SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78431; File No. SR-BX-2016-045)

July 28, 2016

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Tiers Related to SPY 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 July 14, 2016, 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 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 fees and rebates (per executed contract) for certain Penny Pilot[3] Options to: (a) delete SPY Options from the Select Symbols Options Tier Schedule; and (b) adopt a SPY Options Tier Schedule.[4]

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

2 17 CFR 240.19b-4.

3 The Penny Pilot was established in June 2012 and extended through 2016. 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 78036 (June 10, 2016), 81 FR 39308 (June 16, 2016) (SR-BX-2016-021) (notice of filing and immediate effectiveness extending the Penny Pilot through December 31, 2016).

4 SPY, Select Symbols Options Tier Schedule, and SPY Options Tier Schedule are discussed below.

The text of the proposed rule change is available on the Exchange's Website at http://nasdaqbx.cchwallstreet.com/, 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 Exchange proposes to amend Chapter XV, Section 2 to modify fees and rebates[5] for certain Penny Pilot Options to: (a) delete SPY[6] Options from the Select Symbols Options Tier Schedule; and (b) adopt a SPY Options Tier Schedule with explanatory notes. The proposed

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

[6] "SPY" or Standard and Poor's Depositary Receipts/SPDRs options are Penny Pilot Options that are based on the SPDR exchange-traded fund ("ETF"), which is designed to track the performance of the S&P 500. Options on SPY ("SPY Options") are among the highest volume options traded on the Exchange.

SPY Options Tier Schedule would apply to Customers[7] that remove liquidity from Customers, Non-Customers,[8] BX Options Market Makers,[9] and Firms.[10]

Currently, Chapter XV, Section 2 subsection (1) has a Select Symbols Options Tier Schedule that includes SPY,[11] but it does not have a SPY Options Tier Schedule. Both of these issues are addressed in the current filing and each specific change is described in detail below.

Change 1 –Penny Pilot Options: Remove SPY Options from Select Symbols Options Tier Schedule

In Change 1, under Penny Pilot Options, the Exchange proposes to remove SPY Options from the Select Symbols Options Tier Schedule. The Exchange simultaneously proposes to establish a new SPY Options Tier Schedule.

Specifically, the Exchange proposes, commensurate with establishing the SPY Options Tier Schedule, to delete SPY from the BX Options Select Symbol List. The Select Symbols on this list represent, similarly to SPY, some of the highest volume Penny Pilot Options traded on the Exchange and in the U.S. The following are currently Select Symbols: ASHR, DIA, DXJ,

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7 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. This is known as being marked in the Customer range.

8 Note 1 to Chapter XV, Section 2 states: "[1]A Non-Customer includes a Professional, Broker-Dealer and Non-BX Options Market Maker."

9 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. BX Chapter XV.

10 The term "Firm" or ("F") applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC. BX Chapter XV.

11 See Securities Exchange Act Release No. 77339 (March 10, 2016), 81 FR 14155 (March 16, 2016) (SR-BX-2016-016) (notice of filing and immediate effectiveness to adopt Select Symbols Options Tier Schedule).

EEM, EFA, EWJ, EWT, EWW, EWY, EWZ, FAS, FAZ, FXE, FXI, FXP, GDX, GLD, HYG, IWM, IYR, KRE, OIH, QID, QLD, QQQ, RSX, SDS, SKF, SLV, SPY, SRS, SSO, TBT, TLT, TNA, TZA, UNG, URE, USO, UUP, UVXY, UYG, VXX, XHB, XLB, XLE, XLF, XLI, XLK, XLP, XLU, XLV, XLY, XME, XOP, XRT. The Select Symbol List is similar to that of other options exchanges (e.g., the MIAX Options Exchange ("MIAX").[12] Whereas the current Select Symbols Options Tier Schedule has four Tiers, the proposed SPY Options Tier Schedule will have three Tiers. Moreover the SPY Options Tier requirements as well as the proposed fees and rebates are, as described below, very similar to those currently applicable to Select Symbols.

As proposed, the BX Options Select Symbol List in Chapter XV, Section 2 subsection (1) will not include SPY and will read as follows:

BX Options Select Symbol List

The following are Select Symbols: ASHR, DIA, DXJ, EEM, EFA, EWJ, EWT, EWW, EWY, EWZ, FAS, FAZ, FXE, FXI, FXP, GDX, GLD, HYG, IWM, IYR, KRE, OIH, QID, QLD, QQQ, RSX, SDS, SKF, SLV, SRS, SSO, TBT, TLT, TNA, TZA, UNG, URE, USO, UUP, UVXY, UYG, VXX, XHB, XLB, XLE, XLF, XLI, XLK, XLP, XLU, XLV, XLY, XME, XOP, XRT.

Change 2 - Penny Pilot Options: Add SPY Options Tier Schedule

For Penny Pilot Options, in Change 2 the Exchange is proposing to modify fees and rebates for Customer and BX Options Market Maker in respect of SPY Options.[13] Specifically, the Exchange is proposing to add a SPY Options Tier Schedule. This schedule will have three Tiers for Rebate to Remove Liquidity for Customer and several notes. The three new Tiers,

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12 See MIAX fee schedule at https://www.miaxoptions.com/content/fees.

13 The Non- Penny Pilot Options pricing will remain unchanged.

described below along with several proposed notes, together make up the "SPY Options Tier Schedule".

Proposed Tier 1 in the SPY Options Tier Schedule, which is similar in structure to current Tier 1 in the Select Symbols Options Tier Schedule Rebate to Remove Liquidity,[14] states that a BX Participant ("Participant") may earn a rebate if he removes less than 1500 SPY Options contracts per day in the Customer range.[15] Proposed Tier 1 offers a $0.10 rebate when a Customer trades with Non-Customer, BX Options Market Maker, Customer, or Firm. The proposed $0.10 rebate is a modest increase from the current $0.00 rebate in the Select Symbols Options Tier Schedule now applicable to SPY Options. This increase is, as further discussed, reasonable because it incentivizes Participants to bring SPY Options volume to the Exchange. Whereas the Select Symbols Options Tier Schedule takes into account total industry Customer volume per month including equity and ETF options ADV contracts, in order to incentivize Participants to transact more SPY Options volume on the Exchange, proposed Tier 1 looks only at the amount of daily SPY Options volume in the Customer range that is removed by the Participant.

Proposed Tier 2 in the SPY Options Tier Schedule, which is similar in structure to current Tier 2 in the Select Symbols Options Tier Schedule Rebate to Remove Liquidity, states that a Participant may earn a rebate if he removes 1500 to not more than 2999 SPY Options contracts per day in the Customer range. Proposed Tier 2 offers a $0.42 rebate when a Customer trades with Non-Customer, BX Options Market Maker, Customer, or Firm. The proposed $0.42 rebate is a modest increase from the current $0.25 rebate in the Select Symbols Options Tier Schedule

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14 Current Select Symbols Options Tiers use industry customer equity and ETF Option ADV to determine tier level. Rather than industry ADV, proposed SPY Options Tier 1 looks only at how many SPY Options contracts Participant removes in a day.

15 For a discussion of Customer range, <u>see</u> note 7 above.

now applicable to SPY Options. This increase is, as further discussed, reasonable because it incentivizes Participants to bring SPY Options volume to the Exchange. Whereas the Select Symbols Options Tier Schedule takes into account total industry Customer volume per month including equity and ETF options ADV contracts, in order to incentivize Participants to transact more SPY Options volume on the Exchange, proposed Tier 2 looks only at the amount of daily SPY Options volume in the Customer range that is removed by the Participant.

The highest proposed Tier 3 in the SPY Options Tier Schedule, which is similar in structure to current Tier 3 in the Select Symbols Options Tier Schedule Rebate to Remove Liquidity, states that a Participant may earn a rebate if he removes more than 2999 SPY Options contracts per day in the customer range. Proposed Tier 3 offers a $0.51 rebate when a Customer trades with Non-Customer, BX Options Market Maker, Customer, or Firm. The proposed $0.51 rebate is a modest increase from the current $0.37 rebate in the Select Symbols Options Tier Schedule now applicable to SPY Options. This increase is, as further discussed, reasonable because it incentivizes Participants to bring SPY Options volume to the Exchange. Whereas the Select Symbols Options Tier Schedule takes into account total industry Customer volume per month including equity and ETF options ADV contracts, in order to incentivize Participants to transact more SPY Options volume on the Exchange, proposed Tier 3 looks only at the amount of daily SPY Options volume in the Customer range that is removed by the Participant.

As part of the new SPY Options Tier Schedule the Exchange proposes six notes regarding certain fees to add liquidity and fees to remove liquidity. The first four proposed notes are taken directly from the Select Symbols Options Tier Schedule and use the same language except that these proposed notes refer to SPY Options rather than Select Symbols. The Exchange is also adding a sentence to the fourth note to state: There will be no fee or rebate for

Customer SPY Options that add liquidity when contra to Firm, BX Options Market Maker or Non Customer.[16] The Exchange also proposes two additional notes. Proposed note 5 would state that BX Options Market Maker fee to add liquidity and BX Options Market Maker fee to remove liquidity in SPY Options will each be $0.44 per contract when trading with Customer. Proposed note 6 would state that BX Options Market Maker fee to add liquidity in SPY Options will be $0.10 per contract when trading with Firm, BX Options Market Maker or Non Customer.

Today, when BX Options Market Maker trades in SPY Options with Customer, the fee to add liquidity is between $0.29 and $0.44 per contract and the fee to remove liquidity is between $0.25 and $0.42 per contract, according to Tiers. Going forward, per proposed note 5, both the fee to add liquidity in SPY Options and the fee to remove liquidity in SPY Options when BX Options Market Maker trades with Customer will be $0.44 per contract. Today the fee to add liquidity when BX Options Market maker trades in SPY Options with Non-Customer or BX Options Market Maker, or Firm is between $0.14 and $0.00 per contract, according to Tiers. Going forward per proposed note 6 the BX Options Market Maker fee to add liquidity will be $0.10 per contract when trading SPY Options with Firm, BX Options Market Maker or Non Customer. The Exchange believes that it is reasonable to normalize the fees discussed in note 5 and in note 6 so that they are the same for BX Options Market Makers when trading such SPY Options.

As proposed, the SPY Options Tier Schedule in Chapter XV, Section 2 subsection (1) will read as follows:

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16 The Exchange believes that while the fourth note applicable to Select Symbols Options now states that Customer fee to add liquidity in when contra to another Customer is $0.33 per contract, the proposed change is reasonable in light of the overall Exchange efforts to incentivize Participants to bring SPY Options liquidity to the Exchange.

SPY Options Tier Schedule

		Rebate to Remove Liquidity (per contract)
	Applied to:	**Customer**
	Trading with:	**Non-Customer, BX Options Market Maker, Customer, or Firm**
Tier 1	Participant removes less than 1500 SPY Options contracts per day in the customer range	$0.10
Tier 2	Participant removes 1500 to not more than 2999 SPY Options contracts per day in the customer range	$0.42
Tier 3	Participant removes more than 2999 SPY Options contracts per day in the customer range	$0.51

- Note 1: Firm fee to add liquidity and fee to remove liquidity in SPY Options will be $0.33 per contract, regardless of counterparty.

- Note 2: Non-Customer fee to add liquidity and fee to remove liquidity in SPY Options will be $0.46 per contract, regardless of counterparty.

- Note 3: BX Options Market Maker fee to remove liquidity in SPY Options will be $0.46 per contract when trading with Firm, Non-Customer, or BX Options Market Maker.

- Note 4: Customer fee to add liquidity in SPY Options when contra to another Customer will be $0.33 per contract. There will be no fee or rebate for Customer SPY Options that add liquidity when contra to Firm, BX Options Market Maker or Non Customer.

- Note 5: BX Options Market Maker fee to add liquidity and BX Options Market Maker fee to remove liquidity in SPY Options will each be $0.44 per contract when trading with Customer.

- Note 6: BX Options Market Maker fee to add liquidity in SPY Options will be $0.10 per contract when trading with Firm, BX Options Market Maker or Non Customer.

The Exchange is adopting a separate SPY Options Tier Schedule because it believes that it will provide even greater incentives for execution of SPY Options contracts on the BX Options Market. The Exchange believes that its proposal should provide increased opportunities for participation in SPY Options 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 Section 6 of the Act,[17] in general, and with Section 6(b)(4) and 6(b)(5) of the Act,[18] 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. Attracting order flow to the Exchange benefits all Participants who have the opportunity to interact with this order flow.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[19]

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[17] 15 U.S.C. 78f.

[18] 15 U.S.C. 78f (b) (4) and (5).

[19] Securities Exchange Act Release No. 51808 (June 29, 2005), 70 FR 37496 at 37499 (File No. S7-10-04) ("Regulation NMS Adopting Release").

Likewise, in NetCoalition v. Securities and Exchange Commission[20] ("NetCoalition") the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[21] 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."[22]

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'…."[23] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

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

The Exchange believes that the proposed change is reasonable, equitable and not unfairly discriminatory for the following reasons.

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20 Net Coalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

21 See id. At 534-535.

22 See id. At 537.

23 See id. At 539 (quoting Securities Exchange Act Commission at [sic] Release No. 59039 (December 2, 2008), 73 FR 74770 at 74782-74783 (December 9, 2008) (SR-NYSEArca-2006-21)).

Change 1 –Penny Pilot Options: Remove SPY Options from Select Symbols Options Tier Schedule

For Penny Pilot Options, in Change 1, the Exchange proposes modifications to remove SPY Options from the Select Symbols Options Tier Schedule. The Exchange simultaneously proposes to establish a new SPY Options Tier Schedule.

Deleting SPY Options from the Select Symbols Options Tier Schedule of rebates and fees is reasonable because SPY Options are proposed to have their own new Tier structure to further incentivize Participants to send SPY Options order flow to the Exchange. The Exchange believes it is equitable and not unfairly discriminatory to delete SPY Options from Select Symbols and establish the SPY Options Tier Schedule because this schedule will be applied uniformly to all similarly situated Participants. This is further discussed below.

Change 2 - Penny Pilot Options: Add SPY Options Tier Schedule

For Penny Pilot Options, in Change 2 the Exchange is proposing to modify fees and rebates for Customer and BX Options Market Maker in respect of SPY Options.[24] Specifically, the Exchange is proposing to add a SPY Options Tier Schedule as discussed. In adding the new Tiers in the SPY Options Tier Schedule, the current SPY Options pricing in the Select Symbols Options Tier Schedule will be replaced with the proposed SPY Options Tier Schedule specifically applicable to SPY Options, which are among the very highest volume options traded on the Exchange. The proposed SPY Options Tier Schedule will have three Tiers for Rebate to Remove Liquidity for Customer as well as several notes. The three new Tiers, which make up

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[24] Fees and rebates, as well as Tiers, for all other Select Symbols options will remain unchanged.

the "SPY Options Tier Schedule," are similar in structure to the current Select Symbols Options Tier Schedule Rebate to Remove Liquidity[25].

The Exchange believes that it is reasonable to establish separate SPY Options Tiers to attract SPY Options volume to the Exchange while separately setting forth fees and rebates related to SPY Options. The Exchange believes that the proposed Tiers in the SPY 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.[26] In addition, the Exchange believes that making changes to add Tiers applicable to the Customer in terms of 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 SPY Option Tiers for Rebate to Remove Liquidity is reasonable because it encourages market participant behavior through progressive tiered fees and rebates using an accepted methodology among options exchanges.[27] The proposed Tiers in the SPY Options Tier Schedule clearly reflect the progressively increasing nature of Participant executions structured

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25 Unlike the Select Symbols Options Tier Schedule, in the SPY Options Tier Schedule there is no tier 4, which in the Select Symbols Options Tier Schedule for a rebate requires an even higher amount of volume or volume associated with the Price Improvement Mechanism Auction ("PRISM").

26 See, e.g., the MIAX fee schedule at https://www.miaxoptions.com/content/feesand the BOX fee schedule at http://boxoptions.com/fee-schedule/.

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

for the purpose of attracting order flow to the Exchange. That is, as discussed if a Participant removes more SPY Options contracts per day in the customer range he can earn higher rebates. For example, in the highest proposed SPY Options Tier 3 Rebate to Remove Liquidity, for which Participant must remove more than 2999 SPY Options contracts per day in the customer range, the Participant can earn the highest $0.51 rebate (per contract). And in the lowest proposed SPY Options Tier 1 Rebate to Remove Liquidity, for which Participant must remove less than 1500 SPY Options contracts per day in the customer range, the Participant can earn the lowest $0.10 rebate (per contract).

For Penny Pilot Options, establishing the Customer-related and BX Options Market Maker-related fee and rebate changes in respect of SPY Options, which includes the new SPY Options Tiers with notes, is equitable and not unfairly discriminatory because the Exchange's proposal to assess fees and pay rebates according to the SPY Options Tier Schedule will apply uniformly to all similarly situated Participants. Thus, for example, certain Participants would earn a Rebate to Remove Liquidity according to the same Tiers per the SPY 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. Despite the fact that certain BX Options Market Maker fees to add and remove liquidity are proposed to be increased as discussed, the BX Options Market Maker fees to add and remove will be lower as compared to other non-Customer market participants. Unlike other non-Customer market participants, BX Options MMs have obligations to the market and regulatory requirements, which normally do not apply to other market participants.[28] A BX Options Market Maker has the obligation to make continuous markets, engage in course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with course [sic] of dealings. Customers will continue to be assessed the lowest fees because Customer liquidity 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.

As part of the new SPY Options Tier Schedule the Exchange proposes six notes regarding certain fees to add liquidity and fees to remove liquidity. The Exchange believes that this is reasonable. The first four proposed notes are taken directly from the Select Symbols Options Tier Schedule and use the same language except that these proposed notes refer to SPY Options rather than Select Symbols; and note four has one proposed added sentence.[29] Proposed note 4 would state that Customer fee to add liquidity in SPY Options when contra to another Customer will be $0.33 per contract. There will be no fee or rebate for Customer SPY Options that add liquidity when contra to Firm, BX Options Market Maker or Non Customer.[30] The

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[28] Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a Market Maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity 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. See Chapter VII, Section 5."

[29] The sentence proposed to be added to the fourth note would state: There will be no fee or rebate for Customer SPY Options that add liquidity when contra to Firm, BX Options Market Maker or Non Customer.

[30] Previously, as part of the Select Symbol Tier Schedule, a Customer, when trading with Firm, BX Options Market Maker or Non Customer could receive a Rebate to add

Exchange also proposes two additional notes. Proposed note 5 would state that BX Options Market Maker fee to add liquidity and the BX Options Market Maker fee to remove liquidity in SPY Options will each be $0.44 per contract when trading with Customer. Proposed note 6 would state that BX Options Market Maker fee to add liquidity in SPY Options will be $0.10 per contract when trading with Firm, BX Options Market Maker or Non Customer.

Today, when BX Options Market Maker trades in SPY Options with Customer, the fee to add liquidity is between $0.29 and $0.44 per contract and the fee to remove liquidity is between $0.25 and $0.42 per contract, according to Tiers. Going forward, per proposed note 5, both the fee to add liquidity in SPY Options and the fee to remove liquidity in SPY Options when BX Options Market Maker trades with Customer will be $0.44 per contract. Today the fee to add liquidity when BX Options Market maker trades in SPY Options with Non-Customer or BX Options Market Maker, or Firm is between $0.14 and $0.00 per contract, according to Tiers. Going forward per proposed note 6 the BX Options Market Maker fee to add liquidity will be $0.10 per contract when trading SPY Options with Firm, BX Options Market Maker or Non Customer.[31] The Exchange believes that it is reasonable to normalize the fees discussed in note 5 and in note 6 so that they are the same for BX Options Market Makers when trading such SPY

liquidity ($0.00 to $0.25 rebate); and now there is no fee or rebate when a Customer adds liquidity in SPY Options when trading with Firm, BX Options Market Maker or Non Customer. The Exchange believes this change is reasonable and not inequitable or unfairly discriminatory in light of the overall Exchange efforts to incentivize Participants to bring SPY Options liquidity to the Exchange.

31 Previously, as part of the Select Symbol Tier Schedule, BX Options Market Maker when trading with Customer would be assessed a fee to remove liquidity in SPY Options ($0.25 to $0.42), and BX Options Market Maker when trading with Customer would be assessed a fee to add liquidity ($0.29 to $0.44); and as proposed there will be a $0.44 fee to remove liquidity and a $0.44 fee to add liquidity in SPY Options for all Tiers. The Exchange believes this change is reasonable and not inequitable or unfairly discriminatory in light of the overall Exchange efforts to incentivize Participants to bring SPY Options liquidity to the Exchange.

Options. The Exchange believes that to incentivize bringing SPY Options liquidity to the Exchange it is reasonable to make the proposed change in notes 1, 2, 3, and 4 (with the added sentence in note 4 as noted) to refer to SPY Options rather than the Select Symbol Tier Schedule. The Exchange believes that to incentivize bringing SPY Options liquidity to the Exchange it is reasonable to normalize note 5 and note 6 fees so that they are the same under all circumstances for BX Options Market Makers when trading such SPY Options.[32]

For Penny Pilot Options, establishing the Customer-related and BX Options Market Maker-related fee and rebate changes in respect of SPY Options, which includes the new SPY Options Tiers with notes, is equitable and not unfairly discriminatory. This is because the Exchange's proposal to assess fees and pay rebates according to the SPY Options Tier Schedule will apply uniformly to all similarly situated Participants. Thus, for example, Participants would earn a Rebate to Remove Liquidity according to the same Tiers per the SPY Options Tier Schedule. It is equitable and not unfairly discriminatory to assess the same fee and rebate in respect of SPY Options regardless of industry trade volume where this is applied uniformly to all similarly situated Participants.

The Exchange believes that by making the proposed changes it is incentivizing Participants to bring more SPY Options volume to the Exchange to further enhance liquidity in this market.

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32 As part of the Select Symbol Tier Schedule a BX Options Market Maker, when trading with a Customer, would be assessed a fee to add liquidity between $0.29 to $0.44 depending on tier; and as proposed in note 5 there will be a $0.44 fee to add liquidity in SPY options for all Tiers. As part of the Select Symbol Tier Schedule a BX Options Market Maker, when trading with a Non-Customer or BX Options Market Maker, or Firm, would be assessed a fee to add liquidity between $0.00 to $0.14 depending on tier, and as proposed in note 5 [sic] there will be a $0.10 fee to add liquidity in SPY options for all Tiers.

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 fees and rebates and to establish the SPY Options Tier Schedule with notes 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 proposal is actually pro-competitive because the Exchange is simply continuing its fees and rebates and establishing separate Tiers for SPY 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, and 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.

In this instance, the proposed changes to the fees and rebates for execution of contracts on the Exchange, and establishing SPY Options Tiers with notes 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[33]

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-2016-045 on the subject line.

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33 15 U.S.C. 78s(b)(3)(A)(ii).

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-2016-045. 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-2016-045, 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.[34]

Robert W. Errett
Deputy Secretary

[34] 17 CFR 200.30-3(a)(12).