

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52713; File No. SR-NSX-2005-08)

November 1, 2005

Self-Regulatory Organizations; National Stock Exchange; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments No. 1 and 2 Thereto Relating to Manual Processing Fee

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 28, 2005, National Stock Exchange<sup>SM</sup> (“Exchange” or “NSX<sup>SM</sup>”) 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. On October 21, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On October 31, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The Exchange filed the proposed rule change pursuant Section 19(b)(3)(A)(ii) of the Act<sup>5</sup> and Rule 19b-4(f)(2)<sup>6</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.

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

NSX proposes to amend its manual processing fee for crosses and meets phoned into the NSX Control Room and the book fees charged to its Designated Dealers.

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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> In Amendment No. 1, the Exchange (1) clarified who may phone orders into the NSX Control Room, (2) defined “cross” and “meet,” and (3) made other technical changes.

<sup>4</sup> In Amendment No. 2, the Exchange made a correction to the rule text.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

The text of the proposed rule change is reproduced below. Additions are indicated by underlining. Deletions are contained within the brackets.

RULES  
OF  
NATIONAL STOCK EXCHANGE

\* \* \* \* \*

CHAPTER XI

Trading Rules

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Rule 11.10 National Securities Trading System Fees

A. Trading Fees

(a) – (d) No change.

(e) Crosses and Meets

(1) – (3) No change.

(4) Users executing crosses and meets in Tape A, B or C securities through the Exchange’s System Supervisory Center shall be charged [\$15 per contra-party] \$.0025 per share, up to a maximum of \$75 per side of transaction. This transaction fee shall be in lieu of any transaction fee otherwise applicable under Paragraphs (A)(e)(1) through (A)(e)(3) above.

(f) – (l) No change.

(m) DD Issue/Book Fees. Designated Dealers will be charged a monthly book fee based on the following incremental schedule:

Number of Issues ..... Fee Per Issue

0 to 150 .....	\$30.00
151 to 300 .....	\$20.00
301 to 500 .....	\$15.00
501 and higher.....	\$2.00

Notwithstanding the above, any Designated Dealer that has been approved as a designated dealer in excess of 500 issues will be charged a monthly book fee based on the number of issues it traded for the prior month.

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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 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

Currently, orders can be entered on the Exchange either via an electronic connection or by phoning the NSX Control Room.<sup>7</sup> For orders phoned into the NSX Control Room, NSX currently charges a manual processing fee of \$15 per contra-party, with a cap of \$75 per side, on

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<sup>7</sup> Orders may be phoned into the NSX Control Room (or the Exchange's Systems Supervisory Center) by "Users." "Users" are defined in NSX Rule 11.9(a)(7) as "a Member of the Exchange or an Approved Dealer. Access Participant Members are considered to be Users in their limited capacity of executing transactions through the facilities of a Proprietary Member."

every cross or meet.<sup>8</sup> The Exchange has been billing on a per contra basis because the number of contra-parties determines the time it takes to process a trade and the cost of the trade. The Exchange's member firms, however, are more accustomed to being billed on a per share basis and have asked the Exchange to consider billing on such basis to keep firm billing in line with all of the other business lines. The Exchange believes that the implementation of this manual processing fee on a per share basis is reasonable and ensures that each NSX member pays an equitable share of the costs associated with operating the Exchange.

With respect to the book fee, the Exchange currently charges a monthly fee for the number of registered issues for each Designated Dealer. Some firms are beginning to change their business models to solicit fewer, larger size orders across a significant number of securities. This new model requires the firms to be registered in a significant number of securities to attract order flow even though they may not receive order flow for some time. The Exchange believes that the proposed change would initially reduce the cost to these firms while they are expanding their coverage of securities by charging the per issue fee based upon the issues that are traded for any Designated Dealer that has registered in excess of 500 issues. The Exchange believes that the implementation of this proposed fee would encourage Designated Dealers to trade more issues and be charged on the basis of what they actually traded.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and Section 6(b)(4),<sup>10</sup> in particular, in that it is designed to provide an

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<sup>8</sup> A "cross" is a transaction in which one Member represents both the buyer and the seller of a security. A "meet" is a transaction in which a Member represents the buyer or seller of a security and other Members represent the contra parties.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

equitable allocation of reasonable dues, fees, and other charges. The Exchange believes that the proposed change is also consistent with Section 6(b)(5) of the Act<sup>11</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. Further, the Exchange believes that the proposed change would create incentives for NSX members to electronically connect to the Exchange's trading system, thereby increasing efficiency and competition, which, in turn, would enhance the national market system.

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

The Exchange does not believe that the proposed rule change would 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 change.

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

The proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>12</sup> and Rule 19b-4(f)(2)<sup>13</sup> thereunder, because it involves a member due, fee, or other charge. 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

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<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

of investors, or otherwise in furtherance of the purposes of the Act.<sup>14</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-2005-08 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, D.C. 20549-9303.

All submissions should refer to File No. SR-NSX-2005-08. This file number should be included in the subject line if e-mail is used. To help the Commission process and review 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

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<sup>14</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on October 31, 2005, the date the Exchange filed Amendment No. 2 to the proposed rule change. See 15 U.S.C. 78s(b)(3)(C).

copying in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549. Copies of such filings will also 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-2005-08 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Market Regulation, pursuant to the delegated authority.<sup>15</sup>

Jonathan G. Katz  
Secretary

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