

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76390; File No. SR-NSX-2015-05)

November 9, 2015

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Amending Rule 11.1, Hours of Trading, To Rescind Interpretations and Policies .01, “Cessation of Trading Operations on NSX;” Adopting Rule 11.25 Relating to Use of Market Data Feeds; Amending NSX Rule 11.13 Relating to the Order Delivery Mode of Order Interaction; Amending NSX Rule 11.11 to Remove Certain Order Types and Correct Technical Deficiencies in the Numbering of Certain Sections of the Rule; and Amending Rule 11.12, Cross Message and Making Conforming Amendments to NSX Rules 11.11(c) and 16.2

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act” or “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 3, 2015, National Stock Exchange, Inc. (“NSX[®]” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change, as described in Items I and II below, which Items have been substantially 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 Substance of the Proposed Rule Change

The Exchange is proposing to amend NSX Rule 11.1, Hours of Trading, to rescind Interpretations and Policies .01, “Cessation of Trading Operations on NSX.” The Exchange is also proposing to: (i) adopt new Rule 11.25, Use of Market Data Feeds; (ii) amend NSX Rule 11.13 and Interpretations and Policies .01 with respect to the order delivery mode of order interaction with the Exchange’s trading system (“Order Delivery”); (iii) amend NSX Rule 11.11, Orders and Modifiers, to remove descriptions of certain order types that the Exchange will not offer upon a resumption of trading and to correct technical deficiencies in the numbering of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

certain subparagraphs of the rule; and (v) amend Rule 11.12, Cross Message, to delete the rule in its entirety and make conforming amendments to NSX Rules 11.11(c) and 16.2.

The text of the proposed rule change is available on the Exchange's website at www.nsx.com, at the Exchange's principal office, 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 self-regulatory organization 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 those 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, a corporation organized under the laws of the State of Delaware,³ is a registered national securities exchange under Section 6 of the Exchange Act⁴ and operates as a self-regulatory organization governed by the requirements of Section 19 of the Exchange Act.⁵ The Exchange is filing this rule proposal to rescind Interpretations and Policies .01 of Rule 11.1

³ NSX was founded in 1885 as the Cincinnati Stock Exchange and changed its name to "National Stock Exchange" in 2003. See Securities Exchange Act Release No. 48774 (November 12, 2003), 68 FR 65332 (November 19, 2003) (SR-CSE-2003-12). In 2006, the Exchange de-mutualized and changed its corporate organizational structure from a non-stock, not-for-profit Ohio corporation to a Delaware for-profit stock corporation. See Securities Exchange Act Release No. 53963 (June 8, 2006), 71 FR 34660 (June 15, 2006) (SR-NSX- 2006-03).

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78s.

(hereinafter referred to as “I&P.01”), “Cessation of Trading Operations on the Exchange.” I&P.01 currently states that, as of the close of business on May 30, 2014 (the “Closing Date”), NSX shall cease trading activity on its trading system (the “System”);⁶ that all NSX Rules will remain in full force and effect through and after the Closing Date; and that the Exchange shall file a proposed rule change pursuant to Rule 19b-4 of the Exchange Act prior to any resumption of trading on the Exchange pursuant to Chapter XI (Trading Rules).⁷ Rescinding I&P.01 will permit the Exchange to resume trading activity on the System as soon as practicable after the instant rule amendment is operative, thereby restoring NSX to its status as an operating, all-electronic national securities exchange as it had been for many years prior to ceasing trading operations

In connection with the proposed resumption of trading on the System, the Exchange is proposing several other rule amendments. Specifically, the Exchange is proposing in new Rule 11.25 to describe the Exchange’s use of certain data feeds for order handling and execution, order routing and regulatory compliance. The Exchange is also proposing amendments to: (i) Rule 11.11 to eliminate the Double Play and Auto-Ex Only Order types; (ii) Rule 11.13 and the Interpretations and Policies under the rule to eliminate rule text relating to Order Delivery; and (iii) Rule 11.16, Cross Message, to rescind the rule text in its entirety. The Exchange is further proposing non-substantive or conforming amendments to Rules 11.11 and 16.2.

The details of these proposed rule changes are discussed below.

Proposed Resumption of Trading on NSX

⁶ Exchange Rule 1.5S.(4) defined the term “System” as “...the electronic securities communications and trading facility designated by the Board [of Directors] through which orders ... are consolidated for ranking and execution.”

⁷ See Securities Exchange Act Release No. 72107 (May 6, 2014), 79 FR 27017 (May 12, 2014) (SR-NSX-2014-14).

At the time that NSX ceased trading operations, the Exchange operated as a wholly-owned subsidiary of CBOE Stock Exchange, LLC (“CBSX”).⁸ Thereafter, on February 13, 2015,⁹ the Commission issued an Order granting its approval of a transaction in which National Stock Exchange Holdings, Inc. (“NSX Holdings”), a Delaware corporation, purchased all of the outstanding shares of NSX from the CBSX (the “Approval Order”). The Commission noted in the Approval Order that “[t]he Exchange is, and will remain, registered as a national securities exchange under Section 6 of the Act¹⁰ and a self-regulatory organization [“SRO”]...as defined in [S]ection 3(a)(26) of the Act¹¹ after the Closing [of the Transaction].” The Commission further noted that “... [t]he Exchange states that it plans to reopen its trading operations as soon as practicable after the Closing and plans to operate the Exchange using its existing ... [S]ystem pursuant to the rules of the Exchange currently in effect....”¹²

After the Closing of the Transaction up to the date of the instant rule filing, the Exchange has continued to discharge its applicable SRO responsibilities in anticipation of

⁸ See Securities Exchange Act Release No. 66071 (December 29, 2011); 77 FR 521 (January 5, 2012)(SR-CBOE-2011-107 and SR-NSX-2011-14), Order Granting Accelerated Approval to Proposed Rule Changes in Connection with the Proposed Acquisition of the National Stock Exchange, Inc. by the CBOE Stock Exchange, LLC.

⁹ See Securities Exchange Act Release No. 74270 (February 13, 2015), 80 FR 9286 (February 20, 2015) (SR-NSX-2014-017),Order Granting Approval of Proposed Rule Change in Connection With a Proposed Transaction in Which National Stock Exchange Holdings, Inc. Will Acquire Ownership of the Exchange from the CBOE Stock Exchange, LLC. The Approval Order described in detail, *inter alia*, the ownership structure of the Exchange upon its acquisition by NSX Holdings and the requirement that NSX Holdings give due regard to the preservation of the independence of the Exchange’s self-regulatory function.

¹⁰ See 15 U.S.C. 78f.

¹¹ See 15 U.S.C. 78s.

¹² See Order Granting Approval of Proposed Rule Change in Connection With a Proposed Transaction in Which National Stock Exchange Holdings, Inc. Will Acquire Ownership of the Exchange from the CBOE Stock Exchange, LLC, 80 FR at 9287.

resuming trading operations on the Exchange. Specifically, as outlined below, the Exchange has continued as a party to the National Market System (“NMS”) Plans¹³ and has updated its rules as appropriate.¹⁴ The Exchange also filed with the Commission an amendment to NSX Rule 2.5, Application Procedures for an ETP Holder or to become an Associated Person of an ETP Holder,

¹³ See, e.g., Securities Exchange Act Release No. 74323 (February 19, 2015), 80 FR 10169 (February 25, 2015) (File No. 4-631), Order Approving the Eighth Amendment to the National Market System Plan to Address Extraordinary Market Volatility (the “Limit Up-Limit Down Plan”); Securities Exchange Act Release No. 75192 (June 17, 2015), 80 FR 36028 (June 23, 2015) (File No. 4-668), Order Approving Amendment No. 1 to the National Market System Plan Governing the Process of Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail; Securities Exchange Act Release No. 75505 (July 22, 2015), 80 FR 45254 (July 29, 2015) (File No. S7-24-89), Order Approving Amendment No. 35 to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis; Securities Exchange Act Release No. 75504 (July 22, 2015), 80 FR 45252 (July 29, 2015) (SR-CTA/CQ 2015-01), Order Approving the Twenty Second Substantive Amendment to the Second Restatement of the CTA Plan and Sixteenth Substantive Amendment to the Restated CQ Plan; Securities Exchange Act Release No. 75660 (August 11, 2015), 80 FR 48940 (August 14, 2015), (SR-CTA-2015-02), Order Approving the Twenty Third Substantive Amendment to the Second Restatement of the CTA Plan; Securities Exchange Act Release No 75980 (September 25, 2015), 80 FR 58796 (September 30, 2015), Order Approving Amendment No. 2 to the National Market System Plan Governing the Process of Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail.

¹⁴ See Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR-NSX-2014-08), Order Granting Approval of Proposed Rule Changes Relating to Clearly Erroneous Executions; Securities Exchange Act Release No. 72914 (August 26, 2014), 79 FR 52089 (September 2, 2014) (SR-NSX-2014-16), Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 15.5 to Provide Additional Clarity and Precision, Correct Certain Citations, and Align the Rule with the Rules of Other Exchanges With Respect to the Original and Continued Listing Standards for Issuers' Compensation Committees; Securities Exchange Act Release No. 75355 (July 2, 2015), 80 FR 39460 (July 9, 2015) (SR-NSX-2015-03), Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 4.3, Record of Written Complaints; Securities Exchange Act Release No. 75554 (July 30, 2015), 80 FR 46620 (August 5, 2015) (SR-NSX-2015-04), Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Exchange Rule 11.21, Short Sales, to Describe the Exchange’s Implementation of Rule 201 of Regulation SHO Under the Securities Exchange Act of 1934 and Relocate Certain Text from Rule 11.11, Orders and Modifiers; and Amending Rule 13.2 to Incorporate By Reference Rules 200,203 and 204 of Regulation SHO.

adding Interpretations and Policies .01, Expedited Process for Reinstatement as an ETP Holder.¹⁵

The amendment provided an expedited procedure, available for a period of 90 days from the date the rule amendment became operative, for ETP Holders in good standing as of the close of business on May 30, 2014 to reinstate their status as such and to register Associated Persons.¹⁶

As noted above, the Exchange will operate using the existing System and pursuant to the rules in effect. The Exchange has maintained the System's operability and has not made any modification to the System's functionality, except to the extent necessary to comply with regulatory requirements.¹⁷ The functionality relating to order entry and execution, order routing, clearance and settlement and market data distribution, as further described below, remains the same. The Exchange does not currently list any securities and trades equity securities on an Unlisted Trading Privileges basis.¹⁸

The Exchange has implemented and continues to execute a rigorous testing process, including tests with industry participants, to assure that all components of the System function effectively, that the Exchange has full operational capability to re-open its marketplace for the trading of equity securities, and that the Exchange will operate in compliance with all applicable rules and regulations. This testing plan included three weekend tests of NSX's interfaces with the securities information processors, or "SIPs" (i.e., the Consolidated Quote System or "CQS;" the Consolidated Tape System or "CTS;" the UTP Quotation Data Feed, or "UQDF;" and the

¹⁵ The term "ETP Holder" refers to registered brokers or dealers that have been issued an Equity Trading Permit by the Exchange for effecting approved securities transactions on the Exchange's trading facilities. See Exchange Rule 1.5E.(1).

¹⁶ See Securities Exchange Act Release No. 75098 (June 3, 2015), 80 FR 32644 (June 9, 2015) (SR-NSX-2015-02).

¹⁷ For example, the Exchange has made System changes to comply with the new timestamp requirements under the July 2015 amendments to the UTP Plan and the Consolidated Tape and Consolidated Quote Plans. See footnote 13, above.

¹⁸ See NSX Rule 15.9.

UTP Trade Data Feed, or “UTDF”). These tests, which were completed on August 29, 2015, confirmed that NSX will be ready to receive quote and trade data and relevant national market system plan information from, and transmit its quote and trade information to, the securities information processors when it resumes trading operations on the System.

The Exchange also tested for proper functioning of client communication systems with NSX, client order entry connections, and depth of book. Moreover, the Exchange tested its matching engines, market data, trade reporting, quote publication and trade messages, and clearing systems. The tests were conducted with actual market data and clearing data. The Exchange has also re-certified its connection with the Depository Trust & Clearing Corporation (“DTCC”) to assure complete and accurate trade clearing and settlement functions.

The Exchange has also performed a thorough review of the hardware and software components of the System and has resumed the production status of the System on a daily basis. Furthermore, the Exchange made enhancements to its connectivity and certification processes. The Exchange has created an automated certification process, providing ETP Holders and Users with a more efficient process of connecting to the System. The Exchange has also made enhancements to certain internal processes and monitoring tools. These enhancements include a message bus upgrade and security master file upgrade. The Exchange has also enhanced its System monitoring tools to provide for more effective monitoring of System health to allow quicker response within operations support.

Having conducted these tests and made these enhancements and upon receiving regulatory approval to resume trading on the System, the Exchange will execute a staged roll-out

plan to reach full operational capacity.¹⁹ Beginning one week and one day prior to the date trading will resume on the System, the Exchange will test the System using only test symbols. On the first day of trading the Exchange will allow for trading in symbols within a defined alphabetic range (for example, symbols within the letter range X-Z). After three days of trading in this range, the Exchange will activate trading in additional symbols within an alphabetic range (for example, adding symbols within the letter range A-K). Two days later the Exchange will activate trading in all remaining symbols and be fully operational. The Exchange will provide ETP Holders with advance notice of the dates and the symbol ranges that will comprise the staged roll-out.

The Exchange will also take affirmative steps to assure that the date that it intends to resume trading operations is communicated broadly to market participants and to the investing public. Specifically, the Exchange has a target date of on or about December 1, 2015 to resume trading operations on the System. The Exchange will provide timely written notice of the date and other information concerning its resumption of trading operations directly to the following parties: (1) ETP Holders; (2) other national securities exchanges that trade NMS securities; (3) the SIPs; and, (4) the operating committees for the various NMS plans (e.g., the Consolidated Tape Association Plan/Consolidated Quote Plan; the Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis; and the Plan to Address Extraordinary Market Volatility). Furthermore, the Exchange will provide timely notice to the public as a whole by way of widely-disseminated press releases issued by the Exchange

¹⁹ The Exchange will issue a notice to ETP Holders with the precise details of the roll-out plan prior to initiating the plan.

and notification through the Exchange's website and through communications with financial and industry press.

As required by Section 6(b)(1) of the Act,²⁰ the Exchange has the capacity to be able to carry out the purposes of the Act and to comply and to enforce compliance by ETP Holders and persons associated with ETP Holders, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange has the financial, technology and staff resources to effectively surveil its marketplace and to regulate ETP Holders' trading on NSX upon the resumption of trading operations on the System. The Exchange will continue to regularly assess its regulatory resources to assure that they continue to be sufficient to discharge its SRO responsibilities. The Exchange notes that, throughout the period from the date that it ceased trading operations through the date of the instant rule filing, it has continued to be a party to certain 17d-2 Plans for the Allocation of Regulatory Responsibilities pursuant to Section 17(d)(1) of the Exchange Act²¹ and Rules 17d-1 and 17d-2 thereunder,²² specifically the 17d-2 Plan relating to the surveillance, investigation and enforcement of insider trading rules²³ and the 17d-2 Plan relating to Regulation NMS Rules.²⁴ The Exchange will continue as a party to these plans going forward.

²⁰ 15 U.S.C. 78(f)(b)(1).

²¹ 15 U.S.C. 78q(d)(1).

²² 17 CFR 240.17d-1 and 17 CFR 240.17d-2, respectively.

²³ See Securities Exchange Act Release No. 65991 (December 16, 2010), 76 FR 79714 (December 22, 2011) (File No. 4-566), Notice of Filing and Order Approving and Declaring Effective an Amendment to the Plan for the Allocation of Regulatory Responsibilities ... Relating to the Surveillance, Investigation, and Enforcement of Insider Trading Rules.

²⁴ See Securities Exchange Act Release No. 63430 (December 3, 2010), 75 FR 76758 (December 9, 2010) (File No. 4-618), Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities...Relating to Regulation NMS Rules.

In summary, since ceasing trading operations on the System as of the close of business on May 30, 2014, the Exchange (i) continued to maintain the operability of the System; (ii) implemented and successfully executed a rigorous internal testing program to assure that the System will function as designed and subject to NSX rules in effect; (iii) successfully tested connectivity to the securities information processors and to DTCC; (iv) continued to discharge its SRO responsibilities through, among other things, remaining a party to NMS plans and in the multi-party 17d-2 plans for insider trading surveillance and certain Regulation NMS requirements; and (v) amended its rules to keep current with industry regulatory initiatives (e.g., amendments to the market-wide rules governing clearly erroneous executions), and is proposing additional rule changes in the instant rule proposal, described below, that will align with the System's functionality when trading operations resume. Further, the Exchange has sufficient financial, technology and staff resources to effectively regulate ETP Holder activity in the NSX marketplace and meet its compliance obligations under the Act.

In view of the foregoing, the Exchange is positioned to successfully reopen its marketplace for the trading of equity securities and accordingly is proposing to rescind I&P.01 to allow the NSX to resume trading operations as soon as practicable after the instant rule proposal becomes operative.

Adoption of NSX Rule 11.25

The Exchange is proposing to adopt NSX Rule 11.25 to describe the sources of market data used for purposes of order handling and execution, order routing, and regulatory compliance. Paragraph (a) of the proposed Rule will specify which data feeds the Exchange utilizes for the handling, execution, and routing of orders, as well as for surveillance necessary to monitor compliance with applicable securities laws and Exchange rules. Proposed paragraph (b)

will state that the Exchange may adjust its calculation of the NBBO based on information about orders sent to other venues with protected quotations, execution reports received from those venues, and certain orders received by the Exchange. With this rule and other functionalities in place, the system will use market data as follows.

Order Handling and Execution

In order to calculate the national best bid and offer (“NBBO”)²⁵ the Exchange uses only SIP data disseminated through CQ and UQDF for all exchanges. NSX does not use any exchange’s proprietary data feeds. The Exchange does not include its own quotes in the calculation of the Exchange’s NBBO because the system is designed such that all incoming orders are separately compared to the Exchange’s Protected Best Bid or Offer (“PBBO”)²⁶ and the Exchange-calculated NBBO, which together create a complete view of the NBBO, prior to order display, execution, or routing.

The Exchange offers three types of “pegged” Zero Display Reserve Orders, which may be “pegged” to the buy-side of the PBBO, the sell-side of the PBBO or the midpoint of the PBBO.²⁷ The System calculates the PBBO using the quotes from the SIPs, excluding quotes disseminated by the SIPs that originated from the NSX Book.²⁸

Order Routing

When the Exchange has a marketable order eligible to be routed and the System identifies that there is no matching price available on the Exchange, but there is a matching

²⁵ NSX Rule 1.5P.(2) defines the “Protected NBBO” as the national best bid or offer that is a protected quotation.

²⁶ NSX Rule 1.5P.(3) defines the “Protected BBO” as the Protected NBBO or the displayed Top of Book on NSX.

²⁷ See NSX Rule 11.11(c)(2)(A).

²⁸ NSX Rule 1.5N.(1) defines the NSX Book as the System’s electronic file of orders.

price represented at another trading center displaying protected quotes, the System will cause the order to be routed to that trading center. The Exchange uses data received from the SIPs to update the System's calculation of the NBBO for purposes of routing decisions.

Regulatory Compliance

Locked or Crossed Markets: The System determines whether the display of an order would lock or cross the market. At the time an order is entered into the System, it will establish, based upon its calculation of the NBBO from SIP feeds, whether the order will lock or cross the prevailing NBBO for a security. In the event that the order would produce a locking or crossing condition, the System will cancel the order or route the order based on the ETP Holder's order handling instructions.

Pursuant to Regulation NMS, a declaration of self-help can occur when an exchange displaying protected quotes is slow, as defined in Regulation NMS, or non-responsive to the Exchange's routed orders. In this circumstance, according to Rule 611(b) of Regulation NMS,²⁹ the Exchange may declare self-help against that exchange and display a quotation that may lock or cross the market that the Exchange invoked self-help against.³⁰ The Exchange may also declare self-help where another exchange's SIP quotes are slow or non-responsive resulting in a locked or crossed market. Once the Exchange declares self-help, the System will ignore the quotes generated from that exchange in its calculation of the NBBO for execution and routing determinations in compliance with Regulation NMS. The Exchange will also disable all routing to that exchange. However, the System will continue to receive and process

²⁹ See 17 CFR 242.611.

³⁰ See also Question 5.03 in the "Division of Trading and Markets, Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS" (last updated April 4, 2008) available at <http://www.sec.gov/divisions/marketreg/nmsfaq610-11.htm>.

that exchange's quotes in order to immediately include the quote in the NBBO calculation and enable routing once self-help is revoked.

Order Protection Rule: Pursuant to Rule 611 of Regulation NMS,³¹ the Exchange is required to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs of protected quotations in NMS stocks that do not fall within a valid exception and, if relying on such an exception, that are reasonably designed to ensure compliance with the terms of the exception. The System does not permit an execution on the Exchange if there are better-priced protected quotations displayed in the market unless the order is an ISO. At the time an order is entered on NSX, the System uses the SIP data to determine if the NBBO is priced better than what is on the NSX Book. If the Exchange does not match such order on the NSX Book,³² and based on the ETP Holder's order handling instructions, the System cancels or routes the order.

Regulation SHO: The Exchange is required to establish, maintain and enforce written policies and procedures reasonably designed to prevent the execution of a Short Sale Order in a covered security at a price that is equal to or below the current National Best Bid ("NBB") when a short sale price restriction is in effect pursuant to Rule 201 of Regulation SHO under the Exchange Act ("Short Sale Circuit Breaker").³³ When a Short Sale Circuit Breaker is in effect, the Exchange utilizes information received from SIP feeds and what is on the NSX Book, to prevent the execution of a sell short order in contravention of Rule 201 of Regulation SHO.³⁴

³¹ 17 CFR 242.611.

³² NSX Rule 1.5N.(1) defines the term "NSX Book" as the "System's electronic file of orders."

³³ 17 CFR 242.201.

³⁴ See Id.

Limit Up-Limit Down: As stated in Rule 11.24(c), the Exchange is a participant in, and subject to the applicable requirements of, the Limit Up-Limit Down Plan. The System uses price band data received through the SIP to comply with the requirements of the Limit Up-Limit Down Plan. Specifically, as provided in Rule 11.24(e) the System will not execute or display orders for an NMS stock at prices that are outside of a specified price band (i.e., below the lower price band or above the higher price band).

Amendments to NSX Rules 11.13 and 11.11

The Exchange is further proposing to amend NSX Rule 11.13, Proprietary and Agency Orders; Modes of Order Interaction, to eliminate text relating to two modes of order interaction available to Users.³⁵ The Exchange is also: (i) proposing a conforming amendment to NSX Rule 11.11(c)(2)(C) to remove text relating to a Zero Display Reserve Order³⁶ entered through the order delivery mode; and (ii) proposing to amend NSX Rule 11.11, Orders and Modifiers, to eliminate the Auto-Ex Only Order³⁷ and the Double Play Order³⁸ and make non-substantive amendments to correct a numbering defect with respect to certain subparagraphs of NSX Rule 11.11(c).

On August 31, 2006, the Commission approved amendments to NSX's trading rules to provide for a price-time priority market with two modes of order interaction: (1) automatic execution ("Auto-Ex Mode") and (2) order delivery and automated response (previously referred

³⁵ A "User" is any ETP Holder or Sponsored Participant that is authorized to obtain access to the System pursuant to NSX Rule 11.9. See NSX Rule 1.5U.(1).

³⁶ NSX Rule 11.11(c)(2) defines a reserve order as "[a] limit order with a portion of the quantity displayed...and with a reserve portion of the quantity... that is not displayed." Rule 11.11(c)(2)(A) provides a Reserve Order may be entered with a zero display quantity, in which case the Reserve Order is known as a Zero Display Reserve Order.

³⁷ See NSX Rule 11.11(c)(13).

³⁸ See NSX Rule 11.11(c)(10).

to herein as “Order Delivery”).³⁹ Every User is eligible to use the Auto-Ex Mode, under which the System matches and executes like-priced orders, including against Order Delivery Orders resting on the NSX Book. To use Order Delivery a User must demonstrate that it can meet certain eligibility criteria; specifically, a User must demonstrate that its system can automatically process the inbound order and respond immediately. If no response to an inbound order is received within 300 milliseconds, the User’s displayed order will be canceled. Interpretations and Policies .01 of Rule 11.13 provides that, in determining whether a User’s system can automatically process the inbound order and respond immediately, the Exchange requires that Users selecting Order Delivery have system response times that generally meet or exceed industry standards (subject to exceptions for occasional systems malfunctions that do not, in the Exchange’s judgment, materially impair the User’s ability to process and respond to inbound orders immediately).⁴⁰

The Exchange maintained Order Delivery as a mode of interaction with the System through the cessation of trading as of the close of business on May 30, 2014. The Exchange has now determined that, upon resuming trading operations on the System, it will not offer Order Delivery as a mode of order interaction with the System and the only mode of order interaction with the System will be Auto-Ex Mode. The Exchange made this decision as a business judgment based on its assessment of customer interest and market structure considerations. The

³⁹ See Securities Exchange Act Release No. 54391 (August 31, 2006), 71 FR 52836 (September 7, 2006) (SR-NSX-2006-08), Order Approving a Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2 and 3 Thereto to Amend Its Trading Rules to Provide for a Price-Time Priority Market and Other Related Changes.

⁴⁰ The Exchange considered 100 milliseconds to be the industry standard for response time to an inbound order.

Exchange proposes to amend Rule 11.13 to delete paragraph (b) and Interpretations and Policies .01 relating to Order Delivery as a mode of order interaction.

The Exchange is further proposing to amend Rule 11.11(c)(2)(C) to remove certain text related to a Zero Display Reserve Order entered through Order Delivery. The relevant rule text currently states that, if a Zero Display Reserve Order is not designated as a Post Only Order⁴¹ and is entered using the Order Delivery and such order is immediately marketable upon entry into the System, the order will have its mode of order interaction converted to Automatic Execution as described in Rule 11.13(b)(1). This rule text is no longer apposite in view of the Exchange's decision to eliminate Order Delivery upon a resumption of trading on the System.

The Exchange is also proposing to amend Rule 11.11 to eliminate the Auto-Ex Only Order, which was implemented by the Exchange in May 2013.⁴² An Auto-Ex Only Order is an "immediate or cancel" ("IOC") Limit or Market Order⁴³ that the System will automatically execute exclusively against other Auto-Ex Orders at a marketable price. An Auto-Ex Only Order does not interact with an Order Delivery order or route away to other Trading Centers. The System cancels any shares remaining after executing against all marketable Auto-Ex Orders.

⁴¹ NSX Rule 11.11(c)(5) defines a Post Only Order as "[a] limit order that is to be posted on the Exchange and not routed away to another trading center."

⁴² See Securities Exchange Act Release No. 69519 (May 6, 2013), 78 FR 27461 (May 10, 2013) (SR-NSX-2013-02), Order Granting Approval of Proposed Rule Change to Adopt a New Order Type Called the "Auto-Ex Only" Order and Add New Definitions Regarding Automatic Execution Mode and Automatic Execution Orders.

⁴³ NSX Rule 11.11(a), General Order Types, defines a market order as an order to buy or sell a stated amount of a security that is to be executed at the best price obtainable when the order reaches the Exchange (NSX Rule 11.11(a)(1)); a limit order is defined as an order to buy or sell a stated amount of a security at a specified price or better (NSX Rule 11.11(a)(2)); NSX Rule 11.11(b), Time-in-Force, defines an IOC order as a limit order that is to be executed in whole or in part as soon as such order is received and the portion not so executed is canceled. IOC orders are not eligible to be routed to an away trading center pursuant to NSX Rule 11.15, Order Execution.

An Auto-Ex Only Order cannot be used to comply with Rule 611 of Regulation NMS pursuant to the Exchange Act because the Auto-Ex Only Order did not interact with Order Delivery orders that may be protected quotations.

The Exchange notes that the Auto-Ex Only order was implemented to offer Users of the System the option of interacting with marketable orders on the NSX Book without having to incur delays associated with Order Delivery. Such delays could result from sending an incoming order to an Order Delivery participant and receiving a response thereto. However, since NSX will no longer offer Order Delivery the underlying rationale for the Auto-Ex Only Order will no longer exist.

The Exchange is also proposing to amend NSX Rule 11.11(c)(10) to eliminate the Double Play Order type. The Double Play Order was implemented by the Exchange in November 2012.⁴⁴ A Double Play Order is a market or limit order for which a User instructs the System to route to designated away trading centers which are approved by the Exchange from time to time without first exposing the order to the NSX Book. A Double Play Order that does not execute in full after routing away receives a new time stamp upon return to the Exchange and is ranked and maintained in the NSX Book in accordance with NSX Rule 11.14, Priority of Orders.

After assessing the use of the Double Play Order since November 2012, the Exchange has determined that the Double Play Order was infrequently used and that it is not an efficient use of its resources to maintain and support the Double Play Order as an active order type.

Finally, the Exchange proposes certain technical, non-substantive amendments to NSX Rule 11.11 to correct defective numbering. The Exchange added the Midpoint Seeker Order in

⁴⁴ See Securities Exchange Act Release No. 68317 (November 29, 2012), 77 FR 72423 (December 5, 2012) (SR-NSX-2012-22).

March 2013 under NSX Rule 11.11(c)(13).⁴⁵ As a result of an administrative error by the Exchange, the Auto-Ex Only order was assigned the same subparagraph number (c)(13) of Rule 11.11 when it was implemented in May 2013. The Exchange is proposing to renumber the Midpoint Seeker Order as subparagraph (c)(12), which is currently a “reserved” subparagraph. With the proposed elimination of the Auto-Ex Only Order, subparagraph (c)(13) will now be “reserved.”

Amendments to Rule 11.12

Currently, NSX Rule 11.12, Cross Message, provides that subject to the certain restrictions described in the rule, Users are permitted to enter a cross message instructing the System to match for execution the identified buy-side of the cross message with the identified sell side of the cross message at a specified price (a “Cross Trade”).⁴⁶ Pursuant to NSX Rule 11.12(b), the price of the Cross Trade must, on the buy side, be at least \$0.01 less than the lowest displayed order to sell on the NSX Book and is at a price equal to or less than the Protected NBBO offer; on the sell side of the cross, the price must be at least \$0.01 greater than the highest displayed order to buy on the NSX Book and is at a price equal to or greater than the Protected NBBO bid.

Rule 11.12 provides for three types of Cross Trades: a Midpoint Cross, at which the Cross Trade is priced at the midpoint of the Protected NBBO and improves each side of the NSX Top of Book⁴⁷ by at least the minimum price increment for the subject security;⁴⁸ a Clean Cross,

⁴⁵ See Securities Exchange Act Release No. 69009 (February 28, 2013), 78 FR 14867 (March 7, 2013) (SR-NSX-2013-07).

⁴⁶ The Commission approved NSX Rule 11.12 in August 2006. See footnote 39, *supra*.

⁴⁷ The NSX Top of Book is the best-ranked order to buy or sell in the NSX Book. See NSX Rule 1.5T.(1).

⁴⁸ See NSX Rule 11.12(c).

in which the Cross Trade is for at least 5,000 shares with an aggregate value of at least \$100,000 and is executed at a price that is equal to or better than each side of the NSX Top of Book and equal to or better than the Protected NBBO;⁴⁹ and, a Cross/Sweep, in which the System, upon receipt of a Cross/Sweep message from a user, will enter a Protected Sweep Order⁵⁰ for the User's account in an amount necessary to execute against all protected quotations that, if not swept, would prohibit the Cross Trade from being executed by the System. Pursuant to NSX Rule 11.12(f)(1), the Cross Trade will be executed on the System simultaneously with the Protected Sweep Order, unless the size of such order would exceed the size of the Cross Trade, in which event both the Protected Sweep Order and the order for the Cross Trade would be canceled without an execution.

The Exchange has determined in its business judgment that, upon a resumption of trading on the System, it will not support the functionality for Users to enter a Cross into the System. This determination is based on the Exchange's assessment of its current market structure requirements and the technology resources needed to support the functionality. In the event that the Exchange determines to offer Cross Message functionality in the future, it will file a proposed rule change pursuant to Rule 19b-4 of the Exchange Act.

In view of the determination to no longer offer Cross Message functionality, the Exchange is proposing other conforming amendments to its rules. First, the Exchange proposes to delete subparagraph (c)(7)(iii) of NSX Rule 11.11, which currently states that "[a] Sweep Order entered as part of a Cross/Sweep message pursuant to Rule 11.12 shall be treated

⁴⁹ See NSX Rule 11.12(d).

⁵⁰ A Protected Sweep Order is a limit order that instructed the System to "sweep" the market with sizes equal to the order sizes in the NSX Book and the order sizes at away trading centers. See NSX Rule 11.11(c)(7)(i)(A).

identically to a Sweep Order designated ‘Sweep and Cancel’ except as otherwise provided in Rule 11.12.” Similarly, the Exchange proposes to rescind in its entirety the text of NSX Rule 16.2, Crosses, which currently provides that “[c]rosses executed in Tape ‘A’, ‘B’ and ‘C’ securities will not be subject to any transaction fees.” The elimination of the Cross Message functionality renders this rule inapposite.

2. Statutory Basis

The Exchange’s proposed rule changes are consistent with the Exchange Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b)⁵¹ of the Exchange Act. Specifically, the proposed rule change is consistent with the requirement of Section 6(b)(5)⁵² of the Exchange Act that the rules of an exchange be designed to, among other things, promote just and equitable principles of trade, 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.

The Exchange submits that the proposed rescission of I&P.01, which will operate to permit the re-opening of the System for quoting and trading equity securities, fulfills the purposes of Section 6(b)(5).⁵³ The Exchange’s rule proposal will restore the Exchange to the status of a fully operational national securities exchange, as it was prior to the close of business on May 30, 2014. Notably, throughout the period from the date that it ceased trading operations

⁵¹ 15 U.S.C. 78f(b).

⁵² 15 U.S.C. 78f(b)(5).

⁵³ 15 U.S.C. 78f(b)(5).

up to the date of the instant rule filing, the Exchange has continued to maintain its status as a registered national securities exchange and as an SRO. It has continued its participation as a party in the national market system plans.⁵⁴

Upon the resumption of trading on the System, the Exchange will operate its marketplace pursuant to rules currently in effect, as amended by the rule changes proposed in this rule filing. The Exchange has completed a rigorous testing process, including tests with the SIPs and market participants, to assure that the System continues to send and receive quote and trade data and other information necessary to assure the Exchange's compliance with the national market system plans. Restoring NSX to its status as an operating Exchange will promote the protection of investors and the public interest by providing an additional trading venue, operating pursuant to an approved rule set, and available to market participants and the investing public for the trading of equity securities. The Exchange has sufficient financial and staff resources to continue to discharge its obligations as a national securities exchange and as an SRO. The Exchange submits that the proposed amendment will thus further the purposes of Section 6(b)(5) of the Act⁵⁵ in that it will operate to promote just and equitable principles of trade and perfect the mechanism of a free and open market and a national market system by providing investors with the ability to execute trades in equity securities on a regulated marketplace operating pursuant to rules approved by the Commission and subject to regulatory oversight.

Additionally, the Exchange's proposal to describe the Exchange's use of data feeds as a part of this filing and through the adoption of NSX Rule 11.25 is consistent with the Section 6(b)(5) of the Act.⁵⁶ Further, the proposal removes impediments to and perfects the mechanism

⁵⁴ See footnote 13, supra.

⁵⁵ 15 U.S.C. 78f(b)(5).

⁵⁶ 15 U.S.C. 78f(b)(5).

of a free and open market and protects investors and the public interest because it provides additional specificity and transparency. The Exchange's proposal will enable investors to better assess the quality of the Exchange's execution and routing services. The proposal does not change the operation of the Exchange or its use of data feeds; rather it describes how, and for what purposes, the Exchange uses the quotes disseminated from data feeds to calculate the NBBO for a security for purposes of Regulation NMS, Regulation SHO and various order types that update based on changes to the applicable NBBO. The additional transparency into the operation of the Exchange as described in the proposal will 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 Exchange's proposed amendments to conform certain of its rules to the planned operation of the System upon a resumption of trading are consistent with the Section 6(b)(5) of the Act.⁵⁷ Specifically, the Exchange is proposing to amend NSX Rules 11.11 and 11.13, and Interpretations and Policies .01 of Rule 11.13, to remove text relating to Order Delivery, which will not be available to Users as a mode of order interaction with the System upon a resumption of trading. The Exchange is further proposing to amend Rule 11.11 to eliminate the Auto-Ex Only Order, which relates to the handling of certain orders when interacting with Order Delivery, and the Double Play Order, which was an infrequently used order type that the Exchange no longer wishes to support. The Exchange is also proposing to correct defective numbering in Rule 11.11, which will promote clarity and ease of reference in its rules. These proposed amendments are consistent with Section 6(b)(5) of the Act⁵⁸ in that they will operate to align the Exchange's rules with the planned operation of the System upon a resumption of trading, thereby

⁵⁷ 15 U.S.C.78f(b)(5).

⁵⁸ Id.

promoting just and equitable principles of trade and the protection of investors and the public interest.

The Exchange's proposals to amend NSX Rule 11.12 to rescind the rule text governing Cross Trades on the System, and making conforming amendments to NSX Rules 11.11(c)(7)(iii), regarding a Cross/Sweep Order, and 16.2, providing that Cross Trades in Tape A, B, and C securities are not subject to transaction fees, are consistent with Section 6(b)(5) of the Exchange Act because they will remove from the NSX rule book provisions that address a System functionality that will not be supported operationally upon a resumption of trading on the System. The amendments are designed to align the Exchange's rules with the System's planned functionality. The Exchange believes that the amendments will further 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 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Exchange believes that reopening the System for the trading of equity securities will enhance competition in the national market system by providing investors with the opportunity to trade on a competitive trading venue that was available to them prior to the close of business May 30, 2014. The Exchange submits that the proposed rule amendment will thus operate to enhance rather than burden competition in the equity securities markets.

The Exchange's proposed rule changes to: (i) eliminate Order Delivery-related rule text; (ii) eliminate the Auto-Ex Only and Double Play Orders; (iii) eliminate the Cross Trade rule; and (iv) make other conforming rule amendments and correct defecting numbering of certain paragraphs of NSX Rule 11.11, have no competitive impact in that they are designed to assure

that the Exchange's rules and its System functionality align and to promote clarity and transparency in the Exchange's rules.

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

The Exchange has not solicited or received comments on the proposed rule change from market participants or others.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NSX-2015-05 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-NSX-2015-05. 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 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-NSX-2015-05 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.⁵⁹

Robert W. Errett
Deputy Secretary

⁵⁹ 17 CFR 200.30-3(a)(12).