

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71662; File No. SR-NSX-2014-06]

### Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fee and Rebate Schedule To Reduce a Fee for Orders Routed to Other Trading Centers

March 7, 2014.

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 February 28, 2014, 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 to amend its Fee and Rebate Schedule (the "Fee Schedule") issued pursuant to Exchange Rule 16.1. Specifically, the Exchange is seeking to amend Section II. (Other Services), subsection A. (Order Routing—All Tapes)<sup>3</sup> to reduce the per share fee charged to Exchange Equity Trading Permit ("ETP")<sup>4</sup> Holders for orders in securities priced at \$1.00 or greater that are routed away to, and executed on, another Trading Center<sup>5</sup> from the current rate of \$0.0030 to the proposed rate of \$0.0025.

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.

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The term "Tapes" refers to the designation assigned in the Consolidated Tape Association ("CTA") Plan for reporting trades with respect to securities in Networks A, B and C. Tape A securities are those listed on the New York Stock Exchange, Inc.; Tape B securities are listed on NYSE MKT, formerly NYSE Amex, and regional exchanges. Tape C securities are those listed on the NASDAQ Stock Market LLC.

<sup>4</sup> Exchange Rule 1.5 defines "ETP" as the Equity Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange's trading facilities.

<sup>5</sup> Exchange Rule 2.11(a) describes "Trading Centers" as other securities exchanges, facilities of securities exchanges, automated trading systems, electronic communications networks, or other brokers or dealers.

#### 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 is proposing to amend the current Fee Schedule, Section II.A. to reduce the per share fee charged to ETP Holders for orders routed to, and executed on, other Trading Centers from the current rate of \$0.0030 to the proposed rate of \$0.0025. As proposed, this rate will apply only to transactions in securities priced at \$1.00 or greater. Consistent with this proposed reduction in the transaction fee for routed order [sic], the Exchange proposes to amend Section II.A. with respect to the fees applicable to Double Play Orders.<sup>6</sup> An ETP Holder that enters a Double Play Order will not be charged a routing fee under Section II. for the initial routing to a designated away Trading Center and any unexecuted portion of a Double Play Order in a security priced at \$1.00 and above that is returned and executed on the Exchange shall be subject to either Section I of the Fee Schedule, or a fee of \$0.0025 per share if the order is subsequently routed to an away Trading Center in accordance with Exchange Rule 11.15(a)(ii).<sup>7</sup>

The Exchange states that it is making these changes to Section II.A. of the Fee Schedule as part of its ongoing assessment of the U.S. equity securities markets and the competitive environment in which it operates. The

<sup>6</sup> Exchange Rule 11.11(c)(10) defines a Double Play Order as "[a] market or limit order for which the ETP Holder instructs the System to route to designated away Trading Centers which are approved by the Exchange from time to time without first exposing the order to the NSX Book. A Double Play Order that is not executed in full after routing away receives a new timestamp upon return to the Exchange and is ranked and maintained in the NSX Book in accordance with Rule 11.14(a)."

<sup>7</sup> Exchange Rule 11.15 (Order Execution), subparagraph (a)(ii), *Routing to Away Trading Centers*, describes the Exchange's process for routing eligible orders to away Trading Centers.

Exchange submits that the proposed reduction in the transaction fee for routed orders in securities priced at \$1.00 or greater from \$0.0030 to \$0.0025 aligns with the changes to the Fee Schedule that the Exchange filed with the Commission for effectiveness as of February 25, 2014.<sup>8</sup> Specifically, the Exchange believes that the instant proposal will increase opportunities to enhance the execution quality experienced by ETP Holders through improved interaction between liquidity providers and liquidity removers (respectively described as "Makers" and "Takers" of liquidity in the current Fee Schedule). The Exchange believes that, by reducing the transaction fee per executed share for routed orders in securities priced at \$1.00 or greater, it will further incentivize liquidity removers to access the Exchange to remove liquidity at lower cost. In seeking to draw more liquidity, the Exchange aspires to improve the price discovery process, improve execution quality, and lower costs for ETP Holders. The Exchange notes that the proposed change will be available to all ETP Holders with the anticipated result of better execution quality at lower costs.

The Exchange submits that the instant proposal furthers its goals of maximizing the effectiveness of its business model, offering economic incentives to ETP Holders to access the Exchange and providing a high-quality and cost-effective execution venue.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,<sup>9</sup> in general and, in particular, Section 6(b)(4) of the Act,<sup>10</sup> which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,<sup>11</sup> which requires, among other things, that the rules of a national securities exchange not permit

<sup>8</sup> See SR-NSX-2014-05. The Exchange filed with the Commission amendments to the Fee Schedule effective as of February 25, 2014 that, among other changes, adopted a new pricing model that provided for fees for adding liquidity and rebates for removing liquidity (a "taker/maker" pricing model) and made certain other conforming amendments. These included eliminating the separate fee and rebate structure for the Automatic Execution and Order Delivery modes of order interaction and eliminating certain execution-based rebates available in some instances.

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

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

unfair discrimination between customers, issuers, brokers, or dealers, and be designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange submits that its proposal to reduce the per share fee for transactions in routed orders in securities priced at \$1.00 or greater from \$0.0030 to \$0.0025 is consistent with Section 6(b)(4) of the Act in that it is equitably allocated. The reduced fee will be available to all ETP Holders entering orders in securities priced at \$1.00 or greater that result in a route to another Trading Center and a subsequent transaction. The Exchange believes that the proposal also meets the requirement under Section 6(b)(4) of the Act that fees assessed by the Exchange be reasonable. Specifically, the Exchange proposes to lower the current fee from \$0.0030 to \$0.0025 as a means to incentivize increased activity by ETP Holders. The Exchange submits that the proposed reduction of \$0.0005 in the fee for shares routed away and executed on another Trading Center and the adoption of a new fee of \$0.0025 constitutes a reasonable fee that aspires to encourage more activity by liquidity providers, which in turn will result in more ETP Holders accessing the Exchange to remove liquidity. As noted by the Exchange, the reduced fee will apply to all ETP Holders that enter an order on the Exchange in a security priced at \$1.00 or greater that is subsequently routed, in whole or in part, and results in a transaction on another Trading Center. The Exchange proposes a parallel change to the fee applicable to any unexecuted portion of a Double Play Order in a security priced at or above \$1.00 that is returned to the Exchange after the initial route to the designated away Trading Center, and subsequently routed out to another Trading Center for purposes of compliance with trading rules. Such an order will be subject to the proposed fee of \$0.0025 per executed share. This pricing change with respect to Double Play Orders will be equitably applied to all ETP Holders entering Double Play Orders and is reasonable to assure that such orders do not receive disparate pricing.

The Exchange further submits that its proposal meets the requirements of Section 6(b)(5) of the Act. By seeking to attract more liquidity to the NSX market through the proposed amendment, the Exchange is seeking to improve execution quality, price discovery and cost-effectiveness. The Exchange believes that this amendment will,

therefore, further the purposes of Section 6(b)(5) in that it does not permit unfair competition between customers, issuers, brokers or dealers and is designed to promote just and equitable principles of trade, and remove impediments to and perfect the mechanism of a free and open market and a national market system.

#### *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. The Exchange believes, in fact, that the proposed change will operate to enhance rather than burden competition by aspiring to increase liquidity and improve execution quality on the Exchange through an equitable allocation of a reasonable economic incentive. The Exchange submits that its belief that the instant change will enhance competition is supported by the fact that the proposed fee rate of \$0.0025 per executed share for orders routed by the Exchange to other Trading Centers is within the range of fees assessed by other national securities exchanges for executions in routed orders.<sup>12</sup>

#### *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 written comments on the proposed rule change.

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

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>13</sup> and subparagraph (f)(2) of Rule 19b-4.<sup>14</sup> 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.

<sup>12</sup> See, e.g., NASDAQ OMX Price List at <http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>; BATS BZX Exchange Fee Schedule at [http://cdn.batstrading.com/resources/regulation/rule\\_book/BATS-Exchanges\\_Fee\\_Schedules.pdf](http://cdn.batstrading.com/resources/regulation/rule_book/BATS-Exchanges_Fee_Schedules.pdf).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>14</sup> 17 CFR.240.19b-4.

#### **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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NSX-2014-06 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-2014-06. This file number should be included on the subject line if email 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 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 also will 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-2014-06 and should be submitted on or before April 3, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71665; File No. SR-MSRB-2013-07]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of a Proposed Rule Change Consisting of Proposed MSRB Rule G-47, on Time of Trade Disclosure Obligations, Proposed Revisions to MSRB Rule G-19, on Suitability of Recommendations and Transactions, Proposed MSRB Rules D-15 and G-48, on Sophisticated Municipal Market Professionals, and the Proposed Deletion of Interpretive Guidance

March 7, 2014.

#### I. Introduction

On September 17, 2013, the Municipal Securities Rulemaking Board (the "MSRB") filed with the Securities and Exchange Commission (the "SEC" or "Commission"), 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> a proposed rule change consisting of new MSRB Rule G-47 (time of trade disclosures), new MSRB Rules D-15 and G-48 (sophisticated municipal market professionals or "SMMPs"), and amendments to MSRB Rule G-19 (suitability). The proposed rule change was published for comment in the *Federal Register* on October 22, 2013.<sup>3</sup> The Commission received two (2) comment letters in response to the proposed rule change.<sup>4</sup> On January 14,

2014, the MSRB responded to the comments.<sup>5</sup> On January 16, 2014, the Commission published an order to solicit comments from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change ("Proceedings Order").<sup>7</sup> The Commission received no comment letters in response to the Proceedings Order. The Commission is approving the proposed rule change.<sup>8</sup>

#### II. Description of Proposal

As further described in the Proposing Release, the MSRB states that it has examined its interpretive guidance related to time of trade disclosures, suitability, and SMMPs and proposes to consolidate this guidance and codify it into several rules: a new time of trade disclosure rule (proposed Rule G-47), a revised suitability rule (Rule G-19), and two new SMMP rules (proposed Rules D-15 and G-48). Additionally, the proposed revisions to Rule G-19 are designed to harmonize the MSRB's suitability rule with the Financial Industry Regulatory Authority's ("FINRA") suitability rule.<sup>9</sup>

In connection with the rule changes described above, the MSRB proposed to delete certain interpretive guidance affected by these rule changes from the MSRB's Rule Book. Additionally, in the Proposing Release, the MSRB indicated that it did not intend to preserve the relevant guidance, because doing so "would not advance the MSRB's goal to streamline its rulebook."<sup>10</sup> In its Response, the MSRB articulated a different approach. Specifically, to address a commenter concern, the

Association, to Elizabeth M. Murphy, Secretary, SEC, dated November 12, 2013 ("SIFMA Letter").

<sup>5</sup> See Letter from Michael L. Post, Deputy General Counsel, MSRB, to Elizabeth M. Murphy, Secretary, SEC dated January 14, 2014 ("Response").

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> See Exchange Act Release No. 71326 (January 16, 2014), 79 FR 3909 (January 23, 2014) (Order Instituting Proceedings 2013-SR-MSRB-07). The comment period closed on February 13, 2014.

<sup>8</sup> The text of the proposed rule change is available on the MSRB's Web site at [www.msrb.org/Rules-and-Interpretations/SEC-Filings/2013-Filings.aspx](http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2013-Filings.aspx), at the MSRB's principal office, and at the Commission's Public Reference Room.

<sup>9</sup> See FINRA Rule 2111.

<sup>10</sup> See Proposing Release at 21 (responding to a SIFMA comment regarding proposed Rule G-47). See also Proposing Release at 4, describing the MSRB's streamlining goals ("The structure of Proposed G-47 (rule language followed by supplementary material) is the same structure used by FINRA and other selfregulatory organizations ("SROs"). The MSRB intends generally to transition to this structure for all of its rules going forward in order to streamline the rules, harmonize the format with that of other SROs, and make the rules easier for dealers and municipal advisors to understand and follow.")

MSRB stated that it will archive on its Web site the existing guidance that is to be deleted from the Rule Book in connection with the proposed rule change.<sup>11</sup> Moreover, the MSRB states that "[t]o the extent that past interpretive guidance does not conflict with any MSRB rules or interpretations thereof, it remains potentially applicable, depending on the facts and circumstances of a particular case."<sup>12</sup>

#### A. Rule G-47 on Time of Trade Disclosures

MSRB Rule G-17 provides that, in the conduct of its municipal securities or municipal advisory activities, each broker, dealer, municipal securities dealer ("dealer"), and municipal advisor must deal fairly with all persons and may not engage in any deceptive, dishonest or unfair practice. The MSRB has interpreted Rule G-17 to require a dealer, in connection with a municipal securities transaction, to disclose to its customer, at or prior to the time of trade, all material information about the transaction known by the dealer, as well as material information about the security that is reasonably accessible to the market.<sup>13</sup> The MSRB stated in the Proposing Release that it has issued extensive interpretive guidance discussing this time of trade disclosure obligation in general, as well as in specific scenarios. Proposed Rule G-47 is designed to consolidate most of the previously issued guidance into rule language which the MSRB believes would ease the burden on dealers and other market participants who endeavor to understand, comply with and enforce these obligations. The MSRB asserted that the proposed codification of the interpretive guidance on time of trade disclosure obligations is not intended to, and will not, substantively change the current obligations. Rather, the MSRB maintained that the codification is an effort to consolidate the current obligations into streamlined rule language.

A summary of proposed Rule G-47 is as follows:

#### 1. General Disclosure Obligation

Proposed Rule G-47(a) states that dealers cannot sell municipal securities to a customer, or purchase municipal securities from a customer, without disclosing to the customer, at or prior to the time of trade, all material information known about the

<sup>11</sup> See Response at 2. See also discussion of comments, below.

<sup>12</sup> Response at 2.

<sup>13</sup> See, e.g., *MSRB Answers Frequently Asked Questions Regarding Dealer Disclosure Obligations Under MSRB Rule G-17* (November 30, 2011).

<sup>15</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> See Exchange Act Release No. 70593 (October 1, 2013), 78 FR 62867 (October 22, 2013) (Notice of Filing of a Proposed Rule Change Consisting of Proposed MSRB Rule G-47, on Time of Trade Disclosure Obligations, Proposed Revisions to MSRB Rule G-19, on Suitability of Recommendations and Transactions, Proposed MSRB Rules D-15 and G-48, on Sophisticated Municipal Market Professionals, and the Proposed Deletion of Interpretive Guidance) ("Proposing Release"). The comment period closed on November 12, 2013.

<sup>4</sup> Letters from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute to Elizabeth M. Murphy, Secretary, SEC, dated November 1, 2013 ("ICI Letter") and David L. Cohen, Managing Director/Associate General Counsel, Securities Industry and Financial Markets