

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70890; File No. SR-NSX-2013-21)

November 15, 2013

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Fee and Rebate Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act “ or “Exchange Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 1, 2013, National Stock Exchange, Inc. (“NSX[®]” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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

The Exchange is proposing to amend its Fee and Rebate Schedule (the “Fee Schedule”) issued pursuant to Exchange Rule 16.1(a) in order to: change certain fees and rebates applicable to executions occurring through the “Auto Ex” mode of interaction (“Auto Ex Mode”)³ with the NSX’s trading system (the “System”);⁴ and discontinue charging certain fees to Exchange Equity Trading Permit (“ETP”)⁵ Holders that are approved to use the Order Delivery mode of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 11.13 (Proprietary and Agency Orders; Modes of Order Interaction), paragraph(b)(1).

⁴ Under NSX Rule 1.5, the term “System” is defined as “the electronic securities communications and trading facility. . . through which orders of Users are consolidated for ranking and execution.”

⁵ NSX Rule 1.5 defines the term “ETP” as an Equity Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange’s Trading Facilities.

interaction with the System (“Order Delivery Mode”).⁶ The Exchange is also proposing to eliminate the rebate of \$0.0045 per executed share for Double Play Orders⁷ in five select securities (the “Select Securities”) directed to the CBOE Stock Exchange, Inc. (“CBSX”) and pay the standard rebate of \$0.0015 per executed share applicable to Double Play Orders in all other securities priced at \$1.00 and above. The Exchange also proposes to make certain non-material changes to the relevant text of the Fee Schedule to make certain terms used therein consistent with terms used in the Exchange’s rules.

The text of the proposed rule change is available on the Exchange’s website at www.nsx.com, at the Exchange’s principal office, 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 statutory 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

⁶ See Exchange Rule 11.13(b)(2).

⁷ NSX Rule 11.11(c)(10) defines a “Double Play Order” as a market or limit order for which an ETP Holder instructs the System to route to designated away Trading Centers which are approved by the Exchange from time to time without first exposing the order to the NSX Book. A Double Play Order that is not executed in full after routing away receives a new time stamp upon return to the Exchange and is ranked and maintained in the NSX Book in accordance with Rule 11.14(a).

1. Purpose

The Exchange proposes to amend Section I. (Auto Ex Mode); Section II. (Order Delivery); Section III.A. (Order Routing All Tapes); and Section IV. (Regulatory Fee) of its Fee Schedule to: implement new fees and rebates applicable to executions occurring through Auto Ex Mode; change Section II, Pricing Option A for Order Delivery Mode to discontinue a fee paid by ETP Holders approved to use the Order Delivery Mode (“Order Delivery Users”)⁸ for each Order Delivery Notification in securities priced below \$1.00; change Section III.A. to eliminate a rebate of \$0.0045 per executed share paid to ETP Holders that direct Double Play Orders in the Select Securities to CBSX;⁹ and, change Section IV. to discontinue a fee paid by Order Delivery Users for quotation updates in securities priced under \$1.00. The Exchange also proposes to make certain non-material changes to the relevant text of the Fee Schedule to make certain terms used therein consistent with terms used in the Exchange’s rules.

Amended Fees and Rebates Applicable to Auto Ex Mode

The Exchange is proposing several changes to the fees and rebates applicable under both the Fixed Fee Schedule and the Variable Fee Schedule applicable to executions occurring through the use of the Exchange’s Auto Ex Mode. Specifically, the Exchange is proposing to adjust the volume thresholds that must be met before an ETP Holder can be eligible to pay the lowest fees for adding liquidity under the Fixed Fee Schedule. Currently, an ETP Holder must execute average daily volume (“ADV”) of at least 50,000 shares of added liquidity during a calendar month to qualify for the lowest fees under the Fixed Fee Schedule. The Exchange is

⁸ A “User” is defined in Exchange Rule 1.5 as “...any ETP Holder or Sponsored Participant who is authorized to obtain access to the System....”

⁹ The Select Securities are Apple Inc. (“AAPL”); Google Inc. (“GOOG”); Bank of America Corp (“BAC”); Nokia Corporation (“NOK”); and Sirius Radio, Inc. (“SIRI”).

proposing to change this volume threshold to ADV of at least 25,000 executed shares of added liquidity during a calendar month.

Along with this change to the qualifying volume threshold, the Exchange is proposing to adjust certain fees and rebates under both the Variable and Fixed Schedules. For ETP Holders with ADV within Tier 1 (up to 500,000 executed shares), the Exchange will reduce the fee for removing liquidity under the Fixed Fee Schedule from \$0.0030 to \$0.0029. In the Variable Fee Schedule, the Exchange proposes to increase the rebate to add liquidity in Tier 4 (ADV greater than¹⁰ [sic] 5 million shares but less than 10 million shares) from \$0.0028 under the current schedule to \$0.0029. For Tier 5, which the Exchange proposes to amend and redefine as ADV of greater than [sic] 10 million shares executed, the Exchange proposes to increase the rebate for adding liquidity under the Variable Fee Schedule from \$0.0029 to \$0.0031.

The Exchange is further proposing to eliminate Tier 6, defined in the current Fixed and Variable Fee Schedules as ADV in excess of [sic] 20 million shares. The Exchange believes that the proposed amendment to increase the liquidity rebate under Tier 5 in the Variable Fee Schedule provides an appropriate rebate for ETP Holders with ADV in excess of 10 million shares, eliminating the need for the additional Tier 6 pricing. In addition, the Tier 5 ADV amounts are more reflective of the actual volume totals currently executed by ETP Holders. The Exchange submits that eliminating Tier 6 for both the Fixed and Variable Fee Schedules operates to simplify the Fee Schedule and provide a fee and rebate structure that better aligns with actual volume totals.

¹⁰ The Commission notes that the corresponding rule text refers to amounts greater than or equal to for the 5, 10, and 20 million share thresholds referenced herein, and that the rule text is controlling.

Additionally, the Exchange is proposing that, for Tape B securities¹¹ only, each ETP Holder that executes ADV of at least 25,000 shares of added liquidity in Auto Ex Mode during a calendar month will receive a rebate of \$0.0034 under the Fixed Fee Schedule per executed share, to apply across all ADV tiers of the Fixed Fee schedule. This amendment is intended to provide added incentive to ETP Holders to add liquidity in Tape B symbols on the Exchange, thereby increasing trading volumes and providing better execution opportunities for ETP Holders and their customers while maximizing the rebates available to ETP Holders for posting liquidity on the Exchange.

The Exchange believes that the proposed changes to certain fees and rebates applicable to Auto Ex Mode will operate to incentivize ETP Holders to post additional liquidity on the Exchange, increase trading opportunities for ETP Holders and their customers, and enhance the efficiency and cost-effectiveness of trading on the Exchange.

Amended Rebate for Double Play Orders in the Select Securities.

The Exchange is proposing to amend the Fee Schedule to eliminate the enhanced rebate of \$0.0045 per executed share that the Exchange currently pays to ETP Holders that direct Double Play Orders in the Select Securities to CBSX. Double Play Orders routed to and executed on CBSX will be subject to the rebate program applicable to all other securities priced at \$1.00 and above under Section III.A. of the Fee Schedule, which provides for a rebate of \$0.0015 per executed share.

¹¹ The term “Tape B” securities refers to the designation assigned in the Consolidated Tape Association (“CTA”) Plan for reporting trades with respect to securities in Network B, which are securities listed on NYSE MKT, formerly NYSE Amex, and other exchanges. Tape B securities do not include securities listed on the New York Stock Exchange, Inc. or the NASDAQ Stock Market LLC.

The Exchange implemented the enhanced rebate of \$0.0045 for executions of Double Play Orders in the Select Securities directed to CBSX as of July 1, 2013.¹² As of September 3, 2013, the Exchange amended the Fee Schedule to remove AMD and MU from the list of Select Securities and add AAPL and GOOG.¹³

In its previous filings with respect to the enhanced rebates for Double Play Orders directed to and executed on CBSX, the Exchange noted that CBSX had determined the list of Select Securities and, because the Exchange intended to pass through the rebates to ETP Holders that directed Double Play Orders in the Select Securities to CBSX, it made conforming changes to the NSX Fee Schedule. CBSX has determined that, at present, it will not pay the enhanced rebate of \$0.0045 per executed share for any of the symbols that comprise the list of Select Securities. The enhanced per share rebate for executed Double Play Orders in the Select Securities was an attempt to increase liquidity provision in these symbols, but such increased liquidity was not attained. The Exchange is therefore making conforming changes to the Fee Schedule to remove all of the symbols that currently comprise the list of Select Securities and will pay the rebate of \$0.0015 per executed share applicable to all other routed orders in securities priced at \$1.00 and above under Section III.A. of the Fee Schedule. If in the future the Exchange seeks to identify securities for the Select Securities list and apply a different fee and

¹² The Exchange filed for immediate effectiveness amendments to its Fee Schedule, effective July 1, 2013, that: established the \$0.0045 per share rebate for executions of Double Play Orders in the Select Securities on CBSX; clarified that the unexecuted portion of a Double Play Order that is returned to NSX after its initial route to CBSX and subsequently executed on the NSX or routed away in accordance with NSX Rule 11.15(a)(ii) is subject to the standard Fee Schedule; and clarified that the \$0.0030 per share routing fee applies only to orders routed by the Exchange in accordance with NSX Rule 11.15(a)(ii). The Select Securities initially identified included Advanced Micro Devices, Inc. (“AMD”) and Micron Technology, Inc. (“MU”) in addition to BAC, NOK, and SIRI. See Exchange Act Release No. 34-69941; 78 FR 41966; SR-NSX-2013-14.

¹³ See Exchange Act Release No. 34-70525; 78 FR 60954; SR-NSX-2013-18.

rebate program, it would do so upon a filing with the Commission pursuant to section 19(b) of the Act.

Amended Fees Applicable to Order Delivery Mode.

The Exchange is further proposing to amend the Fee Schedule with respect to Order Delivery Mode by, first, eliminating securities priced below \$1.00 from the monthly volume threshold of 1.5 million delivered Order Delivery Notifications that must be met before an Order Delivery User is no longer subject to the \$0.35 fee per Order Delivery Notification fee. As a result, all Order Delivery Notifications in securities priced below \$1.00 will not be subject to the Order Delivery Notification fee. Second, the Exchange is proposing to eliminate the quotation update fee in securities priced below \$1.00, applicable to both new and existing Order Delivery Users. The Exchange states that it is proposing these changes to better align the fees and rebates applicable to Order Delivery Mode; to provide a more cost-effective structure; and to encourage greater activity in securities priced below \$1.00 through the Order Delivery Mode.

Currently, under Section II. Pricing Option A of the Fee Schedule, the Exchange does not pay a transaction rebate or a market data rebate for securities priced under \$1.00, but assesses a fee of \$0.35 for each Order Delivery Notification, up to 1.5 million Order Delivery Notifications per month, that the System delivers to Order Delivery Users for potential execution against a posted displayed or undisplayed order. The Exchange states that, by proposing to eliminate from this volume threshold securities priced below \$1.00 the and charge no fee per Order Delivery Notification for such securities, it is seeking to balance its Fee Schedule to better align the fees and rebates applicable to Order Delivery Notifications in sub-dollar securities. The Exchange states that it is proposing the change to enhance the incentives for an Order Delivery

User to post bids and offers in securities priced below \$1.00 on the NSX Book¹⁴ since the Order Delivery User will not be charged the Order Delivery Notification fee when notified by the Exchange that its posted orders has been matched by the System for execution against a customer order. The Exchange makes it clear in the Fee Schedule that Order Delivery Notifications delivered to the Order Delivery User in securities priced below \$1.00 shall not count toward the 1.5 million Order Delivery Notification fee cap applicable to securities priced at \$1.00 and above.

The Exchange is also proposing to amend Section IV. of the Fee Schedule to eliminate the quotation update fee in securities priced below \$1.00, applicable to both new and existing Order Delivery Users.¹⁵ This proposed change is also directed at incentivizing Order Delivery Users to increase their use of Order Delivery Mode for quoting in securities priced below \$1.00 by eliminating the fees that they would otherwise pay for quotation updates. The Exchange believes that by providing these incentives to Order Delivery Users, it will encourage more liquidity in securities priced below \$1.00 on the Exchange, provide new opportunities for ETP Holders to interact with Order Delivery Users' quoted interest in securities priced below \$1.00, and provide for a simpler and more cost-efficient fee and rebate structure.

Finally, the Exchange is also proposing to change the Fee Schedule to substitute references to an "ETP Holder" with the term "Order Delivery User" and describing such User as an ETP Holder

¹⁴ Exchange Rule 1.5 defines the term "NSX Book" as "...the System's electronic file of orders."

¹⁵ For securities priced at \$1.00 and above, the Exchange will continue to apply a quotation update fee of \$0.000467 to an Order Delivery User's first 150 million quotation updates each calendar month, with no fee applied after this threshold is met. New Order Delivery Users will be charged a reduced fee of \$0.000667 per quotation update in securities priced at \$1.00 and above for the first three months of operation as an Order Delivery User.

approved for Order Delivery Mode. This non-material change will operate to provide clarity in the Fee Schedule and tracks language currently used in the Exchange's rules.

2. Statutory Basis

The Exchange believes that the proposed changes to the Fee Schedule are consistent with the provisions of Section 6(b) of the Act in general,¹⁶ and Sections 6(b)(4)¹⁷ and 6(b)(5)¹⁸ of the Act in particular. With respect to the requirements of Section 6(b)(4) of the Act, the Exchange submits that all of the proposed changes, both for Auto Ex Mode and Order Delivery Mode, provide for the equitable allocation of reasonable dues, fees and other charges among ETP Holders, issuers and persons using the Exchange's facilities.

Specifically, the Exchange believes that the proposed fee and rebate changes for executions in Auto Ex Mode under the proposed revisions Section I. of the Fee Schedule are consistent with the provisions of Section 6(b)(4) of the Act in that they constitute an equitable allocation of reasonable dues and fees among ETP Holders and their customers and market participants seeking pools of liquidity. All ETP Holders are eligible to select the proposed pricing model and may do so at their discretion. The Exchange believes that its proposal to change the ADV threshold in the Fixed Fee Schedule from 50,000 shares to 25,000 shares of added liquidity during a calendar month and to adjust the fees for removing liquidity and the rebates for adding liquidity in the Fixed and Variable Fee Schedules, with the amounts varying depending on the volume tiers into which the ETP Holder's executed volume falls, are consistent with Section 6(b)(5) of the Act in that it is intended to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(4).

¹⁸ 15 U.S.C. 78f(b)(5).

investors and the public interest, by encouraging greater liquidity on the Exchange, potentially improving execution quality and price-discovery, and promoting an efficient and cost-effective means of trading.

Similarly, the Exchange submits that its proposal to provide a rebate of \$0.0034 per executed share to ETP Holders that execute ADV of at least 25,000 shares adding liquidity in Tape B securities, with such rebate to apply across all volume tiers, is intended to attract more volume in those securities to the Exchange, provide additional execution opportunities for ETP Holders seeking to remove that liquidity, and to promote narrower spreads and better execution quality. The Exchange believes that these goals are consistent with Section 6(b)(5) of the Act in that they promote the maintenance of fair and orderly markets, operate to perfect the mechanism of a free and open market and national market system, and are consistent with the protection of investors and the public interest.

The Exchange states that its proposed amendment to Section I. of the Fee Schedule to eliminate volume Tier 6 is consistent with the Section 6(b) of the Act and Sections 6(b)(4) and 6(b)(5) in that it better aligns the Fee Schedule with the trading volume of the Exchange, thereby enhancing transparency and clarity, while providing incentives through the proposed amendments to Section I. to promote additional liquidity and increase trading volumes. This change is consistent with both the provisions of Section 6(b)(4) requiring an equitable allocation of reasonable dues and fees among ETP Holders, issuers and other persons using the Exchange's facilities, and the provisions of section 6(b)(5) requiring that the rules of the Exchange promote just and equitable principles of trade.

The Exchange submits that its proposal amend Section III.A. of the Fee Schedule to remove the five symbols that currently comprise the list of Select Securities, and not presently

offer an enhanced rebate for any Double Play Orders in Select Securities directed to and executed on CBSX, is consistent with Section 6(b)(4) of the Act in that it is an equitable allocation of reasonable dues and fees among ETP Holders, issuers, and persons using the facilities of the Exchange. The Exchange's proposed amendment will remove the enhanced rebates applicable to executed Double Play Orders in the Select Securities directed to CBSX. Any such executions in the symbols that formerly comprised the list of Select Securities will now be subject to the fee and rebate schedule applicable to all securities priced at \$1.00 and above, which will be assessed equally to all ETP Holders and persons using the facilities of the Exchange. The Exchange believes that it is not inconsistent with Section 6 of the Act to eliminate the enhanced rebates for executions in Double Play Orders in the five symbols that comprised the Select Securities list when the desired liquidity that the enhanced rebate was intended to incentivize in those symbols is not attained.

The Exchange next submits that, with respect to the proposed elimination of the fees for Order Delivery Notifications in securities priced below \$1.00, its proposal is consistent with Section 6 of the Act in that it applies equally to all Order Delivery Users with posted interest in such securities on the NSX Book. The Exchange further submits that its proposed elimination of the Order Delivery Notification fee in securities priced below \$1.00 is consistent with Section 6(b)(4) in that it is reasonable to differentiate securities priced under \$1.00 in determining a reasonable fee and rebate structure. In this instance, the Exchange is proposing an amendment that would eliminate the fee that the Exchange currently charges Order Delivery Users for each Order Delivery Notification in a sub-dollar security, up to 1.5 million notifications per month. Under the current Fee Schedule, this is the same fee that the Exchange charges Order Delivery Users for each order Delivery Notification in a security priced at \$1.00 and above, up to 1.5

million notifications per month. Currently, Order Delivery Users receive transaction and market data rebates for securities priced at \$1.00 above while no such rebates are available for securities priced below \$1.00.

The Exchange believes that by eliminating the Order Delivery Notification fee for securities priced below \$1.00 it will incentivize Order Delivery Users to post more interest in such securities on the NSX Book, thereby potentially increasing liquidity in such securities and providing more execution opportunities on the Exchange. It will also provide a potentially more advantageous fee and rebate structure for Order Delivery Users, who under the current Fee Schedule are subject to the same fees and volume thresholds for securities priced at or above \$1.00 and those priced under \$1.00, but without the ability to receive the rebates offered by the Exchange for securities priced at \$1.00 and above. For securities priced at \$1.00 and above, the 1.5 million Order Delivery Notification fee cap will remain in place.

The Exchange submits that the proposed fee structure for Order Delivery Notifications and quotation updates by Order Delivery Users in securities priced below \$1.00 is consistent with Section 6(b)(5) of the Act in that it does not permit unfair discrimination between ETP Holders, issuers and customers. The Exchange is proposing the amendments with the goals of providing a balanced fee and rebate structure for order Delivery Users and incentivizing Order Delivery Users to post more liquidity in securities priced under \$1.00 on the Exchange. There are other markets and execution venues with different pricing mechanisms offered to attract liquidity to those venues. The Exchange submits that in this highly competitive environment, its proposal to eliminate the Order Delivery Notification and quotation update fees in securities priced under \$1.00, applicable to Order Delivery Users, provides alternatives to ETP Holders and their customers, while striving to increase liquidity in securities priced under \$1.00 on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange submits that its proposals to enhance the rebates available to ETP Holders using Auto Ex Mode; and eliminate fees paid by Order Delivery Users for Order Delivery Notifications and quotation updates in securities priced below \$1.00, are reasonable approaches to incentivize additional order flow in a highly competitive environment and therefore does not present a burden on competition.

The proposed rule change to remove the five securities from the list of Select Securities will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes will subject the five symbols on the list to the same fee and rebate structure that is now applied to all other securities in which orders are routed.

Moreover, the Exchange is seeking to provide a fee and rebate structure that appropriately addresses the balance between fees and rebates and provides an economical and cost-effective means for executing transactions in the Exchange's market. To this extent, the Exchange submits that the proposed amendments to the Fee Schedule operate to enhance competition among competing trading venues and provide more choices for ETP Holders and their customers.

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 Exchange Act¹⁹ and subparagraph (f)(2) of Rule 19b-4.²⁰ 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.

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-2013-21 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-2013-21. 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

¹⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁰ 17 CFR 240.19b-4.

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-2013-21, 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.²¹

Kevin M. O'Neill
Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12).