FINDING OF NO SIGNIFICANT IMPACT—Continued

Finding of No Significant Impact	The proposed action does not require changes to the ISFSI's licensed routine operations, maintenance activities, or monitoring programs, nor does it require new construction or land-disturbing activities. The scope of the proposed action concerns only the NRC's review and approval of Duke Energy's DFPs. The scope of the proposed action does not include, and will not result in, the review and approval of decontamination or decommissioning activities or license termination for the ISFSI or for other parts of the H.B. Robinson Steam Electric Plant, Unit 2. Therefore, the NRC staff determined that approval of the initial and updated DFPs for the H.B. Robinson Steam Electric Plant, Unit 2, ISFSI will not significantly affect the quality of the human environment, and accordingly, the staff has concluded that a FONSI is appropriate. The NRC staff further finds that preparation of an environmental impact statement (EIS) is not required.
Available Documents	U.S. Nuclear Regulatory Commission. ESA Section 7 No Effect Determination for ISFSI DFP Reviews (Note to File), dated May 15, 2017. ADAMS Accession No. ML17135A062. U.S. Nuclear Regulatory Commission. Request for Additional Information for Review of the DFPs for Duke Energy ISFSI, dated August 1, 2013. ADAMS Accession No. ML13214A228. U.S. Nuclear Regulatory Commission. Review of the Draft EA for the Oconee ISFSIs DFP Dockets 72–04 and 72–40, dated August 10, 2015. ADAMS Accession No. ML15224B295. U.S. Nuclear Regulatory Commission. Request for Additional Information for Review of Duke Energy's DFP Update for Catawba Nuclear Station; Brunswick Steam Electric Plant; Catawba Nuclear Station; McGuire Nuclear Station; and Catawba Nuclear Station ISFSIs, dated February 23, 2018. ADAMS Package Accession No. ML18057A216. U.S. Nuclear Regulatory Commission. Review of the Draft EA and FONSI for Brunswick Steam Electric Plant, McGuire Nuclear Station, and H.B. Robinson Steam Electric Plant, Unit 2, ISFSIs DFPs, dated March 15, 2021. ADAMS Accession No. ML21071A069. Duke Energy. DFP for ISFSIs, dated December 13, 2012. ADAMS Accession No. ML12353A033. Duke Energy. DFP for ISFSIs, dated March 30, 2015. ADAMS Accession No. ML15089A394. Duke Energy. Response to NRC Request for Additional Information, dated August 1, 2013, Regarding the Decommissioning Funding Status Report for the ISFSIs, dated September 30, 2013. ADAMS Accession No. ML13275A203. Duke Energy. Response to Request for Additional Information Regarding Duke Energy's DFP Update for ISFSIs, dated March 28, 2018. ADAMS Accession No. ML18101A058. U.S. Nuclear Regulatory Commission. Final EA and FONSI for Duke Energy's Initial and Updated DFPs Submitted in Accordance with 10 CFR 72.30(b) and (c) for H.B. Robinson Steam Electric Plant, Unit 2, ISFSI, dated April 21, 2021. ADAMS Package Accession No. ML21056A261.

Dated: April 27, 2021.

For the Nuclear Regulatory Commission.

John B. McKirgan,

Chief, Storage and Transportation Licensing Branch, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2021–09044 Filed 4–29–21; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91671; File No. SR–BX–2021–015]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 7, Section 2, "BX Options Market- Fees and Rebates"

April 26, 2021.

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 April 13, 2021, 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 and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BX Options 7, Section 2, ''BX Options Market- Fees and Rebates.''

The Exchange originally filed the proposed pricing changes on March 29, 2021 (SR–BX–2021–010). On April 13, 2021, the Exchange withdrew that filing and submitted this filing.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on April 1, 2021.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend BX's Pricing Schedule at Options 7, Section 2, ''BX Options Market-Fees and Rebates.'' The Exchange proposes to amend Options 7, Section 2(1) to qualify the Customer Non-Penny Symbol Maker Rebate and add certain rule text to make clear the manner in which Options 7, Section 2(1) pricing applies today. The Exchange also proposes to amend Options 7, Section 2(2) to amend the pricing for the Opening Cross. Each change will be described below.

Options 7, Section 2(1)

Today, Customers are paid a Non-Penny Symbol Maker Rebate of $0.90 per contract for adding liquidity in Non-Penny Symbols, regardless of contra-party. Customers are assessed a Non-Penny Symbol Taker Fee of $0.65 per contract for removing liquidity in Non-Penny Symbols, regardless of counterparty.

The Exchange proposes to amend the Customer Non-Penny Symbol Maker Rebate of $0.90 per contract. The Exchange proposes to continue to pay a Customer Non-Penny Symbol Maker Rebate of $0.90 per contract unless the

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

[2] 17 CFR 240.19b–4.

contra-side is also a Customer, in which case the Exchange will pay a reduced Customer Non-Penny Symbol Market Rebate of $0.45 per contract if the quantity of transactions where the contra-side is also a Customer is greater than 25% of Participant's total Customer Non-Penny Symbol volume which adds liquidity in that month. The aforementioned calculation of 25% will not consider orders within the Opening Process[3] per Options 3, Section 8, orders that generate an order exposure alert per Options 5, Section 4, or orders transacted in the Price Improvement Auction (''PRISM'') per Options 3, Section 13. The Exchange proposes to add this rule text to Options 7, Section 2(1) at new note ''3''.

The Exchange also proposes to amend Options 7, Section 2(1) to add a new note ''*'' which makes clear that orders executed in the Opening Process per Options 3, Section 8, orders that generate an order exposure alert per Options 5, Section 4, and orders transacted in the Price Improvement Auction (''PRISM'') per Options 3, Section 13 are not subject to Options 7, Section 2(1) pricing, instead, these orders are subject to the pricing within Options 7, Sections 2(2), (4) and (5), respectively. The Exchange believes that this note will guide Participants to the correct pricing within Options 7, Section 2. This new note ''*'' does not represent a substantive change. The proposed new note ''*'' is intended to serve as a guidepost to Participants referring to the BX Pricing Schedule.

Options 7, Section 2(2)

As noted above, the Exchange proposes to amend the title of Options 7, Section 2(2) to align with the title of Options 3, Section 8. The Exchange also proposes to add a citation to the rule for the Opening Process. The current title, ''Opening Cross'' would be amended to state ''Opening Process per Options 3, Section 8.'' The Exchange also proposes to change the phrase ''Opening Cross'' to ''Opening Process'' throughout Options 7, Section 2(2) as well. These amendments are non-substantive.

Currently, Options 7, Section 2(2) provides,

All orders executed in the Opening Cross:

Customer orders will receive the Rebate to Remove Liquidity during the Exchange's Opening Cross, unless the contra-side is also a Customer (in which case no Fee to Remove Liquidity is assessed and no Rebate to Remove Liquidity is received). Lead Market Makers, BX Options Market Makers,[4] Non-Customers, and Firms will be assessed the Fee to Remove Liquidity during the Exchange's Opening Cross.

The Exchange recently filed to amend the pricing within Options 7, Section 2(1) to remove the current fees, rebates and tier schedules applicable to Penny Symbols and Non-Penny Symbols and replace it with a new maker/taker fee structure.[5] Currently, Options 7, Section 2(2) continues to reference pricing which was removed with the Prior Fee Change. As the current pricing refers to Rebates to Remove Liquidity and Fees to Remove Liquidity which no longer exist on the Pricing Schedule within Options 7, Section 2(1), the Exchange did not assess any Participant a fee nor pay a rebate in March 2021 with respect to the Opening Cross.

At this time, the Exchange proposes to amend Options 7, Section 2(2) to provide,

All orders executed in the Opening Process:

Customer orders will receive the Maker Rebate during the Exchange's Opening Process, unless the contra-side is also a Customer, in which case a Maker Rebate will not be paid and a Taker Fee will not be assessed. Lead Market Makers, Market Makers, Non-Customers, and Firms will be assessed the Taker Fee during the Exchange's Opening Process and will receive Maker Rebates.

This proposed new rule text would continue to pay Customers a rebate during the Exchange's Opening Process, unless the Customer order is contra another Customer order as explained in greater detail below.

Penny Symbols

Previously, during the Opening Cross, Customer orders received a Rebate to Remove Liquidity, unless the contra-side was also a Customer, in which case no Fee to Remove Liquidity was assessed and no Rebate to Remove Liquidity was received. Previously, during the Opening Cross, BX paid a Penny Symbol Rebate to Remove Liquidity when trading against a Non-Customer, Lead Market Maker, BX Options Market Maker, Customer or Firm which ranged from $0.00 to $0.35 per contract.[6] The proposed new pricing which would be applicable to the Exchange's Opening Process would pay Customers a Maker Rebate of $0.30 per contract, unless the contra-side is also a Customer, in which case a Maker Rebate would not be paid and a Taker Fee would not be assessed. The proposed new Penny Symbol Customer Maker Rebate of $0.30 per contract would pay Participants that previously qualified for now defunct Tiers 1 and 2[7] a higher Customer rebate than was previously paid. Participants that qualified for now defunct Tier 3 would receive a lower Customer rebate than was previously paid, provided the contra-side was not a Customer. Previously, during the Opening Cross, no Rebate was paid to Remove Liquidity when a Customer was contra another Customer. With the proposed pricing, during the Opening Process, when a Customer is contra another Customer a Maker Rebate would not be paid and a Taker Fee would not be assessed.

Previously, during the Opening Cross, Lead Market Makers and Options Market Makers were assessed the Fee to Remove Liquidity while Lead Market Makers and Market Makers paid the Penny Symbol Fee to Remove Liquidity when trading against a Customer that ranged from $0.39 to $0.30 per contract.[8] Previously, during the Opening Cross, Lead Market Makers and Market Makers paid a Penny Symbol Fee to Remove Liquidity when trading against a Non-Customer, Lead Market Maker, BX Options Market Maker or Firm of $0.46 per contract, regardless of tier.[9] With the proposed new Opening

[3] The Exchange proposes to rename ''Opening Cross'' within Options 7, Section 2(2) as 'Opening Process.'' Hereafter, the Exchange will refer to Options 7, Section 2(2) as the Opening Process and the previous process as the Opening Cross throughout this rule change.

[4] The Prior Fee Change renamed ''BX Options Market Maker'' as ''Market Maker.''

[5] *See* Securities Exchange Act Release No. 91473 (April 5, 2021) 86 FR 18562 (April 9, 2021) (April 9, 2021) [sic] (SR–BX–2021–009) (''Prior Fee Change'').

[6] Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month received no Penny Symbol Rebate to Remove Liquidity in Tier 1. Participants that executed 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month received a $0.25 per contract Penny Symbol Rebate to Remove Liquidity in Tier 2. Participants that executed 0.15% or more of total industry customer equity and ETF option ADV contracts per month received a $0.35 per contract Penny Symbol Rebate to Remove Liquidity in Tier 3.

[7] The Prior Fee Change eliminated Tiers 1–3 described herein.

[8] Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.39 per contract in Tier 1. Participants that execute 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.39 per contract in Tier 2. Participants that execute 0.15% or more of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.30 per contract in Tier 3.

[9] Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.46 per contract in Tier 1. Participants that execute 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.46 per contract in Tier 2. Participants that execute 0.15% or more of total industry customer equity and ETF option ADV

Continued

Process pricing, the Penny Symbol Taker Fee for Lead Market Maker and Market Maker orders of $0.46 per contract would be higher than the prior Lead Market Maker and Market Maker tiered Penny Symbol Fee to Remove Liquidity when trading against a Customer which ranged from $0.39 to $0.30 per contract and would be the same as the previous Lead Market Maker and Market Maker tiered Penny Symbol Fees to Remove Liquidity when trading against a Non-Customer, Lead Market Maker, Options Market Maker or Firm of $0.46 per contract regardless of tier. With the proposed new pricing, Lead Market Makers and Market Makers would not receive Maker Rebates during the Opening Process.

Previously, during the Opening Cross, Non-Customers and Firms were assessed the Fee to Remove Liquidity. The prior Penny Symbol Fee to Remove Liquidity was a flat fee of $0.46 per contract. The proposed new Penny Symbol Taker Fee of $0.46 per contract would be the same as the prior Penny Symbol Fee to Remove Liquidity of $0.46 per contract. With this pricing, Non-Customers and Firms would not receive Maker Rebates during the Opening Process.

Non-Penny Symbols

Previously, during the Opening Cross, Customer orders received a Rebate to Remove Liquidity, unless the contra-side was also a Customer, in which case no Fee to Remove Liquidity was assessed and no Rebate to Remove Liquidity was received. Previously, during the Opening Cross, BX paid a Non-Penny Symbol Customer Rebate to Remove Liquidity of $0.80 per contract,[10] regardless of the tier and regardless of the contra-party. The proposed new pricing would similarly pay Customers a Maker Rebate during the Exchange's Opening Process, unless the contra-side is also a Customer, in which case a Maker Rebate would not be paid and a Taker Fee would not be assessed. The proposed new Non-Penny Symbol Customer Maker Rebate of $0.90 per contract during the Opening Process would be higher than the prior rebates, provided the contra-side is not a Customer. During the Opening Process, no Rebate to Remove Liquidity was paid when a Customer was contra another Customer. With the proposed new pricing, during the Opening Process, when a Customer is contra another Customer a Maker Rebate would not be paid and a Taker Fee would not be assessed.

Previously, during the Opening Cross, Lead Market Makers and BX Options Market Makers were assessed the Fee to Remove Liquidity while Lead Market Makers and Market Makers paid an $0.89 per contract Non-Penny Fee to Remove Liquidity when the Lead Market Maker or Market Maker traded with any market participant other than a Customer.[11] Previously, during the Opening Cross, if the contra-party was a Customer, the Lead Market Maker and Market Maker were charged a Fee to Remove Liquidity that ranged from $0.89 to $0.60 per contract depending on the volume tier achieved.[12] The proposed new Taker Fee of $1.10 per contract for removing liquidity for Lead Market Makers and Market Makers in Non-Penny Symbols, during the Opening Process, regardless of contra-party would be higher than the prior fees assessed to Lead Market Makers and Market Makers for removing liquidity in Non-Penny Symbols. With the proposed new pricing, during the Opening Process, Lead Market Makers and Market Makers would not receive Maker Rebates.

Previously, during the Opening Cross, Non-Customers and Firms were assessed the Non-Penny Symbol Fee to Remove Liquidity. During the Opening Cross, the prior Non-Penny Symbol Fee to Remove Liquidity was a flat fee of $0.89 per contract. During the Opening Process, the proposed new Non-Penny Symbol Taker Fee of $1.10 per contract for removing liquidity for Non-Customers and Firms in Non-Penny Symbols, would be higher than the prior Fee to Remove Liquidity. With this pricing, Non-Customers and Firms would not receive Maker Rebates during the Opening Process.

Options 7, Section 2(5)

The Exchange proposes to add the words ''per Options 3, Section 13'' at the end of the title to Options 7, Section 2(5) to provide the citation to the BX Price Improvement Auction rule. This amendment is non-substantive.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[14] 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 Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''[15]

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

contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.46 per contract in Tier 3.

[10] Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month received an $0.80 per contract Non-Penny Symbol Rebate to Remove Liquidity in Tier 1. Participants that executed 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month received an $0.80 per contract Non-Penny Symbol Rebate to Remove Liquidity in Tier 2. Participants that executed 0.15% or more of total industry customer equity and ETF option ADV contracts per month received an $0.80 per contract Non-Penny Symbol Rebate to Remove Liquidity in Tier 3.

[11] Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 1. Participants that executed 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 2. Participants that executed 0.15% or more of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 3.

[12] Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 1. Participants that executed 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 2. Participants that executed 0.15% or more of total industry customer equity and ETF option ADV contracts per month paid an $0.60 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 3.

[13] 15 U.S.C. 78 f(b).

[14] 15 U.S.C. 78f(b)(4) and (5).

[15] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (DC Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that 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.'' [16]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

Options 7, Section 2(1)

The Exchange's proposal to amend the Customer Non-Penny Symbol Maker Rebate of $0.90 per contract for adding liquidity in Non-Penny Symbols, regardless of contra-party and, instead, pay a $0.45 per contract Customer Non-Penny Symbol Maker Rebate if the quantity of transactions where the contra-side is also a Customer is greater than 25% of Participant's total Customer Non-Penny Symbol volume which adds liquidity [17] in that month is reasonable. BX's current $0.90 per contract flat Customer Non-Penny Symbol Maker Rebate is the highest simple order base rebate paid that does not consider volume or contra-party.[18] Other exchanges have higher simple order rebates, provided certain volume criteria are met.[19] The Exchange's proposal to add a volume consideration for the ratio of Customer to Customer orders as compared to total Participant volume which adds Non-Penny Symbol liquidity in order to receive the $0.90 per contract Customer Non-Penny Symbol rebate as compared to the reduced $0.45 per contract rebate is reasonable. The Exchange currently assess a $0.65 per contract Customer Non-Penny Taker Fee, the lowest BX Taker Fee for Non-Penny Symbols,[20] and, currently, the Exchange pays the highest Customer Maker Rebate of $0.90 per contract. The Exchange offers Customers the highest Non-Penny Maker Rebate on BX by assessing higher Non-Penny Taker Fees to Non-Customers.[21] To the extent a Participant submits a Non-Penny Customer order to add liquidity which interacts with a Non-Penny Customer order that removes liquidity, both Participants benefit from the higher Non-Penny Maker Rebate and lower Non-Penny Taker Fee. The Exchange's intention for assessing Customer orders with the reduced Non-Penny Taker Fee was designed to bolster interaction with Non-Customer participants. Today, Non-Penny Customer orders which add liquidity have priority [22] ahead of Non-Penny Non-Customer orders and, therefore, the Exchange's intention to enhance Non-Customer liquidity is subverted when a Non-Penny Customer order transacts with another Non-Penny Customer order. As a result, when Non-Penny Customers interact with other Non-Penny Customer orders more than by happenstance, the Exchange believes it is reasonable to pay Customer orders which add liquidity a lower rebate. The Exchange notes that Participants do occasionally submit Non-Penny Customer orders which add liquidity in Non-Penny Symbols to the order book that trade against Non-Penny Customer orders that remove liquidity in Non-Penny Symbols. The Exchange believes that type of behavior occurs, by happenstance, a small percentage of the time in a given month. Therefore, the Exchange selected 25% as a number to demarcate the point at which a Participant should receive the lower Customer Non-Penny Symbol Maker Rebate of $0.45 per contract because it does not believe that the type of behavior outlined herein should occur more than 25% of a Participant's total Customer Non-Penny Symbol volume unless the trading behavior intended. Further, the Exchange believes that although Customer orders may receive lower rebates if they transact the requisite number of Customer-to Customer trades, the Exchange's rebate of $0.45 per contract remains competitive and equal to or greater than the rebates that other Participants are afforded.[23] The Exchange's proposal to exclude orders executed in the Opening Process per Options 3, Section 8, orders that generate an order exposure alert per Options 5, Section 4, and orders transacted in the Price Improvement Auction (''PRISM'') per Options 3, Section 13 from the aforementioned calculation of 25% is reasonable because orders executed in the Opening Process, orders that generate an order exposure alert, and orders transacted in PRISM have separate pricing within Options 7, Sections 2(2), (4) and (5), respectively. The Exchange's proposal to exclude orders executed in the Opening Process, orders that generate an order exposure alert, and orders transacted in PRISM from the aforementioned calculation of 25% is equitable and not unfairly discriminatory as the Exchange will

[16] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[17] As proposed, the 25% calculation will not consider orders within the Opening Process per Options 3, Section 8, orders that generate an order exposure alert per BX Options 5, Section 4, or orders transacted in the Price Improvement Auction (''PRISM'') per Options 3, Section 13.

[18] BOX Exchange LLC (''BOX'') pays no Non-Penny Interval Class Public Customer Maker Rebate. See BOX's Fee Schedule at Section I, A. Cboe Exchange, Inc. (''Cboe'') pays a Non-Penny Class rebate to customers of $0.18 per contract only if the original order is <100 contracts and removing liquidity. See Cboe's Fee Schedule. Cboe C2 Exchange, Inc. (''C2'') pays a Non-Penny Class rebate to customers of $0.80 per contract to transactions which add liquidity. See C2's Fee Schedule. Cboe BZX Exchange, Inc. (''CboeBZX'') pays Non-Penny Program Securities rebates to customers which range from $0.85 to $1.06 per contract to transactions which add liquidity. See CboeBZX's Fee Schedule. Cboe EDGX Exchange, Inc. (''CboeEDGX'') pays Non-Penny Program Securities rebates to customers which range from $0.01 to $0.21 based on customer volume tiers. See CboeEDGX's Fee Schedule. Miami International Securities Exchange, LLC (''MIAX'') pays no customer rebate for non-penny classes. *See* MIAX's Fee Schedule. MIAX PEARL, LLC (''PEARL'') pays Priority Customer Non-Penny Classes Maker Rebates which range from $0.85 to $1.04 based on volume. *See* PEARL's Fee Schedule. MIAX Emerald, LLC (''EMERALD'') pays Priority Customer Maker Rebates which range from $0.43 to $0.53, except that SPY, QQQ and IWM rebates are $0.45 and Priority Customer Simple Order rebates when contra is an Affiliated Market Maker are $0.49. *See* EMERALD's Fee Schedule. NYSE Arca, Inc. (''NYSEArca'') pays a Customer a $0.75 rebate to post liquidity unless contra a lead market maker, in which case no rebate is paid. *See* NYSE Arca Options Fees and Charges. NYSE American LLC (''NYSEAmerican'') pays no Customer rebates. *See* NYSE American Options Fee Schedule. The Nasdaq Stock Market LLC (''NOM'') pays an $0.80 per contract Customer Non-Penny Symbol Rebate and in some cases $1.00, or $1.05 if other criteria are met. *See* NOM's Pricing Schedule. Nasdaq Phlx LLC (''Phlx'') pays Customer Non-Penny rebates which range from $0.00 to $0.27. See Phlx's Pricing Schedule. Nasdaq ISE, LLC ('ISE'') pays no Non-Penny Priority Customer rebates. See ISE's Pricing Schedule. Nasdaq GEMX, LLC (''GEMX'') pays Priority Customer Non-Penny Symbol Maker Rebates which range from $0.25 to $0.70. See GEMX's Pricing Schedule. Nasdaq MRX, LLC ('MRX'') pays no Priority Customer Non-Penny Symbol rebates. See MRX's Pricing Schedule.

[19] *Id.*

[20] Non-Customer orders are assessed a $1.10 Non-Penny Symbol Taker Fee.

[21] A Non-Customer includes a Professional, Broker-Dealer and Non-BX Options Market Maker. See BX Options 7, Section 1.

[22] *See* Options 3, Section 10.

[23] Today, Lead Market Makers are paid $0.45 per contract Non-Penny Symbol Maker Rebates and Market Maker are paid $0.40 per contract Non-Penny Symbol Maker Rebates. Firms and Non-Customers are not eligible for Non-Penny Symbol Maker Rebates and instead are charged a Maker Fee of $0.45 per contract.

uniformly exclude these orders from the aforementioned calculation of 25%.

The Exchange's proposal to amend the Customer Non-Penny Symbol Maker Rebate of $0.90 per contract for adding liquidity in Non-Penny Symbols, regardless of contra-party and, instead, pay a $0.45 per contract Customer Non-Penny Symbol Maker Rebate if the quantity of transactions where the contra-side is also a Customer is greater than 25% of Participant's total Customer Non-Penny Symbol volume which adds liquidity [24] in that month is equitable and not unfairly discriminatory. The Exchange would uniformly apply the criteria to all Customer orders to determine the applicable rebate.

The Exchange's proposal to pay a lower $0.45 per contract Customer Non-Penny Symbol Maker Rebate when a Participant executes against a Customer more than 25% of that Participant's total Customer Non-Penny Symbol volume which adds liquidity in a month is equitable and not unfairly discriminatory. The Exchange noted above that when Non-Penny Customers interact with other Non-Penny Customer orders more than by happenstance, the Exchange believes it is reasonable to pay Customer orders which add liquidity a lower rebate. The Exchange also noted that Participants do occasionally submit Non-Penny Customer orders which add liquidity in Non-Penny Symbols to the order book that trade against Non-Penny Customer orders that remove liquidity in Non-Penny Symbols. The Exchange believes that type of behavior occurs, by happenstance, a small percentage of the time in a given month. Therefore, the Exchange believes that it is equitable and not unfairly discriminatory to pay a lower rebate to Non-Penny Customer orders which interact with other Non-Penny Customer orders more than by happenstance, because the Exchange's intention to enhance Non-Customer liquidity is subverted. In addition, the Exchange notes that Customers may continue to receive the highest Non-Penny Symbol Maker Rebate paid by BX,[25] provided they do not execute greater than 25% of that Participant's total Customer Non-Penny Symbol volume which adds liquidity in a month.

The Exchange's proposal to amend Options 7, Section 2(1) to add a new note ''*'' which makes clear that orders executed in the Opening Process per Options 3, Section 8, orders that generate an order exposure alert per Options 5, Section 4, and orders transacted in the Price Improvement Auction (''PRISM'') per Options 3, Section 13 are not subject to Options 7, Section 2(1) pricing, rather, these orders are subject to the pricing within Options 7, Sections 2(2), (4) and (5), respectively, is reasonable, equitable and not unfairly discriminatory. The Exchange believes that this rule text will be informative in guiding Participants to the correct pricing within Options 7, Section 2 which applies to a specific transaction. This new note ''*'' does not represent a substantive change. The proposed new note ''*'' is intended to serve as a guidepost to Participants referring to the BX Pricing Schedule.

Options 7, Section 2(2)

The Exchange's proposal to amend the title of Options 7, Section 2(2) from ''Opening Cross'' to ''Opening Process per Options 3, Section 8,'' as well as similar changes throughout Options 7, Section 2(2), is reasonable, equitable and not unfairly discriminatory. The amendment is non-substantive. The proposed title will align with the title of Options 3, Section 8.

The Exchange's proposal to amend the pricing within Options 7, Section 2(2) is reasonable, equitable and not unfairly discriminatory for the below reasons.

Penny Symbols

Customers

The Exchange believes that the proposed Opening Process Customer pricing in Penny Symbols is reasonable. Previously, during the Opening Cross, Customer orders received a Rebate to Remove Liquidity, unless the contra-side was also a Customer, in which case no Fee to Remove Liquidity was assessed and no Rebate to Remove Liquidity was received. Previously, during the Opening Cross, BX paid a Penny Symbol Rebate to Remove Liquidity when trading against a Non-Customer, Lead Market Maker, BX Options Market Maker, Customer or Firm which ranged from $0.00 to $0.35 per contract.[26] The proposed new pricing which would be applicable to the Exchange's Opening Process would pay Customers a Maker Rebate of $0.30 per contract, unless the contra-side is also a Customer, in which case a Maker Rebate would not be paid and a Taker Fee would not be assessed. The proposed new Penny Symbol Customer Maker Rebate of $0.30 per contract would pay Participants that previously qualified for now defunct Tiers 1 and 2 [27] a higher Customer rebate than was previously paid. Participants that qualified for now defunct Tier 3 would receive a lower Customer rebate than was previously paid, provided the contra-side was not a Customer. Previously, during the Opening Cross, no Rebate was paid to Remove Liquidity when a Customer was contra another Customer. With the proposed pricing, during the Opening Process, when a Customer is contra another Customer a Maker Rebate would not be paid and a Taker Fee would not be assessed. The Exchange believes that the proposed pricing will continue to attract order flow to BX because, during the Opening Process, unlike other market participants Customers will continue to receive rebates, except if the Customer order trades against another Customer order. Furthermore, Customers would not be assessed a fee during the Opening Process. During the Opening Process, the Exchange desires to attract Customer liquidity, similar to intra-day, and therefore continuing to pay Customer orders a rebate, provided the Customer order is not contra another customer order is reasonable. Also, during the Opening Process, when a Customer order is contra another Customer order, the Exchange notes that neither Customer order is assessed a Taker Fee. The Exchange believes that it is reasonable to not pay each Customer order a Maker Rebate in these circumstances when no Taker Fees are being assessed to those Customer orders. Finally, the Exchange notes that the Opening Process seeks liquidity for price discovery and therefore the incentives are distinct from trading intra-day, where Participants have an opportunity to interact with the order book. Also, the Exchange believes that the Non-Penny Symbol Customer pricing during the Opening Process remains competitive.[28]

[24] As proposed, the 25% calculation will not consider orders within the Opening Process per Options 3, Section 8, orders that generate an order exposure alert per BX Options 5, Section 4, or orders transacted in the Price Improvement Auction (''PRISM'') per Options 3, Section 13.

[25] *Id.*

[26] Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month received no Penny Symbol Rebate to Remove Liquidity in Tier 1. Participants that executed 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month received a $0.25 per contract Penny Symbol Rebate to Remove Liquidity in Tier 2. Participants that executed 0.15% or more of total industry customer equity and ETF option ADV contracts per month received a $0.35 per contract Penny Symbol Rebate to Remove Liquidity in Tier 3.

[27] The Prior Fee Change eliminated Tiers 1–3 described herein.

[28] NYSEArca currently assesses Customers a Take Liquidity fee of $0.49 per contract in Penny Issues. *See* NYSEArca Options Fees and Charges, Transaction Fee for Electronic Executions—Per Contract.

Lead Market Makers and Market Makers

The Exchange believes that the proposed Opening Process Lead Market Maker and Market Maker pricing in Penny Symbols is reasonable. Previously, during the Opening Cross, Lead Market Makers and Options Market Makers were assessed the Fee to Remove Liquidity. During the Opening Cross, Lead Market Makers and Market Makers previously paid a Penny Symbol Fee to Remove Liquidity when trading against a Customer which ranged from $0.39 to $0.30 per contract [29] and paid a Penny Symbol Fee to Remove Liquidity when trading against a Non-Customer, Lead Market Maker, BX Options Market Maker or Firm of $0.46 per contract, regardless of tier.[30] With the proposed new Opening Process pricing, the Penny Symbol Taker Fee for Lead Market Maker and Market Maker orders of $0.46 per contract would be higher than the prior Lead Market Maker and Market Maker tiered Penny Symbol Fee to Remove Liquidity when trading against a Customer which ranged from $0.39 to $0.30 per contract and would be the same as the current Lead Market Maker and Market Maker tiered Penny Symbol Fees to Remove Liquidity when trading against a Non-Customer, Lead Market Maker, Options Market Maker or Firm of $0.46 per contract regardless of tier. With the proposed new pricing, Lead Market Makers and Market Makers would not receive Maker Rebates during the Opening Process. The Exchange believes its proposed pricing will continue to attract liquidity because the pricing remains competitive with other pricing.[31]

Non-Customers and Firms

The Exchange believes that the proposed Opening Process Non-Customer and Firm pricing in Penny Symbols is reasonable. Previously, during the Opening Cross, Non-Customers and Firms were assessed the Fee to Remove Liquidity. The prior Penny Symbol Fee to Remove Liquidity was a flat fee of $0.46 per contract. The proposed new Penny Symbol Taker Fee of $0.46 per contract would be the same as the prior Penny Symbol Fee to Remove Liquidity of $0.46 per contract. With this pricing, Non-Customers and Firms would not receive Maker Rebates during the Opening Process. The Exchange believes its proposed pricing will continue to attract liquidity because the pricing remains competitive with other pricing.[32]

Non-Penny Symbols

Customers

The Exchange believes that the proposed Opening Process Customer pricing in Non-Penny Symbols is reasonable. Previously, during the Opening Cross, Customer orders received a Rebate to Remove Liquidity, unless the contra-side was also a Customer, in which case no Fee to Remove Liquidity was assessed and no Rebate to Remove Liquidity was received. Previously, during the Opening Cross, BX paid a Non-Penny Symbol Customer Rebate to Remove Liquidity of $0.80 per contract,[33] regardless of the tier and regardless of the contra-party. The proposed new pricing would similarly pay Customers a Maker Rebate during the Exchange's Opening Process, unless the contra-side is also a Customer, in which case a Maker Rebate would not be paid and a Taker Fee would not be assessed. The proposed new Non-Penny Symbol Customer Maker Rebate of $0.90 per contract during the Opening Process would be higher than the prior rebates, provided the contra-side is not a Customer. Previously, during the Opening Cross, no Rebate to Remove Liquidity was paid when a Customer was contra another Customer. With the proposed new pricing, during the Opening Process, when a Customer is contra another Customer a Maker Rebate would not be paid and a Taker Fee would not be assessed. The Exchange believes that the proposed pricing will continue to attract order flow to BX because, during the Opening Process, unlike other market participants Customers will continue to receive rebates, except if the Customer is contra another Customer order, and Customers would not be assessed a fee during the Opening Process. The Exchange believes that it is reasonable to not pay a Customer a rebate during the Opening Process if the Customer is contra another Customer because unlike intra-day trading where Participants have the opportunity to interact with the order book, the Opening Process seeks liquidity for price discovery and therefore the incentives are distinct from the trading intra-day. Also, the Exchange believes that the Non-Penny Symbol Customer pricing during the Opening Process remains competitive.[34]

Lead Market Makers and Market Makers

The Exchange believes that the proposed Opening Process Lead Market Maker and Market Maker pricing in Non-Penny Symbols is reasonable. Previously, during the Opening Cross, Lead Market Makers and BX Options Market Makers were assessed the Fee to Remove Liquidity. Previously, during the Opening Cross, Lead Market Makers and Market Makers paid an $0.89 per contract Non-Penny Fee to Remove Liquidity when the Lead Market Maker or Market Maker traded with any market participant other than a Customer.[35] Previously, during the Opening Cross, if the contra-party was a Customer, the Lead Market Maker and Market Maker were charged a Fee to Remove Liquidity that ranged from $0.89 to $0.60 per contract depending on the volume tier

[29] Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.39 per contract in Tier 1. Participants that execute 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.39 per contract in Tier 2. Participants that execute 0.15% or more of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.30 per contract in Tier 3.

[30] Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.46 per contract in Tier 1. Participants that execute 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.46 per contract in Tier 2. Participants that execute 0.15% or more of total industry customer equity and ETF option ADV contracts per month pay a Penny Symbol Fee to Remove Liquidity of $0.46 per contract in Tier 3.

[31] NYSEArca currently assesses LMMs and NYSE Arca Maker Makers a Take Liquidity fee of $0.50 per contract in Penny Issues. *See* NYSEArca Options Fees and Charges, Transaction Fee for Electronic Executions—Per Contract.

[32] NYSEArca assesses all market participants except Customers a Take Liquidity fee of $0.50 per contract in Penny Issues. *See* NYSEArca's Options Fees and Charges, Transaction Fee for Electronic Executions—Per Contract.

[33] Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month received an $0.80 per contract Non-Penny Symbol Rebate to Remove Liquidity in Tier 1. Participants that executed 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month received an $0.80 per contract Non-Penny Symbol Rebate to Remove Liquidity in Tier 2. Participants that executed 0.15% or more of total industry customer equity and ETF option ADV contracts per month received an $0.80 per contract Non-Penny Symbol Rebate to Remove Liquidity in Tier 3.

[34] NYSEArca currently assesses Customers a Take Liquidity fee of $1.10 per contract in Non-Penny Issues. *See* NYSEArca Options Fees and Charges, Transaction Fee for Electronic Executions—Per Contract.

[35] Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 1. Participants that executed 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 2. Participants that executed 0.15% or more of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 3.

achieved.[36] The proposed new Taker Fee of $1.10 per contract for removing liquidity for Lead Market Makers and Market Makers in Non-Penny Symbols, during the Opening Process, regardless of contra-party would be higher than the prior fees assessed to Lead Market Makers and Market Makers for removing liquidity in Non-Penny Symbols. With the proposed new pricing, during the Opening Process, Lead Market Makers and Market Makers would not be subject to Maker Rebates. The Exchange believes that the Non-Penny Symbol Lead Market Maker and Market Maker pricing during the Opening Process remains competitive.[37]

Non-Customers and Firms

The Exchange believes that the proposed Opening Process Non-Customer and Firm pricing in Non-Penny Symbols is reasonable. Previously, during the Opening Cross, Non-Customers and Firms were assessed the Non-Penny Symbol Fee to Remove Liquidity. During the Opening Cross, the prior Non-Penny Symbol Fee to Remove Liquidity was a flat fee of $0.89 per contract. During the Opening Process, the proposed new Non-Penny Symbol Taker Fee of $1.10 per contract for removing liquidity for Non-Customers and Firms in Non-Penny Symbols would be higher than the prior Fee to Remove Liquidity. With this pricing, Non-Customers and Firms would not receive Maker Rebates during the Opening Process. The Exchange believes that the Non-Penny Symbol Non-Customer and Firm pricing during the Opening Process remains competitive.[38]

The Exchange's proposal to amend the Opening Process pricing is equitable and not unfairly discriminatory. During the Opening Process, Customers will continue to receive rebates, unlike other market participants, except if the Customer is contra another Customer order. Also, unlike other Participants, Customers would not be assessed a fee during the Opening Process. The Exchange believes that it is equitable and not unfairly discriminatory to pay rebates to Customers, provided they are not contra another customer, and not assess fees to Customers, because unlike other Participants, Customer liquidity benefits all market participants by offering additional trading opportunities. Additionally, Market Makers seeking to interact with Customer liquidity are incentivized to tighten quote spreads to interact with the order flow. With respect to Customer orders during the Opening Process that are contra other Customer orders, the Exchange would not pay the Customer a rebate, nor would the Customer be assessed a fee, unlike other Non-Customer Participants who would pay a fee during the Opening Process. While the Exchange desires to attract Customer liquidity during the Opening Process, unlike intra-day trading where Participants have the opportunity to interact with the order book, the Opening Process seeks liquidity for price discovery and therefore the incentives are distinct from the trading intra-day. Finally, the Exchange's proposal will uniformly assess all Non-Customers the same Taker Fee and pay no Maker Rebates to these Participants during the Opening Process.

Options 7, Section 2(5)

The Exchange's proposal to add the words ''per Options 3, Section 13'' at the end of the title to Options 7, Section 2(5) is reasonable, equitable and not unfairly discriminatory. This non-substantive amendment simply provides the citation to the BX Price Improvement Auction rule.

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.

Inter-market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. 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 options 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.

Intra-market Competition

Options 7, Section 2(1)

The Exchange's proposal to amend the Customer Non-Penny Symbol Maker Rebate of $0.90 per contract for adding liquidity in Non-Penny Symbols, regardless of contra-party and, instead, pay a $0.45 per contract Customer Non-Penny Symbol Maker Rebate if the quantity of transactions where the contra-side is also a Customer is greater than 25% of Participant's total Customer Non-Penny Symbol volume which adds liquidity [39] in that month does not impose an undue burden on competition as the Exchange would uniformly apply the criteria to all Customer orders to determine the applicable rebate. The Exchange's proposal to exclude orders executed in the Opening Process, orders that generate an order exposure alert, and orders transacted in PRISM from the aforementioned calculation of 25% does not impose an undue burden on competition as the Exchange will uniformly exclude these orders from the aforementioned calculation of 25%.

The Exchange's proposal to pay a lower $0.45 per contract Customer Non-Penny Symbol Maker Rebate when a Participant executes against a Customer more than 25% of that Participant's total Customer Non-Penny Symbol volume which adds liquidity in a month does not impose an undue burden on competition. Customers may continue to be able to achieve the highest Non-Penny Symbol Maker Rebate paid by BX,[40] provided they do not execute greater than 25% of that Participant's total Customer Non-Penny Symbol volume which adds liquidity in a month.

The Exchange's proposal to amend Options 7, Section 2(1) to add a new note ''*'' which makes clear that orders executed in the Opening Process per Options 3, Section 8, orders that

[36] Participants that executed less than 0.05% of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 1. Participants that executed 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month paid an $0.89 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 2. Participants that executed 0.15% or more of total industry customer equity and ETF option ADV contracts per month paid a $0.60 per contract Non-Penny Symbol Fee to Remove Liquidity in Tier 3.

[37] NYSEArca assesses LMMs and NYSE Arca Market Makers a Take Liquidity fee of $1.10 per contract in Non-Penny Issues. *See* NYSEArca Options Fees and Charges.

[38] NYSEArca assesses all market participants except Customers a Take Liquidity fee of $1.10 per contract in Non-Penny Issues. *See* NYSEArca Options Fees and Charges.

[39] As proposed, the 25% calculation will not consider orders within the Opening Process per Options 3, Section 8, orders that generate an order exposure alert per BX Options 5, Section 4, or orders transacted in the Price Improvement Auction (''PRISM'') per Options 3, Section 13.

[40] *Id.*

generate an order exposure alert per Options 5, Section 4, and orders transacted in the Price Improvement Auction (''PRISM'') per Options 3, Section 13 are not subject to Options 7, Section 2(1) pricing, rather these orders are subject to the pricing within Options 7, Sections 2(2), (4) and (5), respectively, does not impose an undue burden on competition. This amendment is non-substantive. The Exchange believes that this rule text will be informative in guiding Participants to the correct pricing within Options 7, Section 2 which applies to a specific transaction.

Options 7, Section 2(2)

The Exchange's proposal to amend the Opening Process pricing does not impose an undue burden on competition. During the Opening Process, Customers would continue to receive rebates, unlike other market participants, except if the Customer is contra another Customer order. Also, unlike other Participants, Customers would not be assessed a fee during the Opening Process. Paying rebates to Customers, provided they are not contra another customer, and not assessing fees to Customers does not impose an undue burden on competition, because unlike other Participants, Customer liquidity benefits all market participants by offering additional trading opportunities. Additionally, Market Makers seeking to interact with Customer liquidity are incentivized to tighten quote spreads to interact with the order flow. With respect to Customer orders during the Opening Process that are contra other Customer orders, the Exchange would not pay the Customer a rebate, nor would the Customer be assessed a fee, unlike other Non-Customer Participants who would pay a fee during the Opening Process. While the Exchange desires to attract Customer liquidity during the Opening Process, unlike intra-day trading where Participants have the opportunity to interact with the order book, the Opening Process seeks liquidity for price discovery and therefore the incentives are distinct from the trading intra-day. Finally, the Exchange's proposal will uniformly assess all Non-Customers the same Taker Fee and pay no Maker Rebates to these Participants during the Opening Process.

Options 7, Section 2(5)

The Exchange's proposal to add the words ''per Options 3, Section 13'' at the end of the title to Options 7, Section 2(5) does not impose an undue burden on competition. This non-substantive rule change simply provides the citation to the BX Price Improvement Auction rule.

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[41] and paragraph (f) of Rule 19b–4 thereunder.[42]

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 email to *rule-comments@sec.gov.* Please include File Number SR–BX–2021–015 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–2021–015. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549–1090, 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–2021–015 and should be submitted on or before May 21, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–09021 Filed 4–29–21; 8:45 am]

BILLING CODE 8011–01–P

[41] 15 U.S.C. 78s(b)(3)(A)(ii).

[42] 17 CFR 240.19b–4(f)(2).

[43] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91677; File No. SR–NASDAQ–2021–021]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend The Nasdaq Options Market's Pricing Schedule at Options 7, Section 1, General Provisions, and Options 7, Section 2, Nasdaq Options Market—Fees and Rebates

April 26, 2021.

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 April 13, 2021, The Nasdaq Stock Market LLC (''Nasdaq'' 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

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

[2] 17 CFR 240.19b–4.