

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58953; File No. SR-NSX-2008-20)

November 14, 2008

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend NSX Rule 11.23(a) which Defines the Phrase “Riskless Principal Transaction”.

Pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 13, 2008, National Stock Exchange, Inc. (“NSX[®]” or the “Exchange”) filed with the Securities and Exchange Commission (“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 comment 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 NSX Rule 11.23(a), which defines the phrase “riskless principal transaction,” to make clear that the definition includes transactions where an ETP Holder receives orders that may be executed in whole or in part in other market venues. As explained in further detail below, this amendment will clarify the scope of the exception to NSX’s Customer Priority rule contained in Rule 12.6(d), and will more closely align NSX’s rules with those used by other self-regulatory organizations (“SROs”).

The text of the proposed rule change is available on the Exchange’s website at

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

<http://www.nsx.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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NSX Rule 12.6 prohibits an ETP Holder from placing an order for its own account (or an account in which it or one of its associated persons is interested) while it holds an unexecuted, marketable customer order for the same security, unless an exception applies. Specifically, Rule 12.6 provides:

(a) No ETP Holder shall (i) personally buy or initiate the purchase of any security traded on the Exchange for its own account or for any account in which it or any associated person of the ETP Holder is directly or indirectly interested while such an ETP Holder holds or has knowledge that any person associated with it holds an unexecuted market order to buy such security in the unit of trading for a customer, or (ii) sell or initiate the sale of any such security for any such account while it personally holds or has knowledge that any person associated with it holds an unexecuted

market order to sell such security in the unit of trading for a customer.

(b) No ETP Holder shall (i) buy or initiate the purchase of any such security for any account in which it or any associated person of the ETP Holder is directly or indirectly interested at or below the price at which it personally holds or has knowledge that any person associated with it holds an unexecuted limited price order to buy such security in the unit of trading for a customer or (ii) sell or initiate the sale of any such security for any such account at or above the price at which it personally holds or has knowledge that any person associated with it holds an unexecuted limited price order to sell such security in the unit of trading for a customer.

Rule 12.6(d) provides an exception to provisions (a) and (b) where “an ETP Holder engages in trading activity to facilitate the execution, on a riskless principal basis, of another order from its customer . . . *provided that the requirements of Rule 11.23 are satisfied . . .*” (emphasis added.) Thus, to meet the exception in Rule 12.6(d), an ETP Holder also must comply with Rule 11.23. In turn, Rule 11.23(a) defines the phrase “riskless principal transaction” to mean:

two offsetting principal transaction legs in which an ETP Holder, (i) after having received an order to buy a security *that it holds for execution on the Exchange*, purchases the security as principal at the same price, exclusive of markups, markdowns, commissions and other fees, to satisfy all or a portion of the order to buy or (ii) after having received an order to

sell a security *that it holds for execution on the Exchange*, sells the security as principal at the same price, exclusive of markups, markdowns, commissions and other fees, to satisfy all or a portion of the order to sell.

(emphasis added.)

Therefore, if an ETP Holder receives an order to buy or sell a security, but does not hold that order for execution *on the Exchange*, any resulting transaction might not meet the definition of a riskless principal transaction in Rule 11.23(a). For the same reason, such a transaction also might not meet the exception in Rule 12.6(d).

In addition, it is unclear whether an order submitted to a ETP Holder without a designated marketplace for execution could be “[held] for execution on the Exchange,” particularly where the ETP Holder executes the first leg of what generally would be considered a riskless principal transaction on a market other than the Exchange and completes the transaction with its customer on the Exchange. Because the customer has not designated where the order should be executed, and because the first leg of the order was in fact executed off the Exchange, such an order might not be viewed as being “[held] for execution on the Exchange.” Accordingly, the transaction might not be a “riskless principal transaction” within the meaning of Rule 11.23(a) and, therefore, might not satisfy the exception contained in Rule 12.6(d), even if the transaction was done to facilitate a customer order.

NSX proposes to remove the requirement that an order be “[held] for execution on the Exchange” from the definition of a “riskless principal transaction” in Rule 11.23(a) to permit the type of transaction described above to qualify as a “riskless principal transaction” and, where the other requirements are met, to meet the exception in

Rule 12.6(d). The exception in Rule 12.6(d) is designed to allow ETP Holders to place proprietary trades ahead of customer orders only where such proprietary trades are for the benefit of a customer. This exception recognizes that, in some instances, an ETP Holder's nominal trading ahead may nevertheless benefit, rather than harm, a customer. It makes no difference to this analysis whether the customer specified that its order was to be executed on the Exchange, or whether the order can be characterized as being "[held] for execution on the Exchange."

Amended Rule 11.23(a) also would be consistent with other SRO rules. For example, Financial Industry Regulatory Authority ("FINRA") NASD Rule 2111 and IM-2110-2 both allow a firm to trade ahead of a customer order if, among other things, the member's proprietary trade is a riskless principal transaction, as defined in various NASD rules, that is used to facilitate a customer order. The definition of a riskless principal transaction in NASD rules is substantially similar to the definition in NSX Rule 11.23(a) except, of course, that it is not limited to orders held for execution on any particular securities exchange or in any particular venue.³ New York Stock Exchange ("NYSE") Rule 92 also allows firms to trade ahead of customer orders where the firm's proprietary order is a riskless principal transaction designed to facilitate a customer order. NYSE Rule 92 does not require that an order be held for execution on the NYSE or any other venue or securities exchange to qualify for this exception.⁴ Amending Rule 11.23(a) will therefore make NSX rules consistent with analogous SRO rules.

³ See, e.g., NASD Rule 4632(d)(3)(B) (defining a riskless principal transaction as a "transaction in which a member after having received an order to buy a security, purchases the security as principal at the same price to satisfy the order to buy or, after having received an order to sell, sells the security as principal at the same price to satisfy the order to sell") (cited in NASD Rule 2111(f)(1) and IM-2110-2).

⁴ NYSE Rule 92(c)(1) ("The facilitated order must be a 'riskless principal transaction,' which is when a member or member organization, after having received an order to buy a security, purchases the security as principal at the same

Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Securities Exchange Act of 1934 (“Act”),⁵ which requires, among other things, that NSX Rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change will clarify the application of Rule 12.6(d) and will more closely align that rule with the rules of other SROs.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

The proposed rule change will take effect 30 days from the date of filing (or such shorter time as the Commission may designate) pursuant to Section 19(b)(3)(A)(ii) of the Act⁶ and subparagraph (f)(6) of Rule 19b-4⁷ thereunder, because the proposal: (1) does

price to satisfy the order to buy or, after having received an order to sell, sells the security as principal at the same price to satisfy the order to sell.”)

⁵ 78 U.S.C. 78f(b).

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁷ 17 CFR 240.19b-4.

not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.⁸

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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.⁹

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. Please include File Number SR-NSX-2008-20 on the subject line.

Paper Comments:

⁸ As required under Rule 19b-4(f)(6)(iii), NSX provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

⁹ 15 U.S.C. 78s(b)(3)(C).

- 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-NSX-2008-20. 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 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 inspection and copying in the Commission's Public Reference Room 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 NSX. 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-NSX-2008-20 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.¹⁰

Florence E. Harmon
Acting Secretary

¹⁰ 17 CFR 200.30-3(a)(12).