

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69029; File No. SR-NSX-2013-08)

March 4, 2013

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 “Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 26, 2013, National Stock Exchange, Inc. (“NSX<sup>®</sup>” 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 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 charge Equity Trading Permit (“ETP”) Holders<sup>3</sup> \$0.0020 per share when using a Midpoint-Seeker Order<sup>4</sup> in the Exchange’s automatic execution mode of interaction (“Auto-Ex Mode”)<sup>5</sup> to remove liquidity in a security that is priced at or above \$1.00.

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

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

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

<sup>3</sup> 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.

<sup>4</sup> NSX Rule 11.11(c)(13). See also SR-NSX-2013-07.

<sup>5</sup> Under Auto-Ex mode the Exchange matches and executes like-priced orders in accordance with the process described in Exchange Rule 11.13(b)(1).

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 Section I of its Fee Schedule to charge ETP Holders \$0.0020 per share when using a Midpoint-Seeker Order in the Exchange's Auto-Ex Mode to remove liquidity in a security that is priced at or above \$1.00. The Midpoint Seeker Order is an Immediate-or-Cancel ("IOC")<sup>6</sup> order that ETP Holders may use to execute against orders that are posted on the NSX Book<sup>7</sup> at a price equal to or better than the midpoint of the Protected National Best Bid or Offer ("NBBO").<sup>8</sup>

Under Section I of the Fee Schedule, the Exchange currently charges ETP Holders that do not execute at least 50,000 shares of added liquidity in a month using the Exchange's Auto-

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<sup>6</sup> Under Exchange Rule 11.11(b)(1), an "Immediate-or-Cancel Order" is a "limit order that is to be executed in whole or in part as soon as such order is received, and the portion not so executed" is to be cancelled.

<sup>7</sup> Exchange Rule 1.5. "NSX Book" is defined as "System's electronic file of orders."

<sup>8</sup> Exchange Rule 1.5. "Protected NBBO" is defined as "the national best bid or offer that is a protected quotation."

Ex Mode a per share fee of \$0.0030 for any marketable order that removes liquidity. ETP Holders that execute more than 50,000 shares of added liquidity per month in Auto-Ex Mode are eligible for fees and rebates under either the Variable or Fixed Fee Schedules under Section I. Instead of paying the above described fees when removing liquidity in Auto-Ex Mode, ETP Holders will now pay the proposed lower fixed fee of \$0.0020 per share when using the Midpoint-Seeker Order to remove liquidity in securities priced at or above \$1.00.<sup>9</sup> The Exchange believes the proposed fee will encourage (i) ETP Holders that want to interact with Midpoint-Seeker Orders to post additional liquidity on the NSX Book, and (ii) ETP Holders that are seeking executions at prices better than the Protected NBBO to use the Midpoint-Seeker Order. The Exchange does not propose to amend the fee for securities priced below \$1.00.

### **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 March 1, 2013. 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 a copy of the rule filing on the Exchange’s website ([www.nsx.com](http://www.nsx.com)).

### 2. Statutory Basis

The Exchange believes that the proposed fixed fee for Midpoint-Seeker Orders that remove liquidity is consistent with the provisions of Section 6(b) of the Act,<sup>10</sup> in general, and Section 6(b)(4) of the Act,<sup>11</sup> in particular, in that it is reasonable and equitably allocated amongst

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<sup>9</sup> Executed Midpoint-Seeker Orders will be included in the ADV calculation but not be subject to additional fees under Section I of the Fee Schedule.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

ETP Holders 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. The lower per share fee for the Midpoint-Seeker Order is a reasonable method to encourage (i) ETP Holders that want to interact with Midpoint-Seeker Orders to post additional liquidity on the NSX Book, and (ii) ETP Holders that are seeking executions at prices better than the Protected NBBO to use the Midpoint-Seeker Order. The increased liquidity provided by additional order flow to the Exchange benefits all investors by offering additional potential for execution and cost savings. Furthermore, the Exchange believes that the proposed lower fee for Midpoint Seeker Orders is consistent with the provisions of Section 6(b)(5) of the Act,<sup>12</sup> because it is not unfairly discriminatory amongst ETP Holders. As stated above, 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.

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. ETP Holders using the Midpoint-Seeker Order will be charged a lower per share fee for removing liquidity rather than being charged the Exchange's standard fees under Section I of the Fee

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<sup>12</sup> 15 U.S.C. 78f(b)(5).

Schedule. The lower per share fee is designed to increase liquidity by encouraging ETP Holders to use Midpoint Seeker Orders. As stated above, the Exchange 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.

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<sup>13</sup> and subparagraph (f)(2) of Rule 19b-4.<sup>14</sup> 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

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>14</sup> 17 CFR 240.19b-4.

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NSX-2013-08 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-2013-08. 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-2013-08, 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>15</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).