

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103006; File No. SR-BX-2025-009]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Increase the Options Regulatory Fee (ORF) on a Temporary Basis and Discontinue the ORF Model Scheduled to be Implemented in June 2025

May 8, 2025.

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 April 30, 2025, Nasdaq BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“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 increase the BX Options Regulatory Fee or “ORF.” Also, the Exchange proposes to discontinue the ORF model scheduled to be implemented in June 2025.³ The increased ORF rate will sunset on December 31, 2025 and will revert to \$0.0005 per contract side.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 101878 (December 11, 2024), 89 FR 102199 (December 17, 2024) (SR-BX-2024-054) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Approach to the Options Regulatory Fee (ORF) in 2025). See also Securities Exchange Act Release No. 102343 (February 4, 2025), 90 FR 9269 (February 10, 2025) (SR-BX-2025-005) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delay the Implementation of the New Options Regulatory Fee (ORF) and ORF Methodology Proposed in SR-BX- 2024-054).

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on May 1, 2025.

The text of the proposed rule change is available on the Exchange's Website at <https://listingcenter.nasdaq.com/rulebook/bx/rulefilings>, 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 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

BX proposes to increase its ORF from \$0.0005 to \$0.0008 per contract side effective May 1, 2025. The increased ORF rate will sunset on December 31, 2025 and will revert to \$0.0005 per contract side. Additionally, the Exchange proposes to discontinue the ORF model scheduled to be implemented in June 2025.⁴

Background on Current ORF

Today, BX assesses its ORF for each Customer⁵ option transaction that is either: (1)

⁴ Id.

⁵ Today, ORF is collected from Customers, Professionals and broker-dealers that are not affiliated with a clearing member that clear in the "C" range at OCC.

executed by a Participant⁶ on BX; or (2) cleared by a BX Participant at OCC in the Customer range,⁷ even if the transaction was executed by a non-member of BX, regardless of the exchange on which the transaction occurs.⁸ If the OCC clearing member is a BX Participant, ORF is assessed and collected on all ultimately cleared Customer contracts (after adjustment for CMTA⁹); and (2) if the OCC clearing member is not a BX Participant, ORF is collected only on the cleared Customer contracts executed at BX, taking into account any CMTA instructions which may result in collecting the ORF from a non-member.¹⁰ The current BX ORF is \$0.0005 per contract side.

Today, in the case where a Participant both executes a transaction and clears the transaction, the ORF will be assessed to and collected from that Participant. Today, in the case where a Participant executes a transaction and a different Participant clears the transaction, the ORF will be assessed to and collected from the Participant who clears the transaction and not the Participant who executes the transaction. Today, in the case where a non-member executes a transaction at an away market and a Participant clears the transaction, the ORF will be assessed

⁶ The term “Options Participant” or “Participant” mean a firm, or organization that is registered with the Exchange pursuant to Options 2A of these Rules for purposes of participating in options trading on BX Options as a “BX Options Order Entry Firm” or “BX Options Market Maker.” See Options 1, Section 1(a)(40).

⁷ Participants must record the appropriate account origin code on all orders at the time of entry of the order. The Exchange represents that it has surveillances in place to verify that Participants mark orders with the correct account origin code.

⁸ The Exchange uses reports from OCC when assessing and collecting the ORF.

⁹ CMTA or Clearing Member Trade Assignment is a form of “give-up” whereby the position will be assigned to a specific clearing firm at OCC.

¹⁰ By way of example, if Broker A, a BX Participant, routes a Customer order to CBOE and the transaction executes on CBOE and clears in Broker A’s OCC Clearing account, ORF will be collected by BX from Broker A’s clearing account at OCC via direct debit. While this transaction was executed on a market other than BX, it was cleared by a BX Participant in the member’s OCC clearing account in the Customer range, therefore there is a regulatory nexus between BX and the transaction. If Broker A was not a BX Participant, then no ORF should be assessed and collected because there is no nexus; the transaction did not execute on BX nor was it cleared by a BX Participant.

to and collected from the Participant who clears the transaction. Today, in the case where a Participant executes a transaction on BX and a non-member clears the transaction, the ORF will be assessed to the Participant that executed the transaction on BX and collected from the non-member who cleared the transaction. Today, in the case where a Participant executes a transaction at an away market and a non-member ultimately clears the transaction, the ORF will not be assessed to the Participant who executed the transaction or collected from the non-member who cleared the transaction because the Exchange does not have access to the data to make absolutely certain that ORF should apply. Further, the data does not allow the Exchange to identify the Participant executing the trade at an away market.

ORF Revenue and Monitoring of ORF

Today, the Exchange monitors the amount of revenue collected from the ORF (“ORF Regulatory Revenue”) to ensure that it, in combination with other regulatory fees and fines, does not exceed Options Regulatory Costs.¹¹ In determining whether an expense is considered an Options Regulatory Cost, the Exchange reviews all costs and makes determinations if there is a nexus between the expense and a regulatory function. The Exchange notes that fines collected by the Exchange in connection with a disciplinary matter offset Options Regulatory Cost.

ORF Regulatory Revenue, when combined with all of the Exchange’s other regulatory fees and fines, is designed to recover the Options Regulatory Costs to the Exchange of the supervision and regulation of member Customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. Options Regulatory Costs include direct regulatory

¹¹ The regulatory costs for options comprise a subset of the Exchange’s regulatory budget that is specifically related to options regulatory expenses and encompasses the cost to regulate all Participants’ options activity (“Options Regulatory Cost”).

expenses and certain indirect expenses in support of the regulatory function. The direct expenses include in-house and third-party service provider costs to support the day-to-day regulatory work such as surveillances, investigations and examinations. The indirect expenses are only those expenses that are in support of the regulatory functions, such areas include Office of the General Counsel, technology, finance, and internal audit. Indirect expenses will not exceed 35% of the total Options Regulatory Costs, in which case direct expenses could be 65% or more of total Options Regulatory Costs.¹²

Proposal for May 1, 2025

At this time, the Exchange proposes to increase BX's ORF from \$0.0005 to \$0.0008 per contract side effective May 1, 2025. For several years, BX has not been collecting ORF Regulatory Revenue at levels that cover a material portion of its Options Regulatory Cost. By way of background, initially BX did not adopt an ORF as a new options market. Despite the fact that BX was operating its options market since 2012, it did not establish an ORF until February 1, 2016 and has amended its ORF twice since the inception of the ORF.¹³ The current ORF rate of \$0.0005 was set on August 1, 2017 and has remained the same to date. In 2024, BX proposed to revamp the current process of assessing and collecting its ORF¹⁴ along with other Nasdaq

¹² Direct and indirect expenses are based on the Exchange's 2025 Regulatory Budget.

¹³ See Securities Exchange Act Release Nos. 78361 (July 19, 2016), 81 FR 48485 (July 25, 2016) (SR-BX-2016-043) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Adjustments to Its Options Regulatory Fee); and 81341 (August 8, 2017), 82 FR 37946 (August 14, 2017) (SR-BX-2017-032) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise the Rules Regarding the Exchange's Options Regulatory Fee).

¹⁴ See Securities Exchange Act Release No. 101878 (December 11, 2024), 89 FR 102199 (December 17, 2024) (SR-BX-2024-054) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Approach to the Options Regulatory Fee (ORF) in 2025). See also Securities Exchange Act Release No. 102343 (February 4, 2025), 90 FR 9269 (February 10, 2025) (SR-BX-2025-005) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delay the Implementation of the New Options Regulatory Fee (ORF) and ORF Methodology Proposed in SR-BX- 2024-054) (collectively "June 2025 ORF").

affiliated exchanges in an attempt to reform ORF. BX's current ORF rate has been in effect for over 8 years. The Exchange notified Participants of the proposed adjustment to the ORF through an Options Trader Alert.¹⁵ For several years BX has been under collecting ORF and proposes to temporarily increase the amount of ORF that will be collected by the Exchange from \$0.0005 to \$0.0008 per contract side. The Exchange proposes the ORF of \$0.0008 per contract side to have an automatic sunset on December 31, 2025. The proposed increase is based on the Exchange's estimated projections of its Options Regulatory Cost as well as the projected ORF Regulatory Revenue, when combined with all of the Exchange's other regulatory fees and fines. The Exchange will continue to monitor the amount of ORF Regulatory Revenue collected from the ORF to ensure that ORF Regulatory Revenue, in combination with its other regulatory fees and fines, does not exceed Options Regulatory Costs. If the Exchange determines that to be the case, the Exchange will adjust the ORF by submitting a fee change filing to the Commission and notifying¹⁶ its Participants via an Options Trader Alert.¹⁷

Future Proposals

BX previously filed a proposed amendment to its ORF, effective as of January 1, 2025,¹⁸ to amend its methodology of collection to: (1) exclude options transactions in proprietary products; and (2) assess ORF in all clearing ranges except market makers who clear as "M" at OCC. Additionally, BX proposed to assess a different rate for trades executed on BX ("Local

¹⁵ See Options Trader Alert #2025 - 17.

¹⁶ The Exchange will provide Participants with such notice at least 30 calendar days prior to the effective date of the change.

¹⁷ The Exchange notes that in connection with this proposal, it provided the Commission confidential details regarding the Exchange's projected regulatory revenue, including projected revenue from ORF, along with a projected regulatory expense.

¹⁸ See Securities Exchange Act Release No. 101878 (December 11, 2024), 89 FR 102199 (December 17, 2024) (SR-BX-2024-054) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Approach to the Options Regulatory Fee (ORF) in 2025).

ORF Rate”) and trades executed on non-BX exchanges (“Away ORF Rate”).¹⁹ The Exchange also filed to delay the implementation of SR-BX-2024-054, with respect to the new ORF and methodology therein which was effective on January 1, 2025, so that it would now be implemented on June 1, 2025.²⁰ At this time, the Exchange proposes to discontinue its June 2025 ORF. The Exchange received feedback from the Participants²¹ and SIFMA²² related to the implementation of its June 2025 ORF. In particular, two fields necessary for information sharing of executing exchange information among Participants and Clearing Members will not be available after an upcoming technology migration at OCC.²³ In light of this information, the Exchange has been re-evaluating its ORF model and plans to revamp the current process of assessing and collecting ORF, which would be subject to, and described further in, a future rule filing. Particularly, the Exchange is exploring proposing a modified ORF model in which ORF would only be assessed to on-exchange transactions and would continue to be assessed only to customers. At this this time, the Exchange expects to continue assessing ORF as it does today and will continue to ensure that ORF Regulatory Revenue, in combination with its other regulatory fees and fines, does not exceed Options Regulatory Cost.

To create real ORF reform, moving to a new ORF model that only assesses a fee to transactions that occur on the Exchange would remove any duplicative ORF billing. The Exchange believes that each exchange should likewise adopt a similar model to ensure consistent

¹⁹ Id.

²⁰ See Securities Exchange Act Release No. 102343 (February 4, 2025), 90 FR 9269 (February 10, 2025) (SR-BX-2025-005) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delay the Implementation of the New Options Regulatory Fee (ORF) and ORF Methodology Proposed in SR-BX-2024-054).

²¹ The Exchange has discussed the implementation of its June 2025 ORF with various Clearing Members.

²² See SIFMA comment letter at <https://www.sec.gov/comments/sr-nasdaq-2024-078/srnasdaq2024078-550079-1574622.pdf>.

²³ See <https://www.theocc.com/company-information/occ-transformation>.

industry billing of ORF to the benefit of market participants. A consistent methodology of assessing and collecting ORF will also remove confusion and complexity in the billing of ORF. The Exchange has been engaged in remodeling its current ORF over the last year and has held many conversations with market participants to establish a framework that is practical and fair. The Exchange remains committed to ORF reform and will continue to evaluate its ORF model and seek feedback from market participants. Until such time as the new ORF model is in place, the Exchange believes that it is fair and reasonable to temporarily raise the current rate under the existing ORF model to allow BX to increase its current collection to offset Options Regulatory Costs to maintain its regulatory budget.

In light of the Exchange's anticipated proposal to revamp ORF, the Exchange also proposes to adopt a sunset date of December 31, 2025 for the current proposed rate of \$0.0008 per contract side, at which point the Exchange would revert back to current ORF rate of \$0.0005 per contract side. The proposed sunset date will provide time for the Exchange to discuss its anticipated, or potential alternative, ORF model with market participants towards establishment of one new, unified model going forward. The Exchange will endeavor however to implement the modified ORF structure noted above prior to the proposed December 31, 2025 sunset date (i.e., the existence of the sunset date of December 31, 2025 for the proposed ORF rate would not preclude the Exchange from filing to modify its ORF methodology and rate prior to that date).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.²⁴ Specifically, the

²⁴ 15 U.S.C. 78f(b).

Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act²⁵, which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its members, and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁶ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed pricing change is reasonable because it would help ensure that ORF Regulatory Revenue, in combination with other regulatory fees and fines, would help offset, but not exceed, Options Regulatory Cost. As discussed, the Exchange has designed the ORF to generate ORF Regulatory Revenue that would be less than Options Regulatory Cost, which is consistent with the practice across the options industry and the view of the Commission that regulatory fees be used for regulatory purposes and not to support the Exchange's business side. The Exchange has determined to increase its ORF because it has been under collecting for a few years. Initially, BX did not adopt an ORF as a new market in 2012. BX adopted its ORF on February 1, 2016 and amended its ORF such that the current rate of \$0.0005 per contract side has been in effect since August 1, 2017. Thereafter, the Exchange did not amend its ORF until 2024 when it proposed to revamp the current process of assessing and collecting ORF.²⁷ Today, BX's ORF remains at the 2017 rate. The proposed increase is reasonable as it would offset the anticipated Options Regulatory Cost in line with other options exchanges that are collecting at a higher rate and some new options markets which collected ORF from the first day of trading, while still not exceeding a material portion of Options Regulatory Cost. As noted above, the

²⁵ 15 U.S.C. 78f(b)(4).

²⁶ 15 U.S.C. 78f(b)(5).

²⁷ See supra note 14.

Exchange will also continue to monitor on a monthly basis so that ORF Regulatory Revenue, in combination with its other regulatory fees and fines, does not exceed Options Regulatory Cost. If the Exchange determines ORF Regulatory Revenue would exceed a material portion of Options Regulatory Cost, the Exchange will reduce the ORF by submitting a pricing change filing to the Commission.

The Exchange also believes the proposed fee change is equitable and not unfairly discriminatory in that it is charged to all Participants on all their transactions that clear in the customer range at the OCC. The Exchange believes the ORF ensures fairness by assessing higher fees to those Participants that require more Exchange regulatory services based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. For example, there are costs associated with main office and branch office examinations (e.g., staff and travel expenses), as well as investigations into customer complaints and the terminations of registered persons. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (e.g., proprietary transactions) of its regulatory program. Moreover, the Exchange notes that it has broad regulatory responsibilities with respect to its Participants' activities, irrespective of where their transactions take place. Many of the Exchange's surveillance programs for customer trading activity may require the Exchange to look at activity across all markets, such as reviews related to position limit violations and manipulation. Indeed, the Exchange cannot effectively review for such conduct without looking at and evaluating activity regardless of where it transpires. In

addition to its own surveillance programs, the Exchange also works with other exchanges on intermarket surveillance related issues. Through its participation in the Intermarket Surveillance Group (“ISG”)²⁸ the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. Accordingly, there is a strong nexus between the ORF and the Exchange’s regulatory activities with respect to its Participants’ customer trading activity.

The Exchange’s proposal to discontinue its June 2025 ORF is reasonable because it has come to light that certain information necessary for billing of ORF would not be available later in 2025. In light of this information, the Exchange has been re-evaluating its ORF model and plans to revamp the current process of assessing and collecting ORF, which would be subject to, and described further in, a future rule filing. Particularly, the Exchange anticipates moving to a modified ORF model in which ORF would only be assessed to on-exchange transactions and would continue to be assessed only to customers. At this this time, the Exchange expects to continue assessing ORF as it does today and will continue to ensure that ORF Regulatory Revenue, in combination with its other regulatory fees and fines, does not exceed Options Regulatory Cost. Until such time as the new ORF model is in place, the Exchange believes that it is fair and reasonable to temporarily raise the current rate under the existing ORF model to allow BX to increase its current collection to offset Options Regulatory Costs to maintain its regulatory budget..

The Exchange’s proposal to discontinue its June 2025 ORF is equitable and not unfairly discriminatory as the proposal would not apply to any Participant.

²⁸ ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the self-regulatory organizations by cooperatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG’s information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

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. This proposal does not create an unnecessary or inappropriate intra-market burden on competition because ORF applies to all customer activity, thereby raising ORF Regulatory Revenue to offset Options Regulatory Cost. It also supplements the regulatory revenue derived from non-customer activity. The Exchange notes, however, the proposed change is not designed to address any competitive issues. Indeed, this proposal does not create an unnecessary or inappropriate inter-market burden on competition because it is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of ORF Regulatory Revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed Options Regulatory Cost.

Further, no Participant would be subject to the June 2025 ORF as a result of this proposal.

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) of the Act²⁹ and paragraph (f)(2) of Rule 19b-4³⁰ thereunder.

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 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

²⁹ 15 U.S.C. 78s(b)(3)(A).

³⁰ 17 CFR 240.19b-4(f)(2).

Commission will institute proceedings 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-2025-009 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-2025-009. 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 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-2025-009 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.³¹

Sherry R. Haywood,

Assistant Secretary.

³¹ 17 CFR 200.30-3(a)(12).