

requirement under section 6(b)(3) of the Act<sup>42</sup> that the rules of an exchange assure a fair representation of its members in the selection of its directors. The Commission also notes that such a requirement is consistent with the rules of another exchange, which were approved by the Commission,<sup>43</sup> and therefore believes that Amendment No. 2 raises no new issues. The Commission therefore finds good cause exists to accelerate approval of the proposed change, as modified by Amendment No. 2, pursuant to section 19(b)(2) of the Act.

## VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>44</sup> that the proposed rule change (SR-NASDAQ-2007-068) as modified by Amendment Nos. 1 and 2, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>45</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56890; File No. SR-NSX-2007-13]

### Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Market Data and Liquidity Provider Rebate Programs for Transactions Through NSX BLADE

December 4, 2007.

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 26, 2007, 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 prepared substantially by NSX. NSX filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)

thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. 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 BLADE Fee Schedule ("Schedule") in order to implement a series of fee changes, including changes to its tape credit programs. The text of the proposed rule change is available at NSX, <http://www.nsx.com>, 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. NSX 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

NSX proposes a series of fee changes, including changes to its tape credit program for ETP Holders using the Order Delivery mode of order interaction as set forth in Exchange Rule 11.13(b)(2) ("Order Delivery"). In general, as further described below, the Exchange proposes to restructure its market data rebates (known as "tape credits") so as to credit ETP Holders using Order Delivery for market data revenue derived from both transactions and quotes.<sup>5</sup> The Exchange will also decrease the rate at which it rebates those ETP Holders using Order Delivery who have executed liquidity providing shares. Finally, the Exchange proposes that its liquidity provider rebate be

simplified for all transactions in shares executed at less than \$1.00 per share to a single rate.

#### Market Data Rebates

Exchange Rule 16.2(b) currently provides for a 100% pro rata credit on market data revenues generated by transactions in Tape A, Tape B and Tape C securities except for transactions executed using AutoEx and involving certain Designated ETF Shares as set forth in Exhibit A to the Schedule. NSX currently provides no credit on market data revenue generated by quotes in Tape A, Tape B and Tape C securities.<sup>6</sup> With the instant proposed rule change, the Exchange proposes that Exchange Rule 16.2(b) be amended such that the Exchange will share 50% of its market data revenue generated by transactions and 50% of its market data revenue generated by quotes to those ETP Holders<sup>7</sup> using Order Delivery. Thus, while the market data revenue derived from trades is being reduced, there will be a corresponding increase in market data revenue derived from quotes. This rebate program is consistent with other rebate programs provided to Order Delivery firms by other self-regulatory organizations.<sup>8</sup>

The instant proposed rule change does not affect ETP Holders using AutoEx. AutoEx ETP Holders will continue to receive a 100% pro rata credit on market data revenue generated by transactions, unless the subject of the transaction is a Designated ETF Share, but will not receive any credit on market data revenue derived from quoting. All of these market data credits will continue to be allocable to ETP Holders on a pro rata, or symbol-by-symbol, basis based upon Tape A, Tape B and Tape C revenue generated by an ETP Holder's transactions or an ETP Holder's quotes on the Exchange, as applicable.

#### Liquidity Provider Rebates in Order Delivery Transactions

Currently, the Schedule provides that Order Delivery ETP Holders providing liquidity on securities executed at more than \$1.00 per share will receive a

<sup>6</sup> See Securities Exchange Act Release No. 56008 (July 3, 2007), 72 FR 37809 (July 11, 2007) (SR-NSX-2007-07); see also SR-NSX-2007-11 (filed October 1, 2007).

<sup>7</sup> The Allocation Amendment of Regulation NMS provides that market data revenue will be received by self-regulatory organizations such that 50% of the revenue is based on the reporting of quotes and 50% is based on the reporting of transactions. See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37476 (June 29, 2005).

<sup>8</sup> See Securities Exchange Act Release No. 55722 (May 8, 2007), 72 FR 27150 (May 14, 2007) (SR-ISE-2007-24).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> ETP Holders using the Automatic Execution ("AutoEx") mode of order interaction pursuant to Exchange Rule 11.13(b)(1) would continue to receive a 100% pro rata allocation of market data revenue related to transactions. ETP Holders using AutoEx will not receive any market data revenue related to quotes. ETP Holders will additionally receive no market data revenue credit for transactions that utilize AutoEx and that involve those securities that have been identified by the Exchange as Designated ETF Shares.

<sup>42</sup> 15 U.S.C. 78f(b)(3).

<sup>43</sup> See Article III, Section 5 of the Amended and Restated Bylaws of NYSE Market, Inc. See also Release No. 34-53382, *supra* note 38.

<sup>44</sup> 15 U.S.C. 78s(b)(2).

<sup>45</sup> 17 CFR 200.30-3(a)(12).

<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).

rebate of \$0.0028 per share executed. The Exchange is proposing that the Schedule be modified so that Order Delivery ETP Holders placing these orders will receive rebates of \$0.0026 per share executed. However, if the Order Delivery ETP Holder providing liquidity has executed an average of 60 million shares per trading day (excluding partial trading days) on NSX BLADE for the calendar month, the Exchange will provide those ETP Holders with rebates of \$0.0027 per share executed. The Exchange believes that the enhanced rebate that ETP Holders who have executed an average of 60 million shares per day on NSX BLADE over the course of a calendar month will receive for Order Delivery orders is appropriate in light of the significant order flow it is likely to produce, resulting in the Exchange receiving greater funds to permit, among other things, the Exchange to carry out its regulatory functions. Moreover, the Exchange believes that this change in the liquidity provider rebate is appropriate because the Order Delivery mode of order interaction involves greater cost and regulatory burden for the Exchange.

#### Liquidity Provider Rebates for Trades Executed at Less Than \$1.00 per Share

The Exchange currently provides all ETP Holders who provide liquidity with rebates for transactions executed at less than \$1.00 per share ("sub-dollar trades") which mirror the rebates provided for orders executed at \$1.00 or more per share. Thus, the Exchange currently provides different levels of liquidity-providing rebates for sub-dollar trades depending on the circumstances. With the instant proposed rule change, the Exchange is proposing to simplify this arrangement by providing all ETP Holders providing liquidity with a rebate equal to 0.1% of the price per share, multiplied by the number of shares, for all sub-dollar trades. This rate will apply regardless of the symbols executed or the mode of order interaction selected by the ETP Holder.

The Exchange has determined that these changes to the Schedule and tape credits are necessary for competitive reasons, particularly in light of the fact that other markets have similar provisions in their market data revenue rebate programs.<sup>9</sup> Further, the Exchange believes that these fee changes will not impair its ability to carry out its regulatory responsibilities.

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." Accordingly, ETP Holders will, simultaneously with this filing, be notified through the issuance of a Regulatory Circular of the changes to Rule 16.2(b) and the NSX BLADE Fee Schedule.

#### 2. Statutory Basis

NSX believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,<sup>10</sup> in general, and with Section 6(b)(4) of the Act,<sup>11</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

NSX 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

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and
- (iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup> 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.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NSX-2007-13 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-2007-13. 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 on official business days between the hours of 10 a.m. and 3 p.m. 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-2007-13 and should be submitted on or before January 2, 2008.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>9</sup> *Id.*