

to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁶ On December 11, 2015, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.⁸ The Commission has not received any comments on the proposal, as modified by Amendment No. 1.

On March 7, 2016, the Exchange withdrew the proposed rule change (SR-NYSEArca-2015-76).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77339; File No. SR-BX-2016-016]

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fees and Rebates To Adopt the Select Symbols Options Tier Schedule

March 10, 2016.

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 March 1, 2016, NASDAQ BX, Inc. (“BX” or “Exchange”)³ 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 modify certain fees and rebates (per executed contract) to adopt the Select Symbol Options Tier Schedule for certain Penny Pilot⁴ Options (each a “Select Symbol” and together the “Select Symbols”).

The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaqomxbx.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 its Chapter XV, Section 2, to modify certain fees and rebates⁵ to adopt the Select Symbol Options Tier Schedule for certain Penny Pilot Options. The proposed Select Symbol Options Tier Schedule would apply to Customers,⁶

BX Options Market Makers,⁷ Non-Customers,⁸ and Firms.⁹

Currently, Chapter XV, Section 2, subsection (1), contains a SPY¹⁰ Options Tier Schedule (“SPY Schedule”) that has four tiers. The Exchange proposes to convert the SPY Schedule into the Select Symbols Options Tier Schedule, as discussed in detail below.

Change 1—Penny Pilot Options: Modify Fees and Rebates To Add the Select Symbols Options Tier Schedule

In Change 1, the Exchange proposes modifications to convert its current SPY Schedule to the Select Symbols Options Tier Schedule. The proposed change keeps the great majority of the current SPY Schedule fees and rebates assessments (twelve out of sixteen) and tiers (three out of four) exactly the same in the new Select Symbols Options Tier Schedule; and updates the fees and rebates schedule to indicate “Select Symbols” rather than “SPY.”

Specifically, the Exchange proposes, commensurate with renaming the SPY Options Tier Schedule the Select Symbols Options Tier Schedule, to set forth the BX Options Select Symbol List. The Select Symbols¹¹ on this list represent, similarly to SPY, some of the highest volume Penny Pilot Options traded on the Exchange and in the U.S. The proposed Select Symbols are similar to those of other options exchanges (e.g., the MIAX Options Exchange (“MIAX”).¹² Like the SPY

⁶ “Professional” (as that term is defined in Chapter I, Section 1(a)(48)). BX Chapter XV.

⁷ 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. BX Chapter XV.

⁸ Note 1 to Chapter XV, Section 2, states: “¹ A Non-Customer includes a Professional, Broker-Dealer and Non-BX Options Market Maker.”

⁹ The term “Firm” or (“F”) applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC. BX Chapter XV.

¹⁰ “SPY” or Standard and Poor’s Depository Receipts/SPDRs options are Penny Pilot Options that are based on the SPDR exchange-traded fund (“ETF”), which is designed to track the performance of the S&P 500.

¹¹ The following are Select Symbols: ASHR, DIA, DXJ, EEM, EFA, EWJ, EWT, EWW, EWY, EWZ, FAS, FAZ, FXE, FXI, FXP, GDX, GLD, HYG, IWM, IYR, KRE, OIH, QID, QLD, QQQ, RSX, SDS, SKF, SLV, SPY, SRS, SSO, TBT, TLT, TNA, TZA, UNG, URE, USO, UUP, UVXY, UYG, VXX, XHB, XLB, XLE, XLF, XLI, XLK, XLP, XLU, XLV, XLY, XME, XOP, XRT.

¹² See MIAX fee schedule at http://www.miaxoptions.com/sites/default/files/fee-schedules/MIAX_Options_Fee_Schedule_10012015.pdf.

⁶ See Securities Exchange Act Release No. 76291, 80 FR 67827 (Nov. 3, 2015). The Commission determined that it was appropriate to designate a longer period within which to take action on the proposed rule change so that it had sufficient time to consider the proposed rule change. Accordingly, the Commission designated December 15, 2015 as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ See Securities Exchange Act Release No. 76630, 80 FR 78791 (Dec. 17, 2015).

⁹ 17 CFR 200.30-3(a)(57).

¹⁰ 15 U.S.C. 78s(b)(1).

¹¹ 17 CFR 240.19b-4.

¹² The Exchange notes that it has legally changed its name to NASDAQ BX, Inc. with the state of Delaware and filed Form 1 reflecting the change, and is in the process of changing its rules to reflect the new name.

⁴ The Penny Pilot 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).

⁵ Fees and rebates are per executed contract. BX Chapter XV, Section 2(1).

⁶ 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

Options Tier Schedule, the Select Symbols Options Tier Schedule will have four tiers.

Proposed Tier 1 in the Select Symbols Options Tier Schedule, which has the same requirements as the current Tier I in the SPY Options Tier Schedule will be where a BX Participant ("Participant") executes less than 0.05% of total industry customer equity and exchange traded fund ("ETF") option average daily volume ("ADV") contracts per month. Proposed Tier 1 will range from a \$0.00 rebate to a \$0.44 fee:

- The Rebate to Add Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Firm will be \$0.00 (no rebate will be paid);¹³
- the Fee to Add Liquidity when BX Options Market Maker trading with Customer will be \$0.44;¹⁴
- the Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, Customer, or Firm will be \$0.00;¹⁵ and
- the Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be \$0.42.¹⁶

Proposed Tier 2 in the Select Symbols Options Tier Schedule, which has the same requirements as current Tier 2 in the SPY Options Tier Schedule, will be where Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month. Proposed Tier 2 will range from a \$0.25 rebate to a \$0.44 fee:

- The new Rebate to Add Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Firm will be \$0.10;¹⁷
- the new Fee to Add Liquidity when BX Options Market Maker trading with Customer will be \$0.44;¹⁸
- the new Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, Customer, or Firm will be \$0.25;¹⁹ and

¹³ This is the same as the rebate in the current SPY Options Tier Schedule.

¹⁴ Proposed \$0.44 is a modest fee increase from the current SPY Options Tier Schedule, which is \$0.42.

¹⁵ This is the same as the rebate in the current SPY Options Tier Schedule.

¹⁶ This is the same as the fee in the current SPY Options Tier Schedule.

¹⁷ This is the same as the rebate in the current SPY Options Tier Schedule.

¹⁸ Proposed \$0.44 is a modest fee increase from the current SPY Options Tier Schedule, which is \$0.42.

¹⁹ This is the same as the rebate in the current SPY Options Tier Schedule.

—the new Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be \$0.42.²⁰

Proposed Tier 3 in the Select Symbols Options Tier Schedule, which has the same requirements the current Tier 3 in the SPY Options Tier Schedule, will be where Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month. Proposed Tier 3 will range from a \$0.37 rebate to a \$0.40 fee:

- The new Rebate to Add Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Firm will be \$0.20;²¹
- the new Fee to Add Liquidity when BX Options Market Maker trading with Customer will be \$0.40;²²
- the new Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, Customer, or Firm will be \$0.37;²³ and
- the new Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be \$0.39.²⁴

Proposed Tier 4 in the Select Symbols Options Tier Schedule, which is modified from the current Tier 4 in the SPY Options Tier Schedule, will be where Participant executes more than 10,000 BX Price Improvement Auction ("PRISM")²⁵ Agency Contracts per month; or Participant executes BX Options Market Maker volume of 0.30%

²⁰ This is the same as the fee in the current SPY Options Tier Schedule.

²¹ This is the same as the rebate in the current SPY Options Tier Schedule.

²² Proposed \$0.40 is a modest fee increase from the current SPY Options Tier Schedule, which is \$0.39.

²³ This is the same as the rebate in the current SPY Options Tier Schedule.

²⁴ This is the same as the fee in the current SPY Options Tier Schedule.

²⁵ 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 respond to a PRISM Auction, the duration of which is set at 200 milliseconds. 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, 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 [sic]. See Chapter VI, Section 9; and Securities Exchange Act Release No. 76301 (October 29, 2015), 80 FR 68347 (November 4, 2015) (SR-BX-2015-032) (order approving BX PRISM).

or more of total industry customer equity and ETF options ADV per month. If a Participant qualifies for Tier 4 the rates applicable to this tier will supersede any other Select Symbols tier rates that the Participant may qualify for. Proposed Tier 4 will range from a \$0.37 rebate to a \$0.29 fee:

- The new Rebate to Add Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Firm will be \$0.25;²⁶
- the new Fee to Add Liquidity when BX Options Market Maker trading with Customer will be \$0.29;²⁷
- the new Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, Customer, or Firm will be \$0.37;²⁸ and
- the new Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be \$0.25.²⁹

In addition, there are currently six explanatory notes in the SPY Options Tier Schedule. In each such note the Exchange will, as elsewhere in the fees and rebates schedule, replace "SPY" with "Select Symbols." The Exchange proposes to also establish a fee on one note that is not currently fee liable in the SPY Options Tier Schedule. Specifically, the Exchange proposes to state that BX Options Market Maker fee to add liquidity in SPY [sic] Options will be \$0.04 when trading with Firm, Non-Customer, or BX Options Market Maker.

Chapter XV, Section 2 subsection (1) reflecting the proposed Select Symbols Options Tier Schedule will read as follows:

Sec. 2 BX Options Market—Fees and Rebates

The following charges shall apply to the use of the order execution and routing services of the BX Options market for all securities.

(1) Fees for Execution of Contracts on the BX Options Market:

* * * * *

²⁶ This is the same as the rebate in the current SPY Options Tier Schedule.

²⁷ Proposed \$0.29 is, in order to further promote liquidity on the Exchange, a modest fee decrease from the current SPY Options Tier Schedule, which is \$0.32.

²⁸ This is the same as the rebate in the current SPY Options Tier Schedule.

²⁹ This is the same as the fee in the current SPY Options Tier Schedule.

SELECT SYMBOLS OPTIONS TIER SCHEDULE

	Rebate to add liquidity	Fee to add liquidity	Rebate to remove liquidity	Fee to remove liquidity
When:	Customer	BX Options market maker	Customer	BX Options market maker
Trading with:	Non-Customer, BX options market maker, or firm	Customer	Non-Customer, BX options market maker, customer, or firm	Customer
Tier 1: Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month	\$0.00	\$0.44	\$0.00	\$0.42
Tier 2: Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month	0.10	0.44	0.25	0.42
Tier 3: Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month	0.20	0.40	0.37	0.39
Tier 4: Participant executes more than 10,000 PRISM Agency Contracts per month; or Participant executes BX Options Market Maker volume of 0.30% or more of total industry customer equity and ETF options ADV per month	0.25	0.29	0.37	0.25

BX Options Select Symbol List

The following are Select Symbols: ASHR, DIA, DXJ, EEM, EFA, EWJ, EWT, EWW, EWY, EWZ, FAS, FAZ, FXE, FXI, FXP, GDX, GLD, HYG, IWM, IYR, KRE, OIH, QID, QLD, QQQ, RSX, SDS, SKF, SLV, SPY, SRS, SSO, TBT, TLT, TNA, TZA, UNG, URE, USO, UUP, UVXY, UYG, VXX, XHB, XLB, XLE, XLF, XLI, XLK, XLP, XLU, XLV, XLY, XME, XOP, XRT

- BX Options Market Maker fee to add liquidity in Select Symbols Options will be \$0.04 when trading with Firm, Non-Customer, or BX Options Market Maker.

- Firm fee to add liquidity and fee to remove liquidity in Select Symbols Options will be \$0.33 per contract, regardless of counterparty.

- Non-Customer fee to add liquidity and fee to remove liquidity in Select Symbols Options will be \$0.46 per contract, regardless of counterparty.

- BX Options Market Maker fee to remove liquidity in Select Symbols Options will be \$0.46 per contract when trading with Firm, Non-Customer, or BX Options Market Maker.

- Customer fee to add liquidity in Select Symbols Options when contra to another Customer is \$0.33 per contract.

- Volume from all products listed on BX Options will apply to the Select Symbols Options Tiers.

* * * * *

The Exchange is proposing fees and rebate changes and adopting the Select Symbols Options Tier Schedule at this time because it believes that this will

provide incentives for execution of contracts, and in particular Select Symbols Options contracts, on the BX Options Market.

The Exchange also believes that its proposal should provide increased opportunities for participation in executions on the Exchange, facilitating the ability of the Exchange to bring together participants and encourage more robust competition for orders.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act,³⁰ in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act,³¹ 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, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that

³⁰ 15 U.S.C. 78f(b).

³¹ 15 U.S.C. 78f(b)(4), (5).

current regulation 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.”³²

Likewise, in *NetCoalition v. Securities and Exchange Commission*³³ (“NetCoalition”) the DC 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.³⁴ 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.”³⁵

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

³² Securities Exchange Act Release No. 51808 at 37499 (June 9, 2005) (“Regulation NMS Adopting Release”).

³³ *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

³⁴ See *id.* at 534–535.

³⁵ See *id.* at 537.

dealers'. . . ."³⁶ 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 proposes to amend its Chapter XV, Section 2 to modify certain fees and rebates to adopt the Select Symbol Options Tier Schedule for certain Penny Pilot Options. The proposed modified fees and rebates and new Select Symbols Options Tier Schedule would, as discussed, apply to Customers, BX Options Market Makers, Non-Customers, and Firms. The Exchange believes that its proposal is reasonable, equitable, and not unfairly discriminatory and should provide increased opportunities for participation in executions on the Exchange, facilitating the ability of the Exchange to bring together participants and encourage more robust competition for orders.

Change 1—Penny Pilot Options: Modify Fees and Rebates To Add the Select Symbols Options Tier Schedule

In Change 1, the Exchange proposes to convert its current SPY Options Tier Schedule to the Select Symbols Options Tier Schedule and to set forth the BX Options Select Symbol List. The Select Symbols on this list represent, similarly to SPY, some of the highest volume Penny Pilot Options traded on the Exchange and in the U.S and are similar to those of other options exchanges (e.g., the MIAX).

As discussed, the proposed change updates the fees and rebates schedule to indicate "Select Symbols" rather than "SPY" and keeps the great majority of the current SPY Schedule fees and rebates assessments and tiers exactly the same in the new Select Symbols Options Tier Schedule. The proposed fee changes are in respect of the Fee to Add Liquidity when BX Options Market Maker trades with Customer. Each of the Tier 1, 2, and 3 changes is a modest fee increase from the current schedule, not exceeding two pennies. The Tier 4 change is a fee decrease from the current fee schedule in order to further promote liquidity on the Exchange.³⁷ The Exchange also proposes to change one explanatory note applicable to the Select Symbols to make it fee liable.

The proposed rule change is reasonable because it continues to

encourage market participant behavior through the fees and rebates system, which is an accepted methodology among options exchanges.³⁸ Converting SPY Options Tier Schedule to the Select Symbols Options Tier Schedule is reasonable because of the nature of Select Symbol options, which are the most heavily traded options on the Exchange as well as in the industry. By expanding from SPY Options to Select Symbol Options, the Exchange is further promoting options liquidity [sic] the Exchange.

The Exchange believes that the proposed Select Symbol Options Tier Schedule is reasonable because it is not a novel, untested structure but rather is similar to what is offered by other options markets, such as MIAX, and is based on the Exchange's existing SPY Options Tier Schedule. The proposed Tiers in the Select Symbols Options Tier Schedule clearly reflect the progressively increasing nature of Participant executions structured for the purpose of attracting order flow to the Exchange. This encourages market participant behavior through progressive tiered fees and rebates using an accepted methodology among options exchanges.³⁹

Tier 1 in the Select Symbols Options Tier Schedule is, similarly to Tier 1 in the current SPY Options Tier Schedule, set up to enable a Participant to earn a Rebate to Add Liquidity or pay a Fee to Add Liquidity in Select Symbols where the Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month.

Tier 2 in the Select Symbols Options Tier Schedule is, similarly to Tier 2 in the current SPY Options Tier Schedule, set up to enable a Participant to earn a Rebate to Add Liquidity or pay a Fee to Add Liquidity in the Select Symbols where the Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month.

And Tier 3 in the Select Symbols Options Tier Schedule is, similarly to Tier 3 in the SPY Options Tier Schedule, set up to enable a Participant to earn a Rebate to Add Liquidity or pay a Fee to Add Liquidity in the Select Symbols to Participant [sic] executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month. The fees and rebates that BX Options Market Makers and Customers are assessed are, as has

been discussed, almost all comparable to the fees and rebates in the SPY Options Tier Schedule.

The Exchange believes that it is reasonable to also adjust the current Tier 4 in the SPY Options Tier Schedule as reflected in the new Tier 4 in the Select Symbols Options Tier Schedule, in order to enable a Participant to earn a Rebate to Add Liquidity or pay a Fee to Add Liquidity in Select Symbols where the Participant executes more than 10,000 PRISM Agency Contracts per month; or Participant executes BX Options Market Maker volume of 0.30% or more of total industry customer equity and ETF options ADV per month. By so doing, the Exchange encourages Participants to trade PRISM and/or make markets on the exchange.

In addition, the Exchange believes that making changes to add the Select Symbols Options Tier Schedule in terms of Rebate to Add Liquidity and Fee to Add Liquidity, and Rebate to Remove Liquidity and Fee to Remove Liquidity, is reasonable because it encourages the desired Customer behavior by attracting Customer interest in Select Symbols 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 Select Symbols Options Tier Schedule is reasonable in that it is, similarly to the current SPY Options Tier Schedule, set up to incentivize Participants to direct liquidity to the Exchange; using volume from all products listed on BX Options will further incentivize Participants. As Participants execute more of total industry customer equity and ETF option ADV contracts per month on the Exchange, they can in certain categories earn higher rebates and be assessed lower fees. For example, in the Select Symbols Options Tier Schedule the Tier 3 Rebate to Add Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Firm is higher (\$0.20) than the Tier 1 Rebate to Add Liquidity (\$0.00); and the Tier 3 Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, Customer, or Firm is higher (\$0.37) than the Tier 2 Rebate to Remove Liquidity (\$0.25).

Similarly, the proposed Fee to Add Liquidity when BX Option Market Maker trading with Customer is lower for Tier 3 (\$0.40) than for Tier 1 (\$0.44);

³⁶ See *id.* at 539 (quoting Securities Exchange [sic] Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21) at 73 FR at 74782-74783).

³⁷ Tier 4 is updated from the current SPY Options Tier Schedule to give additional ways to achieve the tier requirements through specified PRISM volume as well as options volume.

³⁸ See, e.g., fee and rebate schedules of other options exchanges, including, but not limited to, NASDAQ Options Market ("NOM"), NASDAQ PHLX LLC ("Phlx"), and Chicago Board Options Exchange ("CBOE").

³⁹ *Id.*

and, the Fee to Remove Liquidity when BX Option Market Maker trading with Customer is lower for Tier 3 (\$0.39) than for Tier 1 (\$0.42).

The Exchange believes that it is reasonable to indicate a \$0.04 fee assessment in the discussed BX Options Market Maker explanatory note. This explanatory note, which is currently not fee liable for options on SPY, will be fee liable for Select Symbols. The Exchange believes that this is in line with its continued effort to promote liquidity on the Exchange while covering costs through fees and rebates.

Establishing the Select Symbol Options Tier Schedule is equitable and not unfairly discriminatory. This is because the Exchange's proposal to assess fees and pay rebates according to Tiers 1, 2, 3, and 4 as proposed to be amended will apply uniformly to all similarly situated Participants. Customers would earn a Rebate to Add Liquidity and a Rebate to Remove Liquidity according to the Tiers,⁴⁰ and BX Market Makers would be assessed a Fee to Add Liquidity and a Fee to Remove Liquidity according to the same Tiers per the Select Symbols Options Tier Schedule; and certain fees would be the same regardless of counterparty. The fee and rebate schedule as proposed continues to reflect differentiation among different market participants. The Exchange believes that the differentiation is equitable and not unfairly discriminatory, as well as reasonable, because transactions of a BX Options Market Maker must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and BX Options Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all BX Options Market Makers are designated as specialists on BX for all purposes under the Act or rules thereunder.⁴¹

The Exchange believes that by making the proposed changes it is continuing to incentivize Participants to execute more volume on the Exchange to further enhance liquidity in this market.

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 make changes to its Penny Pilot Options to establish a Select Symbols Options Tiers Schedule will impose any undue 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 continuing its fees and rebates for Penny Pilot Options and establishing a Select Symbols Options Tiers Schedule 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 terms of intra-market competition, the Exchange notes that price differentiation among different market participants operating on the Exchange (e.g., Customer and BX Options Market Maker) is reasonable. Customer activity, for example, 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 (particularly in response to pricing) in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Moreover, unlike others market participants each BX Options Market Maker commits to various obligations. These obligations include, 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.⁴² In this instance, the proposed changes to the fees and rebates to establish a Select Symbols Options Tiers Schedule, does 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 order executions.

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,⁴³ 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

⁴⁰ Per a note to the Select Symbol Options Tier Schedule, Customer fee to add liquidity in Select Symbols Options when contra to another Customer is \$0.33 per contract. The only change in this note, which is currently applicable to the SPY Options Tier Schedule, is that the note will be applicable to the Select Symbol Options Tier Schedule.

⁴¹ See Chapter VII, Section 5, entitled "Obligations of Market Makers."

⁴² See Chapter VII, Section 5.

⁴³ 15 U.S.C. 78s(b)(3)(A)(ii).

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 email to rule-comments@sec.gov. Please include File Number SR-BX-2016-016 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-2016-016. 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 Web site (<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 Web site 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-2016-016 and should be submitted on or before April 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁴

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016-05854 Filed 3-15-16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77341; File No. SR-Phlx-2015-94]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, to Make Permanent the Pilot Program Eliminating Minimum Value Sizes for Opening Transactions in New Series of FLEX Options

March 10, 2016.

I. Introduction

On November 25, 2015, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to make permanent its pilot program ("Pilot Program") eliminating minimum value sizes for requests for quotes ("RFQs") for opening transactions in new series of flexible exchange options ("FLEX Options" or "FLEX"). The proposed rule change was published for comment in the **Federal Register** on December 14, 2015.³ The Commission received no comments on the proposal. On January 28, 2016, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁴ The Exchange filed Amendment No. 1 to the proposed rule

change on February 22, 2016, in order to transmit an updated pilot report that supplements Exhibit 3 to the filing, and to provide additional information regarding transactions covered by the Pilot Program and FLEX Option trading on the Exchange.⁵ The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Amended Proposal

FLEX Options, unlike traditional standardized options, allow investors to customize basic option terms, including size, expiration date, exercise style, and certain exercise prices.⁶ Pursuant to Commentary .01 to Rule 1079, the Exchange currently has in place a Pilot Program under which the minimum size requirements set forth in Rules 1079(a)(8)(A)(i) and (ii), which apply to RFQs for opening transactions in new series of FLEX Options, are eliminated.⁷ Prior to the Pilot Program, pursuant to Rules 1079(a)(8)(A)(i) and (ii), the minimum value size for a RFQ for an

⁵ The Exchange attached an Exhibit 3 to its proposed rule change that contains an initial report summarizing pilot data collected for the period December 1, 2014 through July 31, 2015.

Specifically, the report summarizes the trading volume and underlying value of opening transactions in new series of FLEX Options with a size below the minimum value thresholds in force before the pilot, as well as the types of customers initiating such transactions. In Amendment No. 1, the Exchange submitted an updated report as an amendment to Exhibit 3 that supplements the original Exhibit 3 with summary pilot data for the period August 1, 2015 through December 31, 2015 (together with the initial report, "Pilot Report"). In addition, in Amendment No. 1 the Exchange compares the total volume and value of opening transactions in new series of FLEX Options covered by the Pilot Program during the period December 2014 through December 2015 to the total volume and value of all opening FLEX Option transactions in new series during the same period. Further, in Amendment No. 1 the Exchange also compares the Exchange's FLEX Option trading volume to the Exchange's overall, combined trading volume for standardized options and FLEX Options.

⁶ See Notice; see also Phlx Rule ("Rule") 1079. FLEX equity, FLEX index, and FLEX currency options are traded on the Exchange, but the Pilot Program encompasses only FLEX equity and FLEX index options, and does not encompass FLEX currency options. See Notice; Commentary .01 to Rule 1079; References to "FLEX Options" or "FLEX" for purposes of this filing are meant to refer only to FLEX equity and FLEX index options.

⁷ See Commentary .01 to Rule 1079; see also Securities Exchange Act Release Nos. 62900 (September 13, 2010), 75 FR 57098 (September 17, 2010) (SR-Phlx-2010-123) (establishing Pilot Program); and 77153 (February 17, 2016) 81 FR 9039 (February 23, 2016) (SR-Phlx-2016-19) (extending Pilot Program until the earlier of March 15, 2016, or approval of the Pilot Program on a permanent basis). The term "request for quotes" is defined in Rule 1079(a)(11).

⁴⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 76593 (December 8, 2015), 80 FR 77399 ("Notice").

⁴ See Securities Exchange Act Release No. 76989, 81 FR 5811 (February 3, 2016). The Commission designated March 13, 2016, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.