



8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78278; File No. SR-BX-2016-041)

July 11, 2016

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Fees under Rule 7018

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 June 30, 2016, 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 the Exchange’s transaction fees at Rule 7018 to: (i) eliminate a \$0.0017 per share executed credit tier that is provided for an order that accesses liquidity; and (ii) eliminate a \$0.0019 per share executed fee tier charged for providing liquidity to the System.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on July 1, 2016.

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.

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: (i) eliminate a credit tier provided for an order that accesses liquidity; and (ii) eliminate a fee tier charged for providing liquidity to the System.

First Change

The purpose of the first proposed change is to eliminate a \$0.0017 per share executed credit tier provided for an order that accesses liquidity. The Exchange currently provides a \$0.0017 per share executed credit for an order that accesses liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with Midpoint pegging) entered by a member that accesses liquidity equal to or exceeding 0.20% of total Consolidated Volume³ during a month. The Exchange also has two other credit

³ Consolidated Volume is defined as the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity. As used in this rule, "price improvement" shall mean instances when the accepted price of an order differs from the executed price of an order. See Rule 7018.

tiers based on Consolidated Volume. Specifically, the Exchange provides a \$0.0016 and a \$0.0015 per share executed credit for an order that accesses liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with Midpoint pegging) entered by a member that accesses liquidity equal to or exceeding 0.10% or 0.05% of total Consolidated Volume during a month, respectively. All other orders that remove liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with Midpoint pegging) receive a credit of \$0.0006 per share executed. The Exchange has observed that very few members qualify for the \$0.0017 per share executed credit tier and it has not been effective at providing incentive to market participants to achieve the level of Consolidated Volume needed to qualify for the credit. Accordingly, the Exchange is proposing to eliminate the \$0.0017 per share executed credit tier.

Second Change

The purpose of the second proposed change is to eliminate a \$0.0019 per share executed fee tier charged for providing liquidity to the System. The Exchange currently assesses a fee of \$0.0019 per share executed for a displayed order entered by a member that adds liquidity equal to or exceeding 0.10% of total Consolidated Volume during a month. The Exchange also has two other fee tiers based on Consolidated Volume. Specifically, the Exchange assesses a \$0.0017 per share executed and \$0.0014 per share executed charge for a displayed order entered by a member that adds liquidity equal to or exceeding 0.15% or 0.25% of total Consolidated Volume during a month, respectively. All other displayed orders that provide liquidity are assessed a fee of \$0.0020 per share executed. The Exchange has observed that few members qualify for the \$0.0019 per share executed fee. Thus, the \$0.0019 per share executed fee tier has been ineffective at providing incentive to members to provide the level of Consolidated Volume

needed to qualify for the reduced fee and the Exchange believes that removing the tier from the fee schedule is appropriate.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁴ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act⁵ 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.

First Change

The Exchange believes that eliminating the \$0.0017 per share executed credit tier provided for an order that accesses liquidity is reasonable because it is not providing adequate incentive to market participants to remove liquidity from the Exchange. The Exchange must, from time to time, assess the effectiveness of the criteria it applies in providing reduced charges and credits, including the nature of the market improving behavior required to receive the reduced charge or credit. The Exchange will modify or eliminate such criteria when it believes the criteria are ineffective, which in turn may allow the Exchange to offer other incentives instead. The Exchange may also adjust the level of reduced charge or credit based on its observations of market participant behavior. In this instance, the Exchange believes that both the criteria for the \$0.0017 per share executed credit and the level of the credit itself were ineffective at providing meaningful incentive to market participants to improve the market appreciably. The Exchange is limited in terms of the levels of reduced fees and credits that it can offer, and has consequently determined that it should eliminate the credit tier at this juncture. The Exchange

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4) and (5).

notes that it is continuing to provide other opportunities for members to receive credits, including credit tiers that are based on Consolidated Volume. Eliminating the credit tier will apply to all market participants equally, and will impact only a small number of members that, in any given month, qualify for the credit. Such members will continue to have opportunity to qualify for the lower Consolidated Volume-based credit tiers. Thus, the Exchange believes that the proposed elimination of the \$0.0017 per share executed credit tier is an equitable allocation and is not unfairly discriminatory.

Second Change

The Exchange believes that elimination of the \$0.0019 per share executed fee tier charged for providing liquidity to the System is reasonable because it is not providing adequate incentive to market participants to remove liquidity from the Exchange. As discussed above, the Exchange must, from time to time, assess the effectiveness of the criteria it applies in providing reduced charges and credits, including the nature of the market improving behavior required to receive the reduced charge or credit. The Exchange has observed that very few members qualify for the \$0.0019 per share executed fee, with more members qualifying for the lower fee tiers. The Exchange believes that both the criteria for the \$0.0019 per share executed fee and the level of the reduced fee itself were ineffective at providing meaningful incentive to market participants to improve the market appreciably. As a consequence, the Exchange has determined to eliminate the fee tier at this juncture. The Exchange notes that it is continuing to provide other opportunities for members to receive reduced fees, including reduced fee tiers that are based on Consolidated Volume. Eliminating the fee tier will apply to all market participants equally, and will impact only a small number of members that in any given month qualify for the reduced fee. All members, including the small number that currently would qualify for the eliminated fee tier,

will continue to have opportunity to qualify for the lower Consolidated Volume-based fee tiers. Thus, the Exchange believes that elimination of the \$0.0019 per share executed fee tier is an equitable allocation and is not unfairly discriminatory.

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. 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 for execution of securities in securities of all three Tapes do not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. The proposed changes to the charges assessed and credits provided to members for execution of orders do not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. The proposed changes are reflective of this competition and the Exchange's desire to offer lower fees and credits in return for market-improving liquidity, which

is ultimately limited by the Exchange's need to cover costs and make a profit. Thus, the Exchange must carefully adjust its fees and credits with the understanding that if the proposed changes are unattractive to market participants, it is likely that the Exchange will lose market share to other exchanges and off-exchange venues as a result. In this proposal, the Exchange is eliminating a credit tier and a fee tier, neither of which have proved effective at providing market participants with incentive to provide the market-improving behavior required to qualify for the two tiers. Accordingly, the Exchange is eliminating the tiers, and may offer other tiers in the future better designed to provide incentive to market participants to improve the market. The Exchange believes that the changes are pro-competitive, since any other market is free to provide similar, if not better, incentives fees and credits should they choose to do so, which may attract market participants to those markets to the detriment of the Exchange. For these reasons, 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.

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.⁶

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

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

(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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2016-041 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.

All submissions should refer to File Number SR-BX-2016-041. 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-2016-041 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.⁷

Robert W. Errett
Deputy Secretary

⁷ 17 CFR 200.30-3(a)(12).

