

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68206; File No. SR-NSX-2012-18)

November 9, 2012

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a 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” or “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 31, 2012 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 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(a) to (i) create a separate definition of average daily volume (“ADV”) as it is used for Automatic Execution Mode (“Auto-Ex Mode”) versus Order Delivery Mode to include shares executed in NMS stocks with quoted prices at less than a dollar in the ADV calculation for Auto-Ex Mode, (ii) provide a fixed per share rebate for Midpoint Peg Zero Display Reserve Orders, and (iii) correct typographical inconsistencies within the Fee Schedule. The text of the proposed rule change is available on the Exchange’s website at www.nsx.com, at the Exchange’s principal office, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 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

1. Purpose

The Exchange is proposing to change its Fee Schedule to (i) create separate definitions of ADV for orders executed using Auto-Ex Mode versus Order Delivery Mode to include within the Auto-Ex Mode ADV calculation shares of NMS stocks with quoted prices less than one dollar, (ii) create a fixed per share rebate for Midpoint Peg Zero Display Reserve Orders³, and (iii) correct typographical inconsistencies within the Fee Schedule. The proposed changes provide ETP Holders with greater clarity with regard to the application of rebates and fees as well as to provide additional incentives for ETP Holders to direct order flow that may provide investors with greater liquidity and potential price improvement to the Exchange.

Auto-Ex Mode ADV Calculation

The Exchange uses the ADV⁴ calculation to determine the level of monthly fees (rebates) an ETP Holder will pay (receive) when removing (adding) liquidity. The Exchange is proposing

³ NSX Rule 11.11(c)(2)(B).

⁴ As set forth in the current Explanatory Endnotes of the Fee Schedule, “ADV” means, with respect to an ETP Holder, the average number of shares the ETP Holder has executed on the Exchange in all NMS stocks quoted at prices equal to or greater than a dollar when the Exchange is open for trading (excluding partial trading days) in Auto-Ex

to create separate ADV definitions for Auto-Ex Mode and Order Delivery Mode to include within the Auto-Ex Mode ADV calculation shares of NMS stocks with quoted prices less than one dollar. This change means that the Auto-Ex ADV calculation will include all shares in NMS stocks executed by an ETP Holder using Auto-Ex Mode regardless of the price. The Exchange believes that the proposed change will provide ETP Holders with an incentive to direct additional order flow that may provide investors with price improvement to the Exchange. The Exchange will not change the current ADV calculation for orders executed in Order Delivery Mode because, unlike Auto-Ex mode, ETP Holders that execute orders in Order Delivery Mode are not charged execution fees; they simply receive rebates for their executions. In addition, Order Delivery Mode incurs the Exchange greater regulatory and operational costs than Auto-Ex Mode. The Exchange notes that from May 2009 to September 2012, it included executions in securities priced at less than one dollar in the calculation of volume thresholds used to determine rebates payable for orders executed at one dollar or above.⁵

In addition, the Exchange notes that both EDGX Exchange Inc. (“EDGX”) and BATS Exchange Inc. (“BATS”) have similar rebate structures and do not exclude securities priced below one dollar in the calculation of volume thresholds used to determine rebates payable for orders executed at one dollar or above.⁶

Mode or in Order Delivery Mode during the calendar month (or partial month, as applicable).

⁵ See Securities and Exchange Act Release No. 59974 (May 26, 2009), 74 FR 26453 (June 2, 2009)(SR-NSX-2009-03) and Securities Exchange Act Release No. 67816 (September 10, 2012), 77 FR 56886 (September 17, 2012).

⁶ See Note 1 to EDGX’s Fee Schedule available at <http://www.directedge.com/Portals/0/docs/Fee%20Schedule/2012/EDGX/EDGX%20Fee%20Schedule%20-%20October.pdf> (October 1, 2012). See also BATS Fee Schedule available at http://cdn.batstrading.com/resources/regulation/rule_book/BATS-Exchanges_Fee_Schedules.pdf (October 1, 2012).

Midpoint Peg Zero Display Reserve Orders

The Exchange also proposes a fixed per share rebate of \$0.0017 for Midpoint Peg Zero Display Reserve Orders⁷ executed through both Order Delivery and Auto-Ex modes. The ADV calculations for both Auto-Ex Mode and Order Delivery Mode will include shares executed through the use of Midpoint Peg Zero Display Reserve Orders. The Exchange will use the ADV calculation to determine the tier applicable for fees ETP Holders will be charged for removing liquidity, and rebates for orders that add liquidity other than Midpoint Peg Zero Display Reserve Orders. Rebates for all other order types remain unchanged. By offering a fixed per share rebate for Midpoint Peg Zero Display Reserve Orders, the Exchange believes it will encourage the use of the order type, while maintaining consistency with the Exchange's overall pricing philosophy of encouraging displayed liquidity. In addition, the Exchange is setting the rebate at such level in order to incentivize liquidity by encouraging ETP Holders to use Midpoint Peg Zero Display Reserve Orders since this order type provides ETP Holders that enter them and other ETP Holders an additional way to offer/access liquidity inside the NBBO, respectively. Also, EDGX and BATS have similar rebate structures for non-displayed orders.⁸

Typographical Inconsistencies

Finally, the Exchange is correcting typographical inconsistencies within the Fee Schedule by correcting endnote references, renumbering endnotes, and updating the heading in Section I.

Operative Date and Notice

The Exchange intends to make the proposed modifications, which are effective upon filing, operative as of the commencement of trading on November 1, 2012. Pursuant to Exchange Rule 16.1(c), the Exchange will "provide ETP Holders with notice of all relevant dues,

⁷ NSX Rule 11.11(c)(2)(B).

⁸ See supra note 4.

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).

2. Statutory Basis

The Exchange believes that the proposed ADV definition changes are 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 each change 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 ADV definitions are not unfairly 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.¹¹ The volume adjustments are reasonable methods to incentivize the submission of such orders. All similarly situated ETP Holders are subject to the same fee structure, and access to the Exchange is offered on terms that are not unfairly-discriminatory.¹² Volume-based rebates and discounts have been widely adopted in the equities markets, and are equitable because they are open to all members on an equal basis and provide rebates that are reasonably related to the value of an exchange’s market quality associated with the requirements for the favorable pricing tier.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78f(b)(5).

¹² The Exchange believes that not changing the current ADV calculation for orders executed in Order Delivery Mode is not unfairly discriminatory because, unlike Auto-Ex, ETP Holders that execute orders in Order Delivery Mode are not charged execution fees, they simply receive rebates for their executions. In addition, Order Delivery Mode incurs the Exchange greater regulatory and operational costs than Auto-Ex Mode.

In addition, the Exchange believes the fixed per share rebate for Midpoint Peg Zero Display Reserve Orders is consistent with Section 6(b)(5) of the Act in that it is equitably allocated and not unfairly discriminatory because all ETP Holders are eligible to submit (or not submit) these types of orders, and may do so at their discretion during the course of the month.¹³ The fixed rebate is a reasonable method to incentivize the submission of such orders amongst all its ETP Holders regardless of which volume tier they are eligible for. The Exchange believes that by encouraging the use of the Midpoint Peg Zero Display Reserve Order, ETP Holders seeking to access liquidity inside the NBBO would be more motivated to direct their orders to NSX because they would have a heightened expectation of the availability of liquidity at the NBBO. The increased liquidity also benefits all investors by deepening NSX's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, and improving investor protection. In addition, an ETP Holder whose order is executed against a Midpoint Peg Zero Display Reserve Order would be able to obtain an execution at the NBB or NBO while minimizing the risk that incremental latency associated with routing the order to an away destination may result in an inferior execution. Lastly, the Exchange believes that offering a fixed per share rebate for Midpoint Peg Zero Display Reserve Order is reasonable because the pricing is similar to analogous order types offered by other exchanges.¹⁴

Lastly, the Exchange believes correcting the typographical inconsistencies and updating the heading in Section I in the Fee Schedule are reasonable in that they provide clarity to ETP holders to how the Exchange's fee and rebate structure operates by clarifying important cross-references. The corrections are equitable and not unfairly discriminatory in that the Fee

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ See supra note 4.

Schedule applies to all ETP Holders.¹⁵

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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 Act¹⁶ and subparagraph (f)(2) of Rule 19b-4¹⁷ 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 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.

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁷ 17 CFR 240.19b-4.

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-2012-18 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-2012-18. 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-2012-18 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.¹⁸

Kevin M. O'Neill
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).