

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76692; File No. SR-BX-2015-081)

December 18, 2015

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fees and Rebates and Tiers Related to BX Options

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 December 11, 2015, NASDAQ OMX 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 its Options Pricing at Chapter XV Section 2, entitled “BX Options Market – Fees and Rebates,” which governs pricing for BX members using the BX Options Market (“BX Options”). The Exchange proposes to modify certain fees and rebates (per executed contract) and to adopt tiers applicable to fees and rebates (each a “Tier” and together the “Tiers”).

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqomxbx.cchwallstreet.com/>, 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 its Chapter XV, Section 2 to modify subsection (1) regarding certain fees and rebates³ (known as “fees and rebates”) and to adopt Tiers applicable to certain fees and rebates. The proposed modified fees and rebates (per executed contract) and new Tiers would apply to Customers,⁴ BX Options Market Makers,⁵ and Non-Customers⁶. One proposed new Tier schedule, consisting of three Tiers, would apply to Penny Pilot Options; and

³ Fees and rebates are per executed contract. Chapter XV, Section 2(1).

⁴ 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 Chapter I, Section 1(a)(48)). BX Chapter XV.

⁵ BX Options Market Makers may also be referred to as “Market Makers”. The term “BX Options Market Maker” or ("M") means a Participant that has registered as a Market Maker on BX Options pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. 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.

⁶ Note 1 to Chapter XV, Section 2 states: “¹A Non-Customer includes a Professional, Firm, Broker-Dealer and Non-BX Options Market Maker.”

one proposed new Tier schedule, consisting of three Tiers, would apply to Non-Penny Pilot Options.⁷

Currently, Chapter XV, Section 2 subsection (1) reads as follows:

Sec. 2 BX Options Market—Fees and Rebates

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

(1) Fees for Execution of Contracts on the BX Options Market

Fees and Rebates (per executed contract)			
	Customer	BX Options Market Maker	Non- Customer¹
Penny Pilot Options:			
Rebate to Add Liquidity	\$0.00 ²	\$0.10 ²	N/A
Fee to Add Liquidity	\$0.39 ³	\$0.39 ³	\$0.45
Rebate to Remove Liquidity	\$0.34	N/A	N/A
Fee to Remove Liquidity	N/A	\$0.46	\$0.46
Non-Penny Pilot Options:			
Fee to Add Liquidity	\$0.25/\$0.85 ⁵	\$0.50/\$0.85 ⁵	\$0.88
Rebate to Remove Liquidity	\$0.70	N/A	N/A
Fee to Remove Liquidity	N/A	\$0.89	\$0.89

¹A Non-Customer includes a Professional, Firm, Broker-Dealer and Non-BX Options Market Maker.

²The Rebate to Add Liquidity will be paid to a Customer or BX Options Market Maker only when the Customer or BX Options Market Maker is contra to a Non-Customer or BX Options Market Maker.

³The Fee to Add Liquidity will be assessed to a Customer or BX Options Market Maker only when the Customer or BX Options Market Maker is contra to a Customer.

⁷ The Penny Pilot was established in June 2012 and extended in 2015. See Securities Exchange Act Release Nos. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR-BX-2012-030) (order approving BX option rules and establishing Penny Pilot); and 75326 (June 29, 2015), 80 FR 38481 (July 6, 2015) (SR-BX-2015-037) (notice of filing and immediate effectiveness extending the Penny Pilot through June 30, 2016).

⁴Reserved

⁵The higher Fee to Add Liquidity will be assessed to a Customer or BX Options Market Maker only when the Customer or BX Options Market Maker is contra to a Customer.

The Exchange proposes modifications to its fees and rebates for Penny Pilot Options and for Non-Penny Pilot Options as follows:⁸

Change 1. For Penny Pilot Options, the Exchange proposes to modify fees and rebates to add Tiers for: (1) Customer Rebates to Add Liquidity; (2) Customer Fees to Add Liquidity; (3) Customer Rebates to Remove Liquidity; and (4) BX Options Market Maker Fees to Remove Liquidity.

Change 2. For Non-Penny Pilot Options, the Exchange proposes to modify fees and rebates to add Tiers for: (1) Customer Rebates to Add Liquidity; (2) Customer Fees to Add Liquidity; (3) Customer Rebates to Remove Liquidity; (4) BX Options Market Maker Fees to Remove Liquidity. The Exchange also proposes to increase the Fee to Add Liquidity for BX Options Market Maker and for Non-Customer.

Each specific change is described in detail below.

Change 1 - Penny Pilot Options: Modify Fees and Rebates To Add Tiers

For Penny Pilot Options, the Exchange is proposing to modify fees and rebates for Customer and BX Options Market Maker.⁹ Specifically, the Exchange is proposing to add Tiers

⁸ The greatest volume options traded on the Exchange and in the options market are Penny Pilot Options, and the Exchange has taken this into account when structuring and modifying its fee and rebate schedule.

⁹ The Non-Customer Penny Pilot Options pricing will remain unchanged.

for Rebate to Add Liquidity for Customer,¹⁰ Fee to Add Liquidity for Customer,¹¹ and Rebate to Remove Liquidity for Customer. The Exchange is also proposing to add Tiers for Fee to Remove Liquidity for BX Options Market Maker¹². The three new Tiers, described below, together make up the “Penny Pilot Options Tier Schedule”.

Proposed Tier 1 (“Penny Pilot Tier 1”) will be where a BX Participant (“Participant”) executes less than 0.05% of total industry customer equity and exchange traded fund (“ETF”) option average daily volume (“ADV”) contracts per month. Proposed Penny Pilot Tier 1 will range from \$0.00 rebate to \$0.46 fee:

- the Rebate to Add Liquidity when Customer trading with Non-Customer or BX Options Market Maker will be \$0.00 (no rebate will be paid);
- the Fee to Add Liquidity when Customer trading with Customer will be \$0.39;¹³
- the Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Customer will be \$0.00;
- the Fee to Remove Liquidity when BX Market Maker trading with Customer will be \$0.39; and

¹⁰ The addition of Tiers to Rebate to Add Liquidity for Customer replaces the current fee [sic] (\$0.00) and reference to note 2 which are removed. Note 2 will continue to apply to Rebate to Add Liquidity for BX Options Market Maker, but without reference to the note applying to a Customer. Today, Customers do not receive a Rebate to Add Liquidity.

¹¹ The addition of Tiers to Fee to Add Liquidity for Customer replaces the current fee (\$0.39) and reference to note 3 which are removed. Note 3 will continue to apply to Fee to Add Liquidity for BX Options Market Maker, but without reference to the note applying to a Customer.

¹² The addition of tiers to the Fee to Remove Liquidity for the BX Options Market Maker replaces the current per contract fee of 0.46.

¹³ For Penny Pilot Options, this \$0.39 Fee to Add Liquidity when Customer trading with Customer is the same in all three Tiers.

- the Fee to Remove Liquidity when BX Options Market Maker trading with Non-Customer or BX Options Market Maker will be \$0.46.¹⁴

Proposed Tier 2 (“Penny Pilot Tier 2”) will be where Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month.

Proposed Penny Pilot Tier 2 will range from \$0.10 rebate to \$0.46 fee:

- the Rebate to Add Liquidity when Customer trading with Non-Customer or BX Options Market Maker will be \$0.10;
- the Fee to Add Liquidity when Customer trading with Customer will be \$0.39;
- the Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Customer will be \$0.25;
- the Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be \$0.39; and
- the Fee to Remove Liquidity when BX Options Market Maker trading with Non-Customer or BX Options Market Maker will be \$0.46.

Proposed Tier 3 (“Penny Pilot Tier 3”) will be where Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month. Proposed Penny Pilot Tier 3 will range from \$0.20 rebate to \$0.46 fee:

- the Rebate to Add Liquidity when Customer trading with Non-Customer or BX Options Market Maker will be \$0.20;
- the Fee to Add Liquidity when Customer trading with Customer will be \$0.39;

¹⁴ For Penny Pilot Options, this \$0.46 Fee to Remove Liquidity when BX Options Market Maker trading with Non-Customer or BX Options Market Maker will be the same in all Tiers.

- the Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Customer will be \$0.35;
- the Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be \$0.30; and
- the Fee to Remove Liquidity when BX Options Market Maker trading with Non-Customer or BX Options Market Maker will be \$0.46.

Change 2 – Non-Penny Pilot Options: Modify Fees and Rebates to Add Tiers, Increase Fee to Add Liquidity

For Non-Penny Pilot Options, the Exchange is proposing to modify fees and rebates for Customer, BX Options Market Maker, and Non-Customer. Specifically, the Exchange is proposing to add Tiers for Rebate to Add Liquidity for Customer,¹⁵ Fee to Add Liquidity for Customer,¹⁶ and Rebate to Remove Liquidity for Customer.¹⁷ The Exchange is proposing to add Tiers for Fee to Remove Liquidity for BX Market Maker.¹⁸ The three new Tiers, described below, together make up the “Non-Penny Pilot Options Tier Schedule”. The Exchange is also

¹⁵ The addition of Rebate to Add Liquidity of the Non-Penny Pilot Options part of the fees and rebates schedule is so that the Non-Penny and Penny parts of the schedule both have Rebate to Add Liquidity. The addition of Tiers to Rebate to Add Liquidity in the Non-Penny category applies to Customer only.

¹⁶ The addition of Tiers to Fee to Add Liquidity for Customer replaces the current fee (\$0.25/\$0.85) and reference to note 5 which are taken out. Note 5 will continue to apply to Fee to Add Liquidity for BX Options Market Maker, but without reference to the note applying to a Customer. The Exchange notes that for Fee to Add Liquidity for Customer the Exchange is replacing a fee (\$0.25/\$0.85) with Tiers that include Fee to Add Liquidity as well as Rebate to Add Liquidity.

¹⁷ The addition of Tiers to Rebate to Remove Liquidity for Customer replaces the current fee [sic] (\$0.70) and reference to it is taken out.

¹⁸ The addition of Tiers to Fee to Remove Liquidity for BX Options Market Maker replaces the current fee (\$0.89) and reference to it is taken out.

proposing a modest ten cent increase to the Fee to Add Liquidity for BX Options Market Maker from \$0.50/\$0.85 to \$0.50/\$0.95,¹⁹ and for Non-Customer from \$0.88 to \$0.98.

Proposed Tier 1 (“Non-Penny Pilot Tier 1”) will be where Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month. Proposed Non-Penny Pilot Tier 1 will range from \$0.00 rebate to \$0.89 fee:

- the Rebate to Add Liquidity when Customer trading with Non-Customer or BX Options Market Maker will be \$0.00 (no rebate will be paid);
- the Fee to Add Liquidity when Customer trading with Customer will be \$0.85;²⁰
- the Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Customer will be \$0.80;
- the Fee to Remove Liquidity when BX Market Maker trading with Customer will be \$0.89; and
- the Fee to Remove Liquidity when BX Options Market Maker trading with Non-Customer or BX Options Market Maker will be \$0.89.²¹

Proposed Tier 2 (“Non-Penny Pilot Tier 2”) will be where Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month.

Proposed Non-Penny Pilot Tier 2 will range from \$0.10 rebate to \$0.89 fee:

- the Rebate to Add Liquidity when Customer trading with Non-Customer or BX Options Market Maker will be \$0.10;

¹⁹ Per note 5 as modified, the higher Fee to Add Liquidity will be assessed to a BX Options Market Maker only when the BX Options Market Maker is contra to a Customer.

²⁰ For Non-Penny Pilot Options, this \$0.85 Fee to Add Liquidity when Customer trading with Customer is the same in all three Tiers.

²¹ For Non-Penny Pilot Options, this \$0.89 Fee to Remove Liquidity when BX Options Market Maker trading with Non-Customer or BX Options Market Maker will be the same in all Tiers.

- the Fee to Add Liquidity when Customer trading with Customer will be \$0.85;
- the Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Customer will be \$0.80;
- the Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be \$0.89; and
- the Fee to Remove Liquidity when BX Options Market Maker trading with Non-Customer or BX Options Market Maker will be \$0.89.

Proposed Tier 3 (“Non-Penny Pilot Tier 3”) will be where Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month. Proposed Non-Penny Pilot Tier 3 will range from \$0.20 rebate to \$0.89 fee:

- the Rebate to Add Liquidity when Customer trading with Non-Customer or BX Options Market Maker will be \$0.20;
- the Fee to Add Liquidity when Customer trading with Customer will be \$0.85;
- the Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Customer will be \$0.80;
- the Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be \$0.60; and
- the Fee to Remove Liquidity when BX Options Market Maker trading with Non-Customer or BX Options Market Maker will be \$0.89.

As proposed, Chapter XV, Section 2 subsection (1) will read as follows:

Sec. 2 BX Options Market—Fees and Rebates

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

(1) Fees for Execution of Contracts on the BX Options Market

Fees and Rebates (per executed contract)			
	Customer	BX Options Market Maker	Non-Customer¹
Penny Pilot Options:			
Rebate to Add Liquidity	#	\$0.10 ²	N/A
Fee to Add Liquidity	#	\$0.39 ³	\$0.45
Rebate to Remove Liquidity	#	N/A	N/A
Fee to Remove Liquidity	N/A	#	\$0.46
Non-Penny Pilot Options:			
Rebate to Add Liquidity	*	N/A	N/A
Fee to Add Liquidity	*	\$0.50/\$0.95 ⁵	\$0.98
Rebate to Remove Liquidity	*	N/A	N/A
Fee to Remove Liquidity	N/A	*	\$0.89

¹A Non-Customer includes a Professional, Firm, Broker-Dealer and Non-BX Options Market Maker.

²The Rebate to Add Liquidity will be paid to a BX Options Market Maker only when the BX Options Market Maker is contra to a Non-Customer or BX Options Market Maker.

³The Fee to Add Liquidity will be assessed to a BX Options Market Maker only when the BX Options Market Maker is contra to a Customer.

⁴Reserved

⁵The higher Fee to Add Liquidity will be assessed to a BX Options Market Maker only when the BX Options Market Maker is contra to a Customer.

Penny Pilot Options Tier Schedule

		Rebate to Add Liquidity	Fee to Add Liquidity	Rebate to Remove Liquidity	Fee to Remove Liquidity	Fee To Remove Liquidity
	When:	Customer	Customer	Customer	BX Options Market Maker	BX Options Market Maker
	Trading with:	Non-Customer or BX Options Market Maker	Customer	Non-Customer, BX Options Market Maker, or Customer	Customer	Non-Customer or BX Options Market Maker
Tier 1	Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month.	\$0.00	\$0.39	\$0.00	\$0.39	\$0.46
Tier 2	Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month.	\$0.10	\$0.39	\$0.25	\$0.39	\$0.46
Tier 3	Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month.	\$0.20	\$0.39	\$0.35	\$0.30	\$0.46

* Non-Penny Pilot Options Tier Schedule

		Rebate to Add Liquidity	Fee to Add Liquidity	Rebate to Remove Liquidity	Fee to Remove Liquidity	Fee To Remove Liquidity
	When:	Customer	Customer	Customer	BX Options Market Maker	BX Options Market Maker
	Trading with:	Non-Customer or BX Options Market Maker	Customer	Non-Customer, BX Options Market Maker, or Customer	Customer	Non-Customer or BX Options Market Maker
Tier 1	Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month.	\$0.00	\$0.85	\$0.80	\$0.89	\$0.89
Tier 2	Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month.	\$0.10	\$0.85	\$0.80	\$0.89	\$0.89
Tier 3	Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month.	\$0.20	\$0.85	\$0.80	\$0.60	\$0.89

The Exchange is adopting these fees and rebates at this time because it believes that they will provide incentives for execution of contracts on the BX Options Market. The Exchange believes that its proposal should provide increased opportunities for participation in executions on the Exchange, facilitating the ability of the Exchange to bring together participants and encourage more robust competition for orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,²² in general, and with Section 6(b)(4) and 6(b)(5) of the Act,²³ 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 or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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, for example, the Commission indicated that market forces should generally determine the price of non-core market data because national market system regulation “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁴ Likewise, in NetCoalition v. NYSE Arca, Inc., 615 F.3d 525 (D.C. Cir. 2010), the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees

²² 15 U.S.C. 78f.

²³ 15 U.S.C. 78f(b)(4) and (5).

²⁴ Exchange Act Release No. 34-51808 (June 9, 2005) (“Regulation NMS Adopting Release”).

against a challenge claiming that Congress mandated a cost-based approach.²⁵ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”²⁶

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . .”²⁷ Although the Court and the SEC were discussing the cash equities markets, the Exchange believes that, as discussed above, these views apply with equal force to the options markets.

The Exchange believes that its proposal should provide increased opportunities for participation in executions on the Exchange, facilitating the ability of the Exchange to bring together participants and encourage more robust competition for orders.

Change 1 - Penny Pilot Options: Modify Fees and Rebates

For Penny Pilot Options, the Exchange is proposing to modify fees and rebates for Customer and BX Options Market Maker. Specifically, the Exchange is proposing to add Tiers for Rebate to Add Liquidity for Customer, Fee to Add Liquidity for Customer, and Rebate to Remove Liquidity for Customer. The Exchange is also proposing to add Tiers for Fee to

²⁵ See NetCoalition, 615 F.3d at 534.

²⁶ Id. at 537.

²⁷ NetCoalition I, 615 F.3d at 539 (quoting ArcaBook Order, 73 FR at 74782-74783).

Remove Liquidity for BX Market Maker. The three new Tiers make up the Penny Pilot Options Tier Schedule.

In particular, proposed Penny Pilot Tier 1 will be where a Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month, and will range from \$0.00 rebate to \$0.46 fee.²⁸ Proposed Penny Pilot Tier 2 will be where Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month, and will range from \$0.10 rebate to \$0.46 fee.²⁹ Proposed Penny Pilot Tier 3 will be where Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month, and will range from \$0.20 rebate to \$0.46 fee.³⁰

In adding the new Tiers in the Penny Pilot Options Tier Schedule, the current pricing will be replaced with the proposed Tier Schedule and is no longer used. Tiers replace the current rebate (\$0.00) in Rebate to Add Liquidity for Customer (no rebate is offered today), and

²⁸ The Rebate to Add Liquidity when Customer trading with Non-Customer or BX Options Market Maker will be \$0.00; the Fee to Add Liquidity when Customer trading with Customer will be \$0.39 (same across all tiers); the Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Customer will be \$0.00; the Fee to Remove Liquidity when BX Market Maker trading with Customer will be \$0.39; and the Fee to Remove Liquidity when BX Options Market Maker trading with Non-Customer or BX Options Market Maker will be \$0.46 (same across all Tiers).

²⁹ The Rebate to Add Liquidity when Customer trading with Non-Customer or BX Options Market Maker will be \$0.10; the Fee to Add Liquidity when Customer trading with Customer will be \$0.39; the Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Customer will be \$0.25; the Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be \$0.39; and the Fee to Remove Liquidity when BX Options Market Maker trading with Non-Customer or BX Options Market Maker will be \$0.46.

³⁰ The Rebate to Add Liquidity when Customer trading with Non-Customer or BX Options Market Maker will be \$0.20; the Fee to Add Liquidity when Customer trading with Customer will be \$0.39; the Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Customer will be \$0.35; the Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be \$0.30; and the Fee to Remove Liquidity when BX Options Market Maker trading with Non-Customer or BX Options Market Maker will be \$0.46.

reference to note 2 is removed.³¹ Tiers replace the current fee (\$0.39) to Fee to Add Liquidity for Customer and reference to note 3 is removed and will not apply with this proposal.³² Certain references in Notes 2 and 3 to Customer are removed, and as such the notes no longer make sense for Rebate to Add Liquidity and for Customer Fee to Add Liquidity for Customer.³³ The Exchange is also substituting the current fee (\$0.46) to Fee to Remove Liquidity for BX Options Market Maker by putting it in the tier schedule. Deleting the rebates and fees from the fees and rebates structure for Penny Pilot Options is reasonable where they have been replaced by the new Tiers structure to incentivize Participants to send order flow to the Exchange.

The Exchange believes that the proposed Tiers in the Penny Pilot Options Tier Schedule are reasonable in that they reflect a structure that is not novel in the options markets but rather is similar to that of other options markets and competitive with what is offered by other exchanges.³⁴ In addition, the Exchange believes that making changes to add Tiers applicable to the Customer in terms of Rebate to Add Liquidity, Fee to Add Liquidity, and Rebate to Remove Liquidity, is reasonable because it encourages the desired Customer behavior by attracting Customer interest to the Exchange. Customer activity enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market

³¹ The rule text of note 2 is amended to reflect the removal of certain references to Customer.

³² The rule text of note 3 is amended to reflect the removal of certain references to Customer.

³³ Notes 2 and 3 continue to apply, to Rebate to Add Liquidity for BX Options Market Maker and to Fee to Add Liquidity for BX Options Market Maker, respectively, but without deleted references to Customer.

³⁴ See, e.g., the MIAX fee schedule at http://www.miaxoptions.com/sites/default/files/fee-schedules/MIAX_Options_Fee_Schedule_10012015.pdf and the BOX fee schedule at http://boxexchange.com/assets/BOX_Fee_Schedule1.pdf.

participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Establishing Penny Pilot Tiers for Rebate to Add Liquidity for Customer, Fee to Add Liquidity for Customer, and Rebate to Remove Liquidity for Customer, and Penny Pilot Tiers for Fee to Remove Liquidity for BX Options Market Maker is reasonable. It encourages market participant behavior through progressive tiered fees and rebates using an accepted methodology among options exchanges.³⁵ The proposed Tiers in the Penny Pilot Options Tier Schedule, which have been discussed at length, clearly reflect the progressively increasing nature of Participant executions structured for the purpose of attracting order flow to the Exchange.

The Penny Pilot Tiers are reasonable in that they are set up to incentivize Participants to direct liquidity to the Exchange. That is, as Participants execute more of total industry customer equity and ETF option ADV contracts per month on the Exchange, they can in certain categories earn higher rebates and be assessed lower fees. For example, the Penny Pilot Tier 3 Rebate to Add Liquidity when Customer trading with Non-Customer or BX Options Market Maker is higher (\$0.20) than [sic] the Penny Pilot Tier 1 Rebate to Add Liquidity (\$0.00), which offer [sic] no rebate today. The Penny Pilot Tiers are set up in a similar progressive manner for Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Customer. And, the Fee to Remove Liquidity when BX Option Market Maker trading with Customer is lesser for Tier 3 (\$0.30) than for Tier 1 (\$0.39).³⁶

³⁵ See, e.g., fee and rebate schedules of other options exchanges, including, but not limited to, NASDAQ Options Market (“NOM”), NASDAQ OMX PHLX LLC (“Phlx”), and Chicago Board Options Exchange (“CBOE”).

³⁶ The remaining categories of Fee to Add Liquidity when Customer trading with Customer and Fee to Remove Liquidity when BX Options Market Maker trading with Non-Customer or BX Options Market Maker reflect the same fee in each Penny Pilot Tier, whether 1, 2, or 3 (\$0.39 and \$0.46, respectively).

For Penny Pilot Options, establishing the Customer-related and BX Options Market Maker-related fee and rebate changes, which includes the new Tiers, is equitable and not unfairly discriminatory. This is because the Exchange's proposal to assess fees and pay rebates according to Penny Pilot Tiers 1, 2, and 3 will apply uniformly to all similarly situated Participants. BX Options Market Makers would be assessed a Fee to Remove Liquidity according to the Penny Pilot Tiers, and Customers would earn a Rebate to Add Liquidity and a Rebate to Remove Liquidity according to the same Tiers per the Penny Pilot Options Tier Schedule .

The fee and rebate schedule as proposed continues to reflect differentiation among different market participants. The Exchange believes that the differentiation is equitable and not unfairly discriminatory, as well as reasonable, and notes that unlike others (e.g. Non-Customers) some market participants like BX Options Market Makers commit to various obligations. For example, transactions of a BX Options Market Maker must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and BX Options Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all BX Options Market Makers are designated as specialists on BX for all purposes under the Act or rules thereunder.³⁷

The Exchange believes that by making the proposed Penny Pilot Options changes, it is incentivizing Participants to execute more volume on the Exchange to further enhance liquidity in this market.

³⁷ See Chapter VII, Section 5, entitled “Obligations of Market Makers”.

Change 2 – Non-Penny Pilot Options: Modify Fees and Rebates

For Non-Penny Pilot Options, the Exchange is proposing to modify fees and rebates for Customer and BX Options Market Maker. Specifically, the Exchange is proposing to add Tiers for Rebate to Add Liquidity for Customer, Fee to Add Liquidity for Customer,³⁸ and Rebate to Remove Liquidity for Customer. The Exchange is also proposing to add Tiers for Fee to Remove Liquidity for BX Market Maker. The three new Tiers make up the Non-Penny Pilot Options Tier Schedule.

In particular, proposed Non-Penny Pilot Tier 1 will be where Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month, and will range from \$0.00 rebate to \$0.89 fee.³⁹ The Proposed Non-Penny Pilot Tier 2 will be where Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month, and will range from \$0.10 rebate to \$0.89 fee.⁴⁰ Proposed Non-Penny

³⁸ The addition of Rebate to Add Liquidity of the Non-Penny Pilot Options part of the fees and rebates schedule is so that the Non-Penny and Penny parts of the schedule both have Rebate to Add Liquidity. The addition of Tiers to Rebate to Add Liquidity in the Non-Penny category applies to Customer only.

³⁹ The Rebate to Add Liquidity when Customer trading with Non-Customer or BX Options Market Maker will be \$0.00 ; the Fee to Add Liquidity when Customer trading with Customer will be \$0.85 (same across all Tiers); the Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Customer will be \$0.80; the Fee to Remove Liquidity when BX Market Maker trading with Customer will be \$0.89; and the Fee to Remove Liquidity when BX Options Market Maker trading with Non-Customer or BX Options Market Maker will be \$0.89 (same across all Tiers).

⁴⁰ The Rebate to Add Liquidity when Customer trading with Non-Customer or BX Options Market Maker will be \$0.10; the Fee to Add Liquidity when Customer trading with Customer will be \$0.85; the Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Customer will be \$0.80; the Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be \$0.89; and the Fee to Remove Liquidity when BX Options Market Maker trading with Non-Customer or BX Options Market Maker will be \$0.89.

Pilot Tier 3 will be where Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month, and will range from \$0.20 rebate to \$0.89 fee.⁴¹

In adding the new Tiers in the Non-Penny Pilot Options Tier Schedule, the current pricing will be replaced with the proposed Tier Schedule and is no longer used. Tiers replace the current fee (\$0.25/\$0.85) to Fee to Add Liquidity for Customer⁴² and reference to note 5 is removed.⁴³ Certain references in note 5 to Customer are removed as they are no longer needed.⁴⁴ Tiers replace the current Rebate to Remove Liquidity for Customer and the current rebate (\$0.70) is removed. Tiers replace the current Fee to Remove Liquidity for BX Options Market Maker and the current fee (\$0.89) is removed. Deleting the rebates and fees from the fees and rebates structure for Non-Penny Pilot Options is reasonable where they have been replaced by the new Tiers structure to incentivize Participants bringing flow to the Exchange. The Exchange is also reasonably increasing by ten cents (to \$0.95) the Fee to Add Liquidity for BX Options Market Maker when the BX Options market maker is contra to a Customer, and increasing by ten cents (to \$0.98) the Fee to Add Liquidity for Non-Customer.

⁴¹ The Rebate to Add Liquidity when Customer trading with Non-Customer or BX Options Market Maker will be \$0.20; the Fee to Add Liquidity when Customer trading with Customer will be \$0.85; the Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Customer will be \$0.80; the Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be \$0.60; and the Fee to Remove Liquidity when BX Options Market Maker trading with Non-Customer or BX Options Market Maker will be \$0.89.

⁴² The Exchange notes that for Fee to Add Liquidity for Customer the Exchange is replacing a fee (\$0.25/\$0.85) with Tiers that include Fee to Add Liquidity as well as Rebate to Add Liquidity.

⁴³ The rule text of note 5 is amended to reflect the removal of certain references to Customer.

⁴⁴ Note 5 continues to apply, however, to Fee to Add Liquidity for BX Options Market Maker, but without reference to the note applying to a Customer.

The Exchange believes that the proposed Tiers in the Non-Penny Pilot Options Tier Schedule are reasonable in that they reflect a structure that is not novel in the options markets but rather is similar to and competitive with what is offered by other exchanges.⁴⁵ In addition, the Exchange believes that making changes to add Tiers applicable to the Customer in terms of Rebate to Add Liquidity, Fee to Add Liquidity, and Rebate to Remove Liquidity, is reasonable because it encourages the desired Customer behavior by attracting Customer interest to the Exchange. Customer activity enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Establishing Non-Penny Pilot Tiers for Rebate to Add Liquidity for Customer, Fee to Add Liquidity for Customer, and Rebate to Remove Liquidity for Customer, and Non-Penny Pilot Tiers for Fee to Remove Liquidity for BX Options Market Maker is reasonable. It encourages market participant behavior through progressive tiered fees and rebates using an accepted methodology among options exchanges.⁴⁶ The proposed Tiers in the Non-Penny Pilot Options Tier Schedule, which have been discussed at length, clearly reflect the progressively increasing nature of Participant executions structured for the purpose of attracting flow to the Exchange.

⁴⁵ See, e.g., the MIAX fee schedule at http://www.miaxoptions.com/sites/default/files/fee-schedules/MIAX_Options_Fee_Schedule_10012015.pdf and the BOX fee schedule at http://boxexchange.com/assets/BOX_Fee_Schedule1.pdf.

⁴⁶ See, e.g., fee and rebate schedules of other options exchanges, including, but not limited to, NOM, Phlx, and CBOE.

The Non-Penny Pilot Tiers are reasonable in that they are set up to incentivize Participants to direct liquidity to the Exchange. That is, as Participants execute more of total industry customer equity and ETF option ADV contracts per month on the Exchange, they can in certain categories earn higher rebates and be assessed lower fees. For example, the Non-Penny Pilot Tier 3 Rebate to Add Liquidity when Customer trading with Non-Customer or BX Options Market Maker is, similarly to the equivalent Penny Pilot Tier category, higher (\$0.20) that [sic] the Non-Penny Pilot Tier 1 Rebate to Add Liquidity (\$0.00). The Non-Penny Pilot Tiers are set up in a similar progressive manner for Fee to Remove Liquidity when BX Options Market Maker trading with Customer being assessed a lesser fee for Tier 3 (\$0.60) than for Tier 1 (\$0.89).⁴⁷

For Non-Penny Pilot Options, establishing the Customer-related and BX Options Market Maker-related fee and rebate changes, which includes the new Tiers, is equitable and not unfairly discriminatory. This is because the Exchange's proposal to assess fees and pay rebates according to Non-Penny Pilot Tiers 1, 2, and 3 will apply similarly to all similarly situated Participants. BX Options Market Makers would be assessed a Fee to Remove Liquidity according to the Non-Penny Pilot Tiers, and Customers would earn a Rebate to Add Liquidity and a Rebate to Remove Liquidity and be assessed a Fee to Add Liquidity according to the same Tiers per the Non-Penny Pilot Options Tier Schedule.

The fee and rebate schedule as proposed continues to reflect differentiation among different market participants. The Exchange believes that the differentiation is equitable and not

⁴⁷ The remaining categories of Fee to Add Liquidity when Customer trading with Customer, Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Customer, and Fee to Remove Liquidity when BX Options Market Maker trading with Non-Customer or BX Options Market Maker reflect the same rates in each Non-Penny Pilot Tier, whether 1, 2, or 3 (\$0.85, \$0.80, and \$0.89, respectively).

unfairly discriminatory, as well as reasonable, and notes that unlike others (e.g. Non-Customers) some market participants like BX Options Market Makers commit to various obligations. For example, transactions of a BX Market Maker must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on BX for all purposes under the Act or rules thereunder.⁴⁸

The Exchange believes that by making the proposed Non-Penny Pilot Options changes, it is incentivizing Participants to execute more volume on the Exchange to further enhance liquidity in this market.

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. Specifically, the Exchange does not believe that its proposal to make changes to its Penny Pilot Options and Non-Penny Pilot Options fees and rebates and to establish Tiers for such fees and rebates will impose any undue burden on competition, as discussed below.

The Exchange operates in a highly competitive market in which many sophisticated and knowledgeable market participants can readily and do send order flow to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. Additionally, new competitors have entered the market and still others are reportedly entering the market shortly. These market forces ensure that the Exchange's fees and rebates remain competitive with the fee structures at other trading platforms. In that sense, the Exchange's

⁴⁸ See Chapter VII, Section 5, entitled "Obligations of Market Makers".

proposal is actually pro-competitive because the Exchange is simply continuing its fees and rebates and establishing Tiers for Penny Pilot Options and Non-Penny Pilot Options in order to remain competitive in the current environment.

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In terms of intra-market competition, the Exchange notes that price differentiation among different market participants operating on the Exchange (e.g., Customer, BX Options Market Maker, Non-Customer) is reasonable. Customer activity, for example, enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Moreover, unlike others (e.g. Non-Customers) each BX Options Market Maker commits to various obligations. These obligations include, for example, transactions of a BX Market Maker

must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings.⁴⁹

In this instance, the proposed changes to the fees and rebates for execution of contracts on the Exchange, and establishing Tiers for such fees and rebates, do not impose a burden on competition because the Exchange's execution and routing services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. 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. Additionally, the changes proposed herein are pro-competitive to the extent that they continue to allow the Exchange to promote and maintain order executions.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,⁵⁰ 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.

⁴⁹ See Chapter VII, Section 5, entitled "Obligations of Market Makers". Further, all Market Makers are designated as specialists on BX for all purposes under the Act or rules thereunder. See Chapter VII, Section 2.

⁵⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2015-081 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2015-081. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications

relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BX-2015-081, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵¹

Robert W. Errett
Deputy Secretary

⁵¹ 17 CFR 200.30-3(a)(12).