

1. Text of the Proposed Rule Change

(a) Nasdaq BX, Inc. (“BX” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend the Exchange’s Membership Fee at Equity 7, Section 10, as described further below.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1.

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”). Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Dane Dixon
Associate General Council
Nasdaq, Inc.
470-432-4607

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

The purpose of the proposed rule change is to amend the Exchange's Membership Fee at Equity 7, Section 10. Specifically, the Exchange proposes to increase its annual membership fee ("Annual Membership Fee") from \$3,000 per year to \$4,000 per year. This fee is assessed on all BX members on an annual basis.

BX has not increased its Annual Membership Fee since 2009.³ The Exchange believes the proposed modest fee increase is warranted to ensure that its Annual Membership Fee better reflects the current value of being a member of the Exchange rather than the value when the Annual Membership Fee was last increased to \$3,000 per year more than 15 years ago. The Exchange believes that its ability to deliver value to its customers through technology, liquidity and functionality merits the proposed change to its Annual Membership Fee. The membership team also provides ongoing support to Exchange members with respect to membership changes, registration, and other questions that commonly arise from Exchange members regarding such matters.

Even with the proposed fee increase, the cost of BX membership is lower than the cost of membership in other SROs such as the Long-Term Stock Exchange, Inc. ("LTSE").⁴

³ See Exchange Act Release No. 61595 (Feb. 2, 2009), 74 FR 6441 (Feb. 9, 2009) (SR-BX-2009-004).

⁴ See, e.g., Long-Term Stock Exchange, Inc. Rule 15.200(a) (Annual Membership Fee) at [https://assets-global.website-files.com/6462417e8db99f8baa06952c/64cd4f221126981fa31652b3_LTSE%20Rule%20Book%20through%20June%209%202023%20\(SR-LTSE-2023-01%20Amendment%20No.%202\).pdf](https://assets-global.website-files.com/6462417e8db99f8baa06952c/64cd4f221126981fa31652b3_LTSE%20Rule%20Book%20through%20June%209%202023%20(SR-LTSE-2023-01%20Amendment%20No.%202).pdf).

Ultimately, Exchange membership is voluntary and if BX is incorrect in its determination that the proposed Annual Membership Fee change reflects the value of Exchange membership, then any Exchange member that is dissatisfied with the proposal can choose not to be a member of the Exchange and send its order flow to another exchange.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁶ 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 Exchange believes its proposal to increase its Annual Membership Fee from \$3,000 per year to \$4,000 per year is reasonable, equitable and not unfairly discriminatory. BX believes that this modest increase is an equitable method of ensuring that its Annual Membership Fee better reflects the value of the services it provides its membership. BX also believes the proposed modest increase of BX membership is reasonable since it has not been increased since 2009 and, even following the proposed increase to its Annual Membership Fee, the cost of BX membership still is less than those of other SROs.⁷ Additionally, the Exchange believes that the proposed change is both an equitable allocation and is not designed to permit unfair discrimination between Exchange members because the fee is applied equally to all Exchange members.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

⁷ Supra note 4.

The decision to become a member of an exchange is complex, and not solely based on the non-transactional costs assessed by an exchange. Becoming a member of an exchange does not “lock” a potential member into a market or diminish the overall competition for exchange services. The decision to become a member of an exchange is no less subject to competition than trading fees.

In 2022, MEMX LLC (“MEMX”) commenced assessing a monthly membership fee.⁸ MEMX reasoned in that rule change that there is value in becoming a member of the exchange.⁹ MEMX stated that it believed that its proposed membership fee “is not unfairly discriminatory because no broker-dealer is required to become a member of the Exchange.”¹⁰ In this respect, MEMX is correct; a membership fee is reasonable, equitably allocated and not unfairly discriminatory. Market participants may voluntarily choose to become a member of one or more of a number of different exchanges, of which, BX is but one choice. Additionally, any Exchange member that is dissatisfied with the proposal is free to choose not to be a member of the Exchange and send order flow to another exchange.

The Exchange’s proposal to increase its Annual Membership Fee from \$3,000 per year to \$4,000 per year is reasonable, equitable and not unfairly discriminatory. As a self-regulatory organization, BX’s membership department reviews existing members and new applicants to ensure that each complies with its rules and regulations, as well as

⁸ See Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR-MEMX-2021-19). In 2023, MEMX filed to establish fees for members of its options exchange. See Securities Exchange Act Release No. 98648 (September 29, 2023), 88 FR 68762 (October 4, 2023) (SR-MEMX-2023-26).

⁹ Id.

¹⁰ Id.

other requirements for membership. New applicants must also meet the Exchange's qualification criteria prior to approval. The membership review includes, but is not limited to, the registration and qualification of associated persons, financial health, the validity of the required clearing relationship, and the history of disciplinary matters. All members are required to comply with the Exchange's By-Laws and Rules and are subject to regulation by BX.

As noted above, if the Exchange is incorrect in its determination that the proposed Annual Membership Fee change reflects the value of Exchange membership, then any Exchange member that is dissatisfied with the proposal may voluntarily decide whether membership to the Exchange is worthwhile and has the option of sending order flow to another exchange.

4. 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. BX believes that if the proposed modest fee increase to its Annual Membership Fee proves unattractive to market participants, it is likely that BX will experience a decline in membership as a result.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem annual membership fee levels at a particular venue to be excessive or opportunities available at other venues to be more favorable. Because competitors are free to modify their own annual membership fees in response, the Exchange believes that the degree to which annual membership fee changes in this market may impose any burden on competition is extremely limited.

The Exchange notes that other markets have adopted membership fees. MEMX recently reasoned that it should be permitted to adopt membership fees because MEMX's proposed membership fees would be lower than the cost of membership on other exchanges, and therefore,

...may stimulate intramarket competition by attracting additional firms to become Members on the Exchange or at least should not deter interested participants from joining the Exchange. In addition, membership fees are subject to competition from other exchanges. Accordingly, if the changes proposed herein are unattractive to market participants, it is likely the Exchange will see a decline in membership as a result. The proposed fee change will not impact intermarket competition because it will apply to all Members equally. The Exchange operates in a highly competitive market in which market participants can determine whether or not to join the Exchange based on the value received compared to the cost of joining and maintaining membership on the Exchange.”¹¹

As noted above, BX's Annual Membership Fee would remain substantially lower than the analogous fees of LTSE,¹² and membership fees are subject to competition from other exchanges. Accordingly, if the Annual Membership Fee change proposed herein is unattractive to market participants, it is likely that BX will experience a decline in membership as a result.

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.¹³ The Exchange does not believe that the proposed rule change places an unnecessary burden on competition because it is a modest fee increase for a fee that has remained unchanged since 2009 and that will now better reflect the value of the services it provides its membership.

¹¹ See Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR-MEMX-2021-19).

¹² Supra note 4.

¹³ 15 U.S.C. 78f(b)(8).

Accordingly, any Exchange member that is dissatisfied with the proposal is free to choose not to be a member of the Exchange and send order flow to another exchange.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁴ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change.