

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-74097; File No. SR-BX-2015-004)

January 20, 2015

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding BX LMM and Penny Pilot Options

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 January 9, 2015, NASDAQ OMX 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 Chapter XV, entitled “Options Pricing” and Section 2, entitled “Options Market – Fees and Rebates”. Specifically, the Exchange proposes to: (1) add the definition of Lead Market Maker (“LMM”) and amend the definition of Common Ownership in Chapter XV; (2) adopt three Monthly Volume Tiers in Section 2 that apply to LMMs in their specifically allocated options classes when adding liquidity in Penny Pilot options; (3) indicate in Section 2 that BAC, IWM, QQQ, SPY, and VXX are priced like all other Penny Pilot options; and (4) update the numbering of notes in Section 2.

The text of the proposed rule change is available on the Exchange’s website at <http://nasdaqomxbx.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The purpose of the proposed rule change is to amend Chapter XV, entitled “Options Pricing” and Section 2, entitled “Options Market – Fees and Rebates”. Specifically, the Exchange proposes to: (1) add the definition of Lead Market Maker and amend the definition of Common Ownership in Chapter XV; (2) adopt three Monthly Volume Tiers in Section 2 that apply to LMMs (also known as “BX LMMs”) in their specifically allocated options classes when adding liquidity in Penny Pilot options; (3) indicate in Section 2 that BAC, IWM, QQQ, SPY, and VXX³ are priced like all other Penny Pilot options; and (4) update the numbering of notes in Section 2.

³ BAC is the symbol for Bank of America Corporation, IWM is the symbol for iShares Russell 200 ETF, QQQ is the symbol for PowerShares QQQ Trust Series 1 ETF, SPY is the symbol for SPDR S&P 500 ETF, and VXX is the symbol for iPath S&P 500 VIX Short Term Futures ETN.

Lead Market Maker

BX introduced LMMs this year on the Exchange,⁴ such that with respect to each class of options in an LMM's appointment, an LMM is expected to engage, to a reasonable degree under the existing circumstances, in dealings for his own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of and demand for a particular option contract, or a temporary distortion of the price relationships between option contracts of the same class.⁵ Approved BX Options Market Makers⁶ may become an LMM in one or more listed options. Initial application(s) to become an LMM shall be in a form and/or format prescribed by the Exchange and shall include the following: (1) Background information on the LMM including experience in trading options; (2) the LMM's clearing arrangements; (3) adequacy of capital; and (4) adherence to Exchange rules and ability to meet obligations of an LMM.⁷ Once an applicant is approved by the Exchange as an LMM, any material change in capital shall be reported in writing to the Exchange within two business days after the change. The Exchange will not place any limit on the number of entities that may become LMMs, however the Exchange notes that there will only be one LMM per class.

The Exchange is not, in this proposal, making any changes, substantive or otherwise, to how LMMs function. Rather, in that the proposed new volume tiers in Chapter XV, Section 2 refer to LMMs, the Exchange is adding to Chapter XV a definition of LMM that refers back to

⁴ See Securities Exchange Act Release No. 72883 (August 20, 2014), 79 FR 50971 (August 26, 2014)(SR-BX-2014-035)(order approving introduction of LMMs on BX)(the "LMM approval order").

⁵ LMM obligations and prohibitions are further described in Chapter VII, Section 14.

⁶ See BX Chapter VII, Section 2.

⁷ See BX Chapter VII, Section 13(A)(b). Subsequent applications are discussed in Section 13(A)(c).

Chapter VII, Section 13. Specifically, the Exchange proposes to state in Chapter XV: “The term “Lead Market Maker” or (“LMM”) applies to a registered BX Options Market Maker that is approved pursuant to Chapter VII, Section 13 to be the LMM in an options class (options classes).” This makes the proposed volume tiers language easier to understand and read within Chapter XV, Section 2.

Common Ownership

The concept of common ownership is present in Exchange rules. Currently, Chapter XV states that the term “Common Ownership” shall mean Participants under 75% common ownership or control. The Exchange is, as discussed below, proposing Monthly Volume Tiers for execution of options on BX that meet certain volume thresholds. As such, the Exchange simply proposes to incorporate volume tiers into the definition of “Common Ownership” in Chapter XV by adding the language: “Common Ownership shall apply to all pricing in Chapter XV, Section 2 for which a volume threshold or volume percentage is required to obtain the pricing.” This conforms Chapter XV internally and reduces the possibility of confusion. It also conforms the definition of Common Ownership in BX Chapter XV with a similar definition in the rules of the NASDAQ Options Market (“NOM”).⁸

Fees and Rebates for Penny Pilot Options

The Penny Pilot, an industry-wide program, has been in place on the Exchange for well over a year and has allowed options to quote and trade in penny increments.⁹ The Exchange’s

⁸ See NOM Chapter XV. NOM is a facility of The NASDAQ Stock Market LLC (“NASDAQ”). NASDAQ, NASDAQ OMX PHLX LLC (“Phlx”) and the Exchange are self-regulatory organizations (“SROs”) that are wholly owned subsidiaries of The NASDAQ OMX Group, Inc. (“NASDAQ”).

⁹ The Penny Pilot was established in June 2012 and last extended in December 2014. See Securities Exchange Act Release Nos. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012)(SR-BX-2012-030)(order approving BX option rules and establishing Penny Pilot);

options pricing for execution on the BX Options Market currently has a separate section for fees and rebates¹⁰ for Penny Pilot options on BAC, IWM, QQQ, SPY, and VXX (known as “special rates”) - as opposed to All Other Penny Pilot Options.¹¹ The Exchange proposes to delete the special rates for BAC, IWM, QQQ, SPY, and VXX. By doing so, BAC, IWM, QQQ, SPY, and VXX would have the same fees and rebates as all other Penny Pilot options. Thus, as a result of this filing deleting the special rates, the rebate to add liquidity for a BX Options Market Maker¹² when contra to a Non-Customer, BX Options Market Maker, or BX LMM would increase from \$0.00 to \$0.10 (per executed contract); the rebate to remove liquidity for Customer¹³ would increase from \$0.00 to \$0.35; the fee to add liquidity for Customer when contra to a Customer would increase from \$0.10 to \$0.40; and the fee to add liquidity for BX Options Market Maker when contra to a Customer would increase from \$0.00 to as much as \$0.40 – according to three Monthly Volume Tiers in new note 4 applicable to LMMs as discussed below. As such, all Penny Pilot Options, including BAC, IWM, QQQ, SPY, and VXX, would have the same fees and rebates.

and 73689 (November 25, 2014), 79 FR 71488 (December 2, 2014)(SR-BX-2014-057)(notice of filing and immediate effectiveness extending the Penny Pilot through June 30, 2015).

¹⁰ The Rebate to Add Liquidity is paid to a BX Options Market Maker only when the BX Options Market Maker is contra to a Non-Customer or BX Options Market Maker. A Non-Customer includes a Professional, Firm, Broker-Dealer and Non-BX Options Market Maker.

¹¹ See Securities Exchange Act Release No. 70539 (September 27, 2013), 78 FR 61418 (October 3, 2013)(SR-BX-2013-052)(notice of filing and immediate effectiveness regarding special rates for BAC, IWM, QQQ, SPY, and VXX).

¹² A BX Options Market Maker must be registered as such pursuant to Chapter VII, Section 2 of the BX Options Rules, and must also remain in good standing pursuant to Chapter VII, Section 4.

¹³ The term “Customer” means a Public Customer or a broker-dealer, and the term “Public Customer” means a person that is not a broker or dealer in securities. See Chapter I, Section 1(a)(22) and 1(a)(50).

The fee schedule after the filing will reflect Penny Pilot Options fees and rebates for Customer, BX Options Market Maker, and Non Customer¹⁴ as follows:

Fees and Rebates (per executed contract)			
	Customer	BX Options Market Maker	Non-Customer¹
Penny Pilot Options:			
Rebate to Add Liquidity	\$0.00 ²	\$0.10 ²	N/A
Fee to Add Liquidity	\$0.40 ³	\$0.40 ^{[sic]4}	\$0.45
Rebate to Remove Liquidity	\$0.35	N/A	N/A
Fee to Remove Liquidity	N/A	\$0.46	\$0.46

There are three notes applicable to this Fees and Rebates section, which do not change.¹⁵ The Exchange is adding new note 4 in respect of volume tiers applicable to LMMs.

New note 4 adds Monthly Volume Tiers A, B, and C applicable to BX LMMs in their specifically allocated options classes. These tiers apply to the Fee to add Liquidity for BX LMMs for Penny Pilot Options.¹⁶ The fee is indicated at \$0.40, \$0.38, and \$0.37 depending on Monthly Volume Tier thresholds. Tier A indicates a fee of \$0.40 for Total Volume up to 0.20% of total industry customer equity and ETF option average daily volume (“ADV”) contracts per day. Tier B indicates a fee of \$0.38 for Total Volume above 0.20% to 0.30% of total industry

¹⁴ A Non-Customer includes a Professional, Firm, Broker-Dealer and Non-BX Options Market Maker.

¹⁵ These unchanged notes are: “¹A Non-Customer includes a Professional, Firm, Broker-Dealer and Non-BX Options Market Maker. ²The Rebate to Add Liquidity will be paid to a Customer or BX Options Market Maker only when the Customer or BX Options Market Maker is contra to a Non-Customer or BX Options Market Maker. ³The Fee to Add Liquidity will be assessed to a Customer or BX Options Market Maker only when the Customer or BX Options Market Maker is contra to a Customer.”

¹⁶ For the Fee to add Liquidity for Customer for Penny Pilot Options, note 3 continues to apply. Note 3 states: “The Fee to Add Liquidity will be assessed to a Customer or BX Options Market Maker only when the Customer or BX Options Market Maker is contra to a Customer.”

customer equity and ETF option ADV contracts per day in a month. And Tier C indicates a fee of \$0.37 for a Total Volume 0.31% or more of total industry customer equity and ETF option ADV contracts per day in a month. In addition, because new tiers A, B, and C refer to Total Volume, this term is defined as follows: “ “Total Volume” shall be defined as Customer, BX Options Market Maker, LMM, and Non-Customer volume in Penny Pilot Options and/or Non-Penny Pilot Options which either adds or removes liquidity on BX Options. For purposes of determining Monthly Volume Tiers, any day that the market is not open for the entire trading day will be excluded from such calculation.”¹⁷

Finally, in the rebates and fees section for Non-Penny Pilot Options, note 4 is renumbered to note 5.¹⁸ There are no other changes to this section.

The Exchange believes that having the same fees and rebates across the board for all Penny Pilot Options will incentivize BX Options Market Makers, Customers, and non-Customers to interact with a greater number of Penny Pilot Options orders on the Exchange. The proposed differentiation between BX LMMs and other market participants in terms of tiers recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. LMMs have heightened quoting obligations. Chapter VII, Section 14(a) indicates that transactions of an LMM should constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and no LMM should enter into transactions or make bids or offers that are inconsistent with such a course of dealings. Section 14(b) indicates that obligations of LMMs with respect to each class of options

¹⁷ The Exchange notes that NOM also has a tiered system for fees and rebates, albeit a different one than proposed by the Exchange.

¹⁸ Renumbered note 5 is unchanged and states: “The higher Fee to Add Liquidity will be assessed to a Customer or BX Options Market Maker only when the Customer or BX Options Market Maker is contra to a Customer.”

in his or her appointment specifically include the following: (i) To compete with other LMMs and Market Makers to improve the market in all series of options classes to which the LMM is appointed; (ii) To make markets that will be honored for the number of contracts entered into the Trading System in all series of options classes within the LMM's appointment; (iii) To update market quotations in response to changed market conditions in all series of options classes within the LMM's appointment; (iv) Options traded on the Trading System may be quoted with a difference not to exceed \$5 between the bid and offer regardless of the price of the bid; (v) BX Regulation may establish quote width differences other than as provided in subparagraph (iv) for one or more options series.¹⁹

The Exchange believes that the proposed changes are consistent with the Act and raise no novel issues.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act²⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act²¹ in particular, in that it is

¹⁹ In addition, Chapter VII, Section 14(b)(vi) requires, in part, that in the event the bid/ask differential in the underlying security is greater than the bid/ask differential set forth in subsections (b)(iv)-(v), the permissible price differential for any in-the-money option series may be identical to those in the underlying security market. In the case of the at-the-money and out-of-the-money series, BX Regulation may waive the requirements of subsections (b)(iv)-(v) on a case-by-case basis when the bid/ask differential for the underlying security is greater than .50. In such instances, the bid/ask differentials for the at-the-money series and the out-of-the-money series may be half as wide as the bid/ask differential in the underlying security in the primary market. For obligations with respect to unusual conditions, see Section 14(c). In the LMM approval order (Securities Exchange Act Release No. 72883), the Commission noted that the proposed rules regarding LMMs are substantially similar to the rules of other exchanges such as, for example, NASDAQ OMX PHLX Rules 501, 505, 506 and 511 and NYSE Arca Rules 6.37A and 6.37B.

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. BX Options operates in an intensely competitive environment and seeks to offer the same services that its competitors offer and in which its customers find value.

The Exchange believes that applying the same Rebates and Fees to all Customers, BX Options Market Makers, and Non-Customers in all Penny Pilot Options promotes just and equitable principles of trade, and fosters cooperation and coordination with persons engaged in facilitating transactions in Penny Pilot Options. The Exchange will uniformly apply the same Fees and Rebates to all Customer, Market Maker and non-Customer Penny Pilot Options and will no longer differentiate Fees and Rebates for BAC, IWM, QQQ, SPY, and VXX.

The proposed rule change also protects investors and the public interest and seeks to establish and promote just and equitable principles of trade by creating more uniformity and consistency among the Exchange's rules related to Fees and Rebates for all Penny Pilot Options. The Exchange believes that the proposal will not diminish and in fact may increase, market making activity on the Exchange by ensuring fees and rebates that are reasonable and already in place for Penny Pilot Options. With this proposal, the same rebates and fees will apply across the board to all Penny Pilot options.

The proposal is reasonable, equitable, and not unfairly discriminatory. The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to treat fees and rebates regarding all Penny Pilot Options, including BAC, IWM, QQQ, SPY and VXX, exactly the same. This would, for BAC, IWM, QQQ, SPY and VXX, effectively increase the Rebate to Add

Liquidity for BX Options Market Makers when contra to a Non-Customer, BX Options Market Maker, or BX LMM from \$0.00 to \$0.10;²² would increase the Fee to Add Liquidity for Customers when contra to a Customer from \$0.10 to \$0.40, and for BX Options Market Makers when contra to a Customer from \$0.00 to as much as \$0.40 per Tiers A, B, and C; and would increase the Rebate to Remove Liquidity for Customers from \$0.00 to \$0.35. As noted, the proposal would make all Penny Pilot Options exactly the same in terms of fees and rebates. The Exchange's model would thus assess a fee to add liquidity – across the board for all Penny Pilot Options for Customer, BX Options Market Maker and BX LMM, and Non-Customer. The proposed differentiation between BX Options Market Makers according to LMM tiers recognizes the differing contributions made to the liquidity and trading environment on the Exchange by BX Options Market Makers. In all Penny Pilot Options, Customer would continue to be assessed a smaller fee of \$0.40 to Add Liquidity as opposed to a fee of \$0.45 for non-Customer to Add Liquidity; and the Exchange would continue to uniformly assess, without tiers, the Fee to Add Liquidity in all Penny Pilot Options to all Customers and Non-Customers.²³ In all Penny Pilot Options, Customers would continue to not be assessed a Fee to Remove Liquidity while BX Options Market Makers and Non-Customers are assessed a \$0.46 per contract Fee to Remove Liquidity. All fees and rebates would be applied uniformly by category of market participant per fee schedule. Moreover, the Exchange believes that adding the definition of LMM and amending the definition of Common Ownership in Chapter XV and updating the

²² Per note 2, the Rebate to Add Liquidity will be paid to a Customer or BX Options Market Maker only when the Customer or BX Options Market Maker is contra to a Non-Customer or BX Options Market Maker.

²³ In all Penny Pilot Options, Customer continues to be entitled to a Rebate to Remove Liquidity in Penny Pilot Options; BX Options Market Maker continues to be entitled to a Rebate to Add Liquidity; and BX Options Market Maker and non-Customer continues to be assessed a Fee to Remove Liquidity.

numbering of notes in Section 2 clarifies the uniformly applicable rebates and fees for Penny Pilot Options.

The Exchange further believes the previous pricing scheme employed in the above referenced symbols to incentivize BX Options Market Makers to provide liquidity is no longer necessary in light of the LMM changes and proposed rates discussed herein. The proposed differentiation between BX LMMs and other market participants in terms of tiers recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. The Exchange believes that this is reasonable, equitable, and not unfairly discriminatory. The Exchange notes that as a result of this proposal all rebates and fees would be applied uniformly to all market participants (Customers, BX Options Market Makers, and non-Customers).

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, BX has designed its fees and rebates to compete effectively for the execution and routing of Penny Pilot Options contracts on the Exchange.

The Exchange believes that the proposed amended fees and rebates will attract market participants and BX Options Market Makers to engage in market making activities at the Exchange, which results in tighter markets and order interaction and benefits all market participants. Moreover, BX Options Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.²⁴ While BX

²⁴ For example, pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a Market Maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the

Options Market Makers will be paying a Fee to Add Liquidity in all Penny Pilot Options that will not be higher than for Customers, Customers will pay a fee which is lower than that assessed to Non-Customers. The Exchange believes that this does not present an undue burden on competition because the pricing seeks to reward liquidity providers, which in turn benefits all market participants. The proposed differentiation between BX Options Market Makers, BX LMMs, and other market participants, which includes Tiers A, B, and C for BX LMMs, recognizes the differing above-discussed contributions made to the liquidity and trading environment on the Exchange by these market participants.

The Exchange believes the proposals discussed herein do not pose an undue burden on intermarket competition. The Exchange operates in a highly competitive market comprised of twelve U.S. options exchanges in which sophisticated and knowledgeable market participants can and do send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the proposed fee and rebate scheme discussed herein is competitive. The Exchange believes that this competitive marketplace materially impacts the fees and rebates present on the Exchange today and substantially influences the proposal set forth above.

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.

maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on BX for all purposes under the Act or rules thereunder. See Chapter VII, Section 5.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,²⁵ 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 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 to determine whether the proposed rule 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2015-004 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

²⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR-BX-2015-004. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BX-2015-004 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.²⁶

Brent J. Fields
Secretary

²⁶ 17 CFR 200.30-3(a)(12).