

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-75355; File No. SR-NSX-2015-03)

July 2, 2015

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 4.3, Record of Written Complaints

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act” or “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 23, 2015, National Stock Exchange, Inc. (the “Exchange” or “NSX”) 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 prepared by the Exchange. The Exchange has designated this proposed rule change as “non-controversial” pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.<sup>4</sup> 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 amend Exchange Rule 4.3, Record of Written Complaints, to conform the requirements of the rule to those contained in the rules of other self-regulatory organizations (“SROs”). The Exchange is also proposing to amend Rule 4.3 to eliminate a requirement that complaints and actions with respect thereto be forwarded promptly to the Exchange. The text of the proposed rule change is available on the Exchange’s website at

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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).

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

[www.nsx.com](http://www.nsx.com), at the Exchange's principal office, 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 self-regulatory organization 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 those 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

Currently, Rule 4.3(a) requires that each Exchange Equity Trading Permit ("ETP") Holder<sup>5</sup> keep and preserve a file of all written customer complaints<sup>6</sup> and action taken by the ETP Holder with respect to such complaints, for a period of not less than five years, the first two of which must be in a readily accessible place. The Exchange proposes to amend the rule to reduce the retention period for records of customer complaints and ETP Holder actions with respect thereto from five years to four years, the first two of which must be in a readily accessible place.

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<sup>5</sup> Rule 1.5E.(1) defines ETP as the Equity Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange's trading facilities.

<sup>6</sup> Current Rule 4.3(c) defines a "complaint" as "any written statement of a customer or any person acting on behalf of a customer alleging a grievance involving the activities of an ETP Holder or persons acting under the control of the ETP Holder in connection with (1) the solicitation or execution of any transaction conducted or contemplated to be conducted through the facilities of the Exchange or (2) the disposition of securities or funds of that customer which activities are related to such a transaction."

The Exchange’s proposed rule change will align the retention period prescribed in Exchange Rule 4.3(a) with the retention periods for customer complaint information prescribed in the rules of other SROs. For example, FINRA Rule 4513 requires that FINRA members keep and preserve a record of customer complaints and any action taken by the FINRA member with respect to such complaints for a period of not less than four years.<sup>7</sup> Other national securities exchanges that previously had a five-year retention period for customer complaint information have amended their rules to reduce the record retention period for this information from five years to four years.<sup>8</sup> The Exchange believes that amending Rule 4.3 to align its recordkeeping provisions with those contained in the rules of other SROs will promote consistency and uniformity, enhance regulatory efficiencies, and reduce the compliance burden on ETP Holders that would result from the application of different retention periods for customer complaints and any actions with respect thereto.

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<sup>7</sup> FINRA Rule 4513 requires that “[e]ach [FINRA] member shall keep and preserve in each office of supervisory jurisdiction either a separate file of all written customer complaints that relate to that office (including complaints that relate to activities supervised from that office) and action taken by the member, if any, or a separate record of such complaints and a clear reference to the files in that office containing the correspondence connected with such complaints. Rather than keep and preserve the customer complaint records required under this Rule at the office of supervisory jurisdiction, the member may choose to make them promptly available at that office, upon request of FINRA.”

<sup>8</sup> See, e.g., BATS Exchange, Inc. and BATS Y-Exchange Inc. Rule 4.3; See also Securities Exchange Act Release No. 74656 (April 6, 2015), 80 FR 19381 (April 10, 2015) (SR-BATS-2015-25) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 4.3, Record of Written Complaints) and Securities Exchange Act Release No. 74703 (April 10, 2015), 80 FR 20520 (April 16, 2015) (SR-BYX-2015-20) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 4.3, Record of Written Complaints).

The Exchange is proposing to further amend Rule 4.3 by deleting paragraph (b), which provides that, upon an ETP Holder's receipt of a complaint, a copy shall be forwarded promptly to the Exchange and a report of the action taken by the ETP Holder on the complaint shall also be forwarded to the Exchange. The Exchange notes that this requirement to report upon receipt of a customer complaint and upon any action with respect thereto is not present in the rules of other SROs.<sup>9</sup> The Exchange believes that maintaining a separate and distinct reporting requirement for customer complaints and actions in response thereto would be contrary to the considerations of uniformity and consistency that the Exchange is seeking to advance in proposing the amendments to Rule 4.3.

The Exchange notes that there are already mechanisms in place in the securities industry that provide for the prompt reporting of complaints, settlements and other matters that present issues of potential regulatory concern (e.g., written complaints alleging fraud or misappropriation of customer funds or securities, and settlements in excess of certain monetary amounts).<sup>10</sup> The Exchange believes that maintaining a separate and distinct reporting requirement in its rules for customer complaints and actions in response thereto imposes an unnecessary regulatory and compliance burden on ETP Holders. Moreover, ETP Holders are obligated to furnish complaint information to the Exchange upon request and the proposed rule change does not in any way alter or impact that Exchange's ability to access that information.<sup>11</sup>

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<sup>9</sup> See FINRA Rule 4513, BATS Exchange, Inc. and BATS Y-Exchange, Inc. Rule 4.3. See also EDGA Exchange, Inc. and EDGX Exchange Inc. Rule 4.3, Record of Written Complaints.

<sup>10</sup> See, e.g., FINRA Rule 4530, Reporting Requirements.

<sup>11</sup> Specifically, Rule 4.2, Furnishing of Records, provides, in relevant part, that "[e]very ETP Holder shall furnish to the Exchange, upon request and in a time and manner required by the Exchange...any records, files or financial information pertaining to

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b)<sup>12</sup> of the Exchange Act. Specifically, the Exchange believes that its proposal is consistent with the requirements of Section 6(b)(5)<sup>13</sup> that the rules of an exchange be designed, among other things, to promote just and equitable principles of trade, to 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. Aligning the requirements of Rule 4.3 with the rules of other SROs will provide a further harmonization of securities industry rules applicable to ETP Holders. This will result in greater uniformity, enhanced regulatory efficiency, and a reduced potential for inconsistent regulatory approaches with regard to customer complaint recordkeeping and reporting.

Similarly, the Exchange's proposal to delete paragraph (b) of Rule 4.3, thereby eliminating the requirement that complaints and the ETP Holder's action with respect thereto be reported to the Exchange, is consistent with Section 6(b)(5) of the Act in that it will remove a requirement that, if left in place, imposes an unnecessary regulatory and compliance burden and detracts from the goal of fostering cooperation and coordination in the regulation of ETP

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transactions executed on or through the Exchange...[and] the [E]xchange shall be allowed access, at any time, to the books and records of the ETP Holder in order to obtain or verify information related to transactions executed on or through the Exchange or activities relating to the Exchange.”

<sup>12</sup> 15 U.S.C. 78(f)(b).

<sup>13</sup> 15 U.S.C. 78(f)(b)(5).

Holders. Deleting the separate and distinct reporting requirement will also provide consistency and avoid regulatory duplication, which will operate to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange further submits that removing the reporting requirement will alleviate a regulatory and compliance obligation and allow regulatory resources to be directed to matters with greater impact to the protection of investors.

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

The Exchange does not believe that the proposed rule amendment will impose any burden on competition that is not reasonable or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issue in the U.S. securities markets or have any impact on competition in those markets because it is intended to provide for greater harmonization of Exchange rules with the rules of other SROs. The Exchange submits that the proposed amendment will promote regulatory efficiency and consistency while reducing the regulatory compliance burden on ETP Holders.

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

The Exchange has not solicited or received 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

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 for 30 days from the date on which it was filed, or such shorter time as the

Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</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 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 to determine whether the proposed rule 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](mailto:rule-comments@sec.gov). Please include File Number SR-NSX-2015-03 on the subject line.

##### Paper comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

All submissions should refer to File Number SR-NSX-2015-03. This file number should be included in 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 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 10:00 a.m. and 3:00 p.m. Copies of such 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-2015-03 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>

Robert W. Errett  
Deputy Secretary

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