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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84668; File No. SR-BX-2018-057]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Transaction Fees at Equity 7, Section 118

November 28, 2018.

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 November 16, 2018, 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 Equity 7, Section 118 to: (i) eliminate a fee assessed for displayed orders; (ii) adopt a new fee for displayed orders; (iii) adopt a new fee for non-displayed orders; and (iv) adopt a Qualified Market Maker Program and a related fee.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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 purpose of the proposed rule change is to amend the Exchange's transaction fees at Equity 7, Section 118 to: (i) eliminate a fee assessed for displayed orders; (ii) adopt a new fee for displayed orders; (iii) adopt a new fee for non-displayed orders; and (iv) adopt a Qualified Market Maker Program and a related fee.[3]

[3] The Exchange initially filed the proposed pricing changes on November 1, 2018 (SR-BX-2018-053). On November 6, 2018, the Exchange withdrew that filing and replaced it with SR-BX-2018-054, which corrected a description of the quoting obligation under the QMM Program rule and made a technical correction to the purpose discussion. On November 16, 2018, the Exchange withdrew SR-BX-2018-054 and submitted this filing, which makes technical changes and provides further description of the QMM Program.

First Change

The purpose of the first change is to eliminate a $0.0018 per share executed fee assessed for displayed orders. To qualify for the current fee, a member must add liquidity equal to or exceeding the member's Growth Target. The Growth Target is the liquidity the member added in January 2017 as a percent of total Consolidated Volume[4] plus 0.04% of total Consolidated Volume. The fee tier has not provided adequate incentive to attract liquidity to the Exchange. Accordingly, the Exchange is proposing to eliminate the fee.

Second Change

The purpose of the second change is to adopt a new $0.0016 per share executed fee assessed for displayed orders. To qualify for the proposed fee, a member must add liquidity equal to or exceeding 0.06% of total Consolidated Volume during a month, and remove liquidity equal to or exceeding 0.40% of total Consolidated Volume during a month. The proposed new fee is similar to existing fees assessed for displayed orders, which require a certain level of total Consolidated Volume added during a month to qualify; however, the proposed new fee will also include a qualification requirement that a member remove a certain level of total Consolidated Volume during the month.

Third Change

The purpose of the third change is to adopt a new $0.0020 per share executed fee for non-displayed orders (other than orders with Midpoint pegging). To qualify for the proposed fee, a

4 The term "Consolidated Volume" shall mean 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. See Equity 7, Section 118.

member must meet the Qualified Market Maker Program qualification criteria and add 0.10% of total Consolidated Volume of non-displayed liquidity. The proposed new fee is similar to the certain existing fees assessed for non-displayed orders, which requires a certain level of total Consolidated Volume added during a month to qualify; however, the proposed new fee will also include a qualification requirement that a member also qualify for the Qualified Market Maker Program. The Qualified Market Maker Program, which is being proposed herein and is discussed immediately below, will require a member to provide market-improving behavior in the form of quoting and provision of total Consolidated Volume.

Fourth Change

The purpose of the fourth change is to adopt a Qualified Market Maker ("QMM") Program and a related fee. A QMM is a member that makes a significant contribution to market quality by providing liquidity at the national best bid and offer ("NBBO") in a large number of securities for a significant portion of the day. A QMM may be, but is not required to be, a registered market maker in any security; thus, the QMM designation does not by itself impose a two-sided quotation obligation or convey any of the benefits associated with being a registered market maker. The designation will, however, reflect the QMM's commitment to provide meaningful and consistent support to market quality and price discovery by extensive quoting at the NBBO in a large number of securities. Thus, the program is designed to attract liquidity both from traditional market makers and from other firms that are willing to commit capital to support liquidity at the NBBO. In return for providing the required contribution of market-improving liquidity, a QMM will be assessed a lower rate for executions of displayed orders in securities priced at $1 or more per share that provide liquidity on the Exchange System. Through the use of this incentive, the Exchange hopes to provide improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the inside market. In addition, the program reflects an effort to use financial incentives to encourage a wider variety of members to make positive commitments to promote market quality.

To be designated as a QMM, a member must quote at the NBBO at least 25% of the time during regular market hours in an average of at least 400 securities per day during a month, and provide add volume of at least 0.125% of total Consolidated Volume during the month. In return for its contributions, the Exchange will assess a lower rate for executions of displayed orders in securities priced at $1 or more per share that provide liquidity on the Exchange System. Specifically, the Exchange is proposing to charge a fee of $0.0016 per share executed with respect to all displayed orders in securities priced at $1 or more per share that provide liquidity.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[6] 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 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, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and revenues of self-regulatory organizations and, also, recognized that current regulation

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5 15 U.S.C. 78f(b).

6 15 U.S.C. 78f(b)(4) and (5).

of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[7]

Likewise, in NetCoalition v. Securities and Exchange Commission[8] ("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.[9] 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."[10]

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'…."[11]

First Change

The Exchange believes that elimination of the $0.0018 per share executed fee assessed for displayed orders that provide liquidity is reasonable because the Exchange continues to provide similar fees to members that meet the qualification criteria required to receive the fee. In

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7 Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

8 NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

9 See NetCoalition, at 534 - 535.

10 Id. at 537.

11 Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

this regard, the Exchange will provide four fee tiers ranging from $0.0017 per share executed to $0.0013 per share executed. For example, the Exchange assesses a fee of $0.0017 per share executed for displayed orders entered by a member that adds liquidity equal to or exceeding 0.15% of total Consolidated Volume during a month. Thus, members will continue to have opportunities to receive fees lower than the $0.0018 per share executed fee that is being eliminated.

The Exchange believes that elimination of the $0.0018 per share executed fee assessed for displayed orders is an equitable allocation and is not unfairly discriminatory because the fee has not significantly provided incentive to market participants to provide the required level of total Consolidated Volume to receive the fee, and consequently the Exchange believes that it should eliminate the fee. The Exchange notes that it continues to provide opportunities to its members to qualify for fees lower than the $0.0018 per share executed fee assessed for displayed orders that provide liquidity.

Second Change

The Exchange believes that the proposed $0.0016 per share executed fee is reasonable because it is similar to the fees currently assessed by the Exchange for displayed orders that provide liquidity. As noted above, the Exchange provides other fee tiers for displayed orders ranging from $0.0017 per share executed to $0.0013 per share executed. For example, the Exchange assesses a fee of $0.0017 per share executed for displayed orders entered by a member that adds liquidity equal to or exceeding 0.15% of total Consolidated Volume during a month. The proposed fee will provide another opportunity to members to receive a similar fee in return for certain levels of participation on the Exchange as measured by total Consolidated Volume.

The Exchange believes that the proposed $0.0016 per share executed fee is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same fee to all similarly situated members. To qualify for the new fee, a member must provide certain minimum levels of total Consolidated Volume in both transactions that add and remove liquidity. The qualification criteria ensure that members qualifying for this fee are meaningfully participating on the Exchange in a given month. The Exchange notes that any member may qualify for the proposed fee if it meets the levels of total Consolidated Volume required by the fee's qualification criteria. Thus, the Exchange believes that this additional new fee provides all of its members with choice and flexibility, and is therefore an equitable allocation and not unfairly discriminatory.

Third Change

The Exchange believes that the proposed $0.0020 per share executed fee for non-displayed orders that provide liquidity (other than orders with Midpoint pegging) is reasonable because it is similar to other fees that the Exchange assesses for non-displayed liquidity. For example, the Exchange currently assesses a fee of $0.0024 per share executed for non-displayed orders (other than orders with Midpoint pegging) entered by a member that adds 0.06% of total Consolidated Volume of non-displayed liquidity. The Exchange assesses a fee of $0.0030 per share executed for all other non-displayed orders.[12] The proposed fee will provide members with an opportunity to receive a lower fee for execution of their non-displayed orders. As a consequence, the Exchange believes that the proposed fee is reasonable.

The Exchange believes that the proposed $0.0020 per share executed fee for non-displayed orders (other than orders with Midpoint pegging) is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same fee to all similarly situated members. Similar to the existing $0.0024 per share executed fee for non-displayed orders (other than orders with Midpoint pegging), the proposed new fee requires that a member provide a certain level of total Consolidated Volume of non-displayed liquidity added. In addition to total Consolidated Volume, the proposed new fee also requires that a member qualify as a QMM under the proposed QMM Program, which requires that a member both quotes at the NBBO at least 25% of the time during regular market hours in an average of at least 400 securities per day during the month, and provides add volume of at least 0.125% total Consolidated Volume. Thus, not only must a member provide a certain level of total Consolidated Volume in non-displayed

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12 The Exchange also assesses fees less than $0.0030 per share executed for orders with Midpoint pegging, which are non-displayed orders, if the member meets certain qualification criteria. See Equity 7, Section 118(a).

liquidity added, but it also must provide a certain level of total Consolidated Volume in both displayed and non-displayed liquidity added and quoting activity at the NBBO. The Exchange notes that any member may qualify as a QMM, and in turn also qualify for the proposed non-displayed fee, if the member chooses to provide the levels of liquidity and quoting at the NBBO required by the QMM Program and new fee qualification criteria. As a consequence, the Exchange believes that the proposed fee is an equitable allocation and not unfairly discriminatory.

Fourth Change

The Exchange believes that the proposed $0.0016 per share executed fee of the QMM Program for displayed orders that provide liquidity is reasonable because it is similar to other fees assessed by the Exchange for displayed orders that provide liquidity. In addition to the proposed $0.0016 per share executed fee described above, the Exchange also has other fee tiers for displayed orders ranging from $0.0017 per share executed to $0.0013 per share executed. For example, the Exchange assesses a fee of $0.0017 per share executed for displayed orders entered by a member that adds liquidity equal to or exceeding 0.15% of total Consolidated Volume during a month. The proposed fee will provide another opportunity to members to be assessed a similar fee in return for certain levels of participation on the Exchange as measured by total Consolidated Volume. Unlike other fees currently assessed for displayed orders, the proposed QMM Program fee also requires a significant level of quoting at the NBBO. Thus, the proposed fee is set at a level that is reflective of the beneficial contributions of market participants that quote significantly at the NBBO and provide significant liquidity.

The Exchange believes that the proposed $0.0016 per share executed fee and qualification criteria of the QMM Program are an equitable allocation and are not unfairly discriminatory because the Exchange will apply the same fee to all similarly situated members. Moreover, the proposed qualification criteria requires a member to provide a certain level of total Consolidated Volume in both displayed and non-displayed liquidity added and to quote significantly at the NBBO. Any member may provide the level of total Consolidated Volume and quote at the NBBO at the levels required by the qualification criteria of the QMM Program. Similar to the other current fee qualification criteria, the QMM Program requires a member to provide a certain level of total Consolidated Volume to qualify. Unlike other current fee qualification criteria, the proposed QMM Program requires a member to quote at the NBBO at least 25% of the time during regular market hours in an average of at least 400 securities per day during the month. The Exchange notes that Nasdaq also has a QMM Program, in which Nasdaq members are required to quote at the NBBO at least 25% of the time during regular market hours.[13] In contrast to the Exchange's proposal, Nasdaq requires a member to quote at the NBBO in an average of at least 1,000 securities per day during the month. The Exchange believes that a lower requirement of 400 securities per day during the month is appropriate given the smaller size and volumes of the Exchange in comparison to Nasdaq. For these reasons, the Exchange believes that the proposed QMM Program fee and qualification criteria are an equitable allocation and are 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

13 See Nasdaq Rule 7014(d)(2).

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 fees assessed members for execution of all securities priced at $1 or more per share that it trades 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 new fees provide opportunities to members to receive lower fees for transactions in both displayed and non-displayed orders. The fees are designed to provide incentive to members to improve the market by requiring certain levels of total Consolidated Volume to qualify for the fees. Similarly, the QMM Program fee provides members the opportunity to be assessed lower fees for transactions if they improve the market by providing both significant total Consolidated Volume and quoting at the NBBO meaningfully in a large number of securities. In sum, the proposed changes are designed to make the Exchange a more desirable venue on which to transact; however, 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.

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.[14]

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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2018-057 on the subject line.

14 15 U.S.C. 78s(b)(3)(A)(ii).

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-2018-057. 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. 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-2018-057 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.[15]

Eduardo A. Aleman,

Assistant Secretary.

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15 17 CFR 200.30-3(a)(12).

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