

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89614; File No. SR-BX-2020-022)

August 19, 2020

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend BX Pricing Schedule at Options 7, Section 2, and Options 7, Section 3

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 12, 2020, Nasdaq BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (the “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 BX’s Pricing Schedule at Options 7, Section 2, “BX Options Market Fees and Rebates” and Options 7, Section 3, “BX Options Market - Ports and other Services.”

The Exchange originally filed the proposed pricing changes on August 6, 2020 (SR-BX-2020-021). On August 12, 2020, the Exchange withdrew that filing and submitted this filing.

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

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 BX’s Pricing Schedule at Options 7, Section 2, “BX Options Market Fees and Rebates” and Options 7, Section 3, “BX Options Market - Ports and other Services.” Each change is described below.

Options 7, Section 2

The Exchange proposes to replace the term “Penny Pilot Options” or “Non-Penny Pilot Options” with “Penny Symbols” or “Non-Penny Symbols.” On April 1, 2020 the Commission approved the amendment to the OLPP to make permanent the Pilot Program (the “OLPP Program”).³ The Exchange recently filed a proposal to amend BX Options 3, Section 3 to conform the rule to Section 3.1 of the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options (the “OLPP”).⁴ The Exchange’s proposal amended BX Options 3, Section 3 to refer to a Penny Interval Program instead of a Penny Pilot Program.

³ See Securities Exchange Act Release No. 88532 (April 1, 2020), 85 FR 19545 (April 7, 2020) (File No. 4-443) (“Approval Order”).

⁴ See Securities Exchange Act Release No. 89169 (June 26, 2020), 85 FR 39949 (July 2, 2020) (SR-BX-2020-013).

Options 7, Section 3

In connection with a technology migration, Participants may request new SQF Ports,⁵ SQF Purge Ports,⁶ FIX DROP Port,⁷ CTI Ports,⁸ BX Depth Ports⁹ and BX TOP Ports¹⁰ from

⁵ “Specialized Quote Feed” or “SQF” is an interface that allows Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses into and from the Exchange. Features include the following: (1) options symbol directory messages (e.g. underlying instruments); (2) system event messages (e.g., start of trading hours messages and start of opening); (3) trading action messages (e.g., halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge request from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series. See Options 3, Section 7(d)(1)(B).

⁶ The SQF Purge Interface only receives and notifies of purge request from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series. See Options 3, Section 7(d)(1)(B).

⁷ FIX DROP is a real-time order and execution update message that is sent to a Participant after an order been received/modified or an execution has occurred and contains trade details specific to that Participant. The information includes, among other things, the following: (i) executions; (ii) cancellations; (iii) modifications to an existing order and (iv) busts or post-trade corrections. See Options 3, Section 23(b)(3).

⁸ Clearing Trade Interface (“CTI”) is a real-time clearing trade update message that is sent to a Participant after an execution has occurred and contains trade details specific to that Participant. The information includes, among other things, the following: (i) The Clearing Member Trade Agreement or “CMTA” or The Options Clearing Corporation or “OCC” number; (ii) Exchange badge or house number; (iii) the Exchange internal firm identifier; (iv) an indicator which will distinguish electronic and non-electronically delivered orders; (v) liquidity indicators and transaction type for billing purposes; and (vi) capacity. See Option 3, Section 23(b)(1).

⁹ BX Depth of Market (“BX Depth”) is a data feed that provides full order and quote depth information for individual orders and quotes on the BX Options book, last sale information for trades executed on BX Options, and Order Imbalance Information as set forth in BX Options Rules Options 3, Section 8. The data provided for each options series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on BX and identifies if the series is available for closing transactions only. See Options 3, Section 23(a)(1).

¹⁰ BX Top of Market (“BX Top”) is a data feed that provides the BX Options Best Bid and Offer and last sale information for trades executed on BX Options. The data provided for

August 10, 2020 through September 30, 2020, which are duplicative of the type and quantity of their current ports, at no additional cost to allow for testing of the new ports and allow for continuous connection to the match engine during the transition period.¹¹ For example, a BX Participant with 3 SQF Ports, 1 SQF Purge Port, 1 FIX DROP Port, 1 CTI Port, 2 BX Depth Ports and 1 BX TOP Port on October 1, 2020 could request 3 new SQF Ports, 1 new SQF Purge Port, 1 new FIX DROP Port, 1 new CTI Port, 2 new BX Depth Ports and 1 new BX TOP Port from August 10, 2020 through September 30, 2020 at no additional cost. The BX Participant would be assessed only for the legacy market ports, in this case 3 SQF Ports, 1 SQF Purge Port, 1 FIX DROP Port, 1 CTI Port, 2 BX Depth Ports and 1 BX TOP Port from August 10, 2020 through September 30, 2020 and would not be assessed for the new ports, which are duplicative of the current ports. A Participant may acquire any additional legacy ports from August 10, 2020 through September 30, 2020 and would be assessed the charges indicated in the current Pricing Schedule. The migration does not require a Participant to acquire any additional ports, rather the migration requires a new port to replace any existing ports provided the Participant desired to maintain the same number of ports.¹² A BX Market Maker quoting on BX only requires 1 SQF Port.¹³ A Participant may also obtain any number of order and execution ports, such as a SQF Purge Ports, FIX DROP Ports and CTI Ports and any number of data ports, such as BX Depth and BX TOP Ports. The number of ports obtained by a Participant is dependent on Participant's

each options series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on BX and identifies if the series is available for closing transactions only. See Options 3, Section 23(a)(1).

¹¹ Participants would contact Market Operations to acquire new duplicative ports.

¹² The migration is 1:1 and therefore would not require a Participant to acquire new ports, nor would it reduce the number of ports needed to connect.

¹³ SQF Ports are utilized solely by Market Makers who are the only Participants permitted to quote on BX.

business needs.

The proposal is not intended to impose any additional fees on any BX Participant. This proposal is intended to permit a BX Participant to migrate its current SQF Ports, SQF Purge Ports, FIX DROP Ports, CTI Ports, BX Depth Ports and BX TOP Ports at no additional cost from August 10, 2020 through September 30, 2020 to allow for continuous connection to the Exchange. BX will sunset legacy ports by October 1, 2020. BX will assess Participants new SQF Ports, SQF Purge Ports, FIX DROP Ports, CTI Ports, BX Depth Ports and BX TOP Ports in October 2020.

Currently, there is obsolete rule text within Options 7, Sections 3(i) and 3(ii), which the Exchange proposes to replace with new rule text related to its current proposal to migrate technology. The obsolete rule text concerned a prior technology migration in 2019 which has already occurred and, therefore, the current rule text is no longer necessary.

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 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

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4) and (5).

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.”¹⁶

Likewise, in NetCoalition v. Securities and Exchange Commission¹⁷ (“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.¹⁸ 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.”¹⁹

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’”²⁰ 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.

¹⁶ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹⁷ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹⁸ See NetCoalition, at 534 - 535.

¹⁹ Id. at 537.

²⁰ 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)).

Options 7, Section 2

The Exchange's proposal to replace the term "Penny Pilot Options" or "Non-Penny Pilot Options" with "Penny Symbols" or "Non-Penny Symbols" is reasonable, equitable and not unfairly discriminatory. This amendment seeks to conform the name of the program which governs the listing of certain standardized options.

Options 7, Section 3

The proposed amendments to Options 7, Section 3 are reasonable because they will permit BX Participants to migrate to new technology without a pricing impact. Specifically, the proposal is intended to permit BX Participants to migrate their SQF Ports, SQF Purge Ports, FIX DROP Ports, CTI Ports, BX Depth Ports and BX TOP Ports to new technology at no additional cost from August 10, 2020 through September 30, 2020. This proposal, which offers duplicative ports to Participants at no cost, will allow Participants to test and maintain continuous connection to the Exchange from August 10, 2020 through September 30, 2020. BX will sunset legacy ports by October 1, 2020. BX will assess Participants new SQF Ports, SQF Purge Ports, FIX DROP Ports, CTI Ports, BX Depth Ports and BX TOP Ports in October 2020.

The proposed amendments to Options 7, Section 3 are equitable and not unfairly discriminatory. The Exchange does not require a BX Participant to obtain more than one SQF Port.²¹ In addition, a BX Participant may also obtain any number of order and execution ports, such as a SQF Purge Ports, FIX DROP Ports and CTI Ports and any number of data ports, such as BX Depth and BX TOP Ports to meet its individual business needs.²² This proposal is not intended to have a pricing impact to any BX Participant.

²¹ See note 12 above. One SQF Port would allow a BX Market Maker to quote in all of its assigned options series.

²² See note 11 above.

The Exchange's proposal to remove current rule text and replace it with new rule text is reasonable, equitable and not unfairly discriminatory, as the current rule text refers to a technology migration from 2019 and is obsolete.

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.

Intermarket Competition

The proposal does not impose an undue burden on intermarket competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. 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 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.

Intramarket Competition

Options 7, Section 2

The Exchange's proposal to replace the term "Penny Pilot Options" or "Non-Penny Pilot Options" with "Penny Symbols" or "Non-Penny Symbols" does not impose an undue burden on competition. This amendment seeks to conform the name of the program which governs the listing of certain standardized options.

Options 7, Section 3

The proposal does not impose an undue burden on intra-market competition. The Exchange does not require a BX Participant to obtain more than one SQF Port.²³ In addition, a BX Participant may also obtain any number of order and execution ports, such as a SQF Purge Ports, FIX DROP Ports and CTI Ports and any number of data ports, such as BX Depth Ports and BX TOP Ports to meet its individual business needs.²⁴ This proposal is not intended to have a pricing impact to any BX Participant.

The Exchange's proposal to remove current rule text and replace it with new rule text does not impose an undue burden on competition, as the current rule text refers to a technology migration from 2019 and is obsolete.

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.²⁵

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,

²³ See note 12 above. One SQF Port would allow a BX Market Maker to quote in all of its assigned options series.

²⁴ See note 11 above.

²⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2020-022 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-2020-022. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BX-2020-022, 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.²⁶

J. Matthew DeLesDernier
Assistant Secretary

²⁶ 17 CFR 200.30-3(a)(12).