

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59974; File No. SR-NSX-2009-03)

May 26, 2009

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Fee and Rebate Schedule Issued Pursuant to Exchange Rule 16.1(c) in Order to Include Securities Priced at Less Than One Dollar in the Calculation of Volume Thresholds Used to Determine Rebates Payable for Displayed Order Liquidity Adding Tape A and C Securities Executed at One Dollar or Above

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 15, 2009, National Stock Exchange, Inc. (“NSX” or “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 the Fee and Rebate Schedule (the “Fee Schedule”) issued pursuant to Exchange Rule 16.1(c) in order to include securities priced at less than one dollar in the calculation of volume thresholds used to determine rebates payable for displayed order liquidity adding Tape A and C securities executed at one dollar or above.

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.

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

<sup>2</sup> 17 CFR 240.19b-4.

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

Purpose

With this rule change, the Exchange is proposing to modify the Fee Schedule's calculation of "Liquidity Adding Average Daily Volume" ("Liquidity Adding ADV") used to determine rebates payable for displayed orders of Tape A and C securities in the Automatic Execution Mode of order interaction ("AutoEx")<sup>3</sup> (the "AutoEx Displayed Order Liquidity Adding Tape A/C Rebate") so as to include securities priced under one dollar for purposes of determining whether a volume tier has been achieved.

The AutoEx Displayed Order Liquidity Adding Tape A/C Rebate is currently \$0.0026, \$0.0027 or \$0.0028 per share where an ETP Holder achieves Liquidity Adding ADV<sup>4</sup> of less

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<sup>3</sup> The Exchange's two modes of order interaction are described in NSX Rule 11.13(b).

<sup>4</sup> As set forth in the Explanatory Endnotes to the Fee Schedule, prior to implementation of the instant rule change, "Liquidity Adding ADV" means, with respect to an ETP Holder, "the number of shares such ETP Holder has executed as a liquidity provider on average per trading day (excluding partial trading days and securities under one dollar) across all tapes on NSX for the calendar month (or partial month, as applicable) in which the executions occurred". The proposed rule change would modify the foregoing definition by adding the following statement: "Notwithstanding the foregoing, for purposes of determining whether the volume tier thresholds are achieved in AutoEx with respect to rebates applicable to displayed orders that add liquidity for Tape A and C securities, securities priced under one dollar will be included".

than 25 million, less than 40 million and 40 million or more, respectively. Currently, securities priced under one dollar are excluded from the calculation of “Liquidity Adding ADV”. The Proposed Rule Change would modify the definition of “Liquidity Adding ADV” with respect only to the tiers used in calculation of the AutoEx Displayed Order Liquidity Adding Tape A/C Rebate so as to include securities under one dollar in the calculation of whether the above referenced tiers are achieved. The Proposed Rule Change would not modify other calculations of average daily volume in the Fee Schedule.

Rationale

The Exchange has determined that these changes are necessary to increase the volume of Displayed Orders of sub-dollar Tape A and C securities in AutoEx for the purpose of increasing the revenue of the Exchange and adequately funding its regulatory and general business functions. The proposed modifications are reasonable and equitably allocated to those ETP Holders that opt to provide Tape A and C Displayed Orders in AutoEx, and are not discriminatory because ETP Holders are free to elect whether or not to send such orders. Based upon the information above, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest.

Operative Date and Notice

The Exchange intends to utilize the proposed calculation effective upon filing of this proposed rule as it performs the calculations to determine the May, 2009 AutoEx Displayed Order Liquidity Adding Tape A/C Rebates.<sup>5</sup> Pursuant to Exchange Rule 16.1(c), the Exchange

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<sup>5</sup> The Exchange has determined that its application of the proposed modification of the calculation of average daily volume as it applies to the entire current calendar month could only benefit ETP Holders by serving to increase the amount of their AutoEx Displayed Order Liquidity Adding Tape A/C Rebate for such month. In addition, the

will “provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange” through the issuance of a Regulatory 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](http://www.nsx.com)).

**Statutory Basis**

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,<sup>6</sup> in general, and Section 6(b)(4) of the Act,<sup>7</sup> 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. Moreover, the proposed fee and rebate structure is not discriminatory in that all ETP Holders are eligible to submit (or not submit) liquidity adding trades and quotes, and may do so at their discretion in the daily volumes they choose during the course of the measurement period.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

**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.

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Exchange has determined that such application will not adversely impact the general operating revenues of the Exchange.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

### 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<sup>8</sup> and subparagraph (f)(2) of Rule 19b-4<sup>9</sup> thereunder, because, as provided in (f)(2), it changes “a due, fee or other charge applicable only to a member” (known on the Exchange as an ETP Holder). At any time within sixty (60) days of the filing of such 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:

#### 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-2009-03 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-2009-03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4 [sic].

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, 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 will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-2009-03 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.<sup>10</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).