

reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the issues presented by the proposed rule change and provide the Commission with arguments to support the Commission's analysis as to whether to approve or disapprove the proposed rule change, as modified by Partial Amendment No. 1.

Pursuant to Section 19(b)(2)(B) of the Exchange,<sup>152</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposal's consistency with Section 15A(b)(9) of the Act,<sup>153</sup> which requires that FINRA's rules be designed to, among other things, promote just and equitable principles of trade, 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. As summarized above, commenters raised, and sought clarification regarding, a number of issues. In response, FINRA recently submitted Partial Amendment No. 1 and response to comments. Accordingly, the Commission believes it is appropriate to institute proceedings to allow additional consideration and comments by both commenters and the Commission, and any potential response to comments or supplemental information by FINRA.

#### V. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues raised by the proposed rule change, as modified by Partial Amendment No. 1. In particular, the Commission invites the written views of interested persons on whether the proposed rule change, as modified by Partial Amendment No. 1, is inconsistent with Section 15A(b)(6), or any other provision, of the Exchange Act, or the rules and regulations thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>154</sup>

Interested persons are invited to submit written data, views, and arguments by August 23, 2019 concerning whether the proposed rule change should be approved or disapproved. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by September 16, 2019. In light of the concerns raised by the proposed rule change, as modified by Partial Amendment No. 1, as discussed above, the Commission invites additional comment on the proposed rule change, as modified by Partial Amendment No. 1, as the Commission continues its analysis of whether the proposed rule change, as modified by Partial Amendment No. 1, is consistent with Section 15A(b)(6), or any other provision of the Exchange Act, or the rules and regulations thereunder.

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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2019-012 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-FINRA-2019-012. 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 (<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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2019-012 and should be submitted on or before August 23, 2019. If comments are received, any rebuttal comments should be submitted by September 16, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>155</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86508; File No. SR-BX-2019-027]

### Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend BX Pricing at Options 7, Section 3 Titled BX Options Market—Ports and Other Services

July 29, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 15, 2019, Nasdaq 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 BX pricing at Options 7, Section 3 titled "BX Options Market—Ports and Other Services." The amendment will describe the pricing with respect to an upcoming technology infrastructure migration.

<sup>155</sup> 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(57).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>152</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>153</sup> 15 U.S.C. 78o-3(b)(6).

<sup>154</sup> Exchange Act Section 19(b)(2), as amended by the Securities Acts Amendments of 1975, Public Law 94-29, 89 Stat. 97 (1975), grants the Commission flexibility to determine what type of proceedings—either oral or notice and opportunity

for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

The text of the proposed rule change is available on the Exchange's website at <http://nasdaqbx.cchwallstreet.com/>, 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

The Exchange proposes to amend BX pricing at Options 7, Section 3 titled "BX Options Market—Ports and Other Services." During the month of August 2019, BX Participants will be required to transition from current FIX Ports,<sup>3</sup> CTI Ports<sup>4</sup> and FIX DROP Ports<sup>5</sup> to new FIX Ports, CTI Ports and FIX DROP Ports in connection with an upcoming technology infrastructure migration.

<sup>3</sup> Financial Information eXchange" or "FIX" is an interface that allows Participants and their Sponsored Customers to connect, send, and receive messages related to orders to and from the Exchange. Features include the following: (1) Execution messages; (2) order messages; and (3) risk protection triggers and cancel notifications. See Chapter VI, Section 21(a)(i)(A).

<sup>4</sup> Clearing Trade Interface ("CTI") is a real-time clearing trade update message that is sent to a Participant after an execution has occurred and contains trade details specific to that Participant. The information includes, among other things, the following: (i) The Clearing Member Trade Agreement or "CMTA" or The Options Clearing Corporation or "OCC" number; (ii) Exchange badge or house number; (iii) the Exchange internal firm identifier; (iv) an indicator which will distinguish electronic and non-electronically delivered orders; (v) liquidity indicators and transaction type for billing purposes; and (vi) capacity. See Chapter VI, Section 19(b)(1).

<sup>5</sup> FIX DROP is a real-time order and execution update message that is sent to a Participant after an order been received/modified or an execution has occurred and contains trade details specific to that Participant. The information includes, among other things, the following: (i) Executions; (ii) cancellations; (iii) modifications to an existing order; and (iv) busts or post-trade corrections. See Chapter VI, Section 19(b)(3).

#### Description of Migration and Pricing Impact

In connection with this migration, Participants will request new FIX Ports, CTI Ports and FIX DROP Ports during the month of August, which are duplicative of the type and quantity of their current ports, at no additional cost to allow for testing of the new ports and allow for continuous connection to the match engine during the transition period.<sup>6</sup> For example, a BX Participant with 3 FIX Ports, 1 CTI Port and 1 FIX DROP Port on August 1, 2019 could request 3 new FIX Ports, 1 CTI Port and 1 FIX DROP Port for the month of August 2019 at no additional cost. The BX Participant would be assessed only for the legacy market ports, in this case 3 FIX Ports, 1 CTI Port and 1 FIX DROP Port, for the month of August 2019 and would not be assessed for the new ports, which are duplicative of the current ports. A Participant may acquire any additional legacy ports during the month of August 2019 and would be assessed the charges indicated in the current Pricing Schedule. The migration does not require a Participant to acquire any additional ports, rather the migration requires a new port to replace any existing ports provided the Participant desired to maintain the same number of ports.<sup>7</sup> A Participant desiring to enter orders into BX is required to obtain 1 FIX Port. A Participant may also obtain order and execution ports, such as a CTI Port and/or a FIX DROP Port, to receive clearing and execution messages. The number of additional FIX or order and execution ports obtained by a Participant is dependent on the Participant's business needs.

#### Applicability to and Impact on Participants<sup>8</sup>

The proposal is not intended to impose any additional fees on any BX

<sup>6</sup> Participants would contact Market Operations to acquire new duplicative FIX Ports, CTI Ports and FIX DROP Ports. See Options Technical Update #2019-3.

<sup>7</sup> The migration is 1:1 and therefore would not require a Participant to acquire new ports, nor would it reduce the number of ports needed to connect.

<sup>8</sup> On May 21, 2019, the SEC Division of Trading and Markets (the "Division") issued fee filing guidance titled "Staff Guidance on SRO Rule Filings Relating to Fees" ("Guidance"). Within the Guidance, the Division noted, among other things, that the purpose discussion should address "how the fee may apply differently (e.g., additional cost vs. additional discount) to different types of market participants (e.g., market makers, institutional brokers, retail brokers, vendors, etc.) and different sizes of market participants." See Guidance (available at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees>). The Guidance also suggests that the purpose discussion should include numerical examples. Where possible, the Exchange is including numerical examples. In addition, the

Participants. All Participants may enter orders on BX. As noted above, a BX Participant may enter all orders on BX through one FIX Port. The Exchange does not require a BX Participant to obtain more than one FIX Port, however, a Participant may obtain multiple FIX Ports, a CTI Port or a FIX DROP Port to meet its individual business needs. This proposal is intended to permit a BX Participant to migrate its current FIX Ports, CTI Ports and FIX DROP Ports at no additional costs during the month of August 2019 to allow for continuous connection to the Exchange. Participants would only be assessed a fee for their current FIX Ports, CTI Ports and FIX DROP Ports and not be assessed a fee for any new duplicative ports they acquire in connection with the technology infrastructure migration. This proposal is not intended to have a pricing impact.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>10</sup> 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 proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities. Moreover, the Exchange believes that its proposal complies with Commission guidance on SRO fee filings that the Commission Staff issued on May 21, 2019.<sup>11</sup>

#### The Proposal Is Reasonable

The Exchange's proposal is 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 Commission*,

Exchange is providing data to the Commission in support of its arguments herein. The Guidance covers all aspects of a fee filing, which the Exchange has addressed throughout this filing.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>11</sup> See Guidance, *supra* note 8. Although the Exchange believes that this filing complies with the Guidance, the Exchange does not concede that the standards set forth in the Guidance are consistent with the Exchange Act and reserves its right to challenge those standards through administrative and judicial review, as appropriate.

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’ . . . .”<sup>12</sup>

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 one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. The Exchange believes its proposal is reasonable because it will not cause a pricing impact on any BX Participant, rather the proposal is intended to permit BX Participants to migrate their FIX Ports, CTI Ports and FIX DROP Ports to new technology at no additional cost during the month of August 2019. This proposal, which offers new duplicative ports to Participants at no cost, will allow Participants to test and maintain continuous connection to the Exchange during the month of August 2019.

The Proposal Represents an Equitable Allocation and Is Not Unfairly Discriminatory

The Exchange believes its proposal allocates its fees fairly among its market participants. The proposal is equitable and not unfairly discriminatory. All Participants may enter orders on BX. As noted above, a BX Participant may enter all orders on BX through one FIX Port. The Exchange does not require a BX Participant to obtain more than one FIX Port, however, a Participant may obtain multiple FIX Ports, a CTI Port or a FIX DROP Port to meet its individual business needs. This proposal is not intended to have a pricing impact to any BX Participant.

#### *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.

<sup>12</sup> *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)).

#### Inter-Market Competition

The proposal does not impose an undue burden on inter-market competition. This proposal does not amend pricing or functionality. Rather, this technology migration will enable BX Participants to continue to connect to BX, as is the case today, for the entry of orders.

#### Intra-Market Competition

The proposal does not impose an undue burden on intra-market competition. All Participants may enter orders on BX. As noted above, a BX Participant may enter all orders on BX through one FIX Port. The Exchange does not require a BX Participant to obtain more than one FIX Port, however, a Participant may obtain multiple FIX Ports, a CTI Port or a FIX DROP Port to meet its individual business needs. This proposal is not intended to have a pricing impact to any BX Participant.

#### *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)(ii) of the Act.<sup>13</sup>

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.

#### **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

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–BX–2019–027 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–2019–027. 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 (<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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2019–027 and should be submitted on or before August 23, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Jill M. Peterson,**  
*Assistant Secretary.*

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<sup>14</sup> 17 CFR 200.30–3(a)(12).