

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 that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will facilitate the listing and trading of additional types of actively managed exchange-traded funds that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

Written comments were neither solicited nor received.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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, as modified by Amendment No. 1, 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-NASDAQ-2016-071 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-NASDAQ-2016-071. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use

only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2016-071 and should be submitted on or before June 21, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77892; File No. SR-BX-2016-027]

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options Pricing at Chapter XV, Section 2

May 24, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 19, 2016, NASDAQ BX, Inc. ("BX" or "Exchange")³ filed with the Securities and Exchange Commission ("SEC" or

"Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend its Options Pricing at Chapter XV, Section 2, entitled "BX Options Market—Fees and Rebates," which governs pricing for BX members using the BX Options Market ("BX Options"). The Exchange proposes to modify certain fees (per executed contract) applicable [sic] the Select Symbol Options Tier Schedule for certain Penny Pilot⁴ Options (each a "Select Symbol" and together the "Select Symbols").

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

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

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

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

1. Purpose

The Exchange proposes to amend its Chapter XV, Section 2, to modify the fees⁵ schedule to adopt a Fee to Add Liquidity in the Select Symbol Options⁶

⁴ The Penny Pilot was established in June 2012 and extended in 2015. See Securities Exchange Act Release Nos. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR-BX-2012-030) (order approving BX option rules and establishing Penny Pilot); and 75326 (June 29, 2015), 80 FR 38481 (July 6, 2015) (SR-BX-2015-037) (notice of filing and immediate effectiveness extending the Penny Pilot through June 30, 2016).

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

⁶ Select Symbols represent some of the highest volume Penny Pilot Options traded on the Exchange and in the U.S. The following are Select

²⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange notes that it has legally changed its name to NASDAQ BX, Inc. with the state of Delaware and filed Form 1 reflecting the change, and is in the process of changing its rules to reflect the new name.

Tier Schedule for certain Penny Pilot Options. The proposed Fee to Add Liquidity would apply to BX Options Market Maker⁷ trading with Non-Customer⁸ or BX Options Market Maker, or Firm.⁹

Currently, Chapter XV, Section 2, subsection (1), contains a Select Symbols Options Tier Schedule that has four tiers; and one fee for BX Options Market Maker to add liquidity in Select Symbols Options in a footnote (the “footnote”).¹⁰ The Exchange proposes to delete the footnote and to add a Fee to Add Liquidity as a fifth column in the Select Symbols Options Tier Schedule. The proposed fees are reduced as the Tiers increase from Tier 1 through Tier 4, as discussed in detail below.

Change 1—Penny Pilot Options: Add Fee To Add Liquidity Column to Select Symbols Options Tier Schedule

In Change 1, the Exchange proposes modifications to convert the current footnoted Fee to Add Liquidity to a fifth column in the Select Symbols Options Tier Schedule that is graduated per Tiers 1 through 4. The proposed change will not amend the criteria to qualify for the existing tiers. The proposed change keeps the \$0.04 fee that is in the current footnote and makes it applicable to Tier 3, while proposing new graduated fees for the other three Tiers.

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

⁷ BX Options Market Makers may also be referred to as “Market Makers”. The term “BX Options Market Maker” or (“M”) means a Participant that has registered as a Market Maker on BX Options pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive Market Maker pricing in all securities, the Participant must be registered as a BX Options Market Maker in at least one security. BX Chapter XV.

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

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

¹⁰ The current footnote states: • BX Options Market Maker fee to add liquidity in Select Symbols Options will be \$0.04 when trading with Firm, Non-Customer, or BX Options Market Maker.

Specifically, the Exchange proposes to add a fifth column, Fee to Add Liquidity, to the Select Symbols Options Tier Schedule when BX Options Market Maker trades with Non-Customer or BX Options Market Maker, or Firm. This column will include graduated fees that range from \$0.14 for Tier 1 to \$0.00 for Tier 4,¹¹ as follows.

Tier 1 in the Select Symbols Options Tier Schedule is currently where a BX Participant (“Participant”) executes less than 0.05% of total industry customer equity and exchange traded fund (“ETF”) option average daily volume (“ADV”) contracts per month. Tier 1 ranges from a \$0.00 rebate to a \$0.44 fee, with a proposed \$0.14 Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm.¹²

Tier 2 in the Select Symbols Options Tier Schedule is currently where Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month. Tier 2 ranges from a \$0.25 rebate to a \$0.44 fee, with a proposed \$0.10 Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm.¹³

Tier 3 in the Select Symbols Options Tier Schedule is currently where Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month. Tier 3 ranges from a \$0.37 rebate to a \$0.40 fee, with a proposed \$0.04 Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm.¹⁴ The proposed \$0.04 Fee to Add Liquidity is the same as the fee in the current footnote, except as proposed the fee is graduated according to the four Tiers.

¹¹ As discussed, Tier 4 requires bringing the highest amount of liquidity to the Exchange.

¹² Currently, there is also a \$0.44 Fee to Add Liquidity when BX Options Market Maker is trading with Customer. This fee remains unchanged.

¹³ Currently, there is also a \$0.44 Fee to Add Liquidity when BX Options Market Maker is trading with Customer. This fee remains unchanged.

¹⁴ Currently, there is also a \$0.40 Fee to Add Liquidity when BX Options Market Maker is trading with Customer. This fee remains unchanged.

Tier 4 in the Select Symbols Options Tier Schedule is currently where Participant executes more than 10,000 BX Price Improvement Auction (“PRISM”)¹⁵ Agency Contracts per month; or Participant executes BX Options Market Maker volume of 0.30% or more of total industry customer equity and ETF options ADV per month. If a Participant qualifies for Tier 4 the rates applicable to this tier will supersede any other Select Symbols tier rates that the Participant may qualify for. Tier 4 ranges from a \$0.37 rebate to a \$0.29 fee, with a proposed \$0.00 Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm.¹⁶

Chapter XV, Section 2 subsection (1) reflecting the proposed Select Symbols Options Tier Schedule, with a new Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm, will read as follows:

Sec. 2 BX Options Market—Fees and Rebates

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

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

* * * * *

¹⁵ PRISM is a Price Improvement Mechanism for all-electronic BX Options whereby a buy and sell order may be submitted in one order message to initiate an auction at a stop price and seek potential price improvement. Options are traded electronically on BX Options, and all options participants may respond to a PRISM Auction, the duration of which is set at 200 milliseconds. PRISM includes auto-match functionality in which a Participant (an “Initiating Participant”) may electronically submit for execution an order it represents as agent on behalf of customer, broker dealer, or any other entity (“PRISM Order”) against principal interest or against any other order it represents as agent (an “Initiating Order”) provided it submits the PRISM Order for electronic execution into the PRISM Auction. See Chapter VI, Section 9; and Securities Exchange Act Release No. 76301 (October 29, 2015), 80 FR 68347 (November 4, 2015) (SR-BX-2015-032) (order approving PRISM on BX).

¹⁶ Currently, there is also a \$0.29 Fee to Add Liquidity when BX Options Market Maker is trading with Customer. This fee remains unchanged.

SELECT SYMBOLS OPTIONS TIER SCHEDULE

	Rebate to add liquidity	Fee to add liquidity	Rebate to remove liquidity	Fee to remove liquidity	Fee to add liquidity
When:	Customer	BX Options Market Maker	Customer	BX Options Market Maker	BX Options Market Maker
Trading with:	Non-customer or BX Options Market Maker, or Firm	Customer	Non-customer or BX Options Market Maker, Customer, or Firm	Customer	Non-customer or BX Options Market Maker, or Firm
Tier 1: Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month	\$0.00	\$0.44	\$0.00	\$0.42	\$0.14
Tier 2: Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month	0.10	0.44	0.25	0.42	0.10
Tier 3: Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month	0.20	0.40	0.37	0.39	0.04
Tier 4: Participant executes greater than 10,000 PRISM Agency Contracts per month; or Participant executes BX Options Market Maker volume of 0.30% or more of total industry customer equity and ETF options ADV per month	0.25	0.29	0.37	0.25	0.00

BX Options Select Symbol List

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

- Firm fee to add liquidity and fee to remove liquidity in Select Symbols Options will be \$0.33 per contract, regardless of counterparty.
- Non-Customer fee to add liquidity and fee to remove liquidity in Select Symbols Options will be \$0.46 per contract, regardless of counterparty.
- BX Options Market Maker fee to remove liquidity in Select Symbols Options will be \$0.46 per contract when trading with Firm, Non-Customer, or BX Options Market Maker.
- Customer fee to add liquidity in Select Symbols Options when contra to another Customer is \$0.33 per contract.
- Volume from all products listed on BX Options will apply to the Select Symbols Options Tiers.

* * * * *

The Exchange is proposing fees changes and adopting in the Select Symbols Options Tier Schedule a graduated Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options

Market Maker, or Firm. The Exchange believes that this will provide incentives for execution of more contracts, and in particular Select Symbols Options contracts, on the BX Options Market. The proposed Fee to Add Liquidity incentivizes execution of Select Symbol Options Contracts on the Exchange by the fee being lower for each subsequent higher-level Tier.

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

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act,¹⁸ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

¹⁷ 15 U.S.C. 78f(b).
¹⁸ 15 U.S.C. 78f(b)(4), (5).

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that 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.”¹⁹

Likewise, in *NetCoalition v. Securities and Exchange Commission*²⁰ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.²¹ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”²²

¹⁹ Securities Exchange Act Release No. 51808 (June 29, 2005), 70 FR 37496 at 37499 (File No. S7-10-04) (“Regulation NMS Adopting Release”) [sic].
²⁰ *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).
²¹ See *id.* at 534–535.
²² See *id.* at 537.

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”²³ Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange proposes to amend its Chapter XV, Section 2, to modify certain fees to adopt Fee to Add Liquidity in the Select Symbol Options Tier Schedule for certain Penny Pilot Options. The proposed Fee to Add Liquidity in the Select Symbols Options Tier Schedule would, as discussed, apply where BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm. The Exchange believes that its proposal is reasonable, equitable, and not unfairly discriminatory and should provide increased opportunities for participation in executions on the Exchange, facilitating the ability of the Exchange to bring together participants and encourage more robust competition for orders.

Change 1—Penny Pilot Options: Add Fee To Add Liquidity Column To Select Symbols Options Tier Schedule

In Change 1, the Exchange proposes modifications to convert the current footnoted Fee to Add Liquidity²⁴ to a fifth column in the Select Symbols Options Tier Schedule. The proposed Fee to Add Liquidity is graduated according to Tiers 1 through 4 in the Select Symbols Options Tier Schedule. The proposed change keeps the current \$0.04 fee applicable to Tier 3, and indicates that the fee is reduced as additional liquidity is brought to the Exchange according to Tiers 1 through 4 in the Select Symbols Options Tier Schedule.

Specifically, the Exchange proposes four graduated fees that range from \$0.14 for Tier 1 to \$0.00 for Tier 4.

Tier 1²⁵ currently ranges from a \$0.00 rebate to a \$0.44 fee. The Exchange is proposing in Tier 1 the largest \$0.14 Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm. Tier 2 currently ranges from a \$0.25 rebate to a \$0.44 fee. The Exchange is proposing in Tier 2 a \$0.10 Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm. Tier 3 ranges from a \$0.37 rebate to a \$0.40 fee. The Exchange is proposing in Tier 3 a \$0.04 Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm. The proposed \$0.04 Fee to Add Liquidity is the same as the fee in the current footnote, except as proposed the fee is graduated according to the four Tiers. Tier 4 currently ranges from a \$0.37 rebate to a \$0.29 fee. In Tier 4, the Exchange is proposing the smallest \$0.00 Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm.

The proposed rule change is reasonable because it continues to encourage market participant behavior through the fees and rebates system, which is an accepted methodology among options exchanges.²⁶ Converting the current footnote regarding Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm to the graduated Fee to Add Liquidity is reasonable because of the nature of Select Symbol options. These are the most heavily traded options on the Exchange as well as in the industry. By graduating the proposed Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm, the Exchange is promoting transactions in Select Symbol Options and further promoting options liquidity on the Exchange.

The Exchange believes that the proposed Fee to Add Liquidity in the Select Symbol Options Tier Schedule is reasonable because it is not a novel, untested structure. Rather, the proposed Fee to Add Liquidity is a graduated fees and rebate structure that is similar to what is offered by other options markets²⁷ and is similar to the

Exchange’s existing Select Symbols Options Tier Schedule.²⁸ The proposed fee schedule is, as discussed, graduated according to four Tiers. Thus, the highest proposed Fee to Add Liquidity is applicable to Tier 1, which requires the least amount or [sic] liquidity, and the lowest proposed Fee to Add Liquidity is applicable to Tier 4, which requires the greatest amount of liquidity. The Exchange believes that the higher fees in Tier 1 and 2 (as opposed to the footnote fee of \$0.04, which is proposed in Tier 3) are reasonable because they continue to incentivize bringing liquidity to the Exchange while enabling the Exchange to recoup some of its costs.

The proposed Fee to Add Liquidity that varies according to Tiers in the Select Symbols Options Tier Schedule clearly reflects the progressively increasing nature of Participant executions structured for the purpose of attracting order flow to the Exchange. This encourages market participant behavior through progressive tiered fees and rebates using an accepted methodology among options exchanges.

The Exchange is proposing changes to its fees schedule and adopting in the Select Symbols Options Tier Schedule a graduated Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm. The Exchange believes that this will provide incentives for execution of more contracts, and in particular Select Symbols Options contracts, on the BX Options Market. The proposed Fee to Add Liquidity incentivizes execution of Select Symbol Options Contracts on the Exchange by such fee being lower for each subsequent higher Tier.

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

Establishing the proposed Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm is equitable and not unfairly discriminatory. This is because the Exchange’s proposal to add the noted Fee to Add Liquidity in the Select Symbols Options Tier Schedule will apply uniformly to all similarly situated

²³ See *id.* at 539 (quoting Securities Exchange Act Commission at [sic] Release No. 59039 (December 2, 2008), 73 FR 74770 at 74782–74783 (December 9, 2008) (SR–NYSEArca–2006–21)).

²⁴ The current footnote states: • BX Options Market Maker fee to add liquidity in Select Symbols Options will be \$0.04 when trading with Firm, Non-Customer, or BX Options Market Maker.

²⁵ Each of the four applicable Tiers, which do not change, are described above.

²⁶ See, e.g., fee and rebate schedules of other options exchanges, including, but not limited to, NASDAQ Options Market (“NOM”), NASDAQ PHLX LLC (“Phlx”), and Chicago Board Options Exchange (“CBOE”).

²⁷ See, e.g., MIAX Options Exchange (“MIAX”).

²⁸ See, e.g., in the Exchange’s current Select Symbols Options Tier Schedule: The Fee to Add Liquidity when BX Options Market Maker is trading with Customer, and the Rebate to Add Liquidity when Customer is trading with Non-Customer or BX Options Market Maker, or Firm. BX Chapter XV, Section 2(1).

Participants. The fee and rebate schedule as proposed continues to reflect differentiation among different market participants. The Exchange believes that the differentiation is equitable and not unfairly discriminatory, as well as reasonable, because transactions of a BX Options Market Maker must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and BX Options Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. All Market Makers are designated as specialists on BX Options for all purposes under the Exchange Act or Rules thereunder.²⁹

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

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange does not believe that its proposal to make changes to its Select Symbols Options Tiers Schedule to adopt the Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm will impose any undue burden on competition, as discussed below.

The Exchange operates in a highly competitive market in which many sophisticated and knowledgeable market participants can readily and do send order flow to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. Additionally, new competitors have entered the market and still others are reportedly entering the market shortly. These market forces ensure that the Exchange's fees and rebates remain competitive with the fee structures at other trading platforms. In that sense, the Exchange's proposal is actually pro-competitive because the Exchange is simply continuing its fees and rebates for Penny Pilot Options in the Select Symbols Options Tier Schedule, and is establishing a graduated Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm in

[sic] in order to remain competitive in the current environment.

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In terms of intra-market competition, the Exchange notes that price differentiation among different market participants operating on the Exchange (e.g., Customer and BX Options Market Maker) is reasonable. Customer activity, for example, enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Moreover, unlike others [sic] market participants each BX Options Market Maker commits to various obligations. These obligations include, for example, transactions of a BX Market Maker must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and BX Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings.³⁰

In this instance, the proposed changes to the fees to establish a Fee to Add Liquidity when BX Options Market Maker is trading with Non-Customer or BX Options Market Maker, or Firm in the Select Symbols Options Tiers Schedule, does not impose a burden on

competition because the Exchange's execution and routing services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result.

Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Additionally, the changes proposed herein are pro-competitive to the extent that they continue to allow the Exchange to promote and maintain order executions.

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

No written comments were either solicited or received.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,³¹ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the 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

²⁹ See Chapter VII, Section 5, entitled "Obligations of Market Makers." See also Chapter VII, Section 2.

³⁰ See Chapter VII, Section 5.

³¹ 15 U.S.C. 78s(b)(3)(A)(ii).

• Send an email to rule-comments@sec.gov. Please include File Number SR–BX–2016–027 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2016–027. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2016–027 and should be submitted on or before June 21, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77890; File No. SR–NASDAQ–2016–072]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of the Shares of the Amplify Dow Theory Forecasts Buy List ETF of Amplify ETF Trust

May 24, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 10, 2016, 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 and II below, which Items have been prepared by Nasdaq. On May 20, 2016, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice, as modified by Amendment No. 1 thereto, 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

Nasdaq proposes to list and trade the shares of the Amplify Dow Theory Forecasts Buy List ETF (the “Fund”) of Amplify ETF Trust (the “Trust”) under Nasdaq Rule 5735 (“Managed Fund Shares”).³ The shares of the Fund are collectively referred to herein as the “Shares.”

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR–NASDAQ–2008–039). There are already multiple actively-managed funds listed on the Exchange; *see, e.g.*, Securities Exchange Act Release Nos. 72506 (July 1, 2014), 79 FR 38631 (July 8, 2014) (SR–NASDAQ–2014–050) (order approving listing and trading of First Trust Strategic Income ETF); 69464 (April 26, 2013), 78 FR 25774 (May 2, 2013) (SR–NASDAQ–2013–036) (order approving listing and trading of First Trust Senior Loan Fund); 66489 (February 29, 2012), 77 FR 13379 (March 6, 2012) (SR–NASDAQ–2012–004) (order approving listing and trading of WisdomTree Emerging Markets Corporate Bond Fund). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

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

In its filing with the Commission, Nasdaq 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. Nasdaq 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 list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares⁴ on the Exchange. The Fund will be an actively-managed exchange-traded fund (“ETF”). The Shares will be offered by the Trust, which was established as a Massachusetts business trust on January 6, 2015.⁵ The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N–1A (“Registration Statement”) with the Commission.⁶ The Fund will be a series of the Trust.

Amplify Investments LLC will be the investment adviser (“Adviser”) to the Fund. The following will serve as investment sub-advisers (each, a “Sub-Adviser”) to the Fund: Horizon Investment Services, LLC (“Horizon”) and Penserra Capital Management LLC (“Penserra”). Quasar Distributors LLC

⁴ A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (the “1940 Act”) organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Index Fund Shares, listed and traded on the Exchange under Nasdaq Rule 5705, seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

⁵ The Commission has issued an order, upon which the Trust may rely, granting certain exemptive relief under the 1940 Act. *See* Investment Company Act Release No. 31582 (April 28, 2015) (File No. 812–14423) (the “Exemptive Relief”).

⁶ *See* Post-Effective Amendment No. 2 to Registration Statement on Form N 1A for the Trust, dated May 5, 2016 (File Nos. 333 207937 and 811 23108). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement.

³² 17 CFR 200.30–3(a)(12).