



8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67127; File No. SR-NSX-2012-08)

June 5, 2012

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to temporarily suspend the requirements of NSX Rule 2.5 and related NSX ETP Holder application rules and procedures in order to approve Apex Clearing Corporation, f/k/a Ridge Clearing and Outsourcing Solutions, Inc. (“Apex Clearing”) as an NSX ETP Holder

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 June 5, 2012, National Stock Exchange, Inc. 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 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

National Stock Exchange, Inc. (“NSX[®]” or “Exchange”) is proposing to amend its rules to temporarily suspend the requirements of NSX Rule 2.5 and related NSX ETP Holder application rules and procedures in order to approve Apex Clearing Corporation, f/k/a Ridge Clearing and Outsourcing Solutions, Inc. (“Apex Clearing”) as an NSX ETP Holder, subject to Apex Clearing complying with Exchange ETP Holder application rules and procedures within 30 calendar days of the date that Apex Clearing is provisionally approved as an ETP Holder. The Exchange is also proposing to accept Apex Clearing’s assumption of all of the existing clearing agreements and arrangements currently in effect between Penson Financial Services Inc. (“PFSI”) and various other

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

ETP Holders by execution of a global agreement thereto.

The text of the proposed rule change is available on the Exchange's website at <http://www.nsx.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes this rule filing to temporarily suspend the requirements of NSX Rule 2.5 and related procedures regarding the application process for ETP Holders in order to immediately approve Apex Clearing as an NSX ETP Holder. The Exchange proposes this temporary suspension on an emergency basis to ensure that Apex Clearing can continue the clearing operations of PFSI without unnecessary disruption, which could have a significant collateral impact to a number of other ETP Holders. The proposed temporary suspension is contingent upon Apex Clearing having complied with all Exchange ETP Holder application rules and procedures within 30 calendar days of the date Apex Clearing is provisionally approved as an NSX ETP Holder pursuant to this filing.

On May 31, 2012, Apex Clearing Holdings, LLC ("Apex Holdings"), Apex Clearing Solutions, LLC, Broadridge Financial Solutions, Inc. ("Broadridge"), PFSI and Penson

Worldwide, Inc. (“PWI”) (together, the “Parties”) consummated a transaction resulting in a change in ownership of Apex Clearing.³ Broadridge, Apex Holdings, PWI and PFSI each made capital investments in Apex Holdings, the holding company parent of Apex Clearing. PFSI also assigned all of its U.S. clearing contracts and all customer and introducing broker proprietary accounts along with key personnel to Apex Clearing (the “Transferring Accounts”).⁴

As a result of the transaction, Apex Clearing, which is not an NSX ETP Holder, will provide the clearing and execution services currently provided to the Transferring Accounts by PFSI. On May 31, 2012, Apex Clearing submitted an executed application for approval as an NSX ETP Holder and an NSX User Agreement. However because of the expedited nature of the transaction, Apex Clearing was unable to fully comply with NSX Rule 2.5(a)(5) and related new ETP Holder application procedures. Because of the need for seamless continuity with respect to the Transferring Accounts, Apex Clearing has requested that the Exchange temporarily suspend its new ETP Holder application rules and procedures to the extent necessary in order to enable Apex Clearing’s approval as an ETP Holder on an expedited basis. Pursuant to its request, Apex Clearing will fully comply with the Exchange’s new ETP Holder application rules and procedures within 30 calendar days after provisional approval.

NSX Rule 2.5 requires that applications for an Exchange Trading Permit (“ETP”) shall be made to the Exchange and shall contain certain specified documentation. Among other things,

³ Prior to the Transaction, Apex Clearing’s name was Ridge Clearing & Outsourcing Solutions, Inc. Prior to the transaction, Ridge Clearing & Outsourcing Solutions, Inc. contributed its outsourcing operations and all associated personnel and systems to its affiliated entity, Broadridge Securities Processing Solutions, LLC (“BSPS”) where it will continue to provide operations support and outsourcing services to a number of broker-dealers, including Apex Clearing.

⁴ See Penson Worldwide, Inc. Form 8-K dated May 31, 2012.

to be approved as an NSX ETP Holder, the documentation must contain an agreement regarding certain matters as specified in NSX Rule 2.5(a)(1) through (4), which are generally contained in the Exchange's form User Agreement required to be executed by an applicant, together with such other reasonable information with respect to the applicant as the Exchange may require. In addition, pursuant to NSX Rule 2.4, the Exchange reviews whether the applicant meets federal and NSX capital requirements and verifies that certain other application criteria are satisfied.

Due to the amount of information an applicant is required to provide and have completed prior to being approved as an ETP Holder, the ETP Holder approval process generally takes several weeks to complete. The length of time varies based on the timing of the applicant's response to requests for information and documentation.

As proposed, Apex Clearing will continue the clearing and certain other operations of PFSI as of June 6, 2012. In order to avoid interruption of the services PFSI currently provides to other Exchange ETP Holders, the Exchange believes that Apex Clearing should be approved immediately as an NSX ETP Holder. The Exchange notes that Apex Clearing is already a registered broker dealer and FINRA member, which are prerequisites for becoming an NSX ETP Holder. See NSX Rule 2(a)(1).

The Exchange therefore proposes providing Apex Clearing with a temporary suspension of NSX Rule 2.5 and related ETP Holder application rules and procedures as they relate to approval to operate an NSX ETP Holder and approval of a proposed ETP Holder's approved persons, and immediately provisionally approve Apex Clearing as an ETP Holder. As proposed this temporary suspension is contingent upon:

- Apex Clearing providing the Exchange with sufficient information to confirm that Apex Clearing will meet its capital requirements as an NSX ETP Holder; and

- Within 30 calendar days of Apex Clearing’s approval as an NSX ETP Holder under this proposed filing, Apex Clearing and its approved persons will have complied with the Exchange’s ETP Holder application requirements as set forth in NSX rules and related application documents.

As proposed, if Apex Clearing does not comply with all applicable NSX ETP Holder application requirements within 30 calendar days of the effective date of this filing, its status as an approved NSX ETP Holder will no longer be effective.

In addition, the Exchange proposes to permit Apex Clearing to assume all existing clearing agreements and arrangements currently in effect with other NSX ETP Holders. Notice of such assumption, and a solicitation of consent with respect thereto, will be provided to impacted ETP Holders through applicable notices prior to the effective date thereof.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)⁵ of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5)⁶ in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that permitting the expeditious approval of Apex Clearing as an NSX ETP Holder will avoid interruption of the services PFSI currently provides to other Exchange ETP Holders. Based on information and representations provided by Apex Clearing, a temporary suspension of certain NSX membership rules and procedures is

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

needed based on the expedited nature of the transaction to enable seamless continuity with respect to the transferring accounts. Consequently, the Exchange believes that temporary suspension of its ETP Holder application requirements so that Apex Clearing can be approved immediately as an NSX ETP Holder will help to foster cooperation and coordination with persons engaged in facilitating transactions in securities and is consistent with the Act.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁷ and Rule 19b-4(f)(6) thereunder.⁸ 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 prior to 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 Act⁹ and Rule 19b-4(f)(6)(iii) thereunder.¹⁰

⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule

A proposed rule change filed under Rule 19b-4(f)(6)¹¹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹² the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Commission notes that the Exchange is proposing that certain of its rules relating to membership requirements be temporarily suspended so that Apex Clearing can be provisionally approved as an NSX ETP Holder. The proposed relief does not exempt Apex Clearing from Exchange rule requirements governing NSX ETP Holders. Apex Clearing would have a 30 calendar day grace period within which to apply for and be approved under relevant Exchange rules. Moreover, the Commission believes that waiver of the 30-day operative delay is appropriate to ensure a smooth transition of PFSI operations to Apex Clearing. In particular, given the rapidity with which events have developed, waiver of the 30-day operative delay is necessary to avoid significant disruption to PFSI's existing customers and the market generally. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change as operative upon filing.¹³

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 is waiving this five-day pre-filing requirement.

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ 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).

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 e-mail to rule-comments@sec.gov. Please include File Number SR-NSX-2012-08 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-2012-08. 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 website (<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 website 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-2012-08 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Kevin M. O'Neill
Deputy Secretary

[FR Doc. 2012-14065 Filed 06/08/2012 at
8:45 am; Publication Date: 06/11/2012]

¹⁴ 17 CFR 200.30-3(a)(12).