

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-50190; File No. SR-NSX-2004-09)**

**August 12, 2004**

**Self-Regulatory Organizations; National Stock Exchange; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 to Amend NSX's SOR and Tape B Market Data Revenue Sharing Programs**

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 June 28, 2004, National Stock Exchange (the "Exchange" or "NSX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The NSX filed an amendment to the proposed rule change on August 10, 2004.<sup>3</sup> The Exchange filed the proposal pursuant Section 19(b)(3)(A)(ii) of the Act<sup>4</sup> and Rule 19b-4(f)(2)<sup>5</sup> 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.

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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> See letter from James Yong, Senior Vice President ("SVP"), Regulation and General Counsel of the Exchange, to Nancy Sanow, Assistant Director ("AD"), Division of Market Regulation ("Division"), Commission, dated August 9, 2004 and attachment ("Amendment No. 1"). Amendment No. 1 replaced and superceded the original filing in its entirety. In Amendment No. 1, the Exchange provided additional clarification regarding its proposed changes and made a technical correction to the proposed rule text. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on August 10, 2004, the date the NSX filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

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

NSX is proposing to amend its specialist operating revenue (“SOR”) revenue sharing program set forth in Exchange Rule 11.10(A)(j) as well as its Tape B revenue sharing program set forth in Exchange Rule 11.10(A)(k). NSX will implement the proposed change on July 1, 2004.

The text of the proposed rule change is below.<sup>6</sup> Proposed new language is italicized; proposed deletions are in brackets.

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CHAPTER XI

Trading Rules

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Rule 11.10 National Securities Trading System Fees

A. Trading Fees

(a) – (i) No change.

(j) Revenue Sharing Program. After the Exchange earns total operating revenue sufficient to offset actual expenses and working capital needs, a percentage of all Specialist Operating Revenue (“SOR”) shall be eligible for sharing with Designated Dealers. SOR is defined as operating revenue [which]that is generated by specialist firms. SOR consists of transaction fees, book fees, technology fees, and market data revenue [which]that is attributable to specialist firm activity. SOR shall not include any investment income or regulatory monies.

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<sup>6</sup> The language in Exchange Rule 11.10(A)(k) has been drafted based on the presumption that SR-NSX-2004-08 has already become effective. See Securities Act Release No. 50146 (August 4, 2004), 69 FR 49927 (August 12, 2004) (approving SR-NSX-2004-08).

The sharing of SOR shall be based on each Designated Dealer's pro rata contribution to SOR in excess of \$75,000 per quarter. In no event shall the amount of revenue shared with Designated Dealers exceed SOR. To the extent market data revenue is subject to [year-end]any adjustment, SOR revenue may be adjusted accordingly.

(k) Tape "B" Transactions. Except as provided in Paragraph (A)(e)(4) above, the Exchange will not impose a transaction fee on Consolidated Tape "B" securities. In addition, Members will receive a 50 percent pro rata transaction credit of gross Tape "B" revenue; provided that, however, calculation of the transaction credit will be based on net Tape "B" revenues in those fiscal quarters where the overall revenue retained by the Exchange does not offset actual expenses and working capital needs. To the extent market data revenue from Tape "B" transactions is subject to [year-end]any adjustment, credits provided under this program may be adjusted accordingly.

(l) – (r) No change.

B. No change.

C. No change.

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## **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 the 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 aspects 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 amend its SOR revenue sharing program to provide that only specialists that contribute more than \$75,000 in quarterly SOR will be eligible to participate in the allocation of the SOR.<sup>7</sup> In addition, the first \$75,000 in quarterly SOR contributed by a specialist will be excluded from the firm’s pro rata percentage contribution calculation. Currently, there are no such limitations on SOR participation. In no event will the amount of revenue shared with specialist firms exceed SOR. The Exchange believes that the implementation of this minimum contribution requirement is reasonable and ensures that each member pays an equitable share of the costs associated with operating the Exchange.

Through this filing, NSX is also proposing to make amendments to its SOR revenue sharing program<sup>8</sup> and Tape B market data revenue sharing program<sup>9</sup> to provide that to the extent market data revenue is subject to any adjustments, not just year-end adjustments as the rule text currently provides, credit provided under the respective programs may be adjusted accordingly.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and with Section 6(b)(4) of the Act,<sup>11</sup> in particular, in that it is designed to

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<sup>7</sup> SOR is defined as operating revenue that is generated by specialist firms. SOR consists of transaction fees, book fees, technology fees, and market data revenue attributable to specialist firm activity. SOR does not include any investment income or regulatory monies. Exchange Rule 11.10(A)(j).

<sup>8</sup> Exchange Rule 11.10(A)(j).

<sup>9</sup> Exchange Rule 11.10(A)(k).

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

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

provide for the equitable allocation of reasonable dues, fees, and other charges. The NSX believes the proposed rule change is also consistent with Section 6(b)(5) of the Act<sup>12</sup> in that it is designed 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. The Exchange believes that the proposed change will create incentives for members to use the Exchange trading system, thereby increasing competition, which, in turn, will enhance the National Market System.

The Commission notes that, as a national securities exchange, NSX has an obligation to maintain the resources necessary to adequately conduct its surveillance, examination, and other regulatory responsibilities.<sup>13</sup> The Exchange has acknowledged to the Commission that it remains mindful of its regulatory responsibilities and will not compromise those responsibilities by sharing revenue that would more appropriately be used to fund its regulatory responsibilities.<sup>14</sup>

**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**

No written comments were solicited or received in connection with the proposed rule

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

<sup>13</sup> See Securities Exchange Act Release No. 41286 (April 14, 1999), 64 FR 19843, 19844 (April 22, 1999) (reminding the Cincinnati Stock Exchange, Inc., the precursor to the NSX, of its regulatory responsibilities when considering its SOR program).

<sup>14</sup> Telephone conversation between James Yong, SVP, Regulation and General Counsel of the Exchange and Katherine England, AD, Division, Commission, on July 13, 2004 (regarding operation of the Exchange's SOR program and the need for the Exchange to remain mindful of its regulatory responsibilities).

change.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>15</sup> and subparagraph (f)(2) of Rule 19b-4<sup>16</sup> thereunder, because it involves a member due, fee, or other charge. At any time within 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.<sup>17</sup>

### **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-2004-

09 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and

Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

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

<sup>16</sup> 17 CFR 240.19b-4(f)(2).

<sup>17</sup> See 15 U.S.C. 78s(b)(3)(C). See also footnote 3, supra (regarding calculation of the abrogation period).

All submissions should refer to File No. SR-NSX-2004-09. 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. 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-2004-09 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Market Regulation, pursuant to the delegated authority.<sup>18</sup>

Margaret H. McFarland  
Deputy Secretary

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