

Proposed Rule Change by National Stock Exchange
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input type="checkbox"/>	Section 19(b)(3)(A) <input checked="" type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action <input type="checkbox"/>		Date Expires <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	<input type="checkbox"/> 19b-4(f)(6)
			<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
Provide a brief description of the proposed rule change (limit 250 characters).

The Exchange is proposing to amend its fee schedule to adjust rebate tiers for all Order Delivery mode of order interactions as well as establish a new rule to implement market data rebates for displayed Order Delivery orders that achieve a certain threshold.

Contact Information
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Last Name
 Title
 E-mail
 Telephone Fax

Signature
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date
 By Chief Regulatory Officer
 (Name) (Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

National Stock Exchange, Inc. (“NSX[®]” or “Exchange”) is proposing to establish new Exchange Rule 16.4 and to amend the Fee and Rebate Schedule (the “Fee Schedule”) issued pursuant to Exchange Rule 16.1(c) with respect to rebates payable to ETP Holders that provide liquidity in securities priced at one dollar and higher in Order Delivery mode of execution.

(a) The text of the proposed rule change is attached as Exhibit 5. Material proposed to be added is double underlined. Material proposed to be deleted is enclosed in brackets.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The rule filing was approved by the Executive Committee of the Exchange’s Board of Directors (“Board”) and the Regulatory Oversight Committee of the Board on November 17, 2009. No further action is required.

(b) Comments and questions on the proposed rule change may be directed to James C. Yong, Chief Regulatory Officer of the Exchange, at 312.786.8893.

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

(a) Purpose

With this rule change, the Exchange is proposing to modify the Fee Schedule and establish a new Exchange Rule 16.4 that would result in the use of “Liquidity Adding ADV”, a measurement currently in use elsewhere in the Fee Schedule, to determine volume eligibility for all rebate tiers in the Order Delivery mode of order interaction (“Order Delivery”).¹ In addition, for ETP Holders that achieve at least five million in Liquidity Adding ADV, the proposed modifications would increase rebates for displayed orders of securities priced at or above one

¹ The Exchange’s two modes of order interaction are described in NSX Rule 11.13(b).

dollar in Order Delivery to \$.0024 per share and provide a 50% market data rebate for displayed Order Delivery orders.

Liquidity Adding Rebate in Order Delivery

Currently, for liquidity adding displayed order executions of securities trading at one dollar or higher in Order Delivery, the Fee Schedule provides a progressively higher rebate (of \$0.0008, \$0.0010 or \$0.0012 per share) determined by the number of such shares an ETP Holder has executed on average per day (at least one million and less than ten million, at least ten million and less than 20 million, and at least 20 million, respectively) (the number of such shares being referred to in the Fee Schedule as “Liquidity Adding ADV (O/D Displayed)”). Similarly, for liquidity adding Zero Display Order² executions of securities trading at one dollar or higher in Order Delivery, eligibility for rebates for such orders is based on the average daily number of such shares an ETP Holder has executed (“Liquidity Adding ADV (O/D Dark)”).

With the proposed rule change, with respect to rebates for providing liquidity in Order Delivery (in both displayed orders and Zero Display Orders) of securities one dollar and higher, the eligibility measurements of “Liquidity Adding ADV (O/D Displayed)” and “Liquidity Adding ADV (O/D Dark)” would be deleted and replaced with the measurement “Liquidity Adding ADV.” This measurement is used elsewhere in the Fee Schedule and means, with respect to an ETP Holder, the number of shares such ETP Holder has executed as a liquidity provider on average per trading day (excluding partial trading days) across all tapes on NSX for the calendar month (or partial month, as applicable) in which the executions occurred.³ “Liquidity Adding ADV” is a broader measurement than the two measurements proposed to be deleted in that it captures all liquidity providing shares executed on the Exchange, including sub-dollar shares, both displayed

² “Zero Display Orders” as used herein and in the Fee Schedule means “Zero Display Reserve Orders” as specified in NSX Rule 11.11(c)(2)(A).

³ See Explanatory Endnote 3 to the Fee Schedule.

and non-displayed orders, and executions in both Order Delivery and the Automatic Execution mode of order interaction (“AutoEx”).⁴

In addition, with respect to liquidity adding displayed order executions of securities trading at one dollar or higher in Order Delivery, the proposed rule change would retain the first tier currently in effect (rebating \$0.0008 per share if an ETP Holder’s relevant volume is at least one million and less than ten million) but reduce the high end of such tier from ten million to five million. Further, the proposed rule change would eliminate the two higher eligibility tiers (rebating \$0.0010 or \$0.0012 at 10 million and 20 million, respectively) and, in their place, provide a rebate of \$0.0024 per share if an ETP Holder achieves a Liquidity Adding ADV of at least five million shares during the measurement period.

Market Data Rebate in Order Delivery

Currently, market data revenues attributable to quoting and trading in Order Delivery (regardless of whether displayed or Zero Display Orders) are not shared with ETP Holders.

The proposed rule change would provide a rebate to each ETP Holder equal to fifty percent (50%) of the market data revenue attributable to such ETP Holder’s trading and quoting of displayed orders priced at one dollar or higher in Order Delivery, provided that the ETP Holder achieves a Liquidity Adding ADV of at least five million shares during the measurement period. As is currently the case, no market data revenue will be shared where attributable to trading or quoting in AutoEx, Zero Display Orders, or sub-dollar securities.

As referenced in Explanatory Endnote 8 of the proposed Fee Schedule, proposed new Exchange Rule 16.4 describes the market data revenue rebate program. Rule 16.4 is based on prior Exchange Rule 16.2(b), which was deleted from the NSX Rules pursuant to a rule change effective November 6, 2008⁵. Proposed Rule 16.4(a) makes explicit that no market data rebates

⁴ See supra, footnote 1.

⁵ See Securities Exchange Act Release No. 58935 (November 13, 2008), 73 FR 69703 (November 19, 2008) (NSX-2008-19). The Exchange had previously, pursuant to one of several iterations of then-current Rule 16.2(b) in effect and approved by the Commission, established a rebate program (similar to the proposed rule change) that shared

will be provided with respect to orders in AutoEx. Proposed Rule 16.4(b) provides that ETP Holders that have achieved Liquidity Adding ADV of at least five million shares shall receive a rebate of fifty percent (50%) of Tape A, B and C market data revenue attributable to such ETP Holder's trading and quoting of non-Zero Display Reserve Orders priced at or above one dollar in Order Delivery mode⁶. For purposes of clarity, Rule 16.4(b) further states that ETP Holders shall receive no rebate for market data revenue attributable to securities in Order Delivery priced under one dollar or Zero Display Orders.

Proposed Rule 16.4 also specifies that such rebates shall be paid quarterly and that, notwithstanding the foregoing, an ETP Holder shall not be eligible for market data revenue rebates which aggregate less than \$250 per quarter with respect to such ETP Holder. This exception for *de minimis* payments is based on the Exchange's belief that the monetary value of such rebate is outweighed by the associated administrative burden both to the Exchange and to the recipient ETP Holders.⁷ Finally, proposed Rule 16.4(c) establishes that market data rebates paid or payable to ETP Holders may be modified based on market data revenue adjustments applicable to the Exchange that may be made from time to time by the securities information processors.

The proposed rule change would not modify other rebate calculations, volume tiers, fees or rebates that are currently included in the Fee Schedule, including fees or rebates applicable to orders in AutoEx or regarding securities priced under one dollar in Order Delivery.

50% of trade and quote market data revenue in Order Delivery; see Securities Exchange Act Release No. 56890 (December 4, 2007), 72 FR 70360 (December 11, 2007) (NSX-2007-13).

⁶ The Allocation Amendment of Regulation NMS provides that market data revenue will be received by self-regulatory organizations such that 50% of the revenue is based on the reporting of quotes and 50% is based on the reporting of transactions. See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

⁷ See Securities Exchange Act Release No. 57316 (February 12, 2008), 73 FR 9379 (February 20, 2008) (NSX-2008-01).

Rationale

The Exchange has determined that these changes are necessary to create incentives for ETP Holders to submit increased volumes of orders in Order Delivery and, ultimately, to increase the revenues of the Exchange for the purpose of continuing to adequately fund its regulatory and general business functions. The Exchange has further determined that the Exchange's reintroduction of a market data rebate program in Order Delivery is necessary for competitive reasons.⁸ The Exchange believes that these rebate changes, and in particular the reintroduced market data rebate program pursuant to proposed Exchange Rule 16.4, will not impair its ability to carry out its regulatory responsibilities.

The proposed modifications are reasonable and equitably allocated to those ETP Holders that opt to provide displayed orders and Zero Display Orders in Order Delivery, and is not discriminatory because ETP Holders are free to elect whether or not to send displayed orders or Zero Display Orders via Order Delivery or AutoEx. In addition, the proposed modifications, by providing a market data rebate for displayed orders only and by reducing the volume eligibility thresholds for displayed orders in Order Delivery which results in an increased (and highest available in Order Delivery) rebate amount of \$0.0024, will tend to incentivize ETP Holders to submit displayed orders over Zero Display Orders in Order Delivery. Based upon the information above, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest.

Operative Date and Notice

The Exchange intends to make the proposed modifications, which are effective on filing of this proposed rule, operative for trading on December 1, 2009. 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 a Regulatory Circular of

⁸ Market data rebates in order delivery are currently provided by at least one competitor of the Exchange.

the changes to the Fee Schedule and Rule 16.4 and will post a copy of the rule filing on the Exchange's website (www.nsx.com).

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Securities Exchange Act of 1934⁹ (the "Act"), in general, and Section 6(b)(4) of the Act,¹⁰ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using the facilities of the Exchange. Moreover, the proposed rule change is not discriminatory in that all ETP Holders are eligible to submit (or not submit) trades and quotes in Order Delivery or AutoEx in all tapes and as either displayed or undisplayed, and may do so at their discretion in the daily volumes they choose during the course of the measurement period.

4. 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.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

(a) The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

(b) The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹¹ and subparagraph (f)(2) of Rule 19b-4¹² thereunder, because, as provided in (f)(2), it changes “a due, fee or other charge applicable only to a member” (known on the Exchange as an ETP Holder).

(c) Not applicable.

(d) Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or the Commission

The proposed rule change is not based upon the rule of another self-regulatory organization or of the Commission.

9. Exhibits

List of Exhibits Filed:

1. Form of Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change (Rule 16.4 and the NSX Fee and Rebate Schedule).

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 C.F.R. 240.19b-4.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. _____ ; File No. SR-NSX-2009-07)

Dated:

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change in order to amend the NSX Fee and Rebate Schedule and adopt a new Rule 16.4 with the effect of using the measurement "Liquidity Adding ADV" to determine volume eligibility for all Order Delivery rebate tiers, as well as increasing transaction rebates to \$.0024 per share and implementing a 50% market data rebate for displayed Order Delivery orders of ETP Holders that achieve at least 5 million in Liquidity Adding ADV.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 24, 2009, National Stock Exchange, Inc. 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. 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 National Stock Exchange, Inc. ("NSX[®]" or the "Exchange") is proposing a rule change, operative at commencement of trading on December 1, 2009, which proposes to amend the NSX Fee and Rebate Schedule (the "Fee Schedule") and adopt a new Rule 16.4. In summary, the rule change results in the use of the measurement "Liquidity Adding ADV" to determine volume eligibility for all Order Delivery mode of order interaction ("Order Delivery")³ rebate tiers, as well as an increase in transaction rebates to \$.0024 per share and implementation of a 50% market data rebate for displayed Order Delivery orders of ETP Holders that achieve at least 5 million in Liquidity Adding ADV.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange's two modes of order interaction are described in NSX Rule 11.13(b).

<http://www.nsx.com>, at the principal office of the Exchange, 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

Purpose

With this rule change, the Exchange is proposing to modify the Fee Schedule and establish a new Exchange Rule 16.4 that would result in the use of "Liquidity Adding ADV", a measurement currently in use elsewhere in the Fee Schedule, to determine volume eligibility for all rebate tiers in Order Delivery. In addition, for ETP Holders that achieve at least five million in Liquidity Adding ADV, the proposed modifications would increase rebates for displayed orders of securities priced at or above one dollar in Order Delivery to \$.0024 per share and provide a 50% market data rebate for displayed Order Delivery orders.

Liquidity Adding Rebate in Order Delivery

Currently, for liquidity adding displayed order executions of securities trading at one dollar or higher in Order Delivery, the Fee Schedule provides a progressively higher rebate (of \$0.0008, \$0.0010 or \$0.0012 per share) determined by the number of such shares an ETP Holder has executed on average per day (at least one million and less than ten million, at least ten million and less than 20 million, and at least 20 million, respectively) (the number of such shares being referred to in the Fee Schedule as "Liquidity Adding ADV (O/D Displayed)").

Similarly, for liquidity adding Zero Display Order⁴ executions of securities trading at one dollar or higher in Order Delivery, eligibility for rebates for such orders is based on the average daily number of such shares an ETP Holder has executed (“Liquidity Adding ADV (O/D Dark)”).

With the proposed rule change, with respect to rebates for providing liquidity in Order Delivery (in both displayed orders and Zero Display Orders) of securities one dollar and higher, the eligibility measurements of “Liquidity Adding ADV (O/D Displayed)” and “Liquidity Adding ADV (O/D Dark)” would be deleted and replaced with the measurement “Liquidity Adding ADV.” This measurement is used elsewhere in the Fee Schedule and means, with respect to an ETP Holder, the number of shares such ETP Holder has executed as a liquidity provider on average per trading day (excluding partial trading days) across all tapes on NSX for the calendar month (or partial month, as applicable) in which the executions occurred.⁵ “Liquidity Adding ADV” is a broader measurement than the two measurements proposed to be deleted in that it captures all liquidity providing shares executed on the Exchange, including sub-dollar shares, both displayed and non-displayed orders, and executions in both Order Delivery and the Automatic Execution mode of order interaction (“AutoEx”).⁶

In addition, with respect to liquidity adding displayed order executions of securities trading at one dollar or higher in Order Delivery, the proposed rule change would retain the first tier currently in effect (rebating \$0.0008 per share if an ETP Holder’s relevant volume is at least one million and less than ten million) but reduce the high end of such tier from ten million to five million. Further, the proposed rule change would eliminate the two higher eligibility tiers (rebating \$0.0010 or \$0.0012 at 10 million and 20 million, respectively) and, in their place,

⁴ “Zero Display Orders” as used herein and in the Fee Schedule means “Zero Display Reserve Orders” as specified in NSX Rule 11.11(c)(2)(A).

⁵ See Explanatory Endnote 3 to the Fee Schedule.

⁶ See supra, footnote 3.

provide a rebate of \$0.0024 per share if an ETP Holder achieves a Liquidity Adding ADV of at least five million shares during the measurement period.

Market Data Rebate in Order Delivery

Currently, market data revenues attributable to quoting and trading in Order Delivery (regardless of whether displayed or Zero Display Orders) are not shared with ETP Holders.

The proposed rule change would provide a rebate to each ETP Holder equal to fifty percent (50%) of the market data revenue attributable to such ETP Holder's trading and quoting of displayed orders priced at one dollar or higher in Order Delivery, provided that the ETP Holder achieves a Liquidity Adding ADV of at least five million shares during the measurement period. As is currently the case, no market data revenue will be shared where attributable to trading or quoting in AutoEx, Zero Display Orders, or sub-dollar securities.

As referenced in Explanatory Endnote 8 of the proposed Fee Schedule, proposed new Exchange Rule 16.4 describes the market data revenue rebate program. Rule 16.4 is based on prior Exchange Rule 16.2(b), which was deleted from the NSX Rules pursuant to a rule change effective November 6, 2008⁷. Proposed Rule 16.4(a) makes explicit that no market data rebates will be provided with respect to orders in AutoEx. Proposed Rule 16.4(b) provides that ETP Holders that have achieved Liquidity Adding ADV of at least five million shares shall receive a rebate of fifty percent (50%) of Tape A, B and C market data revenue attributable to such ETP Holder's trading and quoting of non-Zero Display Reserve Orders priced at or above one dollar in Order Delivery mode⁸. For purposes of clarity, Rule 16.4(b) further states that ETP Holders

⁷ See Securities Exchange Act Release No. 58935 (November 13, 2008), 73 FR 69703 (November 19, 2008) (NSX-2008-19). The Exchange had previously, pursuant to one of several iterations of then-current Rule 16.2(b) in effect and approved by the Commission, established a rebate program (similar to the proposed rule change) that shared 50% of trade and quote market data revenue in Order Delivery; see Securities Exchange Act Release No. 56890 (December 4, 2007), 72 FR 70360 (December 11, 2007) (NSX-2007-13).

⁸ The Allocation Amendment of Regulation NMS provides that market data revenue will be received by self-regulatory organizations such that 50% of the revenue is based on the reporting of quotes and 50% is based on the reporting of transactions. See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

shall receive no rebate for market data revenue attributable to securities in Order Delivery priced under one dollar or Zero Display Orders.

Proposed Rule 16.4 also specifies that such rebates shall be paid quarterly and that, notwithstanding the foregoing, an ETP Holder shall not be eligible for market data revenue rebates which aggregate less than \$250 per quarter with respect to such ETP Holder. This exception for *de minimis* payments is based the Exchange's belief that the monetary value of such rebate is outweighed by the associated administrative burden both to the Exchange and to the recipient ETP Holders.⁹ Finally, proposed Rule 16.4(c) establishes that market data rebates paid or payable to ETP Holders may be modified based on market data revenue adjustments applicable to the Exchange that may be made from time to time by the securities information processors.

The proposed rule change would not modify other rebate calculations, volume tiers, fees or rebates that are currently included in the Fee Schedule, including fees or rebates applicable to orders in AutoEx or regarding securities priced under one dollar in Order Delivery.

Rationale

The Exchange has determined that these changes are necessary to create incentives for ETP Holders to submit increased volumes of orders in Order Delivery and, ultimately, to increase the revenues of the Exchange for the purpose of continuing to adequately fund its regulatory and general business functions. The Exchange has further determined that the Exchange's reintroduction of a market data rebate program in Order Delivery is necessary for competitive reasons.¹⁰ The Exchange believes that these rebate changes, and in particular the reintroduced market data rebate program pursuant to proposed Exchange Rule 16.4, will not impair its ability to carry out its regulatory responsibilities.

⁹ See Securities Exchange Act Release No. 57316 (February 12, 2008), 73 FR 9379 (February 20, 2008) (NSX-2008-01).

¹⁰ Market data rebates in order delivery are currently provided by at least one competitor of the Exchange.

The proposed modifications are reasonable and equitably allocated to those ETP Holders that opt to provide displayed orders and Zero Display Orders in Order Delivery, and is not discriminatory because ETP Holders are free to elect whether or not to send displayed orders or Zero Display Orders via Order Delivery or AutoEx. In addition, the proposed modifications, by providing a market data rebate for displayed orders only and by reducing the volume eligibility thresholds for displayed orders in Order Delivery which results in an increased (and highest available in Order Delivery) rebate amount of \$0.0024, will tend to incentivize ETP Holders to submit displayed orders over Zero Display Orders in Order Delivery. Based upon the information above, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest.

Operative Date and Notice

The Exchange intends to make the proposed modifications, which are effective on filing of this proposed rule, operative for trading on December 1, 2009. 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 a Regulatory Circular of the changes to the Fee Schedule and Rule 16.4 and will post a copy of the rule filing on the Exchange’s website (www.nsx.com).

Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,¹¹ in general, and Section 6(b)(4) of the Act,¹² in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using the facilities of the Exchange. Moreover, the proposed rule change is not discriminatory in that all ETP Holders are eligible to submit (or not

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

submit) trades and quotes in Order Delivery or AutoEx in all tapes and as either displayed or undisplayed, and may do so at their discretion in the daily volumes they choose during the course of the measurement period.

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

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act¹³ and subparagraph (f)(2) of Rule 19b-4¹⁴ thereunder, because, as provided in (f)(2), it changes "a due, fee or other charge applicable only to a member" (known on the Exchange as an ETP Holder). 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 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

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁴ 17 CFR 240.19b-4.

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NSX-2009-07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Florence E. Harmon, Acting Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, D.C. 20549-9303.

All submissions should refer to File No. SR-NSX-2009-07. 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 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-2009-07 and should be submitted on or before

_____.

For the Commission by the Division of Trading and Markets, pursuant to the delegated authority.¹⁵

Florence E. Harmon
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Proposed new language is double-underlined. Proposed deletions are enclosed in [brackets].

**RULES
OF
NATIONAL STOCK EXCHANGE, INC.**

CHAPTER XVI.

Dues, Fees, Assessments and Other Charges

* * * * *

Rule 16.1 No Change

Rule 16.2 No Change

Rule 16.3 No Change

Rule 16.4. Market Data Revenue Rebates

(a) Automatic Execution Mode. ETP Holders who have selected the Automatic Execution mode of order interaction as set forth in Rule 11.13(b)(1) ("AutoEx") will receive no rebate for market data revenue associated with quoting or trading.

(b) Order Delivery Mode. Assuming the minimum volume threshold(s) set forth in the fee schedule issued by the Exchange pursuant to Rule 16.1(c) is achieved, an ETP Holder that has selected the Order Delivery mode of order interaction as set forth in Rule 11.13(b)(2) will receive a fifty percent (50%) rebate of Tape "A", "B" and "C" market data revenue attributable to such ETP Holder's trading and quoting of non-Zero Display Reserve Orders priced at or above one dollar in Order Delivery mode. For purposes of clarity, such ETP Holders shall receive no rebate for market data revenue attributable to (x) Zero Display Reserve Orders as set forth in Rule 11.11(c)(2)(A) or (y) securities priced under one dollar.

(c) Adjustments. To the extent market data revenue from Tape "A", "B" or "C" transactions is subject to any adjustment, rebates provided under this program may be adjusted accordingly.

(d) De Minimis Rebates. An ETP Holder shall not be eligible for a tape rebate for any calendar quarter in which the total tape rebate calculation with respect to such ETP Holder for such quarter is less than \$250.

(e) Quarterly Payments. Tape rebates, if any, shall be paid quarterly.

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National Stock Exchange, Inc.
Fee and Rebate Schedule
 Updated as of December [November] 1, 2009

The following reflects the Schedule of Fees and Rebates (pursuant to Rule 16.1(a) and Rule 16.1(c)) for the National Stock Exchange, Inc. ("NSX"). Order matching computations are made on a monthly basis unless otherwise noted. All references to "per share" mean "per share executed."

I. AUTOMATIC EXECUTION MODE (AutoEx)¹

Securities \$1 and Above

Displayed Orders²
That Add Liquidity:

Tapes A and C

Rebate of \$0.0026 per share if
Liquidity Adding ADV³ <25 million or
Rebate of \$0.0027 per share if
Liquidity Adding ADV ≥25 million and <40 million or
Rebate of \$0.0028 per share if
Liquidity Adding ADV ≥40 million

Tape B

Rebate of \$0.0030 per share

All Tapes

Zero Display Orders⁴
That Add Liquidity:

Rebate of \$0.0025 per share if
Total ADV⁵ ≥30 million and Liquidity Adding ADV ≥5 million

All Tapes

Orders That
Take Liquidity:

Fee of \$0.0028 per share if
Liquidity Adding ADV ≥5 million or
Fee of \$0.0030 per share if
Liquidity Adding ADV <5 million

Securities Under \$1 (All Tapes)

Orders That Add Liquidity: Rebate of 0.10% of trade value⁶ (except for Zero Display Orders⁴)

Orders That Take Liquidity: Fee of 0.30% of trade value

II. ORDER DELIVERY MODE⁷

Securities \$1 and Above (All Tapes)

Displayed Orders ² That Add Liquidity:	Rebate of \$0.0008 per share if Liquidity Adding ADV [(O/D Displayed) ⁸] ≥ 1 million and < [10 million <u>or</u> Rebate of \$0.0010 per share if Liquidity Adding ADV (O/D Displayed) ≥ 10 million and < 20 million <u>or</u> Rebate of \$0.0012 per share if Liquidity Adding ADV (O/D Displayed) ≥ 20 million] <u>5 million or</u> <u>Rebate of \$0.0024 per share and 50% of market data revenue⁸ if</u> <u>Liquidity Adding ADV ≥ 5 million</u>
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Zero Display Orders ⁴ That Add Liquidity:	Rebate of \$0.0008 per share if Liquidity Adding ADV [(O/D Dark) ⁹] ≥ 1 million and < 10 million <u>or</u> Rebate of \$0.0010 per share if Liquidity Adding ADV [(O/D Dark)] ≥ 10 million and < 20 million <u>or</u> Rebate of \$0.0012 per share if Liquidity Adding ADV [(O/D Dark)] ≥ 20 million
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III. OTHER SERVICES

A. Order Routing^{[10]9} (All Tapes)

Securities \$1 and Above

Fee of \$0.0029 per share

Securities Under \$1

Fee of 0.30% of trade value

B. Pass Through Charges

NSX may pass through to a specific ETP Holder costs that are assessed to the Exchange by a third party that are attributable to that particular ETP Holder for its use of the facilities of the Exchange.

Explanatory endnotes:

(1) As specified in Rule 11.13(b)(1).

(2) **“Displayed Orders”** means orders that are not Zero Display Orders.

(3) **“Liquidity Adding ADV”** means, with respect to an ETP Holder¹¹¹⁰, the number of shares such ETP Holder has executed as a liquidity provider on average per trading day (excluding partial trading days) across all tapes on NSX for the calendar month (or partial month, as applicable¹²¹¹) in which the executions occurred; provided, however, that for purposes of calculating an ETP Holder’s Liquidity Adding ADV solely with respect to the rebate in AutoEx for Displayed Orders that add liquidity, the full trading day during the measurement period on which such ETP Holder’s liquidity adding volume is lowest shall be excluded.

(4) **“Zero Display Orders”** means “Zero Display Reserve Orders” as specified in Rule 11.11(c)(2)(A).

(5) **“Total ADV”** means, with respect to an ETP Holder¹¹¹⁰, the number of shares such ETP Holder has executed as a liquidity provider, liquidity taker and router of executed trades on average per trading day (excluding partial trading days) across all tapes on NSX for the calendar month (or partial month, as applicable¹²¹¹) in which the executions occurred. For purposes of clarity: (i) no rebates apply to Zero Display Orders where the ETP Holder fails to achieve a Liquidity Adding ADV of at least 5 million shares in the same month (or partial month, as applicable); (ii) no rebates apply to Zero Display Orders where the ETP Holder fails to achieve Total ADV of at least 30 million shares in the same month (or partial month, as applicable); (iii) both Displayed Orders and Zero Display Orders in AutoEx and Order Delivery are counted for purposes of determining Total ADV; and (iv) the foregoing rebates apply only to liquidity adding Zero Display Orders executed in AutoEx.

(6) **“Trade value”** means a dollar amount equal to the price per share multiplied by the number of shares executed.

(7) As specified in Rule 11.13(b)(2).

(8) As specified in Rule 16.4.

[(8) “Liquidity Adding ADV (O/D Displayed)” means, with respect to an ETP Holder¹¹, the number of Displayed Order shares such ETP Holder has executed as a liquidity provider on average per trading day (excluding partial trading days and securities under one dollar) across all tapes in Order Delivery mode for the calendar month (or partial month, as applicable¹²) in which the executions occurred. For purposes of clarity: (i) no rebates apply to Displayed Orders where the ETP Holder fails to achieve Liquidity Adding ADV (O/D Displayed) of at least 1 million shares in the same month (or partial month, as applicable); (ii) only Order Delivery mode liquidity adding Displayed Orders are counted for purposes of determining Liquidity Adding ADV (O/D Displayed); and (iii) the foregoing rebates apply only to liquidity adding Displayed Orders executed in Order Delivery mode.]

[(9) “Liquidity Adding ADV (O/D Dark)” means, with respect to an ETP Holder¹¹, the number of Zero Display Order shares such ETP Holder has executed as a liquidity provider on average per trading day (excluding partial trading days and securities under one dollar) across all tapes in Order Delivery mode for the calendar month (or partial month, as applicable¹²) in which the executions occurred. For purposes of clarity: (i) no rebates apply to Zero Display Orders where the ETP Holder fails to achieve Liquidity Adding ADV (O/D Dark) of at least 1 million shares in the same month (or partial month, as applicable); (ii) only Order Delivery mode liquidity adding Zero Display Orders are counted for purposes of determining Liquidity Adding ADV (O/D Dark); and (iii) the foregoing rebates apply only to liquidity adding Zero Display Orders executed in Order Delivery mode.]

(9[10]) Orders that are routed via NSX and executed in another market center.

(10[11]) Upon verification and approval by NSX, the number of shares executed by ETP Holders under common ownership and control will be aggregated for purposes of calculating average daily volumes. See Rule 16.3.

(11[12]) In the event of any change to this Fee and Rebate Schedule at other than the end of a calendar month, volume calculations will be made on the basis of such number of full trading days within such month during which the unchanged pricing or rebate program’s terms are in effect.