

of the Act<sup>85</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>86</sup> in particular, 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. In particular, the Exchange believes that the proposals will improve the speed, efficiency and quality of Exchange options executions and to provide greater flexibility for Exchange users in how they quote and trade, while also enhancing overall market quality by expanded protection of better displayed prices in the market.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition 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*

No written comments were either solicited or received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

### **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-Phlx-2009-32 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-Phlx-2009-32. 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-Phlx-2009-32 and should be submitted on or before May 5, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>87</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-8422 Filed 4-13-09; 8:45 am]

**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-59723; File No. SR-NSX-2009-02]

### **Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee and Rebate Schedule Relating to Liquidity Adding Rebates**

April 7, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 31, 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 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**

National Stock Exchange, Inc. ("NSX" or "Exchange") is proposing to (i) amend the Fee and Rebate Schedule (the "Fee Schedule") issued pursuant to Exchange Rule 16.1(c) in order to increase the displayed order liquidity adding rebate for Tape A and C securities executed at one dollar or above in the Automatic Execution Mode of order interaction in the event that certain volume thresholds are achieved, (ii) provide a rebate for adding liquidity in displayed orders at one dollar or above in the Order Delivery Mode of order interaction in the event that certain volume thresholds are achieved and (iii) establish a new Rule 16.3 to provide that, for purposes of applying the provisions of the Fee Schedule and Exchange Rule 16, an ETP Holder may request that the Exchange aggregate its activity with the activity of its affiliates.

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

<sup>85</sup> 15 U.S.C. 78f(b).

<sup>86</sup> 15 U.S.C. 78f(b)(5).

<sup>87</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.

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

With this rule change, the Exchange is proposing to increase the liquidity provider rebate for displayed orders (*i.e.*, those orders other than Zero Display Reserve Orders)<sup>3</sup> (“Displayed Orders”) executed in the Automatic Execution Mode of order interaction (“AutoEx”).<sup>4</sup> The proposed increased rebate applies only to Tape A and C securities executed at a price of one dollar and higher in AutoEx, and only after certain volume thresholds are achieved. In addition, the Exchange is proposing to establish a liquidity provider rebate for Displayed Orders executed in the Order Delivery Mode of order interaction (“Order Delivery” or “O/D”).<sup>5</sup> This rebate applies only to securities priced one dollar and higher in Order Delivery, and only after certain volume thresholds are achieved. The proposed rebate for Displayed Orders in Order Delivery mirrors the rebate for liquidity adding Zero Display Orders established pursuant to a rule change submitted by the Exchange for effectiveness on March 2, 2009.<sup>6</sup> Finally, with this rule change the Exchange is proposing to adopt a new Rule 16.3 to allow for the aggregation among affiliated ETP Holders of average daily volumes and other activity.

*Increase in AutoEx Displayed Order Liquidity Adding Rebate for Tapes A and C*

Prior to effectiveness of the instant rule filing, the AutoEx rebate for liquidity adding Displayed Orders in securities one dollar and above was \$0.0026 per share in Tapes A and C, and \$0.0030 per share in Tape B. The instant rule filing proposes to increase the rebate for Tape A and C securities in cases where certain average daily volume thresholds are achieved. Specifically, ETP Holders who achieve

Liquidity Adding ADV<sup>7</sup> of less than 25 million will continue to receive the previously established liquidity adding rebate for executed Tape A and C Displayed Orders in AutoEx of \$0.0026 per share.<sup>8</sup> However, under the instant rule filing, ETP Holders who achieve a Liquidity Adding ADV of 25 million and 40 million shares will receive higher rebates of \$0.0027 and \$0.0028, respectively, with respect to their executed liquidity adding displayed AutoEx Tape A and C securities priced at one dollar and higher.<sup>9</sup>

Like other calculations of “average daily volume” in the Fee Schedule, the measurement period for calculating the proposed rebate is generally the calendar month. However, in the event a pricing or rebate program utilizing this definition is implemented, modified or discontinued on other than month’s end, the period of measurement used to determine “average daily volume” with respect to the rebate (as used in the definition of “Liquidity Adding ADV” and elsewhere in the Fee Schedule) shall be that partial month during which the program’s terms are in effect. This is further explained in the Explanatory Endnotes to the Fee Schedule.

*O/D Liquidity Adding Displayed Order Rebate*

In addition, for securities trading at one dollar or higher in Order Delivery, this rule change proposes to provide a progressively higher rebate applicable to shares executed as liquidity providing Displayed Orders in O/D. ETP Holders who achieve an average daily volume of shares executed as Displayed Orders in O/D (“Liquidity Adding ADV (O/D

Displayed)”) of 1 million,<sup>10</sup> 10 million<sup>11</sup> and 20 million<sup>12</sup> shares will receive rebates of \$0.0008, \$0.0010 and \$0.0012, respectively, with respect to such shares (any such rebate hereinafter referred to as an “O/D Liquidity Adding Displayed Order Rebate”). Liquidity Adding ADV (O/D Displayed) means, with respect to an ETP Holder, “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 for the calendar month (or partial month, as applicable) in which the executions occurred” (see the Explanatory Endnotes to the Fee Schedule).

For purposes of clarity, if an ETP Holder fails to achieve Liquidity Adding ADV (O/D Displayed) of at least 1 million shares in a given month (or partial month, as applicable), then no O/D Liquidity Adding Displayed Order Rebate applies. In addition, for purposes of calculating an ETP Holder’s Liquidity Adding ADV (O/D Displayed), only such ETP Holder’s liquidity adding Displayed Orders executed in O/D in the given time frame are counted. Finally, the O/D Liquidity Adding Displayed Order Rebate applies only to those shares of an ETP Holder executed in O/D as liquidity adding Displayed Orders (*i.e.*, the rebate does not apply to shares of Zero Display Orders that add liquidity in O/D, nor to shares of liquidity providing Displayed Orders in AutoEx). These details are set forth in an explanatory endnote to the Fee Schedule.

Like other calculations of “average daily volume” in the Fee Schedule, the measurement period for calculating the O/D Liquidity Adding Displayed Order Rebate is generally the calendar month. However, in the event a pricing or rebate program utilizing this definition is implemented, modified or discontinued on other than month’s end, the period of measurement used to determine “average daily volume” with respect to the rebate (as used in the definition of Liquidity Adding ADV (O/D Displayed) and elsewhere in the Fee

<sup>7</sup> As used elsewhere in 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 (or partial month, as applicable) in which the executions occurred” (see the Explanatory Endnotes to the Fee Schedule).

<sup>8</sup> Similarly, no change is proposed with respect to the liquidity adding rebate applicable to Tape B securities in AutoEx.

<sup>9</sup> The instant rule filing proposes to establish tiered rebates for executed liquidity adding Tape A and C Displayed Orders in AutoEx. The first rebate tier is \$0.0026 per share, applicable to Tape A and C shares executed at one dollar or more in AutoEx which added liquidity as Displayed Orders, where the ETP Holder’s Liquidity Adding ADV is less than 25 million. The second tier is \$0.0027 per share, applicable to Tape A and C shares executed at one dollar or more in AutoEx which added liquidity as Displayed Orders, where the ETP Holder’s Liquidity Adding ADV is at least 25 million and less than 40 million. The third tier is \$0.0028 per share, applicable to Tape A and C shares executed at one dollar or more in AutoEx which added liquidity as Displayed Orders, where the ETP Holder’s Liquidity Adding ADV is at least 40 million.

<sup>10</sup> The first tier is \$0.0008 per share, applicable to shares executed in O/D which added liquidity as Displayed Orders, where the number of such shares is greater than or equal to 1 million and less than 10 million.

<sup>11</sup> The second tier is \$0.0010 per share, applicable to shares executed in O/D which added liquidity as Displayed Orders, where the number of such shares is greater than or equal to 10 million and less than 20 million.

<sup>12</sup> The third tier is \$0.0012 per share, applicable to shares executed in O/D which added liquidity as Displayed Orders, where the number of such shares is greater than or equal to 20 million.

<sup>3</sup> As specified in Rule 11.11(c)(2)(A).

<sup>4</sup> The Exchange’s two modes of order interaction are described in NSX Rule 11.13(b).

<sup>5</sup> The Exchange’s two modes of order interaction are described in NSX Rule 11.13(b).

<sup>6</sup> See SR-NSX-2009-01.

Schedule) shall be that partial month during which the program's terms are in effect.

**Examples of Order Delivery Liquidity Adding Displayed Order Rebate<sup>13</sup>**

The following charts may be used to illustrate application of the O/D Liquidity Adding Displayed Order Rebate. In a given calendar month (or

other applicable period), the following ETP Holders achieve the following average daily volumes of executed shares (in each case, counting only securities priced at one dollar or higher and excluding partial trading days):

ETP Holder	1	2	3	4	5 (Threshold)	6
	AutoEx Displayed Liquidity Adding	AutoEx Zero Display Liquidity Adding	AutoEx Displayed Liquidity Taking	AutoEx Zero Display Liquidity Taking	Liquidity Adding ADV (O/D Displayed)	Liquidity Adding ADV (O/D Dark)
A .....	30,000	30,000	30,000	30,000	30,000	30,000
B .....	920,000	30,000	30,000	30,000	30,000	30,000
C .....	30,000	920,000	30,000	30,000	30,000	30,000

ETP Holder A will *not* receive an O/D Liquidity Adding Displayed Order Rebate. ETP Holder A fails to satisfy the eligibility requirement (ETP Holder A's

Liquidity Adding ADV (O/D Displayed) of 30,000 (column 5) falls short of the first rebate tier of at least 1 million). ETP Holder B and ETP Holder C similarly

fail to achieve the first tier of the O/D Liquidity Adding Displayed Order Rebate.

ETP Holder	1	2	3	4	5 (Threshold)	6
	AutoEx Displayed Liquidity Adding	AutoEx Zero Display Liquidity Adding	AutoEx Displayed Liquidity Taking	AutoEx Zero Display Liquidity Taking	Liquidity Adding ADV (O/D Displayed)	Liquidity Adding ADV (O/D Dark)
D .....	1 million	1 million	30,000	30,000	10 million	10 million

ETP Holder D will receive an O/D Liquidity Adding Displayed Order Rebate. ETP Holder D's Liquidity Adding ADV (O/D Displayed) of 10 million meets the second tier of the

rebate. Accordingly, ETP Holder D's O/D Liquidity Adding Displayed Order Rebate for the given period will equal the number of full trading days in the measurement period multiplied by 10

million multiplied by \$0.0010 (the second rebate tier for which ETP Holder D is eligible based on Liquidity Adding ADV (O/D Displayed) of at least 10 million and less than 20 million).

ETP Holder	1	2	3	4	5 (Threshold)	6
	AutoEx Displayed Liquidity Adding	AutoEx Zero Display Liquidity Adding	AutoEx Displayed Liquidity Taking	AutoEx Zero Display Liquidity Taking	Liquidity Adding ADV (O/D Displayed)	Liquidity Adding ADV (O/D Dark)
E .....	0	10 million	0	0	20 million	10 million

ETP Holder E will receive an O/D Liquidity Adding Displayed Order Rebate. ETP Holder E has achieved the third tier of the Liquidity Adding ADV (O/D Displayed) eligibility threshold (with 20 million shares). Accordingly, ETP Holder E's O/D Liquidity Adding Displayed Order Rebate for the given period will equal the number of full trading days in the measurement period multiplied by 20 million multiplied by \$0.0012.

**Aggregation of Activity of Affiliated ETP Holders**

This rule change also proposes to adopt a new Rule 16.3 (and delete the obsolete text formerly contained

therein) which would allow an ETP Holder to request that the Exchange aggregate its activity with the activity of certain of its affiliates for purposes of applying Chapter 16 and the terms of the Fee Schedule, including for purposes of achieving the volume rebates and discounts applicable in the various formulations of "average daily volume" used in the Fee Schedule. An ETP Holder requesting aggregation of affiliate activity shall be required to certify to the Exchange the affiliate status of entities whose activity it seeks to aggregate prior to receiving approval for aggregation, and shall be required to inform the Exchange immediately of any

event that causes an entity to cease to be an affiliate. Proposed Rule 16.3 further provides that the Exchange reserves the right to request information to verify the affiliate status of an entity. Upon verification and approval by the Exchange, an ETP Holder's activity would include, for purposes of calculating, among other things, average daily volumes, the activity of its approved wholly owned subsidiary, parent and sister entities that are also ETP Holders.

**Rationale**

The Exchange has determined that these changes are necessary to increase the volume of Displayed Orders in both

<sup>13</sup> These examples merely illustrate the calculation of the rebates for Displayed Orders that Add Liquidity in Order Delivery. They do not

calculate, nor show, the rebates and fees applicable to displayed orders that add liquidity [sic], Zero Display Orders that add liquidity in AutoEx or

Order Delivery, orders that take liquidity, or fees for routing.

AutoEx and Order Delivery for the purpose of increasing the revenue of the Exchange and adequately funding its regulatory and general business functions. In addition, with respect to the O/D Liquidity Adding Displayed Order Rebate, this rule change will provide ETP Holders with equal incentive to submit Displayed Orders (relative to Zero Display Orders) in Order Delivery. With respect to aggregation of affiliated ETP Holder activity, the changes are necessary in order to effectively compete with other trading centers<sup>14</sup>. The proposed modifications are reasonable and equitably allocated to those ETP Holders that opt to provide and take liquidity in Displayed Orders and Zero Display Orders in either AutoEx or 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 Tape A, B and/ or C, and as a liquidity provider or liquidity taker. In addition, the proposed aggregation of affiliate activity is reasonable and equitably allocated among ETP Holders based on clearly established standards in Rule 16.3, and is not discriminatory for the same reason. 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 credit and rebate structure effective on filing of this proposed rule for trading on April 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 will post a copy of the rule filing on the Exchange's Web site (<http://www.nsx.com>).

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,<sup>15</sup> in general, and Section 6(b)(4) of the Act,<sup>16</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 adding trades and quotes in Order Delivery or AutoEx, in any tape, 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. All ETP Holders are further eligible to apply for affiliate aggregation pursuant to the objective criteria set forth in Rule 16.3.

#### *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 foregoing rule change has taken effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>17</sup> and subparagraph (f)(2) of Rule 19b-4<sup>18</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-2009-02 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-NSX-2009-02. 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, 100 F Street, NE., Washington, DC 20549, 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 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 publicly available. All submissions should refer to File Number SR-NSX-2009-02 and should be submitted on or before May 5, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-8424 Filed 4-13-09; 8:45 am]

**BILLING CODE 8010-01-P**

<sup>14</sup> See, e.g., NASDAQ Rule 7027 (adopted by SEC Release 34-53128 (Jan. 13, 2006)).

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

<sup>16</sup> 15 U.S.C. 78f(b)(4).

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>18</sup> 17 CFR 240.19b-4(f)(2).

<sup>19</sup> 17 CFR 200.30-3(a)(12).