

and regulations thereunder,⁶ and, in particular, Section 11A(a)(1) of the Act⁷ and Rule 608 thereunder⁸ in that it is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system.

The proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,⁹ which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations and transactions in securities. These goals are furthered by the proposed changes requiring that Participants report trades as soon as practicable, but no later than 10 seconds, following execution (or cancellation, as applicable) as they bring the trade reporting requirement more in line with current industry practice, as the markets have become more automated and more efficient. In addition, the change will make the trade reporting requirement consistent across the two transaction reporting plans for equity securities¹⁰ and FINRA.¹¹

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act,¹² and the rules thereunder, that the proposed Amendment to the CTA Plan (File No. SR-CTA-2014-04) is approved.

⁶ The Commission has considered the proposed amendment's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78k-1(a)(1).

⁸ 17 CFR 240.608.

⁹ 15 U.S.C. 78k-1(a)(1)(C)(iii).

¹⁰ The participants of the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis ("Nasdaq/UTP Plan") also proposed to amend the trade reporting requirement under the Nasdaq/UTP Plan to require that transactions be reported as soon as practicable, but no later than 10 seconds following execution. See Securities Exchange Act Release No. 73970 (December 31, 2014), 80 FR 910 (January 7, 2015) (File No. S7-24-89) (Notice of Filing of Amendment No. 34 to the Nasdaq/UTP Plan).

¹¹ See Securities Exchange Act Release No. 69561 (May 13, 2013), 78 FR 29190 (May 17, 2013) (File No. SR-FINRA-2013-013) (order approving FINRA rule to require FINRA members to report over-the-counter transactions in Eligible Securities to FINRA as soon as practicable, but no later than 10 seconds following execution).

¹² 15 U.S.C. 78k-1.

¹³ 17 CFR 200.30-3(a)(27).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Brent J. Fields,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74279; File No. SR-NASDAQ-2014-102]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change To Require That a Company Publicly Disclose the Denial of a Listing Application

February 13, 2015.

I. Introduction

On December 11, 2014, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to require companies to disclose the denial of an initial listing application. The proposed rule change was published for comment in the **Federal Register** on December 30, 2014.³ The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of Proposed Rule Change

In its filing, Nasdaq stated that it processes between 200 and 300 applications each year from companies seeking to list securities on Nasdaq. According to the Exchange, while most applicants meet the listing requirements (or are prepared to take action to meet those requirements before listing) in some cases a company does not meet the requirements and is not willing, or able, to comply. Nasdaq may also deny a listing application based on public interest concerns even though the company meets all quantitative listing requirements.⁴ In either case, Nasdaq will inform the company of the outcome, and the company may withdraw its application before the application is formally denied. If the company does not withdraw its application, then the Nasdaq Listing

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 73912 (December 22, 2014), 79 FR 78540 (December 30, 2014) ("Notice").

⁴ See Nasdaq Rule 5101 and 5101-1.

Qualifications Department will issue a written denial to the company.⁵ A company denied listing on Nasdaq may appeal the denial to a Listing Qualifications Hearings Panel ("Hearings Panel").⁶

According to Nasdaq, investors view a company's decision to seek initial listing on the Exchange as a positive development, and companies often publicize their intention to apply for listing.⁷ Nasdaq believes that the public is therefore interested in the outcome of an application for initial listing. Nasdaq proposes to require that a company that receives a written determination denying its application for listing must, within four business days, make a public announcement in a press release or other Regulation FD compliant manner about the receipt of the determination and the Nasdaq Rule(s) upon which the determination is based. The company must describe each specific basis and concern identified by Nasdaq in reaching the determination. If the public announcement is not made by the company within the time allotted or does not include all of the required information, Nasdaq will make a public announcement with the required information and, if the company appeals the determination as set forth in Nasdaq Rule 5815, the Hearings Panel will consider the company's failure to make the public announcement in considering whether to list the company. Nasdaq also proposes to clarify in Rule 5205 that a company may withdraw its application for initial listing at any time.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁸ In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,⁹ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect

⁵ See Nasdaq Rule 5810.

⁶ See Nasdaq Rule 5815.

⁷ See Notice, *supra* note 3.

⁸ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(5).

investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission notes that full and fair disclosure of information by companies is of critical importance to financial markets and the investing public. According to the Exchange, investors view a company's decision to seek initial listing on the Exchange as a positive development, and companies often publicize their intention to apply for listing. The listing of a company on a national securities exchange such as Nasdaq provides benefits including, among others, potential for increased stock liquidity and capital raising benefits.¹⁰ However, there appears to be no Exchange requirement for the company to publicize when its listing application has been denied and therefore that the company will not be receiving the benefits of an exchange listing.

The Commission believes that the public, including potential future investors, would find a denial of a company's listing application, just as important as the decision to seek an exchange listing which, as noted by Nasdaq, is often publicized. The significance of a denial of listing is also underscored by the existence of both the right to appeal the denial on Nasdaq and the right to obtain Commission review of such appeals. Nasdaq rules provide, as noted above, for due process to appeal a denial of listing.¹¹ Denial of listings have also been subject to Commission review under section 19(d) of the Exchange Act.¹²

The Commission therefore believes that the proposed rule change will help provide transparency to future, as well as existing, investors about the status of a company's listing application. The Commission also believes that Nasdaq's proposal to require that such disclosure be made by press release, or other Regulation FD compliant manner, will permit companies to disseminate this important information to the public in a broad and inclusive manner and should help to ensure for broad public access to the denial of listing

¹⁰ Section 18 of the Securities Act of 1933 ("Securities Act") provides federal preemption of state blue sky laws for securities listed on certain national securities exchanges. 15 U.S.C. 77r. See also 17 CFR 230.146.

¹¹ These appeal provisions have been adopted in accordance with section 6(b)(7) of the Act. 15 U.S.C. 78f(b)(7).

¹² Section 19(d) of the Act provides, among other things, for Commission review of any action self-regulatory organization that, among other things, prohibits or limits any person in respect to access to service offered by such organization. See U.S.C. 78s(d).

determination and the reasons for the denial.

As described above, the proposal will also clarify in Nasdaq's rules that a company may withdraw its application for initial listing at any time during the review process.¹³ The decision to seek listing and submit a listing application is generally a voluntary decision by a company. Consistent with this, it is our understanding that companies seeking listing on Nasdaq are allowed to withdraw their voluntary application at any time during the process. The clarification in Nasdaq's proposal codifies this concept in Nasdaq's rules. The Commission also believes that for, the same reasons noted above, companies should consider any applicable disclosure requirements under the federal securities laws if a company withdraws its listing application with Nasdaq for any reason.

IV. Conclusion

It is therefore ordered pursuant to section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR-NASDAQ-2014-102) be, and it hereby is, approved.

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

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74270; File No. SR-NSX-2014-017]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change in Connection With a Proposed Transaction in Which National Stock Exchange Holdings, Inc. Will Acquire Ownership of the Exchange From the CBOE Stock Exchange, LLC

February 13, 2015.

I. Introduction

On December 16, 2014, National Stock Exchange, Inc. ("NSX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1)¹ of the Securities Exchange Act

¹³ See Notice, *supra* note 3.

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).

¹⁶ 15 U.S.C. 78s(b)(1).

of 1934 ("Act"),² and Rule 19b-4 thereunder,³ a proposed rule change to make certain amendments to its corporate governance documents in order to effectuate a proposed transaction (the "Transaction") in which the Exchange will become a wholly-owned subsidiary of National Stock Exchange Holdings, Inc., a Delaware corporation ("NSX Holdings"). The proposed rule change was published for comment in the **Federal Register** on January 2, 2015.⁴ The Commission received no comments on the proposal.

The Commission has reviewed carefully the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵ In particular, the Commission finds that the proposed rule change is consistent with sections 6(b)(1) and (3) of the Act,⁶ which, among other things, require a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act, and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange, and assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. The Commission also finds that the proposal is consistent with section 6(b)(5) of the Act,⁷ which requires that the rules of the exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

II. Discussion

A. Corporate Structure and Proposed Transaction

Currently, the Exchange is a wholly-owned subsidiary of the CBOE Stock

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 73944 (December 24, 2014), 80 FR 85 (SR-NSX-2014-017) ("Notice").

⁵ In approving the proposed rule change, the Commission has considered its impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(1) and (b)(3).

⁷ 15 U.S.C. 78f(b)(5).