

Act<sup>8</sup> and subparagraph (f)(2) of Rule 19b-4<sup>9</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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-CBOE-2011-033 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-CBOE-2011-033. 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 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 CBOE. 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-CBOE-2011-033 and should be submitted on or before May 3, 2011.

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

**Cathy H. Ahn,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64208; File No. SR-NSX-2011-02]

### 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 and NSX Rule 16.4

April 6, 2011.

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 March 29, 2011, National Stock Exchange, Inc. filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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 National Stock Exchange, Inc. ("NSX" or the "Exchange") is proposing a rule change, operative at commencement of trading on April 1, 2011, which proposes to amend the NSX Fee and Rebate Schedule (the "Fee Schedule") to adjust certain liquidity taking rebates and fees in the Automatic Execution Mode of order interaction, eliminate the Exchange's market data rebate in the Order Delivery Mode of order interaction and establish an exchange regulatory fee.

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.

<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.

#### 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 aspects 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 and related text of Rule 16 in four respects. First, the proposed rule change would increase the highest rebate, and adjust the tier thresholds, for liquidity adding displayed orders in the Automatic Execution Mode of order interaction ("AutoEx")<sup>3</sup> priced at least one dollar. Certain conforming changes are also proposed for rebates for liquidity adding Zero Display Orders<sup>4</sup> in AutoEx priced at least one dollar. Second, the proposed rule change would eliminate the \$0.0028 taker fee on orders that take liquidity in AutoEx for securities one dollar and above. Third, the proposed rule change would eliminate the market data revenue rebate currently available in the Order Delivery Mode of order interaction ("Order Delivery"). Finally, the proposed rule change would establish a monthly exchange regulatory fee. Each of the proposed changes is further addressed below.

##### AutoEx Liquidity Adding Rebate for Securities Priced at Least One Dollar

Currently, for displayed orders in securities priced one dollar and above that provide liquidity in AutoEx, the Fee Schedule provides a ("Tier 1") rebate of \$0.0026 per share if an ETP Holder's liquidity adding average daily volume (as such term is defined in Endnote 3 of the Fee Schedule, "Liquidity Adding ADV") is less than 20 basis points of Total Consolidated Average Daily Volume (as defined in Endnote 13 of the Fee Schedule,

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

<sup>4</sup> "Zero Display Orders" means "Zero Display Reserve Orders" as specified in NSX Rule 11.11(c)(2)(A).

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

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

“TCADV”), and a (“Tier 2”) rebate of \$0.0028 per share if Liquidity Adding ADV is at or above 20 basis points of TCADV.

The instant rule change modifies the AutoEx liquidity adding rebate thresholds described above by increasing the Tier 2 rebate from \$0.0028 to \$0.0029 per share. In addition, the instant rule change eliminates the measurement of TCADV and replaces it with a tier of 10 million shares of Liquidity Adding ADV, where such measurement includes only liquidity providing Tape A and C securities in AutoEx priced at least one dollar. With respect to the rebate for Zero Display Orders that add liquidity in AutoEx that are priced at least one dollar, the calculation of an ETP Holder’s Liquidity Adding ADV would be made consistent with the rebate calculation for liquidity adding displayed orders priced at least one dollar in AutoEx.

The proposed edits discussed above are reflected in Section I of the Fee Schedule under the header “Securities \$1 and Above” and across from the header “Displayed Orders that Add Liquidity” and in corresponding Endnotes 3 and 13.

#### AutoEx Taker Fee for Securities Priced at Least One Dollar

The Exchange is also proposing to modify the Fee Schedule’s taker fee structure with respect to orders that take liquidity in AutoEx. Prior to the effective date of the proposed rule change, the Exchange charges a taker fee of \$.0028 per share on securities one dollar or above from all tapes that take liquidity if an ETP Holder’s Liquidity Adding ADV is at least 50,000 (“Tier 1”), and a fee of \$0.0030 per share if Liquidity Adding ADV is less than 50,000 (“Tier 2”). In the proposed rule change, the Exchange is proposing to eliminate Tier 1 and all volume thresholds. Accordingly, after the effective date, a taker fee of \$0.0030 per share, on all securities one dollar or above on all orders that take liquidity on all tapes, will be charged in AutoEx, regardless of the ETP Holder’s Liquidity Adding ADV.

The proposed edits discussed above are reflected in Section I of the Fee Schedule, under the header “Securities \$1 and Above” and across from the header “Orders That Take Liquidity”.

#### Order Delivery Market Data Rebate

The Exchange is also proposing to eliminate the market data rebate in Order Delivery. Prior to the effective date of the proposed rule change, under the Fee Schedule and NSX Rule 16.4, an

ETP Holder that has selected the Order Delivery mode of order interaction is eligible (depending on achievement of volume thresholds) to receive a rebate of a specified percentage of Tape “A”, “B”, and “C” market data revenue attributable to such ETP Holder’s trading and quoting of non-Zero Display Reserve Orders priced at or above one dollar in Order Delivery Mode.<sup>5</sup> Under the proposed rule change, the Exchange is proposing to eliminate the current market data rebate. Accordingly, reference to rebates of market data revenue would be deleted from Section II of the Fee Schedule (together with Endnote 8), and NSX Rule 16.4 would be deleted 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 rebate program was in effect, rebates provided to ETP Holders would be adjusted, as necessary, in accordance with Rule 16.4 (c) as in effect during the period such rebates accrued. Similarly, current Exchange Rules 16.4(d) (De Minimis Rebates) and 16.4(e) (Quarterly Payments) will apply to any market data rebates based on an ETP Holder’s trading activity pursuant to Rule 16.4(b) prior to the effective date of the instant rule filing eliminating the market data rebate.

#### Regulatory Fee

Finally, the Exchange is proposing to establish a monthly regulatory fee payable by each ETP Holder on a monthly basis. Prior to the effective date of the proposed rule change, NSX did not impose a regulatory fee. After the effective date, a monthly regulatory fee of \$500 per ETP Holder will be charged, payable monthly. New text has been added as Section IV of the Fee Schedule to reflect this charge.

#### Rationale

The Exchange has determined that these changes are necessary to increase the revenues of the Exchange for the purpose of continuing to adequately fund its regulatory and general business functions. The Exchange believes that these changes will not impair the Exchange’s ability to fulfill its regulatory responsibilities.

The proposed modifications are reasonable and equitably allocated to ETP Holders that submit orders in AutoEx and Order Delivery, as either display or non-display orders and as

liquidity taking or liquidity providing, and are not discriminatory because ETP Holders are free to elect whether or not to submit 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 make the proposed modifications, which are effective on filing of this proposed rule, operative as of commencement of trading on April 1, 2011. 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 (<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 qualified ETP Holders are eligible to submit (or not submit) trades and quotes at any price in AutoEx and Order Delivery 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

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

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

<sup>5</sup> NSX Rule 16.4(b).

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 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### 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-2011-02 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-2011-02. 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 such filing will also 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 No. SR-NSX-2011-02 and should be submitted on or before May 3, 2011.

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

**Cathy H. Ahn,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64211; File No. SR-BATS-2011-012]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

April 6, 2011.

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 April 1, 2011, BATS Exchange, Inc. (the “Exchange” or “BATS”) 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 Exchange has designated the proposed rule change as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act <sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

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

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

The Exchange proposes [sic] amend the fee schedule applicable to Members<sup>5</sup> and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal will be effective upon filing.

The text of the proposed rule change is available at the Exchange’s Web site at <http://www.batstrading.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

The Exchange proposes to modify the “Options Pricing” section of its fee schedule to: (i) Adopt a definition for Total Consolidated Volume (“TCV”), to be used for purposes of the tiered pricing structure offered by the BATS options market (“BATS Options”); (ii) modify the fees applicable to removing liquidity from BATS Options; (iii) modify the program that provides a rebate specifically for orders that set either the national best bid (the “NBB”) or the national best offer (the “NBO”) subject to average daily volume requirements; and (iv) adopt other changes to other definitions used for purposes of the fee schedule.

##### (i) Definition and Use of Total Consolidated Volume for Pricing

Rather than basing its pricing structure on a static number of contracts, the Exchange proposes to modify its tiered pricing structure such that it is based on Total Consolidated Volume, or TCV, and is thus variable

<sup>5</sup> A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

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

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