

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78048; File No. SR-NSX-2016-03)

June 13, 2016

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Fee and Rebate Schedule to Adopt a Market Data Revenue Sharing Program

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 June 1, 2016, National Stock Exchange, Inc. (“NSX” or the “Exchange”) 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 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 Exchange Rule 16.1, Fee Schedule, to adopt a market data revenue (“MDR”) sharing program, add a definition of the term Average Daily Volume (“ADV”), and make ministerial changes to the Fee Schedule.

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

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 amend Rule 16.1, Fee Schedule, with the goal of maximizing the effectiveness of its business model and continuing to provide Equity Trading Permit (“ETP”) Holders³ a cost-effective execution venue. The Exchange is proposing to implement the MDR sharing program as a part of the Fee Schedule, add a definition of “ADV” and make ministerial changes to the Fee Schedule.

The Exchange’s proposed MDR sharing program provides for the issuance of a credit to ETP Holders for executing trades on the Exchange within two defined volume tiers. The credit is equal to a specified percentage of the monthly market data revenue received by the Exchange that is attributable to such ETP Holder’s displayed quoting and trading activity in securities priced at \$1.00 or greater on the Exchange. If, over the course of a calendar month, an ETP Holder executes an ADV of greater than or equal to 500,000, but less than 1,500,000, shares of securities priced \$1.00 or greater, then the ETP Holder will receive a credit of 25% of the market data revenue that the Exchange received that calendar month that was attributable to that ETP Holder’s executions and displayed quotes in securities priced \$1.00 or greater. If, over the course of a calendar month, the ETP Holder executes an ADV of greater than or equal to 1,500,000 shares of securities priced \$1.00 or greater, then the ETP Holder will receive a credit

³ Exchange Rule 1.5 defines “ETP” as the Equity Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange’s trading facilities.

of 50% of the market data revenue that the Exchange received that calendar month that was attributable to that ETP Holder's executions and displayed quotes in securities priced \$1.00 or greater.

In connection with the MDR sharing program, the Exchange is further proposing to amend the Fee Schedule to add Explanatory Note 4, which defines "ADV" as the average number of shares per day that an ETP Holder has executed on the Exchange in NMS securities priced at \$1.00 or greater when the Exchange is open for trading during the calendar month. The Exchange will not count a day as part of the month, for the purpose of calculating ADV, if the Exchange is not continuously open for trading during Regular Trading Hours⁴ on that day. For example, if the Exchange is open for abbreviated hours on a given day (e.g., until 1:00 p.m. on the day after the Thanksgiving Day holiday) or if the Exchange experiences a technological problem that renders the Exchange inoperative for part of the day, that day will not be factored in to the total number of days in the month when calculating ADV. If an ETP Holder is only eligible to trade on the Exchange for a portion of the month, the Exchange will calculate the ADV based on the number of days during the calendar month that the ETP Holder was eligible to trade. The Exchange notes that, for purposes of the ADV computation, an ETP Holder's total trading activity on the Exchange in securities priced at \$1.00 or greater will be utilized, including executions resulting from non-displayed orders. Explanatory Note 4 will clarify how the Exchange proposes to calculate ADV for the purposes of the market data revenue sharing program, described below.

⁴ NSX Rule 1.5R.(1) defines the term "Regular Trading Hours" as "the time between 9:30 a.m. and 4:00 p.m. Eastern Time."

The Exchange proposes to add Explanatory Note 3 to the Fee Schedule to provide further information regarding MDR sharing.⁵ Explanatory Note 3 makes explicit that, assuming the minimum ADV thresholds are achieved, an ETP Holder will receive an MDR credit (in such percentage as is specified above) of the MDR attributable to the ETP Holder's executions and displayed quotes in securities priced \$1.00 or greater. Explanatory Note 3 also establishes that to the extent market data revenue from Tape "A", "B" or "C" securities transactions is subject to any adjustment by the securities information processor ("SIP"), credits provided to the ETP Holder in connection with the ETP Holder's quoting and trading in the security that is subject to MDR adjustments may be adjusted by the Exchange;⁶ however, the Exchange will adjust credits to the ETP Holder only if the adjustment would be greater than or equal to \$250. Amounts less than \$250 would be considered de minimis and would be an exception, based the Exchange's belief that the monetary value of such an adjustment is outweighed by the associated

⁵ The Exchange has previously implemented other iterations of market data revenue sharing programs pursuant to filings with the Commission and such prior MDR sharing programs shared up to 50% of trade and quote market data revenue. See Securities Exchange Act Release No. 66958 (May 10, 2012), 77 FR 28909 (May 16, 2012) (SR-NSX-2012-07); 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); Securities Exchange Act Release No. 56890 (December 4, 2007), 72 FR 70360 (December 11, 2007) (SR-NSX-2007-13).

⁶ Pursuant to the revenue allocation rules of Regulation NMS, the SIPs continuously calculate market data revenue attributable to each exchange on a security by security basis and distribute revenue to the exchanges quarterly. Fluctuations from quarter to quarter in quoting and trading on the Exchange, on a security by security basis, relative to other exchanges affects the results of the SIPs' continuous calculations of the MDR distribution for both the current quarter and prior quarters in the calendar year. The SIPs may then adjust the MDR distributions that the SIPs made to the Exchange for prior quarters in the calendar year, and the Exchange will adjust an ETP Holder's MDR credit received as appropriate, provided that such an adjustment would be in an amount of \$250 or greater.

administrative burden both to the Exchange and to the recipient ETP Holder.⁷ Lastly, Explanatory Note 3 establishes that MDR credits will be paid on a quarterly basis.

The Exchange also proposes to make the ministerial change of moving Explanatory Notes 1 and 2 from their current position at the end of the sections pertaining to transaction fees and rebates, to the end of the Fee Schedule where they would be more logically placed.

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 an Information Circular and will post the Fee Schedule and the instant rule filing on the Exchange’s website, 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,⁸ in general and, in particular, Section 6(b)(4) of the Act,⁹ which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The proposed rule change is also consistent with Section 6(b)(5) of the Act,¹⁰ which requires, among other things, that the rules of a national securities exchange not permit unfair discrimination between customers, issuers, brokers, or dealers, and be designed to promote just

⁷ The Exchange notes that in the past its Fee Schedule has included a similar de minimis exception for applying credits to ETP Holders for MDR adjustments in amounts less than \$250. See Securities Exchange Act Release No. 66958 (May 10, 2012), 77 FR 28909 (May 16, 2012) (SR-NSX-2012-07).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78f(b)(5).

and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system.¹¹

The Exchange submits that the MDR sharing program is equitable and reasonable, as required by Section 6(b)(4) of the Act. The Exchange believes that the MDR sharing program's volume thresholds are reasonable because they have been set at levels that make the MDR sharing program cost effective for both the Exchange and ETP Holders and, through the issuance of MDR credits, will incentivize Exchange participants to add liquidity to the Exchange. This will result in greater price discovery and price improvement for ETP Holders. The Exchange's process for adjusting credits based on adjustments made by the SIP is also reasonable as it will ensure that the credits received by ETP Holders are accurate. Setting a threshold for adjusting credits in an amount equal to or greater than \$250 is reasonable in that it takes into account the administrative costs to the Exchange and ETP Holder of processing de minimis adjustments.

The MDR sharing program is equitable because each ETP Holder will be subject to the same tiers and thresholds for the MDR sharing program. Additionally, each ETP Holder has the same opportunity to enter and execute any amount of non-displayed and displayed liquidity on the Exchange in order to receive an MDR credit. Thus, the Fee Schedule provides for a streamlined and equitable MDR sharing program which, the Exchange believes, will operate to encourage increased quoting and trading by ETP Holders on the Exchange.

The Exchange further submits that the proposed MDR sharing program satisfies the requirements of Section 6(b)(5) of the Act in that it does not permit unfair discrimination between customers, issuers, brokers, or dealers, is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open

¹¹ The Exchange notes that in the past it has offered, as a part of its Fee Schedule, similar MDR sharing programs. See fn. 5, supra.

market and a national market system. Under the proposed changes to the Fee Schedule, all ETP Holders executing orders on the Exchange will be subject to the same MDR sharing structure, and such changes are thereby designed to meet the requirements of the Section 6(b)(5) that the rules of the Exchange not permit unfair discrimination among ETP Holders and their customers. The Exchange submits that the proposal will promote just and equitable principles of trade by providing a streamlined MDR sharing program that will potentially attract more volume on the Exchange in displayed orders in securities priced at \$1.00 and above. Incentivizing ETP Holders to add displayed liquidity at levels that would result in the MDR credit would also operate to lower the cost to those ETP Holders of executing trades on the Exchange by allowing them to share in the MDR derived from their activity. Moreover, the Exchange believes that incentivizing market participants to post and to access the liquidity on the NSX Book would inure to the benefit of all market participants seeking greater and better execution opportunities. In this regard, the proposed Fee Schedule will promote just and equitable principles of trade and operate to remove impediments to and perfect the mechanism of a free and open market and a national market system under Section 6(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 burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change amends the Fee Schedule, which applies uniformly to all ETP Holders accessing the Exchange. Moreover, the proposed MDR credits will enhance rather than burden competition by operating to incentivize increased liquidity and improve execution quality on the Exchange through reasonable and equitably allocated economic incentives.

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 Act¹² and subparagraph (f)(2) of Rule 19b-4.¹³

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-2016-03 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.

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4.

All submissions should refer to File Number SR-NSX-2016-03. 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 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-2016-03 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.¹⁴

Robert W. Errett
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).