

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57316; File No. SR-NSX-2008-01)

February 12, 2008

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto, to Amend Exchange Rule 16 and the Fee Schedule to Modify Fees and Market Data Rebates for AutoEx Transactions and Other Changes

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 January 30, 2008, the National Stock Exchange, Inc. (“NSX” or “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On February 6, 2008, NSX filed Amendment No. 1 to the proposed rule change. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders it 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

NSX proposes to amend Exchange Rule 16 and the NSX BLADESM Fee and Rebate Schedule (the “Fee Schedule”) in order to (i) modify the fees and market data rebates associated with trading primarily in the automatic mode of order execution (hereinafter “AutoEx”) transactions, (ii) establish a quarterly de minimis threshold amount for tape credits, and (iii) substitute the current Fee Schedule with a more transparent Fee Schedule in a revised format.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

The text of the proposed rule change is available at the <http://www.nsx.com>, the Exchange and 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, 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. 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 is proposing to modify certain fees and rebates for trades executed in AutoEx as set forth in Rule 11.13(b)(1). In addition, a de minimis rebate threshold is proposed which would eliminate market data rebates below a certain quarterly amount. Finally, the Fee Schedule is proposed to be reformatted to best reflect the foregoing.

Liquidity Taking Fee in AutoEx

Specifically, with respect to securities traded at one dollar or more in AutoEx, the instant filing proposes reducing the per share executed liquidity taking fee from \$0.0030 to \$0.0025 across Tapes A, B, and C in NSX BLADE for any ETP Holder⁵ who, as a liquidity provider, has an average daily volume of at least 50,000 shares executed per trading day (excluding partial trading days and securities under one dollar) for the month in which the executions occurred.

⁵ An ETP Holder is a registered broker or dealer that has been issued an Equity Trading Permit by NSX. An ETP Holder will have the status of a "member" of the Exchange as that term is defined in Section 3 of the Act.

The current \$0.0030 per share executed liquidity taking fee would remain unchanged with respect to ETP Holders who do not reach such average daily volume during the month. The introduction of a reduced liquidity taking fee upon meeting certain volume requirements is intended to provide an incentive to ETP Holders to post liquidity at NSX, thereby bringing more liquidity to the Exchange.

Liquidity Provider Rebates in AutoEx

Further, the Exchange proposes to simplify the Fee Schedule by providing for different rebates for adding liquidity depending on whether the security is in Tape A, B, or C, instead of whether the security is identified a “Designated ETF Share.” Thus, under the proposed Fee Schedule, the rebate for adding liquidity is reduced in Tape A and C securities generally from \$0.0030 per share executed to \$0.0026 per share executed. The \$0.0030 per share executed liquidity providing rebate in Tape B securities remains unchanged except for those Exchange Traded Funds identified as “Designated ETF Shares,” in which case the per share executed liquidity providing rebate is reduced under the proposed Fee Schedule from \$0.0035 to \$0.0030. The concept of “Designated ETFs” and the associated fee and rebate structure as set forth in the current Fee Schedule is proposed to be eliminated in its entirety and replaced by the foregoing simplified rate structure. However, the distinction between the liquidity provider rebates for the Tape B securities and the Tape A and C securities corresponds to the previous distinction between Designated ETF Shares (which were largely Tape B securities) and Tape A and C securities. NSX made this distinction in its past Fee Schedule between the rebates to provide an incentive to increase trading volume in the Designated ETF Shares.⁶ Since these shares are largely Tape B securities that distinction has been retained in this proposed Fee Schedule.

⁶ See Securities Exchange Act Release No. 56883 (December 3, 2007), 72 FR 69269 (December 7, 2007) (SR-NSX-2007-11).

Moreover, NSX believes the proposed liquidity provider rebates are not unfairly discriminatory in that all ETP Holders are eligible to trade in Tape A, B, and C securities in AutoEx and may do so at their discretion.

Tape Credits in AutoEx

The instant filing proposes to eliminate tape credits for trade market data across Tapes A, B, and C in all AutoEx transactions, regardless of the price of the security. Tape credits would remain unchanged with respect to transactions in the Order Delivery mode.

De Minimis Rebate Threshold for Market Data Revenue

The instant filing proposes to adopt new Exchange Rule 16.2(b)(5) to eliminate quarterly market data revenue rebates which aggregate less than \$250 per quarter with respect to any ETP Holder. The Exchange believes that the value of such rebates is outweighed by the associated administrative burden both to the Exchange and to ETP Holders who receive such rebates.

Order Delivery and Other Fees and Costs

The fees and/or rebates with respect to transactions in the Order Delivery mode of order interaction as set forth in Rule 11.13(b)(2) remain unchanged, except for the application of the de minimis tape credit rebate threshold discussed above. Moreover, for purposes of clarification, the execution fee for removing liquidity is the same whether the contra-order is an AutoEx or Order Delivery order.⁷ Thus, the fee for taking liquidity from an Order Delivery firm is reflected in the Fee Schedule as taking liquidity in the AutoEx mode. Further, there are no currently

⁷ Orders entered via Order Delivery/Automated Response provide liquidity to the Exchange since the Order Delivery/Automated Response mode was designed to prevent an Order Delivery Firm from having two executions for the same liquidity in two different markets – at the Exchange and at the Electronic Communication Network’s market. Thus, by definition, an Order Delivery mode of execution would never take liquidity away from the Exchange. The contra-side of an Order Delivery Automated Response will always be conducted using the AutoEx Mode of Rule 11.3(b)(1).

proposed changes to the information contained in Section III of the proposed Fee Schedule regarding routing fees.

New Fee Schedule Format

Finally, in addition to the substantive changes to the Fee Schedule as described above, the instant filing proposes the adoption of a new format for its Fee Schedule, which the Exchange believes is more transparent and easier to navigate and understand. The proposed Fee Schedule is renamed as the Exchange's "Fee and Rebate Schedule" and includes the tape credit amounts specified in Rule 16.2(b). The proposed Fee Schedule provides explanatory endnotes and cross references applicable Exchange Rules where necessary or applicable.

Rationale

The Exchange has determined that the proposed rule change is necessary for competitive reasons. Under the proposed Fee Schedule, the fees paid by a particular ETP Holder will depend on a number of variables, including the mode of order interaction (AutoEx or Order Delivery), the types of securities traded through NSX BLADE (Tapes A, B, or C), the average daily monthly liquidity providing volume, and the price of the securities (with a distinction for those above and below \$1.00). These factors are taken into consideration and reflected in the introduction of a reduced liquidity taking fee (provided certain volume thresholds are met) as an incentive to ETP Holders to both post and take liquidity at NSX and the more simplified fee schedule for Tape B securities (in lieu of the longer list of the fees associated with specific Designated ETF Shares⁸). NSX notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be more attractive. Accordingly, the proposed modifications attempt to keep

⁸ See supra note 6.

the fees reflected in the Fee Schedule competitive with fees charged by other venues and to continue to be reasonable and equitably allocated to those ETP Holders that opt to direct orders to NSX. Based upon the information above, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest.

Effective Date and Notice

The Exchange intends to make operative the tape rebate structure and new Fee Schedule in accordance with the proposed rule change on February 1, 2008. Pursuant to Exchange Rule 16.1(c), the Exchange will “provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange” through the issuance of a Regulatory Circular of the changes to the Fee Schedule and will provide a copy of the rule filing on the Exchange’s Web site (www.nsx.com).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,⁹ in general, and Section 6(b)(4) of the Act,¹⁰ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges. Moreover, the proposed liquidity provider rebates are not discriminatory in that all ETP Holders are eligible to trade in Tape A, B, and C securities in AutoEx and may do so at their discretion.

B. Self Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

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

The foregoing proposed rule change is filed pursuant to Section 19(b)(3)(A)(ii) of the Act¹¹ and subparagraph (f)(2) of Rule 19b-4 thereunder¹² because it establishes or changes a due, fee, or other charge applicable only to a member imposed by a self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. 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.¹³

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. Please include File Number SR-NSX-2008-01 on the subject line.

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).

¹³ For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on February 6, 2008, the date on which NSX filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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-2008-01. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. 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-2008-01 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Florence E. Harmon
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).