SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78931; File No. SR-NSX-2016-11)

September 26, 2016

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Fee and Rebate Schedule to Create a Liquidity-Adding Volume Threshold to Benefit from the Current Liquidity Taking Fee in Securities Priced $1.00 or Greater

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 20, 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 comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its Fee and Rebate Schedule (the "Fee Schedule"), issued pursuant to Exchange Rule 16.1, to: (1) create a monthly, liquidity-adding volume threshold that Equity Trading Permit ("ETP") Holders[3] will be required to meet to continue to pay for [sic] the current liquidity-taking fee in securities priced $1.00 or greater and establish a different, higher liquidity-taking fee for ETP Holders that do not meet the new volume threshold; and (2) make ministerial changes to the Fee Schedule.

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

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

2 17 CFR 240.19b-4.

3 Exchange Rule 1.5E(1) defines "ETP" as the Equity Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange's trading facilities.

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 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 its Fee Schedule, issued pursuant to Rule 16.1, with the goal of maximizing the effectiveness of its business model and continuing to provide ETP Holders a cost-effective execution venue. To further incentivize ETP Holders to post liquidity on the NSX Book,[4] the Exchange is proposing to create a monthly, liquidity-adding volume threshold that an ETP Holder must reach to continue to pay the current liquidity-taking fee for securities priced $1.00 or greater. The Exchange proposes to adopt a different, higher liquidity-taking fee for ETP Holders that do not meet the new liquidity-adding volume threshold.

Currently, the Exchange charges ETP Holders $0.0003 per share executed for liquidity-taking orders in symbols priced at $1.00 or greater. The Exchange proposes to amend its fee schedule to add language in the Transaction Fees and Rebates section of the Fee Schedule and an Explanatory Note 1 which will create two different price structures depending on the amount of

[4] Exchange Rule 1.5N(1) defines "NSX Book" as the trading systems' electronic file of orders.

liquidity that an ETP Holder adds on the Exchange. Specifically, the Exchange will charge the current "taker" fee of $0.0003 per executed share for any marketable liquidity-removing order in securities priced at $1.00 or greater to any ETP Holder that executes at least 50,000 shares of liquidity-adding volume during a calendar month. An ETP Holder that does not execute at least 50,000 shares of liquidity-adding volume during a calendar month will be charged $0.0030 per executed share for any liquidity-removing order in securities priced at $1.00 or greater. After each calendar month, the Exchange will calculate the number of shares of liquidity-adding volume that each ETP Holder executed and apply the appropriate fee for the ETP Holder's liquidity-taking executions that calendar month.

The Exchange also proposes to make the ministerial change of adjusting the numbering for Explanatory Notes in light of the addition of proposed Explanatory Note 1.

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 web site, 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,[5] in general and, in particular, Section 6(b)(4) of the Act,[6] 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,[7] which

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[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

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

The Exchange submits that the proposed liquidity-adding volume threshold and associated fee are reasonable and equitable, as required by Section 6(b)(4) of the Act. The Exchange believes that the volume thresholds are reasonable because they have been set at achievable levels that will incentivize ETP Holders trading on the Exchange to add a greater amount of liquidity to the Exchange. This will result in greater price discovery and price improvement for ETP Holders and market participants. Further, the proposed "taker" fee of $0.0030 per share for securities priced $1.00 or greater is reasonable because it is within the range of fees that other exchanges charge per executed share for orders removing liquidity in securities priced $1.00 or greater.[8]

The liquidity-adding volume threshold is equitable because each ETP Holder has the same opportunity to post liquidity on the Exchange totaling 50,000 shares in order to continue to pay the current $0.0003 per share "taker" fee, as opposed to the new, higher taker fee. Thus, the Fee Schedule provides for an equitable program which, the Exchange believes, will operate to encourage increased quoting and trading by ETP Holders on the Exchange. The Exchange notes

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8 See, e.g., Bats BZX Exchange, Inc. ("BZX") Fee Schedule and the Fee Schedule of the Chicago Stock Exchange, Inc. ("CHX"). As of September 2016, both BZX and CHX charge a fee of $0.0030 per executed share for orders removing liquidity in securities priced $1.00 or greater.

that in the past it has offered, as a part of its Fee Schedule, a similar minimum, liquidity-adding volume threshold to qualify for a more advantageous "taker" fee.[9]

The Exchange further submits that its proposal that ETP Holders must attain at least 50,000 shares of executed liquidity-adding volume in a calendar month to benefit from the lower "take" fee of $0.0003 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 market and a national market system. Under the proposed changes to the Fee Schedule, all ETP Holders executing orders on the Exchange will have the same opportunity to qualify for the lower priced fee tier through their trading activity adding liquidity on the Exchange, 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 notes that, at present, approximately a dozen ETP Holders would meet the volume threshold of 50,000 shares of liquidity-adding volume to qualify for the current taker fee of $0.0003 per executed share.

The Exchange submits that the proposal will promote just and equitable principles of trade by providing a reasonable and attainable volume threshold that will potentially attract more displayed volume on the Exchange. Incentivizing ETP Holders to add more liquidity on the Exchange would inure to the benefit of all market participants seeking additional execution

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9 The Exchange has utilized a similar program as a part of its Fee Schedule in the past. That program provided that "[e]ach ETP Holder will be charged $0.0030 per share for any marketable order that removes liquidity unless the ETP Holder executes at least 50,000 shares of liquidity-adding volume in Auto-Ex Mode per month." See Securities Exchange Act Release No. 67816 (September 10, 2012), 77 FR 56886 (September 14, 2012) (SR-NSX-2012-14). The Exchange notes that, when this program was previously in effect, the majority of ETP Holders trading on the Exchange qualified for the lower fee tier.

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 changes 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 Act[10] and subparagraph (f)(2) of Rule 19b-4.[11]

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b-4.

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-2016-11 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.

All submissions should refer to File Number SR-NSX-2016-11. 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-2016-11 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]

Brent J. Fields
Secretary

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