

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-75098; File No. SR-NSX-2015-02)

June 3, 2015

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Provide an Expedited Process for Former Equity Trading Permit Holders to Apply for Reinstatement and Register Associated Persons

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 27, 2015, the 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 and II below, which Items have been 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 the Substance of the Proposed Rule Change

The Exchange is proposing to amend Exchange Rule 2.5 (Application Procedures for an ETP Holder or to become an Associated Person of an ETP Holder)<sup>3</sup> to add new Interpretations and Policies Section .01, entitled “Expedited Process for Reinstatement as an ETP Holder.” The Exchange is proposing this amendment to allow the use of an expedited process to facilitate the reinstatement, subject to certain conditions, of former ETP Holders of NSX<sup>4</sup> and to register their

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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> The term “ETP Holder” refers to the holder of an Equity Trading Permit, or “ETP,” issued by the Exchange for effecting approved securities transactions on the Exchange’s trading facilities. An ETP may be issued to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act (See Exchange Rule 1.5E.(1)).

<sup>4</sup> Pursuant to a rule filing with the Commission, the Exchange ceased trading operations as of the close of business on May 30, 2014. See Securities Exchange Act Release No. 72107 (May 6, 2014), 79 FR 27017 (May 12, 2014) (SR-NSX-2014-14). NSX continued

Associated Persons.<sup>5</sup> The Exchange’s proposal is designed to facilitate an efficient reinstatement process in connection with a subsequent reopening of trading on the Exchange, after all regulatory approvals are obtained.

The Exchange has designated this rule proposal as “non-controversial” pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.<sup>7</sup> The text of the proposed rule change is available on the Exchange’s website at [www.nsx.com](http://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 the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory 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.

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to be registered as a national securities exchange and retained its status as a self-regulatory organization. All NSX rules remained in full force and effect after trading on the NSX’s trading system ceased.

<sup>5</sup> The terms “person associated with an ETP Holder” or “associated person of an ETP Holder” mean any partner, officer, director, or branch manager of an ETP Holder (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with an ETP Holder, or any employee of such ETP Holder, except that any person associated with an ETP Holder whose functions are solely clerical or ministerial shall not be included in the meaning of such terms. See Exchange Rule 1.5P.(1).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6)(iii).

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 amend Rule 2.5 to implement, on a temporary basis, an expedited procedure to permit approved ETP Holders in good standing as of the close of business on May 30, 2014, when the Exchange ceased trading operations, to reinstate their ETP Holder status and register with the Exchange each Associated Person of such ETP Holder. As proposed, the Exchange will require that: (i) the ETP Holder using the expedited process is a member of another self-regulatory organization ("SRO"); and (ii) each proposed Associated Person holds an active and recognized securities industry registration.<sup>8</sup> Former ETP Holders seeking reinstatement under the proposed expedited process would use a short-form application to reinstate their ETP Holder status and register Associated Persons.

The Exchange proposes that the expedited procedure for reinstatement as an ETP Holder and registering Associated Persons would be effective for 90 days from the date on which the rule amendment permitting the use of expedited procedure becomes effective. The short-form application that the Exchange proposes for use in connection with the expedited reinstatement process will include an agreement conforming with Rule 2.5(a)(1) through (a)(5).<sup>9</sup> The short

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<sup>8</sup> See footnote 4, supra. As provided in the Exchange's rule filing to cease trading operations on the Exchange as of May 30, 2014, all ETPs terminated automatically as of that date.

<sup>9</sup> Exchange Rule 2.5 (a)(1) through (a)(5) require [sic] that applications for an ETP contain certain agreements, including, inter alia: an agreement by the applicant to adhere to the provisions of the Exchange's amended certificate of incorporation, its by-laws, the Exchange Rules, the policies, interpretations and guidelines of the Exchange and all orders and decisions of the Exchange's Board of Directors; an agreement to pay dues, assessments and other charges in the manner and amount fixed by the Exchange; an agreement that the Exchange, its officers, employees and members of the Board and of any committee shall not be liable, except for willful malfeasance, to the applicant or to any other person for any action taken by such director, officer or member in his official

form application will also include the Exchange’s standard routing agreement. The Exchange may request further documentation, in addition to the short-form application, in order to confirm that a former ETP Holder using the expedited process and any proposed Associated Persons meet the qualification standards set forth in Exchange Rule 2.4 (Restrictions). As part of the expedited application process, the Exchange will review the records of the prospective ETP Holder and each proposed Associated Person maintained by the Central Registration Depository System (“CRD”).<sup>10</sup>

After the expiration of the 90-day period, the expedited process would no longer be available and any former ETP Holder and Associated Person seeking reinstatement after that date would be required to complete a full application. The expedited process will not be available to new ETP applicants (i.e., an applicant that was not an approved ETP Holder in good standing as of May 30, 2014) or to ETP Holders that ceased to be members of another SRO after May 30, 2014. The Exchange will not approve any application unless the prospective ETP Holder is a member of another SRO.

The Exchange’s proposal is intended to allow former ETP Holders to reinstate their status and register Associated Persons in an efficient manner that will enable the Exchange to progress toward a reopening of trading as soon as practicable after the Exchange has obtained all of the necessary regulatory approvals to do so. Reinstating ETP Holders and registering their

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capacity, or by any employee while acting within the scope of his employment, in connection with the administration or enforcement of any of the provisions of the Exchange’s by-laws, its Rules, policies, interpretations or guidelines of the Exchange or of any penalty imposed by the exchange, its Board or any duly authorized committee; an agreement to maintain and make available to the Exchange, its authorized employees and its Board or committee members such books and records as may be required to be maintained by the Commission or the Exchange Rules; and such other reasonable information with respect to the applicant as the Exchange may require.

<sup>10</sup> The Financial Industry Regulatory Authority (“FINRA”) operates the CRD System.

Associated Persons is a critical element of this process from both an organizational and operational standpoint. Before trading on the Exchange can resume, ETP Holders will need to re-establish and test their connectivity. The Exchange will need to test its systems to confirm that the functionality to process, route and execute orders and issue reports to customers, which has not been modified since May 30, 2014, will continue to operate without incident upon a resumption of trading on the Exchange. Given these imperatives, the Exchange believes that it is important to effectuate the reinstatement of qualified former ETP Holders and the registration of their Associated Persons as quickly and efficiently as possible.

The Exchange submits that its proposal does not present any significant regulatory risk. Prior to May 30, 2014, every ETP Holder was a member of another SRO with oversight responsibility, and the Exchange will not approve any ETP Holder application unless the applicant is a current member of another SRO. The short form application requires each prospective ETP Holder to identify its Designated Examining Authority (“DEA”). The expedited process proposed in this filing will only be available to approved ETP Holders in good standing as of May 30, 2014, each of which had previously been approved by the Exchange through its regular application process pursuant to Rule 2.5. Further, the Exchange will not approve any proposed Associated Person unless such person holds an active and recognized securities industry registration and meets the requirements of Rule 2.4 (Restrictions).

The Exchange notes that the Commission has approved the use of an expedited membership approval process and a short-form application in other situations where the facts and circumstances did not justify the time and administrative costs inherent in completing and processing the regular application to become a member of a national securities exchange. In the past, such situations have involved the formation of a new exchange that is an affiliate of an

existing exchange and the members of the existing exchange are permitted to become members of the newly-formed exchange through an expedited process, using a short-form application.<sup>11</sup> Use of an expedited process in that circumstance was appropriate since the applicants for membership on the new exchange had already been approved as members of the affiliated exchange. The Exchange submits that using an expedited process and a short-form application is similarly appropriate in this case, where the Exchange is seeking to employ an efficient and cost-effective means of reinstating previously-approved ETP Holders and registering their Associated Persons.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Exchange Act.<sup>12</sup> Pursuant to Section 6(b)(2) of the Act,<sup>13</sup> and subject to the conditions set forth in Section 6(c) of the Act,<sup>14</sup> in its capacity as a registered national securities exchange, NSX's rules must provide that any registered broker-dealer may become an ETP Holder and any person may become an Associated Person thereof. Under Section 6(c) of the Act, the Exchange must deny ETP Holder status to any person, other than a natural person, that is not a registered broker or dealer, any natural person that is not, or is not

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<sup>11</sup> See, e.g., In the Matter of the Applications of EDGX Exchange, Inc., and EDGA Exchange, Inc. for Registration as National Securities Exchanges: Findings, Opinion, and Order of the Commission, Exchange Act Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10-194 and 10-196); In the Matter of the Application of BATS Exchange, Inc. for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission, Exchange Act Release No. 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10-182).

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(2).

<sup>14</sup> 15 U.S.C. 78f(c).

associated with, a registered broker or dealer, and registered broker-dealers that do not satisfy certain standards, such as financial responsibility or operational capacity. As a registered national securities exchange, NSX must independently determine if an applicant satisfies the standards set forth in the Act and in the Exchange's rules.

The Exchange submits that its proposal for an expedited approval process for former ETP Holders and Associated Persons thereof is consistent with its obligations as a registered national securities exchange under the Exchange Act. The expedited process would only be available to ETP Holders that were in good standing as of May 30, 2014; all of such ETP Holders had previously been approved by the Exchange under its regular application process as set forth in Rule 2.5.<sup>15</sup> As part of its review process in connection with submitted "waive-in" applications, the Exchange will review the CRD records for both the ETP Holder applicant and proposed Associated Persons, and will request additional information as necessary to assure that they continue to meet the eligibility requirements set forth in the Act [sic] and in the Exchange's rules.

The Exchange further believes that its proposal is consistent with the requirements of Section 6(b)(5)<sup>16</sup> that the rules of an exchange be designed, among other things, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Additionally, the Exchange believes the proposed rule change is consistent with the Section

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<sup>15</sup> See footnote 9, *supra*.

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

6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed expedited process will operate to reduce the time and administrative costs normally incurred by both ETP Holders and the Exchange in processing applications to become ETP Holders and registering their Associated Persons. The Exchange further believes that its proposal will thus 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 system. The Exchange's proposal will be available to all ETP Holders in good standing as of May 30, 2014 that seek to reinstate their status as ETP Holders of NSX, thus meeting the requirement of Section 6(b)(5) that the Exchange's rules not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

Additionally, the Exchange notes that its proposed expedited procedure for reinstatement will have duration of 90 days from the date that the instant rule change becomes effective. This is consistent with the approach in other instances where national securities exchanges used an expedited application process for a limited purpose and a similar time frame, after which the expedited process was no longer available. The Exchange believes that by utilizing an expedited process that has precedent in both its application and its time duration with the process used by other national securities exchanges, it is fulfilling the requirement of Section 6(b)(5) of the Act that its rules foster cooperation and coordination with persons engaged in, among other things, regulating and processing information with respect to, and facilitating transactions in securities.

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

The Exchange believes that the proposed rule change is consistent with Section 6(b)(8) of the Act<sup>17</sup> in that it will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposed expedited process will only be available to broker-dealers that were registered ETP Holders as of the date the Exchange ceased trading operations. Allowing for an expedited and efficient process for reinstatement of ETP Holders and registering their Associated Persons will facilitate the process of preparing the Exchange for a resumption of trading, thereby providing another competitive trading venue for market participants. The Exchange notes that new ETP Holder applicants would not be eligible for the expedited process, nor would any otherwise eligible former ETP Holder that sought reinstatement after the 90-day time period for use of the expedited process had elapsed. Associated Persons that an ETP Holder seeks to register through the expedited process must hold an active and recognized securities industry registration and meet the requirements of Rule 2.4(e) [sic]. The Exchange submits that these factors indicate that its proposal will not impose any unnecessary or inappropriate burden on competition and therefore is consistent with the Act.

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

Because the 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)

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<sup>17</sup> 15 U.S.C. 78f(b)(8).

become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>18</sup> and Rule 19b-4(f)(6) thereunder.<sup>19</sup>

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 under Section 19(b)(2)(B) of the Act<sup>20</sup> 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-2015-02 on the subject line.

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<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

<sup>20</sup> 15 U.S.C. 78s(b)(2)(B).

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-2015-02. 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 such filing 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-2015-02 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>21</sup>

Robert W. Errett  
Deputy Secretary

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<sup>21</sup> 17 CFR 200.30-3(a)(12).