

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75291; File No. SR-BX-2015-015]

### Self-Regulatory Organizations; NASDAQ OMX BX Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, To Amend and Restate Certain Rules That Govern the NASDAQ OMX BX Equities Market

June 24, 2015.

#### I. Introduction

On March 20, 2015, NASDAQ OMX BX, Inc. (“BX” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to amend and restate certain BX rules that govern the NASDAQ OMX BX Equities Market in order to provide a clearer and more detailed description of certain aspects of its functionality. The proposed rule change was published for comment in the **Federal Register** on April 6, 2015.<sup>3</sup> The Commission received no comment letters regarding the proposed rule change. On May 12, 2015, the Commission extended to July 5, 2015, the time period in which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved.<sup>4</sup> On June 22, 2015, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>5</sup> This order approves the proposed rule change, as amended, on an accelerated basis.

#### II. Description of the Amended Proposal

The Exchange proposes to amend and restate certain rules governing the NASDAQ OMX BX Equities Market in order to provide additional detail and clarity regarding its order type functionality.<sup>6</sup> This proposed rule change is a response to Chair White’s request that each equities exchange conduct a comprehensive review of the operation of each of the order types that it offers to members.<sup>7</sup>

While the Exchange believes that its current rules and other public disclosures provide a comprehensive description of the operation of the NASDAQ OMX BX Equities Market and are sufficient for members and the investing public to have an accurate understanding of its market structure, it also acknowledges that a restatement of certain rules will further clarify the operation of its system.<sup>8</sup> For instance, BX believes that adding examples of order type operation to its rules will promote greater understanding of the Exchange’s market structure.<sup>9</sup> In addition, BX asserts that certain functionality previously described as an “order type” is more precisely characterized as an attribute that may be added to a particular order.<sup>10</sup> Accordingly, this proposed rule change distinguishes between “Order Types” and “Order Attributes,” and provides descriptions of the Order Attributes that may be attached to particular Order Types.<sup>11</sup>

Currently, BX Rule 4751 sets forth most of the rules governing NASDAQ OMX BX Equities Market Order Types and Order Attributes, as well as other defined terms that pertain to trading securities on the NASDAQ OMX BX Equities Market.<sup>12</sup> BX proposes to restate and amend Rule 4751 as new Rule 4701.<sup>13</sup> BX also proposes to amend the definitions pertaining to Order Types and Order Attributes and to relocate them from Rule 4751 to new Rules 4702 (Order Types) and 4703 (Order Attributes), respectively.<sup>14</sup> In addition, BX proposes to delete Rule 4755 as the information contained

therein is superseded by proposed Rules 4702 and 4703.<sup>15</sup> Lastly, BX proposes certain conforming and technical changes to Rules 4756, 4757, and 4780.<sup>16</sup>

BX represents that, except where specifically stated otherwise, all proposed rules are restatements of existing rules and are not intended to reflect substantive changes to rule text or the operation of the NASDAQ OMX BX Equities Market.<sup>17</sup> Proposed Rule 4702 related to Order Types contains definitions and descriptions of Price to Comply Orders, Price to Display Orders (referred to as “Price to Comply Post Orders” in current Rule 4751),<sup>18</sup> Non-Displayed Orders, Post-Only Orders, Retail Price Improving Orders, and Retail Orders. Proposed Rule 4703 related to Order Attributes contains definitions and descriptions of time-in-force (“TIF”) modifiers, order size, order price, pegging, minimum quantity, routing, discretion, reserve size, attribution, intermarket sweep order designation, and display.<sup>19</sup>

In Amendment No. 1, the Exchange proposes to add language further explaining the operation of the following order types: Post-Only Orders, orders with a TIF of IOC, including Routable Orders and Post-Only Orders; orders with Midpoint Pegging, Primary Pegging or Market Pegging; and orders designated with both Pegging and Routing attributes.<sup>20</sup> For example, the Exchange states that for Order Types that list both Pegging and Routing as possible Order Attributes, the two Order Attributes may be combined since Pegging serves to establish the price of the order, while Routing establishes the market center(s) to which the system’s routing functionality may direct a routed order if liquidity is available at that price.<sup>21</sup> The Exchange also proposes to add further specification regarding the availability of certain order types only through certain communication protocols by stating that a Post-Only Order with a TIF of IOC may not be entered through the RASH or FIX protocols.<sup>22</sup> In addition, the Exchange proposes to add language stating that one or more Order

<sup>6</sup> See Notice 80 FR at 18473.

<sup>7</sup> See *id.*; see also Mary Jo White, Chair, Commission, Speech at the Sandler O’Neill & Partners, L.P. Global Exchange and Brokerage Conference (June 5, 2014), available at <http://www.sec.gov/News/Speech/Detail/Speech/1370542004312>.

<sup>8</sup> See Notice, 80 FR at 18474.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> See Rule 4751.

<sup>13</sup> See proposed Rule 4701.

<sup>14</sup> See proposed Rules 4702 and 4703.

<sup>15</sup> See Rule 4755.

<sup>16</sup> BX states that, in subsequent proposed rule changes, it plans to restate the remainder of its Rules numbered 4752 through 4780 so that they appear sequentially following Rule 4703. See Notice, 80 FR at 18474.

<sup>17</sup> See Notice, 80 FR at 18474.

<sup>18</sup> See Notice, 80 FR at 18477 n.29.

<sup>19</sup> The Notice contains additional details related to proposed Rules 4702 and 4703. See Notice, 80 FR at 18473-90.

<sup>20</sup> See Amendment No. 1.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 74617 (March 31, 2015), 80 FR 18473 (“Notice”).

<sup>4</sup> See Securities Exchange Act Release No. 74934, 80 FR 28325 (May 18, 2015).

<sup>5</sup> In Amendment No. 1, the Exchange proposed to correct typographical errors in the original filing, further improve the clarity of certain rule language, and include additional explanation with regard to the purpose of the proposed rule change.

Attributes may be assigned to a single order, but if the use of multiple Order Attributes would result in contradictory instructions, the system will reject the order or remove non-conforming Order Attributes.<sup>23</sup>

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>24</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>25</sup> which requires, among other things, that the rules of a national securities exchange be 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, 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 are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission notes that the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act because the reorganized and enhanced descriptions of its Order Types, Order Attributes, and related System functionality should promote just and equitable principles of trade and perfect the mechanisms of a free and open market and the national market system by providing greater clarity concerning certain aspects of the System's operations.<sup>26</sup> In addition, the Commission notes that BX believes that the proposed rule change should contribute to the protection of investors and the public interest by making BX's rules easier to understand.<sup>27</sup> Further, BX believes that additional specificity in its rules will promote a better understanding of the Exchange's operation, thereby facilitating fair competition among brokers and dealers and among markets.<sup>28</sup>

The Commission notes that, according to the Exchange, the proposal does not add any new functionality but instead

re-organizes the Exchange's order type rules and provides additional detail regarding the order type functionality currently offered by the Exchange. Based on the Exchange's representation, the Commission believes that the proposed rule change does not raise any novel regulatory considerations and should provide greater specificity, clarity and transparency with respect to the order type functionality available on the Exchange. In addition, the Commission notes that the Exchange's proposed rule changes provide additional detail related to functionality for certain order types and the handling of orders during initial entry and after posting to the NASDAQ OMX BX Equities Market Book. Accordingly, the Commission believes that this proposed rule change should provide greater transparency with respect to the Exchange's order type functionality. For these reasons, the Commission believes that the proposal should help to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

The Commission finds good cause to approve the filing, as amended by Amendment No. 1 to the proposed rule change, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The proposed amendments should further increase the Exchange's transparency with respect to the operation of various order types and modifiers, and serve to enhance investors' understanding of the tools available with respect to the handling of their orders. Accelerated approval would allow the Exchange to update its rule text immediately, thus providing users with greater clarity with respect to the use and potential use of functionality offered by the Exchange. In addition, the initial proposal was open for comment for twenty-one days after publication and generated no comment. Accordingly, the Commission believes that good cause exists, consistent with Sections 6(b)(5) and 19(b) of the Act,<sup>29</sup> to approve the filing, as amended by Amendment No. 1 to the proposed rule change, on an accelerated basis.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

change, as amended, 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2015-015 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-2015-015. This file number should be included on the subject line if email 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 Web site (<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 Web site 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-2015-015 and should be submitted on or before July 22, 2015.

### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>30</sup> that the proposed rule change (SR-BX-2015-015) be, and it hereby is, approved on an accelerated basis, as amended.

<sup>30</sup> 15 U.S.C. 78s(b)(2).

<sup>31</sup> 17 CFR 200.30-3(a)(12).

<sup>23</sup> *Id.*

<sup>24</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>25</sup> 15 U.S.C. 78f(b)(5).

<sup>26</sup> See Notice, 80 FR at 18488.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> 15 U.S.C. 78f(b)(5); 15 U.S.C. 78s(b).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>31</sup>

**Robert W. Errett,**  
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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75299; File No. SR-CBOE-2015-047]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change Relating to Floor Broker Due Diligence

June 25, 2015.

#### I. Introduction

On May 5, 2015, Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> a proposed rule change to amend Exchange rules related to Floor Broker due diligence. The proposed rule change was published for comment in the **Federal Register** on May 22, 2015.<sup>4</sup> The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

#### II. Description of the Proposal

CBOE proposes to amend several rules to address certain order handling obligations on the part of its Floor Brokers. Specifically, whether orders sent to Floor Brokers are presumed to be “Held” or “Not Held.” A “Not Held” order generally is one where the customer gives the Floor Broker discretion in executing the order, both with respect to the time of execution and the price (though the customer may specify a limit price), and the Floor Broker works the order over a period of time to avoid market impact while seeking best execution of the order. A “Held” order generally is one where the customer seeks a prompt execution at the best currently available price or prices.

Currently, CBOE Rule 6.53 (Certain Order Types Defined) defines a “Not Held Order” as an order that is marked as “not held” or “take time,” or “which

bears any qualifying notation giving discretion as to the price or time at which such order is to be executed.” CBOE Rule 6.75 (Discretionary Transactions) further provides that “[u]nder normal market conditions, and in the absence of a ‘not held’ instruction, a Floor Broker may not exercise time discretion on market or marketable limit orders and shall immediately execute such orders at the best price or prices available.”

CBOE now proposes to amend Exchange Rule 6.75, as well as Rules 6.53 and 6.73, to establish a different default status for orders sent to Floor Brokers. Specifically, CBOE proposes to add a new Interpretation and Policy .06 to CBOE Rule 6.73 (Responsibilities of Floor Brokers) to specify that an order entrusted to a Floor Broker will be considered a Not Held Order unless (i) a Floor Broker’s customer otherwise specifies or (ii) the order was electronically received by the Exchange and subsequently routed to a Floor Broker or PAR Official pursuant to the order entry firm’s routing instructions. The Exchange also proposes to add additional language to the Not Held Order definition in CBOE Rule 6.53(g) that mirrors the language it proposes to add to Rule 6.73. Finally, the Exchange proposes to amend CBOE Rule 6.75, which addresses a Floor Broker’s discretion in executing orders, to delete the sentence that specifies that a Floor Broker may *not* exercise time discretion on an order under normal market conditions unless the order was marked “not held.”

The consequence of these proposed changes, taken together, will result in a change to the default order handling obligations for orders sent to Floor Brokers. Whereas Floor Brokers are currently obligated by CBOE Rule 6.75 to immediately execute orders at the best available prices under normal market conditions unless the customer provides a Not Held instruction on the order, CBOE’s proposal will consider all orders sent to Floor Brokers to be “Not Held” by default unless the customer specifies or if the order is delivered to CBOE electronically in such a manner as to suggest that the customer is seeking a prompt execution of a marketable order at the best available prices.

In its filing, the Exchange states that CBOE Rules 6.73 and 6.75 were adopted prior to electronic trading and thus did not contemplate the interaction between an electronic trading environment and a manual trading floor.<sup>5</sup> The Exchange believes that, at present, customers who

submit orders to Floor Brokers likely are seeking to rely on a Floor Broker’s expertise and discretion.<sup>6</sup> The Exchange believes that customers place orders with Floor Brokers because Floor Brokers can exercise discretion in executing a client’s order and can potentially provide higher execution quality.<sup>7</sup> The Exchange states that a customer would otherwise electronically submit an order to the Exchange for automatic handling and an electronic execution.<sup>8</sup>

#### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>9</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>10</sup> which requires that the rules of the exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, 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.

The Commission believes that the Exchange has articulated a reasonable basis for changing the current default presumption of whether a customer intends to provide a Floor Broker with the ability to exercise time and price discretion on its behalf as long as the order is not otherwise marked, or received electronically, in a manner to suggest that the customer did not intend for its order to be treated as Not Held. Other than changing the default presumption to “Not Held” for most orders sent to Floor Brokers, CBOE is not proposing to change any other order handling obligations applicable to Floor Brokers. CBOE’s proposal responds to its understanding of the changing role of Floor Brokers on its trading floor since it adopted Rule 6.75, and its understanding of how customers today use, and intend to continue to use, the services of Floor Brokers on the CBOE exchange. Accordingly, the Commission finds that the proposed rule change is consistent with the Act and is designed

<sup>6</sup> See *id.*

<sup>7</sup> See *id.*

<sup>8</sup> See *id.*

<sup>9</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Act Release No. 74990 (May 18, 2015), 80 FR 29767 (“Notice”).

<sup>5</sup> See Notice, *supra* note 4, 80 FR at 29768.