

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62601; File No. SR-NSX-2010-09)

July 29, 2010

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Enhanced Customer Disclosure Rules Concerning Transactions Outside of Regular Trading Hours

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 July 29, 2010, National Stock Exchange, Inc. (“NSX<sup>®</sup>” or “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 Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 Substance of the Proposed Rule Change

NSX is proposing to adopt certain enhanced customer disclosure requirements applicable to transactions outside of the Exchange’s regular trading hours trading session.

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> 15 U.S.C. 78s(b)(3)(A)(iii).

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

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

With this rule change, the Exchange is proposing to amend Rule 11.1 to adopt enhanced customer disclosure requirements applicable to transactions on the Exchange during trading sessions outside of Regular Trading Hours (as such term is defined below). In addition, the instant rule change proposes to make certain clean-up conforming changes to other Exchange Rules as further described below.

The instant rule filing proposes to adopt as Rule 11.1(c) certain enhanced disclosure requirements applicable to transactions effected on the Exchange outside of the Regular Trading Hours trading session.<sup>5</sup> Specifically, Rule 11.1(c) provides that no ETP Holder may accept an order from a non-ETP Holder for execution outside of Regular Trading Hours without disclosing to such non-ETP Holder that extended hours trading involves material trading risks, including

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<sup>5</sup> Currently, the Exchange's Regular Trading Hours, as such term is defined in NSX Rule 1(R)(1), are from 8:30 a.m. until 3 p.m. Central Time (9:30 a.m. until 4 p.m. Eastern Time ("ET")). The pre-Regular Trading Hours trading session is from 8 a.m. until 9:30 a.m. ET, and the post-Regular Trading Hours trading session is from 4 p.m. until 6:30 p.m. ET.

the possibility of lower liquidity, high volatility, changing prices, unlinked markets, an exaggerated effect from news announcements, wider spreads and any other relevant risk. The absence of an updated underlying index value or intraday indicative value is an additional trading risk in extended hours for UTP Derivative Security products under NSX Rule 15.9. Proposed Rule 11.1(c) provides for the benefit of ETP Holders disclosure language regarding the foregoing risks that would be generally acceptable to the Exchange. In addition, proposed Rule 11.1(d) provides that trades on the Exchange executed and reported outside of Regular Trading Hours shall be designated as “.T” trades. Proposed Rule 11.1(c) and (d) are based on Arca Rule 7.34(e) and (f), respectively.<sup>6</sup>

In addition, the proposed rule change makes clean up changes to NSX Rule 1.5R(1) by modifying the definition of “Regular Trading Hours” to reflect Eastern Time instead of Central Time, consistent with the time references in the remainder of NSX Rules. Further, for purposes of internal consistency and clarity, the references to hours of trading in Interpretation and Policy .01(f) of Rule 15.12 is eliminated as obsolete, and in Rule 15.9B(2) such reference is modified consistent with the usage of the term “Regular Trading Hours”. Finally, the definition of “Day Order” in Rule 11.11(b)(2) is modified to clarify that Day Orders will expire at the close of the Exchange’s Regular Trading Hours trading session instead of at the close of the regular trading session on the given security’s listing exchange.<sup>7</sup>

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<sup>6</sup> See also NASDAQ Rule 4631, ISE Rule 2102, Interpretation and Policy .04 and .05, and BATS Rule 3.21.

<sup>7</sup> This modification constitutes no change to the Exchange’s current practices because the close of the regular trading sessions on listing exchanges has historically also been 4:00 p.m. ET.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>9</sup> in particular in that it is designed, among other things, to promote clarity, transparency and full disclosure, in so doing, to prevent fraudulent and manipulative acts and practices, 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. Moreover, the proposed rule change is not discriminatory in that all ETP Holders are eligible to participate (or elect to not participate) in effectuating transactions on the Exchange outside of Regular Trading Hours on the same terms and conditions.

### 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 Exchange Act.

### 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.

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

Because the foregoing rule change does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission

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

<sup>9</sup> 15 U.S.C. 78f(b)(4).

may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>12</sup> However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission notes that the Exchange's proposal is substantially similar to the rules of other national securities exchanges and does not raise any new substantive issues.<sup>13</sup> Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and hereby designates the proposal operative upon filing.<sup>14</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and 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. The Exchange has satisfied this requirement.

<sup>13</sup> See supra note 6. The Commission previously has waived the operative delay for similar rule change proposals of other exchanges under Rule 19b-4(f)(6) on the same basis. See, e.g., Securities Exchange Act Release No. 59963 (May 21, 2009), 74 FR 25787 (May 29, 2009) (SR-BATS-2009-012); and Securities Exchange Act Release No. 58685 (September 30, 2008), 73 FR 58277 (October 6, 2008) (SR-ISE-2008-73).

<sup>14</sup> For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>15</sup>

#### 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-2010-09 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-2010-09. 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 Web site (<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 Web site viewing and printing in the Commission's Public Reference Room, 100 F

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

Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-2010-09 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>16</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).