

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-78960; File No. SR-NSX-2016-12)

September 28, 2016

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rule 11.26 to Implement the Regulation NMS Plan to Implement a Tick Size Pilot Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on 22 September, 2016, National Stock Exchange, Inc. (“NSX” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) a 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 filed a proposal to amend NSX Rule 11.26 to modify certain data collection requirements of the Regulation NMS Plan to Implement a Tick Size Pilot Program (the “Plan”). The proposed rule change is substantially similar to proposed rule changes recently approved or published by the Commission for the Financial Industry Regulatory Authority, Inc. (“FINRA”) to amend FINRA Rule 6191, which also sets forth amendments to the requirements

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).

for the collection and transmission of data pursuant to Appendices B and C of the Plan.⁵ The Exchange has designated this proposal as a “non-controversial” proposed rule change and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.⁶

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 statutory 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

On August 25, 2014, NYSE Group, Inc., on behalf of BZX, Chicago Stock Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., FINRA, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC (“NYSE”), NYSE MKT LLC, and NYSE Arca, Inc. (collectively “Participants”), filed with the Commission, pursuant to Section 11A of the Act⁷ and Rule 608 of Regulation NMS

⁵ See Securities Exchange Act Release No. 78800 (September 9, 2016), 81 FR 63565 (September 15, 2016) (SR-FINRA-2016-35).

⁶ 17 CFR 240.19b-4(f)(6)(iii).

⁷ 15 U.S.C. 78k-1.

thereunder,⁸ the Plan to Implement a Tick Size Pilot Program (“Pilot”).⁹ The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.¹⁰ The Plan¹¹ was published for comment in the Federal Register on November 7, 2014 and was thereafter approved by the Commission, as modified, on May 6, 2015.¹² On November 6, 2015, the Commission granted the Participants an exemption from implementing the Plan until October 3, 2016.¹³ On March 3, 2016, the Commission noticed an amendment to the Plan adding NSX as a Participant.¹⁴

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan. As is described more fully below, the proposed rules would require ETP Holders¹⁵ to comply with the applicable data collection requirements of the Plan.¹⁶

⁸ 17 CFR 242.608.

⁹ See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

¹⁰ See Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

¹¹ Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

¹² See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (File No. 4-657) (“Approval Order”).

¹³ See Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015) (File No. 4-657) (Order Granting Exemption From Compliance With the National Market System Plan To Implement a Tick Size Pilot Program).

¹⁴ See Securities Exchange Act Release No. 77277 (March 3, 2016), 81 FR 12162 (March 8, 2016).

¹⁵ An “ETP Holder” is a registrant of NSX to which NSX has issued an ETP. An “ETP” is defined as “... an Equity Trading Permit issued by the Exchange for effecting approved

The Pilot will include stocks of companies with \$3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least \$2.00 for every trading day. The Pilot will consist of a control group of approximately 1,400 Pilot Securities and three test groups with 400 Pilot Securities in each (selected by a stratified random sampling process).¹⁷ During the pilot, Pilot Securities in the control group will be quoted at the current tick size increment of \$0.01 per share and will trade at the currently permitted increments. Pilot Securities in the first test group (“Test Group One”) will be quoted in \$0.05 minimum increments but will continue to trade at any price increment that is currently permitted.¹⁸ Pilot Securities in the second test group (“Test Group Two”) will be quoted in \$0.05 minimum increments and will trade at \$0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.¹⁹ Pilot Securities in the third test group (“Test Group Three”) will be subject to the same quoting and trading increments as Test Group Two and also will be subject to the “Trade-at” requirement to prevent price matching by a market participant that is not displaying at a Trading Center’s “Best Protected Bid” or “Best Protected Offer,” unless an enumerated exception applies.²⁰ In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and

securities transactions on the Exchange’s trading facilities....” See Exchange Rule 1.5.E(1).

¹⁶ Interpretations and Policies .11 to Rule 11.26 to [sic] provide that the Rule shall be in effect during a pilot period to coincide with the pilot period for the Plan (including any extensions to the pilot period for the Plan).

¹⁷ See Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

¹⁸ See Section VI(B) of the Plan.

¹⁹ See Section VI(C) of the Plan.

²⁰ See Section VI(D) of the Plan.

exceptions that mirror those under Rule 611 of Regulation NMS²¹ will apply to the Trade-at requirement.

In approving the Plan, the Commission noted that the Trading Center data reporting requirements would facilitate an analysis of the effects of the Pilot on liquidity (e.g., transaction costs by order size), execution quality (e.g., speed of order executions), market maker activity, competition between trading venues (e.g., routing frequency of market orders), transparency (e.g., choice between displayed and hidden orders), and market dynamics (e.g., rates and speed of order cancellations).²² The Commission noted that Market Maker profitability data would assist the Commission in evaluating the effect, if any, of a widened tick increment on market marker profits and any corresponding changes in the liquidity of small-capitalization securities.²³

Compliance with the Data Collection Requirements of the Plan

The Plan contains requirements for collecting and transmitting data to the Commission and to the public.²⁴ Specifically, Appendix B.I of the Plan (Market Quality Statistics) requires Trading Centers²⁵ to submit variety of market quality statistics, including information about an

²¹ 17 CFR 242.611.

²² See Approval Order, 80 FR at 27543.

²³ Id.

²⁴ The Exchange is also required by the Plan to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. In that regard, the Exchange adopted Rule 11.26(c), Compliance With Quoting and Trading Restrictions, describing the responsibilities of the Exchange and of ETP Holders in complying with the quoting and trading provisions of the Plan. See Securities Exchange Act Release No. 78391 (July 21, 2016), 81 FR 49348 (July 27, 2016) (SR-NSX-2016-05).

²⁵ The Plan incorporates the definition of a “Trading Center” from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a “Trading Center” as “a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.” See 17 CFR 242.600(b).

order's original size, whether the order was displayable or not, the cumulative number of orders, the cumulative number of shares of orders, and the cumulative number of shares executed within specific time increments, e.g., from 30 seconds to less than 60 seconds after the time of order receipt. This information shall be categorized by security, order type, original order size, hidden status, and coverage under Rule 605.²⁶ Appendix B.I of the Plan also contains additional requirements for market orders and marketable limit orders, including the share-weighted average effective spread for executions of orders; the cumulative number of shares of orders executed with price improvement; and, for shares executed with price improvement, the share-weighted average amount per share that prices were improved.

Appendix B.II of the Plan (Market and Marketable Limit Order Data) requires Trading Centers to submit information relating to market orders and marketable limit orders, including the time of order receipt, order type, the order size, the National Best Bid and National Best Offer ("NBBO") quoted price, the NBBO quoted depth, the average execution price-share-weighted average, and the average execution time-share-weighted average.

The Plan requires Appendix B.I and B.II data to be submitted by Participants that operate a Trading Center, and by members of the Participants that operate Trading Centers. The Plan provides that each Participant that is the Designated Examining Authority ("DEA") for a member of the Participant that operates a Trading Center shall collect such data in a pipe delimited format, beginning six months prior to the Pilot Period and ending six months after the end of the Pilot Period. The Plan also requires the Participant, operating as DEA, to transmit this information to the SEC within 30 calendar days following month end.

²⁶ 17 CFR 242.605.

Pursuant to the aforementioned requirements, the Exchange submitted and the Commission noticed a rule filing to adopt Exchange Rule 11.26(b), Compliance with Data Collection Requirements.²⁷ The Exchange now proposes to amend Rule 11.26(b) to modify certain data collection and reporting requirements.²⁸ First, Appendix B.I.a(21) through B.I.a(27) currently requires that Trading Centers report the cumulative number of shares of cancelled orders during a specified duration of time after receipt of the order that was cancelled. The Exchange and the other Participants believe that, for purposes of reporting cancelled orders, it is appropriate to categorize unexecuted Immediate or Cancel orders separately as one bucket irrespective of the duration of time after order receipt, i.e., without a time increment, to better differentiate orders cancelled subsequent to entry from those where the customer's intent prior to order entry was to cancel the order if no execution could be immediately obtained. The Exchange, therefore, proposes to modify Interpretations and Policies .04 to provide that unexecuted Immediate or Cancel orders shall be categorized separately for purposes of Appendix B.I.a(21) through B.I.a(27).

The second change relates to the reporting of daily market quality statistics pursuant to Appendix B.I. Currently, Appendix B.I sets forth categories of orders, including market orders,

²⁷ See Securities Exchange Act Release No. 77483 (March 31, 2016), 81 FR 20040 (April 6, 2016) (SR-NSX-2016-01).

²⁸ FINRA, on behalf of the Participants submitted a letter to Commission requesting an exemption from certain provisions of the Plan related to data collection. See letter dated August 30, 2016 from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA to Robert W. Errett, Deputy Secretary, Commission. The Commission, pursuant to its authority under Rule 608(e) of Regulation NMS, granted each Participant a limited exemption from the requirement to comply with certain provisions of the Plan as specified in the letter and noted herein, as long as each Participant submits proposed rule amendments to reflect the changes. See, letter dated August 30, 2016 from David S. Shillman, Associate Director, Division of Trading and Markets, Commission to Marcia E. Asquith, FINRA.

marketable limit orders, and inside-the-quote resting limit orders, for which daily market quality statistics must be reported. The Exchange and the other Participants have determined that it is appropriate to include an order type for limit orders priced more than \$0.10 away from the NBBO for purposes of Appendix B reporting. The Exchange therefore proposes to amend Interpretations and Policies .06 to provide that limit orders priced more than \$0.10 away from the NBBO shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (22). These orders are not currently required to be reported pursuant to Appendix B, and the Exchange and the other Participants believe that requiring the reporting of such orders will produce a more comprehensive data set.

The third change relates to the reporting of market quality statistics pursuant to Appendix B.I for a variety of order types, including inside-the-quote resting limit orders (12), at-the-quote resting limit orders (13), and near-the-quote resting limit orders (within \$0.10 of the NBBO) (14). The Exchange and the other Participants believe that it is appropriate to require Trading Centers to report all orders that fall within these categories, and not just those orders that are “resting.” The Exchange, therefore, proposes to amend Interpretations and Policies .06 to make this change.

In the fourth change, the Exchange proposes to renumber Interpretations and Policies .09 to .10 and add new Interpretations and Policies .09 to modify the manner in which market maker participation statistics are calculated. Currently, Appendix B.IV provides that market maker participation statistics shall be calculated based on share participation, trade participation, cross-quote share (trade) participation, inside-the-quote share (trade) participation, at-the-quote share (trade) participation, and outside-the-quote share (trade) participation. The Exchange and the other Participants have determined that it is appropriate to add the count of the number of Market

Makers used in the calculation of share (trade) participation to each category. The Exchange is therefore proposing this change as part of Interpretations and Policies .09. In addition, Appendix B.IV(b) and (c) currently require that, when aggregating across Market Makers, share participation and trade participation shall be calculated using the share-weighted average and trade-weighted average, respectively. The Exchange and the other Participants believe that it is more appropriate to calculate share and trade participation by providing the total count of shares or trades, as applicable, rather than weighted averages, and the Exchange is therefore proposing this change as part of Interpretations and Policies.

The fifth change relates to the NBBO that a Trading Center is required to use when performing certain quote-related calculations. When calculating cross-quote share (trade) participation pursuant to Appendix B.IV(d) and inside-the-quote share (trade) participation pursuant to Appendix B.IV(e), the Plan requires the Trading Center to utilize the NBBO at the time of the trade for both share and trade participation calculations. When calculating at-the-quote share (trade) participation and outside-the-quote share (trade) participation pursuant to Appendix B.IV(f) and (g), the Plan allows the Trading Center to utilize the National Best Bid or National Best Offer (NBBO) at the time of or immediately before the trade for both share and trade participation calculations. The Exchange and the other Participants believe that it is appropriate to calculate all quote participation (cross-quote share (trade) participation, inside-the-quote share (trade) participation, at-the-quote share (trade) participation and outside-the-quote share (trade) participation) solely by reference to the NBBO in effect immediately prior to the trade. The Exchange therefore proposes to make this change as part of Interpretations and Policies .09.

Finally, the Exchange proposes to change the end date until which the Pre-Pilot Data Collection Securities shall be used to fulfill the Plan's data collection requirements. Currently, Interpretations and Policies .10, which is being renumbered to .11, provides that Pre-Pilot Data Collection Securities are the securities designated by the Participants for purposes of the data collection requirements described in Items I, II and IV of Appendix B and Item I of Appendix C to the Plan for the period beginning six months prior to the Pilot Period and ending on the trading day immediately preceding the Pilot Period. The Exchange and the other Participants believe that it is appropriate to use the Pilot Securities to satisfy the Plan's data collection requirements prior to the commencement of the Pilot. Accordingly, the Exchange is revising Interpretations and Policies .10 (which will be re-numbered .11) to provide that the Pre-Pilot Data Collection Securities shall be used to satisfy the Plan's data collection requirements through thirty-one days prior to the Pilot Period, after which time the Pilot Securities shall be used for purposes of the data collection requirements.²⁹ The Exchange will also renumber Interpretations and Policies .11 to .12.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act³⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act³¹ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination

²⁹ NYSE, NYSE MKT, and Nasdaq published an automated list of securities eligible for the Pilot on the evening of September 2, 2016. At that time, all securities were designated for the Control Group. All securities will continue to be reflected as Control Group securities for the entire month of September 2016. On September 6, 2016, NYSE, NYSE MKT, and Nasdaq published a manual list identifying the final Test Group assignment for each eligible security.

³⁰ 15 U.S.C. 78f(b).

³¹ 15 U.S.C. 78f(b)(5).

with persons engaged in 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 believes that this proposal is consistent with the Act because it implements and clarifies the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant of the Plan. In approving the Plan, the SEC noted that the Pilot was an appropriate, data-driven test that was designed to evaluate the impact of a wider tick size on trading, liquidity, and the market quality of securities of smaller capitalization companies, and was therefore in furtherance of the purposes of the Act. The Exchange believes that this proposal is in furtherance of the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act because the proposal implements and clarifies the requirements of the Plan and applies specific obligations to ETP Holders in furtherance of compliance with the Plan.

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

The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. The Exchange also notes that, other than the change to require use of the Pilot Securities beginning thirty days prior to the beginning of the Pilot Period, the proposed changes will not affect the data collection and reporting requirements for members that operate Trading Centers; the proposed changes will only affect how the Exchange and Participants that operate Trading Centers collect and report data. The Exchange notes that, with respect to the change to require the use of the Pilot Securities beginning thirty days prior to the start of the Pilot Period, the proposed change reduces the number of securities on which affected members otherwise would have been required to collect data pursuant to the Plan and Exchange Rule 11.26. In addition,

the proposed rule change applies equally to all similarly situated members. Therefore, the Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has neither solicited nor received comments on the proposed rule change.

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)(iii) of the Act³² and Rule 19b-4(f)(6) thereunder.³³ 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) by its terms, 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.

A proposed rule change filed under Rule 19b-4(f)(6)³⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),³⁵ 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 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 because it will allow the Exchange to implement

³² 15 U.S.C. 78s(b)(3)(A)(iii).

³³ 17 CFR 240.19b-4(f)(6).

³⁴ 17 CFR 240.19b-4(f)(6).

³⁵ 17 CFR 240.19b-4(f)(6)(iii).

the proposed rules immediately thereby preventing delays in the implementation of the Plan. The Commission notes that the Plan is scheduled to start on October 3, 2016. Therefore, the Commission hereby waives the 30 day operative delay and designates the proposed rule change to be operative upon filing with the Commission.³⁶

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)³⁷ 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-2016-12 on the subject line.

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.

³⁶ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³⁷ 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File No. SR-NSX-2016-12. 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, on official business days between the hours of 10 a.m. and 3 p.m. eastern time. Copies of such filings 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-2016-12 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.³⁸

Robert W. Errett
Deputy Secretary

³⁸ 17 CFR 200.30-3(a)(12).