SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68392; File No. SR-NSX-2012-24)

December 10, 2012

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 "Exchange Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on December 3, 2012, 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 the 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) to: (1) modify the Quotation Update Fee charged for each quotation update[3] transmitted to the Exchange by an Equity Trading Permit ("ETP")[4] Holder using the Exchange's Order Delivery mode ("Order Delivery Mode"); and (2) cap the Quotation Update Fee to the first 150 million quotation updates entered by each ETP Holder per month. 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 A "quotation update" includes any change to the price, size or side of a quotation or submission of an updated quote with the same price, size or side. A quotation update does not include posting of a new quote to replace a quote that was fully executed.

4 Exchange 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.

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 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 Exchange Rule 16.1(a) to: (1) modify the Quotation Update Fee charged for each quotation update transmitted to the Exchange by an ETP Holder using the Exchange's Order Delivery mode; [sic] and (2) cap the Quotation Update Fee to the first 150 million quotation updates entered by each ETP Holder per month.

Electronic Communication Networks ("ECNs") can use Order Delivery Mode to provide quotations to the Exchange for publishing in the consolidated quotation feed as well as the Exchange's proprietary depth-of-book feed. The Exchange delivers Order Delivery Notifications[5] to an ECN when it receives an incoming order from another trading center which can potentially execute against the published quote. Except for very limited circumstances, the

[5] An "Order Delivery Notification" refers to a message sent by the Exchange to the Order Delivery participant communicating the details of the full or partial quantity of an inbound contra-side order that potentially may be matched within the System for execution against an Order Delivery Order.

ECN must immediately and automatically execute the Order Delivery Notification. Under Section 6(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act" or "Act"), the Exchange must have effective surveillance mechanisms to ensure that Order Delivery participants comply with the Exchange's rules and regulations as well as those of the SEC.[6]

On November 2, 2012, the Exchange amended Section IV of its Fee Schedule to adopt a separate Quotation Update Fee for existing and new Order Delivery participants.[7] The Exchange adopted the Quotation Update Fee as a means of recouping costs associated with regulating the marketplace and the Order Delivery program. The Quotation Update Fee is $0.000444 for each quotation update by an existing Order Delivery participant, and $0.006667 for each quotation update from a new Order Delivery participant during the first three (3) months of participation.

The Exchange now proposes to (i) increase the Quotation Update Fee for existing Order Delivery participants from $0.000444 to $0.000467, (ii) decrease the Quotation Update Fee for new Order Delivery participants from $0.006667 to $0.000667 during the first three (3) months of participation, and (iii) cap the Quotation Update Fee to the first 150 million quotation updates entered by each ETP Holder per month.

The Exchange believes that this approach equitably allocates fees among its members and is not unfairly discriminatory because Order Delivery participants (i) constitute a substantial portion of the Exchange's processing activity including quotations, Order Delivery Notifications, and transactions, and (ii) require a heightened level of regulatory scrutiny and are utilizing significantly greater regulatory resources as compared to ETP Holders that post and execute orders on the Exchange using automatic execution. The Exchange also believes that a cap on the

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6 15 U.S.C. 78f(b)(1).

7 See Securities Exchange Act Release No. 68215 (November 13, 2012), 77 FR 69522 (November 19, 2012) (SR-NSX-2012-20).

Quotation Update Fee is necessary to equitably allocate regulatory costs among Order Delivery participants. The Exchange will assess, on a quarterly basis, whether the Quotation Update Fee is equitably allocated among its members and to adjust the rate accordingly [sic]. The Exchange will consider any changes in the level of Order Delivery processing and other activity as well as any changes in the market, surveillance and system requirements required to effectively perform the regulatory, surveillance, investigative or enforcement functions.

Operative Date and Notice

The Exchange will make the proposed modifications, which are effective on filing of this proposed rule, operative as of commencement of trading on December 3, 2012.[8] 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 of the changes to the Fee Schedule and will post a copy of the rule filing on the Exchange's website (www.nsx.com)

2. Statutory Basis

The Exchange believes that the amended Quotation Update Fee for existing Order Delivery participants is consistent with the provisions of Section 6(b) of the Act[9], in general, and Section 6(b)(4) of the Act,[10] in particular in that it 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. Order Delivery Mode imposes on the Exchange greater regulatory

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8 While the Exchange proposes to amend the date of its Fee Schedule to December 1, 2012, it will not implement the proposed fee changes until Monday, December 3, 2012, the first day of trading. The Exchange proposes to amend the Fee Schedule's date to December 1 as it contains non-transaction based fees that are charged on a monthly basis.

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

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

and operational costs than should the Exchange offer only automatic execution mode of interaction ("Auto-Ex Mode"),[11][sic] because Order Delivery is a model that requires increased regulatory procedures and resources to ensure effective oversight of compliance with the rules and regulations of the Exchange and the Commission. The Exchange believes that the amended Quotation Update Fee for existing Order Delivery participants is consistent with the provisions of Section 6(b)(5) of the Act,[12] is equitable and not unfairly discriminatory because Order Delivery participants constitute a substantial portion of the Exchange's processing activity including quotations, order delivery notifications, and transactions, and require a heightened level of regulatory scrutiny and resources as compared to ETP Holders that post and execute orders on the Exchange using Auto-Ex Mode. The Exchange believes that capping the Quotation Update Fee is necessary to equitably allocate regulatory costs among Order Delivery participants. Order Delivery participants are eligible to submit (or not submit) liquidity adding and quotes, and may do so at their discretion in the daily volumes they choose during any given trading day.

Therefore, the Exchange believes the revised fee structure is a reasonable means for the NSX to recover the regulatory costs of the marketplace and Order Delivery. The Quotation Update Fee is reasonable given that it is directly related to the Exchange's cost of regulation. The Exchange will review the rate of the Quotation Update Fee on a quarterly basis, and will consider any changes in the level of Order Delivery processing and other activity as well as any

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[11] Under Auto-Ex Mode, the Exchange matches and executes like-priced orders (including against Order Delivery orders resting on the NSX book). Auto-Ex orders resting in the NSX book execute immediately when matched against a marketable incoming contra-side Auto-Ex order.

[12] 15 U.S.C. 78f(b)(5).

changes in the market, surveillance and system requirements required to effectively perform the surveillance, investigative or enforcement functions. Furthermore, the Exchange also believes that the amended Quotation Update Fee for new Order Delivery participants during their first three (3) months of operation is consistent with the provisions of Section 6(b) of the Act,[13] in general, and Section 6(b)(4) of the Act,[14] in particular in that it 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. Oversight of a new Order Delivery participant's activities imposes on the Exchange additional regulatory and operational costs because the Exchange expends an increased regulatory focus over a new Order Delivery participant's activities to ensure compliance with Exchange Rule 11.13 and to gain familiarity with their quoting activities. The Exchange believes that continuing to charge a higher quotation update fee for new Order Delivery participants during their first three (3) months of operation is a reasonable means to cover the regulatory oversight costs. Moreover, the Exchange believes that the amended Quotation Update Fee for new Order Delivery participants during their first three (3) months of operation is consistent with the provisions of Section 6(b)(5) of the Act,[15] in that the proposed regulatory fee is not unfairly discriminatory. New participants may not quote with as much frequency as established Order Delivery participants. For example, a new Order Delivery participant may submit quotations in a few securities, and ramp up quotation activity with experience. However, the Exchange will need to expend additional resources to ensure that the new Order Delivery participant is complying with all regulations. In addition, new Order Delivery participants require increased regulatory oversight due to the Exchange's focus on their

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[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

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

trading activity as well as Exchange staff developing familiarity with the new participant's [sic] trading behavior. Also, Order Delivery participants are eligible to submit (or not submit) liquidity adding and [sic] quotes, and may do so at their discretion in the daily volumes they choose during any given trading day.

Lastly, the Exchange believes that proposing to limit the Quotation Update Fee to an Order Delivery participant's first 150 million quotation updates each month is also consistent with the provisions of Section 6(b) of the Act,[16] in general, and Section 6(b)(4) of the Act,[17] in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among Order Delivery participants, its members and other persons using the facilities of the Exchange. The Exchange found that capping the Quotation Update Fee was necessary to equitably allocate regulatory costs among Order Delivery participants. Moreover, the Exchange believes that the proposed cap on the Quotation Update fee is consistent with the provisions of Section 6(b)(5) of the Act,[18] in that the proposed regulatory fee is not unfairly discriminatory because it applies to all Order Delivery participants equally. Nonetheless, the Exchange understands that new participants may not quote with as much frequency as established Order Delivery participants, thereby not reaching the cap. As stated above, a new Order Delivery participant may submit quotations in a few securities, and ramp up quotation activity with experience. However, the Exchange will need to expend additional resources to ensure that the new Order Delivery participant is complying with all regulations. In addition, new Order Delivery participants require increased regulatory oversight due to the Exchange's

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[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(4).

[18] 15 U.S.C. 78f(b)(5).

focus on their trading activity as well as Exchange staff developing familiarity with the new participant's trading behavior.

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

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 Act[19] 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:

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[19] 15 U.S.C. 78s(b)(3)(A)(ii).

[20] 17 CFR 240.19b-4.

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-2012-24 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-2012-24. 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 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 offices 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-2012-24, 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

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[21] 17 CFR 200.30-3(a)(12).