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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76693; File No. SR-BX-2015-079)

December 18, 2015

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish Fees and Rebates Related to BX Price Improvement Auction (PRISM)

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 December 11, 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 its Options Pricing at Chapter XV, Section 2, entitled “BX Options Market – Fees and Rebates,” which governs pricing for BX members using the BX Options Market (“BX Options”). The Exchange proposes to adopt new subsection (5) to add fees and rebates for BX Price Improvement Auction (“PRISM”), which is a mechanism for price improvement on BX Options (“Price Improvement Mechanism”).

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 Exchange proposes to amend its Chapter XV, Section 2 to adopt new subsection (5) to add fees and rebates for PRISM.

Effective on or about November 16, 2015, BX Options is introducing PRISM, which is codified in BX Chapter VI, Section 9 (also known as the “PRISM Rule”).³ PRISM is a Price Improvement Mechanism for all-electronic BX Options whereby a buy and sell order may be submitted in one order message to initiate an auction at a ‘stop price’ and seek potential price improvement. Options are traded electronically on BX Options, and all options participants may

³ See Securities Exchange Act Release Nos. 76301 (October 29, 2015), 80 FR 68347 (November 4, 2015) (SR-BX-2015-032) (approval order) (“PRISM Approval”); and 75827 (September 3, 2015), 80 FR 54601 (September 10, 2015) (SR-BX-2015-032) (“PRISM Filing”). In the PRISM Approval the Exchange noted that it will file a rule change separately with the Commission to remove Price Improving and Post-Only Order types from its Rules. The Exchange will not commence offering BX PRISM until such time as it has an effective and operative rule in place from the Commission to remove Price Improving and Post-Only Orders and removes the ability to submit Price Improving and Post-Only Orders into the auction. In the event the Exchange determines to amend its order types to allow the entry of non-displayed order types, e.g. Price Improving or Post-Only Orders, the Exchange will file a proposed rule change pursuant to Section 19(b)(2) with the Commission to seek approval for such rule change. See also Options Technical Update #2015-6.

respond to a PRISM Auction,⁴ the duration of which will be set at 200 milliseconds.⁵ PRISM includes auto-match functionality in which a Participant (an “Initiating Participant”) may electronically submit for execution an order it represents as agent on behalf of customer,⁶ broker dealer, or any other entity (“PRISM Order”) against principal interest or against any other order it represents as agent (an “Initiating Order”) provided it submits the PRISM Order for electronic execution into the PRISM Auction pursuant to Chapter VI, Section 9.⁷ The PRISM Rule describes the circumstances under which an Initiating Participant may initiate an Auction. A PRISM Order that is for a Non-Customer (account of a broker-dealer or any other person or entity that is not a Public Customer) is always required to improve the same side of the BX BBO even if there is no resting limit order on the book. PRISM Orders that do not comply with the requirements set forth in the PRISM Rule are not eligible to initiate an Auction and will be immediately cancelled. Also, PRISM Orders submitted at or before the opening of trading are not eligible to initiate an Auction and will be rejected. PRISM Orders submitted during the final two seconds of the trading session in the affected series are not eligible to initiate an Auction and will be immediately cancelled. Finally, an Initiating Order may not be a solicited order for the account of any BX Options Market Maker assigned in the affected series.⁸

⁴ PRISM Auction eligibility requirements and the early conclusion of the PRISM Auction are, with certain other PRISM features, subject to a pilot program scheduled to expire July 18, 2016. See BX Chapter VI, Section 9.

⁵ Other exchanges that have price improvement auctions have developed different durations. See, e.g., CBOE Rule 6.74A(b)(1)(C) (CBOE’s AIM auction has a duration of one second); and BOX Rule 7150(f)(1) (BOX’s PIP auction has a duration of one hundred milliseconds, commencing on the dissemination of the PIP broadcast).

⁶ The term "Customer" is defined below for purposes of this fee proposal.

⁷ BX PRISM will only conduct an auction for simple (non-complex) Orders.

⁸ See BX Chapter VI, Section 9(i)(C) through (G).

The Exchange believes that the PRISM Auction will be beneficial to market participants, and in particular will encourage BX Market Makers⁹ to quote at the National Best Bid or Offer (“NBBO”) with additional size and thereby result in tighter and deeper markets, resulting in more liquidity on BX. Specifically, by offering BX Market Makers the ability to receive priority in the proposed allocation during the PRISM Auction up to the size of their quote, a BX Market Maker will be encouraged to quote with additional size outside of the PRISM Auction at the best and most aggressive prices. BX believes that this incentive may result in a narrowing of quotes and thus further enhance BX’s market quality. BX believes that PRISM will encourage BX Market Makers to compete vigorously to provide the opportunity for price improvement in a competitive auction process.¹⁰

⁹ BX Options Market Makers may also be referred to as “Market Makers”. The term “BX Options Market Maker” means a Participant that has registered as a Market Maker on BX Options pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. 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.

¹⁰ For purposes of brevity, the Exchange does not endeavor to describe all the nuances of PRISM within this fee proposal. Additional detail regarding PRISM can be found in PRISM Approval, PRISM Filing, and PRISM FAQs at <http://nasdaqtrader.com/content/productsservices/trading/PRISMFAQs.pdf>.

This proposal establishes the fee and rebate structure for PRISM (per contract), in particular two new fees and one new rebate. These would apply to Customers,¹¹ BX Options Market Makers,¹² and Non-Customers:

Change 1. The Exchange proposes to establish fees for Submitted PRISM Order¹³ (Agency Order and Contra-Side Order).

Change 2. The Exchange proposes to establish fees for Responded to PRISM Auction¹⁴ (Penny Classes¹⁵ and non-Penny Classes).

Change 3. The Exchange proposes to establish rebates for PRISM Order Traded With PRISM Response.¹⁶

Each specific change is described in detail below.

¹¹ 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 Chapter I, Section 1(a)(48)).

¹² BX Options Market Makers may also be referred to as "Market Makers". The term "BX Options Market Maker" or ("M") means a Participant that has registered as a Market Maker on BX Options pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. 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.

¹³ This relates to a market participant submitting an order into the PRISM Auction.

¹⁴ This relates to a market participant responding to a PRISM Auction.

¹⁵ Penny Classes are options listed pursuant to the Penny Pilot, which was established in June 2012 and extended in 2015. 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); and 75326 (June 29, 2015), 80 FR 38481 (July 6, 2015) (SR-BX-2015-037) (notice of filing and immediate effectiveness extending the Penny Pilot through June 30, 2016).

¹⁶ This relates to a market participant submitting a PRISM Order pursuant to a PRISM Auction and the PRISM Order trading with (or being "contra to") PRISM Response. The rebate discussed is similar to the Miami International Securities Exchange ("MIAX") PRIME break-up rebate. MIAX PRIME is, as discussed, similar in nature to PRISM.

Change 1 – Fees for Submitted PRISM Order: Agency Order and Contra-Side Order

For Submitted PRISM Order the Exchange is proposing to establish fees for Agency Order (per contract), and fees for Contra-Side Order (per contract). Currently, the Exchange has no such fees.

The fees for Submitted PRISM Order will range from \$0.00 to \$0.30 for Agency Order. The fees for Submitted PRISM Order will range from \$0.00 to \$0.05 for Contra-Side Order. Specifically, for Submitted PRISM Order proposed Chapter XV, Section 2 subsection (5) will state that for Customer there will be no fee (\$0.00) for Agency Order and no fee (\$0.00) for Contra-Side Order. Subsection (5) will state that for BX Options Market Maker there will be a \$0.30 fee for Agency Order and a \$0.05 fee for Contra-Side Order. Subsection (5) will state that for Non-Customer there will be a \$0.30 fee for Agency Order and a \$0.05 fee for Contra-Side Order.

Change 2 – Fees for Responded to PRISM Auction: Penny Classes and non-Penny Classes

For Responded to PRISM Auction the Exchange is proposing to establish fees for Penny Classes (per contract), and fees for non-Penny Classes (per contract). Currently, the Exchange has no such fees.

The fees for Responded to PRISM Auction will be \$0.49 (per executed contract) for Penny Classes. The fees for Responded to PRISM Auction will be \$0.94 (per executed contract) for non-Penny Classes. Specifically, for Responded to PRISM Auction proposed Chapter XV, Section 2 subsection (5) will state that for Customer there will be a \$0.49 fee for Penny Classes and a \$0.94 fee for non-Penny Classes. Subsection (5) will state that for BX Options Market

Maker there will be a \$0.49 fee for Penny Classes and a \$0.94 fee for non-Penny Classes.

Subsection (5) will state that for Non-Customer there will be a \$0.49 fee for Penny Classes and a \$0.94 fee for non-Penny Classes.

Change 3 – Rebates for PRISM Order Traded with PRISM Response: Penny Classes and non-Penny Classes

For PRISM Order Traded with PRISM Response the Exchange is proposing to establish rebates for Penny Classes (per contract), and rebates for non-Penny Classes (per contract). Currently, the Exchange has no such rebates. These rebates would be applied in conjunction with the Agency Order fees that the Submitted PRISM Order is assessed.

The rebates for PRISM Order Traded with PRISM Response will range from \$0.00 to \$0.35 for Penny Classes. The rebates for PRISM Order Traded with PRISM Response will range from \$0.00 to \$0.70 for non-Penny Classes. Only Customers will get rebates. Specifically, for PRISM Order Traded with PRISM Response proposed Chapter XV, Section 2 subsection (5) will state that for Customer there will be a \$0.35 rebate for Penny Classes and a \$0.70 rebate for non-Penny Classes. Subsection (5) will state that for BX Options Market Maker and for Non-Customer there will be no rebate (\$0.00) for Penny Classes and no rebate (\$0.00) for non-Penny Classes.

BX will apply the rebate to market participants that submitted a PRISM Order pursuant to a PRISM Auction and the PRISM Order Traded with PRISM Response. Moreover, the Agency Order fee for Submitted PRISM Order, which is discussed in Change 1 above, will be applicable to any contract(s) for which a rebate is provided (whether \$0.00 or otherwise in the fees and rebates schedule)¹⁷ for PRISM Order Traded with PRISM Response.

¹⁷ Also known as fee and rebate schedule.

Example 1

A Customer PRISM Agency Order in a Penny Class (one contract) trades against a PRISM Response in a Penny Class (one contract). The Customer Agency Order is assessed a fee of \$0.00 and given a rebate of \$0.35 for a total rebate of \$0.35 (fee \$0.00 + rebate \$0.35). The market participant that Responded to PRISM Auction will be assessed a fee of \$0.49.

Example 2

A Non-Customer PRISM Agency Order in a Penny Class (one contract) trades against a PRISM Response in a Penny Class (one contract). The Non-Customer Agency Order is assessed a fee of \$0.30 and given a rebate of \$0.00 for a total fee of \$0.30 (fee \$0.30 + rebate \$0.00). The market participant that Responded to PRISM Auction will be assessed a fee of \$0.49.

As proposed, Chapter XV, Section 2 subsection (5) will read as follows:

(5) Fees and rebates for BX Price Improvement Auction (“PRISM”)

Fees and rebates (per contract)

Type of Market Participants	Submitted PRISM Order		Responded to PRISM Auction		PRISM Order Traded With PRISM Response	
	Agency Order	Contra-Side Order	Penny Classes	Non-Penny Classes	Penny Classes	Non-Penny Classes
Customer	\$0.00	\$0.00	\$0.49	\$0.94	\$0.35	\$0.70
BX Options Market Maker	\$0.30	\$0.05	\$0.49	\$0.94	\$0.00	\$0.00
Non-Customer	\$0.30	\$0.05	\$0.49	\$0.94	\$0.00	\$0.00

BX will apply the rebate to market participants that submitted a PRISM Order pursuant to a PRISM Auction and the PRISM Order Traded with PRISM Response. The Agency Order fee for Submitted PRISM Order will be applicable to any contract(s) for which a rebate is provided (whether \$0.00 or otherwise in this fees and rebates schedule) for PRISM Order Traded with PRISM Response.

The Exchange is adopting these fees and rebates at this time because it believes that they will allow the Exchange to recoup some of the costs associated with PRISM, which promotes price improvement to the benefit of market participants, while also incentivizing the use of PRISM.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁸ in general, and with Section 6(b)(4) and 6(b)(5) of the Act,¹⁹ 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 or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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, for example, the Commission indicated that market forces should generally determine the price of non-core market data because national market system regulation “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁰ Likewise, in

¹⁸ 15 U.S.C. 78f.

¹⁹ 15 U.S.C. 78f(b)(4) and (5).

²⁰ Securities Exchange Act Release No. 51808 at 37499 (June 9, 2005) (“Regulation NMS Adopting Release”).

NetCoalition v. NYSE Arca, Inc.²¹ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.²² As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”²³

Further, “[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’”²⁴ Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange’s proposal establishes fees and rebates regarding PRISM, which promotes price improvement to the benefit of market participants. The Exchange believes that PRISM will encourage market participants, and in particular BX Market Makers, to compete vigorously to provide the opportunity for price improvement in a competitive auction process. The Exchange believes that its proposal will allow the Exchange to recoup costs associated with PRISM while also incentivizing its use.

²¹ NetCoalition v. NYSE Arca, Inc. 615 F.3d 525 (D.C. Cir. 2010).

²² See NetCoalition, at 534.

²³ Id. at 537.

²⁴ Id. at 539 (quoting ArcaBook Order, 73 FR at 74782-74783).

Change 1 – Fees for Submitted PRISM Order: Agency Order and Contra-Side Order

For Submitted PRISM Order, establishing that there will be no fee for Customer for Agency Order, while establishing a \$0.30 fee per contract for BX Options Market Maker for Agency Order and a \$0.30 fee per contract for Non-Customer for Agency Order, is reasonable because it encourages the desired Customer behavior. The fee is also reasonable because the associated revenue will allow the Exchange to maintain and enhance its services. For Submitted PRISM Order, establishing no Customer fee, while establishing a \$0.05 fee per contract for BX Options Market Maker for Contra-Side Order and a \$0.05 fee per contract fee for Non-Customer for Contra-Side Order, is reasonable because it encourages the desired Customer behavior. The fee is also reasonable because the associated revenue will allow the Exchange to maintain and enhance its services.

Assessing Customers a lesser fee for Agency Order and for Contra-Side Order (in both cases \$0.00) is reasonable because of the desirability of Customer activity. The proposed new fees and rebates for PRISM schedule is set up to encourage greater Customer trade volume to the Exchange. Customer activity enhances liquidity on the Exchange for the benefit of all market participants and benefits 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. The practice of incentivizing increased Customer order flow through a fee and rebate schedule in order to attract professional liquidity providers (market-makers) is, and

has been, commonly practiced in the options markets.²⁵ The proposed fee and rebate schedule similarly attracts Customer order flow.

The proposed fee and rebate schedule is reasonably designed because it is within the range of fees and rebates assessed by other exchanges employing similar fee structures for price improvement mechanisms.²⁶ Other competing exchanges offer different fees and rebates for agency orders, contra-side order, and responders to the auction in a manner similar to the proposal.²⁷ Other competing exchanges also charge different rates for transactions in their price improvement mechanisms for customers versus their non-customers in a manner similar to the proposal.²⁸ As proposed, all applicable fees and rebates are within the range of fees and rebates for executions in price improvement mechanisms assessed by other exchanges employing similar fee structures for price improvement mechanisms.

The fee and rebate schedule as proposed continues to reflect differentiation among different market participants typically found in options fee and rebate schedules.²⁹ The Exchange believes that the differentiation is reasonable and notes that unlike others (e.g. Customers) some market participants like BX Options Market Makers commit to various obligations. For example, transactions of a BX Market Maker must constitute a course of

²⁵ See, e.g., MIAX Fee Schedule, NYSE Arca Fee Schedule, Nasdaq Options Market (“NOM”) Fee Schedule.

²⁶ See MIAX Fee Schedule; and Securities Exchange Act Release No. 72943 (August 28, 2014), 80 FR 52785 (September 4, 2014) (SR-MIAX-2015-45) (notice of filing and immediate effectiveness regarding MIAX PRIME). See also, e.g., NYSE Amex Options Fee Schedule; International Securities Exchange Fee Schedule; and BOX Options Exchange Fee Schedule.

²⁷ Id.

²⁸ Id.

²⁹ See, e.g., NOM Chapter XV, Section 2 and BX Chapter XV, Section 2. See also MIAX Fee Schedule.

dealings reasonably calculated to contribute to the 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.³⁰

For Submitted PRISM Order, establishing no fee for Customer (Agency Order and Contra-Side Order) and a fee for BX Market Maker and Non-Customer (Agency Order and Contra-Side Order) is equitable and not unfairly discriminatory. This is because the Exchange's proposal to assess such fee will apply the same to all similarly situated participants. Moreover, all similarly situated Submitted PRISM Orders are subject to the same proposed fee schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory. In addition, fees for Submitted Prism Order are equitable and not unfairly discriminatory because, while each market participant (Customer, BX Options Market Maker, non-Customer) is assessed a fee the Customer fee is lowest because an increase in Customer order flow will bring greater volume and liquidity, which benefits all market participants by providing more trading opportunities and tighter spreads.

Change 2 – Fees for Responded to PRISM Auction: Penny Classes and non-Penny Classes

For Responded to PRISM Auction, establishing that there will be a \$0.49 fee per contract for Customer for Agency Order, and the same fee for BX Options Market Maker and for Non-Customer for Agency Order, is reasonable because the associated revenue will allow the Exchange to maintain and enhance its services. The practice of incentivizing increased Customer order flow through a fee and rebate schedule in order to attract professional liquidity

³⁰ See Chapter VII, Section 5, entitled “Obligations of Market Makers”.

providers (market-makers) is, and has been, commonly practiced in the options markets.³¹ The proposed fee and rebate schedule similarly attracts Customer order flow.

The proposed fee and rebate schedule is reasonably designed because it is within the range of fees and rebates assessed by other exchanges employing similar fee structures for price improvement mechanisms.³² Other competing exchanges offer different fees and rebates for agency orders, contra-side order, and responders to the auction in a manner similar to the proposal.³³ Other competing exchanges also charge different rates for transactions in their price improvement mechanisms for customers versus their non-customers in a manner similar to the proposal.³⁴ As proposed, all applicable fees and rebates are within the range of fees and rebates for executions in price improvement mechanisms assessed by other exchanges employing similar fee structures for price improvement mechanisms.

For Responded to PRISM Auction, establishing that there will be a \$0.94 fee per contract for Customer for Contra-Side Order, and the same fee for BX Options Market Maker and for Non-Customer for Contra-Side Order, is reasonable because the associated revenue will allow the Exchange to maintain and enhance its services. The practice of incentivizing increased Customer order flow through a fee and rebate schedule in order to attract professional liquidity

³¹ See MIAX Fee Schedule, NYSE Arca Fee Schedule, NOM Fee Schedule.

³² See MIAX Fee Schedule; and Securities Exchange Act Release No. 72943 (August 28, 2014), 80 FR 52785 (September 4, 2014) (SR-MIAX-2015-45) (notice of filing and immediate effectiveness regarding MIAX PRIME). See also, e.g., NYSE Amex Options Fee Schedule; International Securities Exchange Fee Schedule; and BOX Options Exchange Fee Schedule.

³³ Id.

³⁴ Id.

providers (market-makers) is, and has been, commonly practiced in the options markets.³⁵ The proposed fee and rebate schedule similarly attracts Customer order flow.

The proposed fee and rebate schedule is reasonably designed because it is within the range of fees and rebates assessed by other exchanges employing similar fee structures for price improvement mechanisms.³⁶ Other competing exchanges offer different fees and rebates for agency orders, contra-side order, and responders to the auction in a manner similar to the proposal.³⁷ Other competing exchanges also charge different rates for transactions in their price improvement mechanisms for customers versus their non-customers in a manner similar to the proposal.³⁸ As proposed, all applicable fees and rebates are within the range of fees and rebates for executions in price improvement mechanisms assessed by other exchanges employing similar fee structures for price improvement mechanisms.

For Responded to PRISM Auction, establishing a fee for Customer, BX Market Maker and Non-Customer (Agency Order and Contra-Side Order) is equitable and not unfairly discriminatory. This is because the Exchange's proposal to assess such fee will apply the same to all similarly situated participants. Moreover, all similarly situated Submitted PRISM Orders are subject to the same proposed fee schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory.

³⁵ See MIAX Fee Schedule, NYSE Arca Fee Schedule, NOM Fee Schedule.

³⁶ See MIAX Fee Schedule; and Securities Exchange Act Release No. 72943 (August 28, 2014), 80 FR 52785 (September 4, 2014) (SR-MIAX-2015-45) (notice of filing and immediate effectiveness regarding MIAX PRIME). See also, e.g., NYSE Amex Options Fee Schedule; International Securities Exchange Fee Schedule; and BOX Options Exchange Fee Schedule.

³⁷ Id.

³⁸ Id.

**Change 3 – Rebates for PRISM Order Traded with PRISM Response: Penny
Classes and non-Penny Classes**

For PRISM Order Traded with PRISM Response, establishing that there will be no rebate for BX Options Market Maker and Non-Customer for Penny Classes, while establishing a \$0.35 rebate per contract for Customer for Penny Classes and a \$0.70 rebate per contract for Customer for non-Penny Pilot Classes, is reasonable because it encourages the desired Customer behavior. The rebate is also reasonable because paying the rebate only to Customers will allow the Exchange to maintain and enhance its services. The rebate is also reasonable because paying the rebate only to Customers will allow the Exchange to maintain and enhance its services.³⁹

Offering a rebate only for Customer (\$0.35 or \$0.70) is reasonable because of the significance of Customer activity. Customer activity enhances liquidity on the Exchange for the benefit of all market participants and benefits 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. The practice of incentivizing increased Customer order flow through a fee and rebate schedule in order to attract professional liquidity providers (market-makers) is, and has been, commonly practiced in the options markets.⁴⁰ The proposed fee and rebate schedule similarly attracts Customer order flow.

The proposed fee and rebate schedule is reasonably designed because it is within the range of fees and rebates assessed by other exchanges employing similar fee structures for price

³⁹ As noted, such rebate would be applied in conjunction with any Agency Order fee that the Submitted PRISM Order is assessed.

⁴⁰ See MIAX Fee Schedule, NYSE Arca Fee Schedule, NOM Fee Schedule.

improvement mechanisms.⁴¹ Other competing exchanges offer different fees and rebates for agency orders, contra-side order, and responders to the auction in a manner similar to the proposal.⁴² Other competing exchanges also charge different rates for transactions in their price improvement mechanisms for customers versus their non-customers in a manner similar to the proposal.⁴³ As proposed, all applicable fees and rebates are within the range of fees and rebates for executions in price improvement mechanisms assessed by other exchanges employing similar fee structures for price improvement mechanisms.

For PRISM Order Traded with PRISM Response, establishing a rebate for Customer (Penny Classes and non-Penny Classes) and no rebate for BX Market Maker and Non-Customer (Penny Classes and non-Penny Classes) is equitable and not unfairly discriminatory. This is because the Exchange's proposal to pay such rebate will apply the same to all similarly situated participants. The Exchange is adopting the proposed fees and rebates at this time because it believes that the associated revenue will allow it to continue and enhance PRISM, which is beneficial to market participants. Moreover, all similarly situated PRISM Order Traded with PRISM Response are subject to the same proposed rebate schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory. In addition, rebates for PRISM Order Traded with PRISM Response are equitable and not unfairly discriminatory because, while only Customer, can earn a rebate, Customer order flow will bring greater volume and liquidity, which benefits all market participants by providing more trading opportunities and tighter spreads

⁴¹ See MIAX Fee Schedule; and Securities Exchange Act Release No. 72943 (August 28, 2014), 80 FR 52785 (September 4, 2014) (SR-MIAX-2015-45) (notice of filing and immediate effectiveness regarding MIAX PRIME). See also, e.g., NYSE Amex Options Fee Schedule; International Securities Exchange Fee Schedule; and BOX Options Exchange Fee Schedule.

⁴² Id.

⁴³ Id.

The rebate schedule as proposed continues to reflect differentiation among different market participants typically found in options fee and rebate schedules.⁴⁴ The Exchange believes that the differentiation is reasonable and notes that unlike others (e.g. Customers) some market participants like BX Options Market Makers commit to various obligations. For example, transactions of a BX Market Maker must constitute a course of dealings reasonably calculated to contribute to the 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.⁴⁵

In sum the Exchange believes that the proposed fee and rebate structure is designed to attract Customer liquidity, which benefits all market participants by providing more trading opportunities. This attracts BX Market Makers and 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. Moreover, the Exchange believes that assessing market participants other than Customers a higher effective rate for certain PRISM Order transactions is reasonable, equitable, and not unfairly discriminatory because these types of market participants are more sophisticated and have higher levels of order flow activity and system usage. This level of trading activity draws on a greater amount of system resources than that of Customers, and thus, generates greater ongoing operational costs. The proposed fees and rebates will allow it to continue and enhance PRISM, which is beneficial to market participants.

⁴⁴ See, e.g., NOM Chapter XV, Section 2 and BX Chapter XV, Section 2.

⁴⁵ See Chapter VII, Section 5, entitled “Obligations of Market Makers”.

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. Specifically, the Exchange does not believe that its proposal to establish fees and rebates for PRISM will impose any burden on competition, as discussed below.

The Exchange operates in a highly competitive market in which many sophisticated and knowledgeable market participants can readily and do send order flow to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. Additionally, new competitors have entered the market and still others are reportedly entering the market shortly. These market forces ensure that the Exchange's fees and rebates remain competitive with the fee structures at other trading platforms. In that sense, the Exchange's proposal is actually pro-competitive because the Exchange is simply establishing rebates and fees in order to remain competitive in the current environment.

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. 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 this instance, the proposed changes to the charges assessed and credits available to member firms in respect of PRISM do not impose a burden on competition because the Exchange's execution and routing services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. 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. Additionally, the changes proposed herein are pro-competitive to the extent that they continue to allow the Exchange to promote and maintain PRISM, which has the potential to result in more efficient, price improved executions to the benefit of market participants.

The Exchange believes that the proposed change would increase both inter-market and intra-market competition by incentivizing members to direct their orders, and particularly Customer orders, to the Exchange, which benefits all market participants by providing more trading opportunities, which attracts market makers. To the extent that there is a differentiation between proposed fees assessed and rebates offered to Customers as opposed other market participants, the Exchange believes that this is appropriate because the fees and rebate should incentivize members to direct additional order flow to the Exchange and thus provide additional liquidity that enhances the quality of its markets and increases the volume of contracts traded on the Exchange. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased

transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange. 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.

The Exchange believes that the proposed fees and rebates for participation in the PRISM Auction are not going to have an impact on intra-market competition based on the total cost for participants to transact as respondents to the Auction as compared to the cost for participants to engage in non-Auction electronic transactions on the Exchange. As noted above, the Exchange believes that the proposed pricing for the PRISM Auction is comparable to that of other exchanges offering similar electronic price improvement mechanisms, and the Exchange believes that, based on experience with electronic price improvement crossing mechanisms on other markets, market participants understand that the price-improving benefits offered by the Auction justify and offset the transaction costs associated with Auction. To the extent that there is a difference between non-PRISM transactions and PRISM transactions, the Exchange does not believe this difference will cause participants to refrain from submitting or responding to PRISM. In addition, the Exchange does not believe that the proposed transaction fees and credits burden competition by creating a disparity of transaction fees between the PRISM Order and the transaction fees a responder pays would result in certain participants being unable to compete with the contra side order. The Exchange expects to see robust competition within the PRISM Auction. As discussed, 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. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the

Exchange. The Exchange believes that the proposed rule change reflects this competitive environment because it establishes a fee structure in a manner that encourages market participants to direct their order flow, to provide liquidity, and to attract additional transaction volume to the Exchange.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,⁴⁶ 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.

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:

⁴⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2015-079 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-2015-079. 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-2015-079 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.⁴⁷

Robert W. Errett
Deputy Secretary

⁴⁷ 17 CFR 200.30-3(a)(12).

