

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69818; File No. SR-BX-2013-041)

June 21, 2013

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 4120 to Adopt a Modification in the Process for Initiating Trading of a Security that is the Subject of a Trading Halt or Pause on BX

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 June 14, 2013, NASDAQ OMX BX, Inc. (“BX” or the “Exchange”) filed with the Securities and Exchange Commission (“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 Rule 4120 to adopt a modification in the process for initiating trading of a security that is the subject of a trading halt or pause on BX. The text of the proposed rule change is also available on the Exchange’s website 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

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

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

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

In 2012, The NASDAQ Stock Market LLC (“NASDAQ”) modified its process for commencing trading of a security that is the subject of an initial public offering on NASDAQ by allowing market participants to enter orders to be held in an undisplayed state until the commencement of the Display-Only Period that occurs prior to the IPO.<sup>3</sup> NASDAQ recently proposed a similar change with regard to entering orders prior to the end of other trading halts or pauses on NASDAQ.<sup>4</sup> BX is proposing to make a similar change with regard to entering orders prior to the end of trading halts or pauses on BX. Rule 4120(a) describes the circumstances under which BX has the authority to initiate a trading halt. As detailed in Rule 4120(a), the specific bases for a halt include the following:

- a halt when a security listed on another national securities exchange is halted to permit dissemination of news (Rule 4120(a)(2)) or due to an order imbalance or influx (Rule 4120(a)(3));
- a halt with respect to an index warrant when deemed appropriate in the interests of a fair and orderly market and to protect investors (Rule 4120(a)(8));
- a halt in a Derivative Securities Product (as defined in Rule 4120(b)(4)(A)) for which a net asset value (“NAV”) or a Disclosed Portfolio is disseminated if the Exchange becomes

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<sup>3</sup> Securities Exchange Act Release No. 66652 (March 23, 2012), 77 FR 13129 (March 29, 2012) (SR-NASDAQ-2012-038).

<sup>4</sup> Securities Exchange Act Release No. 69536 (May 13, 2013), 78 FR 29187 (May 17, 2013) (SR-NASDAQ-2013-073).

aware that the NAV or Disclosed Portfolio is not being disseminated to all market participants at the same time (Rule 4120(a)(10));

- a trading pause with respect to stocks that are not subject to the Limit Up-Limit Down Plan<sup>5</sup> and for which the primary listing market has issued an individual stock trading pause (Rule 4120(a)(11)); and
- a trading halt in a Derivative Security Product traded pursuant to unlisted trading privileges for which a “Required Value,” such as an intraday indicative value or disclosed portfolio, is not being disseminated, under the conditions described in Rule 4120(b).<sup>6</sup>

Under the current process, quotes and orders in a halted security may not be entered until the resumption of trading. However, BX believes that the quality of its process for commencing

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<sup>5</sup> Plan to Address Extraordinary Market Volatility Submitted to the Commission Pursuant to Rule 608 of Regulation NMS under the Act, Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

<sup>6</sup> Rule 4120 includes additional bases for halting securities listed on the Exchange; however, the Exchange’s rules governing listing are not operative at this time. The additional bases include: a halt to permit the dissemination of material news with respect to a security listed on the Exchange (Rule 4120(a)(1)); a halt in an American Depository Receipt (“ADR”) or other security listed on the Exchange, when the security listed on the Exchange or the security underlying the ADR is listed on or registered with another national or foreign securities exchange or market, and the regulatory authority overseeing such exchange or market halts trading in such security for regulatory reasons (Rule 4120(a)(4)); a halt when the Exchange requests from the issuer information relating to material news or the issuer's ability to meet Exchange listing qualification requirements, or any other information necessary to protect investors and the public interest (Rule 4120(a)(5)); a halt in a security listed on the Exchange when extraordinary market activity in the security is occurring, the Exchange determines that the activity is likely to have a material effect on the market for the security, and the Exchange believes that the activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system (Rule 4120(a)(6)); a halt in a series of Portfolio Depository Receipts, Index Fund Shares or Managed Fund Shares listed on the Exchange if the Intraday Indicative Value or the index value applicable to that series is not being disseminated as required (Rule 4120(a)(9)); and a halt trading in a security listed on the Exchange if the security fails to comply with Rule 5550(d) (requiring a minimum bid price of at least \$0.25 per share).

trading in the halted security would be enhanced by allowing market participants to enter orders to be held but not displayed until the resumption of trading.<sup>7</sup> Specifically, BX believes that this change will provide for a greater number of orders being entered prior to commencement of trading, resulting in a higher level of order interaction at the resumption of trading.

Orders entered in this manner will be held in a suspended state until the resumption of trading, at which time they will be entered into the system. Market participants may cancel orders entered in this manner in the same way they would cancel any other order. Orders entered prior to the resumption of trading will be rejected unless they are designated for holding. Specifically, the orders will be entered into the continuous market once trading resumes.<sup>8</sup>

## 2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>9</sup> in general, and with Section 6(b)(5) of the Act,<sup>10</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a

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<sup>7</sup> Because the orders would be held in an undisplayed state, the change would not implicate BX Rule 3340 or FINRA Rule 5260, which prohibit transactions, publication of quotations, or publication of indications of interest during a trading halt.

<sup>8</sup> Orders entered and held during the halt period will be entered into the continuous market in the order in which they were received. However, such orders will be entered contemporaneously with any orders received through order entry ports after the halt is terminated. Thus, the relative priority of orders received during the halt and orders received through order entry ports after the halt is terminated will be a function of the duration of system processing associated with each particular order. As a result, orders received during the halt will not automatically have priority over orders received at the conclusion of the halt.

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

national market system, and, in general, to protect investors and the public interest. Specifically, BX believes that the change to allow entry of quotes and orders for holding during a trading halt will provide for a greater number of orders being entered prior to commencement of trading, resulting in a higher level of order interaction in the re-opening process. Thus, BX believes that the change will remove impediments to and perfect the mechanism of a free and open market.

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

BX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, BX believes that this change will provide for a greater number of orders being entered prior to commencement of trading, resulting in a higher level of order interaction. BX believes that this change will promote competition by enhancing the attractiveness of BX as a trading venue through higher order fill rates and more complete price discovery. Moreover, because the change will not affect the availability or price of goods or services offered by BX or others, it will not impose any burden on competition.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>12</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.

#### 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-2013-041 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2013-041. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such 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 publicly available. All submissions should refer

to File Number SR-BX-2013-041 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>13</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).