

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76640; File No. SR-NSX-2015-05)

December 14, 2015

Self-Regulatory Organizations; National Stock Exchange, Inc.; Order Approving a Proposed Rule Change to Modify and Eliminate Certain Rules and to Enable Trading Activity to Resume on the Exchange

I. Introduction

On November 3, 2015, the National Stock Exchange (“NSX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change proposing changes that would, among other things, allow trading activity to resume on the Exchange.³ The proposed rule change was published for comment in the Federal Register on November 13, 2015.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to amend Rule 11.1 (Hours of Trading) to rescind Interpretations and Policies .01 (Cessation of Trading Operations NSX) to permit the Exchange to resume trading activity. The Exchange also proposes to (i) amend Rule 11.11 (Orders and Modifiers) to remove descriptions of certain order types that the Exchange will not offer when it resumes

¹ 15 U.S.C. 782(b)(1).

² 17 CFR 249.19b-4.

³ On May 1, 2014, NSX filed a proposed rule change to halt all trading activity on the Exchange. See Securities Exchange Act Release No. 72107 (May 6, 2014), 79 FR 27017 (May 12, 2014)(SR-NSX-2014-14). There has been no trading activity on the Exchange since the close of business on May 30, 2014 (“Closing Date”).

⁴ See Securities Exchange Act Release No. 76390 (November 9, 2015), 80 FR 70261 (“Notice”).

trading and to correct the numbering of certain subparagraphs of the rule; (ii) delete Rule 11.12 (Cross Message) and make conforming changes to Rules 11.11(c) and 16.2; (iii) amend Rule 11.13 and Interpretations and Policies .01 to eliminate the order delivery mode of order interaction with the Exchange’s trading system (“Order Delivery”); and (iv) adopt Rule 11.25 (Use of Market Data Feeds) to describe the Exchange’s use of certain data feeds for order handling and execution.⁵

In its filing, the Exchange represented to the Commission that it is ready to resume trading activity upon approval of this filing. To that end, the Exchange represents that, since the Closing Date, it has continued to discharge its responsibilities as a self-regulatory organization (“SRO”) in anticipation of resuming trading operations,⁶ specifically, by, among other things, (i) remaining a party to certain multi-party 17d-2 Plans for the Allocation of Regulatory Responsibilities pursuant to Section 17(d)(1) of the Act⁷ and Rules 17d-1 and 17d-2 thereunder⁸ relating to insider trading surveillance and certain Regulation NMS requirements;⁹ (ii) continuing to maintain the operability of its trading system and not modifying the system’s functionality, except as necessary to comply with regulatory requirements;¹⁰ (iii) implementing and executing a rigorous testing program, including tests with industry participants, to assure that its trading system will function as designed and consistent with all applicable rules and

⁵ For a more detailed description of the proposed changes, see Notice, supra note 4.

⁶ See Notice, supra note 4, at 70262.

⁷ 15 U.S.C. 78q(d)(1).

⁸ 17 CFR 240.17d-1 and 17 CFR 240.17d-2.

⁹ See Notice, supra note 4, at 70264.

¹⁰ See id. at 70263.

regulations;¹¹ (iv) testing connectivity to the securities information processors (“SIPs”) and re-certifying its connection to the Depository Trust Clearing Corporation;¹² and (v) amending certain Exchange Rules to keep current with industry regulatory initiatives.¹³ The Exchange further represents that it has the capacity to be able to carry out the purposes of the Act and to comply with 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 further states that it has the financial, technological, and personnel resources to effectively conduct surveillance of its marketplace and to regulate ETP Holders’ trading on NSX upon the resumption of trading operations.¹⁴

Furthermore, the Exchange represents that it will provide timely written notice of the date it will commence trading, and other related information directly to the following parties: (i) ETP Holders; (ii) other national securities exchanges that trade NMS securities; (iii) the SIPs; and, (iv) 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, the Plan to Address Extraordinary Market Volatility).¹⁵ NSX further states that it will provide timely notice to the general public by way

¹¹ See id.

¹² See id.

¹³ See id. at 70263-64.

¹⁴ See id. at 70264-65.

¹⁵ See id. at 70263-64.

of widely-disseminated press releases, notification through the Exchange’s website, and communications with financial and industry press.¹⁶

Finally, the Exchange represents that upon receiving Commission approval to resume trading, it will execute a staged roll-out plan to reach full operational capacity and provide notice to ETP Holders with the precise details of the roll-out plan before initiating the plan.¹⁷

III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁸ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹⁹ which requires that the rules of the Exchange, among other things, be 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.

Based on the Exchange’s representations, the Commission believes that the Exchange is positioned to resume its status as a fully operational national securities exchange and to commence trading operations consistent with the notice provisions set forth in the proposed rule change.²⁰ The Commission notes that the Exchange will resume operations using the same trading system and rules (subject to the changes proposed herein) that were in effect on the

¹⁶ See id. at 70264.

¹⁷ See id. at 70263.

¹⁸ In approving the proposed rule change, the Commission has considered its impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ See Notice, supra note 4, at 70263-64.

Closing Date. The Commission further notes that the Exchange has committed to “regularly assess its regulatory resources to assure that they continue to be sufficient to discharge its SRO responsibilities.”²¹ The Exchange’s proposed staged roll-out plan should ensure that trading is resumed in an orderly manner. The Exchange’s decision to streamline its trading operations by amending Rules 11.11, 11.12, 11.13, and 16.2, and adopting Rule 11.25, is consistent with the protection of investors and the public interest. These changes, which eliminate order-types that were not being used before the Closing Date, eliminate the order delivery mode of order interaction with the Exchange’s trading system, and adopt a rule to describe the Exchange’s use of certain data feeds for order handling and execution, will allow the exchange to resume trading, providing another venue to which customer orders can be routed. The Commission notes that it received no comments on the proposed rule change.

As noted above, NSX intends to resume operations as an automated trading center and have its best bid and best offer be a Protected Quotation.²² To meet their regulatory responsibilities under Rule 611(a) of Regulation NMS, market participants must have sufficient notice of new Protected Quotations, as well as all necessary information (such as final technical specifications).²³ Therefore, the Commission believes that it would be a reasonable policy and procedure under Rule 611(a) to require that industry participants begin treating NSX’s best bid and best offer as a Protected Quotation as soon as possible but no later than 60 days after the date of this order, or such later date as NSX resumes operations as a national securities exchange.

²¹ See id. at 70264.

²² 17 CFR 242.600(b)(58).

²³ See Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038, 30041 (May 24, 2006).

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act²⁴ that the proposed rule change (SR-NSX-2015-05), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Robert W. Errett
Deputy Secretary

²⁴ 15 U.S.C. 78s(b)(2).

²⁵ 17 CFR 200.30-3(a)(12).