

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-72227; File No. SR-NSX-2014-15)

May 22, 2014

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Certain Requirements Pertaining to Sponsored Access Under Rules 11.9 and 11.17

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 May 8, 2014, National Stock Exchange, Inc. (“NSX<sup>®</sup>” 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 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 is proposing certain amendments to Rule 11.9, titled “Access” and to Rule 11.17, titled “Clearance and Settlement.” The text of the proposed rule change is available on the Exchange’s website at <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

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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 parts of such statements.

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

1. Purpose

The Exchange is proposing certain amendments to Rule 11.9, paragraph (b) governing the requirements for a Sponsored Participant<sup>3</sup> to obtain access to the Exchange’s trading system (the “System”)<sup>4</sup> through a Sponsoring ETP Holder.<sup>5</sup> First, the Exchange is proposing to amend paragraph (b) of Rule 11.9 to eliminate a provision that a Sponsored Participant may obtain access to the System “...only if such participant is a registered broker or dealer and a self-clearing member of a Qualified Clearing Agency....” The Exchange proposes to make a conforming amendment to paragraph (a) of Rule 11.17 to eliminate the parallel provision that “[e]ach Sponsored Participant must be a member of a Qualified Clearing Agency....”

The Exchange submits that the import of these two rule provisions was to assure that a Sponsored Participant accessing the Exchange was an entity subject to the risk, capital and

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<sup>3</sup> A “Sponsored Participant” is defined in Exchange Rule 1.5S.(1) as “...a person who has entered into a sponsorship arrangement with a Sponsoring ETP Holder pursuant to Rule 11.9.”

<sup>4</sup> The “System” is defined in Exchange Rule 1.5S.(4) as “...the electronic securities communications and trading facility designated by the Board [of Directors of the Exchange] through which the orders of Users are consolidated for ranking and execution.”

<sup>5</sup> A “Sponsoring ETP Holder” is defined in Exchange Rule 1.5S(2) as “...a broker-dealer that has been issued an ETP by the Exchange who has been designated by a Sponsored Participant to execute, clear and settle transactions resulting from the System. The Sponsoring ETP Holder shall be either (i) a clearing firm with membership in a clearing agency registered with the Commission that maintains facilities through which transactions may be cleared or (ii) a correspondent firm with a clearing arrangement with any such clearing firm.”

compliance requirements applicable to brokers and dealers under the federal securities laws, the regulations promulgated thereunder, and the rules of the self-regulatory organizations to which such a broker or dealer belonged. The additional requirement that the Sponsored Participant be a self-clearing member of a Qualified Clearing Agency operated to assure that trades executed by the Sponsored Participant in the NSX marketplace would settle and clear without risk to counterparties, to the Exchange, or to the wider market. These considerations were particularly important to the extent that a Sponsored Participant may have had an arrangement with the Sponsoring ETP Holder whereby the Sponsored Participant's orders bypassed the Sponsoring ETP Holder's trading systems and were routed orders directly to the Exchange.

The Exchange submits that the requirement of Rule 11.9 that a Sponsored Participant must be a registered broker or dealer and a self-clearing member of a Qualified Clearing Agency is no longer necessary in view of the significant changes to the regulations governing market access that have been enacted since Rule 11.9 was last amended in 2006.<sup>6</sup> Most notably, in November 2010, the Commission adopted Rule 15c3-5, Risk Management Controls for Brokers or Dealers with Market Access<sup>7</sup> Rule 15c3-5 requires, *inter alia*, that a broker or dealer with market access,<sup>8</sup> or that provides a customer or any other person with access to an exchange through the use of its mnemonic or market participant identifier or otherwise, establish,

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<sup>6</sup> See Exchange Act Release No. 54391 (August 31, 2006); 71 FR 52836 (September 7, 2006)(SR-NSX-2006-08).

<sup>7</sup> 17 CFR 240.15c3-5; Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69791 (November 15, 2010).

<sup>8</sup> Rule 15c3-5(a)(1) defines market access as access to trading in securities on an exchange or alternative trading system as a result of being a member or subscriber of the exchange or alternative trading system, or access to trading in securities on an alternative trading system provided by a broker-dealer operator of an alternative trading system to a non-broker-dealer. See 17 CFR 240.15c3-5(a)(1).

document and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory and other risks, such as legal and operational risks, related to market access.<sup>9</sup> Rule 15c3-5 requires that a broker or dealer's financial risk management controls and supervisory procedures be reasonably designed to systematically limit the financial exposure that could arise as a result of market access, including preventing the entry of orders that exceed pre-set credit or capital thresholds and rejecting erroneous or duplicative orders.<sup>10</sup> A broker-dealer's regulatory risk management controls and supervisory procedures must be reasonably designed to ensure compliance with all regulatory requirements, including preventing the entry of orders unless there has been compliance with all regulatory requirements that must be satisfied on a pre-order entry basis.<sup>11</sup> The Rule further requires that the broker or dealer with market access have direct and exclusive control of the risk management controls and supervisory procedures.<sup>12</sup>

The Exchange submits that the provisions of Rule 15c3-5, which operate to prohibit “unfiltered” or “naked” access where a customer's order flow does not pass through an ETP Holder's systems or filters prior to entry on the Exchange, render the requirement of Rule 11.9(b) that a Sponsored Participant be a self-clearing broker-dealer, and its parallel requirement in the text of Rule 11.17(a), to be extraneous. Moreover, the Exchange notes that an examination of the requirements for Sponsored Participants under the rules of other national equity security

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<sup>9</sup> 17 CFR 240.15c3-5(b).

<sup>10</sup> 17 CFR 240.15c3-5(c)(1).

<sup>11</sup> 17 CFR 240.15c3-5(b) and (c).

<sup>12</sup> 17 CFR 240.15c3-5(d).

exchanges discloses that they do not contain a similar requirement that a Sponsored Participant be a registered, self-clearing broker-dealer.<sup>13</sup> Thus, by this proposed amendment, the Exchange will bring the requirements of Rule 11.9(b) into alignment with the rules of other exchanges. The Exchange believes that this change will operate to enhance efficiencies by eliminating the need for ETP Holders to impose special requirements on its Sponsored Participants for purposes of accessing the Exchange when such special requirements are not required for purposes of sponsored access to other exchanges.

The Exchange also proposes to amend subparagraph (b)(2)(D) of Rule 11.9 that requires, in relevant part, that a Sponsored Participant provide “upon request” a list of Authorized Traders who may obtain access to the System on behalf of the Sponsored Participant to the Sponsoring ETP Holder and to the Exchange. Under the Exchange’s proposed amendment, the Sponsored Participant would be required to provide a list of Authorized Traders to the Sponsoring ETP Holder, but would not limit this requirement to instances where a request is made by the Sponsoring ETP Holder to do so.<sup>14</sup> The Exchange believes that it is important for a Sponsoring ETP Holder to have a current list of its Sponsored Participants’ Authorized Traders and, since other exchanges have the same requirement, the amendment as proposed would enhance the ability of the Sponsoring ETP Holder to comply with market access requirements while not imposing any greater compliance burden.

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<sup>13</sup> See, e.g., New York Stock Exchange LLC (“NYSE”) Rule 123B.10(c); NYSE Arca Equities, Inc. (“NYSE Arca”) Rule 7.29(b); BATS Exchange, Inc. (“BATS”) Rule 11.3; EDGA Exchange, Inc. (“EDGA”) Rule 11.3(b).

<sup>14</sup> The Exchange’s proposed amendment to require that a Sponsored Participant furnish a list of its Authorized Traders to its Sponsoring ETP Holder mirrors the same requirement found in NYSE Arca Rule 7.29(b)(2)(D) and BATS Rule 11.3(b)(2)(D).

The Exchange also proposes to delete from paragraph (b)(3) of Rule 11.9 the provision that it is the responsibility of the Sponsoring ETP Holder, without limitation to clear and settle the Sponsored Participant's trades in the event that the Sponsored Participant or its Qualified Clearing Agency does not accept any such trades. The Exchange believes that deletion of this text is consistent with the proposed removal of the requirement under Rule 11.9 that a Sponsored Participant must be a self-clearing broker or dealer and notes that the preceding sentence of Rule 11.9(b)(3), which will remain unchanged under the Exchange's proposal, requires a written statement from the Sponsoring ETP Holder that it is responsible for the "orders, executions and actions of its Sponsored Participant at issue." The Exchange also notes that Rule 1.5S.(2) defines "Sponsoring ETP Holder" as a broker-dealer that has been designated by a Sponsored Participant to "...execute, clear and settle transactions resulting from the System...." The Exchange does not believe that the text it proposes to remove impacts in any way the respective obligations of the Sponsoring ETP Holder or Sponsored Participant with respect to the clearing and settlement of the Sponsored Participant's executions on the Exchange.

## 2. Statutory Basis

The Exchange believes that the proposed amendments to Rules 11.9 and 11.17 are consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange and, in particular, with the requirements of Section 6(b) of the Act.<sup>15</sup> In particular, the Exchange submits that its proposal is consistent with Section 6(b)(5) of the Act,<sup>16</sup> because it would promote just and equitable principles of trade and remove impediments to, and perfect the mechanism of, a free and open market and a national market

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

system and, in general, protect investors and the public interest.

The Exchange believes that amending Rule 11.9(b) to remove the requirement that a Sponsored Participant must be a registered, self-clearing broker or dealer, along with the parallel requirement contained in Rule 11.17(a), is consistent with Section 6(b)(5), in that it would remove from the Exchange's rules provisions that, while intended as salutary requirements intended to protect investors and the public interest, are now extraneous to that goal because of the significant changes to the regulatory and compliance structure for market access that have resulted from the implementation of Rule 15c3-5. Accordingly, the Exchange submits that considerations of investor protection and the public interest are no longer effectively served by placing the additional requirement on prospective Sponsored Participants that they meet the criterion of being a self-clearing broker-dealer, as well as satisfying the other requirements of Rule 11.9, before they can access the Exchange's marketplace.

The Exchange further believes that its proposal to eliminate the self-clearing broker-dealer requirement for Sponsored Participants from Rule 11.9(b)(2) and 11.17(a) would operate to promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and national market system. The Exchange's proposal aligns the Exchange's rules with those of other national securities exchanges, which do not have the same requirements in their respective sponsored access and clearance and settlement rules.<sup>17</sup> The Exchange thereby aspires to promote the consistency of its rules with other Exchanges by removing a requirement that other exchanges do not have and which can be deemed an impediment to a free and open market and national market system.

Similarly, the Exchange believes that its proposal to amend subparagraph (b)(2)(D) of

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<sup>17</sup> See footnote 13, supra.

Rule 11.9 to require that a Sponsored Participant shall provide a list of its Authorized Traders to the Sponsoring ETP Holder is consistent with Section 6(b)(5) of the Act in that it promotes just and equitable principles of trade and the protection of investors. The Exchange believes that it is important for a Sponsoring ETP Holder to have a current list of its Sponsored Participants' Authorized Traders and not confine that requirement to instances where the Sponsoring ETP Holder requests such a list. Moreover, as other exchanges have the same requirement, the amendment as proposed would enhance the ability of the Sponsoring ETP Holder to comply with market access requirements while not imposing any greater compliance burden.<sup>18</sup>

The Exchange's proposed amendment deleting from paragraph (b)(3) of Rule 11.9 the provision that it is the responsibility of the Sponsoring ETP Holder, without limitation to clear and settle the Sponsored Participant's trades in the event that the Sponsored Participant or its Qualified Clearing Agency does not accept any such trades, is consistent with Section 6(b)(5). The Exchange submits that the text proposed for deletion was apposite within the context of the requirement that a Sponsored Participant must be a self-clearing registered broker or dealer, which is also proposed for deletion. The Exchange notes that the preceding sentence of Rule 11.9(b)(3), which will remain unchanged under the Exchange's proposal, requires a written statement from the Sponsoring ETP Holder that it is responsible for the "orders, executions and actions of its Sponsored Participant at issue" and that Rule 1.5S.(2) defines "Sponsoring ETP Holder" as a broker-dealer that has been designated by a Sponsored Participant to "...execute, clear and settle transactions resulting from the System...." The Exchange believes that its proposal will operate to clarify and impart consistency within its rules, which is consistent with

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<sup>18</sup> Id.



the requirements of Section 6(b)(5) of the Act that the rules of the Exchange promote just and equitable principles of trade and the protection of investors and the public interest.

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

The Exchange believes that the proposed amendments to Rules 11.9 and 11.17 are in accordance with Section 6(b)(8) of the Act in that they will not place any burden on competition that is not necessary or appropriate in furtherance of the Act. In fact, the Exchange believes that its proposed amendment will promote competition by removing from Rule 11.9 the requirement that a Sponsored Participant seeking to attain access to the Exchange's marketplace through a Sponsoring ETP Holder must itself be a self-clearing registered broker or dealer. Since the access rules of other national securities exchanges do not contain a similar requirement, its proposed removal from Rule 11.9 will make access to the Exchange subject to meeting similar terms and conditions as required by other exchanges and not imposing special or unique provisions that operate as a barrier to obtaining access on the Exchange. The Exchange believes that the proposed amendments will therefore promote competition rather than impede it in any way.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from ETP Holders or other interested parties.

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

Because the foregoing proposed rule change does not:

- A. significantly affect the protection of investors or the public interest;
- B. impose any significant burden on competition; and

C. 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)<sup>19</sup> of the Exchange Act and Rule 19b-4(f)(6)<sup>20</sup> thereunder. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, or such shorter time as designated by the Commission.<sup>21</sup>

The Exchange requests that the Commission waive the 30-day operative delay so that the proposed rule change may become effective and operative upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act<sup>22</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>23</sup>

The Commission finds that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. In particular, the proposed rule change will align the NSX sponsored access requirements with that of other exchanges. Further, waiver of the operative delay would allow Exchange ETP Holders to enter sponsored access arrangements immediately. Accordingly, the Commission designates the proposal operative upon filing.<sup>24</sup>

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<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(6).

<sup>21</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>22</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>23</sup> 17 CFR 240.19b-4(f)(6).

<sup>24</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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-NSX-2014-15 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Secretary,

Securities and Exchange Commission, 100 F Street, NE, Washington, D.C. 20549-1090.

All submissions should refer to File No. SR-NSX-2014-15. This file number should be included in the subject line if e-mail is used. To help the Commission process and review 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 a.m. and 3 p.m. eastern time. Copies of such filings will also 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-NSX-2014-15 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 the delegated authority.<sup>25</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>25</sup> 17 CFR 200.30-3(a)(12).