-2024-012); and 34-100398 (June 21, 2024), 89 FR 53676 (June 27, 2024) (SR-BOX-2024-16); Securities Exchange Act Release No. 100994 (September 10, 2024), 89 FR 75612 (September 16, 2024) (SR-NYSEARCA-2024-79).

**Calculation and Proposed Fee Changes**

The proposed inflationary adjustments are based on a comparison of the Data Processing PPI index on the last date that the relevant fee was adjusted with the level of the Data Processing PPI index on August 1, 2024. For example, for a fee that was last changed on September 1, 2010, the Exchange divided the difference between the Data Processing PPI index on August 2024 (116.022) and the Data Processing PPI index in September 2010 (101.7) by the Data Processing PPI index in September 2010 (101.7), to calculate a total inflationary adjustment of 14 percent to obtain the percentage increase. That percentage increase was then applied to the prior fee to determine the proposed fee, and then rounding the result.<sup>11</sup> This calculation was repeated for each market data fee.

As noted above, the Exchange proposes to adjust fees through a one-time inflationary adjustment to be executed in three tranches: one in 2025 that will cover 45 percent of the adjustment, another in 2026 to cover an additional 30 percent, and a final tranche in 2027 for the final 25 percent of the adjustment.

Table 1 below shows the proposed changes for 2025, 2026 and 2027, the date of the last fee change, and the overall adjustment:

**Table 1: Proposed Inflationary Adjustment**

<b>Product</b>	<b>Current</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>	<b>Last Change</b>	<b>Overall Percent Change</b>
<b>BX Top and BX Depth Distributor Fees</b>						

<sup>11</sup> The Exchange rounded fees as follows: fee values over \$999.99 were rounded to the nearest \$10; fees between \$99.99 and \$999.99 were rounded to the nearest dollar; fees between \$9.99 and \$99.99 were rounded to the nearest \$0.50; fees less than \$9.99 were rounded to the nearest \$0.10. Where rounding would have caused the proposed fee to exceed the rate of inflation, the Exchange rounded downward.

Internal Distributor Fee	\$1,500	\$1,588	\$1,657	\$1,696	7/1/2013 <sup>12</sup>	13.1%
External Distributor Fee	\$2,000	\$2,117	\$2,209	\$2,261	7/1/2013 <sup>13</sup>	13.1%
Non-Display Enterprise License	\$2,500	\$2,647	\$2,761	\$2,827	7/1/2013 <sup>14</sup>	13.1%
<b>BX Top and BX Per Subscriber Fees</b>						
BX Top	\$5.00	\$5.30	\$5.50	\$5.65	7/1/2013 <sup>15</sup>	13.1%
BX Depth	\$10	\$10.55	\$11.05	\$11.30	7/1/2013 <sup>16</sup>	13.0% <sup>17</sup>

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>18</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>19</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

This belief is based on two factors. First, the current fees do not properly reflect the quality of the services and products, as fees for the services and products in question have been static in nominal terms, and therefore falling in real terms due to inflation. Second, the Exchange believes that investments made in enhancing the capacity of

<sup>12</sup> See Securities Exchange Act Release No. 69821 (June 21, 2013), 78 FR 38757 (June 27, 2013) (SR-BX-2013-040).

<sup>13</sup> See *id.*

<sup>14</sup> See *id.*

<sup>15</sup> See *id.*

<sup>16</sup> See *id.*

<sup>17</sup> The change as calculated by the Data Processing PPI index is 13.1%. The actual change is 13.0% due to rounding of the fee.

<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(4) and (5).

Exchange systems have increased the performance of the services and products notwithstanding fees having remained static in nominal terms.

### **Equitable Allocation of Reasonable Dues, Fees, and Other Charges**

The proposed changes are an equitable allocation of reasonable dues, fees, and other charges because, as noted above, the Exchange has not increased any of the fees included in the proposal since the dates indicated in Table 1. In the years following the last fee increase, the Exchange has made significant investments in upgrades to Exchange systems and enhancing the quality of its services as measured by, among other things, increased throughput. As such, Exchange customers have benefitted while the Exchange's ability to recoup its investments has been hampered, and Exchange fees have fallen in real terms during the relevant period.

Between 2018 and 2023, for example, the overall inflation rate was an average of 3.93% per year, producing a cumulative inflation rate of 21.28%.<sup>20</sup> Using the more targeted inflation number of Data Processing PPI, the cumulative inflation rate was 8.07%.<sup>21</sup> The Exchange believes the Data Processing PPI is a reasonable metric for this fee increase because it is targeted to producer-side increases in the data processing industry, which, based on the definition adopted by BLS, would include the Exchange's market data products. Notwithstanding this inflation, the Exchange has not increased its fees for the subject services for the period of time indicated in Table 1, and therefore the proposed fee changes represent a reasonable increase from the current fees.

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<sup>20</sup> See <https://www.officialdata.org/us/inflation/2019?endYear=2023&amount=1>

<sup>21</sup> See <https://data.bls.gov/timeseries/PCU518210518210>.

The Exchange believes the proposed fee increase is reasonable in light of the Exchange's continued expenditure in maintaining a robust technology ecosystem. The Exchange continues to invest in maintaining and enhancing its market data products for the benefit and often at the behest of its customers and global investors. Such enhancements include refreshing all aspects of the technology ecosystem including software, hardware, and network while introducing new and innovative products. The goal of these enhancements, among other things, is to provide faster and more consistent market data products. The Exchange continues to expend resources to innovate and modernize technology so that it may benefit its members in offering its market data products.

#### **The Proposal Does Not Permit Unfair Discrimination**

The proposed fee increases are not unfairly discriminatory because they would apply to all data recipients that choose to purchase the market data products identified above. Any person that chooses to purchase any of these products would be subject to the same fee schedule, regardless of what type of business they operate or the use they plan to make of the data feed. Additionally, the fee increase would be applied uniformly to subscribers without regard to Exchange membership status or the extent of any other business with the Exchange or affiliated entities.

The proposed changes are also not unfairly discriminatory because the fees would be assessed uniformly across all market participants that purchase these products in the same manner they are today, and all products will remain available for purchase by all market participants.



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

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

**Intramarket Competition**

The proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As noted above, the fee schedule would continue to apply to all customers of the market data products identified above in the same manner as it does today, albeit at inflation-adjusted rates for certain fees, and customers may choose whether to subscribe to the feed at all. The Exchange also believes that the level of the proposed fees neither favors nor penalizes any one or more categories of market participants in a manner that would impose an undue burden on competition.

**Intermarket Competition**

The proposed fees do not impose a burden on competition or on other Self Regulatory Organizations that is not necessary or appropriate. In determining the proposed fees, the Exchange utilized an objective and stable metric with limited volatility. Utilizing Data Processing PPI over a specified period of time is a reasonable means of recouping the Exchange's investment in maintaining and enhancing the market data products identified above. The Exchange believes utilizing Data Processing PPI, a tailored measure of inflation, to increase certain market data fees to recoup the Exchange's investment in maintaining and enhancing its market data products would not impose a burden on competition.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>22</sup>

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

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-BX-2024-058 on the subject line.

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<sup>22</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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-2024-058. 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-2024-058 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.<sup>23</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>23</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

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

**NASDAQ BX, INC. RULES**

**Options Rules**

**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:

	<b>Monthly Internal Distributor Fee</b>	<b>Monthly External Distributor Fee</b>	<b>Monthly Non-Display Enterprise License Fee</b>
BX Top and BX Depth <sup>*</sup>	[\$1,500] <u>\$1,588 (op. (1/1/25)</u> <u>\$1,657 (op. (1/1/26)</u> <u>\$1,696 (op. (1/1/27)/firm</u>	[\$2,000] <u>\$2,117 (op. (1/1/25)</u> <u>\$2,209 (op. (1/1/26)</u> <u>\$2,261 (op. (1/1/27)/firm</u>	[\$2,500] <u>\$2,647 (op. (1/1/25)</u> <u>\$2,761 (op. (1/1/26)</u> <u>\$2,827 (op. (1/1/27)/firm</u>

<sup>\*</sup>One Distributor fee allows access to both the BX Top and BX Depth data feeds.

**Monthly Per Subscriber Fee**

BX Top	[\$5] <u>\$5.30 (op. (1/1/25)</u> <u>\$5.50 (op. (1/1/26)</u> <u>\$5.65 (op. (1/1/27) /professional Subscriber</u> \$1/non-professional Subscriber
BX Depth	[\$10] <u>\$10.55 (op. (1/1/25)</u> <u>\$11.05 (op. (1/1/26)</u> <u>\$11.30 (op. (1/1/27) professional Subscriber</u> \$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:

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

#### **BX Options Trade Outline Historical Data**

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

Historical Data for Current Intra-Day Product \$9,000 for the most recent  
Distributors: 36 months

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 December 2014.

### **BX Options Trade Outline External Distribution of Derived Data**

<b>Account Type</b>	<b>Monthly Charge</b>
Unlimited External Distribution of Derived Data:	\$3,000

Fees for external distribution of Derived Data from BX Options Trade Outline are in addition to fees for the End of Day product or the Intraday product, or both, as applicable.

"Derived Data" is any information generated in whole or in part from Exchange Information such that the information generated cannot be reverse engineered to recreate Exchange Information, or be used to create other data that is recognizable as a reasonable substitute for such Exchange Information.

“Exchange Information” is any data or information that has been collected, validated, processed and/or recorded by the Exchange and made available for transmission relating to: (i) eligible securities or other financial instruments, markets, products, vehicles, indicators or devices; (ii) activities of the Exchange; or (iii) other information or data from the Exchange. Information includes, but is not limited to, any element of information used or processed in such a way that Exchange Information or a substitute for such Information can be identified, recalculated or re-engineered from the processed information.

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