

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60068; File No. SR-NSX-2009-04)

June 8, 2009

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Fee and Rebate Schedule to (i) Increase from 50,000 to 5 Million the Liquidity Adding Average Daily Volume Thresholds in the Automatic Execution Mode of Order Interaction (“AutoEx”); (ii) Include Securities Less Than One Dollar in the Calculation of Liquidity Adding and Total Average Volume Thresholds in AutoEx; and (iii) Eliminate the Two Lower Tiers with Respect to the AutoEx Liquidity Adding Zero Display Order Rebate

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 29, 2009, National Stock Exchange, Inc. 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 comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

National Stock Exchange, Inc. (“NSX[®]” or “Exchange”) is proposing to amend the Fee and Rebate Schedule (the “Fee Schedule”) issued pursuant to Exchange Rule 16.1(c) in order to (i) increase from 50,000 to 5 million the liquidity adding average daily volume thresholds in the Automatic Execution Mode of order interaction (“AutoEx”); (ii) include securities less than one dollar in the calculation of liquidity adding and total average volume thresholds in AutoEx; and (iii) eliminate the two lower tiers with respect to the AutoEx liquidity adding zero display order rebate.

The text of the proposed rule change is available on the Exchange’s website at

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

<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

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

Purpose

With this rule change, the Exchange is proposing to make three changes to the Fee Schedule, in each case only with respect to AutoEx³.

First, the liquidity adding average daily volume ("Liquidity Adding ADV") thresholds in AutoEx that are currently set at 50,000 are proposed to be increased to 5 million. This threshold is used to determine both the amount of the liquidity taking fee in AutoEx and eligibility for receipt of the liquidity adding zero display order rebate in AutoEx. Under the Fee Schedule in effect prior to effectiveness of the instant proposed rule change, an ETP Holder needs to achieve a Liquidity Adding ADV⁴ of 50,000 in order to obtain a reduced liquidity taking fee from \$0.0030 to \$0.0028 per share. The instant rule filing proposes to increase the Liquidity Adding ADV used with respect to AutoEx liquidity taking fees from 50,000 to 5 million. In addition,

³ The Exchange's two modes of order interaction are described in NSX Rule 11.13(b).

⁴ Explanatory Endnote 3 of the Fee Schedule contains the definition of "Liquidity Adding ADV".

under the Fee Schedule in effect prior to effectiveness of the instant proposed rule change, an ETP Holder needs to achieve a Liquidity Adding ADV of 50,000 in order to become eligible to receive rebates for submitting liquidity adding Zero Display Orders⁵ in AutoEx. If an ETP Holder fails to achieve a Liquidity Adding ADV of 50,000, such ETP Holder is not eligible to receive a liquidity adding Zero Display Order rebate. The instant rule filing proposes to increase the Liquidity Adding ADV used with respect to eligibility to receive a liquidity adding Zero Display Order rebate in AutoEx from 50,000 to 5 million.

Second, the instant rule change proposes to include securities less than one dollar in the calculation of Liquidity Adding ADV and Total ADV⁶. Prior to effectiveness of the instant rule change, securities less than one dollar were excluded from such calculations except only with respect to the volume tier thresholds relative to the AutoEx liquidity adding displayed order rebate for Tape A and C securities⁷. The instant rule change would include sub-dollar securities in all calculations of both Liquidity Adding ADV and Total ADV.

Third, the two lower of the three tiers used to determine the amount, if any, of an ETP Holder's rebate for liquidity adding Zero Display Orders in AutoEx would be eliminated under the proposed rule change. Under the Fee Schedule prior to effectiveness of the instant proposed rule change, progressively higher rebates may be awarded where an ETP Holder achieves Total

⁵ "Zero Display Orders" means "Zero Display Reserve Orders" as specified in NSX Rule 11.11(c)(2)(A).

⁶ "Total ADV" is used to determine the amount, if any, of an ETP Holder's liquidity adding Zero Display Order rebate in AutoEx. See Explanatory Endnote 5 of the Fee Schedule.

⁷ See SR-NSX-2009-03 (filed My [sic] 15, 2009).

ADV of 1 million⁸, 15 million⁹ and 30 million¹⁰ shares. The instant rule change proposes to eliminate the 1 million and 15 million tiers (together with the associated lesser rebate amounts of \$0.0022 and \$0.0023 per share, respectively), such that the sole remaining Total ADV tier would be 30 million, for which the associated rebate would remain \$0.0025 per share.

The proposed rule change would not modify other calculations of average daily volume, volume tiers, or associated fees that are included in the Fee Schedule.

Rationale

The Exchange has determined that these changes are necessary to increase the volume of liquidity adding and sub-dollar orders in AutoEx for the purpose of increasing the revenue of the Exchange and adequately funding its regulatory and general business functions. The proposed modifications are reasonable and equitably allocated to those ETP Holders that opt to provide liquidity adding and sub-dollar orders in AutoEx, and are not discriminatory because ETP Holders are free to elect whether or not to send such orders. 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 utilize the proposed volume thresholds effective June 1, 2009. Pursuant to Exchange Rule 16.1(c), the Exchange will “provide ETP Holders with notice of all

⁸ The first tier is \$0.0022 per share (applicable to shares executed in AutoEx which added liquidity as Zero Display Orders), where Total ADV is greater than or equal to 1 million and less than 15 million.

⁹ The second tier is \$0.0023 per share (applicable to shares executed in AutoEx which added liquidity as Zero Display Orders), where Total ADV is greater than or equal to 15 million and less than 30 million.

¹⁰ The third tier is \$0.0025 per share (applicable to shares executed in AutoEx which added liquidity as Zero Display Orders), where Total ADV is greater than or equal to 30 million.

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).

Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,¹¹ in general, and Section 6(b)(4) of the Act,¹² 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 and sub-dollar trades and quotes, and may do so at their discretion in the daily volumes they choose during the course of the measurement period.

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.

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 Act¹³ and subparagraph (f)(2) of Rule 19b-4¹⁴ thereunder, because, as provided in (f)(2), it

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2009-04 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NSX-2009-04. 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

¹⁴ 17 CFR 240.19b-4 [sic].

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 will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-2009-04 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.¹⁵

Florence E. Harmon
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).