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–Phlx–2012–106 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–Phlx–2012–106. 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–Phlx–2012–106 and should be submitted on or before September 13, 2012.

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

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–20711 Filed 8–22–12; 8:45 am]

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[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67681; File No. SR–NSX–2012–13]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Rules To Add Rule 3.21 Regarding Telephone Solicitation

August 17, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 13, 2012, National Stock Exchange, Inc. 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 National Stock 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 add Rule 3.21, Telephone Solicitation, to its Rulebook to codify provisions that are substantially similar to Federal Trade Commission (''FTC'') rules that prohibit deceptive and other abusive telemarketing acts or practices.

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.

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

[2] 17 CFR 240.19b–4.

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

1. Purpose

The Exchange proposes to add Rule 3.21, Telephone Solicitation, to its Rulebook to codify provisions that are substantially similar to FTC rules that prohibit deceptive and other abusive telemarketing acts or practices. Rule 3.21 requires Equity Trading Permit (''ETP'') Holders to, among other things, maintain do-not-call lists, limit the hours of telephone solicitations, and not use deceptive and abusive acts and practices in connection with telemarketing. The Commission directed the Exchange to enact these telemarketing rules in accordance with the Telemarketing Consumer Fraud and Abuse Prevention Act of 1994 (''Prevention Act'').[3] The Prevention Act requires the Commission to promulgate, or direct any national securities exchange or registered securities association to promulgate, rules substantially similar to the FTC rules [4] to prohibit deceptive and other abusive telemarketing acts or practices, unless the Commission determines either that the rules are not necessary or appropriate for the protection of investors or the maintenance of orderly markets, or that existing federal securities laws or Commission rules already provide for such protection.[5]

In 1997, the Commission determined that telemarketing rules promulgated and expected to be promulgated by self-regulatory organizations, together with the other rules of the self-regulatory organizations, the federal securities laws and the Commission's rules thereunder, satisfied the requirements of the Prevention Act because, at the time, the applicable provisions of those laws and rules were substantially similar to the FTC's telemarketing rules.[6] Since 1997, the FTC has amended its telemarketing rules in light of changing telemarketing practices and technology.[7]

[3] 15 U.S.C. 6101—6108.

[4] 16 CFR 310.1—.9. The FTC adopted these rules under the Prevention Act in 1995. *See* FTC, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995).

[5] 15 U.S.C. 6102.

[6] *See Telemarketing and Consumer Fraud and Abuse Prevention Act; Determination that No Additional Rulemaking Required,* Exchange Act Release No. 38480 (Apr. 7, 1997), 62 FR 18666 (Apr. 16, 1996). The Commission also determined that some provisions of the FTC's telemarketing rules related to areas already extensively regulated by existing securities laws or activities not applicable to securities transactions. *See id.*

[7] *See, e.g.,* FTC, *Telemarketing Sales Rule,* 73 FR 51164 (Aug. 29, 2008) (amendments to the *Telemarketing Sales Rule* relating to prerecorded

As mentioned above, the Prevention Act requires the Commission to promulgate, or direct any national securities exchange or registered securities association to promulgate, rules substantially similar to the FTC rules to prohibit deceptive and other abusive telemarketing acts or practices.[8] In May 2011, Commission staff directed the Exchange to conduct a review of its telemarketing rule and propose rule amendments that provide protections that are at least as strong as those provided by the FTC's telemarketing rules.[9] Commission staff had concerns ''that the [self-regulatory organization] rules overall have not kept pace with the FTC's rules, and thus may no longer meet the standards of the [Prevention] Act.''[10]

The proposed rule change, as directed by the Commission staff, adopts provisions in Rule 3.21 that are substantially similar to the FTC's current rules that prohibit deceptive and other abusive telemarketing acts or practices as described below.[11]

Telemarketing Restrictions

The proposed rule change codifies the telemarketing restrictions in Rule 3.21 to provide that no ETP Holder or person associated with an ETP Holder [12] may make an outbound telephone call [13] to:

(1) Any person's residence at any time other than between 8:00 a.m. and 9:00 p.m. local time at the called person's locations;

(2) any person that previously has stated that he or she does not wish to receive any outbound telephone calls made by or on behalf of the ETP Holder; or

(3) any person who has registered his or her telephone number on the FTC's national do-not-call registry.

The proposed rule change is substantially similar to the FTC's provisions regarding abusive telemarketing acts or practices.[14] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[15]

Caller Disclosures

The proposed rule change codifies in Rule 3.21(b) that no ETP Holder or associated person of an ETP Holder shall make an outbound telephone call to any person without disclosing truthfully, promptly and in a clear and conspicuous manner to the called person the following information: (i) the identity of the caller and the ETP Holder; (ii) the telephone number or address at which the caller may be contacted; and (iii) that the purpose of the call is to solicit the purchase of securities or related services. The proposed rule change also provides that the telephone number that a caller provides to a person as the number at which the caller may be contacted may not be a 900 number or any other number for which charges exceed local or long-distance transmission charges.[16]

Exceptions

The proposed rule change adds Rule 3.21 to provide that the prohibition in paragraph (a)(1) [17] does not apply to outbound telephone calls by an ETP Holder or an associated person of an ETP Holder if:

(1) The ETP Holder has received that person's express prior written consent;

(2) The ETP Holder has an established business relationship [18] with the person; or

(3) The person is a broker or dealer.

ETP Holder's Firm-Specific Do-Not-Call List

The proposed rule change adds Rule 3.21(d) to provide that each ETP Holder must make and maintain a centralized list of persons who have informed the ETP Holder or any of its associated persons of an ETP Holder that they do not wish to receive outbound telephone calls. The proposed term ''outbound telephone calls'' is substantially similar to the FTC's definition of that term.[19]

Proposed Rule 3.21(d)(2) adopts procedures that ETP Holders must institute to comply with Rule 3.21(a)

messages and call abandonments); and FTC, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) (amendments to the *Telemarketing Sales Rule* establishing requirements for sellers and telemarketers to participate in the national do-not-call registry).

[8] *See supra* note 4.

[9] *See* Letter from Robert W. Cook, Director, Division of Trading and Markets, Securities and Exchange Commission, to Joseph Rizzello, Chief Executive Officer, National Stock Exchange (May 12, 2011).

[10] *Id.*

[11] The proposed rule change is also substantially similar to FINRA Rule 3230. *See supra* note 1.

[12] A ''person associated with an ETP Holder'' or ''associated person of an ETP Holder'' means any partner, officer, director, or branch manager of an ETP Holder (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with an ETP Holder, or any employee of an ETP Holder, except that any person associated with an ETP Holder whose functions are solely clerical or ministerial shall not be included in the meaning of such terms. *See* Rule 1.5(P)(1).

[13] An ''outbound telephone call'' is a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution from a donor. A ''telemarketer'' is any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor. A ''customer'' is any person who is or may be required to pay for goods or services through telemarketing. A ''donor'' means any person solicited to make a charitable contribution. A ''person'' is any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity. ''Telemarketing'' means consisting of or relating to a plan, program, or campaign involving at least one outbound telephone call, for example cold-calling. The term does not include the solicitation of sales through the mailing of written marketing materials, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the marketing materials and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term ''further solicitation'' does not include providing the customer with information about, or attempting to sell, anything promoted in the same marketing materials that prompted the customer's call. A ''charitable contribution'' means any donation or gift of money or any other thing of value, for example a transfer to a pooled income fund. *See* proposed Rule 3.21(n)(3), (11), (16), (17), (20), and (21); *see also* FINRA Rule 3230(m)(11), (14), (16), (17), and (20); and 16 CFR 310.2(f), (l), (n), (v), (w), (cc), and (dd).

[14] *See* 16 CFR 310.4(b)(1)(iii)(A) and (B) and (c); *see also* FINRA Rule 3230(a). *See* proposed Rule 3.21(n)(16) and (21) and *supra* note 12.

[15] *See* FTC, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4628; and FTC, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995) at 43855.

[16] *See* proposed Rule 3.21(b); *see also* FINRA Rule 3230(d)(4). The proposed rule change is substantially similar to the FCC's regulations regarding call disclosures. *See* 47 CFR 64.1200(d)(4).

[17] The Exchange believes that even if an ETP Holder satisfies the exception in paragraph (c), the ETP Holder should still make the caller disclosures required by paragraph (b) to the called person to ensure that the called person receives sufficient information regarding the purpose of the call.

[18] An ''established business relationship'' is a relationship between an ETP Holder and a person if (a) the person has made a financial transaction or has a security position, a money balance, or account activity with the ETP Holder or at a clearing firm that provides clearing services to the ETP Holder within the 18 months immediately preceding the date of an outbound telephone call; (b) the ETP Holder is the broker-dealer of record for an account of the person within the 18 months immediately preceding the date of an outbound telephone call; or (c) the person has contacted the ETP Holder to inquire about a product or service offered by the ETP Holder within the three months immediately preceding the date of an outbound telephone call. A person's established business relationship with an ETP Holder does not extend to the ETP Holder's affiliated entities unless the person would reasonably expect them to be included. Similarly, a person's established business relationship with an ETP Holder's affiliate does not extend to the ETP Holder unless the person would reasonably expect the ETP Holder to be included. The term ''account activity'' includes, but is not limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the ETP Holder. The term ''broker-dealer of record'' refers to the broker or dealer identified on a customer's account application for accounts held directly at a mutual fund or variable insurance product issuer. *See* proposed Rule 3.21(n)(1), (4), and (12); *see also* 16 CFR 310.2(o) and FINRA Rule 3230(m)(1), (4), and (12).

[19] *See* 16 CFR 310.4(b)(1)(iii)(A) and *supra* note 12; *see also* FINRA Rule 3230(a)(2). Additionally, this proposed rule change replaces a reference to the term ''member'' with ''ETP Holder,'' which conforms to the term currently used in NSX's Rules.

and (b) prior to engaging in telemarketing. These procedures must meet the following minimum standards:

(1) ETP Holders must have a written policy for maintaining their firm-specific do-not-call lists.

(2) Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the ETP Holder's firm-specific do-not-call list.

(3) If an ETP Holder receives a request from a person not to receive calls from that ETP Holder, the ETP Holder must record the request and place the person's name, if provided, and telephone number on its firm-specific do-not-call list at the time the request is made.[20]

(4) ETP Holders or associated persons of an ETP Holder making an outbound telephone call must make the caller disclosures set forth in Rule 3.21(b).

(5) In the absence of a specific request by the person to the contrary, a person's do-not-call request will apply to the ETP Holder making the call, and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the call and the product being advertised.

(6) An ETP Holder making outbound telephone calls must maintain a record of a person's request not to receive further calls.

Inclusion of this requirement to adopt these procedures will not create any new obligations on ETP Holders, as they are already subject to identical provisions under FCC telemarketing regulations.[21]

Do-Not-Call Safe Harbors

Proposed Rule 3.21(e) provides for certain exceptions to the telemarketing restriction set forth in proposed Rule 3.21(a)(3), which prohibits outbound telephone calls to persons on the FTC's national do-not-call registry. First, proposed Rule 3.21(e)(1) provides that an ETP Holder or associated person of an ETP Holder making outbound telephone calls will not be liable for violating proposed Rule 3.21(a)(3) if:

(1) The ETP Holder has an established business relationship with the called person; however, a person's request to be placed on the ETP Holder's firm-specific do-not-call list terminates the established business relationship exception to the national do-not-call registry provision for that ETP Holder even if the person continues to do business with the ETP Holder;

(2) The ETP Holder has obtained the person's prior express written consent, which must be clearly evidenced by a signed, written agreement (which may be obtained electronically under the E-Sign Act)[22] between the person and the ETP Holder that states that the person agrees to be contacted by the ETP Holder and includes the telephone number to which the calls may be placed; or

(3) The ETP Holder or associated person of an ETP Holder making the call has a personal relationship [23] with the called person.

The proposed rule change is substantially similar to the FTC's provision regarding an exception to the prohibition on making outbound telephone calls to persons on the FTC's do-not-call registry.[24] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[25]

Second, proposed Rule 3.21(e)(2) provides that an ETP Holder or associated person of an ETP Holder making outbound telephone calls will not be liable for violating proposed Rule 3.21(a)(3) if the ETP Holder or associated person of an ETP Holder demonstrates that the violation is the result of an error and that as part of the ETP Holder's routine business practice:

(1) The ETP Holder has established and implemented written procedures to comply with Rule 3.21(a) and (b);

(2) The ETP Holder has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to the preceding clause;

(3) The ETP Holder has maintained and recorded a list of telephone numbers that it may not contact in compliance with Rule 3.21(d); and

(4) The ETP Holder uses a process to prevent outbound telephone calls to any telephone number on the ETP Holder's firm-specific do-not-call list or the national do-not-call registry, employing a version of the national do-not-call registry obtained from the FTC no more than 31 days prior to the date any call is made, and maintains records documenting this process.

The proposed rule change is substantially similar to the FTC's safe harbor to the prohibition on making outbound telephone calls to persons on a firm-specific do-not-call list or on the FTC's national do-not-call registry.[26] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[27]

Wireless Communications

Proposed Rule 3.21(f) clarifies that the provisions set forth in Rule 3.21 are applicable to ETP Holders and associated persons of an ETP Holder making outbound telephone calls to wireless telephone numbers.[28]

Outsourcing Telemarketing

Proposed Rule 3.21(g) states that if an ETP Holder uses another entity to perform telemarketing services on its behalf, the ETP Holder remains responsible for ensuring compliance with Rule 3.21. The proposed rule change also provides that an entity or person to which an ETP Holder outsources its telemarketing services must be appropriately registered or licensed, where required.[29]

Billing Information

The proposed Rule provides that, for any telemarketing transaction, no ETP Holder or associated person of an ETP Holder may submit billing information [30] for payment without the express informed consent of the customer. Proposed Rule 3.21(h) requires that each ETP Holder or associated person of an ETP Holder must obtain the express informed consent of the person to be charged and to be charged using the identified account.

If the telemarketing transaction involves preacquired account information [31] and a free-to-pay

[20] ETP Holders must honor a person's do-not-call request within a reasonable time from the date the request is made, which may not exceed 30 days from the date of the request. If these requests are recorded or maintained by a party other than the ETP Holder on whose behalf the outbound telephone call is made, the ETP Holder on whose behalf the outbound telephone call is made will still be liable for any failures to honor the do-not-call request.

[21] *See* 47 CFR 64.1200(d); *see also* FINRA Rule 3230(d).

[22] 15 U.S.C. 7001 *et seq.*

[23] The term ''personal relationship'' means any family member, friend, or acquaintance of the person making an outbound telephone call. *See* proposed Rule 3.21(n)(18); *see also* FINRA Rule 3230(m)(18).

[24] *See* 16 CFR 310.4(b)(1)(iii)(B); *see also* FINRA Rule 3230(b).

[25] *See* FTC, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4628; and FTC, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995) at 43854.

[26] *See* 16 CFR 310.4(b)(3); *see also* FINRA Rule 3230(c).

[27] *See* FTC, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4628; and FTC, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995) at 43855.

[28] *See also* FINRA Rule 3230(e).

[29] *See also* FINRA Rule 3230(f).

[30] The term ''billing information'' means any data that enables any person to access a customer's or donor's account, such as a credit or debit card number, a brokerage, checking, or savings account number, or a mortgage loan account number. *See* proposed Rule 3.21(n)(3).

[31] The term ''preacquired account information'' means any information that enables an ETP Holder or associated person of an ETP Holder to cause a charge to be placed against a customer's or donor's account without obtaining the account number

conversion [32] feature, the ETP Holder or associated person of an ETP Holder must:

(1) Obtain from the customer, at a minimum, the last four digits of the account number to be charged;

(2) Obtain from the customer an express agreement to be charged and to be charged using the identified account number; and

(3) Make and maintain an audio recording of the entire telemarketing transaction.

For any other telemarketing transaction involving preacquired account information, the ETP Holder or associated person of an ETP Holder must:

(1) Identify the account to be charged with sufficient specificity for the customer to understand which account will be charged; and

(2) Obtain from the customer an express agreement to be charged and to be charged using the identified account number.

The proposed rule change is substantially similar to the FTC's provision regarding the submission of billing information.[33] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[34]

Caller Identification Information

Proposed Rule 3.21(i) provides that ETP Holders that engage in telemarketing must transmit caller identification information [35] and are explicitly prohibited from blocking this information. The telephone number provided must permit any person to make a do-not-call request during normal business hours. These provisions are similar to the caller identification provision in the FTC rules.[36] Inclusion of these caller identification provisions in this proposed rule change will not create any new obligations on ETP Holders, as they are already subject to identical provisions under FCC telemarketing regulations.[37]

Unencrypted Consumer Account Numbers

Proposed Rule 3.21(j) prohibits an ETP Holder or associated person of an ETP Holder from disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing. The proposed rule change is substantially similar to the FTC's provision regarding unencrypted consumer account numbers.[38] The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.[39] Additionally, the proposed rule change defines ''unencrypted'' as not only complete, visible account numbers, whether provided in lists or singly, but also encrypted information with a key to its decryption. The proposed definition is substantially similar to the view taken by the FTC.[40]

Abandoned Calls

Proposed Rule 3.21(k) prohibits an ETP Holder or associated person of an ETP Holder from abandoning [41] any outbound telephone call. The abandoned calls prohibition is subject to a ''safe harbor'' under proposed Rule 3.21(k)(2) that requires an ETP Holder or associated person of an ETP Holder:

(1) To employ technology that ensures abandonment of no more than three percent of all calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues;

(2) For each outbound telephone call placed, to allow the telephone to ring for at least 15 seconds or four rings before disconnecting an unanswered call;

(3) Whenever an ETP Holder or associated person of an ETP Holder is not available to speak with the person answering the outbound telephone call within two seconds after the person's completed greeting, promptly to play a prerecorded message stating the name and telephone number of the ETP Holder or associated person of an ETP Holder on whose behalf the call was placed; and

(4) To maintain records documenting compliance with the ''safe harbor.'' The proposed rule change is substantially similar to the FTC's provisions regarding abandoned calls.[42] The FTC provided a discussion of the provisions when they are adopted pursuant to the Prevention Act.[43]

Prerecorded Messages

Proposed Rule 3.21(l) prohibits an ETP Holder or associated person of an ETP Holder from initiating any outbound telephone call that delivers a prerecorded message without a person's express written agreement [44] to receive such calls. The proposed rule change also requires that all prerecorded outbound telephone calls provide specified ''opt-out'' mechanisms so that a person can opt out of future calls. The prohibition does not apply to a prerecorded message permitted for compliance with the ''safe harbor'' for abandoned calls under proposed Rule 3.21(k)(2). The proposed rule change is substantially similar to the FTC's provisions regarding prerecorded messages.[45] The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act.[46]

Credit Card Laundering

Proposed Rule 3.21(m) prohibits credit card laundering, the practice of depositing into the credit card system [47] a sales draft that is not the result of a credit card transaction between the

directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged. *See* proposed Rule 3.21(n)(19).

[32] The term ''free-to-pay conversion'' means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period. *See* proposed Rule 3.21(n)(13).

[33] *See* 16 CFR 310.4(a)(7); *see also* FINRA Rule 3230(i).

[34] *See* FTC, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4616.

[35] Caller identification information includes the telephone number and, when made available by the ETP Holder's telephone carrier, the name of the ETP Holder.

[36] *See* 16 CFR 310.4(a)(8); *see also* FINRA Rule 3230(g).

[37] *See* 47 CFR 64.1601(e).

[38] *See* 16 CFR 310.4(a)(6); *see also* FINRA Rule 3230(h).

[39] *See* FTC, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4615.

[40] *See id.* at 4616.

[41] An outbound telephone call is ''abandoned'' if the called person answers it and the call is not connected to an ETP Holder or associated person of an ETP Holder within two seconds of the called person's completed greeting.

[42] *See* 16 CFR 310.4(b)(1)(iv) and (b)(4); *see also* FINRA Rule 3230(j).

[43] *See* FTC, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4641.

[44] The express written agreement must: (a) Have been obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the ETP Holder to place prerecorded calls to such person; (b) have been obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service; (c) evidence the willingness of the called person to receive calls that deliver prerecorded messages by or on behalf of the ETP Holder; and (d) include the person's telephone number and signature (which may be obtained electronically under the E-Sign Act).

[45] *See* 16 CFR 310.4(b)(1)(v); *see also* FINRA Rule 3230(k).

[46] *See* FTC, *Telemarketing Sales Rule,* 73 FR 51164 (Aug. 29, 2008) at 51165.

[47] The term ''credit card system'' means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system. The term ''credit card'' means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit. The term ''credit'' means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment. *See* proposed Rule 3.21(n)(7), (8), and (10).

cardholder [48] and the ETP Holder. Except as expressly permitted, the proposed rule change prohibits an ETP Holder or associated person of an ETP Holder from:

(1) Presenting to or depositing into the credit card system for payment, a credit card sales draft [49] generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the ETP Holder;

(2) Employing, soliciting, or otherwise causing a merchant,[50] or an employee, representative or agent of the merchant to present to or to deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the ETP Holder; or

(3) Obtaining access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement [51] or the applicable credit card system.

The proposed rule change is substantially similar to the FTC's provision regarding credit card laundering.[52] The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act.[53]

Definitions

Proposed Rule 3.21(n) adopts the following definitions, which are substantially similar to the FTC's definitions of these terms: ''acquirer,'' ''billing information,'' ''caller identification service,'' ''cardholder,'' ''charitable contribution,'' ''credit,'' ''credit card,'' ''credit card sales draft,'' ''credit card system,'' ''customer,'' ''donor,'' ''established business relationship,'' ''free-to-pay conversion,'' ''merchant,'' ''merchant agreement,'' ''outbound telephone call,'' ''person,'' ''preacquired account information,'' ''telemarketer,'' and ''telemarketing.'' [54] The FTC provided a discussion of each definition when they were adopted pursuant to the Prevention Act.[55]

State and Federal Laws

Proposed Rule 3.21, Interpretation and Policy .01 [56] reminds ETP Holders and associated persons of an ETP Holder that engage in telemarketing that they also are subject to the requirements of relevant state and federal laws and rules, including the Prevention Act, the Telephone Consumer Protection Act (''TCPA''),[57] and the rules of the FCC relating to telemarketing practices and the rights of telephone consumers.[58]

Announcement in Regulatory Circular

The Exchange will announce the implementation date of the proposed rule change in a Regulatory Circular to be published no later than 90 days following the effective date. The implementation date will be no later than 180 days following the effective date.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Exchange Act.[59] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [60] requirements that the rules of an exchange be 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 to protect investors and the public interest generally.

In particular, the proposed rule change will prevent fraudulent and manipulative acts and protect investors and the public interest by continuing to prohibit ETP Holders from engaging in deceptive and other abusive telemarketing acts or practices. Additionally, the proposed rule change removes impediments to and perfects the mechanism for a free and open market and a national market system, because it provides consistency among telemarketing rules of national securities exchanges and FINRA, therefore making it easier for investors to comply with these rules.

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.

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

Written comments on the proposed rule change were neither solicited nor received.

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

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) [61] of the Act and Rule 19b–4(f)(6) [62] thereunder.

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

[48] The term ''cardholder'' means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued. *See* proposed Rule 3.21(n)(6).

[49] The term ''credit card sales draft'' means any record or evidence of a credit card transaction. *See* proposed Rule 3.21(n)(9).

[50] The term ''merchant'' means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution. The term ''acquirer'' means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value. *See* proposed Rule 3.21(n)(2) and (14).

[51] The term ''merchant agreement'' means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution. *See* proposed Rule 3.21(n)(15).

[52] *See* 16 CFR 310.3(c); *see also* FINRA Rule 3230(l).

[53] *See* FTC, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995) at 43852.

[54] *See* proposed Rule 3.21(n)(2), (3), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (19), (20), and (21); and 16 CFR 310.2(a), (c), (d), (e), (f), (h), (i), (j), (k), (l), (n), (o), (p), (s), (t), (v), (w), (x), (cc), and (dd); *see also* FINRA Rule 3230(m)(2), (3), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (19), and (20). The proposed rule change also adopts definitions of ''account activity,'' ''broker-dealer of record,'' and ''personal relationship'' that are substantially similar to FINRA's definitions of these terms. *See* proposed Rule 3.21(n)(1), (4), and (18) and FINRA Rule 3230(m)(1), (4), and (18); *see also* 47 CFR 64.1200(f)(14) (FCC's definition of ''personal relationship'').

[55] *See* FTC, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995) at 43843; and FTC, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) at 4587.

[56] *See also* FINRA Rule 3230, Supplementary Material .01, *Compliance with Other Requirements.*

[57] *See* 47 U.S.C. 227.

[58] *See* 47 CFR 64.1200.

[59] 15 U.S.C. 78f(b).

[60] 15 U.S.C. 78f(b)(5).

[61] 15 U.S.C. 78s(b)(3)(A).

[62] 17 CFR 240.19b-4(f)(6).

investors or otherwise in furtherance of the purposes of the Exchange 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 email to *rule-comments@sec.gov.* Please include File Number SR–NSX–2012–13 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 No. SR–NSX–2012–13. This file number should be included in the subject line if email is used. To help the Commission process and review 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 a.m. and 3 p.m. eastern time. Copies of such filings will also 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–2012–13 and should be submitted on or before September 13, 2012.

For the Commission by the Division of Trading and Markets, pursuant to the delegated authority.[63]

Elizabeth M. Murphy,

Secretary.

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[63] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67682; File No. SR–NYSEArca–2012–82]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of FlexShares Ready Access Variable Income Fund Under NYSE Arca Equities Rule 8.600

August 17, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on August 7, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to list and trade the following under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): FlexShares Ready Access Variable Income Fund. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.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 self-regulatory organization 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 those 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 to list and trade the following Managed Fund Shares (''Shares'')[3] under NYSE Arca Equities Rule 8.600: FlexShares Ready Access Variable Income Fund (''Fund'').[4] The Shares will be offered by FlexShares Trust (''Trust''), a statutory trust organized under the laws of Maryland and registered with the Commission as an open-end management investment company.[5]

The investment adviser to the Fund will be Northern Trust Investments, Inc. (''Investment Adviser''). Foreside Fund Services, LLC will serve as the distributor for the Fund (''Distributor''). J.P. Morgan Chase Bank, N.A. will serve as the administrator, custodian, and transfer agent for the Fund (''Transfer Agent'').

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the

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

[2] 17 CFR 240.19b–4.

[3] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index, or combination thereof.

[4] The Commission has previously approved the listing and trading on the Exchange of other actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca–2009–79) (order approving Exchange listing and trading of five fixed income funds of the PIMCO ETF Trust); 61365 (January 15, 2010), 75 FR 4124 (January 26, 2010) (SR–NYSEArca–2009–114) (order approving Exchange listing and trading of Grail McDonnell Fixed Income ETFs).

[5] The Trust is registered under the 1940 Act. On June 28, 2012, the Trust filed with the Commission a post-effective amendment to Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''1933 Act'') and the 1940 Act relating to the Fund (File Nos. 333–173967 and 811–22555) (''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 30068 (May 22, 2012) (File No. 812–13868) (''Exemptive Order'').