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 Pricing Schedule at Options 7, Section 2(4) to modify the rebates for execution of contracts on the Exchange that generate an order exposure alert.

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:

Sun Kim
Senior Associate General Counsel
Nasdaq, Inc.
646-420-7816

[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 Pricing Schedule at Options 7, Section 2(4) to amend the rebates for execution of contracts on the Exchange that generate an order exposure alert pursuant to Options 5, Section 4. Options 5, Section 4(a) provides that "exposure" or "exposing" an order means a notification is sent to BX participants with the price, size, and side of interest that is available for execution. The order exposure functionality alerts BX participants that a marketable order entered on BX is available for execution, thereby providing an additional opportunity for execution on BX when BX is not part of the national best bid or offer ("NBBO") contra to the order and the order locks or crosses the away best bid or offer ("ABBO").

Today, the Exchange assesses a $0.47 per contract rebate for a Customer[3] Penny Symbol order triggering an order exposure alert. For Lead Market Maker,[4] BX Options Market Maker,[5] and Non-Customer[6] Penny Symbol orders, this rebate is $0.10 per contract. The Exchange now proposes to decrease the foregoing rebates such that

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3 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)).

4 The term "Lead Market Maker" or ("LMM") applies to a registered BX Options Market Maker that is approved pursuant to Options 2, Section 3 to be the LMM in an options class (options classes).

5 The term "BX Options Market Maker" or ("M") is a Participant that has registered as a Market Maker on BX Options pursuant to Options 2, Section 1, and must also remain in good standing pursuant to Options 2, Section 9. In order to receive Market Maker pricing in all securities, the Participant must be registered as a BX Options Market Maker in at least one security.

6 The term "Non-Customer" shall include a Professional, Broker-Dealer and Non-BX Options Market Maker.

Customer Penny Symbol orders will now receive $0.42 per contract (instead of a $0.47 per contract rebate), and Lead Market Maker, BX Options Market Maker, and Non Customer orders will be assessed $0.00 per contract (instead of a $0.10 per contract rebate).

While the Exchange is lowering the rebate for Customers and eliminating the rebate for all other market participants, the Exchange believes that its proposed pricing will continue to incentivize executions in Penny Symbols on BX because Customer Penny Symbol orders will receive a $0.42 per contract rebate for triggering an order exposure alert, and all other market participant orders in Penny Symbols triggering an order exposure alert will receive free executions under this proposal. Of note, orders are subject to the routing fees noted in Options 7, Section 2(3) when routed to an away options exchange. Further, any order submitted on BX may be marked Do Not Route as provided in Options 5, Section 4.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[8] 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's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant

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7 15 U.S.C. 78f(b).

8 15 U.S.C. 78f(b)(4) and (5).

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 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'…."[9]

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."[10]

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 eighteen options exchanges to which

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9 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)).

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

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.

The Exchange believes that its proposal to amend the pricing for the execution of contracts on BX that trigger an order exposure alert is reasonable. While the Exchange is decreasing the rebate for Customers and eliminating the rebate for all other market participants, the Exchange believes that its proposed pricing will continue to incentivize executions in Penny Symbols on BX because Customer Penny Symbol orders will receive a $0.42 per contract rebate for triggering an order exposure alert, and all other market participant orders in Penny Symbols triggering an order exposure alert will receive free executions under this proposal. As noted above, orders are subject to the routing fees noted in Options 7, Section 2(3) when routed to an away options exchange. Further, any order submitted on BX may be marked Do Not Route as provided in Options 5, Section 4. The Exchange believes that the proposing pricing will continue to encourage marketable orders to be executed on the Exchange, which facilitates the ability of the Exchange to bring together BX participants and encourage more robust competition for orders.

The Exchange further believes that its proposal is equitable and not unfairly discriminatory. As proposed, Customers will continue to receive more favorable pricing than other market participants. The Exchange does not believe this is unfairly discriminatory because Customer activity enhances liquidity on the Exchange for the benefit of all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

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.

The Exchange does not believe that its proposal would impose an undue burden on intra-market competition. While Customers will receive more favorable pricing under this proposal than other market participants on BX, the Exchange believes that Customer activity enhances liquidity on the Exchange for the benefit of all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

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 sum, 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.

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,[11] 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.

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[11] 15 U.S.C. 78s(b)(3)(A)(ii).

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.

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.