

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55541; File No. SR-NSX-2007-01]

### **Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto to Modify Fees for Transactions Executed Through NSTS and ITS Plans**

March 27, 2007.

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 February 5, 2007, the 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 substantially prepared by the Exchange. On March 19, 2007, NSX submitted Amendment No. 1 to the proposed rule change. NSX has filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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**

The Exchange is proposing various amendments to its fees for transactions executed through National Securities Trading System (“NSTS”), the Exchange’s legacy trading system, so that this fee schedule will correspond more closely to the existing fees for transactions executed through NSX BLADE, the Exchange’s new trading platform. These amendments involve proposed changes to old NSX Rule 11.10(A) (which is applicable to NSTS transactions), and the associated NSTS Fee Schedule. The Exchange is also proposing corresponding changes to its Fee Schedule applicable to transactions under the Intermarket Trading System Plan and/or the Plan for the purpose of Creating and Operating an Intermarket Communications Linkage (“ITS Plans”) for transactions executed through the ITS Plans (“ITS Transactions”). The text of the proposed rule change is available at NSX, the Commission’s Public

Reference Room, and <http://www.nsx.com>.

#### **II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, NSX 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. NSX 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**

##### **Background**

The Exchange has created a new state of the art trading platform, known as NSX BLADE, which utilizes a strict price/time priority system as the ultimate replacement for NSTS. The Exchange is in the midst of phasing in NSX BLADE. NSX BLADE was launched on October 23, 2006. As of the date of the initial filing of this proposed rule change, all Tape “C” securities have been phased into NSX BLADE from NSTS, and the Exchange plans to transition all Tape “A” and Tape “B” securities from NSTS to NSX BLADE in the near future.

During this transitional period of phasing in various securities to NSX BLADE, the Exchange will be operating both NSTS and NSX BLADE. Until such securities are phased into NSX BLADE, Tape “A” and “B” securities will continue to be traded via NSTS.

##### **Rule Set**

During this transitional period of phasing in various securities to NSX BLADE, the Exchange is operating both NSTS and NSX BLADE. Accordingly, the Exchange is operating under two sets of rules during this phase-in period. All transactions in NSTS are operating under the rules pertaining to NSTS (old Rule 11.9 (National Securities Trading System) and old Rule 11.10 (National Securities Trading System Fees) and any associated Fee Schedule) while all transactions in NSX BLADE are operating under the NSX BLADE trading rules approved in SR-NSX-2006-03 and the new fee rules in Chapter XVI of the Exchange Rules. When the phase-in is complete and NSTS is no longer operational, old Rules 11.9 and 11.10

(and any associated NSTS Fee Schedule) will be extinguished. The Exchange has issued a Notice to ETP Holders to advise them of the different trading systems and rules and fees applicable to each,<sup>5</sup> and will issue a Notice advising them of the fee changes with this rule change. During this interim period, the Exchange has created a Fee Schedule applicable to NSTS Rules (“NSTS Fee Schedule”) under the authority of NSX Rule 16.1.<sup>6</sup> Further, while the Fee Schedule for ITS Transactions is identical to the Fee Schedule for identical transactions entered in NSTS, the Exchange has decided to create a Fee Schedule for ITS Transactions to make it easier for parties to identify the specific fees associated with the ETP Holder’s transactions.

#### **Fee Proposal**

In the instant rule filing, the Exchange is proposing amendments to old Rule 11.10(A) and the associated NSTS Fee Schedule relating to transactions in Tape “A” and “B” securities on NSTS, and is proposing corresponding amendments to its Fee Schedule for ITS Transactions. As amended, old Rule 11.10(A) and the associated NSTS Fee Schedule would provide for an execution fee of \$0.0030 per share for removing liquidity from NSTS (in other words, a charge for taking liquidity against an order in NSTS), and a rebate of \$0.0030 per share executed for adding liquidity into NSTS (in other words, a rebate for the addition of liquidity to NSTS, provided that it results in an execution through NSTS). Thus, ETP Holders taking liquidity against an order in NSTS will be charged a fee of \$0.0030 per share executed, and ETP Holders providing liquidity into NSTS will be paid a rebate of \$0.0030 per share executed. In connection with this rule change, language is also proposed to be added to the NSTS Fee Schedule stating that with respect to ITS Transactions executed through NSTS, the Exchange will pay the applicable liquidity provider rebate only after it receives payment of the liquidity taker fee applicable to the execution.

This liquidity taker fee and liquidity provider rebate are proposed to replace the current transaction fees applicable to transactions in Tape “A” and “B” securities on NSTS. Currently, old Rule 11.10(A) provides for a variety of fees for executions in Tape “A” securities, and the NSTS Fee Schedule provides for

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

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

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

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

<sup>5</sup> Regulatory Circular 06-011, issued on October 19, 2006.

<sup>6</sup> On November 14, 2006, a new NSTS Fee Schedule became effective. See Securities Exchange Act Release No. 54753 (November 14, 2006), 71 FR 67678 (November 22, 2006) (SR-NSX-2006-14).

a \$0.0030 per share liquidity taker fee and a \$0.0027 per share liquidity provider rebate for executions in Tape "B" securities. These fees and rebates are proposed to be removed and replaced with the fee structure described herein.<sup>7</sup> In connection with this filing, the Exchange also proposes to remove \$50,000 monthly transaction fee cap for transactions on NSTS that is currently provided for in old Rule 11.10(A)(i), and the quotation fee that is currently provided for in old Rule 11.10(A)(s). The Exchange is proposing these changes to its fees for NSTS transactions in order to harmonize its NSTS fees with the fees applicable to transactions executed through NSX BLADE. One of the proposed changes described above—the proposed new language in the NSTS Fee Schedule relating to the timing of liquidity provider rebate payments on ITS Transactions—is a policy change and, as of the date of the initial filing of this rule change, similar language was not contained in the Fee Schedule applicable to transactions executed through NSX BLADE.

The liquidity taker fee and liquidity provider rebate described above are contained in the NSTS Fee Schedule. The NSTS Fee Schedule supplements the fees and rebates contained in old NSX Rule 11.10. If the NSTS Fee Schedule does not contravene any fees stated in old NSX Rule 11.10, the ETP Holder effecting a transaction via NSTS will be charged the fees noted in old NSX Rule 11.10.

Changes are also being proposed to the Fee Schedule for ITS Transactions, to provide for a corresponding \$0.0030 per share liquidity taker fee for ITS Transactions executed through NSTS. Thus ETP Holders taking liquidity will be charged under the NSTS Fee Schedule, and executions through an ITS Plan will be charged under the Fee Schedule for ITS Transactions (although the rates of the two execution fees are identical). The Exchange bills non-ETP Holders using the facilities of the Exchange for ITS Transactions under the Fee Schedule for ITS Transactions.

Pursuant to NSX Rule 16.1(c), the Exchange will "provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange." ETP Holders and others, including self-regulatory organizations that are the subject of exchange-to-exchange billing, using the Exchange will be advised of these fees through the Exchange's Web site. In addition, ETP

<sup>7</sup> All Tape "C" securities have been transitioned to NSX BLADE, so there will be no Tape "C" transactions on NSTS.

Holders will, simultaneously with this filing, be notified through the issuance of a Regulatory Circular of the changes to the Fee Schedules applicable to transactions through NSTS and the ITS Plans.

The fees have been designed in this manner in order to ensure that the Exchange can continue to fulfill its obligations under the Act.

## 2. Statutory Basis

NSX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>8</sup> in general, and with Sections 6(b)(4) of the Act,<sup>9</sup> in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges. In addition, NSX believes that the proposed rule change furthers the objectives of Section 6(b)(1) of the Act<sup>10</sup> in that it helps to assure that the Exchange is so organized and has the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its ETP Holders with the Act.

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

The Exchange does not believe that the proposed rule change will result in 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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>11</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>12</sup> because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. 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.<sup>13</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-2007-01 on the subject line.

### 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-2007-01. 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 NSX. 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-2007-01 and should

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78ff(b)(1).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on March 19, 2007, the date on which the Exchange submitted Amendment No. 1.

be submitted on or before April 23, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55542; File No. SR-NSX-2007-02]

### **Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto to Amend the Exchange's Tape Rebate Programs for Transactions Through NSTS to Establish an Equivalent Tape A Rebate Program**

March 27, 2007.

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 February 15, 2007, the National Stock Exchange, Inc. ("NSX" or "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 substantially by NSX. NSX amended the proposed rule change on March 19, 2007.<sup>3</sup> NSX filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders it 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**

The Exchange is proposing to amend old NSX Rule 11.10(A)(1), which is applicable to transactions through the Exchange's legacy trading system, National Securities Trading System ("NSTS"), to provide for a rebate program for Tape A securities that is equivalent to the Exchange's current

Tape A rebate program applicable to transactions executed through the Exchange's new trading system, NSX BLADE. This proposed Tape A rebate program is also equivalent to the Exchange's current Tape B and Tape C rebate programs applicable to NSTS and NSX BLADE transactions.

The text of the proposed rule change is available at NSX, <http://www.nsx.com>, and 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, NSX 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. NSX 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**

NSX proposes to amend old Exchange Rule 11.10(A)(1), which is applicable to transactions through NSTS, to provide for a rebate program for Tape A securities that is equivalent to the Exchange's current Tape A rebate program applicable to transactions executed through NSX BLADE. This proposed Tape A rebate program is also equivalent to the Exchange's current Tape B and Tape C rebate programs applicable to NSTS and NSX BLADE transactions.

The Exchange has created a new trading platform, known as NSX BLADE, which uses a strict price/time priority system as the ultimate replacement for NSTS. The Exchange is in the midst of phasing in NSX BLADE. NSX BLADE was launched on October 23, 2006. As of the date of the initial filing of this proposed rule change, all Tape C securities have been phased into NSX BLADE from NSTS, and the Exchange plans to transition all Tape A and Tape B securities from NSTS to NSX BLADE in the near future.

During this transitional period of phasing in various securities to NSX BLADE, the exchange will be operating both NSTS and NSX BLADE. Until such securities are phased into NSX BLADE, Tape A and Tape B securities will continue to be traded via NSTS.

During this transitional period of phasing in various securities to NSX BLADE, the Exchange is operating both NSTS and NSX BLADE. Accordingly, the Exchange is operating under two sets of rules during the phase-in period. All transactions in the NSTS System are operating under the rules pertaining to NSTS (old Exchange Rule 11.9 (National Securities Trading System) and old Exchange Rule 11.10 (National Securities Trading System Fees) and any associated Fee Schedule) while all transactions in NSX BLADE are operating under the NSX BLADE trading rules approved in SR-NSX-2006-03<sup>6</sup> and the new fee rules in Chapter XVI. When the phase-in is complete and NSTS is no longer operational, old Rules 11.9 and 11.10 will be extinguished. The Exchange has issued a Notice to ETP Holders to advise them of the different trading systems and rules and fees applicable to each,<sup>7</sup> and will issue a Notice advising them of the fee changes with this proposed rule change.

Additionally, the Exchange currently offers rebate programs for Tape A, B and C transactions executed through NSX BLADE, each consisting of a 50 percent transaction credit on revenues generated by transactions executed through NSX BLADE in Tape A, B or C securities, respectively. Old Rule 11.10(A)(1), which is applicable to transactions executed through NSTS, currently provides for equivalent 50 percent Tape B and C rebate programs for transactions executed through NSTS. Under each of the Exchange's current rebate programs, the credit is allocable to ETP Holders on a pro rata basis based upon Tape A, B or C revenue generated by an ETP Holder's transactions on NSX BLADE or NSTS, as applicable.

With the instant proposed rule change, the Exchange is proposing to adopt a rebate program for NSTS transactions in Tape A securities that is equivalent to the Exchange's current Tape A rebate program applicable to NSX BLADE transactions. As with the Exchange's other tape rebate programs, this proposed Tape A rebate program will provide a 50 percent transaction credit on revenues generated by transactions executed through NSTS in Tape A securities, and will be allocable to ETP Holders on a pro rata basis based upon the Tape A revenue generated by such ETP Holder's transactions on NSTS. The Exchange believes that there

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Amendment No. 1.

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

<sup>5</sup> 17 CFR 240.19b-4(f)(6). The Commission considers the 60-day abrogation period to have commenced on March 19, 2007, the date NSX filed Amendment No. 1.

<sup>6</sup> See Securities Exchange Act Release No. 53963 (June 8, 2006), 71 FR 34660 (June 15, 2006) (order) (SR-NSX-2006-034).

<sup>7</sup> Regulatory Circular 06-011, issued on October 19, 2006.