

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92103; File No. SR-BX-2021-025)

June 3, 2021

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend BX Options 7, Section 1, “General Provisions” and Section 2, “BX Options Market- Fees and Rebates.”

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 May 24, 2021, Nasdaq BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“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 Options 7, Section 1, “General Provisions” and Section 2, “BX Options Market- Fees and Rebates.”

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.

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 Exchange proposes to amend BX’s Pricing Schedule at BX Options 7, Section 1, “General Provisions” and Section 2, “BX Options Market- Fees and Rebates.” Each change will be described below.

Options 7, Section 1

The Exchange proposes to relocate rule text, without change, related to the Removal of Days for Purposes of Pricing Tiers within Options 7, Section 2(6) into Options 7, Section 1, General Provisions. This proposed change is non-substantive. The Exchange believes that this rule text is more appropriate for Section 1 which describes general provisions.

Options 7, Section 2

The Exchange will begin offering its Block Order Mechanism³ and Customer Cross Order⁴ on June 1, 2021.⁵ The Exchange proposes to assess no fees and pay no rebates for orders entered into the Block Order Mechanism or Customer Cross Orders. Specifically, the Exchange

³ The Block Order Mechanism is for single leg transactions only. Block Orders are orders for fifty (50) contracts or more. See Securities Release Act No. 89759 (September 3, 2020), 85 FR 55877 (September 3, 2020) [*sic*] (SR-BX-2020-023).

⁴ See Options Technical Update #2021-2.

⁵ A Customer Cross Order is an order type within Options 3, Section 7(a)(10). A Customer Cross Order is comprised of two Public Customer Orders automatically executed upon entry provided that the execution is at or between the best bid and offer on the Exchange and (i) is not at the same price as a Public Customer Order on the Exchange's limit order book and (ii) will not trade through the NBBO. See Securities Release Act No.89476 (August 4, 2020), 85 FR 48274 (August 10, 2020) (SR-BX-2020-017).

proposes to create a header within Options 7, Section 2(6) [*sic*] which states, “Block Order Mechanism per Options 3, Section 11 and Customer Cross Orders per to Options 3, Section 12” and note that “Orders executed in the Block Order Mechanism and Customer Cross Orders are not subject to fees or rebates.”

Also, the Exchange proposes to amend the rule text within Options 7, Section 2(1), which directs Participants to applicable pricing, to also provide that “Orders executed in the Block Order Mechanism and Customer Cross Orders are not subject to the pricing in Options 7, Section 2(1), instead, these orders are subject to the pricing within Options 7, Section 2(6).” The addition of this rule text will serve as a guidepost to Participants to easily locate the pricing for the Block Order Mechanism.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁷ 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 proposed changes to BX’s Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: “[n]o one disputes

⁶ 15 U.S.C. 78 f(b).

⁷ 15 U.S.C. 78f(b)(4) and (5).

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’”⁸

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.”⁹

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

⁸ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

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

Options 7, Section 1

The Exchange's proposal to relocate rule text related to the Removal of Days for Purposes of Pricing Tiers within Options 7, Section 2(6) into Options 7, Section 1, General Provisions, without change, is reasonable as the Exchange is simply relocating the rule text within a section which describes general provisions.

The Exchange's proposal to relocate rule text related to the Removal of Days for Purposes of Pricing Tiers within Options 7, Section 2(6) into Options 7, Section 1, General Provisions, without change, is equitable and not unfairly discriminatory as the rule text will continue to apply uniformly to all Participants.

Options 7, Section 2

The Exchange's proposal to adopt Block Order Mechanism and Customer Cross Order pricing is reasonable. On June 1, 2021, the Exchange will begin offering the Block Order Mechanism and Customer Cross Orders to Participants and assess no fees and not pay any rebates for orders entered into the Block Order Mechanism or Customer Cross Orders. The Exchange's proposal will provide Participants notification of its Block Order and Customer Cross Order pricing. The proposal to add rule text within Options 7, Section 2(1) will serve as a guidepost to Participants to easily locate the pricing for the Block Order Mechanism and Customer Cross Orders.

The Exchange's proposal to adopt Block Order Mechanism and Customer Cross Order pricing is equitable and not unfairly discriminatory as no Participant would be subject to any fees or be paid any rebates for orders executed into the Block Order Mechanism or Customer Cross Orders.

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.

Inter-market Competition

The proposal does not impose an undue burden on inter-market 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 options 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.

Intra-market Competition

Options 7, Section 1

The Exchange's proposal to relocate rule text related to the Removal of Days for Purposes of Pricing Tiers within Options 7, Section 2(6) into Options 7, Section 1, General Provisions, without change, does not impose an undue burden on competition as the rule text will continue to apply uniformly to all Participants.

Options 7, Section 2

The Exchange's proposal to adopt Block Order Mechanism and Customer Cross Order pricing does not impose an undue burden on competition as no Participant would be subject to

any fees or be paid any rebates for orders executed into the Block Order Mechanism or Customer Cross Orders.

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-2021-025 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-2021-025. 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 Web site (<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-2021-025 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

J. Matthew DeLesDernier
Assistant Secretary

¹¹ 17 CFR 200.30-3(a)(12).