

general, to protect investors and the public interest.

The Commission believes that the proposed rule change is appropriate to eliminate confusion and reduce regulatory overlap by repealing rules that are similar to federal rules and regulations or are specific to the NYSE and its marketplace. As further described in the Notice, FINRA stated that NASD Rule 2760 is similar to the Commission's Rule 15c1-8 under the Act,<sup>6</sup> which FINRA believes appropriately protects investors without duplication by NASD Rule 2760. FINRA also stated that NASD Rule 2780 duplicates the Commission's Rule 10b-2, which was rescinded by the Commission in 1993 because it was duplicative of other provisions of the federal securities laws, including the Commission's Regulation M.<sup>7</sup> Therefore, FINRA believes that NASD Rule 2780 should be deleted. In addition, FINRA stated that NYSE Rules 2B and 411 and the Interpretation to Incorporated NYSE Rule 411(a)(ii)(5) relate to activity that concerns solely the NYSE marketplace and, in the case of Rule 411(b)(2), is duplicative of existing Commission recordkeeping requirements. Thus, FINRA believes that these Incorporated NYSE Rules and Interpretation should not be included in the consolidated FINRA rulebook. In approving this proposed rule change, the Commission notes that FINRA members and their associated persons are required to comply with all applicable federal securities laws and that FINRA, as a self-regulatory organization, has the obligation to have the capacity to enforce compliance by its members and their associated persons with the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> proposed rule change (SR-FINRA-2009-087) be, and it hereby is, approved.

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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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

Release No. 34-61474; File No. SR-NSX-2010-01]

### Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NSX Fee and Rebate Schedule To Increase the Rebate for Liquidity Adding Displayed Orders of Securities Priced Under One Dollar in the Auto Execution Mode of Order Interaction to 0.25% of Trade Value

February 2, 2010.

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 January 29, 2010, 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 a rule change, operative at commencement of trading on February 1, 2010, which proposes to amend the NSX Fee and Rebate Schedule (the "Fee Schedule") to increase the rebate for liquidity adding displayed orders of securities priced under one dollar in the Auto Execution mode of order interaction ("AutoEx")<sup>3</sup> to 0.25% of trade value.

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 modify the Fee Schedule to increase the rebate for liquidity adding displayed orders of securities priced under one dollar in AutoEx to 0.25% of trade value.

The current Fee Schedule provides a rebate in AutoEx of 0.10% of trade value (except for Zero Display Orders<sup>4</sup>) with respect to transactions in securities priced under one dollar. The term "trade value" means a dollar amount equal to the price per share multiplied by the number of shares executed.<sup>5</sup> The instant rule filing proposes to increase such rebate from 0.10% of trade value to 0.25% of trade value. Zero Display Orders remain excluded from this rebate program. The proposed rule change would not modify other rebates or fees that are included in the Fee Schedule.

##### Rationale

The Exchange has determined that this change is necessary to create further incentive for ETP Holders to submit increased volumes of liquidity providing displayed orders of sub-dollar securities in AutoEx and, ultimately, to increase the revenues of the Exchange for the purpose of continuing to adequately fund its regulatory and general business functions. The Exchange has further determined that the proposed fee adjustment is necessary for competitive reasons. The Exchange believes that this rebate change will not impair its ability to carry out its regulatory responsibilities.

The proposed modifications are reasonable and equitably allocated to those ETP Holders that opt to provide liquidity adding displayed orders of securities priced under one dollar in AutoEx, and is not discriminatory because ETP Holders are free to elect whether or not to send liquidity adding displayed orders for sub-dollar securities in AutoEx. In addition, the proposed modification will tend to further incentivize ETP Holders to submit displayed orders over Zero

<sup>4</sup> "Zero Display Orders" as used herein and in the Fee Schedule means "Zero Display Reserve Orders" as specified in NSX Rule 11.11(c)(2)(A).

<sup>5</sup> See Explanatory Endnote (6) to the Fee Schedule.

<sup>6</sup> 17 CFR 240.15c1-8.

<sup>7</sup> See Securities Exchange Act Release No. 32100 (April 2, 1993), 58 FR 18145 (April 8, 1993).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</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> The Exchange's two modes of order interaction are described in NSX Rule 11.13(b).

Display Orders in AutoEx. 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 modifications, which are effective on filing of this proposed rule, operative for trading on February 1, 2010. 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>6</sup> in general, and Section 6(b)(4) of the Act,<sup>7</sup> 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 rule change is not discriminatory in that all ETP Holders are eligible to submit (or not submit) trades and quotes at any price in AutoEx in all tapes, as either displayed or undisplayed, and as liquidity adding or liquidity taking, 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.

#### 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>8</sup> and subparagraph (f)(2) of Rule 19b-4<sup>9</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-2010-01 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-2010-01. 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 Web site viewing and printing 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-2010-01 and should be submitted on or before March 2, 2010.

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. 34-61471; File No. SR-NYSEAmex-2010-06]

#### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adding 75 Options Classes to the Penny Pilot Program

February 2, 2010.

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 February 1, 2010, NYSE Amex LLC (the “NYSE Amex” or the “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 prepared by the self-regulatory organization. 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 proposes to identify the next 75 options classes to be added to the Penny Pilot Program for Options (“Penny Pilot” or “Pilot”) on November 2, 2009 [sic].<sup>3</sup> There are no changes to the Rule text. A copy of this filing is available on the Exchange’s Web site at <http://www.nyse.com>, at the Exchange’s principal office, at the Commission’s Public Reference Room and on the Commission’s Web site at <http://www.sec.gov>.

<sup>10</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> The Commission notes that the form 19b-4 correctly notes that the 75 new classes were added to the Penny Pilot on February 1, 2010.

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4.