

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99430; File No. SR-BX-2024-003)

January 25, 2024

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

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”),² and Rule 19b-4 thereunder,³ notice is hereby given that on January 12, 2024, Nasdaq BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II 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 its Pricing Schedule at Options 7, Section 2. While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on February 1, 2024.

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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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. Specifically, the Exchange proposes to amend Options 7, Section 2(5) related to the BX Price Improvement Auction (“PRISM”).

Currently, the Exchange assesses the below fees and pays the below rebates for orders executed in its PRISM Auction.

Fees and rebates (per contact)

Type of Market Participants	Submitted PRISM Auction Order In Penny Classes fee		Submitted PRISM Auction Order In Non-Penny Classes rebate		PRISM Response to PRISM Auction fee		PRISM Order Traded With PRISM Response rebate	
	PRISM Initiating Order	PRISM Initiating Order	PRISM Initiating Order	PRISM Initiating Order	Penny Classes	Non-Penny Classes	Penny Classes	Non-Penny Classes
Customer	\$0.00	\$0.00	\$0.12	\$0.00	\$0.40	\$0.79	\$0.35	\$0.70
Lead Market Maker	\$0.00	\$0.00	\$0.00	\$0.00	\$0.50	\$1.25	\$0.00	\$0.00
BX Options Market Maker	\$0.00	\$0.00	\$0.00	\$0.00	\$0.50	\$1.25	\$0.00	\$0.00
Non-Customer	\$0.00	\$0.00	\$0.00	\$0.00	\$0.50	\$1.25	\$0.00	\$0.00

Today, the Exchange assesses no PRISM Order⁴ fees in Penny and Non-Penny Classes to any Participant. Today, the Exchange pays a \$0.12 per contract rebate to Customers⁵ for PRISM Orders in Non-Penny Classes. Today, the Exchange assesses no Initiating Order⁶ fees in Penny and Non-Penny Classes to any Participant for PRISM Auction Orders.⁷ Today, the Exchange assesses a \$0.40 per contract PRISM Response⁸ to Customers and a \$0.50 per contract PRISM Response to Non-Customers⁹ in Penny Classes. Today, the Exchange assesses a \$0.79 per contract PRISM Response to Customers and a \$1.25 per contract PRISM Response to Non-Customers in Non-Penny Classes. Today, if a PRISM Order trades with a PRISM Response, the Exchange pays a rebate of \$0.35 to Customers for Penny Classes and a rebate of \$0.70 to Customers for Non-Penny Classes. Non-Customers are not paid a rebate if a PRISM Order trades with a PRISM Response.

Proposal

⁴ A PRISM Order is one-side of a PRISM Auction Order that represents an agency order on behalf a Public Customer, broker-dealer or other entity which is paired with an Initiating Order. See BX Options 7, Section 2(5).

⁵ The term “Customer” or (“C”) applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (“OCC”) which is not for the account of broker or dealer or for the account of a “Professional” (as that term is defined in Options 1, Section 1(a)(48)). See BX Options 7, Section 1(a).

⁶ An Initiating Order is one-side of a PRISM Auction Order that represents principal or other interest which is paired with a PRISM Order. See BX Options 7, Section 2(5).

⁷ A PRISM Auction Order is a two-sided, paired order comprised of a PRISM Order and an Initiating Order. See BX Options 7, Section 2(5).

⁸ A PRISM Response is interest that executed against the PRISM Order pursuant to Options 3, Section 13. See BX Options 7, Section 2(5).

⁹ The term “Non-Customer” shall include a Professional, Broker-Dealer and Non-BX Options Market Maker. See BX Options 7, Section 1(a).

The Exchange proposes to amend its PRISM pricing to increase its Initiating Order fees in Penny and Non-Penny Classes for Non-Customers¹⁰ from \$0.00 to \$0.05 per contract. Customers will continue to be assessed no Initiating Order Fee in Penny and Non-Penny Classes. The Exchange also proposes to decrease its pricing for Non-Penny PRISM Responses for Non-Customers from \$1.25 to \$1.10 per contract. The Exchange is not amending its Non-Penny PRISM Responses for Customers.

While the Exchange is increasing its Initiating Order fee from \$0.00 to \$0.05 per contract in Penny and Non-Penny Classes for Non-Customers, the Exchange believes the proposed pricing remains competitive and will continue to encourage BX Participants to participate in PRISM Orders on BX. Customers will continue to be assessed no Initiating Order fee in a PIXL Auction in Penny and Non-Penny Classes. The Exchange believes that the decreased Non-Penny Non-Customer PRISM Response fees will encourage Participants to participate in PRISM Orders on BX. Customers will continue to be assessed a lower Non-Penny PRISM Response fee as compared to other Participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹² 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.

¹⁰ The term “Non-Customer” shall include a Professional, Broker-Dealer and Non-BX Options Market Maker. See BX Options 7, Section 1(a).

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4) and (5).

The proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options 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 Commission¹³ (“NetCoalition”), the D.C. Circuit stated, “[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’....”¹⁴

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction services. The Exchange is only one of seventeen 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. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to attract additional order flow to the Exchange and increase its market share relative to its competitors.

The Exchange’s proposal to amend its PRISM pricing to increase its Initiating Order fees in Penny and Non-Penny Classes for Non-Customers from \$0.00 to \$0.05 per contract is reasonable. While the Exchange is increasing its Initiating Order fee from \$0.00 to \$0.05 in

¹³ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹⁴ 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)).

Penny and Non-Penny Classes for Non-Customers, the Exchange believes the proposed pricing remains competitive and will continue to encourage BX Participants to participate in PRISM Orders on BX. The Exchange's proposal to decrease its pricing for Non-Penny PRISM Responses for Non-Customers from \$1.25 to \$1.10 per contract is reasonable. The Exchange believes that the decreased Non-Penny PRISM Response fees will encourage Participants to attract order flow to BX since the Exchange is no longer assessing any fees to participate in PRISM Orders on BX. The proposed pricing is comparable to the spread between the agency order and responses in a price improvement auction on another options exchange.¹⁵

The Exchange's proposal to amend its PRISM pricing to increase its Initiating Order fees in Penny and Non-Penny Classes for Non-Customers from \$0.00 to \$0.05 per contract is equitable and not unfairly discriminatory. The Exchange will uniformly not assess a Penny or Non-Penny Initiating Order fee to any Non-Customer. While Customers will continue to not be assessed an Initiating Order fee in Penny and Non-Penny Classes, the Exchange notes that Customer activity enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. The Initiating Order fee is comparable to other options exchanges. The Exchange's proposal to decrease its pricing for Non-Penny PRISM Responses for Non-Customers from \$1.25 to \$1.10 per contract is equitable and not unfairly discriminatory. The Exchange will uniformly assess the \$1.10 per contract Non-Penny PRISM Responses to Non-

¹⁵ BOX Exchange LLC ("BOX") assesses customers no agency order fee and assesses Non-Customers a \$0.05 per contract agency order fee in Penny and Non-Penny classes in BOX's Price Improvement Period or "PIP". BOX assesses a Penny Response Fee of \$0.49 per contract for Customers and \$0.50 per contract for Non-Customers in PIP. BOX assesses a Non-Penny Response Fee of \$0.96 per contract for Customers and \$1.15 per contract for Non-Customers in PIP.

Customers. Customers will continue to be assessed a lower Non-Penny PRISM Response fee of \$0.79 per contract. Assessing Customers a lower Non-Penny PRISM Response fee of \$0.79 per contract as compared to \$1.10 per contract for Non-Customers is equitable and not unfairly discriminatory as Customer activity enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers.

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 inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice to initiate a price improvement auction. 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. 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

The Exchange's proposal to amend its PRISM pricing to increase its Initiating Order fees in Penny and Non-Penny Classes for Non-Customers from \$0.00 to \$0.05 per contract does not impose an undue burden on competition. The Exchange will uniformly not assess a Penny or

Non-Penny Initiating Order Fee to any Non-Customer. While Customers will continue to not be assessed an Initiating Order fee in Penny and Non-Penny Classes, the Exchange notes that Customer activity enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. The Exchange's proposal to decrease its pricing for Non-Penny PRISM Responses for Non-Customers from \$1.25 to \$1.10 per contract does not impose an undue burden on competition. The Exchange will uniformly assess the \$1.10 per contract Non-Penny PRISM Responses to Non-Customers. Customers will continue to be assessed a lower Non-Penny PRISM Response fee of \$0.79 per contract. Assessing Customers a lower Non-Penny PRISM Response fee of \$0.79 per contract as compared to \$1.10 per contract for Non-Customers does not impose an undue burden on competition as Customer activity enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers.

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

No written comments were solicited or received.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)¹⁶ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁷ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(2).

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁸ of the Act to determine whether the proposed rule change 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 (<https://www.sec.gov/rules/sro.shtml>);
or
- Send an email to rule-comments@sec.gov. Please include file number SR-BX-2024-003 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-2024-003. This file number should be included on the subject line if email 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 (<https://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

¹⁸ 15 U.S.C. 78s(b)(2)(B).

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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-BX-2024-003 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Sherry R. Haywood,

Assistant Secretary.

¹⁹ 17 CFR 200.30-3(a)(12).