

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54194; File No. SR-NSX-2006-10)

July 24, 2006

Self-Regulatory Organizations; National Stock Exchange; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a new Chapter XVI of the NSX Rules Relating to Dues, Fees, Assessments, Charges, and Market Data Rebate Programs

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 13, 2006, National Stock Exchange (“NSX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by NSX. NSX filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission.<sup>5</sup> 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

NSX proposes to adopt Chapter XVI of its Rules relating to dues, fees, assessments, charges and market data revenue sharing programs. The text of the proposed rule change is available at the Commission, at NSX, and at [www.nsx.com](http://www.nsx.com).

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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).

<sup>4</sup> 17 CFR 240.19b-(4)(f)(6).

<sup>5</sup> NSX provided the Commission with written notice of its intent to file the proposed rule change on June 29, 2006. See Section 19(b)(3)(A) of the Act, and Rule 19b-4(f)(6)(iii) thereunder. 15 U.S.C. 78s(b)(3)(A), 17 CFR 240.19b-4(f)(6)(iii).

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

In its filing with the Commission, NSX 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. NSX 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

NSX Rule 11.10 currently sets forth the Exchange's fees, dues and rebate programs. NSX proposes to remove the language in NSX Rule 11.10 concerning fees, dues and rebate programs in connection with the Exchange's proposed changes to Chapter XI of its Rules, which are part of a separate proposed rule change.<sup>6</sup> The Exchange proposes to adopt Chapter XVI relating to fees, dues and rebate programs. Chapter XVI will replace current NSX Rule 11.10 when the Exchange's proposed changes to Chapter XI of its Rules become effective.

Proposed NSX Rule 16.1(a) authorizes the Exchange to prescribe such reasonable dues, fees, assessments or other charges as it may, in its discretion, deem appropriate. Such dues, fees, assessments and charges may include ETP Holder dues, transaction fees, communication and technology fees, regulatory charges, listing fees, and other fees and charges as the Exchange may determine. NSX Rule 16.1 further provides that all dues,

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<sup>6</sup> See SR-NSX-2006-08.

fees and charges shall be equitably allocated among ETP Holders, issuers and other persons using the Exchange's facilities.

Proposed NSX Rule 16.1(b) provides for a regulatory transaction fee pursuant to Section 31 of the Act.<sup>7</sup> This proposed Rule is identical to current Exchange Rule 11.10(q).

Proposed NSX Rule 16.1(c) states that the Exchange will provide ETP Holders with notice of all relevant dues, fees, assessments and charges. The Exchange proposes to maintain a separate fee schedule that contains its current fees, dues and other charges, instead of including all of its specific fees, dues and charges in the text of its Rules (as it currently does with NSX Rule 11.10). The Exchange notes that this approach is consistent with the approach taken by other national securities exchanges.<sup>8</sup>

Proposed NSX Rule 16.2(a) provides that crosses executed in Tape A, B and C securities will not be subject to any transaction fees. Under current NSX Rule 11.10(A)(k), the Exchange generally does not charge any transaction fees for trades in Tape B securities. Proposed NSX Rule 16.2(a) would replace current NSX Rule 11.10(A)(k), and would eliminate fees for crosses executed in Tape A and C securities.<sup>9</sup>

Proposed NSX Rule 16.2(b) contains the Exchange's market data revenue rebate programs, which are being moved from current NSX Rule 11.10(A)(l). The Exchange's current rebate programs, as reflected in NSX Rule 11.10(a)(l), consist of a 50%

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<sup>7</sup> 15 U.S.C. 78ee.

<sup>8</sup> See, e.g., Chicago Stock Exchange, Article XIV, Rules 1, 2 and 7; NYSE Arca Equities Rule 3.7.

<sup>9</sup> The Exchange's current fees for crosses in Tape A and C securities are contained in current NSX Rule 11.10(A)(e). NSX Rule 11.10(A)(e) is proposed to be removed as part of SR-NSX-2006-08.

transaction credit on revenues generated by transactions in Tape B and C securities. Proposed NSX Rule 16.2(b) is equivalent to current NSX Rule 11.10(A)(1), except that proposed NSX Rule 16.2(b) also establishes a rebate program for Tape A securities.

Like the Exchange's current Tape B and C rebate programs, the proposed new Tape A rebate program will provide a 50% transaction credit on revenues generated by transactions in Tape A securities, and will be allocable to members on a pro rata basis based upon the Tape A revenue generated by such members. The Exchange believes that there is no regulatory reason to distinguish Tape A transactions from Tape B and C transactions, and is therefore proposing an equivalent rebate program. As with the Exchange's current Tape B and C rebate programs, to the extent that market data revenue from Tape A transactions is subject to any adjustment, credits provided under the Tape A program may be adjusted accordingly.

The Exchange notes that, consistent with its Tape B and C programs, the Tape A rebate program will be based on gross Tape A revenue. The Exchange believes that the addition of this Tape A rebate program, and the calculation of rebates on a gross basis, will not impair its ability to carry out its regulatory responsibilities under the Act, as the change is likely to lead to greater transactional volume in Tape A securities on the Exchange and therefore greater revenues that may be applied to the Exchange's regulatory programs. The Exchange is cognizant of its surveillance and compliance responsibilities as a self-regulatory organization; its responsibilities as a self-regulatory organization will be in no way compromised by the implementation of the changes proposed herein. The Exchange notes that the calculation of rebates based on gross

revenues is consistent with market data revenue sharing programs of other national securities exchanges.<sup>10</sup>

Proposed NSX Rule 16.3 provides that Chapter XVI will become effective upon written notice by the Exchange to ETP Holders. The Exchange is proposing this effectiveness provision in order to ensure that the effectiveness of this new Chapter coincides with the effectiveness of the Exchange's proposed changes to its trading rules,<sup>11</sup> and the launch of its new trading system.

The Exchange believes this proposed rule change is consistent with the protection of investors and the public interest because it is designed to lower the cost of trading and market data to broker-dealers and the investing public, and to enhance competition in the trading of Tape A securities.

## 2. Statutory Basis

NSX believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,<sup>12</sup> in general, and with Section 6(b)(4) of the Act,<sup>13</sup> in particular,

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<sup>10</sup> NSX's definition of "gross revenue" is the revenue received by the Exchange from the tape associations after the tape associations take into account the "allocated support cost" and "unincorporated business costs." Some markets, such as the Chicago Stock Exchange ("CHX"), provide for rebates based upon monthly tape revenue from the Consolidated Tape Association (less all direct TA costs) generated by a particular Tape A or Tape B security (See CHX Fee Schedule, Section M). Other markets, like the Nasdaq Stock Market, allow members to earn credits from one or two pools, with each pool representing 50% of the tape revenue paid by the Consolidated Tape Association for each of the Tape A or Tape B transactions after deducting the amount that the market pays to the Consolidated Tape Association for capacity usage (See NASD Rule 7010(c)(2)). While the NYSE Arca LLC has some limitations on who is eligible to receive rebates, the amount of the pool for calculation purposes is based on 50% of the gross revenues derived from market data fees (See NYSE Arca "Market Data Revenue Sharing Credits" under Exchange Fees).

<sup>11</sup> See SR-NSX-2006-08.

<sup>12</sup> 15 U.S.C. 78f(b).

in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges by crediting members on a pro rata basis.

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

NSX 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

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</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.

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<sup>13</sup> 15 U.S.C. 78f(b)(4).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

The Exchange has asked that the Commission waive the 30-day operative delay to ensure that this proposed rule change will be both effective and operative on or before the effective date of SR-NSX-2006-08 and the date of NSX's launch of its new trading system. The Exchange expects to launch its new system on August 1, 2006. Waiver of the 30-day operative delay will eliminate the potential that the Exchange will not have rules in place relating to dues, fees, assessments, charges, and rebate programs at the time it launches its new system. In light of the foregoing, the Commission believes such waiver is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>16</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-2006-10 on the subject line.

##### Paper comments

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<sup>16</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

- 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-2006-10. 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 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-2006-10 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>17</sup>

Nancy M. Morris  
Secretary

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