

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-77799; File No. SR-BX-2016-024)

May 10, 2016

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the Maximum Number of Times an Order on BX May Be Updated Before the System Cancels the Order

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 April 29, 2016, NASDAQ BX, Inc. (“BX” or “Exchange”) 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 modify the maximum number of times an Order on the Exchange may be updated before the System cancels the Order.

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

Background

The Exchange will cancel an Order if it is updated a certain number of times during any given day. Pursuant to Rule 4702(a), an Order will be cancelled if it is repriced and/or reentered 10,000 times for any reason.<sup>3</sup>

Pursuant to Rule 4702(b)(7)(A), a Market Maker Peg Order will be canceled if it is repriced 1,000 times. Pursuant to Rule 4703(d), an Order with Primary Pegging will be cancelled if it is updated 1,000 times, and an Order with Market Pegging will be cancelled if it is updated 10,000 times.

The Exchange applies these limits to conserve System resources by limiting the persistence of Orders that update repeatedly without execution. These limits are applied daily to each order entered into the System. Orders that have a Time-in-Force<sup>4</sup> that allows them to persist longer than a single trading day will have their count reset each day. For example, if an Order with a Time-in-Force of Good-till-Canceled<sup>5</sup> is repriced 9,999 times during any given day,

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<sup>3</sup> Orders entered through OUCH and FLITE ports generally are not repriced or reentered. As explained in rule 4702(b)(1)(B), orders entered through OUCH and FLITE may be updated for display once. Further, OUCH and FLITE Orders may only be decremented in size, which is not considered repricing or reentry of the Order. See <http://www.nasdaqtrader.com/Trader.aspx?id=TradingSpecs> for a description of the various order entry port specifications.

<sup>4</sup> The “Time-in-Force” assigned to an Order means the period of time that the System will hold the Order for potential execution. See Rule 4703(a).

<sup>5</sup> An Order that is designated to deactivate one year after entry may be referred to as a “Good-till-Cancelled.” See Rule 4703(a)(3).

the Order will not be canceled due to the number of updates. Starting the next day, the Order would be again allowed to reprice up to 9,999 times before it would be canceled by the System.

### Proposed Changes

First, the Exchange is proposing to eliminate rule text under Rules 4702(a), 4702(b)(7)(A), and 4703(d) concerning cancellation based on Order updates and consolidate the concept under a new Rule 4756(a)(4).

Second, the Exchange is proposing to no longer state the specific number of times a particular Order Type may be updated before it is canceled in the new rule and is, instead, noting that the number of permissible changes may vary by Order Type or Order Attribute and may change from time to time. Further, the proposed rule will note that the Exchange will post on its website what is considered a change for a particular Order Type and Order Attribute, and the current limits on the number of such changes.

The Exchange is changing the process by which it counts updates, which will allow it to identify a wider range of updates to an Order. Using the new process, the Exchange will be able to track the following Order updates: (1) System-generated child Orders; (2) display size refreshes from reserve; (3) replaces of System-generated child Orders (which include Orders with a Pegging Attribute); and (4) cancellation requests of System-generated child Orders. The Exchange notes that all updates identified by the current process will be counted under the new process. The Exchange believes these changes will provide it with greater flexibility in addressing changes in volume, market participant behavior, and the Exchange's capacity to handle the message volume caused by Orders that update a significant number of times throughout the trading day.

The Exchange will provide at least one day's advanced notice to the public of any changes to the number of updates permitted before an Order is canceled. Initially, the Exchange

will keep the number of updates consistent with what is currently noted in the rules; however, the Exchange may shortly thereafter change the number of updates as needed to address market conditions.

BX is also making minor technical corrections to Rule 4702(b)(7) to make “(A)” denoting subparagraph (A) under the rule not bold, and to insert missing spaces between words in the sixth paragraph of subparagraph (A) under the rule. BX is also changing the word “they” to the word “the” in the first full paragraph below the bulleted list under Rule 4703(d).

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>6</sup> in general, and with Section 6(b)(5) of the Act,<sup>7</sup> in particular, because 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 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 is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Excessive updating of Orders places a burden on the Exchange’s System, which, if left unchecked, could potentially affect overall market quality. The Exchange will continue canceling Orders that reach a certain number of updates but, instead of the static number of updates stated in the rules, the Exchange is proposing to provide the number of updates by Order Type or Order Attribute on its public website. Website posting will allow the Exchange to react more quickly to changes in the marketplace by changing the applicable number of updates that

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<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(5).

will trigger cancellation of an Order. The Exchange will provide advanced notice to market participants of any changes to the number of updates applied. Thus, the proposed rule change will further promote the protection [sic] 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, as amended.<sup>8</sup> The Exchange is proposing to make the change because it will allow it to better manage market quality for all market participants, who would be negatively impacted by issues caused by Orders that tax System resources due to the excessive number of updates.

These adjustments will not impact competition among market participants because the cancellation parameters will apply equally to all market participants. As is the case now, market participants that have an Order canceled due to the number of updates may enter a new replacement Order. Thus, the Exchange does not think that the proposed change will place a burden on competition not necessary or appropriate in furtherance of the Act.

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)(iii) of

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

the Act<sup>9</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>10</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. 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 Number SR-BX-2016-024 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>9</sup> 15 U.S.C. 78s(b)(3)(a)(iii) [sic].

<sup>10</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.

All submissions should refer to File Number SR-BX-2016-024. 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 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-2016-024 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>11</sup>

Robert W. Errett  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).