

particular, the requirements of Section 6(b) of the Act.<sup>8</sup> Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) of the Act<sup>9</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

#### *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 not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were either solicited or received.

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

Because the foregoing rule does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (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<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing. The Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest because such waiver will enable the Exchange to better meet customer demand in light of recent increased volatility in the marketplace.<sup>12</sup>

Therefore, the Commission designates the proposal operative upon filing.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate 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, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-Phlx-2008-78 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-Phlx-2008-78. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet 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 inspection and copying 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. Copies of such 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-Phlx-2008-78 and should be submitted on or before December 11, 2008.

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

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-27578 Filed 11-19-08; 8:45 am]

BILLING CODE 8011-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-58953; File No. SR-NSX-2008-20]

### **Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NSX Rule 11.23(a) Which Defines the Phrase "Riskless Principal Transaction"**

November 14, 2008.

Pursuant to section 19(b)(3)(A) 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 November 13, 2008, 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 comment 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 proposes to amend NSX Rule 11.23(a), which defines the phrase "riskless principal transaction," to make clear that the definition includes transactions where an ETP Holder receives orders that may be executed in whole or in part in other market venues. As explained in further detail below, this amendment will clarify the scope of the exception to NSX's Customer Priority rule contained in Rule 12.6(d), and will more closely align NSX's rules with those used by other self-regulatory organizations ("SROs").

<sup>13</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>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and 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. The Commission deems this requirement to be met.

<sup>12</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the

proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

NSX Rule 12.6 prohibits an ETP Holder from placing an order for its own account (or an account in which it or one of its associated persons is interested) while it holds an unexecuted, marketable customer order for the same security, unless an exception applies. Specifically, Rule 12.6 provides:

(a) No ETP Holder shall (i) personally buy or initiate the purchase of any security traded on the Exchange for its own account or for any account in which it or any associated person of the ETP Holder is directly or indirectly interested while such an ETP Holder holds or has knowledge that any person associated with it holds an unexecuted market order to buy such security in the unit of trading for a customer, or (ii) sell or initiate the sale of any such security for any such account while it personally holds or has knowledge that any person associated with it holds an unexecuted market order to sell such security in the unit of trading for a customer.

(b) No ETP Holder shall (i) buy or initiate the purchase of any such security for any account in which it or any associated person of the ETP Holder is directly or indirectly interested at or below the price at which it personally holds or has knowledge that any person associated with it holds an unexecuted limited price order to buy such security in the unit of trading for a customer or (ii) sell or initiate the sale of any such security for any such account at or above the price at which it personally holds or has knowledge that any person

associated with it holds an unexecuted limited price order to sell such security in the unit of trading for a customer.

Rule 12.6(d) provides an exception to provisions (a) and (b) where "an ETP Holder engages in trading activity to facilitate the execution, on a riskless principal basis, of another order from its customer \* \* \* provided that the requirements of Rule 11.23 are satisfied \* \* \* ." (emphasis added.) Thus, to meet the exception in Rule 12.6(d), an ETP Holder also must comply with Rule 11.23. In turn, Rule 11.23(a) defines the phrase "riskless principal transaction" to mean:

Two offsetting principal transaction legs in which an ETP Holder, (i) after having received an order to buy a security *that it holds for execution on the Exchange*, purchases the security as principal at the same price, exclusive of markups, markdowns, commissions and other fees, to satisfy all or a portion of the order to buy or (ii) after having received an order to sell a security *that it holds for execution on the Exchange*, sells the security as principal at the same price, exclusive of markups, markdowns, commissions and other fees, to satisfy all or a portion of the order to sell.

(emphasis added.)

Therefore, if an ETP Holder receives an order to buy or sell a security, but does not hold that order for execution *on the Exchange*, any resulting transaction might not meet the definition of a riskless principal transaction in Rule 11.23(a). For the same reason, such a transaction also might not meet the exception in Rule 12.6(d).

In addition, it is unclear whether an order submitted to a ETP Holder without a designated marketplace for execution could be "[held] for execution on the Exchange," particularly where the ETP Holder executes the first leg of what generally would be considered a riskless principal transaction on a market other than the Exchange and completes the transaction with its customer on the Exchange. Because the customer has not designated where the order should be executed, and because the first leg of the order was in fact executed off the Exchange, such an order might not be viewed as being "[held] for execution on the Exchange." Accordingly, the transaction might not be a "riskless principal transaction" within the meaning of Rule 11.23(a) and, therefore, might not satisfy the exception contained in Rule 12.6(d), even if the transaction was done to facilitate a customer order.

NSX proposes to remove the requirement that an order be "[held] for execution on the Exchange" from the definition of a "riskless principal

transaction" in Rule 11.23(a) to permit the type of transaction described above to qualify as a "riskless principal transaction" and, where the other requirements are met, to meet the exception in Rule 12.6(d). The exception in Rule 12.6(d) is designed to allow ETP Holders to place proprietary trades ahead of customer orders only where such proprietary trades are for the benefit of a customer. This exception recognizes that, in some instances, an ETP Holder's nominal trading ahead may nevertheless benefit, rather than harm, a customer. It makes no difference to this analysis whether the customer specified that its order was to be executed on the Exchange, or whether the order can be characterized as being "[held] for execution on the Exchange."

Amended Rule 11.23(a) also would be consistent with other SRO rules. For example, Financial Industry Regulatory Authority ("FINRA") NASD Rule 2111 and IM-2110-2 both allow a firm to trade ahead of a customer order if, among other things, the member's proprietary trade is a riskless principal transaction, as defined in various NASD rules, that is used to facilitate a customer order. The definition of a riskless principal transaction in NASD rules is substantially similar to the definition in NSX Rule 11.23(a) except, of course, that it is not limited to orders held for execution on any particular securities exchange or in any particular venue.<sup>3</sup> New York Stock Exchange ("NYSE") Rule 92 also allows firms to trade ahead of customer orders where the firm's proprietary order is a riskless principal transaction designed to facilitate a customer order. NYSE Rule 92 does not require that an order be held for execution on the NYSE or any other venue or securities exchange to qualify for this exception.<sup>4</sup> Amending Rule 11.23(a) will therefore make NSX rules consistent with analogous SRO rules.

#### Statutory Basis

The Exchange believes that the proposed rule change is consistent with

<sup>3</sup> See, e.g., NASD Rule 4632(d)(3)(B) (defining a riskless principal transaction as a "transaction in which a member after having received an order to buy a security, purchases the security as principal at the same price to satisfy the order to buy or, after having received an order to sell, sells the security as principal at the same price to satisfy the order to sell") (cited in NASD Rule 2111(f)(1) and IM-2110-2).

<sup>4</sup> NYSE Rule 92(c)(1) ("The facilitated order must be a 'riskless principal transaction,' which is when a member or member organization, after having received an order to buy a security, purchases the security as principal at the same price to satisfy the order to buy or, after having received an order to sell, sells the security as principal at the same price to satisfy the order to sell.")

the provisions of Section 6(b) of the Securities Exchange Act of 1934 ("Act"),<sup>5</sup> which requires, among other things, that NSX Rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change will clarify the application of Rule 12.6(d) and will more closely align that rule with the rules of 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 inappropriate burden on competition.

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

The Exchange has neither solicited nor 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 will take effect 30 days from the date of filing (or such shorter time as the Commission may designate) pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>6</sup> and subparagraph (f)(6) of Rule 19b-4<sup>7</sup> thereunder, because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.<sup>8</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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>9</sup>

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

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NSX-2008-20 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-NSX-2008-20. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet 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 inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NSX. 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-2008-20 and should be submitted on or before December 11, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-27579 Filed 11-19-08; 8:45 am]

**BILLING CODE 8011-01-P**

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## **SMALL BUSINESS ADMINISTRATION**

### **[Disaster Declaration #11487]**

### **Indiana Disaster Number IN-00027**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 2.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Indiana (FEMA-1795-DR), dated 09/23/2008.

*Incident:* Severe Storms and Flooding.

*Incident Period:* 09/12/2008 through 10/06/2008.

*Effective Date:* 11/07/2008.

*Physical Loan Application Deadline Date:* 11/24/2008.

*Economic Injury (EIDL) Loan Application Deadline Date:* 06/23/2009.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Indiana, dated 09/23/2008, is hereby amended to include the following areas as adversely affected by the disaster.

*Primary Counties:* Daviess, La Porte.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. E8-27551 Filed 11-19-08; 8:45 am]

**BILLING CODE 8025-01-P**

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(C).

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 240.19b-4.

<sup>8</sup> As required under Rule 19b-4(f)(6)(iii), NSX provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.