

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-79806; File No. SR-NSX-2017-01)

January 17, 2017

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rule 11.26 Regarding the Data Collection Requirements of 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 January 6, 2017, 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 proposes to amend NSX Rule 11.26(b) and Rule 11.26, Interpretations and Policies .08 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 the same as proposed rule changes recently approved or published by the Commission for Bats BZX Exchange f/k/a BATS Exchange, Inc. (“BZX”) to amend BZX Rule 11.27 which also sets forth

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).

amendments to the requirements for the website data publication requirements pursuant to Appendices B and C of the Plan.⁵

The text of the proposed rule change is available on 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, Bats BYX Exchange, Inc., f/k/a BATS-Y Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, 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 Act⁶ and Rule 608 of Regulation

⁵ See Securities Exchange Act Release No. 79533 (December 13, 2016), 81 FR 91990 (December 19, 2016) (SR-BatsBZX-2016-82).

⁶ 15 U.S.C. 78k-1.

NMS thereunder,⁷ the Plan to Implement a Tick Size Pilot Program (“Pilot”).⁸ The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.⁹ The Plan¹⁰ was published for comment in the Federal Register on November 7, 2014 and was thereafter approved by the Commission, as modified, on May 6, 2015.¹¹ On November 6, 2015, the Commission granted the Participants an exemption from implementing the Plan until October 3, 2016.¹² On March 3, 2016, the Commission published an amendment to the Plan adding NSX as a Participant.¹³ On September 13, 2016, the Commission exempted the Plan Participants from the requirement to fully implement the Pilot on October 3, 2016, to permit the Plan Participants to implement the pilot on a phased-in basis, as described in the Plan Participants’ exemptive request.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

⁷ 17 CFR 242.608.

⁸ See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

⁹ See Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

¹⁰ Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

¹¹ See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (File No. 4-657) (“Approval Order”).

¹² 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).

¹³ See Securities Exchange Act Release No. 77277 (March 3, 2016), 81 FR 12162 (March 8, 2016).

¹⁴ See Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., dated September 13, 2016; see also Letter from Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., to Brent J. Fields, Secretary, Commission, dated September 9, 2016.

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.

The Exchange adopted rule amendments to implement the requirements of the Plan, including relating to the Plan's data collection requirements and requirements relating to website data publication.¹⁵ Specifically, with respect to the website data publication requirements pursuant to Section VII and Appendices B and C to the Plan, Exchange Rule 11.26(b)(2)(B) provides, among other things, that the Exchange shall make the data required by Items I and II of Appendix B to the Plan, and collected pursuant to paragraph (b)(2) of Rule 11.26, publicly available on the Exchange's website on a monthly basis at no charge and shall not identify the Trading Center that generated the data. Exchange Rule 11.26(b)(3)(C), provides, among other things, that the Exchange shall make the data required by Item IV of Appendix B to the Plan, and collected pursuant to paragraph (b)(3)(A) of Rule 11.26, publicly available on the Exchange website on a monthly basis at no charge and shall not identify the Trading Center [sic] that generated the data. Exchange Rule 11.26(b)(5) provides, among other things, that the Exchange shall collect and transmit to the Commission data described in Item III of Appendix B of the Plan relating to daily Market Maker registration statistics, but does not currently include a provision requiring the Exchange to publish such data to its website. Rule 11.26, Interpretation and Policy .08 provides, among other things, that the requirement that the Exchange or the Designated Examining Authority ("DEA") make certain data publicly available on the Exchange's or the DEA's website pursuant to Appendix B and C to the Plan shall commence at the beginning of the Pilot Period.

¹⁵ See Securities Exchange Act Release No. 77483 (March 31, 2016), 81 FR 20040 (April 6, 2016) (File No. SR-NSX-2016-01); see also Securities Exchange Act Release No. 78960 (September 28, 2016), 81 FR 68476 (October 4, 2016) (File No. SR-NSX-2016-12).

The Exchange is proposing amendments to Rule 11.26(b)(2)(B) (regarding Appendix B.I and B.II data) and Rule 11.26(b)(3)(C) (regarding Appendix B.IV data) to provide that data required to be made available on the Exchange's website be published within 120 calendar days following month end. The Exchange also proposes to add a provision to Rule 11.26(b)(5) to state that the Exchange shall make data collected under Appendix B.III publicly available on the Exchange's website within 120 calendar days following month end at no charge.¹⁶ In addition, the proposed amendments to Rule 11.26, Interpretations and Policies .08 would provide that, notwithstanding the provisions of paragraphs (b)(2)(B), (b)(3)(C), and (b)(5), the Exchange or the DEA shall make data for the Pre-Pilot period publicly available on the Exchange's or the DEA's website pursuant to Appendix B and C to the Plan by February 28, 2017.¹⁷ The purpose of delaying the publication of the website data is to address confidentiality concerns by providing for the passage of additional time between the market information reflected in the data and the public availability of such information.¹⁸

¹⁶ The Exchange notes that it does not currently have any Market Makers and, therefore, does not currently collect Market Maker registration statistics.

¹⁷ With respect to data for the Pilot Period, the requirement that the Exchange or the DEA make data publicly available on the Exchange's or the DEA's website pursuant to Appendix B and C to the Plan shall continue to commence at the beginning of the Pilot Period. Thus, the first website publication date for Pilot Period data (covering October 2016) would be published on the Exchange's or the DEA's website by February 28, 2017, which is 120 days following the end of October 2016.

¹⁸ On November 30, 2016, the Commission granted each Participant a limited exemption from the requirement to publish certain Pilot data on a monthly basis. For each Participants that is the DEA of a Market Maker, the Commission granted a limited exemption to allow FINRA to aggregate and publish certain data on the FINRA website, rather than each Participant that is a DEA of a Market Maker publishing such data on its respective website. The exemptions were granted to the Participants so long as each Participant submits proposed rule changes to reflect the exemptions. See Letter dated November 30, 2016 from David S. Shillman, Associate Directors, Division of Trading and Markets to Ms. Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act²⁰ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination 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 is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan and is in furtherance of the objectives of the Plan, as identified by the SEC. The Exchange further believes that the instant proposal is consistent with the Act in that it is designed to address confidentiality concerns by permitting the Exchange to delay website publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information.

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

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. The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan.

The proposal is intended to address confidentiality concerns that may adversely impact competition by permitting the Exchange to delay website publication to provide for passage of

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(5).

additional time between the market information reflected in the data and the public availability of such information. The proposal also does not alter the information required to be submitted to the Commission.

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

Because the foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)²¹ of the Exchange Act and Rule 19b-4(f)(6) thereunder.²²

A proposed rule change filed under paragraph (f)(6) of Rule 19b-4²³ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁴ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the

²¹ 15 U.S.C. 78(s)(b)(3)(A).

²² 17 CFR 240.19b-4(f)(6). See Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40144 (July 11, 2008) ("Commission Guidance and Amendment to the Rule Relating to Organization and Program Management Concerning Proposed Rule Changes by Self-Regulatory Organizations") (the "Streamlining Release"). As set forth in the Streamlining Release, Rule 19b-4(f)(6) permits a proposed rule change to become immediately effective to the extent such proposal is a proposed rule change to implement provisions of an approved national market system plan or a Commission rule. Id. at 40148.

²³ 17 CFR 240.19b-4(f)(6)(iii).

²⁴ 17 CFR 240.19b-4(f)(6)(iii).

proposed rule change not become operative for 30 days after the date of the filing so that it may become operative immediately.

The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan. The proposal is intended to address confidentiality concerns by permitting the Exchange to delay website publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information. The proposal does not alter the information required to be submitted to the SEC.

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 proposed changes that are intended to address confidentiality concerns. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative as of 6 January, 2017.²⁵

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 action is: necessary or appropriate in the public interest, for the protection of investors, otherwise in furtherance of the purposes of the Act.²⁶ If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

²⁵ For purposes of only waiving the operative delay for this rule proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁶ 15 U.S.C. 78s(b)(3)(C).

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-2017-01 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.

All submissions should refer to File No. SR-NSX-2017-01. 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. 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.

You should submit only information that you wish to make available publicly. All submissions should refer to file number SR-NSX-2017-01 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.²⁷

Eduardo A. Aleman
Assistant Secretary

²⁷ 17 CFR 200.30-3(a)(12).