

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-79281; File No. SR-BX-2016-059)

November 10, 2016

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 4702 and Rule 4703 to Add a “Trade Now” Instruction to Certain Order Types

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 8, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 4702 (Order Types) and Rule 4703 (Order Attributes) to add a “Trade Now” instruction to certain order types.

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

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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

BX proposes to amend Rules [sic] 4702 (Order Types) and Rule 4703 (Order Attributes) to add a "Trade Now" instruction to certain order types. BX will offer this functionality through its OUCH, RASH, FLITE, and FIX protocols. This instruction will provide resting orders with a greater ability to receive an execution when that resting order is locked, e.g., the price of a resting non-display buy order equals the price of a resting displayed sell order on the BX book. The Trade Now instruction will allow participants to enter an instruction to have a locked resting buy (sell) order execute against the locking sell (buy) order. Depending on the protocol used by the participant to access the BX system, the participant may either specify that the order execute against locking interest automatically, or the participant may be required to send a Trade Now instruction to the Exchange once the order has become locked. As discussed in greater detail below, BX is offering the Trade Now instruction for all orders that may be sent to the BX book and that are not subject to other BX rules regarding the display and execution of those orders.

When a Trade Now instruction is applied to a resting buy (sell) order, the order will execute against the available size of the locking sell (buy) order at the locked price. The following example illustrates this scenario:

- Participant A enters a Non-Display buy order for 200 shares at \$0.95, and specifies the Trade Now instruction;

- Participant B enters a Post Only sell order for 100 shares at \$0.95;<sup>3</sup>
- The Post Only order is posted at \$0.95 and locks the Non-Display order;
- The buy order will execute for 100 shares at \$0.95 as the remover of liquidity.

If a buy (sell) order with the Trade Now instruction is only partially executed, the unexecuted portion of that order remains on the BX book and maintains its priority. When a Trade Now instruction is entered through the OUCH or FLITE protocol for a resting buy (sell) order and there is no locking order on the opposite side of the market, the Trade Now instruction will be ignored and the buy (sell) order will remain on the BX book, retaining its priority.

As noted above, BX is proposing to offer the Trade Now instruction for all orders that may be sent to the BX book and that are not subject to other BX rules regarding the display and execution of those orders. Accordingly, the Trade Now instruction shall not be available for Retail Price Improving Orders (Rule 4702(b)(5)) or Retail Orders (Rule 4702(b)(6)). A Retail Price Improving Order is held on the Exchange Book in order to provide liquidity at a price at least \$0.001 better than the NBBO, and may execute only against a Retail Order, and only if its price is at least \$0.001 better than the NBBO. A Retail Order will attempt to execute against Retail Price Improving Orders and any other orders on the Exchange Book with a price that is (i) equal to or better than the price of the Retail Order and (ii) at least \$0.001 better than the NBBO. Given that Retail Price Improving Orders and Retail Orders are already subject to rules governing the handling and execution of such orders, there is not a need to implement the Trade Now instruction for these order types.

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<sup>3</sup> The Exchange recently submitted a proposal to amend BX Rules 4702 and 4703 to change the way in which Post Only Orders interact with resting Non-Display orders and preventing the execution of midpoint pegged orders during a crossed market. See Securities Exchange Act 78909 (September 22, 2016), 81 FR 66708 (September 28, 2016) (SR-BX-2016-046).

Depending on the interface being used by the participant, the Trade Now attribute may either allow the order to execute against locking interest automatically (“Reactive Trade Now”), or the participant may be required to send a Trade Now instruction to the Exchange once the order has become locked (“Non-Reactive Trade Now”). All orders that are entered through the RASH and FIX protocols with a Trade Now order attribute will be Reactive Trade Now, and those orders shall execute against locking interest automatically.

The Reactive Trade Now instruction will be available on an order-by-order basis, and will also be available as an optional port level setting. If the Reactive Trade Now setting is enabled on a specific port, all orders entered via the specific port will, by default, be designated with the Reactive Trade Now instruction. If the Reactive Trade Now setting is enabled on a specific port, participants will have the ability to designate on an order-by-order basis that a particular order entered via the specific port will not be designated with the Reactive Trade Now instruction, thereby overriding the port level setting for the order. If the Reactive Trade Now instruction is specified for an order for which the Trade Now instruction does not apply, e.g., a Retail Price Improving Order or a Retail Order, the system will not invoke the Trade Now instruction for that order.

In contrast, orders entered through the OUCH and FLITE protocols will use the Non-Reactive Trade Now functionality, and participants must send the Trade Now instruction after the order becomes locked. If a participant enters a Non-Reactive Trade Now instruction when there is no locking interest, the instruction will be ignored by the system and the order will remain on the BX Book with the same priority.

The Non-Reactive Trade Now instruction will be available to participants on order-by-order basis. If the Non-Reactive Trade Now instruction is entered for an order for which the

Trade Now instruction does not apply, the system will not invoke the Trade Now instruction for that order.

BX is offering two different variations of the Trade Now instruction to reflect the differences in behavior among participants who use the different BX protocols. For example, BX typically assumes a more active role in managing the order flow submitted by users of the RASH and FIX protocols. Allowing these participants to use the Reactive Trade Now instruction at the time of order entry will allow for the automatic execution of orders, and reflects the order flow management practices of these participants. In contrast, users of the OUCH and FLITE protocols generally assume a more active role in managing their order flow. Offering the Non-Reactive Trade Now instruction for these protocols, and its requirement that the instruction must be sent after the order becomes locked, reflects the order flow management practices of these participants.

BX notes that a similar functionality currently exists on NYSE Arca, Inc. (“NYSE Arca”), which NYSE Arca refers to as a “Non-Display Remove Modifier.” As set forth in NYSE Arca Rule 7.31, a Limit Non-Displayed Order may be designated with a Non-Display Remove Modifier. If so designated, a Limit Non-Displayed Order to buy (sell) will trade as the liquidity-taking order with an incoming Adding Liquidity Only Order (“ALO Order”) to sell (buy) that has a working price equal to the working price of the Limit Non-Displayed Order.<sup>4</sup> NYSE Arca also provides this functionality for other orders, such as Mid-Point Passive Liquidity Orders (“MPL Orders”) designated Day and MPL-ALO Orders<sup>5</sup> and Arca Only Orders.<sup>6</sup>

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<sup>4</sup> See NYSE Arca Rule 7.31(d)(2)(B).

<sup>5</sup> See NYSE Arca Rule 7.31(d)(3)(G).

<sup>6</sup> See NYSE Arca Rule 7.31(e)(1)(C). To the extent that the Trade-Now functionality will be made available for Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, Post-Only Orders, and Market Maker Peg Orders, BX notes that the Trade-Now

## 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 the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by offering participants an additional functionality that will facilitate the execution of locked orders, thereby increasing the efficient functioning of the BX market. The Trade Now functionality is an optional feature that is being offered at no additional charge, and is designed to reflect both the objectives of the BX market, and the order flow management practices of various market participants. For these reasons, the Trade Now functionality will only be made available for orders that are entered in the BX book and that are not subject to other BX rules regarding the display and execution of those orders, i.e., Retail Price Improving Orders and Retail Orders. Depending on the protocol, the Trade Now functionality will be offered as either the Reactive Trade Now or Non-Reactive Trade Now functionality.

### 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. This is an optional functionality that is being offered at no charge, and which may be used equally by similarly-situated participants. Although the functionality of the Trade Now instruction will

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functionality will apply to different order types than the NYSE Arca Non-Display Remove Modifier functionality.

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

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

differ depending upon the protocol that is being used to access BX, BX believes that the difference in functionality reflects the different ways in which participants enter and manage their order flow.

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) of the Act and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>10</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>11</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 proposal may become operative immediately upon filing. The Exchange states that the Trade Now functionality is complementary to its recent proposal to change the way in which Post Only Orders interact with resting Non-Display

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<sup>9</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>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

orders.<sup>12</sup> The Exchange believes that releasing both complementary functionalities at the same time will be easier for market participants to manage and implement. The Exchange further believes that the Trade Now functionality will facilitate the execution of locked orders, thereby increasing the efficient functioning of the BX market, and that waiver of the operative delay will allow this functionality to be made available at an earlier date. Finally, the Exchange notes that NYSE Arca currently utilizes a similar functionality in the form of its Non-Display Remove Modifier. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>13</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

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<sup>12</sup> See supra note 3.

<sup>13</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).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2016-059 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2016-059. 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 available publicly. All submissions should refer

to File Number SR-BX-2016-059, 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>14</sup>

Brent J. Fields  
Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).