

*Paper Comments*

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

All submissions should refer to File Number SR-FINRA-2008-050. 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2008-050 and should be submitted on or before November 14, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-25374 Filed 10-23-08; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58808; File No. SR-NSX-2008-18]

### Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NSX Fee Schedule To Increase the Liquidity Taking Fee for Automatic Execution Mode Transactions

October 17, 2008.

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 October 9, 2008, National Stock Exchange, Inc. ("NSX" or the "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 prepared by the Exchange. 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 the NSX Fee and Rebate Schedule (the "Fee Schedule") in order to increase the fee for taking liquidity in Automatic Execution mode of order interaction for those securities trading at one dollar or more. The text of the proposed rule change is available on the Exchange's Web site at <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

##### 1. Purpose

With this rule change, the Exchange is proposing to increase the liquidity taking fee in the Automatic Execution mode of order interaction ("AutoEx Mode").<sup>3</sup> In particular, this rule change proposes to increase the liquidity taking fee in securities trading at or above one dollar in AutoEx Mode from the current fee of \$0.0025 to \$0.0028 per share executed across all tapes where Liquidity Adding Average Daily Volume ("Liquidity Adding ADV") equals or exceeds 50,000 shares. As stated in explanatory endnote 3 of the Fee Schedule, "Liquidity Adding ADV" 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 and securities under one dollar) across all tapes on NSX for the calendar month in which the executions occurred. The instant rule filing proposes no changes to the liquidity taking fee for transactions in AutoEx Mode where Liquidity Adding ADV is less than 50,000 shares<sup>4</sup> or for any securities under one dollar.<sup>5</sup>

The Exchange intends to make the proposed fee structure effective on filing of this proposed rule for trading on October 9, 2008. Because the instant rule filing is mid-month, Liquidity Adding ADV will be calculated in the month of October 2008, using two calculation periods. For trades executed prior to October 9, 2008, Liquidity Adding ADV will be calculated based on the average per trading day (excluding partial trading days and securities under one dollar) across all tapes on NSX for the period beginning October 1, 2008 and ending October 8, 2008, the period when the old Fee Schedule (prior to effectiveness of the instant modification) was in effect. For trades executed on or after October 9, 2008, Liquidity Adding ADV will be calculated based on the average per trading day (excluding partial trading days and securities under one dollar)

<sup>3</sup> This rule change proposes no changes to the fees and rebates applicable to securities executed in the Order Deliver mode of order interaction ("Order Delivery Mode").

<sup>4</sup> The liquidity taking fee in AutoEx Mode where the Liquidity Adding ADV is less than 50,000 shares is \$0.0030 per share executed across all tapes.

<sup>5</sup> The liquidity taking fee in AutoEx Mode for securities under one dollar is 0.30% of the trade value, where "trade value" means a dollar amount equal to the price per share multiplied by the number of shares executed.

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

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

<sup>10</sup> 17 CFR 200.30-3(a)(12).

across all tapes on NSX for the period beginning October 9, 2008 and ending October 31, 2008, the period when the new Fee Schedule (after effectiveness of the instant modification) was in effect. Thereafter, Liquidity Adding ADV will be calculated based on the number of shares an 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 on NSX for the calendar month in which the executions occurred. Notice will be provided to ETP Holders respecting the calculation of the Liquidity Adding ADV.

For purposes of clarity, the proposed rule change proposes no modifications to the fees and rebates relating to any trades in Order Delivery Mode.

#### Rationale

The Exchange has determined that these changes are necessary to increase the revenue of the Exchange and to adequately fund its regulatory and general business functions. The proposed modification is reasonable and equitably allocated to those ETP Holders that opt to take liquidity in AutoEx Mode, and is not discriminatory because ETP Holders are free to elect whether to send orders in all tapes through the AutoEx Mode as liquidity taking trades and quotes. Based upon the information above, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest.

#### Notice

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 will provide a copy of the rule filing on the Exchange's Web site ([www.nsx.com](http://www.nsx.com)).

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the provisions of Section 6(b) of the Act,<sup>6</sup> in general, and Section 6(b)(4) of the Act,<sup>7</sup> 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 fee and rebate structure is not discriminatory in that all ETP Holders are eligible to submit (or not submit) liquidity taking trades

and quotes in AutoEx Mode in all tapes and may do so at their discretion.

#### 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 Act<sup>8</sup> and subparagraph (f)(2) of Rule 19b-4<sup>9</sup> 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
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NSX-2008-18 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NSX-2008-18. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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-2008-18 and should be submitted on or before November 14, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-25375 Filed 10-23-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58799; File No. SR-NYSEArca-2008-108]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Revising NYSE Arca Rule 5.3 To Enable the Listing and Trading of Options on Managed Fund Shares

October 16, 2008.

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 October 9, 2008, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and

<sup>10</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>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).