

Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2019-026 and should be submitted on or before June 5, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Eduardo A. Aleman,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85820; File No. SR-NYSEArca-2019-30]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the NYSE Arca Options Fee Schedule

May 9, 2019.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on April 30, 2019, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 modify the NYSE Arca Options Fee Schedule (“Fee Schedule”). The Exchange proposes to implement the fee change effective May 1, 2019. The proposed rule change is available on the Exchange’s website at www.nyse.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 self-regulatory organization 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 those 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 parts of such statements.

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

1. Purpose

The purpose of this filing is to modify the Fee Schedule, effective May 1, 2019, to provide an additional method for Market Makers to qualify for enhanced posting credits in Penny Pilot issues and SPY. The filing will also eliminate a program that is no longer effective.

The Exchange currently provides a number of incentives for Market Makers and Lead Market Makers (collectively, “Market Makers”) to achieve posting credits that are higher than the base posting credit of \$0.28 per contract in Penny Pilot issues and SPY.⁴ Among these incentives are enhanced posted liquidity credits based on achieving certain percentages of NYSE Arca Equity daily activity, also known as “cross-asset pricing.” Similarly, because the Exchange allows Market Makers to aggregate their volume executed on NYSE Arca with Affiliated or Appointed Order Flow Providers (“OFPs”), Market Makers may encourage an increased level of activity from these participants to qualify for various incentives. As a result, the Exchange becomes a more attractive venue for Customer (and Professional Customer) orders offering enhanced rebates. Pursuant to the Market Maker Penny Pilot and SPY Posting Credit Tiers (the “Penny Credit Tiers”), Market Maker orders and quotes that post liquidity and are executed on the Exchange earn a base credit of \$0.28 per contract, and may be eligible for increased credits based on the participant’s activity. Currently, in addition to the base, there are three

Penny Credit Tiers, with increasing minimum volume thresholds (as well as increasing credits) associated with each tier: The Select Tier, the Super Tier and the Super Tier II.

The Exchange proposes to add a new (third) alternative qualification volume threshold for Super Tier II, but will not modify the \$0.42 per contract credit associated with this Tier.⁵ Specifically, the proposed alternative method of qualifying would require a Market Maker to achieve at least 0.10% of Total Customer Average Daily Volume (“TCADV”) from Market Maker posted interest in all issues, plus at least 0.42% of executed Average Daily Volume (“ADV”) of Retail Orders of U.S. Equity Market Share Posted and Executed on NYSE Arca Equity Market.⁶ This proposed change seeks to incent Market Makers to achieve this Tier by increasing trading on the equities market (while making the Tier easier to achieve based on a lower minimum threshold for options trading activity).

The Exchange also currently offers a special rate of \$0.12 per contract Firm and Broker Dealer orders in manual executions of VXX that are not facilitating a Customer or Professional Customer (the “Program”). The Exchange has decided to discontinue the Program as it did not attract additional participation or volume to the Exchange and therefore proposes to delete all references to the Program and the associated rate. The proposed change would add clarity, transparency and internal consistency to the program.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act, in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly

⁵ The Exchange is not modifying the existing (two) alternative bases for a Market Maker to achieve Super Tier II, which require (1) a Market Maker to execute at least 0.20% of TCADV from Market Maker posted interest in all issues, plus ETP Holder and Market Maker posted volume in Tape B Securities (“Tape B Adding ADV”) that is equal to at least 1.50% of US Tape B consolidated average daily volume (“CADV”) for the billing month executed on NYSE Arca Equity Market; or (2) at least 1.60% of TCADV from Market Maker interest in all issues, with at least 0.90% of TCADV from Market Maker posted interest in all issues.

⁶ For purposes of calculating the executed ADV of Retail Orders of U.S. Equity Market Share on the NYSE Arca Equity Market, a Retail Order must qualify for the Retail Order Tier set forth in the NYSE Arca Equities Fee Schedule.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ The base credit is available for executions of Market Maker posted interest in Penny Pilot Issues and SPY and has no minimum volume threshold requirement.

discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed modification to Super Tier II is reasonable, equitable, and not unfairly discriminatory because offering a third alternative qualification basis should encourage more participants to qualify for the various Tiers, particularly those like Super Tier II that have a cross-asset pricing component. The proposed modification to Super Tier II, which would be available to all similarly-situated market participants on an equal and non-discriminatory basis, should incent Market Makers to increase trading on the equities market, while making it easier to meet the requisite volume threshold in options trading for this Tier. The Exchange notes that Market Makers are still eligible to qualify for Super Tier II under the existing alternatives (*see supra* note 5) based on posted Market Maker Electronic volume and overall volume, or by executing Posted Interest coupled with Tape B activity on the NYSE Arca Equity Market. By continuing to provide such alternative methods to qualify for a Tier, and adding an additional method, the Exchange believes the opportunities to qualify for credits is increased, which benefits all participants through increased Market Maker activity. Further, encouraging Market Maker activity on the Exchange would also contribute to the Exchange's depth of book as well as to the top of book liquidity.

To the extent that Market Maker activity that adds liquidity is increased by the proposal, market participants will increasingly compete for the opportunity to trade on the Exchange. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes the proposed modification is reasonable, equitable and not unfairly discriminatory because it would encourage participants to enhance their order flow to interact with Market Maker orders and quotes, which potential increase in order flow would benefit all market participants by improving order execution and price discovery, which, in turn, promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system.

Finally, the proposal to eliminate the Program is reasonable and equitable, and not unfairly discriminatory because the Exchange has decided to discontinue the Program, which is based on business conducted on the Exchange in a particular symbol, and therefore would impact all similarly-situated market participants equally. The Exchange proposes to delete all references to the Program and the associated rate, which would add clarity and transparency to the Fee Schedule making it easier to navigate to the benefit of the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed changes would encourage competition, including by attracting additional liquidity to the Exchange, which would continue to make the Exchange a more competitive venue for, among other things, order execution and price discovery. The Exchange does not believe that the proposed changes would impair the ability of any market participants or competing order execution venues to maintain their competitive standing in the financial markets. Further, the incentive would be available to all similarly-situated participants, and, as such, the proposed changes would not impose a disparate burden on competition either among or between classes of market participants and may, in fact, encourage competition.

The proposal to eliminate the Program is reasonable and equitable, and not unfairly discriminatory because the Exchange has decided to discontinue the Program, which is based on business conducted on the Exchange in a particular symbol, and therefore would impact all similarly-situated market participants equally.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)⁷ of the Act and subparagraph (f)(2) of Rule 19b-4⁸ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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-NYSEArca-2019-30 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-NYSEArca-2019-30. 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

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(2).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2019-30 and should be submitted on or before June 5, 2019.

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

Eduardo A. Aleman,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85811; File No. SR-BX-2019-011]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing of Proposed Rule Change To Make Permanent the Pilot Program for the Exchange's Retail Price Improvement Program, Which Is Set To Expire on June 30, 2019

May 9, 2019.

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 26, 2019 Nasdaq BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to make permanent the pilot program for the Exchange's Retail Price Improvement ("RPI") Program (the "Program" or "BX RPI Program"), which is set to expire the earlier of approval of the filing to make this rule permanent or June 30, 2019.

The text of the proposed rule change is available on the Exchange's website at <http://nasdaqbx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to make permanent the Exchange's pilot RPI Program,³ currently scheduled to expire the earlier of approval of the filing to make this rule permanent or June 30, 2019.

Background

In November 2014, the Commission approved the RPI Program on a pilot basis.⁴ The Program is designed to

³ Securities Exchange Act Release No. 73702 (November 28, 2014), 79 FR 72049 (December 4, 2014) (SR-BX-2014-048) ("RPI Approval Order"). In addition to approving the RPI Program on a pilot basis, the Commission granted the Exchange's request for exemptive relief from Rule 612 of Regulation NMS, 17 CFR 242.612 ("Sub-Penny Rule"), which among other things prohibits a national securities exchange from accepting or ranking orders priced greater than \$1.00 per share in an increment smaller than \$0.01. *See id.* As part of this filing, and pursuant to the Exchange's separate written request, the Exchange also requests that the exemptive relief from the Sub-Penny Rule be made permanent. *See* Letter from Jeffrey S. Davis, Vice President and Deputy General Counsel, Nasdaq BX, Inc. to Eduardo A. Aleman, Deputy Secretary, Securities and Exchange Commission dated April 26, 2019.

⁴ *See id.*

attract retail order flow to the Exchange, and allow such order flow to receive potential price improvement. The Program is currently limited to trades occurring at prices equal to or greater than \$1.00 per share. Under the Program, a class of market participant called a Retail Member Organization ("RMO") is eligible to submit certain retail order flow ("Retail Orders")⁵ to the Exchange. BX members ("Members") are permitted to provide potential price improvement for Retail Orders in the form of non-displayed interest that is priced more aggressively than the Protected National Best Bid or Offer ("Protected NBBO").⁶

The Program was approved by the Commission on a pilot basis running one-year from the date of implementation.⁷ The Commission approved the Program on November 28, 2014.⁸ The Exchange implemented the Program on December 1, 2014 and the pilot has since been extended for a one-year period twice, as well as for a six-month period twice, with it now scheduled to expire the earlier of approval of the filing to make this rule permanent or June 30, 2019.⁹

Specifically, BX Rule 4780 will be amended to delete 4780(h) that says the Program is a pilot and that it is scheduled to expire the earlier of

⁵ A "Retail Order" is defined in BX Rule 4780(a)(2) by referencing BX Rule 4702, and BX Rule 4702(b)(6) says it is an order type with a non-display order attribute submitted to the Exchange by an RMO. A Retail Order must be an agency order, or riskless principal order that satisfies the criteria of FINRA Rule 5320.03. The Retail Order must reflect trading interest of a natural person with no change made to the terms of the underlying order of the natural person with respect to price (except in the case of a market order that is changed to a marketable limit order) or side of market and that does not originate from a trading algorithm or any other computerized methodology.

⁶ The term Protected Quotation is defined in Chapter XII, Sec. 1(19) and has the same meaning as is set forth in Regulation NMS Rule 600(b)(5)(8). The Protected NBBO is the best-priced protected bid and offer. Generally, the Protected NBBO and the national best bid and offer ("NBBO") will be the same. However, a market center is not required to route to the NBBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBBO is otherwise not available for an automatic execution. In such case, the Protected NBBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.

⁷ *See* RPI Approval Order, *supra* note 3 at 72053.

⁸ *Id.* at 72049.

⁹ *See* Securities Exchange Act Release No. 76490 (November 20, 2015), 80 FR 74165 (November 27, 2015) (SR-BX-2015-073); Securities Exchange Act Release No. 79446 (December 1, 2016), 81 FR 88290 (December 7, 2016) (SR-BX-2016-065); Securities Exchange Act Release No. 82192 (December 1, 2017), 82 FR 57809 (December 7, 2017) (SR-BX-2017-055); Securities Exchange Act Release No. 83539 (June 28, 2018), 83 FR 31203 (July 3, 2018) (SR-BX-2018-026); and Securities Exchange Act Release No. 84847 (Dec. 18, 2018), 83 FR 66326 (Dec. 26, 2018) (SR-BX-2018-063).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.