

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58112; File No. SR-NSX-2008-11)

July 7, 2008

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change as Modified by Amendment Nos. 1, 2, and 3 Thereto Relating to the Termination of the Intermarket Trading System Plan and to a Technical Change to Rule 8.15.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 19, 2008, the National Stock Exchange (“NSX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On June 27, 2008, the Exchange filed Amendment Nos. 1 and 2 to the proposal. On July 2, 2008, the Exchange filed Amendment No. 3 to the proposal. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Due to the termination of the Intermarket Trading System (“ITS”) Plan, the Exchange is proposing to eliminate all references to the ITS Plan in its Rules and Fee Schedules, and to otherwise make technical and conforming changes related to the termination of ITS, as well as a minor technical change to Rule 8.15 (“Imposition of Fines for Minor Violation(s) of Rules”).

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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

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

Chapter XIV ("Intermarket Trading System Plan") of the NSX Rules provides the rules relating to the ITS Plan under which the Exchange conducted intermarket trading in exchange-listed equity securities with those market centers that were linked under the ITS Plan.<sup>3</sup> In connection with the implementation of Regulation NMS,<sup>4</sup> the ITS Plan was officially eliminated.<sup>5</sup> Because elimination of ITS has rendered Chapter XIV obsolete, the Exchange now proposes to eliminate Chapter XIV, the Fee Schedule for ITS Transactions, and all other references to Chapter XIV and the ITS Plan in the NSX Rules.

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<sup>3</sup> See Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983)(File No. 4-208).

<sup>4</sup> 17 C.F.R. § 242.600 et al.

<sup>5</sup> See Securities Exchange Act Release No. 55397 (March 5, 2007), 72 FR 11066 (March 12, 2007)(File No. 4-208).

In addition, the Exchange proposes to make a technical and conforming change to Interpretation .01 to Rule 8.15, which has been renumbered due to the deletion of ITS related provisions. The Exchange also proposes that the Rule cited in this Interpretation be changed from Rule 11.9(c) to Rule 11.8(a)(1). This change is required as Rule 11.9(c), relating to the Exchange's legacy trading system, has been functionally replaced by Rule 11.8(a)(1) relating to the Exchange's new trading system, NSX BLADE.<sup>6</sup>

Finally, the Exchange proposes to amend NSX Rule 11.3(a)(ii) to allow sub-penny bids, offers, orders and indications of interest (hereinafter "orders") in all securities where such orders are priced less than \$1.00 per share. Due to programming issues relating to ITS, the rule previously only permitted sub-penny price increments for securities priced below \$1.00 per share that were listed on the Nasdaq Stock Market. Now that the ITS Plan has terminated, and consistent with Regulation NMS, the Exchange proposes to allow sub-penny increments for all securities traded on the Exchange for orders priced less than \$1.00 per share, regardless of the listing exchange.<sup>7</sup>

## 2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>9</sup> in particular, in that it is designed prevent fraudulent and manipulative acts and practices, 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, and, in general, to protect investors and the public interest.

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<sup>6</sup> See Securities Exchange Act Release No. 54391 (August 31, 2006), 71 FR 52836 (September 7, 2006) (SR-NSX-2006-08).

<sup>7</sup> 17 CFR 242.612.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(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 Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received by the Exchange.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup> Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup> As required under Rule 19b-4(f)(6)(iii) under the Act,<sup>14</sup> the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

to 30 days after the date of filing.<sup>15</sup> However, Rule 19b-4(f)(6)(iii)<sup>16</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay and render the proposed rule change operative immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the 30-day operative delay would enable the Exchange to: eliminate all references to the ITS Plan in its Rules and Fee Schedules and to otherwise make technical and conforming changes required as a result of the termination of the ITS Plan as quickly as possible and eliminate any potential confusion. The waiver would also allow sub-penny bids, offers, orders in all securities where such orders are priced less than \$1.00 per share, which would enable investors to expand their trading options. Accordingly, the Commission designates the proposal to be operative upon filing with the Commission.<sup>17</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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:

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<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> For purposes of waiving the operative date of this proposal only, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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](mailto:rule-comments@sec.gov). Please include File Number SR-NSX-2008-11 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-2008-11. 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 Web site (<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 inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10:00 am and 3:00 pm. Copies of the filing also will be available for inspection and copying at the principal office of NSX. 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-2008-11 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.<sup>18</sup>

Florence E. Harmon  
Acting Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).