SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66958; File No. SR-NSX-2012-07)

May 10, 2012

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Clarify the Purpose of, and Statutory Basis for, the May 1, 2012 Changes to the NSX Fee and Rebate Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on May 9, 2012, 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 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 clarify the purpose of, and statutory basis for, its amended Fee and Rebate Schedule (the "Fee Schedule") issued pursuant to Exchange Rule 16.1(c) that went into effect on May 1, 2012 pursuant to SR-NSX-2012-06 to adjust the take fee and rebates for certain orders executed in the Exchange's Automatic Execution Mode, adjust the rebates and for certain orders executed in the Exchange's Order Delivery Mode, and re-introduce a market data revenue rebate sharing program, and to reinstate the fee changes that were implemented in SR-NSX-2012-06 which was withdrawn on May 8, 2012.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

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

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 more clearly state the purpose of, and statutory basis for, its amended Fee Schedule that went into effect on May 1, 2012, pursuant to SR-NSX-2012-06, and to reinstate the fee changes that were implemented in SR-NSX-2012-06 which was withdrawn on May 8, 2012. No changes to the Fee Schedule are proposed other than those described in SR-NSX-2012-06.[3]

The fee change proposed by SR-NSX-2012-06 modified the Fee Schedule in four respects. First, SR-NSX-2012-06 amended the rebates applicable to liquidity adding order executions in securities priced at least one dollar in the Exchange's Automatic Execution Mode of order interaction ("AutoEx"). Second, SR-NSX-2012-06 amended the take fee applicable to order executions in securities priced at least one dollar in AutoEx. Third, SR-NSX-2012-06 amended the rebate tiers applicable to order executions in securities priced at least one dollar in the Exchange's Order Delivery Mode of order interaction ("Order Delivery"). Finally, with respect to the rebate adjustments in both AutoEx and Order Delivery, SR-NSX-2012-06 re-established a market data rebate sharing program with Exchange ETP Holders. Each of the changes is further addressed below.

3 As a result of this filing, the fee changes that were implemented on May 1, 2012 will continue uninterrupted despite the withdrawal of SR-NSX-2012-06.

1. Rebates for Executions in Securities Priced at Least One Dollar in AutoEx

SR-NSX-2012-06 proposed to modify the rebates applicable to liquidity adding order executions in securities priced one dollar or more in AutoEx. These changes can be found in Section I of the Fee Schedule.

Prior to May 1, 2012, a flat $0.0026 rebate per share applied to an ETP Holder's displayed liquidity adding order executions of securities of at least one dollar in AutoEx. Under SR-NSX-2012-06, progressively greater rebates, of $0.0024, $0.0026, $0.0027, $0.0028 or $0.0029 per share, plus 50% of market data revenues attributable to such orders if the second (or higher) volume tier is achieved, apply depending on an ETP Holder's "Average Daily Volume" ("ADV") (as such term is further discussed below). A $0.0024 per share rebate (with no market data revenue sharing) applies to an ETP Holder's AutoEx, dollar or higher displayed order executions that add liquidity where the ETP Holder's ADV is less than 500,000 shares; a $0.0026 per share rebate (plus 50% market data revenue sharing, as further described below) applies to an ETP Holder's AutoEx, dollar or higher displayed order executions that add liquidity where the ETP Holder's ADV is at least 500,000 shares but less than 1,500,000 shares; a $0.0027 per share rebate (plus 50% market data revenue sharing) applies to an ETP Holder's AutoEx, dollar or higher displayed order executions that add liquidity where the ETP Holder's ADV is at least 1,500,000 shares but less than 5,000,000 shares; a $0.0028 per share rebate (plus 50% market data revenue sharing) applies to an ETP Holder's AutoEx, dollar or higher displayed order executions that add liquidity where the ETP Holder's ADV is at least 5,000,000 shares but less than 10,000,000 shares; and a $0.0029 per share rebate (plus 50% market data revenue sharing) applies to an ETP Holder's AutoEx, dollar or higher displayed orders that add liquidity where the ETP Holder's ADV is at least 10,000,000 shares.

SR-NSX-2012-06 also introduced the term "ADV", as defined in Endnote 3. Endnote 3 provides that "ADV" means, with respect to an ETP Holder, the number of shares such ETP Holder has executed on average per trading day (excluding partial trading days) in Auto-Ex or Order Delivery, as applicable, across all tapes in securities priced at least one dollar on NSX for the calendar month (or partial month, as applicable) in which the executions occurred. Endnote 3 further clarifies that "ADV", as used with respect to AutoEx, shall mean only those executed shares of the ETP Holder that are submitted in AutoEx mode and that ADV, as used with respect to Order Delivery, shall mean only those executed shares of the ETP Holder that are submitted in Order Delivery mode. The definition of "ADV" as proposed was derived from the previously defined term "Liquidity Adding ADV", which defined term was eliminated. The term "ADV" differs from "Liquidity Adding ADV" in that: (i) ADV captures both liquidity adding and taking volume (whereas Liquidity Adding ADV captured only liquidity adding volume); (ii) ADV is limited to volumes in AutoEx or Order Delivery depending on the rebate or take fee that is being calculated, i.e., the rebates in AutoEx only measure for purposes of ADV those executions of orders that the ETP Holder has submitted in AutoEx mode, and the rebates in Order Delivery only measure for purposes of ADV those executions of orders that the ETP Holder has submitted in Order Delivery mode (whereas Liquidity Adding ADV captured volumes in both modes of order interaction); and (iii) ADV does not include sub-dollar securities for any purpose (whereas Liquidity Adding ADV carved out sub-dollar securities only with respect to rebates in order delivery, notwithstanding that no rebate or taking volume tiers previously applied in AutoEx).

2. Take Fee for Execution of Securities Priced at Least One Dollar in AutoEx

Prior to May 1, 2012, a flat fee of $0.0030 per share applied to order executions that take liquidity in securities of at least one dollar in AutoEx. SR-NSX-2012-06 offered a progressively lower take fee of $0.0030, $0.0029, $0.0028, or $0.0026 per share depending on an ETP Holder's ADV. A $0.0030 per share take fee applies to an ETP Holder's AutoEx, dollar or higher order executions that take liquidity where the ETP Holder's ADV is less than 5,000,000 shares; a $0.0029 per share take fee applies to an ETP Holder's AutoEx, dollar or higher order executions that take liquidity where the ETP Holder's ADV is at least 5,000,000 shares but less than 10,000,000 shares; a $0.0028 per share take fee applies to an ETP Holder's AutoEx, dollar or higher order executions that take liquidity where the ETP Holder's ADV is at least 10,000,000 shares but less than 20,000,000 shares; and a $0.0026 per share take fee applies to an ETP Holder's AutoEx, dollar or higher order executions that take liquidity where the ETP Holder's ADV is at least 20,000,000 shares. As noted above, ADV with respect to the take fee is calculated to include only the ETP Holder's volumes in AutoEx and excludes sub-dollar securities.

3. Rebates for Executions of Displayed Orders of Securities Priced at Least One Dollar in Order Delivery

As previously reflected in Section II of the Fee Schedule, for all liquidity adding displayed orders of securities priced at least one dollar in Order Delivery, the Exchange prior to May 1, 2012 offered an $0.0008 per share rebate for each Order Delivery displayed order execution that adds liquidity where an ETP Holder's Liquidity Adding ADV was less than 15 million, or a $0.0024 per share rebate for each such order execution where an ETP Holder's Liquidity Adding ADV was at least 15 million. Under SR-NSX-2012-06, progressively greater rebates, of $0.0008, $0.0024 or $0.0027 per share, plus 25% of market data revenues attributable to such orders if the third volume tier is achieved or 50% of market data revenues if the fourth volume tier is achieved, applies depending on an ETP Holder's ADV. A $0.0008 per share rebate (with no market data revenue sharing) applies to an ETP Holder's Order Delivery, dollar or higher displayed order executions that add liquidity where the ETP Holder's ADV is less than 15,000,000 shares; a $0.0024 per share rebate (with no market data revenue sharing) applies to an ETP Holder's Order Delivery, dollar or higher displayed order executions that add liquidity where the ETP Holder's ADV is at least 15,000,000 shares but less than 25,000,000 shares; a $0.0027 per share rebate (plus 25% market data revenue sharing, as further described below) applies to an ETP Holder's Order Delivery, dollar or higher displayed order executions that add liquidity where the ETP Holder's ADV is at least 25,000,000 shares but less than 30,000,000 shares; and a $0.0027 per share rebate (plus 50% market data revenue sharing) applies to an ETP Holder's Order Delivery, dollar or higher displayed order executions that add liquidity where the ETP Holder's ADV is at least 30,000,000 shares. As noted above, ADV with respect to the rebate in Order Delivery is calculated to include only the ETP Holder's volumes in Order Delivery and excludes sub-dollar securities.

4. Market Data Rebate Sharing Program

Prior to May 1, 2012, market data revenues attributable to quoting and trading were not shared with ETP Holders. Under SR-NSX-2012-06, the Fee Schedule provides a rebate to each ETP Holder equal to a specified percentage (not exceeding 50%) of the market data revenue received by the Exchange that is attributable to such ETP Holder's trading and quoting of displayed orders priced at one dollar or higher in both AutoEx and Order Delivery, provided that the ETP Holder achieves the required ADV during the measurement period as described above.

Explanatory Endnote 8 of the Fee Schedule describes the market data revenue rebate program.[4] Explanatory Endnote 8 makes explicit that no market data rebates will be provided

---

4 Explanatory Endnote 8 is based on prior Exchange Rule 16.4, which was deleted from NSX Rules pursuant to a rule change effective April 1, 2011. See Securities Exchange Act Release No. 64208 (April 6, 2011), 76 FR 20412 (April 12, 2011) (SR-NSX- 2011-

with respect to Zero Display Reserve Orders or securities priced less than a dollar. Explanatory Endnote 8 provides that ETP Holders that have achieved an ADV as required in Section I (AutoEx) or Section II (Order Delivery) of the Fee Schedule shall receive a specified percentage rebate of Tape A, B and C market data revenue attributable to such ETP Holder's trading and quoting of displayed orders priced at or above one dollar.

Explanatory Endnote 8 also established that market data rebates paid or payable to ETP Holders may be modified based on market data revenue adjustments applicable to the Exchange that may be made from time to time by the securities information processors. Explanatory Endnote 8 also specifies that such rebates shall be paid quarterly and that, notwithstanding the foregoing, an ETP Holder shall not be eligible for market data revenue rebates which aggregate less than $250 per quarter with respect to such ETP Holder. This exception for de minimis payments is based the Exchange's belief that the monetary value of such rebate is outweighed by the associated administrative burden both to the Exchange and to the recipient ETP Holders.[5]

---

02). The Exchange had previously established other iterations of market data rebate sharing programs as approved by the Commission which shared up to 50% of trade and quote market data revenue; see Securities Exchange Act Release No. 61103 (December 3, 2009), 74 FR 65576 (December 10, 2009) (SR-NSX- 2009-07); Securities Exchange Act Release No. 58935 (November 13, 2008), 73 FR 69703 (November 19, 2008) (SR-NSX-2008-19); and Securities Exchange Act Release No. 56890 (December 4, 2007), 72 FR 70360 (December 11, 2007) (SR-NSX-2007-13). While the volume tiers and certain other aspects of the current market data revenue sharing program differ from prior programs offered by the Exchange, the methodology utilized by the Exchange to calculate an ETP Holder's market data rebates under the program remains identical to the previously utilized methodology.

5 See Securities Exchange Act Release No. 57316 (February 12, 2008), 73 FR 9379 (February 20, 2008) (NSX-2008-01).

Rationale

In adjusting the volume thresholds necessary to achieve progressively higher rebates and lower take fees[6] in SR-NSX-2012-06, the Exchange regarded these changes as necessary to create incentives for ETP Holders to submit increased volumes of orders in to the Exchange 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 believes that these rebate changes, and in particular the reintroduced market data rebate program, will not impair its ability to carry out its regulatory responsibilities. The modifications are reasonable and equitably allocated to those ETP Holders that opt to submit orders in AutoEx (as liquidity provider or taker) and Order Delivery, and are not unfairly discriminatory because ETP Holders are free to elect whether or not to send such orders to the Exchange. In addition, the modifications, by providing a market data rebate for displayed orders only (and not Zero Display Reserve Orders), will tend to incentivize ETP Holders to submit displayed orders over Zero Display Reserve Orders. Based upon the information above, the Exchange believes that the adjustments to the Fee Schedule are consistent with the protection of investors and the public interest.

2. Statutory Basis

The Exchange believes that the rule changes as described in SR-NSX-2012-06 and as clarified herein are consistent with the provisions of Section 6(b) of the Act, in general, and Section 6(b)(4) of the Act,[7] in particular in that each change 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.

---

6 At the higher ADV volume tiers, the fees and rebate schematic will be inverted in that the displayed liquidity provider rebates will be greater than the liquidity taker fees.

7 15 U.S.C. 78f(b)(4).

The changes to the rebates payable for executions in securities priced at least one dollar in AutoEx are reasonable because they are designed to incentivize the submission of such orders and increase order volume on the Exchange. The changes are equitably allocated and not unfairly discriminatory because all qualified ETP Holders are eligible to submit (or not submit) displayed liquidity providing orders of securities priced at least one dollar in AutoEx on the Exchange. The volume adjustments are reasonable methods to incentivize the submission of such orders. All similarly situated members are subject to the same fee structure, and access to the Exchange is offered on terms that are not unfairly-discriminatory. Volume-based rebates and discounts have been widely adopted in the equities markets, and are equitable because they are open to all members on an equal basis and provide rebates that are reasonably related to the value of an exchange's market quality associated with the requirements for the favorable pricing tier.

The changes to the take fees for executions in securities priced at least one dollar in AutoEx are reasonable because they are designed to incentivize the submission of such orders and increase order volume on the Exchange. The changes are equitably allocated and not unfairly discriminatory because all qualified ETP Holders are eligible to submit (or not submit) displayed liquidity taking orders of securities priced at least one dollar in AutoEx on the Exchange. The volume adjustments are reasonable methods to incentivize the submission of such orders. All similarly situated members are subject to the same fee structure, and access to the Exchange is offered on terms that are not unfairly-discriminatory. Volume-based take fee discounts have been widely adopted in the equities markets, and are equitable because they are open to all members on an equal basis and offer fees that are reasonably related to the value of an exchange's market quality associated with the requirements for the favorable pricing tier.

The changes to the rebates payable for executions in securities priced at least one dollar in Order Delivery are reasonable because they are designed to incentivize the submission of such orders and increase order volume on the Exchange. The changes are equitably allocated and not unfairly discriminatory because all qualified ETP Holders are eligible to submit (or not submit) displayed liquidity providing orders of securities priced at least one dollar in Order Delivery on the Exchange. The volume adjustments are reasonable methods to incentivize the submission of such orders. All similarly situated members are subject to the same fee structure, and access to the Exchange is offered on terms that are not unfairly-discriminatory. Volume-based rebates and discounts have been widely adopted in the equities markets, and are equitable because they are open to all members on an equal basis and provide rebates that are reasonably related to the value of an exchange's market quality associated with the requirements for the favorable pricing tier.

The market data rebate sharing program that is applicable to providers of displayed liquidity in both AutoEx and Order Delivery for executions of orders in securities priced at least one dollar is reasonable because it is designed to incentivize ETP Holders to provide such order flow to the Exchange. The changes are equitably allocated and not unfairly discriminatory because all qualified ETP Holders are eligible to submit (or not submit) displayed liquidity providing orders of securities priced at least one dollar in AutoEx and Order Delivery on the Exchange. The volume adjustments are reasonable methods to incentivize the submission of such orders. All similarly situated members are subject to the same fee structure, and access to the Exchange is offered on terms that are not unfairly-discriminatory. Volume-based take discounts in the form of market data rebates have been historically widely adopted in the equities markets, and are equitable because they are open to all members on an equal basis and offer rebates that are reasonably related to the value of an exchange's market quality associated with the requirements for the favorable pricing tier. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other market centers.

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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b-4 thereunder.[9] 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:

---

8 15 U.S.C. 78s(b)(3)(A)(ii).

9 17 CFR 240.19b-4(f)(2).

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. Please include File Number SR-NSX-2012-07 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-2012-07. 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 website (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 website 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 10:00 a.m. and 3:00 p.m. Copies of such 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-2012-07 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.[10]

Kevin M. O'Neill
Deputy Secretary

[10] 17 CFR 200.30-3(a)(12).