

identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–59 and should be submitted on or before September 21, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

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*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78676; File No. SR–NSX–2016–07]

### Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules Regarding Qualification, Registration and Continuing Education for Persons Associated With Equity Trading Permit Holders, To Add Definitions, Amend Definitions, and To Make Technical, Non-Substantive and Conforming Amendments to Rules

August 25, 2016.

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 August 24, 2016, National Stock Exchange, Inc. (“NSX” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 Substance of the Proposed Rule Change

The Exchange is proposing amendments to its rules regarding qualification, registration and continuing education requirements applicable to Equity Trading Permit (“ETP”) Holders<sup>3</sup> and Persons

Associated with ETP Holders.<sup>4</sup> The Exchange’s rule proposal is intended to align its rules with those of other self-regulatory organizations (“SROs”) and thus promote consistency within the securities industry. The Exchange is also proposing to amend NSX Rule 1.5, Definitions, and make technical or conforming changes to certain other NSX rules.

The Exchange has designated this rule proposal as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act<sup>5</sup> and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.<sup>6</sup>

The text of the proposed rule change is available on the Exchange’s Web site at <http://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 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

The Exchange proposes to amend its qualification, registration, and continuing education requirements applicable to ETP Holders and Persons Associated with ETP Holders. The proposed amendments are intended to: (i) Provide transparency and clarity with respect to the Exchange’s registration, qualification, and examination requirements; (ii) ensure that all persons engaging in trading on the Exchange or performing supervisory or operational functions are properly registered and

subject to the examination and continuing education requirements necessary for their business function; (iii) align the Exchange’s qualification, registration and examination rules with those of the Financial Industry Regulatory Authority (“FINRA”) and other SROs so as to promote uniform standards across the securities industry; (iv) provide for the Securities Trader registration (Series 57) and Securities Trader Principal registration; and (v) reorganize certain rules, add new definitions of terms, and make other conforming or ministerial, non-substantive amendments designed to enhance the comprehensiveness and clarity of the Exchange’s rules. The proposed changes are discussed below.

##### Amendments to NSX Rule 1.5—Definitions

The Exchange is proposing to amend NSX Rule 1.5 to add new definitions, revise certain definitions in the current rule, and make non-substantive changes to the rule text. The Exchange first proposes to amend the definition of an ETP in NSX Rule 1.5E.(1). As currently defined in the rule, the term ETP “. . . shall refer to an Equity Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange’s trading facilities. An ETP may be issued to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.”

Under the Exchange’s proposed amendment, the definition of an “ETP” would retain the text that an ETP shall refer to an Equity Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange’s trading facilities. However, the subsequent text in the current rule, which provides that an ETP may be issued to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, will be moved to NSX Rule 2.3, entitled “ETP Holder Eligibility,” where it is more logically placed given the content of that rule. Additionally, the relocated text will be amended to add a requirement that the prospective ETP Holder must be a member of another national securities exchange or national securities association in order to be eligible to become an ETP Holder of NSX. The Exchange is proposing this amendment because it will not act as the Designated Examining Authority for any ETP

<sup>16</sup> 17 CFR 200.30–3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> Exchange Rule 1.5E.(1) defines the term “ETP,” in relevant part, as “. . . an Equity Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange’s trading facilities. . . .”

<sup>4</sup> Exchange Rule 1.5P.(2) defines “Person Associated with an ETP Holder” as “. . . any partner, officer, director, or branch manager of an ETP Holder (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with an ETP Holder, or any employee of such ETP Holder, except that any person associated with an ETP Holder whose functions are solely clerical or ministerial shall not be included in the meaning of such terms.”

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

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

Holder under Section 17(d) of the Act<sup>7</sup> and Rules 17d-1<sup>8</sup> and 17d-2<sup>9</sup> thereunder. In new NSX Rule 1.5E.(2), the Exchange proposes to add a new definition of ETP Holder as meaning “the Exchange-approved holder of an ETP” in order to clarify that term and add its definition to Rule 1.5.

The Exchange is also proposing to add new definitions for the terms “Person,” “Principal,” “Principal—Financial and Operations,” “Securities Trader,” and “Securities Trader Principal.” Proposed Rule 1.5P.(1) will define the term “Person” as a natural person, corporation, partnership, limited liability company, association, joint stock company, trustee of a trust fund, or any organized group of persons whether incorporated or not.<sup>10</sup>

The term “Principal” will be defined in proposed Rule 1.5P.(3) as any person actively engaged in the management of the ETP Holder’s securities business, including supervision, solicitation, the conduct of the ETP Holder’s business, or the training of Authorized Traders<sup>11</sup> and Persons Associated with the ETP Holder for any of these functions. Such persons shall include Sole Proprietors, Officers, Partners and Directors of Corporations. The definition of a “Principal” in the proposed amendment aligns with the definition of Principal in NASD Rule 1021(b), Definition of Principal.<sup>12</sup>

A Principal—Financial and Operations (“FINOP”) will be defined in proposed Rule 1.5P.(4) as a Person Associated with an ETP Holder whose responsibilities include final approval and responsibility for the accuracy of financial reports submitted to securities industry regulatory bodies and the final preparation of such reports; supervision of individuals who assist in the preparation of such reports; supervision of and responsibility for individuals who are involved in the maintenance of the ETP Holder’s books and records from which such reports are derived; supervision and/or performance of the ETP Holder’s responsibilities under all

financial responsibility rules under the provisions of the Act; overall supervision of and responsibility for the individuals who are involved in the administration and maintenance of the ETP Holder’s back office operations; or any other matter involving the financial and operational management of the ETP Holder.

The Exchange proposes to add the terms Securities Trader and Securities Trader Principal to Exchange Rule 1.5S. Proposed Rule 1.5S.(1) states that the term “Securities Trader” means any person engaged in the purchase or sale of securities or other similar instruments for the account of an ETP Holder with which such person is associated, as an employee or otherwise, and who does not transact any business with the public. Proposed Rule 1.5S.(2) states that the term “Securities Trader Principal” means a person who has become qualified and registered as a Securities Trader and passes the General Securities Principal qualification examination. Each Principal with responsibility over securities trading activity on the Exchange shall become qualified and registered as a Securities Trader Principal. The Exchange’s proposed definitions of the Securities Trader and Securities Trader Principal registration categories align with those contained in NASD Rules 1032 and 1022(a)(6)(A), respectively.

The Exchange also proposes to make changes to the numbering and capitalization and other ministerial changes to Rule 1.5 in light of the additions that have been made to the Rule.

#### Amendments to Chapter II—ETP Holders of the Exchange

The Exchange is proposing to make changes to Chapter II of its rules with respect to the eligibility, obligations and restrictions applicable to ETP Holders; and the qualification, registration and continuing education requirements applicable to Principals of ETP Holders, Authorized Traders, and Persons Associated with an ETP Holder. The proposed changes will align the Exchange’s rules with those of other SROs and provide ETP Holders, their registered and non-registered personnel, and other market participants with reasonable notice of the requirements established by the Exchange in these subject areas.

#### Amendments to NSX Rule 2.2, Obligations of ETP Holders and the Exchange

The Exchange proposes to amend NSX Rule 2.2, entitled Obligations of ETP Holders and the Exchange. The

current text of the rule will be denoted as paragraph (a) and additional rule text will be added in new paragraphs (b) through (e). Proposed paragraph (b) provides that each ETP Holder shall require each Person Associated with such ETP Holder as defined in NSX Rule 1.5P.(2) to agree: (i) To supply the Exchange with such information as may be specified by the Exchange with respect to such person’s relationships and dealings with the ETP Holder; (ii) to permit the examination by the Exchange of such person’s books and records to verify the accuracy of the information so supplied; and (iii) to be regulated by the Exchange and recognize the Exchange’s obligation under the Act to enforce compliance with the Exchange’s Rules, By-Laws, Interpretations and Policies and the provisions of the Act and the rules and regulations thereunder. The Exchange is proposing these requirements in order to make more explicit in the Exchange’s rules the obligation of ETP Holders, and all Persons Associated with the ETP Holder, to comply with Exchange information requests, to permit the examination of any books and records relevant to the subject matter of an Exchange inquiry, and to consent to the regulatory jurisdiction of the Exchange.<sup>13</sup>

Proposed new subparagraph (c)(i) of Rule 2.2 provides that an ETP Holder shall register through the Central Registration Depository System (“CRD System”)<sup>14</sup> as a Principal all persons who meet the definition thereof under Rule 1.5P.(3), *i.e.*, persons actively engaged in the management of the ETP Holder’s securities business, including supervision, solicitation, the conduct of the ETP Holder’s business, or the training of Authorized Traders and Persons Associated with the ETP Holder for any of these functions. Such persons shall include sole proprietors, officers, partners, and directors of corporations.

Further, pursuant to proposed subparagraph (c)(i), a Principal that is responsible for supervising Authorized Traders or any Principal designated as a Chief Compliance Officer on Schedule A of the ETP Holder’s Form BD must pass the General Securities Principal qualification examination (“Series 24”) and be registered in CRD. Alternatively, proposed Interpretations and Policies provision .02 provides that the Exchange will accept the New York Stock Exchange (“NYSE”) Chief Compliance Officer Examination

<sup>7</sup> 15 U.S.C. 78q(d).

<sup>8</sup> 17 CFR 240.17d-1.

<sup>9</sup> 17 CFR 240.17d-2.

<sup>10</sup> The proposed definition of a “Person” is the same as that contained in NYSE Arca, Inc. Rule 1.1(v) and NYSE Arca Equities Inc. Rule 1.1(oo).

<sup>11</sup> Exchange Rule 1.5A.(2) defines “Authorized Trader” as “. . . a person who may submit orders (or who supervises a routing engine that may automatically submit orders) to the Exchange’s trading facilities on behalf of his or her ETP Holder or Sponsored Participant.” No changes to that definition are proposed in this rule filing.

<sup>12</sup> NASD Rule 1021(b), and other NASD Rules regarding the qualification, registration and continuing education requirements for registered personnel, as applicable, are part of FINRA’s Transitional Rule Book.

<sup>13</sup> See 15 U.S.C. 78f(c)(3)(C).

<sup>14</sup> The CRD System is operated by FINRA and defined in proposed NSX Rule 2.2(c). ETP Holders are not required to be members of FINRA.

(“NYSE Series 14”) as an alternative examination to qualify as a Principal a registrant who is identified as the Chief Compliance Officer on the ETP Holder’s Form BD. This provision recognizes that potential registrants cannot register with the Exchange as a Principal using the Series 14 qualification through the CRD System. Except as provided in Interpretations and Policies provisions .04, described below, a Principal must pass the General Securities Representative examination (“Series 7 examination”) or an equivalent foreign examination module as a prerequisite to taking the Series 24 examination.

Proposed subparagraphs (c)(ii) and (iii) of Rule 2.2 require each ETP Holder, except a sole proprietorship or a proprietary trading firm with 25 or fewer Authorized Traders (such entity defined as a “Limited Size Proprietary Firm”), to have a minimum of two registered Principals. A Person registered solely as a FINOP, as defined in Rule 1.5P.(4), does not count toward the two-Principal requirement and shall not be qualified to function in a Principal capacity with responsibility over any area of business activity not described in Rule 1.5P.(4).<sup>15</sup>

Proposed subparagraph (c)(iii) states that for purposes of the Rule, the Exchange proposes to define a proprietary firm as an ETP Holder that trades its own capital and conducts all of its trading activity using exclusively firm accounts and firm funds; does not have customer accounts; whose traders are owners of, employees of, or contractors of the firm; and is not a FINRA member.<sup>16</sup> The Exchange submits that it is appropriate and consistent with the goal of promoting consistency and uniformity in SRO rules, to allow for an exemption from the two-Principal requirement for those ETP Holders that only engage in proprietary trading and have 25 or fewer Authorized Traders. Accordingly, as proposed, such ETP Holders will be required to maintain one Series 24 Registered Principal.

The Exchange further proposes to include a waiver provision that will permit the Exchange to waive the requirements of this proposed subparagraph in situations that indicate conclusively that only one person associated with an applicant for membership should be required to

register as a Principal. The Exchange is proposing this amendment to align Rule 2.2(c)(ii) with NASD Rule 1021(e)(2), which contains the same waiver provision.

The Exchange proposes in paragraph (d) of amended NSX Rule 2.2 to require that ETP Holders designate and register with the Exchange through the CRD System a FINOP, as described in proposed NSX Rule 1.5P.(5). The FINOP will be required by the Exchange to pass the Financial and Operations Principal examination (“Series 27”) examination.”<sup>17</sup> The proposed rule will allow a FINOP to be either an employee of the ETP Holder or an independent contractor.

The Exchange is further proposing to adopt NSX Rule 2.2(e), Continuing Education Requirements, describing such requirements for all Registered Persons of ETP Holders. The requirements proposed in Rule 2.2(e) are identical to those in the rules of other SROs. For the purposes of paragraph (e) the term “Registered Person” means any Person registered with the Exchange as a General Securities Representative, Securities Trader, Principal, FINOP, Person Associated with an ETP Holder, Authorized Trader, or Market Maker Authorized Trader pursuant to Exchange Rules.<sup>18</sup> Proposed NSX Rule 2.2(e), which aligns with FINRA Rule 1250, establishes both a “Regulatory Element” (applicable to Principals, Authorized Traders and General Securities Representatives) and a “Firm Element” (applicable to those registered persons that have direct customer contact).

The Exchange submits that its proposed adoption of the uniform securities industry rules regarding continuing education requirements will promote uniformity among SRO rules.<sup>19</sup>

Amendments to NSX Rule 2.2, Interpretations and Policies

The Exchange proposes to amend the Interpretations and Policies of NSX Rule 2.2 to add new provisions and to relocate and amend certain text currently found in the Interpretation and Policies provisions of current NSX Rule 2.4 (Restrictions) as Interpretations and Policies to NSX Rule 2.2. Currently, NSX Rule 2.4 Interpretations and Policies describe the qualification requirements that align with NSX Rule

2.2, as proposed to be amended by this rule filing, and the Exchange believes that relocating these provisions will result in a better organizational structure and greater clarity in its rules. The Exchange also proposes to add to the amended NSX Rule 2.2

Interpretations and Policies new provisions relating to the Securities Trader and Securities Trader Principal categories of registration.<sup>20</sup>

As amended, the NSX Rule 2.2 Interpretations and Policies include the following: In provision .01, the Exchange states that it requires the Series 7 or an equivalent foreign examination module approved by the Exchange in qualifying persons seeking registration as General Securities Representatives. The Exchange is relocating this clause from NSX Rule 2.4 Interpretations and Policies, provision .01(c) and adding the text allowing for an equivalent foreign examination module, which will align the Exchange’s requirements with those of other SROs.<sup>21</sup>

In proposed provision .02, the Exchange states that it will accept the NYSE Series 14 as an alternative qualification to the Series 24 to register as a Principal an individual identified as the Chief Compliance Officer on ETP Holder’s Form BD. Additionally, in order to conform to the rules of other SROs, the Exchange specifies in provision .05 that it uses the Uniform Application for Securities Industry Registration or Transfer (“Form U4”), and the Uniform Termination Notice for Securities Industry Registration (“Form U5”), through the CRD System as part of its procedure for registration of ETP Holder personnel. Form U4 shall be amended by the ETP Holder no later than 30 days after an event that would require an amendment to Form U4.

In proposed provision .06, the substance of which is being relocated from NSX Rule 2.4 Interpretations and Policies .01(b), the Exchange will have the authority to waive the requirement of a proficiency examination in exceptional cases, upon a written request and a showing of good cause by an applicant. Advanced age or physical infirmity will not individually of themselves constitute sufficient grounds to waive a qualification examination. Experience in fields ancillary to the investment banking or securities business may constitute sufficient

<sup>15</sup> The provisions of the proposed rule align with those of other SROs. *See e.g.*, NASD Rule 1022; Bats BZX Exchange, Inc. (“BZX”) Rule 2.5, Interpretations and Policies .01(d).

<sup>16</sup> The definition of “proprietary trading firm” proposed in subparagraph (c)(iii) is identical to that provided in BZX Rule 2.5, Interpretations and Policies 01(g).

<sup>17</sup> *See* NASD Rule 1022(b), (c).

<sup>18</sup> The proposed definition of “Registered Person” is substantially similar to that contained in FINRA Rule 1250(a)(5).

<sup>19</sup> *See, e.g.*, NYSE Rule 345A; NYSE Arca Equities Rule 2.21; BZX and Bats BZY Exchange, Inc. Rules 2.5, Interpretations and Policies .02.

<sup>20</sup> *See* Securities Exchange Act Release No. 75783 (August 28, 2015), 80 FR 53369 (September 3, 2015) (SR-FINRA-2015-17), Order Approving a Proposed Rule Change To Establish the Securities Trader and Securities Trader Principal Registration Categories.

<sup>21</sup> *See, e.g.*, NASD Rule 1032(a)(2); BZX Rule 2.5, Interpretations and Policies .01(c).

grounds to waive a qualification examination.<sup>22</sup> The Exchange is further proposing to add Interpretations and Policies provision .07. This proposed provision states that any costs borne by the Exchange with respect to registration and examination may be passed through to the applicable ETP Holder. The Exchange believes this addition is necessary to provide ETP Holders with notice that costs may be assessed by the Exchange to comply with the changes to its registration rules.<sup>23</sup>

#### Securities Trader and Securities Trader Principal Registrations

The Exchange is proposing to add Interpretations and Policies provisions .03 and .04 to adopt the Securities Trader and Securities Trader Principal registrations.

In proposed provision .03, the Exchange will require the Securities Trader Qualification Examination ("Series 57") and registration for persons meeting the definition of a Securities Trader as set forth in Rule 1.5S.(1). A person registered as a Securities Trader will not be able to function in any other registration category unless he or she is also qualified in such other registration category. For example, a person registered solely as a Securities Trader would not be able to perform all of the functions of a General Securities Representative (Series 7), unless such person had obtained that registration as well.

Proposed provision .04 would further require that a Principal who will have supervisory responsibility for securities trading activity on the Exchange to become qualified and registered as a Securities Trader Principal.

Qualification as a Securities Trader Principal would require the Series 57 examination as a prerequisite to taking the Series 24 examination. A Person who is qualified and registered as a Securities Trader Principal may only have supervisory responsibilities for the trading activity described in NASD Rule 1032(f)(1), unless such person is separately qualified and registered in

another appropriate principal registration category. A person who is registered as a General Securities Principal shall not be qualified to supervise the trading activities described in NASD Rule 1032(f)(1), unless such person has also become qualified and registered as a Securities Trader under NASD Rule 1032(f) by passing the Securities Trader qualification examination and becoming registered as a Securities Trader Principal.<sup>24</sup> Adopting the Securities Trader and Securities Trader Principal qualification and registration categories will promote consistency and uniformity within the securities industry.

#### Amendments to NSX Rule 2.4, Restrictions

The Exchange is proposing amendments to NSX Rule 2.4, Restrictions, that are intended to streamline and clarify the rule requirements. In light of other changes contained in this rule proposal, the text of current NSX Rule 2.4(e) and Interpretations and Policies .01 and .02 has been relocated to NSX Rule 2.2 and the Interpretations and Policies to such rule. In certain areas, the repositioned rule text has been further amended. These changes are proposed to better organize the Exchange's requirements for the qualification, registration and continuing education requirements applicable to registered persons. With respect to the remaining text of NSX Rule 2.4, the Exchange is proposing certain non-substantive amendments designed to enhance the clarity of the rule.

#### Amendments to NSX Rules 2.5, 2.6, 2.7 and 2.11

The Exchange is proposing certain non-substantive, technical or conforming amendments to NSX Rules 2.5, 2.6, 2.7 and 2.11. Current NSX Rule 2.5, Application Procedures for an ETP Holder or to become an Associated Person of an ETP Holder, provides in paragraph (b) that "[a]pplications for association with an ETP Holder shall be made on Form U4 and such other forms as the Exchange may prescribe, and shall be delivered to the Exchange's Vice President of Regulation or such other officer or employee as designated by the Exchange." In view of the Exchange's proposed amendments to NSX Rule 2.2, the text of paragraph (b) is no longer needed and the Exchange proposes to delete this text and denote paragraph (b) as "Reserved."

Similarly, paragraph (f) currently provides that "[e]xcept where, pursuant to Section 17(d) of the Act, the Exchange has been relieved of its responsibility to review and act upon applications for associated persons of an ETP Holder, the procedure set forth in this Chapter shall govern the processing of any such applications." The Exchange is proposing to delete this provision because it retains the authority and responsibility to review and approve applications for associated persons of ETP Holders, and the proposed amendments to the qualification and registration requirements discussed in this filing make this current rule text inapposite. Moreover, were the Exchange to enter into an agreement with another SRO to review and act upon applications for associated persons of ETP Holders, such an agreement would be subject to a filing with the Commission pursuant to Section 17(d) of the Act. Accordingly, the Exchange proposes to delete the current text and make paragraph (f) "Reserved."

The Exchange is proposing ministerial, non-substantive amendments to NSX Rule 2.6, entitled Revocation of an ETP or an Association with an ETP Holder, NSX Rule 2.7, entitled Voluntary Termination of Rights as an ETP Holder and NSX Rule 2.11, entitled NSX Securities, LLC. NSX Rule 2.6 currently states, in relevant part, that "[i]n connection with any revocation or voluntary termination of an ETP pursuant to Rule 2.7, the ETP shall be cancelled." The Exchange proposes to delete the text referencing a voluntary termination of an ETP from NSX Rule 2.6 and add it to NSX Rule 2.7, where it is more logically placed.

Finally, the Exchange proposes a ministerial amendment to Rule 2.11(a)(2) to remove an obsolete reference to the National Association of Securities Dealers ("NASD") as the unaffiliated SRO having oversight responsibilities for NSX Securities, LLC, the Exchange's outbound order routing facility. The correct reference should be to the Financial Industry Regulatory Authority and the Exchange proposes to amend the rule to denote that fact.

#### Amendments to Chapter XI—Trading Rules

The Exchange is proposing to make several amendments to Chapter XI, Trading Rules. First, the Exchange proposes to amend Rule 11.6, Obligations of Market Maker Authorized Traders, to align the text of the rule with the Exchange's proposed rule changes regarding the qualification and registration of Persons Associated with

<sup>22</sup> Proposed provision .06 aligns with NASD Rule 1070(d). The Exchange proposes this provision, in part, to allow for experience in fields ancillary to the investment banking or securities business to potentially constitute sufficient grounds to waive a qualification examination, which is in line with FINRA registration rules. Under current Exchange rules, such experience cannot individually of itself constitute sufficient grounds to waive a qualification examination.

<sup>23</sup> The Exchange is not proposing to add a specific fee to its Fee and Rebate Schedule at this juncture and would make a filing with the Commission pursuant to Section 19(b) of the Act, 15 U.S.C. 78s, prior to implementing any such fee.

<sup>24</sup> Proposed provision .04 aligns with NASD Rule 1022(a)(6)(B).

ETP Holders. The Exchange proposes to amend subparagraph (b)(2) of the rule to add text stating that a person who successfully completes the Series 57 qualification examination will be qualified to be registered as a Market Maker Authorized Trader ("MMAT"). The Exchange proposes to remove the Series 7 qualification for registration as an MMAT. The Exchange further proposes to amend subparagraph (b)(2) to eliminate a provision that would allow the Exchange to waive such qualification requirements if the person applying for MMAT status had served as a dealer-specialist or market maker on a registered national securities exchange or association for at least two consecutive years within three years of the date of application. The Exchange believes that requiring the Series 57 as the qualification for registration as an MMAT and the elimination of the waiver provision currently in NSX Rule 11.6(b)(2) will operate to clarify the requirements necessary to qualify as an MMAT and will further promote consistency and uniformity in the rules regarding registration of Associated Persons.

The Exchange is further proposing amendments to NSX Rule 11.10, Authorized Traders, to add new paragraph (e). As proposed, the new rule text will state that, to be eligible for registration as an Authorized Trader of an ETP Holder, a person must successfully complete the Series 57 examination and any other training and/or certification programs as may be required by the Exchange.

The Exchange believes that the proposed amendments to NSX Rules 11.6 and 11.10 will provide internal consistency within NSX's rules and eliminate a fragmented qualification standard for individuals engaged in trading on the Exchange. Currently under Rule 11.6, an individual is required to pass the Series 7 examination to register as an MMAT. Current Rule 11.10 does not include a similar requirement for an Authorized Trader that will not act as an MMAT. The Exchange proposes to replace the Series 7 qualification with the Series 57 qualification for both Authorized Traders and MMATs, thereby providing a uniform registration requirement.

Additionally, the Exchange proposes to change Rule 11.6(b) to clarify that the Exchange will register an MMAT upon receiving a written application from a Market Maker and subject to the eligibility criteria described in the rule. This change is intended to clarify that the MMAT applicant must meet the eligibility criteria set forth in the Rule

before the Exchange will register the MMAT.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act<sup>25</sup> in general, and furthers the objectives of Sections 6(b)(5)<sup>26</sup> and 6(c)(3)(B)<sup>27</sup> in particular, in that the amendments are intended to promote just and equitable principles of trade, foster cooperation, and coordination among the SROs responsible for the qualification, registration, and continuing education requirements for registered securities industry personnel, and in general are designed to protect investors the public interest. In addition, the proposed amendments further the objectives of Section 6(c)(3)(B) of the Act, which provides that it is the Exchange's responsibility to prescribe in its rules the standards of training, experience, and competence for ETP Holders and Persons Associated with ETP Holders; the Exchange has the authority under Section 6(c)(3)(B) to bar an individual from becoming an ETP Holder or a person Associated with an ETP Holder, or condition the individual's status as such, if such person does not meet the standards of training, experience and competence that the Exchange prescribes.

The proposed amendments to NSX Rule 1.5, whereby the Exchange proposes to add new definitions for the terms "ETP Holder," "Person," "Principal," "Principal—Financial and Operational," "Securities Trader," and "Securities Trader Principal," are consistent with the statutory provisions in that they add clarity and context to the Exchange's rules regarding securities industry personnel to whom the proposed amended qualification and registration requirements will apply.

The Exchange's proposed amendments to certain provisions contained in Chapter II of the NSX rules, entitled "ETP Holders of the Exchange," also satisfy the requirements of Sections 6(b)(5) and 6(c)(3)(B) of the Act in that, among other things, they prescribe the standards of training, experience, and competence for ETP Holders and their Associated Persons. Specifically, the proposed amendments to NSX Rule 2.2(b)(i) through (iii), providing that each ETP Holder shall require its Associated Persons to agree: (i) To supply the Exchange with information as requested; (ii) to permit the examination by the Exchange of the person's books and records; and (iii) to

be regulated by the Exchange and recognize the Exchange's obligations to enforce compliance with its rules, by-laws and policies and the provisions of the Act, are consistent with Section 6(b)(5) in that they are designed to establish standards of conduct for proposed Associated Persons. The provisions will operate to promote cooperation and coordination among persons regulating the securities markets, which is one of the objectives of Section 6(b)(5).

Proposed NSX Rule 2.2(c)(i)–(iii) addresses the requirements for ETP Holders to register Principals, and provides an exemption from the two-Principal registration requirement for sole proprietorships and proprietary trading firms, the latter as defined in NSX Rule 2.2(c)(iii). Proposed NSX Rule 2.2(d) contains the requirement for each ETP Holder to register a FINOP. These proposed rule provisions are consistent with the rules of other SROs; their adoption by the Exchange is designed to further enhance cooperation and coordination among those entities responsible for regulating the securities industry, thereby meeting the statutory requirement set forth in Section 6(b)(5).

In proposed NSX Rules 2.2(e)(i) and (ii) the Exchange will adopt the uniform industry rules establishing continuing education requirements for the registered personnel. The proposed revisions will contribute to the consistency of application of continuing education requirements and meet the statutory mandate of Section 6(c)(3)(B) that the Exchange's rules be designed to prescribe standards of training and competence for registered personnel associated with its ETP Holders. The proposed continuing education requirements will contribute to uniform standards across the securities industry and avoid unnecessary duplication or inconsistencies among SRO rules.

The Exchange's proposed amendments to Interpretations and Policies .01 through .07 of NSX Rule 2.2 also meet the requirements of Sections 6(b)(5) and 6(c)(3)(B) pursuant to the Act. These proposed amendments specify that: (i) The Exchange requires the Series 7 or an equivalent foreign examination module in qualifying persons as General Securities Representatives; (ii) the NYSE Series 14 can be used as a qualification for Principals designated as an ETP Holder's Chief Compliance Officer; (iii) those who meet the qualifications of a Securities Trader must pass the Series 57; (iv) any Principal who supervises Securities Trading activity must qualify as a Securities Trader Principal, and only a Principal qualified as a Securities

<sup>25</sup> 15 U.S.C. 78f(b).

<sup>26</sup> 15 U.S.C. 78f(b)(5).

<sup>27</sup> 15 U.S.C. 78f(c)(3)(B).

Trader Principal may supervise Securities Trading activity; (v) ETP Holders must use the Form U4 and Form U5 for registration and termination of ETP Holder personnel; (vi) the Exchange may grant a waiver of an examination requirement in exceptional cases and upon a showing of good cause; and (vii) the Exchange may pass through the reasonable costs associated with such examinations and qualifications to ETP Holders. All of these proposed amendments to the NSX Rule 2.2 Interpretations and Policies are designed to align the Exchange's rules with the qualification and registration requirements of other SROs and thus are designed to promote uniformity and certainty in the securities industry, which is consistent with the statutory mandate of Section 6(b)(5) of the Act that the rules of the Exchange foster coordination and cooperation among those entities regulating the securities markets.

The Exchange's proposed amendments to NSX Rules 2.5, 2.6, 2.7, and 2.11 are designed as conforming amendments that resulted from the proposed changes to the Exchange's qualification and registration rules, or are ministerial, non-substantive changes designed to correct deficient or obsolete text and promote clarity and consistency in the Exchange's rules. Such amendments are consistent with Section 6(b)(5) of the Act in that, by enhancing the organization and clarity of the Exchange's rules, they operate to promote just and equitable principles of trade.

The Exchange has further proposed amendments Chapter XI, Trading Rules, and specifically to NSX Rules 11.6 and 11.10. The proposed amendments codify the qualification standards for MMATs and for Authorized Traders. The proposed amendments are designed to establish the standard of competence and knowledge required of those categories of registered personnel, which is consistent with the requirements of Section 6(c)(3)(B) of the Act. The adoption of these rule amendments will conform the Exchange's standards those of FINRA and other SROs.

#### *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 Act. The proposed amendments are intended to promote transparency in the Exchange's rules, and consistency with the rules of other SROs with respect to the

examination, qualification, and continuing education requirements applicable to ETP Holders and their registered personnel. The Exchange believes in that regard that any burden on competition would be clearly outweighed by the important regulatory goal of ensuring clear and consistent requirements applicable across SROs, avoiding duplication, and mitigating any risk of SROs implementing different standards in these important areas.

Further, the Exchange does not believe that the proposed amendments will affect competition among securities markets since FINRA and exchanges have adopted similar rules with uniform standards for qualification, registration and continuing education requirements.

#### *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 any 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 foregoing proposed rule change does not:

- A. Significantly affect the protection of investors or the public interest;
- B. impose any significant burden on competition; and
- C. 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) <sup>28</sup> of the Exchange Act and Rule 19b-4(f)(6) thereunder.<sup>29</sup>

At any time within sixty (60) days of the filing of such proposed rule change, the Commission may summarily 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.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

<sup>28</sup> 15 U.S.C. 78(s)(b)(3)(A).

<sup>29</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description of the text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change, or such other time as designated by the Commission. The Exchange provided the Commission with the required notice.

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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NSX-2016-07 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, DC 20549-1090.

All submissions should refer to File No. SR-NSX-2016-07. This file number should be included in the subject line if email 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 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 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. You should submit only information that you wish to make available publicly. All submissions should refer to file number SR-NSX-2016-07 and should be submitted on or before September 21, 2016.

For the Commission by the Division of Trading and Markets, pursuant to the delegated authority.<sup>30</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

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<sup>30</sup> 17 CFR 200.30-3(a)(12).