

include a centralized forum for price discovery, pre- and post-trade transparency, standardized contract specifications, and the guarantee of the Options Clearing Corporation.

The Commission believes that the proposal strikes a reasonable balance between the Exchange's desire to offer a wider array of products with the need to avoid unnecessary proliferation of options series and the corresponding increase in quotes. In approving the proposed rule change, the Commission has relied on the Exchange's representation that it has the necessary systems capacity to support the new options series that will be listed under this proposal. This approval order is conditioned on CBOE's adherence to this representation. The Commission expects the Exchange to continue to monitor for options with little or no open interest and trading activity and to act promptly to delist such options. In addition, the Commission expects that CBOE will monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, the Options Price Reporting Authority's, and vendors' automated systems.

#### Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-CBOE-2009-068), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60979; File No. SR-NSX-2009-06]

### 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 Exclude, for Purposes of Calculating the Automatic Execution Mode of Order Interaction ("AutoEx") Liquidity Adding Displayed Order Rebate, An ETP Holder's Lowest Full Trading Day's Liquidity Adding Volume From The Determination of The ETP Holder's "Liquidity Adding Average Daily Volume"

November 10, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 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 exclude, for purposes of calculating the Automatic Execution Mode of order interaction ("AutoEx") liquidity adding displayed order rebate with respect to each ETP Holder during each measurement period, such ETP Holder's lowest full trading day's liquidity adding volume from the determination of the ETP Holder's "liquidity adding average daily volume."

The text of the proposed rule change is available on the Exchange's Web site 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

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 make a change to the Fee and Rebate Schedule (the "Fee Schedule") solely with respect to calculation of the rebate for Displayed Orders that add liquidity in AutoEx<sup>3</sup>.

An ETP Holder's liquidity adding average daily volume ("Liquidity Adding ADV") is used, among other things, to determine the amount of an ETP Holder's liquidity adding Displayed Order rebate in AutoEx ("AutoEx Displayed Order Liquidity Adding Rebate"). Explanatory Endnote 3 of the Fee Schedule currently defines "Liquidity Adding ADV" as, "with respect to an ETP Holder<sup>11</sup>, the number of shares such ETP Holder has executed as a liquidity provider on average per trading day (excluding partial trading days) across all tapes on NSX for the calendar month (or partial month, as applicable) in which the executions occurred." The instant rule filing proposes to modify this definition to exclude from such calculation, solely for purposes of calculating the AutoEx Displayed Order Liquidity Adding Rebate, an ETP Holder's lowest full trading day's liquidity adding volume during each measurement period. Thus, solely for purposes of calculating the AutoEx Displayed Order Liquidity Adding Rebate, the ratio used to determine an ETP Holder's Liquidity Adding ADV during each measurement period would be adjusted by (x) excluding from the numerator the ETP Holder's lowest full trading day's volume of shares executed as a liquidity provider, and (y) reducing the denominator by one day.

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.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

## Rationale

The Exchange has determined that these changes are necessary to accommodate for situations where, due to unusual circumstances<sup>4</sup> during a measurement period, an ETP Holder obtains abnormally low liquidity adding executions at the Exchange. By omitting one day per measurement period which, as a volume outlier, skews downward an ETP Holder's average daily volume for purposes of calculating the AutoEx Displayed Order Liquidity Adding Rebate, the Exchange is responding to the needs of its customers and the realities of order flow.

The Exchange believes that the proposed modification will enhance the Exchange's reputation within the industry as highly responsive to its customers' needs, will assist in attracting additional customers, and will ultimately cause increased volumes of liquidity adding orders at the Exchange, all of which shall serve to increase the revenue of the Exchange and its ability to adequately fund its regulatory and general business functions. The proposed modifications are reasonable and equitably allocated to those ETP Holders that opt to provide liquidity adding orders in AutoEx, and are not discriminatory because such terms apply to all ETP Holders, who 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 revised definition as of November 1, 2009. 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 Web site (<http://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,<sup>5</sup> in general, and Section 6(b)(4) of the Act,<sup>6</sup> in particular, in that it is designed to provide for the equitable

<sup>4</sup> Abnormally low liquidity adding volumes may be caused by a variety of factors, including internal problems with an ETP Holder's systems, connections or other technology, as well by occasional abnormally low overall market volumes.

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(4).

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 on the same basis, 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 Act<sup>7</sup> and subparagraph (f)(2) of Rule 19b-4<sup>8</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NSX-2009-06 on the subject line.

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> 17 CFR 240.19b-4.

## 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-2009-06. 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 a.m. and 3 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-2009-06 and should be submitted on or before December 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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<sup>9</sup> 17 CFR 200.30-3(a)(12).