found in Section 6(b)(5) of the Act,[5] in that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed rule change identifies the options classes to be added to the Penny Pilot in a manner consistent with prior rule changes.

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

The proposed rule change does not impose 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 not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Exchange Act[6] and Rule 19b–4(f)(1) thereunder,[7] in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2010–09 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–ISE–2010–09. 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 Web site viewing and printing 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 available publicly. All submissions should refer to File No. SR–ISE–2010–09 and should be submitted on or before March 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

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[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A)(i).

[7] 17 CFR 240.19b–4(f)(1).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61473; File No. SR–FINRA–2009–087]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Repeal NASD Rules 2760 and 2780, Incorporated NYSE Rules 2B and 411, and the Interpretation to Incorporated NYSE Rule 411(a)(ii)(5) as Part of the Process of Developing the Consolidated FINRA Rulebook

February 2, 2010.

On December 4, 2009, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to repeal NASD Rule 2760 (Offerings "At the Market"), NASD Rule 2780 (Solicitation of Purchases on an Exchange to Facilitate a Distribution of Securities), Incorporated NYSE Rule 2B (No Affiliation between Exchange and any Member Organization), Incorporated NYSE Rule 411 (Erroneous Reports) and the Interpretation to Incorporated NYSE Rule 411(a)(ii)(5) as part of the process of developing a consolidated FINRA rulebook. The proposed rule change was published for comment in the **Federal Register** on December 29, 2009.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[4] In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[5] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61211 (December 18, 2009), 74 FR 68889. ("Notice").

[4] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78*o*–3(b)(6).

general, to protect investors and the public interest.

The Commission believes that the proposed rule change is appropriate to eliminate confusion and reduce regulatory overlap by repealing rules that are similar to federal rules and regulations or are specific to the NYSE and its marketplace. As further described in the Notice, FINRA stated that NASD Rule 2760 is similar to the Commission's Rule 15c1–8 under the Act,[6] which FINRA believes appropriately protects investors without duplication by NASD Rule 2760. FINRA also stated that NASD Rule 2780 duplicates the Commission's Rule 10b–2, which was rescinded by the Commission in 1993 because it was duplicative of other provisions of the federal securities laws, including the Commission's Regulation M.[7] Therefore, FINRA believes that NASD Rule 2780 should be deleted. In addition, FINRA stated that NYSE Rules 2B and 411 and the Interpretation to Incorporated NYSE Rule 411(a)(ii)(5) relate to activity that concerns solely the NYSE marketplace and, in the case of Rule 411(b)(2), is duplicative of existing Commission recordkeeping requirements. Thus, FINRA believes that these Incorporated NYSE Rules and Interpretation should not be included in the consolidated FINRA rulebook. In approving this proposed rule change, the Commission notes that FINRA members and their associated persons are required to comply with all applicable federal securities laws and that FINRA, as a self-regulatory organization, has the obligation to have the capacity to enforce compliance by its members and their associated persons with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] proposed rule change (SR–FINRA–2009–087) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

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[6] 17 CFR 240.15c1–8.

[7] *See* Securities Exchange Act Release No. 32100 (April 2, 1993), 58 FR 18145 (April 8, 1993).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–61474; File No. SR–NSX–2010–01]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NSX Fee and Rebate Schedule To Increase the Rebate for Liquidity Adding Displayed Orders of Securities Priced Under One Dollar in the Auto Execution Mode of Order Interaction to 0.25% of Trade Value

February 2, 2010.

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 January 29, 2010, 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

National Stock Exchange, Inc. ("NSX®" or "Exchange") is proposing a rule change, operative at commencement of trading on February 1, 2010, which proposes to amend the NSX Fee and Rebate Schedule (the "Fee Schedule") to increase the rebate for liquidity adding displayed orders of securities priced under one dollar in the Auto Execution mode of order interaction ("AutoEx")[3] to 0.25% of trade value.

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 modify the Fee Schedule to increase the rebate for liquidity adding displayed orders of securities priced under one dollar in AutoEx to 0.25% of trade value.

The current Fee Schedule provides a rebate in AutoEx of 0.10% of trade value (except for Zero Display Orders[4]) with respect to transactions in securities priced under one dollar. The term "trade value" means a dollar amount equal to the price per share multiplied by the number of shares executed.[5] The instant rule filing proposes to increase such rebate from 0.10% of trade value to 0.25% of trade value. Zero Display Orders remain excluded from this rebate program. The proposed rule change would not modify other rebates or fees that are included in the Fee Schedule.

Rationale

The Exchange has determined that this change is necessary to create further incentive for ETP Holders to submit increased volumes of liquidity providing displayed orders of sub-dollar securities in AutoEx 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 proposed fee adjustment is necessary for competitive reasons. The Exchange believes that this rebate change 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 liquidity adding displayed orders of securities priced under one dollar in AutoEx, and is not discriminatory because ETP Holders are free to elect whether or not to send liquidity adding displayed orders for sub-dollar securities in AutoEx. In addition, the proposed modification will tend to further incentivize ETP Holders to submit displayed orders over Zero

[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).

[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 (6) to the Fee Schedule.