

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58217; File No. SR-NSX-2008-12)

July 24, 2008

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Provide for a Post Intermarket Sweep Order

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 July 18, 2008, National Stock Exchange, Inc. (“NSX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. NSX filed the proposal 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 the proposal 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 NSX Rule 11.11(c)(8) to allow ETP Holders the option of designating an intermarket sweep order (“ISO”) as a “Post Intermarket Sweep Order” (“Post ISO”). The text of the proposed rule change is below. Proposed new language is underlined, and the proposed deletions are enclosed in brackets:

RULES  
OF  
NATIONAL STOCK EXCHANGE, INC.

CHAPTER XI.

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<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).

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

## Trading Rules

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### Rule 11.11. Orders and Modifiers

Users may enter into the System the types of orders listed in this Rule 11.11, subject to the limitations set forth in this Rule or elsewhere in these Rules.

(a) - (b) No change.

(c) Other Types of Orders and Order Modifiers

(1) - (7) No change.

(8) [Incoming] Intermarket Sweep Order (“ISO”).

(i) Incoming ISO. The System will accept incoming intermarket sweep orders (as such term is defined in Regulation NMS) from other trading centers. In order to be eligible for treatment as an intermarket sweep order, the order must be marked “ISO,” and the User entering the order must simultaneously route one or more additional limit orders marked “ISO,” as necessary, to away markets to execute against the full displayed size of any protected quotation for the security with a price that is superior to the limit price of the intermarket sweep order entered in the System. Such orders, if they meet the requirements of the foregoing sentence, will be considered immediate-or-cancel (IOC) and will be executed without regard to protected quotations at away markets consistent with Regulation NMS.

(ii) Post ISO. A User may designate an ISO as a “Post ISO.” In order to be eligible for treatment as a Post ISO, the order must be marked “Post ISO,” and in submitting such an order the User entering the order represents that such User has simultaneously routed one or more additional limit orders marked “ISO,” as necessary, to away markets to execute against the full displayed size of any protected quotation for the security with a price that is

superior or equal to the limit price of the Post ISO entered in the System. Such order, if it meets the requirements of the foregoing sentence and is not a Post Only Order pursuant to Rule 11.11(c)(5), will be executed without regard to protected quotations at away markets consistent with Regulation NMS by sweeping the NSX Book up to and including its limit price. A Post ISO which is designated by the User as a Post Only Order pursuant to Rule 11.11(c)(5) will be rejected without execution if, when entered, it is immediately marketable against displayed orders in the NSX Book. Any unfilled portion of a Post ISO that meets the requirements of Rule 11.22(d)(3) will be posted at the entered limit price.

(9) No change.

(d) No change.

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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

The Exchange is proposing to amend Exchange Rules 11.11(c)(8) to allow ETP Holders the option of posting an order designated as an ISO.

Under current Rule 11.11(c)(8), the System will accept incoming intermarket sweep orders (as such term is defined in Regulation NMS) from other trading centers. In order to be eligible for treatment as an intermarket sweep order, the order must be marked “ISO,” and the User entering the order must simultaneously route one or more additional limit orders marked “ISO,” as necessary, to away markets to execute against the full displayed size of any protected quotation for the security with a price that is superior to the limit price of the intermarket sweep order entered in the System. Such orders, if they meet the requirements of the foregoing sentence, will be considered immediate-or-cancel (IOC) and will be executed without regard to protected quotations at away markets consistent with Regulation NMS.

Under the proposed rule change, by designating an ISO as a “Post ISO,” the ETP Holder represents to the Exchange that the ETP Holder has simultaneously routed one or more additional limit orders marked “ISO,” as necessary, to away markets to execute against the full displayed size of any protected quotation for the security with a price that is superior or equal to the limit price of the intermarket sweep order entered in the System. The incoming Post ISO (unless marked “post only”) will sweep the NSX Book up to its limit price. Unlike a standard ISO (which is considered IOC), if residual shares of the Post ISO are available, they will be posted at the entered limit price (similar to existing “Sweep and Post” orders under Rule 11.11(c)(7)(ii)(A)). Any unfilled portion of a Post ISO order following the sweep of the NSX Book will be posted in the NSX Book and will be ineligible for routing.

If an incoming Post ISO is marked as “Post Only” pursuant to Rule 11.11(c)(5) and is marketable (within NSX), it will be rejected. Otherwise, Post Only Post ISOs will be accepted and posted in the NSX Book at its limit price providing liquidity.

Similar to ISOs under the current Rules, Users sending a Post ISO must simultaneously route one or more additional limit orders marked “ISO,” as necessary, to away markets to execute against the full displayed size of any protected quotation for the security with a price that is superior or equal to the limit price of the intermarket sweep order entered in the System in accordance with Regulation NMS’ Order Protection Rule Rules 610 and 611. Post ISOs may therefore lock or cross protected quotes at away market centers that were sent ISOs equal to the limit price, consistent with Rule 11.22(d)(3), but may not lock or cross the NSX Top of Book, and are not routable, subject to their compliance with this rule and Rule 11.22(d)(3).

Post ISOs may be entered as odd, round or mixed lots. Only displayed orders (and displayed orders with reserves) may be designated as Post ISOs. Post ISO for Order Delivery will be processed in the same way as other order types supported today.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>6</sup> in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

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 states that written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay.

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

<sup>8</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange fulfilled this requirement.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>9</sup> Previously, the Commission approved an order type similar to the one proposed,<sup>10</sup> and this proposal does not raise any novel issues. For these reasons, the Commission designates the proposed rule change as operative upon filing.

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-2008-12 on the subject line.

##### Paper Comments:

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

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<sup>9</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>10</sup> See Securities Exchange Act Release No. 54549 (September 29, 2006), 71 FR 59179 (October 6, 2006) (SR-NYSEArca-2006-59) (approving NYSE Arca Equities Rule 7.31(w)).

All submissions should refer to File Number SR-NSX-2008-12. 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will 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 Number SR-NSX-2008-12 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.<sup>11</sup>

Florence E. Harmon  
Acting Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).