

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54180; File No. SR-NSX-2006-09)

July 20, 2006

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto to Amend Its Fee Schedule Contained in Exchange Rule 11.10(A) to Include a Quotation Fee

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 3, 2006, the National Stock Exchange, Inc. (“NSX” or “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. On July 19, 2006, NSX submitted Amendment No. 1 to the proposed rule change. On July 20, 2006, NSX submitted Amendment No. 2 to the proposed rule change. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend its fee schedule reflected in Exchange Rule 11.10(A) to provide for a quotation fee. The quotation fee would be based upon the number of changes to the price or size of an ETP Holder’s displayed bid or offer on the Exchange (“quotation

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

updates”) and would apply only to the extent the ETP Holder’s average number of daily quotation updates is greater than 3 million. Below is the text of the proposed rule change, as amended. Proposed new language is underlined.

**RULES OF NATIONAL STOCK EXCHANGE**

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**CHAPTER XI**

**Trading Rules**

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**Rule 11.10 National Securities Trading System Fees**

A. Trading Fees

(a)-(r) No change.

(s) Quotation Fee. ETP Holders will be charged for quotation updates based upon the per quotation update rates as noted below. A “quotation update” means each change to the price or size of an ETP Holder’s displayed bid or offer on the Exchange.

<u>Avg. Daily Quotation Updates</u>	<u>Charge Per Quotation Update</u>
0 to 3,000,000 .....	\$0.00
<u>3,000,001 and higher.....</u>	<u>\$0.01 over 3,000,000</u>

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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, as amended, 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 aspects 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's fee schedule reflected in Exchange Rule 11.10(A) currently provides for fees payable by ETP Holders based upon, among other things, transactions executed on the Exchange, but does not provide for any fees based solely upon the number of changes to the price or size of an ETP Holder's quotation updates. However, NSX states that quotation updates can affect both the Exchange's systems resources and its regulatory functions. For example, a sufficiently high level of quotation updates could require that the Exchange expend additional resources on its systems technology in order to avoid capacity and performance degradation issues. NSX states that the levels of surveillance and investigation required in order for the Exchange to adequately discharge its self-regulatory obligations also increase with an increase in quotation updates. For these reasons, the Exchange believes that it is appropriate to charge a fee for high levels of quotation updates that consume a high amount of the Exchange's systems capacity and require a higher amount of regulatory scrutiny.

The proposed quotation fee would be based upon the number of quotations updates posted by an ETP Holder, but would apply only to the extent that an ETP Holder averages in excess of 3 million quotation updates per day. The Exchange is proposing to charge ETP Holders that provide quotation updates in excess of 3 million updates on an average daily basis a penny a quote for all quotation updates in excess of 3 million.<sup>5</sup> The average daily quotation

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<sup>5</sup> Thus, for example, an ETP Holder that has an averaged daily quotation updates of 3,000,001 would be assessed a penny and not have to pay \$30,000.01.

updates would be calculated on a monthly basis taking the total quotation updates for the month-end period (“TQU”) and dividing the TQU by the number of trading days the ETP Holder provides quotation updates. 3 million would be subtracted from this average daily quotation to yield the amount of daily quotations in excess of 3 million quotes. The excess would be multiplied by a penny to yield the daily quote charge. The daily quote charge would be multiplied by the number of trading days quoted for the month to yield the monthly quote charge. NSX states that the monthly quote charge would be collected by the Exchange on a monthly basis. The formula for the quote charge thus is:

$$[(\text{Number of quotation updates for the month} / \text{number of trading days quoted}) - 3,000,000] \times \$0.01 \times \text{the number of trading days quoted}$$

NSX states that, in deciding whether to assess a quote fee, it made a business decision to allow a certain level of quote traffic as part of any Equity Trading Permit regardless of any trading activity through NSX. The Exchange states that it determined to use 3 million as the baseline for its quoting traffic after taking into consideration a number of business concerns. According to NSX, these concerns include, but are not limited to, the cost to the Exchange assessed by the Consolidated Quotation Service and the Securities Information Processor for Tape C securities (including the cost of penalties for exceeding capacity), the cost to the Exchange for software and hardware costs associated with increased capacity, the average number of quotes provided by ETP Holders, the capacity of the old NSTS System, and the increased regulatory costs associated with the surveillance and investigations of ETP Holders. NSX states that any ETP Holder could choose to remain under the baseline for quoting traffic and not be charged any quote fee, or could choose to exceed the baseline and be charged only for those quote updates in excess of the baseline. Thus, the rule would apply equally to all ETP

Holders. The Exchange states that the rule also benefits ETP Holders as it allows them to plan for and administer their quoting traffic based on cost considerations during the interim period until the Exchange's new trading system is launched.

NSX states that the quotation fee has been designed in this manner in order to ensure that the Exchange can continue to fulfill its obligations under Section 6(b) of the Act<sup>6</sup> in the event of a high volume of quotation updates on the Exchange.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>8</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The Exchange also believes that the proposed rule change, as amended, furthers the objectives of Section 6(b)(1) of the Act<sup>9</sup> in that it helps to assure that the Exchange is so organized and has the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its ETP Holders with the Act.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is 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

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78f(b)(1).

The Exchange neither solicited nor received comments on the proposed rule change, as amended.

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

The foregoing proposed rule change, as amended, has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>10</sup> and Rule 19b-4(f)(2)<sup>11</sup> thereunder, because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. 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.<sup>12</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, as amended, 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-2006-09 on the subject line.

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

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on July 20, 2006, the date on which the Exchange submitted Amendment No. 2.

Paper comments:

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

All submissions should refer to File Number SR-NSX-2006-09. 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. 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 Number SR-NSX-2006-09 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Nancy M. Morris  
Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).