

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54753; File No. SR-NSX-2006-14)

November 14, 2006

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto to Implement a Fee Schedule Under NSX Rule 16.1(a) and 16.1(c) for Transactions Executed Through NSTS and to Modify a Fee Schedule for ITS Transactions

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 31, 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 substantially prepared by the Exchange. On November 13, 2006, NSX submitted Amendment No. 1 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 Act³ and Rule 19b-4(f)(2) thereunder,⁴ 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 implement a new Fee Schedule to supplement Exchange Rule 11.10 for transactions executed through the Exchange’s National Securities Trading System (“NSTS”), and to amend the Fee Schedule applicable to transactions under the Intermarket

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

Trading System Plan and/or the Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage (“ITS Plans”), both to provide for an execution fee and a rebate for executions in Exchange Traded Funds (“ETFs”) classified as Tape B securities. The other fees for executions through NSTS during the phase-in period of Exchange’s new trading system, NSX BLADE, will remain the fees contained in NSX Rule 11.10. The text of the proposed rule change, as amended, is available on the Exchange’s Web site at <http://www.nsx.com>, at the principal office of NSX, 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, 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 proposes to (i) provide for a rebate of \$0.0027 per share executed for adding liquidity in NSTS for ETFs that are classified as Tape B securities and (ii) charge a liquidity taker fee of \$0.0030 per share for transactions in ETFs that are classified as Tape B securities via NSTS, including transactions executed through the auspices of the ITS Plans.

Background

The Exchange has created a new state of the art trading platform, known as NSX BLADE, that utilizes a strict price/time priority system as the ultimate replacement for NSTS. In

connection with the new trading platform, the Exchange filed a proposed rule change to accommodate the new trading platform, which was approved on August 31, 2006.⁵

As part of that rule filing, the Exchange stated that NSX BLADE will be phased in gradually — first with a small group of Tape C securities over several weeks until all Tape C securities have been transitioned to the new system. Once all Tape C securities have been transitioned to NSX BLADE, the Exchange will then transition all Tape A and Tape B securities.⁶

During this transitional period of phasing in various securities to the NSX BLADE System, the Exchange will be operating both NSTS and the NSX BLADE Systems. Until such securities are phased into the NSX BLADE System, Tape B securities, including ETFs that are classified as Tape B securities, will continue to be traded via NSTS.

Rule Set

During this transitional period of phasing in various securities to the NSX BLADE System, the Exchange will be operating under two sets of rules. All transactions in NSTS will still operate under the rules pertaining to NSTS (old NSX Rule 11.9 (National Securities Trading System) and old NSX Rule 11.10 (National Securities Trading System Fees)) while all transactions in NSX BLADE will operate under the new trading rules approved in SR-NSX-2006-08 and the new fee rules in Chapter XVI.⁷ When the phase-in period has expired and

⁵ See Securities Exchange Act Release No. 54391 (August 31, 2006), 71 FR 52836 (September 7, 2006) (order approving SR-NSX-2006-08).

⁶ The Exchange commenced the gradual phase-in of NSX BLADE on October 23, 2006 with the trading of one Tape C security. NSX plans to monitor this implementation and adjust the schedule as needed to maintain an orderly transition.

⁷ The Exchange filed SR-NSX-2006-10 in anticipation of the new trading rules and it was effective upon filing on July 13, 2006. See Securities Exchange Act Release No. 54194 (July 24, 2006), 71 FR 43258 (July 31, 2006) (notice of filing and immediate effectiveness of SR-NSX-2006-10). SR-NSX-2006-10 added Chapter XVI to the

NSTS is no longer operational, old NSX Rules 11.9 and 11.10 will be extinguished.⁸ The Exchange has issued a Notice to ETP Holders to advise them of the different trading systems and the rules and fees applicable to each,⁹ and will issue a Notice advising them of these new Fee Schedules and this rule change. During this interim period, the Exchange has decided to create a Fee Schedule applicable to NSTS Rules under the authority of NSX Rule 16.1. Further, while the Fee Schedule for ITS Transactions is identical to the Fee Schedule for identical transactions entered in NSTS, the Exchange has decided to create a Fee Schedule for ITS Transactions to make it easier for parties to identify the specific fees associated with the ETP Holders' transactions.

Fee Proposal

The instant rule change proposes a new Fee Schedule under NSX Rule 16.1(a) and 16.1(c) for executions through NSTS, and proposes to amend a Fee Schedule previously filed for

Exchange's Rules to create a central place where the ETP Holders can look to in order to determine the Exchange's fees and its Fee Schedules. Originally contemplated as the Fee Schedule for NSX BLADE, the chapter was flexible enough to allow the Exchange to establish other fees in that Chapter. For example, NSX Rule 16.1 is not limited by its terms to the NSX BLADE system. Thus, the Exchange has implemented the ITS Plan Fee Schedule to provide for a pass-through of costs provision which is applicable to any transactions through NSTS or NSX BLADE if done through an ITS Plan. See Securities Exchange Act Release No. 54692 (November 2, 2006), 71 FR 65867 (November 9, 2006) (notice of filing and immediate effectiveness of SR-NSX-2006-12). Moreover, any changes to the NSTS Fees, if necessary through the phase-in period, will be done through a Fee Schedule under NSX Rule 16.1. In contrast, NSX Rule 16.2 is limited to transactions through NSX BLADE in that rules relating to fees for crosses and tape credits for transactions through NSTS are already contained in the NSTS NSX Rule 11.10.

⁸ Similarly, the NSTS Fee Schedule will also be extinguished.

⁹ Regulatory Circular 06-011 issued on October 19, 2006.

transactions executed through the ITS Plans.¹⁰ The proposed NSTS and ITS Plan Fee Schedules provide for an execution fee of \$0.0030 per share for removing liquidity in ETFs classified as Tape B securities executed through NSTS (in other words, a charge for taking liquidity against an order in NSTS). ETP Holders taking liquidity will be charged under the NSTS Fee Schedule, and executions in Tape B ETFs through an ITS Plan will be charged under the ITS Plan Fee Schedule (although the rate of the two execution fees are identical).¹¹ The Fee Schedules also provide for a rebate of \$0.0027 per share executed for adding liquidity in NSTS for ETFs that are classified as Tape B securities (in other words, a rebate for the addition of liquidity to NSTS, provided that it results in an execution through the NSTS System).

The fees and rebates applicable to these Tape B ETF securities are contained in the NSTS Fee Schedule under NSX Rule 16.1. Moreover, as stated in SR-NSX-2006-13 (filed October 23, 2006), until transitioned to NSX BLADE, any transaction in the Tape A and Tape B (non-Nasdaq listed) securities through the NSTS System will be charged the fees in old NSX Rule 11.10. This NSTS Fee Schedule will supplement the fees and rebates contained in old NSX Rule 11.10 and will supercede any contrary fees that are contained in old NSX Rule 11.10. If the NSTS Fee Schedule does not contravene any fees stated in old NSX Rule 11.10, the ETP Holder affecting a transaction via NSTS will be charged the fees noted in old NSX Rule 11.10.

¹⁰ As set forth in SR-NSX-2006-10, the Exchange proposed 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.

¹¹ The Exchange would bill non-ETP Holders using the facilities of the Exchange for transactions through an ITS Plan under the ITS Plan Fee Schedule. See Securities Exchange Act Release No. 54548 (September 29, 2006), 71 FR 59159 (October 6, 2006) (notice of filing and order granting accelerated approval of SR-NSX-2006-11), which permits Exchange to Exchange billing for transactions through the Linkage Plan. The Exchange represented that, for purposes of Exchange to Exchange billing, it would charge in accordance with its fee schedule.

Pursuant to NSX Rule 16.1(c), the Exchange will “provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange.” ETP Holders and others, including self-regulatory organizations that are the subject of the Exchange to Exchange billing,¹² using the Exchange will be advised of these fees through the Exchange’s Web site. In addition, the ETP Holders will, simultaneous with the filing, be notified through the issuance of a Regulatory Circular of these new Fee Schedules applicable to transactions through the NSTS System and the ITS Plans.

NSX states the fees have 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.¹³

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹⁵ 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 Act¹⁶ 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.

¹² See id.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4).

¹⁶ 15 U.S.C. 78f(b)(1).

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

The Exchange has 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 Act¹⁷ and Rule 19b-4(f)(2)¹⁸ 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.¹⁹

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁸ 17 CFR 240.19b-4(f)(2).

¹⁹ 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 November 13, 2006, the date on which the Exchange submitted Amendment No. 1.

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. Please include File Number SR-NSX-2006-14 on the subject line.

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-2006-14. 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-2006-14 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.²⁰

Nancy M. Morris
Secretary

²⁰ 17 CFR 200.30-3(a)(12).