

is December 2, 2012. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change, the comments received, and any response to the comments submitted by the Exchange. The proposed rule change would, among other things, amend NASDAQ Rule 4751(f)(4) to create a new INAV Pegged Order type for U.S. Component Stock ETFs.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁶ designates January 16, 2012, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR–NASDAQ–2012–117).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68268; File No. SR–BX–2012–072]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rule 4618

November 20, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b–4 thereunder,² notice is hereby given that on November 15, 2012, NASDAQ OMX BX, Inc. (“BX” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by BX. On November 15, 2012, BX filed Amendment No. 1 to the proposed rule change.³ BX filed the proposal pursuant to Section 19(b)(3)(A)⁴ and Rule 19b–

4(f)(6)⁵ thereunder so that the proposal was effective upon filing with the Commission. 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

BX is filing this proposed rule change to amend Rule 4618. The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

4618. Clearance and Settlement

(a) All transactions through the facilities of the NASDAQ OMX BX Equities Market shall be cleared and settled through a registered clearing agency using a continuous net settlement system. This requirement may be satisfied by direct participation, use of direct clearing services, [or] by entry into a correspondent clearing arrangement with another member that clears trades through such a[n] *clearing agency*[,], or by use of the services of CDS Clearing and Depository Services, Inc. in its capacity as a member of such a clearing agency.

(b) No change.

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

BX proposes to modify Rule 4618 to clarify that the use of a long-standing arrangement between National Securities Clearing Corporation (“NSCC”) and CDS Clearing and Depository Services, Inc. (“CDS”)⁶ for clearing transactions in U.S. securities provides an acceptable method for clearing transactions executed on BX. Among other things, CDS operates Canada's national clearance and settlement operations for cash equities

trading, performing a role analogous to NSCC in the U.S. CDS is regulated by the Ontario and Quebec securities commissions and the Bank of Canada, with working and reporting relationships with the Canadian Securities Administrators (CSA), other Canadian provincial securities commissions, and the Canadian Office of the Superintendent of Financial Institutions. CDS is also a full service member of NSCC and a participant in the Depository Trust Company (“DTC”).

Currently, a Canadian broker-dealer seeking to buy or sell U.S. securities may do so through a U.S. registered broker-dealer with which it establishes a relationship for that purpose. In such a relationship, the U.S. broker-dealer manages the clearance and settlement of the resulting trades, either through direct membership at NSCC or indirectly through a clearing broker with which it has established a relationship. Under the proposed change, a Canadian broker-dealer that is a member of CDS may make use of CDS, and its direct membership in NSCC, to clear and settle the resulting trades. Specifically, the clearing report for the trade will “lock in” CDS, with reference to the CDS membership of the Canadian broker-dealer, as a party to the trade.⁷ NSCC then looks to CDS for satisfaction of clearance and settlement obligations of the Canadian broker-dealer. NSCC requires CDS to commit collateral to the NSCC clearing fund like any other NSCC member, the amount of which is based on a risk-based margining methodology. In a similar manner, CDS requires its participants to commit collateral to CDS. The sole risk incurred by BX and then by NSCC in the arrangement is the highly remote risk that CDS itself might default on its obligations to clear and settle on behalf of the Canadian broker-dealer. This risk is conceptually indistinguishable from the risk of a clearing broker default; moreover, because the value of Canadian trades cleared through the mechanism is likely to be small in comparison to the values cleared through many large U.S. clearing brokers, the magnitude of this risk is correspondingly smaller.

The relationship between NSCC and CDS was established more than two decades ago, and various aspects of the

⁷ As an NSCC member, CDS is responsible for the settling and clearing of its participants' trades conducted with U.S. broker-dealers. For purposes of “locking-in” parties, certain CDS participants have discrete NSCC participant codes that identify the Canadian broker-dealer and its participation in the NSCC/CDS clearing arrangement. On midnight of T+1, NSCC takes on the buyer's credit risk and the seller's delivery risk.

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30–3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ In Amendment No. 1, BX deleted “October __, 2012” and inserted “November 1, 2012” on page 9 of 18 of the original filing, concerning when BX provided the Commission with written notice of the proposed rule change.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b–4(f)(6).

⁶ CDS was formerly known as The Canadian Depository for Securities Limited.

relationship have been recognized through several prior filings⁸ and no-action letters,⁹ as well as a recent similar filing by The NASDAQ Stock Market LLC.¹⁰ A recent description of the parameters of the relationship may be found in NSCC's Assessment of Compliance with the CPSS/IOSCO Recommendations for Central Counterparties.¹¹ The most prominent use of the relationship arises under FINRA Rule 7220A, which allows over-the-counter trades executed on behalf of CDS members to be reported through the FINRA/NASDAQ Trade Reporting Facility and cleared through the CDS/NSCC relationship.

In order to clearly establish that use of the CDS/NSCC relationship is a permissible method of clearing transactions executed on BX, BX is proposing to amend Rule 4618. Currently, the rule provides that trades must be cleared through a registered clearing agency using a continuous net settlement ("CNS") system, and that this requirement may be satisfied by direct participation, use of direct clearing services, or by entry into a correspondent clearing arrangement with another member that clears trades through such an agency. NSCC is currently the only registered clearing agency using a CNS system for trades executed on BX. While it is possible that the term "direct clearing services" could be construed to cover CDS's participation in NSCC on behalf of its members—because CDS is a direct member of NSCC for the purpose of providing clearing services to its members—the term has not previously been construed by BX in that manner. Accordingly, BX believes that the clarity

of the rule would be enhanced by directly recognizing the CDS/NSCC relationship in the rule text. BX proposes amending the rule to provide that the rule may be satisfied through "use of the services of CDS Clearing and Depository Services, Inc. in its capacity as a member of such a clearing agency." Whenever a clearing arrangement making use of CDS's membership in NSCC is established, NSCC will require the BX member, the Canadian broker on whose behalf it is acting, CDS, and BX to sign a short agreement, to be addressed to NSCC, in which the parties acknowledge their use of the CDS/NSCC arrangement.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹² in general, and with Section 6(b)(5) of the Act,¹³ 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. Specifically, by allowing Canadian broker-dealers whose trades are executed on BX to make use of the long-standing arrangement between NSCC and CDS for clearing transactions, BX believes that the proposed rule change will directly foster cooperation and coordination with the two primary North American cash equities clearinghouses and their respective members, thereby promoting a free and open market. Because the arrangement between NSCC and CDS—which has been in place, in varying forms, for over two decades—includes mechanisms to provide for the collateralization of the obligations arising thereunder, BX believes that the proposed change is fully consistent with the protection of investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

BX 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. The proposed change will ensure that Canadian broker-dealers whose trades

are executed on BX are able to make use of an additional available option for clearing such transactions, thereby promoting competition with respect to the availability of clearing services.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder¹⁵ 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. 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 email to rule-comments@sec.gov. Please include File Number SR-BX-2012-072 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2012-072. This file number should be included on the subject line if email is used. To help the

⁸ See Securities Exchange Act Release No. 36918 (March 4, 1996), 61 FR 9739 (March 11, 1996) (SR-NASD-95-49) (approving access to Automated Confirmation Transaction Service for CDS members); Securities Exchange Act Release No. 40523 (October 6, 1998), 63 FR 54739 (October 13, 1998) (approving establishment of a CDS omnibus account at DTC to facilitate cross-border clearing).

⁹ See Letter from Dan W. Schneider, Deputy Associate Director, Commission, to Karen L. Saperstein, Assistant General Counsel, NSCC (November 26, 1984) (available at 1984 WL 47355) (taking no-action position with respect to use of CDS and NSCC with respect to clearing of trades executed on behalf of Canadian broker-dealers on the Boston Stock Exchange); Letter from Dan W. Schneider, Deputy Associate Director, Commission, to Karen L. Saperstein, Assistant General Counsel, NSCC (October 24, 1984) (available at 1984 WL 47356) (taking no-action position with respect to CDS becoming a member of NSCC).

¹⁰ Securities Exchange Act Release No. 66310 (February 2, 2012), 77 FR 6610 (February 8, 2012) (SR-NASDAQ-2012-015).

¹¹ "Assessment of Compliance with the CPSS/IOSCO Recommendations for Central Counterparties," NSCC (November 14, 2011) (available at http://www.dtcc.com/legal/compliance/NSCC_Self_Assessment.pdf).

¹² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).

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 such filings will also be available for inspection and copying at the principal office of BX and on BX's Web site: <http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/pdf/bx-filings/2012/SR-BX-2012-072.pdf>.

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-2012-072 and should be submitted on or before December 18, 2012.

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

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68270; File No. SR-FINRA-2012-050]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt a Supplementary Schedule for Derivatives and Other Off-Balance Sheet Items Pursuant to FINRA Rule 4524 (Supplemental FOCUS Information)

November 20, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 15, 2012, the Financial Industry Regulatory Authority, Inc. ("FINRA") 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 substantially prepared by FINRA. 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

FINRA is proposing to adopt a supplementary schedule for derivatives and other off-balance sheet items pursuant to FINRA Rule 4524 (Supplemental FOCUS Information).

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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. FINRA 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

FINRA Rule 4524 requires each firm, as FINRA shall designate, to file such additional financial or operational schedules or reports as FINRA may deem necessary or appropriate for the protection of investors or in the public interest as a supplement to the FOCUS reports. Pursuant to FINRA Rule 4524, FINRA is proposing the adoption of a supplemental schedule to the FOCUS reports to capture important information that is not otherwise reported on certain firms' balance sheets. To that end, the proposal would require all carrying or clearing firms to file with FINRA the Derivatives and Other Off-Balance Sheet Items Schedule ("OBS") within 22

business days of the end of each calendar quarter. The proposed OBS is necessary for FINRA to more effectively examine for compliance with, and enforce, its rules on capital adequacy. The proposed OBS enables FINRA to examine on an ongoing basis the potential impact off-balance sheet activities may have on carrying and clearing firms' net capital, leverage and liquidity, and ability to fulfill their customer protection obligations.

In the aftermath of the financial crisis, FINRA began to closely monitor firms' levels of leverage and available liquidity to meet their funding needs and began to collect certain additional information from certain carrying and clearing firms with regard to their proprietary positions, financing transactions and certain off-balance sheet transactions. FINRA believes the proposed OBS will allow FINRA to obtain more comprehensive and consistent information regarding carrying and clearing firms' off balance sheet assets, liabilities and other commitments. The proposed OBS would require firms to report their gross exposures in financing transactions (e.g., reverse repos, repos and other transactions that are otherwise netted under generally accepted accounting principles, reverse repos and repos to maturity and collateral swap transactions), interests in and exposure to variable interest entities, non-regular way settlement transactions (including to be announced or TBA securities and delayed delivery/settlement transactions), underwriting and other financing commitments, and gross notional amounts in centrally cleared and non-centrally cleared derivative contracts involving equities, commodities, interest rates, foreign exchange derivatives and credit default swaps. However, the proposed OBS contains a *de minimis* off-balance sheet activity exception for each reporting period. If the total of all off-balance sheet items is less than 10% of the firm's excess net capital on the last day of the reporting period, the firm will not be required to file the proposed OBS for the reporting period.³

The proposed rule change will be effective upon Commission approval. FINRA will announce the first quarterly reporting period (i.e., the implementation date for purposes of the proposed off-balance sheet schedule) in a regulatory notice to be published no later than 60 days following

³ For purposes of the proposed OBS, the term "excess net capital" means net capital reduced by the greater of the minimum dollar net capital requirement or two percent of combined aggregate debit items as shown in the Formula for Reserve Requirements pursuant to 17 CFR 240.15c3-3.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁶ 17 CFR 200.30-3(a)(12).