

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58935; File No. SR-NSX-2008-19)

November 13, 2008

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Exchange Rule 16 and the NSX Fee Schedule for Order Delivery Mode 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 November 5, 2008, National Stock Exchange, Inc. (“NSX” or the “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. 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

The Exchange is proposing to amend Exchange Rule 16.2(b) and the NSX Fee and Rebate Schedule (the “Fee Schedule”) issued pursuant to Exchange Rule 16.1(c) in order to (i) eliminate the rebate for adding liquidity in Order Delivery mode of order interaction for all securities and (ii) eliminate the trade and quote market data revenue credit in Order Delivery mode for all securities.

The text of the proposed rule change is available on the Exchange’s website at <http://www.nsx.com>, at the principal office of the Exchange, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

In its filing with the Commission, the Exchange 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 parts of such statements.

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

1. Purpose

With this rule change, the Exchange is proposing to eliminate all liquidity adding rebates and market data revenue credits in Order Delivery mode of order interaction (“Order Delivery Mode”).³ In particular, for securities in Order Delivery Mode, this rule change proposes to reduce the rebate for adding liquidity to zero across all Tapes and regardless of the price at which the securities are trading.⁴

In addition, with respect to Tape B and C securities in Order Delivery Mode, the instant filing proposes to eliminate the market data revenue credit in both trades and quotes. Currently in Order Delivery Mode, ETP Holders receive a credit of 50% of both trade and quote market data revenues for Tape B and C securities, regardless of price. This credit is proposed to be

³ This rule change proposes no changes to the fees and rebates applicable to securities executed in the Automatic Execution (“Auto Ex”) mode of order interaction under current NSX Rule 11.13(b)(1).

⁴ In particular, for securities trading at or above one dollar in Order Delivery Mode, this rule change proposes to reduce to zero the rebate for adding liquidity from \$0.0023 per share executed for Tape A, and from \$0.0025 per share executed for Tapes B and C. For securities which trade under one dollar in Order Delivery Mode, this rule change proposes to reduce to zero the rebate for adding liquidity from 0.10% of the trade value, where “trade value” means a dollar amount equal to the price per share multiplied by the number of shares executed.

eliminated for all Tape B and C securities executed in Order Delivery Mode, regardless of price, which effectively eliminates tape revenue sharing in Order Delivery Mode.⁵

Because as a result of the proposed rule change there would be no tape credit sharing program under either Order Delivery Mode or Automatic Execution mode of order interaction (“AutoEx”), the instant rule filing proposes to simplify Rule 16.2 by eliminating the text of Rule 16.2(b) (“Tape Credits”) in its entirety. To the extent that the Consolidated Tape Association or the Nasdaq Securities Information Processor subsequently adjusts any Tape A, Tape B or Tape C revenue earned by the Exchange for any period(s) during which the tape revenue credit program was in effect, credits paid to ETP Holders would be adjusted, as necessary, in accordance with the rules in effect during such period, including the “De Minimis Credits” rule under current Rule 16.2(b)(5) which establishes an eligibility threshold of \$250 per calendar quarter for participation in the tape credit program.

No Changes to Automatic Execution Mode

For purposes of clarity, the proposed rule change proposes no modifications to the fees and rebates relating to any trades in AutoEx.

Rationale

The Exchange has determined that these changes are necessary to increase the revenue of the Exchange and to adequately fund its regulatory and general business functions. The proposed modification is reasonable and equitably allocated to those ETP Holders that opt to provide liquidity in Order Delivery Mode, and is not discriminatory because ETP Holders are free to elect whether to send orders in all tapes through the Order Delivery Mode, through

⁵ Pursuant to SR-NSX-2008-17, the Exchange previously eliminated the tape revenue sharing credit program for all Tape A securities in Order Delivery Mode.

AutoEx, and as liquidity providing trades and quotes. Based upon the information above, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest.

Operative Date and Notice

The Exchange intends to make the proposed credit and rebate structure effective on filing of this proposed rule for trading on November 6, 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 post a copy of the rule filing on the Exchange’s website (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,⁶ in general, and Section 6(b)(4) of the Act,⁷ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using the facilities of the Exchange. Moreover, the proposed fee and rebate structure is not discriminatory in that all ETP Holders are eligible to submit (or not submit) liquidity adding trades and quotes in Order Delivery Mode or AutoEx in all tapes 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 impose any inappropriate burden on competition.

⁶ 15 U.S.C. 78f(b).

⁷ 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

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

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act⁸ and subparagraph (f)(2) of Rule 19b-4⁹ thereunder, because, as provided in (f)(2), it changes “a due, fee or other charge applicable only to a member” (known on the Exchange as an ETP Holder). At any time within sixty (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.

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-2008-19 on the subject line.

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

Paper Comments:

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

All submissions should refer to File Number SR-NSX-2008-19. 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 a.m. and 3:00 p.m. Copies of the 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-2008-19 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.¹⁰

Florence E. Harmon
Acting Secretary

¹⁰ 17 CFR 200.30-3(a)(12).