

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-78249; File No. SR-BX-2016-038)

July 7, 2016

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend PRISM Pilot Program Through January 18, 2017

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 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 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 BX rules at Chapter VI, Section 9, concerning a price-improvement mechanism, “PRISM” to extend, through January 18, 2017, a pilot program (the “pilot”) concerning (i) the early conclusion of the PRISM Auction (as described below); (ii) an unrelated market or marketable limit order (against the BX BBO) on the opposite side of the market from the PRISM Order received during the Auction will not cause the Auction to end early and will execute against interest outside of the Auction; and (iii) no minimum size requirement of orders. The current pilot is scheduled to expire July 18, 2016.<sup>3</sup>

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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> See Securities Exchange Release No. 76301 (October 29, 2015), 80 FR 68347 (November 4, 2015) (SR-BX-2015-032).

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqbx.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 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 purpose of this proposed rule change is to extend certain pilots within Chapter VI, Section 9, entitled "Price Improvement Auction ("PRISM"), through January 18, 2017.

Background

The Exchange adopted PRISM in November 2015 as a price-improvement mechanism on the Exchange.<sup>4</sup> This mechanism permits a Participant (an "Initiating Participant") to electronically submit for execution an order it represents as agent on behalf of a Public Customer,<sup>5</sup> Professional customer, broker dealer, or any other entity ("PRISM Order") against

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<sup>4</sup> Id.

<sup>5</sup> A Public Customer order does not include a Professional order, and therefore a Professional would not be entitled to Public Customer priority as described herein. A Public Customer means a person that is not a broker or dealer in securities. See BX Options Rules at Chapter I, Section 1(a)(50). A Public Customer order does not include a Professional order for purposes of BX Rule at Chapter VI, Section 10(1)(C)(1)(a), which governs allocation priority. A "Professional" means any person or entity that (i) is not a

principal interest or against any other order it represents as agent (an “Initiating Order”), provided it submits the PRISM Order for electronic execution into the PRISM Auction (“Auction”) pursuant to the Chapter VI, Section 9.<sup>6</sup> All options traded on the Exchange are eligible for PRISM.

#### Pilot Program

Three components of PRISM were approved by the Commission on a pilot basis: (1) the early conclusion of the PRISM Auction;<sup>7</sup> (2) an unrelated market or marketable limit order (against the BX BBO) on the opposite side of the market from the PRISM Order received during the Auction will not cause the Auction to end early and will execute against interest outside of the Auction;<sup>8</sup> and (3) no minimum size requirement of orders. The Exchange has provided the following additional information on a monthly basis.<sup>9</sup> The pilots were approved for a pilot period expiring on July 18, 2016.<sup>10</sup>

The Exchange notes that during the pilot period it has been required to submit, and has been submitting, certain data periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size orders and that there is an active and liquid market functioning on the Exchange outside of the Auction

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broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A Participant or a Public Customer may, without limitation, be a Professional. All Professional orders shall be appropriately marked by Participants. See BX Rules at Chapter I, Section 1(a)(49).

<sup>6</sup> BX will only conduct an auction for Simple Orders.

<sup>7</sup> See Chapter VI, Section 9(ii)(B)(4).

<sup>8</sup> See Chapter VI, Section 9(ii)(D).

<sup>9</sup> See Chapter VI, Section 9(vii).

<sup>10</sup> See note 3 above.

mechanism. Specifically, the Exchange has submitted the following data as specified in its approval order:<sup>11</sup>

- (1) The number of contracts (of orders of 50 contracts or greater) entered into the PRISM;
- (2) The number of contracts (of orders of fewer than 50 contracts) entered into the PRISM;
- (3) The number of orders of 50 contracts or greater entered into the PRISM; and
- (4) The number of orders of fewer than 50 contracts entered into the PRISM.

The Exchange will continue to provide such data. The Exchange believes that, because the pilot has been operating for a relatively short amount of time, the proposed extension should afford the Commission additional time to evaluate the pilot. The Exchange proposes to extend the pilot through January 18, 2017.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>12</sup> in general and with Section 6(b)(5) of the Act,<sup>13</sup> in that it is designed 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,

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<sup>11</sup> Id.

<sup>12</sup> 15 U.S.C. 78f.

<sup>13</sup> 15 U.S.C. 78f(b)(5).

brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purposes of the Act or the administration of the Exchange.

The Exchange believes that the proposed rule change is also consistent with Section 6(b)(8) of the Act<sup>14</sup> in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Specifically, the Exchange believes that PRISM, including the rules to which the pilot applies, results in increased liquidity available at improved prices, with competitive final pricing out of the Initiating Participant's complete control. The Exchange believes that PRISM promotes and fosters competition and affords the opportunity for price improvement to more options contracts. The extension proposal allows additional time for the Commission to evaluate the pilot.

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 proposal extends existing pilots that apply to all Exchange members, and enables the Exchange to be competitive in respect of other option exchanges that have similar programs.

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

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<sup>14</sup> 15 U.S.C. 78f(b)(8).

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>16</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>17</sup> normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>18</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay. The Exchange stated that the proposed rule change does not involve any substantive changes to the Exchange's Rules and only seeks to extend the previously approved PRISM pilot. The Exchange also stated that the extension will ensure fair competition among exchanges by allowing the Exchange to continue with this pilot similar to other options exchanges that operate auctions. Finally, the Exchange stated that the waiver is consistent with the protection of investors and the public interest because it will permit the PRISM pilot to continue without interruption and will allow the Exchange to gather more information in connection with the pilot.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the PRISM pilot to continue uninterrupted, thereby avoiding any potential investor confusion that could result from a

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

<sup>16</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.

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

<sup>18</sup> 17 CFR 240.19b-4(f)(6)(iii).

temporary interruption in the pilot. Therefore, the Commission designates the proposed rule change to be operative on July 18, 2016.<sup>19</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.

#### 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-2016-038 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.

All submissions should refer to File Number SR-BX-2016-038. 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

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<sup>19</sup> For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2016-038 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>20</sup>

Brent J. Fields  
Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).