

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76497; File No. SR-NSX-2015-06)

November 20, 2015

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Rule 2.13, Mandatory Participation in Testing of Backup Systems

Pursuant to 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 10, 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 Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6)(iii)⁴ thereunder, which renders it effective upon filing with the Commission. 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 adopt Rule 2.13, Mandatory Participation in Testing of Backup Systems, establishing business continuity and disaster recovery plans ("BC/DR plans") testing requirements for certain ETP Holders in connection with Regulation Systems Compliance and Integrity ("Regulation SCI"), as further described below.⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6)(iii).

⁵ See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) ("SCI Adopting Release").

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

As adopted by the Commission, Regulation SCI applies to certain self-regulatory organizations (including the Exchange), alternative trading systems ("ATs"), plan processors, and exempt clearing agencies (collectively, "SCI entities"), and will require these SCI entities to comply with requirements with respect to the automated systems central to the performance of their regulated activities.⁶ Among the requirements of Regulation SCI is Rule 1001(a)(2)(v), which requires the Exchange and other SCI entities to maintain "[b]usiness continuity and disaster recovery plans that include maintaining backup and recovery capabilities sufficiently

⁶ 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). However, the Exchange has retained its status as a registered national securities exchange under Section 6 of the Act, 15 U.S.C. 78f and a self-regulatory organization as defined in Section 3(a)(26) of the Act, 15 U.S.C. 78c(a)(26). NSX is planning to resume trading operations, subject to receiving Commission approval to do so.

resilient and geographically diverse and that are reasonably designed to achieve next business day resumption of trading and two-hour resumption of critical SCI systems following a wide-scale disruption.”⁷

Pursuant to Regulation SCI, the Exchange is proposing to require certain ETP Holders to participate in testing of the operation of the Exchange’s BC/DR plans. Paragraph (a) of Rule 1004 of Regulation SCI requires each SCI entity to: “[e]stablish standards for the designation of those members or participants that the SCI entity reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans.”⁸ Paragraph (b) of Rule 1004 further requires each SCI entity to “[d]esignate members or participants pursuant to the standards established in paragraph (a) of [Rule 1004] and require participation by such designated members or participants in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by the SCI entity, provided that such frequency shall not be less than once every 12 months.”⁹

To comply with the provisions of Rule 1004 of Regulation SCI, the Exchange is proposing to adopt new Rule 2.13 governing mandatory testing of the Exchange’s backup systems. First, in paragraph (a) of Rule 2.13, the Exchange proposes to include language from paragraph (a) of Rule 1004 of Regulation SCI to summarize the Exchange’s obligation pursuant to such rule. Specifically, the Exchange proposes to state that “[p]ursuant to Regulation SCI and with respect to the Exchange’s business continuity and disaster recovery plans, including its backup systems, the Exchange is required to establish standards for the designation of ETP

⁷ 17 CFR 242.1001(a)(2)(v).

⁸ 17 CFR 242.1004(a).

⁹ 17 CFR 242.1004(b).

Holders that the Exchange reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans.” The Exchange further proposes that paragraph (a) state that the “Exchange has established standards and will designate ETP Holders according to those standards” as set forth in the proposed Rule. In addition, the Exchange proposes to make clear that all ETP Holders are permitted to connect to the Exchange’s backup systems as well as to participate in testing of such systems. Proposed paragraph (a) is consistent with the Commission's adoption of Regulation SCI, which encouraged “SCI entities to permit non-designated members or participants to participate in the testing of the SCI entity's BC/DR plans if they request to do so.”¹⁰

Second, in paragraph (b) of Rule 2.13, the Exchange proposes to specify the criteria that the Exchange will employ to determine whether an ETP Holder will be required to connect to the Exchange’s backup systems and to participate in scheduled functional and performance testing as announced by the Exchange, which shall occur at least once every 12 months. Specifically, proposed paragraph (b) would require all ETP Holders that account for a meaningful percentage of the Exchange's volume to connect to the Exchange's backup systems and to participate in functional and performance testing.

In adopting the requirements of Rule 2.13(b) to participate in mandatory testing of such systems, the Exchange intends to subject to the Rule only those ETP Holders that the Exchange believes are necessary to maintain fair and orderly markets at the Exchange. Designating ETP Holders to participate in mandatory testing because they account for a meaningful percentage of the Exchange's overall volume is a reasonable means to ensure the maintenance of a fair and orderly market on the Exchange.

¹⁰ See SCI Adopting Release, *supra* note 5 at 72350.

In addition to paragraphs (a) and (b) described above, the Exchange also proposes to adopt Interpretation and Policy .01, which would provide additional detail regarding the notice that will be provided to ETP Holders that have been designated pursuant to subparagraph (b) of the Rule as well as the Exchange's method for measuring the volume threshold. As proposed, Interpretation and Policy .01 would state that for purposes of identifying ETP Holders that account for a meaningful percentage of the Exchange's overall volume, the Exchange will measure volume executed on the Exchange on a quarterly basis. The percentage of volume that the Exchange considers to be meaningful for purposes of this Interpretation and Policy .01 will be determined by the Exchange and will be published in a circular distributed to ETP Holders. The Exchange will publish its first Information Circular consistent with Rule 2.13 upon a resumption of trading on the System.

The proposed Interpretation and Policy would also require the Exchange to notify, on a quarterly basis, individual ETP Holders that are subject to proposed paragraph (b) based on the prior calendar quarter's volume. Finally, as proposed, if an ETP Holder has not previously been subject to the requirements of proposed paragraph (b), then such ETP Holder would have until the next calendar quarter before such requirements are applicable. The Exchange believes the proposed notice requirements are necessary to provide ETP Holders with proper advance notice in the event they become subject to proposed Rule 2.13(b). The proposed timeframes would also provide ETP Holders with adequate time to become compliant with such Rule due to the necessary infrastructure changes that may be needed to connect to the Exchange's backup systems for an ETP Holder that is not already connected.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹² in particular, in that it is designed to promote just and equitable principles of trade, 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 proposal will ensure that the minimum number of ETP Holders necessary for the maintenance of a fair and orderly market are properly designated consistent with Rule 1004 of Regulation SCI.

Specifically, the proposal will adopt criteria with respect to the designation of ETP Holders that are required to participate in the testing of the Exchange's BC/DR plans, as well as appropriate notification regarding such designation. As set forth in the SCI Adopting Release, "SROs have the authority, and legal responsibility, under Section 6 of the Exchange Act, to adopt and enforce rules (including rules to comply with Regulation SCI's requirements relating to BC/DR testing) applicable to their members or participants that are designed to, among other things, 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."¹³ The proposal is consistent with such authority and legal responsibility.

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 not necessary or appropriate in furtherance of the purposes of the

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ See SCI Adopting Release, supra note 5 at 72350.

Act. To the contrary, the proposal is not a competitive proposal but rather is necessary for the Exchange's compliance with Regulation SCI.

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

The Exchange has neither solicited nor received written comments on the proposed rule change from market participants or others.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6)(iii) thereunder.¹⁵ 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) become operative prior to 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 and Rule 19b-4(f)(6)(iii) thereunder.¹⁶ A proposed rule change filed under Rule 19b-4(f)(6)(iii)¹⁷ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁸ 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 the

¹⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Exchange to immediately incorporate changes required under Regulation SCI, such as establishing standards for designating BC/DR participants, and help ensure that the Exchange will be able to satisfy the requirements of Regulation SCI once the Exchange commences operations. Accordingly, the Commission designates the proposed rule change to be operative upon filing.¹⁹

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)²⁰ of the Act 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. Please include File Number SR-NSX-2015-06 on the subject line.

¹⁹ 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).

²⁰ 15 U.S.C. 78s(b)(2)(B).

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, D.C. 20549-1090.

All submissions should refer to File No. SR-NSX-2015-06. 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 20549-1090. Copies of the 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. Interested persons should submit only information that they wish to make available publicly. All submissions

should refer to file number SR-NSX-2015-06 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.²¹

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Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12).