SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67816; File No. SR-NSX-2012-14)

September 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 September 4, 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 September 4, 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 amend its Fee and Rebate Schedule (the "Fee Schedule") issued pursuant to Exchange Rule 16.1(a) to introduce different Fee Schedules including liquidity adding rebates and liquidity removal fees. The Exchange proposes to adopt a Fee Schedule which allows Equity Trading Permit ("ETP") Holders to choose one of two pricing options which can be applied to shares executed on the Exchange in Automatic Execution Mode[3] for securities quoted at prices equal to or greater than one dollar. ETP Holders can choose between a Variable Fee Schedule, which offers a liquidity adding rebate, a fixed liquidity removal fee along with market data rebates, and a Fixed Fee Schedule which sets forth a fixed liquidity adding rebate and a fixed liquidity removal fee.

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

2 17 CFR 240.19b-4.

3 See NSX Rule 11.13(b)(1).

The proposed rule filing also offers ETP Holders that execute orders using the Order Delivery Mode[4] an alternate fee schedule ("Alternate Fee Schedule") for securities quoted at prices equal to or greater than one dollar. The Alternate Fee Schedule may provide these ETP Holders with an incentive to execute additional orders on the Exchange using the Automatic Execution Mode. ETP Holders that are order delivery participants automatically receive the Alternate Fee Schedule upon meeting the minimum ADV threshold of 1,500,000 in Order Delivery Mode and 10,000,000 shares in Automatic Execution Mode. Under the Alternate Fee Schedule, ETP Holders will receive up to an additional $0.0003 liquidity adding rebate over the tiered rebates contained in the Primary Fee Schedule when the tier requirements are met. The Exchange is also proposing to reduce the liquidity adding rebates and increase the number of ADV tiers on the current Primary Fee Schedule (as defined in further detail below).

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

Purpose

The Exchange is proposing to modify the Fee Schedule for securities quoted in prices equal to or greater than one dollar. The Exchange will not change the Fee Schedule for securities priced less than one dollar. First, the Exchange is proposing to introduce a Fixed Fee Schedule which will be the default Fee Schedule for shares executed in Automatic Execution Mode. Second, the Exchange proposes to require ETP Holders to pay a $0.0030 liquidity removal fee under both the Fixed Fee Schedule and the Variable Fee Schedule unless the ETP Holder

4 See NSX Rule 11.13(b)(2).

provides and executes 50,000 shares of liquidity per month on the Exchange in Automatic Execution Mode. ETP Holders that exceed the 50,000 liquidity providing threshold will be charged the liquidity removal rate from the appropriate ADV tier on the default Fixed Fee Schedule or the elected Variable Fee Schedule. Third, the Exchange proposes to reduce the per share liquidity adding rebate and increase the number of ADV tiers for securities quoted at prices equal to or more than one dollar for ETP Holders that use the Order Delivery Mode. Fourth, an Alternate Fee Schedule will be proposed by the Exchange for ETP Holders executing orders using the Order Delivery Mode. Under the Alternate Fee Schedule, shares executed under the Automatic Execution Mode by an ETP Holder that is an order delivery participant will be attributed to the per share average daily volume ("ADV") calculation[5] used by the Exchange to determine the tiered rebate applicable to Order Delivery Mode. Fifth, the Exchange is proposing to amend the definition of the ADV used to determine whether the Alternate or Primary Fee Schedule applies to an ETP Holder using Order Delivery Mode. Finally, the Exchange is proposing to clarify the Fee Schedule's endnotes, and present the fee structure in a table format.

1. Introduction of Fixed Fee Schedule for Automatic Execution Mode

The Exchange's current tiered pricing schedule for ETP Holders executing transactions using the Automatic Execution Mode includes a liquidity adding rebate, a liquidity removal fee and a market data revenue rebate which causes variable pricing ("Variable Fee Schedule"). The

5 See Endnote 4. The Exchange proposes to define the ADV as the average number of shares the ETP Holder has executed on the Exchange in all NMS stocks quoted at prices equal to or greater than a dollar when the Exchange is open for trading (excluding partial trading days) in Auto-Ex Mode or in Order Delivery Mode during the calendar month (or partial month, as applicable[3]) [sic]. Shares executed by an ETP Holder in Auto-Ex Mode will only be used by the Exchange to calculate the minimum ADV contained in Section I of the Fee Schedule. Likewise, shares executed by an ETP Holder in Order Delivery Mode as an order delivery participant will only be used by the Exchange to calculate the minimum ADV contained in Section II of the Fee Schedule.

Exchange will not change the rates currently contained in the Variable Fee Schedule. The Exchange changed the presentation of the Variable Fee Schedule by representing the liquidity adding rebates, liquidity removal fees and market data revenue rebates in a table format.

The proposed rule change introduces a Fixed Fee Schedule applicable to transactions executed by ETP Holders using the Automatic Execution Mode. The Fixed Fee Schedule will be the Exchange's default pricing for shares executed in Automatic Execution Mode. However, an ETP Holder may elect to apply the Variable Fee Schedule instead of the Fixed Fee Schedule by indicating its preference in an email to the Exchange prior to the first of the month.[6] ETP Holders may elect the Variable Fee Schedule following the effectiveness of this rule filing by emailing the Exchange by September 10, 2012.[7]

The Fixed Fee Schedule provides fixed tier pricing and no market data revenue rebate. ETP Holders will receive a fixed rebate when executing displayed orders that add liquidity, and be charged a fixed fee when executing orders that remove liquidity from the Exchange. Under the Fixed Fee Schedule, a per share liquidity adding rebate will be paid for displayed orders in securities quoted with a price equal to or greater than a dollar at a rate of $0.0024, $0.0030, $0.0031, $0.0032, or $0.0033 per share depending on an ETP Holder's ADV. An ETP Holder will receive a $0.0024 per share rebate when the ETP Holder's ADV is less than 500,000 shares; a $0.0030 per share rebate when the ETP Holder's ADV is at least 500,000 shares but less than 1,500,000 shares; a $0.0031 per share rebate when the ETP Holder's ADV is at least 1,500,000 shares but less than 5,000,000 shares; a $0.0032 per share rebate when the ETP Holder's ADV is

6 See Endnote 3.

7 See Endnote 3. ETP Holders may elect to adopt the "Variable Fee Schedule" by sending an email indicating this preference to NSXTrading@NSX.com.

at least 5,000,000 shares but less than 10,000,000 shares; and a $0.0033 per share rebate when the ETP Holder's ADV is at least 10,000,000 shares.

In addition, the Fixed Fee Schedule will charge ETP Holders a tiered liquidity removal fee at a rate of $0.0030, $0.0029, $0.0028, or $0.0027 per share depending on an ETP Holder's ADV. A $0.0030 per share fee applies when the ETP Holder's ADV is less than 500,000 shares; a $0.0029 per share fee applies when the ETP Holder's ADV is at least 500,000 shares but less than 5,000,000 shares; a $0.0028 per share fee applies when the ETP Holder's ADV is at least 5,000,000 shares but less than 10,000,000 shares; and a $0.0027 per share fee applies when the ETP Holder's ADV is at least 10,000,000 shares.

2. Tiered Pricing Contingency

The proposed rule change will also make the availability of the lower tiered pricing for liquidity removal contained in the Fixed Fee Schedule and the Variable Fee Schedule contingent upon an ETP Holder's use of the Automatic Execution Mode to execute 50,000 shares per month of displayed orders which add liquidity to the Exchange.

3. Reduction of Per Share Liquidity Rebate for Order Delivery Mode

As currently reflected in Section II of the Fee Schedule, ETP Holders that execute orders using the Order Delivery Mode receive a liquidity adding rebate for displayed orders of securities quoted at prices equal to or better than one dollar, and a market data revenue rebate attributable to these orders is available at certain ADV levels. The Exchange currently offers a per share rebate of $0.0008, $0.0024 or $0.0027 per share depending on an ETP Holder's ADV ("Primary Fee Schedule"). A current $0.0008 per share rebate (with no market data revenue sharing) applies when the ETP Holder's ADV is less than 15,000,000 shares; a current $0.0024 per share rebate (with no market data revenue sharing) applies when the ETP Holder's ADV is at least 15,000,000 shares but less than 25,000,000 shares; a current $0.0027 per share rebate (plus 25% market data revenue sharing) applies when the ETP Holder's ADV is at least 25,000,000 shares but less than 30,000,000 shares; and a current $0.0027 per share rebate (plus 50% market data revenue sharing) applies when the ETP Holder's ADV is at least 30,000,000 shares.

The Exchange is proposing to reduce the liquidity adding rebates and increase the number of tier sizes offered under the Primary Fee Schedule. The proposed changes include an $0.0008 per share rebate (with no market data revenue sharing) when the ETP Holder's ADV is less than 10,000,000 shares; a $0.0011 per share rebate (with no market data revenue sharing) when the ETP Holder's ADV is at least 10,000,000 shares but less than 12,000,000 shares; a $0.0015 per share rebate (with no market data revenue sharing) when the ETP Holder's ADV is at least 12,000,000 shares but less than 15,000,000 shares; a $0.0021 per share rebate (with no market data revenue sharing) when the ETP Holder's ADV is at least 15,000,000 shares but less than 20,000,000; a $0.0021 per share rebate (plus 25% market data revenue sharing) when the ETP Holder's ADV is at least 20,000,000 shares but less than 25,000,000; and a $0.0024 per share rebate (plus 25% market data revenue sharing) when the ETP Holder's ADV is equal to or greater than 25,000,000 shares.

An ETP Holder may be eligible for an additional $0.0001 rebate on the Primary Fee Schedule if the ETP Holder executes an ADV of 3,000,000 to 4,999,999 shares using the Automatic Execution Mode in addition to a minimum ADV of 1,500,000 shares in Order Delivery Mode. An ETP Holder may also be eligible for an addition $0.0002 rebate on the Primary Fee Schedule by executing an ADV of 5,000,000 to 9,999,999 shares using the Automatic Execution Mode in addition to a minimum of 1,500,000 shares in Order Delivery Mode.

4. Alternate Fee Schedule

The Exchange is also proposing to adopt an "Alternate Fee Schedule" which will automatically apply when an ETP Holder that uses the Order Delivery Mode as an order delivery participant meets the minimum ADV threshold by executing 1,500,000 shares using the Order Delivery Mode and 10,000,000 using the Automatic Execution Mode.[8] The Alternate Fee Schedule will be in lieu of the Primary Fee Schedule. ETP Holders that are not order delivery participants will not be subject to this fee schedule.

As stated above, an ETP Holder that is an Order Delivery participant will automatically receive the Alternate Fee Schedule by meeting a minimum ADV of 1,500,000 shares in Order Delivery Mode and 10,000,000 shares in Automatic Execution Mode. The Alternate Fee Schedule increases an ETP Holder's liquidity adding rebates from the tiered liquidity adding rates in the Primary Fee Schedule by $0.0003 per tier. Thus, a $0.0011 per share liquidity adding rebate (with no market data revenue sharing) applies when the ETP Holder's ADV is less than 10,000,000 shares; a $0.0014 per share liquidity adding rebate (with no market data revenue sharing) applies when the ETP Holder's ADV is at least 10,000,000 shares but less than 12,000,000 shares; a $0.0018 per share liquidity adding rebate (with no market data revenue sharing) applies when the ETP Holder's ADV is at least 12,000,000 shares but less than 15,000,000 shares; a $0.0024 per share liquidity adding rebate (with no market data revenue sharing) applies when the ETP Holder's ADV is at least 15,000,000 shares but less than 20,000,000; a $0.0024 per share liquidity adding rebate (plus 25% market data revenue sharing, as further described below) applies when the ETP Holder's ADV is at least 20,000,000 shares but less than 25,000,000; and a $0.0027 per share liquidity adding rebate (plus 25% market data

8 See Endnote 9.

revenue sharing) applies when the ETP Holder's ADV is greater than 25,000,000 shares. The Alternate Fee Schedule attributes the number of shares executed by the ETP Holder using the Automatic Execution Mode in the per share ADV calculation used by the Exchange to determine the applicable tiered rebates available in Order Delivery Mode.

5. Amended ADV Definition for Order Delivery Mode

The Exchange proposes a clarification in endnote 8 providing that marketable orders entered by an ETP Holder that is an order delivery participant with a handling instruction other than Post Only through the order delivery session is [sic] subject to the Automatic Execution Mode Fee Schedule. Furthermore, these orders will be counted towards the minimum ADV for Automatic Execution Mode for determining whether the Alternate Fee Schedule will automatically apply.

6. Amended Endnotes and Table Presentation

The Exchange also proposes to make certain amendments to the Fee Schedule in order to clarify language used in the endnotes. The Exchange proposes to clarify the definition of (i) Displayed Orders contained in endnote 2, (ii) ADV contained in endnote 4, and (iii) Market Data Revenue ("MDR") Rebates contained in endnote 5. These proposed amendments do not represent a substantive change to the current definitions. Also, the Exchange moved endnotes 7 through 10 in the proposed Fee Schedule. Subject to the changes discussed in this filing, there are no additional substantive changes made to endnotes 7 through 10. Finally, the Exchange is proposing to change the presentation of its multiple fee schedules by using tables to set forth the different rebates and fees.

6. [sic] Rationale

The Exchange believes these changes are necessary to create incentives for ETP Holders to submit increased volumes of orders 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 changes 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 submit orders in the Automatic Execution Mode (as liquidity provider or taker) and the Order Delivery Mode, 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 proposed modifications, by providing a market data rebate for displayed orders only (and not Zero Display Reserve Orders), may provide incentives for ETP Holders to submit displayed orders over Zero Display Reserve 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.

<u>Operative Date and Notice</u>

The Exchange currently intends to make the proposed modifications, which are effective on filing of this proposed rule, operative as of commencement of trading on September 4, 2012. 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 (www.nsx.com).

Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the provisions of Section 6(b) of the Securities Exchange Act of 1934[9] (the "Act"), in general, and Section 6(b)(4) of the Act,[10] 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.

The proposed changes that introduce the two different pricing options are equitably allocated and not unfairly discriminatory because all qualified ETP Holders are eligible to choose which Fee Schedule they would like to apply. The adjustments are reasonable methods to incentivize the submission of orders on the Exchange. These proposed changes are equitable because they are open to all members on an equal basis.

The proposed changes that to [sic] the Automatic Execution Mode Section of the Fee Schedule 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 Automatic Execution Mode 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.

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[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

The proposed changes to the rebates payable for executions in securities priced at least one dollar in Order Delivery Mode are reasonable because they are in the same range of rebates offered by other comparable exchanges. The proposed 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 Mode 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 [sic]. 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 proposed visual changes to the Fee Schedule is [sic] reasonable because it allows [sic] Exchange ETP Holders to better understand the different Fee Schedules.

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.[11] At any time within 60 days of the filing of such 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. Please include File Number SR-NSX-2012-14 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-2012-14. 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

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

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 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-2012-14 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.[12]

Kevin M. O'Neill
Deputy Secretary

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