

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64427; File No. SR-BX-2011-025)

May 6, 2011

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change to Amend IM-4120-3 to Include Additional Securities in the Pilot by which Such Rule Operates and Amend Rule 4613(a) to Simplify Certain Aspects of the Text while also Conforming Certain of the Percentages Thereunder to the Proposed Changes to Price Move Percentages that Trigger a Circuit Breaker Pilot Pause

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 4, 2011, NASDAQ OMX BX, Inc. (“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 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 IM-4120-3 to include additional securities in the pilot by which such rule operates and amend Rule 4613(a) to simplify certain aspects of the text while also conforming certain of the percentages thereunder to the proposed changes to price move percentages that trigger a circuit breaker pilot pause.

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.

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IM-4120-3. Circuit Breaker Securities Pilot

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The provisions of paragraph (a)(11) of this Rule shall be in effect during a pilot set to end on the earlier of August 11, 2011 or the date on which a limit up / limit down mechanism to address extraordinary market volatility, if adopted, applies. During the pilot, the term "Circuit Breaker Securities" shall mean all NMS stocks[the securities included in the S&P 500® Index, the Russell 1000 Index, as well as a pilot list of Exchange Traded Products].

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4613. Market Maker Obligations

A member registered as an Equities Market Maker shall engage in a course of dealings for its own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets in accordance with this Rule.

(a) Quotation Requirements and Obligations

(1) No change.

(2) Pricing Obligations. For NMS stocks (as defined in Rule 600 under Regulation NMS) a Market Maker shall adhere to the pricing obligations established by this Rule during Regular Trading Hours; provided, however, that such pricing obligations (i) shall not commence during any trading day until after the first regular way transaction on the primary listing market in the security, as reported by the responsible single plan processor, and (ii) shall be suspended during a trading halt, suspension, or pause, and shall not re-commence until after the first regular way transaction on the primary listing market in the security following such halt, suspension, or pause, as reported by the responsible single plan processor.

(A) - (C) No change.

(D) For purposes of this Rule, the [term] "Designated Percentage" shall be 8% for securities subject to Rule 4120(a)(11) and are securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products, 28% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products with a price equal to or greater than \$1, and 30% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products with a price less than \$1,[mean the individual stock pause trigger percentage under Rule 4120(a)(11) (or comparable rule of another exchange) less two (2) percentage points.] except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Rule 4120(a)(11) is not in effect, the Designated Percentage shall be 20% for securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products, 28% for all NMS stocks not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products with a price equal to or greater than \$1, and 30% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products with a price less than \$1. [For times during regular market hours when stock pause triggers are not in effect under Rule 4120(a)(11) (or comparable rule of another exchange), the Designated

Percentage calculation will assume a trigger percentage of 22%. For NMS stocks that are not subject to such stock pause triggers the Designated Percentage will assume a trigger percentage of 32%.]

(E) For purposes of this Rule, the [term] "Defined Limit" shall be 9.5% for securities subject to Rule 4120(a)(11) and are securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products, 29.5% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products with a price equal to or greater than \$1, and 31.5% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products with a price less than \$1,[mean the individual stock pause trigger percentage under Rule 4120(a)(11) (or comparable rule of another exchange) less one-half (1/2) percentage point.] except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Rule 4120(a)(11) is not in effect, the Defined Limit shall be 21.5% for securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products, 29.5% for all NMS stocks not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products with a price equal to or greater than \$1, and 31.5% for securities subject to Rule 4120(a)(11) and that are all NMS stocks not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products with a price less than \$1. [For times during regular market hours when stock pause triggers are not in effect under Rule 4120(a)(11) (or comparable rule of another exchange), the Defined Limit calculation will assume a trigger percentage of 22%. For NMS stocks that are not subject to such stock pause triggers the Defined Limit calculation will assume a trigger percentage of 32%.]

(F) – (K) No change.

(b) – (e) No change.

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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 IM-4120-3 to include additional securities in the pilot by which such rule operates and amend Rule 4613(a) to simplify certain aspects of the text while also conforming certain of the percentages thereunder to the proposed changes to price move percentage triggers of the trading pause recognized under Rule 4120(a)(11).

The Commission approved Rule 4120(a)(11) on a pilot basis on June 10, 2010 to provide for trading pauses in individual securities due to extraordinary market volatility (“Trading Pause”) in all securities included within the S&P 500® Index (“S&P 500”) (“Trading Pause Pilot” or “Pilot”).³ The Exchange noted in its filing to adopt Rule 4120(a)(11) that during the Pilot period it would continue to assess whether additional securities need to be added and whether the parameters of Rule 4120(a)(11) would need to be modified to accommodate trading characteristics of different securities. The Exchange subsequently received approval to add to the Pilot the securities included in the Russell 1000® Index (“Russell 1000”) and a specified list of Exchange Traded Products (“ETPs”).⁴

³ The Commission approved the Trading Pause Pilot for all equities exchanges and FINRA. See Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (File Nos. SR-BATS-2010-014; SR-EDGA-2010-01; SR-EDGX-2010-01; SR-BX-2010-037; SR-ISE-2010-48; SR-NYSE-2010-39; SR-NYSEAmex-2010-46; SR-NYSEArca-2010-41; SR-NASDAQ-2010-061; SR-CHX-2010-10; SR-NSX-2010-05; and SR-CBOE-2010-047) and Securities Exchange Act Release No. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR-FINRA-2010-025).

⁴ The Commission approved the addition to the Trading Pause Pilot of the securities included in the Russell 1000 and ETPs, where applicable, for all equities exchanges and FINRA. See Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (File Nos. SR-BATS-2010-018; SR-BX-2010-044; SR-CBOE-2010-065; SR-CHX-2010-14; SR-EDGA-2010-05; SR-EDGX-2010-05; SR-ISE-2010-66; SR-NASDAQ-2010-079; SR-NYSE-2010-49; SR-NYSEAmex-2010-63; SR-NYSEArca-2010-61; and SR-NSX-2010-08) and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR-FINRA-2010-033). The Exchange submitted a proposed rule change shortly after the addition of the Russell

The Exchanges have continued to assess whether additional securities need to be added to the Pilot and whether the parameters of the Pilot needs to be modified to accommodate trading characteristics of different securities. In consultation with other markets and the staff of the Commission, the Exchanges are proposing to include all NMS stocks within the Pilot that are not already included therein, but to apply a wider price move percentage to the newly added securities.⁵ Accordingly, the Exchange proposes to delete language concerning the limited application of pauses in Circuit Breaker Securities from the rule's text, as the text therein would no longer be necessary, and to define Circuit Breaker Securities as all NMS stocks.

The NYSE, NYSE Amex, NYSE Arca, and NASDAQ, as the listing markets, are proposing to set the price move required to trigger a trading pause for the proposed new securities to be 30% or more for such securities priced at \$1 or higher and 50% or more for such securities priced less than \$1.⁶ The listing markets believe that applying a broader percentage to securities priced less than \$1 compared to those priced above \$1 is appropriate given that lower-priced securities tend to be more volatile, and price movements of lower-priced securities equate to a higher percentage move than a similar price change for a higher-priced security. The listing markets also believe that these percentages are commensurate with the characteristics shared by

1000 securities and ETPs to extend the operation of the Pilot, which was set to expire on December 10, 2010, until April 11, 2011. See Securities Exchange Act Release No. 63505 (December 9, 2010), 75 FR 78302 (December 15, 2010) (SR-NASDAQ-2010-162). On March 31, 2011, the Exchange submitted a proposed rule change to further extend the pilot program until the earlier of August 11, 2011 or the date on which a limit up / limit down mechanism to address extraordinary market volatility, if adopted, applies. See Securities Exchange Act Release No. 64176 (April 4, 2011), 76 FR 19821 (April 8, 2011) (SR-BX-2011-018).

⁵ Certain of the Exchanges that have market maker requirements are modifying their market maker obligations to fit within these new Pilot price move percentages.

⁶ Under the proposed rule change, the price of a security would be based on the closing price on the previous trading day, or, if no closing price exists, the last sale reported to the Consolidated Tape on the previous trading day.

the proposed new securities within these price ranges and would promote the objectives of the Trading Pause Pilot to reduce the negative impacts of unanticipated price movements in a security. In particular, the proposed additional stocks are those not currently included in the S&P 500 Index, Russell 1000 Index, or specified ETPs, and therefore are more likely to be less liquid securities or securities with lower trading volumes. Accordingly, the Exchange believes that broader price move percentages would be appropriate. Similarly, because leveraged ETPs trade at a ratio against the associated index, a broader price move percentage would also be appropriate for leveraged ETPs.

The proposed changes to the Pilot, if approved, would require that the text of Rule 4613(a), which pertains to the pricing obligations that Market Makers are required to adhere to, be amended to correct the cross-references therein to Rule 4120(a)(11) and the price move thereunder. Specifically, the Exchange proposes to remove any text from Rule 4613(a) addressing NMS stocks that are not subject to the Pilot because no such securities would exist and such text would therefore be unnecessary. The Exchange also proposes to simplify Rule 4613(a) by explicitly stating the percentages that are applicable thereunder and the times during the trading day when Rule 4120(a)(11) is not in effect. The Exchange notes that part of this proposed change would be substantive, in that the percentages under Rule 4613(a) would decrease slightly for the proposed new securities priced at \$1 or greater. The Exchange believes that this proposed substantive change would not have a significant impact on Market Maker pricing obligations and is reasonable because it would ensure that the designated quoting percentages in Rule 4613(a) are within a narrower range than the percentages necessary to trigger a Trading Pause.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5),⁸ in particular, in that it 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposed rule change also is designed to support the principles of Section 11A(a)(1)⁹ of the Act in that it seeks to ensure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements because it expands the scope of the Pilot to cover all NMS stocks. Additionally, the proposed changes would ensure that the designated quoting percentages in Rule 4613(a) are within a narrower range than the percentages necessary to trigger a Trading Pause.

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

The Exchange 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.

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 (i) as the Commission may designate up to 90 days of such date if it finds

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78k-1(a)(1).

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 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. Please include File Number SR-BX-2011-025 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-2011-025. 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, 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-2011-025 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.¹⁰

Elizabeth M. Murphy
Secretary

¹⁰ 17 CFR 200.30-3(a)(12).