

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80924; File No. SR-BX-2017-028)

June 14, 2017

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Transaction Fees at Rule 7018

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 June 1, 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 amend the Exchange's transaction fees at Rule 7018 to reduce the amount of one of the credits for entering an order that accesses liquidity in the Exchange's Equities System, as described further 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

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 amend the Exchange's transaction fees at Rule 7018 to reduce a credit for entering an order that accesses liquidity in the Exchange's Equities System for "all other orders," i.e., orders that do not qualify for other available credits for removing liquidity.

The Exchange operates on the "taker-maker" model, whereby it pays credits to members that take liquidity and charges fees to members that provide liquidity. Currently, the Exchange offers five different credits for orders that access liquidity on the Exchange. First, the Exchange pays a credit of \$0.0016 per share executed for an order that accesses liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member that accesses liquidity equal to or exceeding 0.10% of total Consolidated Volume during a month. Second, the Exchange pays a credit of \$0.0015 per share executed to an order that accesses liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member that accesses liquidity equal to or exceeding 0.05% of total Consolidated Volume during month. Third, the Exchange pays a credit of \$0.0000 per share executed for an order that receives price improvement and executes against an order with a Non-displayed price. Fourth, the Exchange pays a credit of \$0.0000 per share executed for an order with Midpoint pegging that removes liquidity. Finally, the Exchange pays a credit of \$0.0006 per share executed for "all other orders."

The Exchange now proposes to reduce the credit for “all other orders” from \$0.0006 per share executed to \$0.0003 per share executed. All of the other credits and charges will remain the same.

The Exchange is making this change because it believes that the amount of the new credit is more closely aligned to the requirements necessary to qualify for that credit and the behavior that the credit is designed to incentivize. The Exchange notes that, while it does pay credits of \$0.0015 and \$0.0016 per share executed for accessing liquidity, a member must also meet also meet a volume threshold of accessing liquidity equal to or exceeding 0.05% or 0.10% of total Consolidated Volume during that month, respectively. Unlike other credits the Exchange offers for accessing liquidity, a member does not have to meet any volume requirements in order to qualify for this credit. In contrast, the Exchange pays a credit of \$0.0000 per share executed for an order that receives price improvement and executes against an order with a Non-displayed price, and for an order with Midpoint pegging that removes liquidity. In comparison to these other credits and their attendant requirements, and given that the Exchange is limited in the amount of credits that it provides to members, the Exchange believes the new credit amount is appropriate.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁴ 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.

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(4) and (5).

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.”⁵

Likewise, in NetCoalition v. Securities and Exchange Commission⁶ (“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.⁷ 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.”⁸

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

⁵ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

⁶ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

⁷ See NetCoalition, at 534 - 535.

⁸ Id. at 537.

granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'....”⁹

The Exchange believes that reducing the credit for “all other orders” from \$0.0006 to \$0.0003 is reasonable because the amount of the new credit is more closely aligned to the requirements necessary to qualify for the credit and the behavior that it is designed to incentivize, especially given that the Exchange is limited in the amount of credits that it provides to members. Unlike other credits the Exchange offers for accessing liquidity, a member does not have to meet any volume requirements in order to qualify for this credit. While the Exchange does pay credits of \$0.0015 and \$0.0016 per share executed for accessing liquidity, a member must also meet also meet a volume threshold of accessing liquidity equal to or exceeding 0.05% or 0.10% of total Consolidated Volume during a month, respectively. In contrast, the Exchange pays a credit of \$0.0000 for an order that receives price improvement and executes against an order with a Non-displayed price, and for an order with Midpoint pegging that removes liquidity. The Exchange believes that the new credit amount is more closely aligned to the requirements for qualifying for that credit, especially in comparison to the other credits offered by the Exchange and their attendant requirements.

The Exchange believes that the proposed change is equitably allocated among members, and is not designed to permit unfair discrimination. BX notes that participation on the Exchange, and eligibility for this credit, is voluntary, and that the Exchange continues to offer other credits for which members may attempt to qualify instead of the proposed credit. Additionally, the proposed change to the credit amount applies to all members that otherwise qualify for the credit. The Exchange believes that it is equitable and not unfairly discriminatory to amend the amount

⁹ Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

of the credit for “all other orders,” and not other credits, because the new credit amount is more closely aligned to the requirements for qualifying for that credit, especially in comparison to the other credits offered by the Exchange and their attendant requirements.

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 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 change to the credit available to member firms for accessing liquidity for “all other orders” does not impose a burden on competition because the Exchange’s execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. The new credit applies equally to all members that otherwise meet the requirements, e.g., accessing liquidity on the Exchange using an order that does not qualify for one of the other available credits, and all similarly situated members are equally capable of qualifying for the credit if they choose to meet the requirements.

In sum, if the change proposed herein is 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 change will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁰ 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-2017-028 on the subject line.

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

Paper comments:

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

All submissions should refer to File Number SR-BX-2017-028. 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, D.C. 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-2017-028 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.¹¹

Eduardo A. Aleman
Assistant Secretary

¹¹ 17 CFR 200.30-3(a)(12).