

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-76375; File No. SR-BX-2015-64)

November 5, 2015

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Price Improving and Post-Only Orders

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 October 30, 2015, NASDAQ OMX 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 the Substance of the Proposed Rule Change

The Exchange proposes to remove a “Price Improving Order” and a “Post-Only Order” as eligible order types for entry into the automated system for order execution and trade reporting owned and operated by BX (“System”).

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).<sup>3</sup>

The text of the proposed rule change is 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.

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6)(iii).

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 is seeking to remove references to “Price Improving Orders” in the Rulebook. Specifically, the Exchange is seeking to amend the following sections of the Rulebook: Chapter III, Section 4, entitled “Prevention of the Misuse of Material Nonpublic Information;” Chapter VI, Section 1, entitled “Definitions,” Section 6, entitled “Acceptance of Quotes and Orders” and Section 7, entitled “Entry and Display of Orders;” and Chapter VII, Section 12, entitled “Order Exposure Requirements.”

The Exchange is also seeking to remove references to “Post-Only Orders” in the Rulebook. Specifically, the Exchange is seeking to amend the following sections in the Rulebook: Chapter VI, Section 1, entitled “Definitions,” Section 6, entitled “Acceptance of Quotes and Orders” and Section 9 entitled “Price Improvement Auction (“PRISM”).”

Each order type will be explained in more detail below.

Price Improving Orders

Price Improving Orders are orders to buy or sell an option at a specified price at an increment smaller than the minimum price variation in the security. Today, Price Improving

Orders may be entered in increments as small as one cent and are available for display at the minimum price variation (“MPV”) in that security and shall be rounded up for sell orders and rounded down for buy orders. Without this order type, market participants would not be able to submit orders or quotes priced between the MPV; those orders or quotes would be rejected.

The Exchange proposes to amend Chapter III, Section 4, entitled “Prevention of the Misuse of Material Nonpublic Information” to remove Price Improving Orders as an example of an order type that would be violative of this rule. The Exchange proposes to remove the definition of a Price Improving Order from the list of order types that are acceptable on BX in Chapter VI, Section I, entitled “Definitions.” The Exchange proposes to amend Chapter VI, Section 6, entitled “Acceptance of Quotes and Orders” to remove Price Improving Orders as an acceptable order type. The Exchange proposes to amend Chapter VI, Section 7, entitled “Entry and Display of Orders” to remove language describing the manner in which Price Improving Orders are displayed in the System. Finally, the Exchange proposes to amend Chapter VII, Section 12, entitled “Order Exposure Requirements” to remove the reference to the exposure time for Price Improving Orders.

Today, Price Improving Orders on BX represent less than 1.5% of the BX volume. The Exchange is removing this order type in connection with its recent filing of a price improving auction (PRISM).<sup>4</sup> This proposed auction mechanism will offer participants an alternative means of entering price improving interest.

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<sup>4</sup> See Securities Exchange Act Release No. 76301 (October 29, 2015) (SR-BX-2015-032) (Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, to Adopt a New Price Improvement Auction, BX PRISM) (not yet published) [sic].

The Exchange believes that PRISM should promote and foster competition and provide more options contracts with the opportunity for price improvement. As a result of the increased opportunities for price improvement, the Exchange believes that participants will use PRISM to increase the number of Public Customer orders that are provided with the opportunity to receive price improvement over the NBBO.

#### Post-Only Orders

Post-Only Orders are orders that will not remove liquidity from the System. Post-Only Orders are to be ranked and executed on the Exchange or cancelled, as appropriate, without routing away to another market. Post-Only Orders are evaluated at the time of entry with respect to locking or crossing other orders as follows: (i) if a Post-Only Order would lock or cross an order on the System, the order will be re-priced to \$.01 below the current low offer (for bids) or above the current best bid (for offers) and displayed by the System at one minimum price increment below the current low offer (for bids) or above the current best bid (for offers); and (ii) if a Post-Only Order would not lock or cross an order on the System but would lock or cross the NBBO as reflected in the protected quotation of another market center, the order will be handled pursuant to Chapter VI, Section 7(b)(3)(C). Participants may choose to have their Post-Only Orders returned whenever the order would lock or cross the NBBO or be placed on the book at a price other than its limit price. Post-Only Orders received prior to the opening cross or after market close will be rejected. Post-Only Orders may not have a time-in-force designation of Good Til Cancelled or Immediate or Cancel.

The Exchange proposes to remove the definition of a Post-Only Order from the list of order types that are acceptable on BX in Chapter VI, Section I, entitled “Definitions.” The Exchange proposes to amend Chapter VI, Section 6, entitled “Acceptance of Quotes and Orders”

to remove Post-Only Orders as an acceptable order type. Finally, the Exchange proposes to amend Chapter VI, Section 9, entitled “Price Improvement Auction (“PRISM”)” to remove an explanation on the manner in which Post-Only Orders will interact in the auction process.

Today, the Exchange transacts a small number of Post-Only Orders on BX.<sup>5</sup> The Exchange adopted the Post-Only Order to encourage displayed liquidity and offer BX market participants greater flexibility to post liquidity on BX. Participants are not utilizing this order type very frequently. As previously mentioned, the Exchange is removing the Price-Improving Order in connection with its recent filing of a price improving auction (PRISM).<sup>6</sup> This proposed auction mechanism will offer participants a new means of entering price improving interest. Aside from Price-Improving Orders, the Post-Only Order is the only other non-displayed order type currently on BX. At this time, the Exchange proposes to also remove the Post-Only Order from BX which would result in all remaining order types on BX being displayed similar to NASDAQ OMX PHLX LLC (“Phlx”) order types.

This proposed rule change would remove Price Improving Orders and Post-Only Orders as acceptable order types for orders or quotes entered into BX’s System for all market participants.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>8</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect

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<sup>5</sup> The Exchange transacted on 90 Post-Only Orders from July through September 2015.

<sup>6</sup> See note 4.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by removing Price Improving and Post-Only Orders as acceptable order types for all market participants.

### Price-Improving Orders

With the removal of Price Improving Orders, market participants would not be able to submit orders or quotes priced between the MPV; those orders would be rejected. Other options exchanges currently do not offer a similar order type.<sup>9</sup> The Exchange believes that the removal of the Price Improving Order does not otherwise create an impediment to a free and open market. The Exchange believes this proposed amendment is non-controversial. By not accepting Price Improving Orders, BX's true BBO will be transparent. All orders will be disseminated at the prices and sizes submitted by market participants at the time of entry into the System.<sup>10</sup> The Exchange believes that market participants will continue to quote at their best prices and the market will be more transparent. The Exchange believe that despite the removal of the availability and use of Price Improving Orders, the Exchange will remain competitive.

Today, Price Improving Orders are not displayed at their limit price, and Participants are unable to ascertain the BX BBO with certainty. The removal of the Price Improving order type will result in greater transparency. In addition, BX recently received approval for a new auction mechanism, PRISM, which offers Participants an alternative means of entering price improving interest.<sup>11</sup>

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<sup>9</sup> See Phlx and BOX Options Exchange LLC, which do not have a similar type of price improving order.

<sup>10</sup> If this results in a price which locks or crosses an away market, then it will be repriced in accordance with BX Rules at Chapter VI, Section 7(C).

<sup>11</sup> See note 4.

## Post-Only Orders

With the removal of Post-Only Orders, market participants would not be able to submit orders or quotes priced between the MPV; those orders would be rejected. Other options exchanges currently do not offer a similar order type.<sup>12</sup> The Exchange believes that the removal of the Post-Only Order does not otherwise create an impediment to a free and open market. The Exchange believes this proposed amendment is non-controversial. By not accepting Post-Only Orders, BX's true BBO will be transparent. All orders will be disseminated at the prices and sizes submitted by market participants at the time of entry into the System.<sup>13</sup> The Exchange believes that market participants will continue to quote at their best prices and the market will be more transparent. The Exchange believe that despite the removal of the availability and use of Post-Only Orders, the Exchange will remain competitive.

Today, Post-Only Orders are not displayed at their limit price, and Participants are unable to ascertain the BX BBO with certainty. The removal of the Post-Only order type will result in greater transparency. With the removal of both the Price-Improving order type and Post-Only order type, the remaining order types will be displayed.

The Exchange's removal of Price Improving and Post-Only Orders will reduce the complexity surrounding the repricing of such non-displayed order types within the auction mechanism. The Exchange's proposal would result in all orders being displayed on BX and the elimination of non-displayed order types. Notwithstanding the foregoing, the BBO shall be the Best Bid or Best Offer on BX. The BBO is repriced and displayed in accordance with BX Rules at Chapter VI, Section 7(C).

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<sup>12</sup> See Phlx and BOX Options Exchange LLC, which do not have a similar type of post-only order.

<sup>13</sup> See note 10.

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 Exchange does not believe that the proposal to remove Price Improving Orders as an acceptable Order type creates an undue burden on inter-market competition because despite the removal of Price Improving Orders, BX will remain competitive. By not accepting Price Improving Orders, BX's true BBO will be more transparent. Orders will be disseminated at the prices and sizes submitted by market participants at the time of entry into the System. Market participants would not be able to submit orders or quotes priced between the MPV.

The Exchange does not believe that the proposal to remove Post-Only Orders as an acceptable order type creates an undue burden on inter-market competition because despite the removal of Post-Only Orders, BX will remain competitive. Similarly, by not accepting Post-Only Orders, BX's true BBO will be more transparent. Orders will be disseminated at the prices and sizes submitted by market participants at the time of entry into the System. Market participants would not be able to submit orders or quotes priced between the MPV with the removal of this order type.

The Exchange does not believe that the proposal to remove Price Improving Orders and Post-Only Orders as acceptable order types creates an undue burden on intra-market competition because the proposed rule change would thereby remove Price Improving Orders and Post-Only Orders as acceptable order types for orders enters into BX's System for all market participants.

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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6)<sup>15</sup> thereunder.

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>16</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>17</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the filing can be operative prior to the implementation of BX PRISM. The Exchange states that it intends to launch the newly approved BX PRISM auction without the ability to enter either of these order types. The Exchange further states that BX PRISM will benefit from the transparency of the orders entered into the auction. The Exchange also states that the removal of Post-Only Orders and Price-Improving Orders will reduce complexity surrounding the repricing of such non-displayed order types within BX PRISM. The Commission believes that waiver of the 30-day operative delay is appropriate so that Post-Only Order and Price-Improving Orders may be removed as order types on the

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of 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.

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

<sup>17</sup> 17 CFR 240.19b-4(f)(6)(iii).

Exchange prior to the implementation of BX PRISM. Based on the foregoing, the Commission believes that the waiver of the operative delay is consistent with the protection of investors and the public interest.<sup>18</sup> The Commission hereby grants the waiver and designates the proposal operative 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 necessary or appropriate in the public interest, for the protection of investors, or 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 No. SR-BX-2015-64 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.

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<sup>18</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

All submissions should refer to File No. SR-BX-2015-64. This file number should be included on the subject line if e-mail 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, D.C. 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 available publicly. All submissions should refer to File No. SR-BX-2015-64, 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>19</sup>

Robert W. Errett  
Deputy Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).