

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68684; File No. SR-NSX-2013-01)

January 17, 2013

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Provide for the Payment of Exchange Fees Through an Integrated Billing Process

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 January 10, 2013, 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 the Substance of the Proposed Rule Change

The Exchange is proposing to: (1) define the term “Clearing Member” under Exchange Rule 1.5; and (2) adopt Exchange Rule 16.4 to allow Equity Trading Permit (“ETP”)<sup>3</sup> Holders to pay their Exchange and vendor invoices for Exchange-related services through the Exchange’s integrated billing system (“IBS”).

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.

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

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

<sup>3</sup> Exchange Rule 1.5 defines the term “ETP” as an Equity Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange’s Trading Facilities.

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

The Exchange is proposing to: (1) define the term "Clearing Member" under Exchange Rule 1.5; and (2) adopt Exchange Rule 16.4 to allow ETP Holders to pay their Exchange and vendor invoices for Exchange-related services through the Exchange's IBS.

**Definition of Clearing Member**

The Exchange is proposing to: (1) define the term "Clearing Member" under Exchange Rule 1.5 as "[a]n ETP Holder that is a member of a Qualified Clearing Agency defined in Section Q below." Section Q of Exchange Rule 1.5 defines "Qualified Clearing Agency" as "a clearing agency registered with the Commission pursuant to Section 17A of the Act that is deemed qualified by the Exchange." In adding a definition of Clearing Member to Exchange Rule 1.5, the Exchange does not propose to add a new category of Exchange member or alter current ETP Holder obligations. The Exchange simply proposes this definition to describe ETP Holders that may also be members of a Qualified Clearing Agency as a means to add clarity to the integrated billing solution under proposed Exchange Rule 16.4, described below.

### **Integrated Billing Solution**

The Exchange also proposes to adopt Exchange Rule 16.4 to allow ETP Holders to pay their Exchange and vendor invoices for Exchange-related services through the Exchange's IBS, unless payment by check or bank transfer is agreed to between the Exchange and ETP Holder.<sup>4</sup> In lieu of payment by check or bank transfer, ETP Holders will now be required to designate an ETP Holder that is also Clearing Member (as defined above) to pay their Exchange invoices via IBS. The ETP Holder will continue to receive monthly statements which outline their monthly fees and charges. The Clearing Member will pay to the Exchange on a timely basis any amount that the ETP holder does not dispute. The Exchange will obtain these payments from the Clearing Member's account at the Qualified Clearing Agency. The Qualified Clearing Agency will not be liable in connection with its forwarding to the Exchange each month a payment representing the total amount that the Exchange advises the Qualified Clearing Agency is owed to the Exchange.

Payment of invoices via the Exchange's IBS will increase efficiency and reduce financial risk by allowing the Exchange to draft against the Clearing Member's account the amount due rather than invoicing each ETP Holder separately and awaiting payment via check or bank transfer. In addition, the Exchange notes the Chicago Board Options Exchange, Inc. ("CBOE")<sup>5</sup> has implemented a similar process for the payment of invoices by its members. The only

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<sup>4</sup> The Exchange represents that, in the Exchange's written agreement with each vendor for which the Exchange will collect payments via IBS, the Exchange will require the vendor to include a provision in the vendor's written agreement with each member from which payments via IBS will be collected in which the member authorizes NSX to assess and collect from the member through NSX's billing procedures and automated systems, on behalf of the vendor, the fees assessed by the vendor to the member for the vendor's service. The Exchange does not currently collect payments from ETP Holders for vendor invoices, but may do so in the future.

<sup>5</sup> CBOE Rule 3.23.

difference between CBOE's requirements and those proposed by the NSX, is that the CBOE rule appears to required [sic] payment via IBS as mandatory for all its members, while the NSX's proposed rule would allow alternative payment methods if agreed to with the Exchange.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6 of the Act,<sup>6</sup> and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.<sup>7</sup> Specifically, the Exchange believes the proposed rule change furthers the objective of Section 6(b)(5) of the Act<sup>8</sup> because allowing ETP Holders to pay their Exchange and vendor invoices via IBS is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to transactions in securities, and to remove impediments to and perfects [sic] the mechanism of a free and open market and a national market system. Payment of invoices via the Exchange's IBS would increase efficiency and reduce financial risk by allowing the Exchange to draft against the Clearing Member's account the amount due, rather than the ETP Holder paying their invoices via check or bank transfer each month. Lastly, the Exchange notes that the proposed rule change is not unfairly-discriminatory because payment of invoices via IBS is voluntary and each ETP Holder is able to continue to remit payment of their invoices by check or bank transfer.

The Exchange believes the proposed definition of "Clearing Member" under Exchange Rule 1.5 is consistent with Section 6 of the Act,<sup>9</sup> and the rules and regulations thereunder and, in

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<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78f.

particular, the requirements of Section 6(b) of the Act.<sup>10</sup> Specifically, the Exchange believes the proposed definition furthers the objective of Section 6(b)(5) of the Act<sup>11</sup> because the proposed definition of “Clearing Member” is designed to describe ETP Holders who may also be members of a Qualified Clearing Agency, thereby adding clarity to the IBS under proposed Exchange Rule 16.4. Therefore, the Exchange believes the proposed definition of “Clearing Member” fosters cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to transactions in securities, and removes impediments to and perfect [sic] the mechanism of a free and open market and a national market system.

**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 Act. The proposed rule change will provide ETP Holders the choice of paying their invoices through IBS rather than via check or bank transfer, which is designed to increase efficiency and reduce financial risk. The proposed definition of “Clearing Member” under Exchange Rule 1.5 is designed to add clarity to the integrated billing solution under proposed Exchange Rule 16.4 and does not propose to add a new category of Exchange members or alter current ETP Holder obligations. Therefore, the Exchange believes the proposed rule change does not impose a burden on competition because ETP Holders are free to choose the payment method they wish.

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

Written comments on the proposed rule change were neither solicited nor received.

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

<sup>11</sup> 15 U.S.C. 78f(b)(5).

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

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, it has become effective pursuant to Section

19(b)(3)(A)<sup>12</sup> of the Act and Rule 19b-4(f)(6)<sup>13</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) of the Act<sup>14</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii) of the Act,<sup>15</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that ETP Holders may use the IBS system for invoicing and payment processing immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will facilitate a more efficient method for ETP Holders to pay invoices to the Exchange and for the Exchange to collect undisputed payments owed by ETP Holders to the Exchange and to

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of the filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

vendors.<sup>16</sup> Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.

At any time within 60 days of the filing of such 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or 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](mailto:rule-comments@sec.gov). Please include File Number SR-NSX-2013-01 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-NSX-2013-01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 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 offices 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-2013-01, 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.<sup>17</sup>

Kevin M. O'Neill  
Deputy Secretary

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