

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54829; File No. SR-NSX-2006-13)

November 29, 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 NSX BLADE

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 October 23, 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 17, 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 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 implement a fee schedule pursuant to the newly approved Chapter XVI of the Exchange Rules. The Fee Schedule would apply to executions through NSX’s new trading system, NSX BLADE. The fees for executions through the Exchange’s

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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).

current trading system, National Securities Trading System (“NSTS”), during the phase-in period of NSX BLADE are the fees contained in old Exchange Rule 11.10. Below is the text of the proposed rule change, as amended. Proposed new language is underlined.

**NATIONAL STOCK EXCHANGE, INC.**

**FEE SCHEDULE**

For Executions via

NSX BLADE<sup>SM</sup>

As of October, 2006

The following reflects the Schedule of Fees (pursuant to Rule 16.1(a) and Rule 16.1(c)) for all transactions executed via the National Stock Exchange System known as NSX BLADE<sup>SM</sup> (the “System”):

1. **Order Matching.** Orders in Tape C securities that are matched in the System will be subject to the following rebates and execution fees (computed on a monthly basis):

A. Rebate for adding liquidity (per share executed):

<u>Average Daily Shares of Liquidity Provided</u>	<u>Rebate for Adding Liquidity (Per Share Executed)</u>
<u>Greater than 30 million</u>	<u>\$0.0028</u>
<u>30 million or less</u>	<u>\$0.0027</u>

B. Execution fee for removing liquidity: \$0.0030 per share executed.

2. **Order Routing.** Orders that are routed through the System and executed in another market center shall be charged \$0.0040 per share executed.

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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

In anticipation of the approval of the new trading rules,<sup>5</sup> the Exchange recently amended its rules to add a Chapter XVI to set forth, in its own chapter, rules relating to fees, dues, assessments, and the tape rebate program. The rule change, SR-NSX-2006-10, was filed pursuant to Section 19(b)(3)(A) of the Act,<sup>6</sup> which rendered it effective upon filing.<sup>7</sup>

As part of the instant rule change, the Exchange is filing a Fee Schedule under NSX Rule 16.1(a) and 16.1(c) for executions through NSX BLADE.<sup>8</sup> This Fee Schedule provides for, in

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> See Securities Exchange Act Release No. 54194 (July 24, 2006), 71 FR 43258 (July 31, 2006) (notice of filing and immediate effectiveness of File No. SR-NSX-2006-10). SR-NSX-2006-10 was effective upon filing on July 13, 2006. NSX Rule 16.3 provides that the new Chapter XVI would become effective upon written notice by the Exchange to the ETP Holders. Notice was provided declaring Chapter XVI effective on October 2 and 19, 2006 respecting ITS transactions and transactions in NSX BLADE, respectively.

<sup>8</sup> 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, as it formerly did prior to the adoption of Chapter XVI.

connection with NSX BLADE transactions in Nasdaq-listed securities, an execution fee for removing liquidity from NSX BLADE (i.e., charging ETP Holders for taking liquidity against an order in the NSX BLADE System) of \$0.0030 per share executed on NSX BLADE and a rebate for adding liquidity in NSX BLADE (i.e., providing a rebate to any ETP Holder that adds liquidity to the NSX BLADE System). The rebate for adding liquidity would depend upon the amount of liquidity added by the ETP Holder as set forth in the Fee Schedule. If the ETP Holder provides 30 million shares or less of added liquidity, the Exchange would provide a rebate of \$0.0027 per share for all shares of liquidity provided that were executed on NSX BLADE. For those ETP Holders who provide, on an average daily basis, liquidity in excess of 30 million shares, the Exchange would rebate \$0.0028 per share for all shares (including the first 30 million) of liquidity provided that were executed on NSX BLADE. The Fee Schedule also provides for an order routing fee of \$0.0040 per share executed.

While SR-NSX-2006-10 was effective upon filing, NSX Rule 16.3 allows the Exchange to delay the effectiveness of the Rule until it gives written notice to its ETP Holders. This was done to allow the Exchange to file its rules while awaiting the launch of NSX BLADE. It is anticipated that NSX BLADE will be phased in gradually—first with a small group of Nasdaq-listed securities over several weeks until all Nasdaq-listed securities have been transitioned to the new system. Once all Nasdaq-listed securities have been transitioned to NSX BLADE, the Exchange will then transition all non-Nasdaq-listed securities.<sup>9</sup> The phase-in of NSX BLADE commenced on October 23, 2006 with the trading of one security.<sup>10</sup>

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<sup>9</sup> The NSX BLADE Fee Schedule will be amended to reflect fees for executions for Tape A and B (non-NASDAQ ) securities prior to the time those securities are transitioned to NSX BLADE.

<sup>10</sup> NSX plans to monitor this implementation and adjust the schedule as needed to maintain an orderly transition.

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. Accordingly, the Exchange will be operating under two sets of rules during the phase-in period. All transactions in the NSTS System 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.<sup>11</sup> When the phase-in period has expired and NSTS is no longer operational, old NSX Rules 11.9 and 11.10 will be extinguished. The Exchange has issued a Notice to ETP Holders to advise them of the different trading systems and rules and fees applicable to each,<sup>12</sup> and will issue a Notice advising them of the new Fee Schedule and rule change.

Since NSX will first begin transitioning Nasdaq-listed securities, the fees contained in the NSX BLADE Fee Schedule apply only to Nasdaq-listed securities. Until transitioned to NSX BLADE, any transaction in Nasdaq-listed securities and non-Nasdaq-listed securities through the NSTS System will be charged the fees contained in old Exchange Rule 11.10.

Pursuant to newly approved 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 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 the new NSX BLADE Fee Schedule.

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<sup>11</sup> The Fee Schedule filed in SR-NSX-2006-12 is applicable to any transaction through an ITS Plan, regardless of whether the transaction was done through NSTS or NSX BLADE.

<sup>12</sup> Regulatory Circular 06-011 issued on October 19, 2006.

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.<sup>13</sup>

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>15</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>16</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

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

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

<sup>14</sup> 15 U.S.C. 78f(b).

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

<sup>16</sup> 15 U.S.C. 78f(b)(1).

### 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>17</sup> and Rule 19b-4(f)(2)<sup>18</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>19</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-2006-13 on the subject line.

#### Paper comments:

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>18</sup> 17 CFR 240.19b-4(f)(2).

<sup>19</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 November 17, 2006, the date on which the Exchange submitted Amendment No. 1.

- 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-2006-13. 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-2006-13 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>20</sup>

Nancy M. Morris  
Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).