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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90120; File No. SR-BX-2020-028]

### **Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Eliminate the fee for BX's TradeInfo Interface in Options 7**

October 9, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 30, 2020, 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 eliminate the fee for BX's TradeInfo interface in Options 7 in connection with decommissioning this functionality, and to credit any TradeInfo fees paid by Participants for the month of September 2020.

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.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

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

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

1. Purpose

The purpose of the proposed rule change is to eliminate the fee for BX's TradeInfo interface in Options 7 in connection with decommissioning this functionality, and to credit any TradeInfo fees paid by Participants for the month of September 2020.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on October 1, 2020.

TradeInfo is a user interface which permits a Participant to: (i) search all orders submitted in a particular security or all orders of a particular type, regardless of their status (open, canceled, executed, etc.); (ii) cancellation of open orders at the order, port or firm mnemonic level; (iii) a view of orders and executions; and (iv) download of orders and executions for recordkeeping purposes.<sup>3</sup> The Exchange notes that this interface is not utilized by BX Participants at this time<sup>4</sup> and has therefore separately filed to decommission TradeInfo effective September 14, 2020 to

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<sup>3</sup> See Options 3, Section 23(b)(2).

<sup>4</sup> There are five Participants currently billed for TradeInfo, but no Participant logged into TradeInfo in 2020, including these five Participants.

coincide with the BX technology migration to enhanced Nasdaq, Inc. functionality.<sup>5</sup> As noted in that filing, information that is currently available within TradeInfo can be obtained from FIX,<sup>6</sup> FIX Drop<sup>7</sup> and the Clearing Trade Interface,<sup>8</sup> which are available to all Participants.<sup>9</sup>

In connection with retiring TradeInfo on September 14, 2020, the Exchange proposes to eliminate the associated TradeInfo BX Interface Fee of \$95 per user, per month set forth in Options 7, Section 3(ii), to be effective on October 1, 2020. The Exchange also proposes to make a similar change in Options 7, Section 7(c)(2), which governs fee disputes, by deleting the reference to the TradeInfo fee therein.

The Exchange notes that TradeInfo fees are assessed in full month increments and are not prorated.<sup>10</sup> Consequently, by decommissioning TradeInfo on September 14<sup>th</sup>, a Participant subscriber would still be charged the \$95 per user fee for all of September on the October bill.<sup>11</sup>

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<sup>5</sup> See Securities Exchange Act Release No. 89819 (September 10, 2020), 85 FR 57893 (September 16, 2020) (SR-BX-2020-027). The Exchange has also issued an Options Trader Alert to provide notice of TradeInfo's decommission. See Options Trader Alert #2020-23.

<sup>6</sup> "Financial Information eXchange" or "FIX" is an interface that allows Participants and their Sponsored Customers to connect, send, and receive messages related to orders and auction orders and responses to and from the Exchange. Features include the following: (1) execution messages; (2) order messages; and (3) risk protection triggers and cancel notifications. See Options 3, Section 7(d)(1)(A).

<sup>7</sup> FIX DROP is a real-time order and execution update message that is sent to a Participant after an order has been received/modified or an execution has occurred and contains trade details specific to that Participant. The information includes, among other things, the following: (i) executions; (ii) cancellations; (iii) modifications to an existing order and (iv) busts or post-trade corrections. See Options 3, Section 23(b)(3).

<sup>8</sup> The Clearing Trade Interface or "CTI" is a real-time clearing trade update message that is sent to a Participant after an execution has occurred and contains trade details specific to that Participant. The information includes, among other things, the following: (i) The Clearing Member Trade Agreement or "CMTA" or The Options Clearing Corporation or "OCC" number; (ii) Exchange badge or house number; (iii) the Exchange internal firm identifier; (iv) an indicator which will distinguish electronic and non-electronically delivered orders; (v) liquidity indicators and transaction type for billing purposes; and (vi) capacity. See Options 3, Section 23(b)(1).

As noted above, there are five Participants currently billed for TradeInfo, but no Participant is actually using this interface at this time.<sup>12</sup> Accordingly, the Exchange proposes to issue a credit in the same amount the Participant paid in fees for TradeInfo for the month of September 2020. To effect this change, the Exchange proposes to add the following language in Options 7, Section 3(ii): “Any BX Participant that paid the TradeInfo BX Interface Fee of \$95 per user, per month in September 2020 will get an equivalent credit for that month.”

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>13</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>14</sup> 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 believes the elimination of the TradeInfo BX Interface Fee and related rule text is reasonable because the Exchange no longer offers this functionality as of September 14, 2020, thus making the fees irrelevant going forward. As there are still a small number of Participants currently subscribed to TradeInfo, the Exchange believes that it is reasonable to issue an equivalent credit to those Participants that are billed for the TradeInfo fee for the month

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<sup>9</sup> See supra note 5. Today, all Participants have at least FIX, FIX DROP, or CTI.

<sup>10</sup> See Options 7, Section 3.

<sup>11</sup> The Exchange sends a monthly invoice of fees to each Participant the following month. For example, a Participant will be billed in October for subscribing to TradeInfo in September.

<sup>12</sup> See supra note 4.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4) and (5).

of September 2020.<sup>15</sup> As explained above, because TradeInfo fees are currently assessed in full month increments and are not prorated, Participant subscribers would be charged the \$95 per user fee for all of September on their October bill, even though they will not be able to access this service for the full month of September. The Exchange therefore believes that it is reasonable to refund the equivalent amount on the Participant's October bill in the manner proposed above.

The Exchange believes that its proposal to eliminate the TradeInfo fee and related rule text is equitable and not unfairly discriminatory because no BX Participant will be charged the TradeInfo fee going forward under this proposal. As noted above, five Participant subscribers are charged the TradeInfo fee today. To the extent any Participants pay the TradeInfo fee for the month of September 2020, the Exchange is proposing to issue an equivalent credit for that month. Not issuing the proposed credit to Participants that are not currently subscribed to TradeInfo is equitable and not unfairly discriminatory as these Participants would not be charged the TradeInfo fee in the first place. Thus, the Exchange believes that its proposal will not unfairly discriminate among Participants and will be allocated equitably.

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. The proposed fee changes eliminate the fee and related rule text that applied to the TradeInfo interface, which the Exchange no longer offers as of September 14, 2020. As noted above, while there are a very small number of Participants currently subscribed to TradeInfo, no Participants are actually

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<sup>15</sup> See supra note 4.

utilizing this interface at this time.<sup>16</sup> For those few Participants currently subscribed to (and billed for) TradeInfo for the month September 2020, the Exchange is proposing to issue an equivalent credit for that month. By providing a credit in this manner to Participant subscribers and not providing the credit to non-subscriber Participants (who would not be charged the TradeInfo fee in the first place), the Exchange seeks to ensure that all Participants are treated equitably under this proposal. Furthermore, the Exchange notes that the TradeInfo interface is entirely optional, and Participants are able to obtain the information available on TradeInfo from FIX, FIX Drop and CTI, which are available to all Participants. Accordingly, the Exchange does not believe that its proposal imposes any burden on intra-market competition, or places certain market participants at a relative disadvantage compared to other market participants.

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. 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.

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.

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Id.

### 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.<sup>17</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2020-028 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-2020-028. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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-2020-028 and should be submitted on or before **[INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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<sup>18</sup> 17 CFR 200.30-3(a)(12).