

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80055; File No. SR-BX-2017-009)

February 16, 2017

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Increase the BX Options Market Port Fees and Institute a Fee Cap at Chapter XV Section 3

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 February 8, 2017, 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 increase the BX Options Market port fees and institute a fee cap at Chapter XV Section 3.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 increase the BX Options Market port fees and institute a fee cap at Chapter XV Section 3(b).³ The Exchange notes that it has not increased fees for the connectivity provided under the rule since its adoption in January 2015⁴ notwithstanding that the costs that the Exchange incurs in offering the connectivity have increased. As described below, the Exchange is also proposing to limit the total amount that an Options Participant⁵ may be assessed under the rule.

Under the Chapter XV Section 3(b), the Exchange assesses an Options Participant \$200 per port, per month, per mnemonic⁶ for Order Entry Ports,⁷ CTI Ports,⁸ BX Depth Ports,⁹ BX

³ The Exchange initially filed the proposed pricing changes on February 1, 2017 (SR-BX-2017-005). On February 8, 2017, the Exchange withdrew that filing and submitted this filing.

⁴ See Securities Exchange Act Release No. 73894 (December 19, 2014), 79 FR 78119 (December 29, 2014) (SR-BX-2014-060).

⁵ As defined by BX Options Rules Chapter II, Section 1.

⁶ A “mnemonic” is a unique identifier consisting of a four character alpha code.

⁷ The Order Entry Port Fee is a connectivity fee in connection with routing orders to the Exchange via an external order entry port. BX Options Market Participants access the Exchange’s network through order entry ports. A BX Options Market Participant may have more than one order entry port.

⁸ CTI offers real-time clearing trade updates. A real-time clearing trade update is a message that is sent to a member after an execution has occurred and contains trade details. The message containing the trade details is also simultaneously sent to The Options Clearing Corporation. The trade messages are routed to a member's connection containing certain information. The administrative and market event messages include, but are not limited to: system event messages to communicate operational-related events; options directory messages to relay basic option symbol and contract information for

TOP Ports,¹⁰ and Order Entry DROP Ports¹¹ without a cap on how much a Participant is assessed.¹² The Exchange is proposing to increase the fee assessed for Order Entry Ports, CTI Ports, BX Depth Ports, BX TOP Ports, and Order Entry DROP Ports to \$650 per port, per month, per mnemonic, which is consistent with the fees assessed by The NASDAQ Stock Market for comparable connectivity.¹³ The Exchange is also proposing to limit the amount a Participant must pay for the aforementioned connectivity provided under Chapter XV Section 3(b) to \$7,500 per month.

options traded on the Exchange; complex strategy messages to relay information for those strategies traded on the Exchange; trading action messages to inform market participants when a specific option or strategy is halted or released for trading on the Exchange; and an indicator which distinguishes electronic and non-electronically delivered orders.

⁹ A BX Depth Port provides access to BX Depth, which is a data feed that provides 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 Options Rules Chapter VI, Section 8. BX Depth is the options equivalent of the BX TotalView/ITCH data feed that BX offers under BX Rule 7023 with respect to equities traded on BX. As with TotalView, members use BX Depth to “build” their view of the BX book by adding individual orders that appear on the feed, and subtracting individual orders that are executed. See Chapter VI, Section 1(a)(3)(A).

¹⁰ BX TOP Port is a data feed that provides the BX Best Bid and Offer (“BBO”) and last sale information for trades executed on BX. The BBO and last sale information are identical to the information that BX sends to the Options Price Regulatory Authority (“OPRA”) and which OPRA disseminates via the consolidated data feed for options. BX TOP Port is the options equivalent of the BX Basic data feed offered for equities under BX Rule 7047. See Chapter VI, Section 1(a)(3)(B).

¹¹ The DROP interface provides real time information regarding orders sent to the BX Options Market and executions that occurred on the BX Options Market. The DROP interface is not a trading interface and does not accept order messages.

¹² The Exchange also assesses a \$500 SQF Port fee, which is assessed per port, per month. A SQF Port is a port that allows a Participant acting as options Market Maker to enter its markets into the BX Options Market. The Exchange is not proposing to amend the fees assessed for SQF Ports or apply the proposed limit on fees to SQF Port fees.

¹³ See NASDAQ Options Rules Chapter XV, Section 3(b).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁵ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that increasing the fee assessed for Order Entry Ports, CTI Ports, BX Depth Ports, BX TOP Ports, and Order Entry DROP Ports to \$650 per port, per month, per mnemonic is reasonable because it is competitive with the fees of other exchanges. Specifically, The NASDAQ Stock Market assesses \$650 per port, per month, per mnemonic for comparable connectivity under Nasdaq Options Market Rules Chapter XV, Section 3(b). Moreover, the Exchange notes that it has not increased fees for the connectivity provided under the rule since it adopted the connectivity options on January 2, 2015,¹⁶ notwithstanding that costs associated with offering and supporting the connectivity have increased, which include the cost of technology and infrastructure. The costs that the Exchange incurs is substantially similar to those that The NASDAQ Stock Market incurs, since both exchanges use the same hardware and support services for the ports. Thus, the Exchange has determined that \$650 per port, per month, per mnemonic is the appropriate fee that will allow it to cover its costs and realize a profit, while avoiding an overall reduction in the number of subscribers. The Exchange also believes that the proposed \$7,500 fee cap is reasonable because, taken together with the proposed fee increase, it will allow the Exchange to cover costs while reducing the impact of the fees on Options

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4) and (5).

¹⁶ See note 4, supra.

Participants that subscribe to a large number of ports. Because Options Participants generally need an increasing number of ports as provided under BX Options Market Rules Chapter XV Section 3(b) as their activity expands on the BX Options Market, the Exchange believes that without such a cap Options Participants may be inhibited from growing their activity on the Exchange. As a general principal, the Exchange believes that greater participation on the BX Options Market by Options Participants improves market quality for all market participants. Thus, in arriving at a fee cap of \$7,500, the Exchange balanced the desire to improve market quality against the need to cover costs and make a profit.

The Exchange believes that increasing the fee assessed for Order Entry Ports, CTI Ports, BX Depth Ports, BX TOP Ports, and Order Entry DROP Ports to \$650 per port, per month, per mnemonic is an equitable allocation and is not unfairly discriminatory because the increased fee will apply to all Options Participants that have, or are seeking, the connectivity provided under the rule. As noted above, the Exchange is increasing the fees under the rule to align them with the costs associated with offering the ports as well as to allow the Exchange to realize a profit. The Exchange believes that the proposed \$7,500 fee cap is an equitable allocation and is not unfairly discriminatory because the any Options Participant that subscribes to connectivity under the rule that would otherwise exceed \$7,500 per month will have its fees capped. Although Options Participants that do not have fees under the rule in excess of \$7,500 per month will not benefit from the fee cap, the Exchange notes that any Options Participant may increase the number of ports subscribed to receive the fee cap, should their activity on the BX Options Market warrant increased subscription. Moreover, Options Participants that do not qualify for the fee cap will benefit from the greater liquidity provided by Options Participants that conduct a

sufficient level of activity on the BX Options Market to require connectivity in excess of the fee cap.

The Exchange notes that it is not amending or applying a fee limitation to SQF Port Fees, which are also provided under BX Options Market Rules Chapter XV Section 3(b).¹⁷ The Exchange believes that it is equitable and not unfairly discriminatory to increase the other port fees, as proposed herein, and not increase the fee assessed for SQF Port Fees because SQF Port Fees are used by BX market makers in connection with their market making activities. Unlike other Options Participants, BX market makers add value to the market through continuous quoting and a commitment of capital. The Exchange believes that not applying a limitation on fees to SQF Port Fees is equitable and not unfairly discriminatory because the Exchange has found that maintaining the separation between SQF ports and the other ports under BX Options Market Rules Chapter XV Section 3(b) is appropriate given the different purposes for subscribing to the ports. Moreover, the Exchange does not believe that applying an independent fee limitation to SQF Port Fees is warranted at this juncture because of the limited number of SQF ports to which any single market maker subscribes.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain

¹⁷ See note 12, supra.

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 this instance, the proposed changes to the charges assessed for Order Entry Ports, CTI Ports, BX Depth Ports, BX TOP Ports, and Order Entry DROP Ports under BX Options Market Rules Chapter XV Section 3(b) do not impose a burden on competition because the Exchange's connectivity services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. To the extent that the changes are viewed unfavorably by Options Participants, the proposed fees increase and fee cap may result in the Exchange losing subscribership and market participation, which would likely benefit other exchanges and trading venues. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Options Participants or competing order execution venues to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁸

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

¹⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2017-009 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-BX-2017-009. 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 the 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-2017-009, 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.¹⁹

Eduardo A. Aleman
Assistant Secretary

¹⁹ 17 CFR 200.30-3(a)(12).