

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53195; File No. SR-NSX-2006-02)

January 30, 2006

Self-Regulatory Organizations; National Stock Exchange; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Exchange Rule 11.3 to Allow for Sub-Penny Quoting in Certain Securities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 30, 2006, the National Stock ExchangeSM (“NSX” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has filed this proposal pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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 Exchange Rule 11.3 to allow for sub-penny quoting in securities that are listed on The Nasdaq Stock Market where such quotes are priced less than \$1.00 per share, and in any other security approved by the Commission for sub-penny quoting. Exchange Rule 11.3 currently prohibits, and will continue to prohibit, sub-penny quoting in securities whose quotes are at \$1.00 or more per share, except to the extent otherwise approved

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

by the Commission. The text of the proposed rule change is below. Proposed new language is underlined. Proposed deletions are indicated in [brackets].⁵

RULES
OF
NATIONAL STOCK EXCHANGE

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CHAPTER XI

Trading Rules

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Rule 11.3 Price Variations

Bids, [or] offers, orders or indications of interests in [stocks] securities traded on the Exchange shall not be made [at a] in an increment smaller [variation] than:

(i) \$0.01 [per share; and in bonds at a smaller variation than 1/8 of 1% of the principal amount.] if those bids, offers or indications of interests are priced equal to or greater than \$1.00 per share; or

(ii) \$0.0001 if those bids, offers or indications of interests are priced less than \$1.00 per share and the security is listed on the Nasdaq Stock Market and is trading on the Exchange; or

(iii) Any other increment established by the Commission for any security which has been granted an exemption from the minimum price increments requirements of SEC Rule 612(a) or 612(b).

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⁵ Certain technical changes to the rule text have been made pursuant to a telephone conversation between James C. Yong, Chief Regulatory Officer, NSX and Sara Gillis, Attorney, Division of Market Regulation, Commission on January 30, 2006.

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 aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 11.3 currently provides that bids or offers in stocks traded on the Exchange shall not be made at a smaller variation than \$0.01 per share. Rule 612 of Regulation NMS under the Act provides, in relevant part, that no national securities exchange shall “display, rank, or accept from any person a bid or offer, an order, or an indication of interest in any NMS stock priced in an increment smaller than \$0.01 if that bid or offer, order, or indication of interest is priced equal to or greater than \$1.00 per share.”⁶ Rule 612 also prohibits national securities exchanges from displaying, ranking or accepting bids, offers, orders, or indications of interest priced in increments smaller than \$0.0001 if the bid, offer, order, or indication of interest is priced less than \$1.00 per share.⁷ Finally, Rule 612(c) of Regulation NMS provides that the Commission may grant exemptions from the minimum price increment requirements of Rule 612(a) and 612(b) “if the Commission determines that such exemption is necessary or

⁶ 17 CFR 242.612(a).

⁷ 17 CFR 242.612(b).

appropriate in the public interest, and is consistent with the protection of investors.”⁸ The compliance date for Rule 612 is January 31, 2006 (the “Compliance Date”).⁹

The Exchange is now proposing to prohibit the submission of bids, offers, orders, or indications of interest priced in increments smaller than (i) \$0.0001 if the bid, offer, order, or indication of interest is priced less than \$1.00 per share on securities that are listed in the Nasdaq Stock Market and traded on the Exchange, or (ii) the minimum price increment established by the Commission for any security that has been granted an exemption from the minimum price increment requirement of Rule 612(a) or 612(b) of Regulation NMS. Exchange Rule 11.3 currently prohibits, and will continue to prohibit, sub-penny orders and quotes priced at \$1.00 or more per share, except to the extent otherwise approved by the Commission, and will maintain a minimum increment of \$0.01 for any security traded on the Exchange and listed by the New York Stock Exchange or American Stock Exchange.

In connection with these revisions to Exchange Rule 11.3, the Exchange is also removing the language in Exchange Rule 11.3 relating to minimum price variations in bonds. The Exchange does not trade bonds and has not traded bonds for several years.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,¹⁰ in general, and Section 6(b)(5) of the Act,¹¹ in particular, in that it is

⁸ 17 CFR 242.612(c).

⁹ See Securities Exchange Act Release No. 52196 (Aug. 2, 2005), 70 FR 45529 (Aug. 8, 2005).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

designed to promote just and equitable principles of trade and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, generally, in that it protects investors and the public interest. The Exchange also believes that the proposal is consistent with the quoting restrictions of Rule 612 of Regulation NMS.

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.

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

Because the proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³ The Exchange has asked the Commission to waive the 30-day operative delay and allow the proposed rule change to become operative on January 31, 2006, the

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has determined to waive this requirement.

compliance date for Rule 612. The Commission hereby grants that request.¹⁴ The Commission believes that waiving the operative delay is consistent with the protection of investors and the public interest. The Commission previously has considered whether, for NMS stocks, quoting below \$1.00 in sub-penny increments should be permitted. The Commission determined that it should and codified that view in Rule 612(b) of Regulation NMS.¹⁵ The Exchange's proposal to permit its members to make bids or offers – in NMS stocks that are listed on Nasdaq – priced below \$1.00 in increments as small as \$0.0001 is consistent with Rule 612(b) and raises no new regulatory issues.

At any time within 60 days of the filing of the 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. Please include File Number SR-NSX-2006-02 on the subject line.

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37555 (June 29, 2005).

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NSX-2006-02. 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 such filing 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-2006-02 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 delegated authority.¹⁶

Nancy M. Morris
Secretary

¹⁶ 17 CFR 200.30-3(a)(12).