

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-75568; File No. SR-BX-2015-043)

July 30, 2015

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 4703(a)

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 July 20, 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 Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 4703(a) to remove the Market Hours Immediate or Cancel Time in Force and to delay implementation of changes to the Good-til-market close Time in Force, which were recently adopted by BX but are not yet implemented.

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.

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

The Exchange is proposing to amend Rule 4703(a) to remove the Market Hours Immediate or Cancel (“Market Hours IOC” or “MIOC”) Time-in-Force and to delay implementation of changes to the Good-til-market close (“GTMC”) Time-in-Force, which were recently adopted by BX but are not yet implemented.<sup>3</sup> Time-in-Force (“TIF”) is a characteristic of an order that limits the period of time that the System will hold an order for potential execution. An Order that is designated to deactivate immediately after determining whether the Order is marketable may be referred to as having a TIF of “Immediate or Cancel” or “IOC”.<sup>4</sup> Any Order with a TIF of IOC entered between 9:30 a.m. ET and 4:00 p.m. ET is considered as having a TIF of MIOC.<sup>5</sup> The MIOC TIF is very similar to the SIOC<sup>6</sup> TIF, but MIOC designated orders are limited to entry and potential execution only during Regular Market Hours. An order

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<sup>3</sup> The Exchange notes that the text at issue in this filing concerning the MIOC TIF under Rule 4703(a)(1) is not yet implemented, but was recently inadvertently incorporated into the BX rulebook when the Commission approved certain rules governing the BX equities market in order to provide additional detail and clarity regarding its order type functionality. See Securities Exchange Act Release No. 75291 (June 24, 2015), 80 FR 37698 (July 1, 2015) (SR-BX-2015-015). Notwithstanding its inadvertent inclusion in the rulebook, the rule text concerning the MIOC TIF is not yet effective. The Exchange had anticipated implementing the MIOC and GTMC changes in the second quarter of 2015. See Securities Exchange Act Release No. 74638 (April 2, 2015), 80 FR 18890 (April 8, 2015) (SR-BX-2015-016).

<sup>4</sup> See Rule 4703(a)(1).

<sup>5</sup> Id.

<sup>6</sup> An Order with a TIF of IOC that is entered at any time between 7:00 a.m. ET and 7:00 p.m. ET may be referred to as having a TIF of “System Hours Immediate or Cancel” or “SIOC”. Id.

designated with a TIF of MIOC that is entered outside of Regular Market Hours would be returned to the entering member firm without attempting to execute. The Exchange has determined that, based on a lack of market participant desire for a MIOC TIF and the cost that would be incurred in developing and implementing it on the Exchange, it will not implement the MIOC TIF at this juncture. Accordingly, the Exchange is proposing to delete text concerning the MIOC TIF, which is effective but not yet operative.

The Exchange is also proposing to amend Rule 4703(a)(6) to make it clear that the Exchange will no longer accept GTMC orders for execution after 4:00 p.m. Eastern Time, which are currently accepted and converted to SIOC orders if received after 4:00 p.m. Eastern Time. In April 2015, the Exchange proposed this change to the predecessor rule concerning GTMC orders in a prior filing with the Commission,<sup>7</sup> and had anticipated implementing the change at some point in the second quarter of 2015. During that time, the Commission approved a rule change that renumbered and clarified the rule.<sup>8</sup> Accordingly, the Exchange is now amending the renumbered rule to reflect the changes made in the prior filing. The Exchange is also proposing to delay the change to the operation of GTMC orders after 4:00 p.m. Eastern Time, so that this change will now be implemented the week of August 17, 2015 and will complete the implementation the week of August 31, 2015.

The Exchange is also making a minor technical correction to Rule 4703(a)(6) by inserting hyphenation in the term “Time-in-Force,” which will make it consistent with its use in other paragraphs of the rule.

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<sup>7</sup> See Securities Exchange Act Release No. 74638 (April 2, 2015), 80 FR 18890 (April 8, 2015) (SR-BX-2015-016).

<sup>8</sup> The Exchange also made a clarifying change to the rule, which was incorporated into the renumbered rule. Supra note 3.

## 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 national market system, and, in general, to protect investors and the public interest; and also in that it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that, in light of a lack of market participant interest and the costs the Exchange would incur in developing and implementing a MIOC TIF, it would be in the best interest of the market and market participants not to implement the change at this juncture. Implementing a change, which will not be used significantly yet will represent a cost to the Exchange to implement, could ultimately result in increased costs to market participants in the form of increased fees. Accordingly, the Exchange is eliminating the MIOC TIF until such time that the demand for it justifies the expenditure.

The proposed change to Rule 4703(a)(6) is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest because it modifies the rule to reflect a change made to the predecessor rule, which was filed with the Commission as an immediately effective filing to be implemented sometime in the second quarter of 2015. The change, which was subject to the notice and comment process, had not been implemented prior to the rule's renumbering.

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

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

Accordingly, the proposed change to amend Rule 4703(a)(6) merely modifies the rule text so that it is consistent with the changes made to the predecessor rule.

The proposed delay in implementing the changes to the Good-til-market close TIF is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest because it will provide the Exchange with a brief extension to adequately program and test the proposed changes to the TIF. Moreover, the Exchange is delaying implementation of the changes until after the reconstitution of the Russell indexes, which is a day of significant volume in the market and immediately prior to which the Exchange reduces the number of changes made to the System. Accordingly, the proposed delay will serve to reduce risk in the market during a time of significant volume and provide the Exchange adequate time to program and test the proposed changes, thereby protecting investors and the public interest.

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. Specifically, the Exchange notes that there is little interest in MIOC among market participants on BX, and accordingly removing MIOC before it is implemented will not impact the Exchange's competitiveness among exchanges or other execution venues. In addition, the Exchange does not believe that briefly delaying the changes to the Good-til-market close TIF will place any burden on competition whatsoever because the TIF will continue to be available unchanged until the Exchange has adequately programmed and tested the proposed changes.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> Because the 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, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>15</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>16</sup> the Commission may 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 proposed rule change may become operative immediately. The Exchange represents that market participants have not expressed interest in the MIOC TIF. The Exchange therefore argues that waiver of the operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to remove the MIOC TIF prior its implementation, thereby serving to avoid investor confusion.

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

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and 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. The Exchange has satisfied this requirement.

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

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

The Exchange also reasons that waiving the operative delay would allow the Exchange to make the required technical and operational changes to the GTMC TIF after the reconstitution of the Russell Indexes. Based on the foregoing, the Commission finds that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and hereby designates the proposal operative upon filing.<sup>17</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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 change should be approved or disapproved.

#### IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2015-043 on the subject line.

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<sup>17</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2015-043. 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 offices 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-2015-043, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Robert W. Errett  
Deputy Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12), (59).