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 No. SR–BatsEDGX–2016–48, and should be submitted on or before September 29, 2016.

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

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–21487 Filed 9–7–16; 8:45 am]

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[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78761; File No. SR–NSX–2016–04]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 11.18 To Address the Exchange's Liability for System Failures; Amend Rule 2.11 To Provide for an Error Account Maintained by the Exchange's Routing Broker; Adopt Rule 11.11(e) To Allow Cancellation of Orders When a System Failure Occurs; Amend Rule 1.5 To Reposition the Definition of a Trading Center; and Make Other Non-Substantive and Conforming Changes

September 2, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 29, 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 and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6)(iii) [4] thereunder, which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to: (i) amend NSX Rule 11.18, entitled ''LIMITATION OF LIABILITY,'' to allow the Exchange to provide compensation for losses sustained as a result of an Exchange trading system (''System'') [5] failure (''System Failure'') or through a negligent act or omission of an Exchange employee; (ii) adopt new NSX Rule 11.11(e), entitled Cancellation of Orders By NSX and NSX Securities,[6] to provide authority to cancel orders as deemed to be necessary to maintain fair and orderly markets if a System Failure occurs; (iii) amend NSX Rule 2.11, currently entitled NSX Securities, LLC, to provide for an error account maintained by NSX Securities, LLC (''NSXS''); and (iv) make changes to certain definitional sections and adopt other non-substantive and ministerial amendments. The Exchange has designated this proposal as ''non-controversial'' and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[7]

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 statutory basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] Rule 1.5S.(4) defines the ''System'' as the ''. . .electronic securities communications and trading facility designated by the Board through which orders. . .are consolidated for ranking and execution.''

[6] NSX Securities, LLC is a facility of the Exchange as defined in Section 3(a)(2) of the Exchange Act, 15 U.S.C. 78c(a)(2) and, as such, is subject to Section 6 of the Exchange Act, 15 U.S.C. 78f. The Exchange is responsible for filing with the Commission rule changes and fees relating to the outbound router function of NSXS.

[7] 17 CFR 240.19b–4(f)(6)(iii).

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: (i) amend NSX Rule 11.18 to establish a procedure to compensate Equity Trading Permit (''ETP'') Holders [8] for System Failures; (ii) adopt Rule 11.11(e), Cancellation of Orders By NSX or NSX Securities, to provide that NSX or NSXS may cancel orders as deemed necessary to maintain fair and orderly markets if a System Failure occurs at NSX, or at a routing broker in connection with the routing function provided under NSX Rules 2.11 and 11.15, or at another trading center to which an NSX order has been routed; (iii) amend NSX Rule 2.11 to describe the operation of an error account maintained by NSXS as the Exchange's outbound order routing facility and by other routing broker-dealers that may be used to liquidate unmatched executions when a System Failure occurs; and (iv) amend NSX Rule 1.5 to add the definition of a ''Trading Center'' by repositioning the definition from its current placement in NSX Rule 2.11(a) and make changes to NSX Rule 11.15(a)(ii)(A) and 11.15(a)(ii)(B) in connection therewith. The Exchange is also proposing certain non-substantive, ministerial amendments to Rules 1.5, 2.11 and 11.18.

Proposed Amendments to NSX Rule 11.18—Limitation of Liability

Currently, Rule 11.18 provides that neither the Exchange nor Exchange-related persons, which are defined in current NSX Rule 11.18(A) as the Exchange's ''agents, employees, contractors, officers, directors, committee members or affiliates,'' shall be liable to any User,[9] ETP Holder or persons associated therewith, for any loss, damage, claim or expense growing out of, *inter alia,* the use or enjoyment of the System or any facility of the Exchange. The Exchange is proposing to amend Rule 11.18 to provide for the payment of claims by ETP Holders for losses sustained either as a result of a

[8] Rule 1.5E.(1) defines ''ETP'' as an Equity Trading Permit issued by the Exchange to a registered broker or dealer for effecting approved securities transactions on the Exchange's trading facilities.

[9] A ''User'' is defined in Exchange Rule 1.5U.(1) as ''. . .any ETP Holder or Sponsored Participant who is authorized to obtain access to the System[.]''

System Failure, which is defined in proposed paragraph (d)(2) of NSX Rule 11.18 as ''an actual malfunction in the physical equipment and/or programming in the Exchange's system or facilities that results in an incorrect execution or no execution of a valid, marketable order that was received and acknowledged by Exchange systems,'' or losses sustained through the negligent acts or omissions of an Exchange employee. The proposal will allow the Exchange to compensate an ETP Holder, subject to specific monetary limits, for losses that can be established as having resulted from such an occurrence.

The Exchange proposes that, as to any one or more claims made by a single ETP Holder under the proposed rule for losses occurring on a single trading day, the Exchange shall not be liable in excess of the greater of $100,000 or the amount of any recovery obtained by the Exchange under any applicable insurance maintained by the Exchange.[10]

As to the aggregate of all claims made by all ETP Holders under the proposed rule for losses occurring on a single trading day, the Exchange shall not be liable in excess of the greater of $250,000 or the amount of any recovery obtained by the Exchange under any applicable insurance maintained by the Exchange.[11] For the aggregate of all claims made by all ETP Holders under the proposed rule during a single calendar month, the Exchange shall not be liable in excess of the greater of $500,000 or the amount of any recovery obtained by the Exchange under any applicable insurance maintained by the Exchange.[12]

As proposed in new subparagraph (d)(6) of the rule, in the event that all of the claims made under Rule 11.18 cannot be fully satisfied because in the aggregate they exceed the applicable maximum limitations provided in the rule, then the maximum permitted amount will be proportionally allocated among all such claims arising during a single trading day or single calendar month based on the proportion that each such claim bears to the total amount of all such claims.

Further, the Exchange is proposing in new subparagraph (d)(7) of the rule to require that any claims for reimbursement shall be in writing and must be submitted before the close of Regular Trading Hours[13] on the next business day following the day on which the use of the System or Exchange facilities, or the purported negligent acts or omissions of an Exchange employee, gave rise to the claim. Additionally, pursuant to proposed new subparagraph (d)(8), in reviewing claims by ETP Holders pursuant to NSX Rule 11.18(d), the Exchange will verify that: (i) a valid order was entered by the ETP Holder and accepted and acknowledged by the System; (ii) a System Failure or a negligent act or omission by an Exchange employee occurred during the handling or execution of that order; and (iii) the ETP Holder's loss resulted from the System Failure or negligent act or omission by an Exchange employee. The Exchange will also assess the extent to which the conduct of the ETP Holder may have contributed to the loss and may adjust the amount to be paid on the claim accordingly.

The Exchange's proposed rule amendments are similar to rules adopted by a number of other national securities exchanges that allow for limited compensation for losses resulting from system malfunctions or negligent acts or omissions of exchange employees.[14] For example, NYSE Arca Equities (''NYSE Arca'') Rule 13.2(b) is substantively the same as proposed NSX Rule 11.18(d)(1) in its description of the occurrences that give rise to a claim for compensation. The process that the Exchange proposes to use in order to verify a claim for compensation by an ETP Holder under proposed Rules 11.18(d)(7) and (d)(8) is similar to the process described in the rules of Bats BZX Exchange, Inc. (''BZX''),[15] Bats BYX Exchange, Inc. (''BYX''),[16] Bats EDGA Exchange, Inc. (''EDGA''),[17] and Bats EDGX Exchange, Inc. (''EDGX'').[18] In each of these exchange's rule sets, the exchange verifies that: (i) a valid order was entered and accepted and acknowledged by the exchange's system; and (ii) a system failure or negligent act or omission of an exchange employee occurred during the handling or execution of that order. The Exchange's proposed Rule 11.18(d)(8), however, specifies that the review process of claims will include verification that the ETP Holder's loss resulted from a System Failure or a negligent act or omission by an Exchange employee, as well as the extent to which the ETP Holder's conduct may have contributed to the loss; the amount to be paid on the claim may be adjusted by the Exchange as a result. In this regard, the proposed rule is similar to New York Stock Exchange (''NYSE'') Rule 18(d), which provides, in relevant part, that the review of a claim for compensation ''will determine whether the amount claimed should be reduced based on the actions or inactions of the claiming member organization, including whether the member organization made appropriate efforts to mitigate its loss.''

Additionally, the Exchange provides for the same monetary compensation formula under proposed subparagraphs (d)(3)–(5) of Rule 11.18 as do the BZX,[19] BYX,[20] EDGA,[21] and EDGX[22] exchanges in their respective liability rules. The Exchange proposes to adopt the rule amendments proposed in this filing in order to have similar authority as other national securities exchanges in those circumstances, and thereby promote consistency among exchange rules.

The Exchange also proposes ministerial amendments to amend Rule 11.18(A)–(C) to adjust the lettering from its current all upper case format to lower case (*i.e.,* Rule 11.18(a), 11.18(b) and 11.18(c)) and to adjust the text in those paragraphs to be consistent with style of text used throughout the Exchange's rule book.

Proposed NSX Rule 11.11(e)

The Exchange is proposing to adopt NSX Rule 11.11(e), entitled Cancellation of Orders By NSX or NSX Securities. As proposed, the rule will provide that NSX, NSXS, or a third-party routing broker may cancel orders as deemed to be necessary to maintain fair and orderly markets if and when a systems, technical, or operational issue occurs at NSX, NSXS, or at a third-party routing broker in connection with the routing function provided under NSX Rules 2.11 and 11.15[23] or at another Trading Center to which an NSX order has been routed. A routing broker may only cancel orders routed to another Trading Center based on NSX's standing or specific instructions or as otherwise

[10] Proposed Rule 11.18(d)(3).

[11] Proposed Rule 11.18(d)(4).

[12] Proposed Rule 11.18(d)(5).

[13] Rule 1.5R.(1) defines ''Regular Trading Hours'' as the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

[14] *See* Securities Exchange Act Release No. 56085 (July 17, 2007), 72 FR 40348 (July 24, 2007) (SR–NYSE–2007–09) (relating to amendments to New York Stock Exchange Rule 18); Securities Exchange Act Release No. 60794 (October 6, 2009), 74 FR 52522 (October 13, 2009) (SR–NASDAQ–2009–084) (relating to amendments to NASDAQ Rule 4626); Securities Exchange Act Release No. 58872 (October 28, 2008), 73 FR 65901 (November 5, 2008) (SR–BATS–2008–008 (relating to amendments to Bats Exchange, Inc. Rule 11.16); *see also* NYSE Arca Equities Rule 13.2.

[15] *See* BZX Rule 11.16(f).

[16] *See* BYX Rule 11.16(f).

[17] *See* EDGA Rule 11.14(f).

[18] *See* EDGX Rule 11.14(f).

[19] *See* BZX Rule 11.16(d)(1)–(3).

[20] *See* BYX Rule 11.16(d)(1)–(3).

[21] *See* EDGA Rule 11.14(d)(1)–(3).

[22] *See* EDGX Rule 11.14(d)(1)–(3).

[23] Rule 11.15, Order Execution, describes the process for the execution of orders on NSX and for orders routed to other Trading Centers.

provided in the Exchange's rules.[24] NSX shall provide notice of the cancellation to each affected ETP Holder via telephonic communication and/or electronic mail as soon as practicable.

The Exchange is proposing Rule 11.11(e) to gain the explicit authority to cancel orders in the event of a System Failure that, if not promptly addressed, could be detrimental to the maintenance of fair and orderly markets.[25] This provision would apply in all situations, and not be limited to the routing function. Other national securities exchanges have adopted rules that, like proposed Rule 11.11(e), provide the authority to cancel orders as deemed necessary for the maintenance of fair and orderly markets.[26] The requirement for NSX to provide notice of any such cancellation to the affected ETP Holders as soon as practicable will benefit market participants by allowing them to determine alternatives in the handling of their orders.

In addition, the Exchange is proposing to make ministerial, non-substantive amendments to Rule 11.11(d) by renumbering current subparagraphs (i) through (iv) as subparagraphs (1) through (4). NSX is not proposing any changes to the rule text of these subparagraphs. The Exchange is making this change to align the subparagraph numbering under NSX Rule 11.11(d) with the numbering used in other sections of Rule 11.11.

Proposed Amendments to NSX Rule 2.11

NSXS is the Exchange's outbound order routing facility. From time to time, the Exchange, NSXS or one or more unaffiliated third-party routing broker-dealers used by the Exchange to access other Trading Centers may encounter situations in which it becomes necessary to cancel orders and resolve one or more error positions.

The Exchange proposes to amend Rule 2.11 to provide that NSXS and any third-party routing broker-dealer used by the Exchange to route orders to other Trading Centers (collectively, the ''Routing Broker'') shall maintain an account for the purpose of addressing positions that result from a systems, technical or operational issue at the Exchange, the Routing Broker, or the destination Trading Center that affects one or more orders (''Error Position'').[27] Specifically, under proposed Rule 2.11(a)(5), the Routing Broker would be required to maintain an error account for the purpose of liquidating an Error Position acquired as a result of a System Failure experienced by the Routing Broker, the Exchange or at a Trading Center, in connection with the order routing process. The proposed amendments provide that the Routing Broker would only assume an Error Position in its error account under documented circumstances when the Error Position could not fairly and practicably be assigned to one or more ETP Holders or if the Exchange determines to cancel all orders affected by the technical or systems issue. Such circumstances include if an economic harm would result or it would otherwise be to the economic detriment of the ETP Holder or its customer.

Proposed subparagraph (a)(5)(i) of Rule 2.11 provides that errors to which the rule applies include those caused by any act or omission by NSX, a Routing Broker, or at another Trading Center to which an order has been routed and that results in an unmatched trade position, *i.e.,* an execution of a routed order for which there is no corresponding order with which to pair the execution (each a ''routing error''). Such routing errors would include, without limitation, positions resulting from determinations by NSX or a Routing Broker to cancel an order pursuant to proposed NSX Rule 11.11(e).

As proposed in Rule 2.11(a)(5)(ii), if the Exchange or the Routing Broker reasonably determines that there is accurate and sufficient information (including valid clearing information) to assign the positions to all of the ETP Holders affected by that systems, technical or operational issue, sufficient time pursuant to normal clearance and settlement deadlines to evaluate the information necessary to assign the positions to all of the ETP Holders affected by that systems, technical or operational issue, and has not determined to cancel all orders affected by that systems, technical or operational issue, the Exchange or NSXS [sic] will assign the full amount of the resulting Error Position to one or more ETP Holders. The ETP Holder would then be responsible for liquidating the position in its own error account. To the extent that the Error Position resulted from a System Failure at the Exchange or the Routing Broker, the affected ETP Holder would have the ability to file a claim for reimbursement pursuant to the proposed amendments to NSX Rule 11.18 discussed above.

As an example of such a situation, if ETP Holder A placed an order to buy 100 shares of symbol XYZ, and a System Failure caused the Routing Broker to route an order for the wrong number of shares (*e.g.,* 1,000 shares), or route an order for the correct number of shares but in the wrong symbol (*e.g.,* symbol XYY instead of XYZ) then, in either situation, the Routing Broker would assign to ETP Holder A the full amount of the resulting Error Position (in the above examples, with respect to the incorrect size, 1,000 shares of XYZ, of which 900 shares would be the Error Position or, with respect to the incorrect symbol, 100 shares of XYY). Under these circumstances, because the Error Position would have been caused by an Exchange or Routing Broker System Failure, ETP Holder A would be permitted to submit a claim for reimbursement to the Exchange, subject to the requirements and limitations of proposed NSX Rule 11.18(d), to the extent that ETP Holder A incurred a loss after trading out of the Error Position.

Proposed Rule 2.11(a)(5)(iv) states that, except to facilitate the clearing and settlement process where a systems, technical or operational issue prevents an ETP Holder from providing valid clearing instructions, the Routing Broker shall not accept any positions in such error account from an account of an ETP Holder or permit any ETP Holder to transfer any positions from the ETP Holder's account to a Routing Broker error account. The exception is set forth in Rule 2.11(a)(5)(v) and permits the Routing Broker, in the absence of valid clearing information attributable to a systems, technical or operational issue, to assume that ETP Holder's side of the trade so that the trade can be automatically processed for clearing and settlement on a locked-in basis pursuant to Rule 11.17(b).

Proposed Rule 2.11(a)(6) requires the Routing Broker to liquidate the Error Positions as soon as practicable. The Routing Broker could determine to liquidate the position itself or have a third-party broker-dealer liquidate the position on the Routing Broker's behalf. Further, proposed subparagraph (a)(6)(i)

[24] *See, e.g.,* Rule 11.11(d), Cancel/Replace Messages and Rule 11.15(c), Special Rules for Orders Routed to Other Trading Centers.

[25] The definition of ''maintenance of fair and orderly markets'' includes, but is not limited to, the prevention of situations that would create a potential market dislocation or result in executions that would operate to cause an economic harm to a market participant were the order or orders at issue to be executed.

[26] Examples of other exchange rules providing authority to cancel orders to maintain fair and orderly markets include NYSE Arca Rule 7.45(d)(1); BZX Rule 2.11(a)(6); BYX Rule 2.11(a)(6); EDGA Rule 2.11(a)(6); EDGX Rule 2.11(a)(6); and Chicago Stock Exchange Article 20, Rule 12(a).

[27] The Exchange notes that, in connection with providing the routing function, a non-affiliated Routing Broker currently may utilize its own error account to liquidate Error Positions. It is reasonable and appropriate to address routing errors through the error account maintained by a non-affiliated Routing Broker because, among other reasons, the non-affiliated Routing Broker is, in fact, the executing broker associated with these transactions.

requires that NSX and NSXS provide complete time and price discretion for the trading to liquidate the Error Positions to a third-party broker-dealer and shall not attempt to exercise any influence or control over the timing or methods of such trading. Subparagraph (a)(6)(ii) provides that NSX and NSXS shall establish, maintain, and enforce written policies and procedures reasonably designed to restrict the flow of confidential and proprietary information associated with the liquidation of the Error Positions in accordance with NSX Rule 2.11,[28] and prevent the use of information associated with other orders subject to the routing service when making determinations regarding the liquidation of Error Positions. In addition, subparagraph (a)(6)(iii) provides that NSX and NSXS shall make and keep records to document all determinations to treat positions as Error Positions and all determinations for the assignment of Error Positions to ETP Holders or the liquidation of Error Positions, as well as records associated with the liquidation of Error Positions through a third-party broker dealer in accordance with Rule 17a–4 under the Exchange Act.[29]

The Exchange notes that, in certain circumstances, NSX and its Routing Broker may not learn about an Error Position until the following business day (''T+1''). Examples of such situations include (i) during the clearing process when a routing destination has submitted to Depository Trust Clearing Corporation (''DTCC'') a transaction for clearance and settlement for which NSX or the Routing Broker never received an execution confirmation; or (ii) when another Trading Center does not recognize a transaction submitted by a Routing Broker to DTCC for clearance and settlement. The affected ETP Holder's trade(s) cannot be nullified absent express authority under Exchange Rules.[30] Accordingly, the Exchange believes that the use of an error account to liquidate the Error Positions that may occur in these circumstances is reasonable and appropriate.

The Exchange's proposed assignment process is designed to ensure that an Error Position is assigned to ETP Holders in a non-discriminatory manner because the Exchange would attempt to assign an Error Position to an ETP Holder in every instance. If the Routing Broker reasonably concludes that it is unable to trace each erroneous execution comprising an Error Position back to one or more ETP Holder's orders, then the Routing Broker will assume the entire amount of the Error Position in its error account. Moreover, under proposed Rule 2.11(a)(5)(iii), if the Routing Broker reasonably concludes, due to the number of erroneous executions and/or the number of ETP Holders potentially affected, that it would not be able to trace each erroneous execution comprising an Error Position back to such ETP Holders in a timely manner (which will be defined to mean by the end of Regular Trading Hours on the first business day following the trade date on which the Error Position was established (T+1)), then the Routing Broker will assume the entire amount of the Error Position in its error account. When an Error Position is acquired in the NSXS error account or the error account of an unaffiliated routing broker-dealer, it will be liquidated as soon as practicable pursuant to proposed subparagraph (a)(6) of NSX Rule 2.11.

The Exchange also proposes two ministerial amendments to Rule 2.11. First, the Exchange proposes to remove the comma in the title of the Rule to align with the actual corporate name of NSX Securities. Second, the Exchange proposes to amend Rule 2.11(a) to add ''NSXS'' as an abbreviated term for NSX Securities LLC.

Definition of Trading Center

The Exchange proposes to move the definition of ''Trading Center'' from NSX Rule 2.11, which pertains to NSXS, to NSX Rule 1.5, which contains definitions generally used throughout the Exchange's rules. Under NSX Rule 2.11(a), ''Trading Center'' is defined as ''other securities exchanges, facilities of securities exchanges, automated trading systems, electronic communication networks or other brokers or dealers.'' The Exchange does not propose to amend the definition of ''Trading Center.''

The Exchange submits that relocating the definition of ''Trading Center'' to the Exchange's general definitional rule will enhance the clarity and ease of reference of the Exchange's Rules. With this change, the Exchange will change NSX Rule 11.15(a)(ii)(A) and (B) to remove the clause ''(as defined in NSX Rule 2.11)'' in reference to the definition of Trading Center, because the clause is no longer applicable.

Lastly, the Exchange proposes to remove the word ''all'' from the first sentence of Rule 1.5, as the inclusion of the word is unnecessary.

2. Statutory Basis

The Exchange submits that the proposed rule change is consistent with Section 6 of the Act[31] and the Rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[32] Specifically, the Exchange submits that the proposal furthers the objectives of Section 6(b)(5),[33] in particular, as it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and 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, and is not designed to permit unfair discrimination between customers, brokers or dealers. The Exchange submits that, in general, this proposal is in keeping with those principles.

The proposed amendments to NSX Rule 11.18 are consistent with Section 6(b)(5) of the Act in that they promote just and equitable principles of trade by providing the Exchange with the authority to compensate ETP Holders for losses resulting from System Failures or the negligent conduct of an Exchange employee, in amounts up to the monetary limitations set forth in subparagraphs (d)(3) through (d)(5) of NSX Rule 11.18. Currently, market participants experiencing a loss as a result of such an occurrence have no ability under Exchange rules to obtain any compensation from the Exchange. The proposed amendments would enable the Exchange to provide reasonable and equitable compensation to parties who sustained losses as a result of failure on the part of the Exchange to properly handle an order. Other exchanges have recognized the need to provide such relief and have amended their general liability rules to permit limited compensation under defined circumstances.[34]

The Exchange believes that the rule provisions that establish the process for an ETP Holder to obtain compensation under the rule are consistent with

[28] Proposed Rule 2.11(a)(6)(ii) provides that NSX or NSXS shall establish, maintain and enforce written policies and procedures reasonably designed to restrict the flow of confidential and proprietary information associated with the liquidation of the Error Positions in accordance with Rule 2.11, and prevent the use of information associated with other orders subject to the routing services when making determinations regarding the liquidation of Error Positions.

[29] *See* 17 CFR 240.17a–4.

[30] *See, e.g.,* Rule 11.19, Clearly Erroneous Executions.

[31] 15 U.S.C. 78f.

[32] 15 U.S.C. 78f(b).

[33] 15 U.S.C. 78f(b)(5).

[34] *See* note 14, *supra.*

Section 6(b)(5) of the Act in that they provide a clear definition of what constitutes a System Failure (*i.e.,* an actual malfunction in the physical equipment and/or programming in the Exchange's systems or facilities that results in an incorrect execution or no execution of a valid, marketable order that was received and acknowledged by Exchange systems) and establish a transparent process for ETP Holders to submit a claim for compensation pursuant to the rule. Specifically, a claim for compensation must be submitted by the close of Regular Trading Hours on the next business day following the occurrence that gives rise to the claim. This time frame is sufficient for ETP Holders to gather information and submit a claim, while also requiring that claims be submitted in a timely manner. Thus, the time window for submission of a claim is reasonable because it balances the Exchange's interest in timely submission with the ETP Holder's interest in having enough time to prepare and submit a claim.

Similarly, the Exchange believes that provisions of proposed Rule 11.18(d)(8) that establish the criteria for reviewing claims for compensation provide for a transparent process in which the Exchange will verify that: (i) A valid order was entered by the ETP Holder and accepted and acknowledged by the Exchange's system; (ii) an Exchange system failure or a negligent act or omission by an Exchange employee occurred during the handling or execution of that order; and (iii) that the ETP Holder's loss resulted from such system failure or negligent act or omission. The Exchange will assess the extent to which the ETP Holder's conduct may have contributed to the loss and may adjust the amount to be paid on the claim by the Exchange.

The Exchange believes that these provision are designed to, and will operate to, further the objectives of Section 6(b)(5) by promoting just and equitable principles of trade, removing impediments to and perfecting the mechanism of a free and open market and a national market system and, in general, protecting investors and the public interest. The amendments contained in NSX Rule 11.18(d) provide clear standards for addressing claims and are available to all ETP Holders, and are not designed to permit unfair discrimination between customers, brokers or dealers, thus meeting the requirement of Section 6(b)(5).

Proposed Rule 11.11(e) is consistent with Section 6(b)(5) of the Act in that it will allow NSX, NSXS, or a third-party routing broker to cancel orders when it deems such action to be necessary for the maintenance of fair and orderly markets if a System Failure occurs. As proposed, the Exchange submits that the ability to take action to mitigate potential harm to market participants in cases where the handling of an order is affected by a System Failure will operate to promote just and equitable principles of trade and protect investors and the public interest.

The proposed amendments to Rule 2.11(a)(5) and (a)(6) governing the process for liquidating errors resulting from a technical or systems issue affecting the routing function, and the requirements for an error account maintained by the Routing Broker, are consistent with Section 6(b)(5) of the Act in that they are designed to provide a uniform and consistent approach to handling such errors, thereby promoting just and equitable principles of trade. As noted above and as further described in Section 8 of the Exchange's rule filing, the Exchange's proposed rule amendments align to a significant degree with the rules of other national securities exchanges and, in that regard, the proposed amendments operate to 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.

Finally, the Exchange submits that its proposed ministerial, non-substantive amendments to certain rules, as discussed above, are consistent with Section 6(b)(5) of the Act. The changes are designed to promote consistency, transparency and ease of reference in the Exchange's Rules, and will thereby operate to promote just and equitable principles of trade and the protection of investors and the public interest as required by Section 6(b)(5).

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. Allowing the Exchange to have the authority to address System Failures in a timely manner, including by canceling an order where deemed necessary to maintain fair and orderly markets, and establishing a framework for compensating market participants for losses, will not burden competition among ETP Holders or among NSX and other exchanges. As noted above, other national securities exchanges have adopted similar rules and the Exchange is seeking to align its error resolution rules and processes with those already widely adopted within the securities industry.[35]

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 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 if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[36] and Rule 19b–4(f)(6) thereunder.[37]

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 email to *rule-comments@sec.gov.* Please include File Number SR–NSX–2016–04 on the subject line.

[35] *See id.*

[36] 15 U.S.C. 78s(b)(3)(A).

[37] 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.

Paper Comments

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

All submissions should refer to File Number SR–NSX–2016–04. 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–2016–04 and should be submitted on or before September 29, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Brent J. Fields,

Secretary.

[FR Doc. 2016–21644 Filed 9–7–16; 8:45 am]

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[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78755; File No. SR–NYSEArca–2016–103]

Self-Regulatory Organizations; NYSE Arca Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Amending Rules 2.17(c) and 2.23(i) To Extend the Time Within Which OTP Holders and OTP Firms Must File a Uniform Termination Notice for Securities Industry Registration (''U5'')

September 1, 2016.

On July 14, 2016, NYSE Arca, Inc. 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 amend Rules 2.17(c) and 2.23(i) to extend the time within which OTP Holders and OTP Firms must file a U5. The proposed rule change was published for comment in the **Federal Register** on July 27, 2016.[3] The Commission received no comments in response to the proposal. In response to a related proposed rule change,[4] however, the Commission received a comment letter and a response to those comments from the proposing exchange.[5]

Section 19(b)(2) of the Act[6] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is September 10, 2016. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the issues raised in the NASAA Letter, as well as those in the response from NYSE MKT LLC., in connection with the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[7] designates October 25, 2016, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEArca–2016–103).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–21519 Filed 9–7–16; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78381 (July 21, 2016), 81 FR 49286.

[4] *See* Securities Exchange Act Release No. 78198 (June 30, 2016), 81 FR 44363.

[5] *See* letter from Judith Shaw, President, North American Securities Administrators Association, Inc., to Brent J. Fields, Secretary, Securities and Exchange Commission, dated August 3, 2016 (''NASAA Letter'') and letter from Elizabeth K. King, General Counsel and Corporate Secretary, New York Stock Exchange to Brent J. Fields, Secretary, SEC, dated August 12, 2016.

[6] 15 U.S.C. 78s(b)(2).

[7] *Id.*

[8] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78766; File No. SR–BatsBYX–2016–17]

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Exchange Rule 11.27 To Describe Changes to System Functionality Necessary To Implement the Regulation NMS Plan To Implement a Tick Size Pilot Program

September 2, 2016.

I. Introduction

On June 29, 2016, Bats BYX Exchange, Inc. (''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 11.27(a) to specify that orders entered into the Exchange's Retail Price Improvement (''RPI'') Program qualify for certain exceptions to the Regulation NMS Plan to Implement a Tick Size Pilot Program (''Plan'' or ''Pilot'') and to adopt Exchange Rule 11.27(c) to describe changes to System[3] functionality to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''System'' is defined as the ''electronic communications and trading facility designated by