SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93405; File No. SR-BX-2021-047)

October 22, 2021

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Equity 7, Section 118 to Establish an Enhanced Market Quality Program

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 October 12, 2021, 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 Equity 7, Section 118 to establish an Enhanced Market Quality Program, as described further below.

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

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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 establish an Enhanced Market Quality Program that is similar to a program that exists (with proposed amendments) on its sister exchange, Nasdaq PHLX, LLC.[3] The Enhanced Market Quality Program is intended to provide supplemental incentives to members that meet certain quality standards in acting as market makers for securities on the Exchange. It rewards members that make a significant contribution to market quality by providing liquidity at the national best bid and offer ("NBBO") in a large number of securities for a significant portion of the day.

Specifically, the Exchange proposes to make a lump sum payment at the end of each month (a "Fixed Payment") to a member to the extent that the member, through one or more of its MPIDs, quotes at the NBBO for at least a threshold percentage of the time during Market Hours in an average number of securities per day during the month (satisfying the "NBBO requirement"), as specified below.[4] On a daily basis, the Exchange will determine the number of

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3 See Securities Exchange Act Release No. 34-92754 (August 25, 2021), 86 FR 48789 (August 31, 2021) (SR-Phlx-2021-47). The proposal reflects changes to this program that Nasdaq PHLX, LLC is proposing concurrently with this rule filing.

4 For purposes of the Enhanced Market Quality Program, a member will be deemed to quote at the NBBO in a security if it quotes a displayed order of at least 100 shares in the security and prices the order at either the national best bid or the national best offer or both the national best bid and offer for the security. Additionally, for a particular Tape A security to count towards the threshold for qualifying for the Fixed Payment on a particular day, and receiving the Fixed Payment, a member has to quote such security at the NBBO for at least 30% of the time during Market Hours on that day. For a particular Tape B security to count towards the threshold for qualifying for the Fixed Payment on a

securities in which each of a member's MPIDs satisfied the NBBO requirement. The Exchange will aggregate all of a member's MPIDs to determine the number of securities for purposes of the NBBO requirement.

The Exchange proposes to limit the applicability of the Program to the top 1,500 securities in each of Tapes A and B, as determined by their total value traded during the second month prior to the current month (e.g., for October 2021, the measurement period for determining the list will be August 2021).[5] In doing so, the Exchange seeks to target the Program at securities in Tapes A and B that are most in demand among market participants and which trade extensively, so that an improvement in quoting in those securities would, in turn, stand improve the attractiveness of the Exchange to participants. The Exchange would divide the 1,500 securities into three equal groups (or "Classes") for each Tape, with the top 500 ranked securities placed in Class 3, the middle 500 ranked securities placed in Class 2, and the lowest ranked 500 securities placed in Class 1. The Exchange would assign Fixed Payment amounts to each of the three Classes in each Tape and in each of the five Tiers, with these amounts generally increasing from Class 1 to Class 3, and from Tiers 1-5. Generally speaking (with exceptions set forth in the schedules below), this proposed structure would provide the largest Fixed Payments to those members that meet the NBBO requirement in the greatest number of qualifying securities and those that trade most extensively, and the lowest incentives to those members that meet the NBBO requirement in the fewest number of qualifying securities and those that trade least extensively.

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particular day, and receiving the Fixed Payment, a member has to quote such security at the NBBO for at least 50% of the time during Market Hours on that day.

5 The Exchange notes that a symbol that did not trade during the measurement month will not be eligible for inclusion in the list.

The Program will be open to all members. A member may but is not required to be, a registered market maker in any security; thus, the Program will not by itself impose a two-sided quotation obligation or convey any of the benefits associated with being a registered market maker. Accordingly, the Program is designed to attract liquidity both from traditional market makers and from other firms that are willing to commit capital to support liquidity at the NBBO.

For securities in each of the three Classes, the Exchange will determine the amount of the Fixed Payment that it pays to a qualifying member as follows. First, the Exchange will determine the number of securities in each Class for which a member has met the NBBO requirement during the month. The Exchange will then determine whether the number of securities in a particular Class for which a member has satisfied the NBBO requirement during the month is sufficient to qualify it for a Tier, and if so, it will determine the highest Tier applicable to the member with respect to that Class of securities. Next, the Exchange will multiply the average daily number of its qualifying securities in the Class and Tier by the applicable amounts applicable to that Class and Tier, and [sic] the specified lump sum, if applicable.

Under the proposal, a member that qualifies for a Fixed Payment for securities in each of Tapes A and B and in multiple Classes within each Tape will receive Fixed Payments covering qualifying securities in both Tapes, and within each Tape, each of the applicable Classes, but within each Tape and Class, a member may only qualify for one Tier during a month.

The Exchange will pay the Fixed Payment in addition to other rebates or fees provided under Equity 7, Sections 118(a) - (f).

As of the outset of every month, the Exchange will reevaluate and, as applicable, update its lists of the securities that it places in each Class, and it will publish its updated lists on its website as of the outset of the month in which they will apply.

The Exchange proposes to set the Tiers, Classes, and the Fixed Payments as follows:

Tape A Securities				
Tiers	**Average daily number of securities quoted at the NBBO for at least 30% of the time during Market Hours during the month**	**Fixed payment for securities in Tape A in Class 1**	**Fixed payment for securities in Tape A in Class 2**	**Fixed payment for securities in Tape A in Class 3**
1	0-24	$0 per qualified security per month	$0 per qualified security per month	$0 per qualified security per month
2	25-49	$0 per qualified security per month	$0 per qualified security per month	$200 per qualified security over 24 per month
3	50-149	$50 per qualified security per month [sic]	$200 per qualified security over 49 per month	$5,000 + ($450 per qualified security over 49) per month
4	150-249	$5,000 + ($100 per qualified security over 149) per month	$20,000 + ($300 per qualified security over 149) per month	$50,000 + ($600 per qualified security over 149) per month
5	250 or greater	$15,000 + ($150 per qualified security over 249) per month	$50,000 + ($350 per qualified security over 249) per month	$50,000 + ($600 per qualified security over 149) per month

Tape B Securities				
Tiers	**Average daily number of securities quoted at the NBBO for at least 50% of the time during Market Hours during the month**	**Fixed payment for securities in Tape B in Class 1**	**Fixed payment for securities in Tape B in Class 2**	**Fixed payment for securities in Tape B in Class 3**
1	0-24	$0 per qualified security per month	$0 per qualified security per month	$0 per qualified security per month

2	25-49	\$0 per qualified security per month	\$0 per qualified security per month	\$100 per qualified security over 24 per month
3	50-149	\$0 per qualified security per month	\$25 per qualified security over 49 per month	\$2,500 + (\$150 per qualified security over 49) per month
4	150-249	\$50 per qualified security over 149 per month	\$2,500 + (\$50 per qualified security over 149) per month	\$17,500 + (\$300 per qualified security over 149) per month
5	250 or greater	\$5,000 + (\$75 per qualified security over 249) per month	\$7,500 + (\$150 per qualified security over 249) per month	\$17,500 + (\$300 per qualified security over 149) per month

The following are examples of the operation of the proposed Enhanced Market Quality Program.

Example 1: A member quotes an average of 200 symbols a day in Tape A, Class 2 in excess of the 30% NBBO requirement to qualify for a Tier during the month. Under the proposal, the member would qualify for a Fixed Payment equal to the combination of Tier 4, Class 2. The Fixed Payment due to such member is calculated as follows: 51 (the number of symbols over 149) times \$300, which equals \$15,300, plus \$20,000, for a total of \$35,300 for the month.

Example 2: A member meets the NBBO requirements for an average of 200 symbols a day in Tape A, Class 2, 26 symbols a day in securities in Tape A, Class 3, and 51 securities in Tape B, Class 2. In this scenario, the member would qualify for three Fixed Payments.

- First, for the 200 Tape A, Class 2 securities for which the member meets the NBBO requirement during the month, the member would receive a Fixed Payment equal to the combination of Tier 4, Class 2. The Fixed Payment due to such member is calculated as follows: 51 (the number of symbols over 149) times \$300, which equals \$15,300, plus \$20,000, for a total of \$35,300 for the month.

- Second, for the 26 Tape A, Class 3 securities for which the member meets the NBBO requirement during the month, the member would receive a Fixed Payment equal to the combination of Tier 2, Class 3. The Fixed Payment due to such member is calculated as follows: 2 (the number of symbols over 24) times $200, which equals $400 for the month.
- Third, for the 51 Tape B, Class 2 securities for which the member meets the NBBO requirement during the month, the member would receive a Fixed Payment equal to the combination of Tier 3, Class 2. The Fixed Payment due to such member is calculated as follows: 2 (the number of symbols over 49) times $25, which equals $50 for the month.
- The total of all Fixed Payments due to the member for the month will be $35,750 ($35,300 + $400 + $50).

Through the use of this incentive Program, the Exchange hopes to provide improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the inside market. In addition, the Program reflects an effort to use financial incentives to encourage a wider variety of members to make positive commitments to promote market quality. The Exchange believes that different members may respond to different incentives, and therefore the Enhanced Market Quality Program is designed to promote market quality through quoting activity. The Exchange recognizes that while generally market participants will provide quotes with the intention of trading, market makers and liquidity providers cannot control when counter parties choose to interact with those quotes and therefore the Exchange believes it is beneficial to the market to offer this incentive based on quoting activity directly.

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 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."[8]

Likewise, in NetCoalition v. Securities and Exchange Commission[9] ("NetCoalition") the D.C. Circuit stated as follows: "[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

6 15 U.S.C. 78f(b).

7 15 U.S.C. 78f(b)(4) and (5).

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

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

execution of order flow from broker dealers'…."[10]

The Exchange believes that the proposed Enhanced Market Quality Program is reasonable because it is similar to other incentive programs offered by the Exchange for displayed orders that provide liquidity, like the Qualified Market Maker Program set forth in Equity 7, Sections 118(f). The proposed Fixed Payment will provide an opportunity to members to receive an additional credit in return for certain levels of participation on the Exchange as measured by quoting at the NBBO for a significant portion of the day each month. The proposed Fixed Payment is set at a level that reflects the beneficial contributions of market participants that quote significantly at the NBBO in certain qualifying securities. The Exchange believes that it is reasonable to limit the universe of qualifying securities to a list of 1,500 symbols that traded most extensively on the Exchange in Tapes A and B during second month prior to the current month, and to vary the amount of Fixed Payments in relation to the relative extent to which symbols on that list trade, because improving the quality of quotes for more popular symbols will do more to enhance the attractiveness of the Exchange than will improving quote quality for thinly-traded symbols. Given that the Exchange has finite resources to allocate to incentive programs, it is reasonable to allocate those resources in a manner that is most likely to achieve its intended objectives. The Exchange notes that a competing exchange which operates a similar incentive program also targets its incentives to a select list of symbols.[11]

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10 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)).

11 Securities Exchange Act Release No. 34-92150 (June 10, 2021), 86 FR 32090, 32091 n.9 (June 16, 2021) ("SR-MEMX-2021-07") ("As proposed, the term 'DLI Target Securities'' means a list of securities designated as such, the universe of which will be determined by the Exchange and published on the Exchange's website. The Exchange anticipates that the initial DLI Target Securities list will include between 275 and 300 securities. The DLI Target Securities list will always include at least 75 securities and may be periodically updated by the Exchange, provided that the Exchange will not

The Exchange believes that it is reasonable to limit applicability of the proposed Fixed Payments to securities in Tapes A and B, and to set the credits higher for the Tape A securities, insofar as the Exchange seeks to incentivize members to quote at the NBBO on the Exchange in such securities and improve the market therefor.

The Exchange believes that the proposed Fixed Payments set forth by the Enhanced Market Quality Program are an equitable allocation and are not unfairly discriminatory because the Exchange will offer the same Fixed Payment rates to all similarly situated members. Moreover, the proposed qualification criteria requires a member to quote significantly at the NBBO in securities that trade extensively, therefore contributing to market quality in a meaningful way on the Exchange. Any member may quote at the NBBO at the level required by the qualification criteria of the Enhanced Market Quality Program. The Exchange notes that it has a similar Qualified Market Maker Program in which members are required to quote at the NBBO more than a certain amount of time during regular market hours.[12] For these reasons, the Exchange believes that the proposed Enhanced Market Quality Program Fixed Payments and qualification criteria are an equitable allocation and are not unfairly discriminatory.

The Exchange also believes that it is equitable and not unfairly discriminatory to apply the Enhanced Market Quality Program only to Tape A and Tape B securities, and then only to the top 1,500 symbols in each Tape by total value traded during the second month prior to the current month, and to set the Fixed Payment rates higher for the Tape A securities than Tape B securities, because the Exchange has limited resources available to it for incentive programs and

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remove a security from the DLI Target Securities list without at least 30 days' prior notice to Members as published on the Exchange's website (unless the security is no longer eligible for trading on the Exchange)."

12 See Qualified Market Maker Program, Equity 7, Section 118(f).

the Exchange believes that the most effective application of such limited resources is to improve the market quality for the most actively traded Tape A and Tape B securities, as proposed.

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 Program will 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 proposed Program will provide members with the opportunity to receive incentive payments if they improve the market by providing significant quoting at the NBBO in a large number of securities, while limiting the universe of such securities to those which the Exchange believes will do most to improve market quality.

In terms of intra-market 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 because the Program is open to all members on the same terms.

In sum, the proposed Program is designed to improve the quality of the Exchange for securities that are likely to attract the greatest trading interest; however, 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.

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.[13]

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.

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13 15 U.S.C. 78s(b)(3)(A)(ii).

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-2021-047 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-2021-047. 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.

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-2021-047 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.[14]

J. Matthew DeLesDernier
Assistant Secretary

[14] 17 CFR 200.30-3(a)(12).