For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30167 Filed 12–13–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68391; File No. SR–NSX–2012–25]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fee and Rebate Schedule

December 10, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 3, 2012, National Stock Exchange, Inc. (''NSX®'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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 the Substance of the Proposed Rule Change

The Exchange is proposing to amend its Fee and Rebate Schedule (the ''Fee Schedule'') issued pursuant to Exchange Rule 16.1(a) to: (1) Modify the rebates provided to Equity Trading Permit (''ETP'') [3] Holders that execute orders on the Exchange using Order Delivery mode (''Order Delivery Mode''); and (2) charge a fee for each Order Delivery Notification,[4] which is capped on a monthly basis. The text of the proposed rule change is available on the Exchange's Web site at *www.nsx.com,* at the Exchange's principal office, 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

The Exchange is proposing to amend its Fee Schedule issued pursuant to Exchange Rule 16.1(a) to: (1) Modify the rebates for orders executed by ETP Holders using the Exchange's Order Delivery Mode; and (2) charge a fee for each Order Delivery Notification, which is capped on a monthly basis.

Modification of Order Delivery Rebates for Securities Priced at $1.00 or Above

Under Section II of the Fee Schedule, the Exchange offers ETP Holders both a Primary and Alternate Fee Schedule with four (4) tiers of progressively greater rebates. An ETP Holder's monthly average daily trading volume (''ADV'') determines which rebate tier the ETP Holder meets. The Exchange proposes to replace these tiers and the Primary and Alternate Fee Schedules under Section II of the Fee Schedule with a single rebate for all shares executed by ETP Holders against displayed and undisplayed orders using the Order Delivery Mode (''Order Delivery Participants'').[5] The Exchange also [sic] proposes a $0.0030 per share rebate and a 50% Market Data Rebate (''MDR'') for all transactions executed by Order Delivery Participants in securities priced at $1.00 or above.[6] These rebates will replace the current 25% MDR paid to ETP Holders that meet the ADV requirements under the fourth tier of Section II of the Fee Schedule. The Exchange believes that Order Delivery Participants will post additional liquidity on the Exchange if it (i) increases the rebate to $0.0030 per share when the Order Deliver [sic] Participant adds liquidity in a security quoted at a price of $1.00 or greater, and (ii) provides Order Delivery Participants with 50% of the attributable MDR received by the Exchange.

Modification of Order Delivery Rebates for Securities Priced Below $1.00

The Exchange is proposing to amend Section II of the Fee Schedule to no longer provide ETP Holders with a rebate for transactions executed using Order Delivery Mode for securities quoted at prices less than $1.00. The Fee Schedule currently provides ETP Holders with a rebate of the ''[l]esser of: 0.20% of trade value and 20% of the quote spread'' for securities quoted at prices less than $1.00.

Rationale for Revised Order Delivery Rebates

The Exchange believes that the higher rebates [7] will provide ETP Holders with an incentive to post additional liquidity on the Exchange via Order Delivery Mode. The Exchange also notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive. The Exchange believes that the proposed rule change reflects this competitive environment.

Order Delivery Notification Fee

The Exchange proposes to introduce an Order Delivery Notification Fee. The Exchange proposes to charge ETP Holders $0.29 for each Order Delivery Notification delivered to each ETP Holder for potential execution against a posted displayed or undisplayed order. Currently, the Exchange provides this service to ETP Holders at no charge. The proposed Order Delivery Notification Fee will only apply to the first 1.5 million Order Delivery Notifications from [sic] a single Order Delivery Participant in a given calendar month.

Rationale for Order Delivery Notification Fee

The Exchange's Order Delivery Mode provides Electronic Communication Networks (''ECNs'') with an electronic trading platform to interact with the

[21] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] Exchange Rule 1.5 defines the term ''ETP'' as an Equity Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange's Trading Facilities.

[4] An Order Delivery Notification refers to a message sent by the Exchange to the Order Delivery participant communicating the details of the full or partial quantity of an inbound contra-side order that potentially may be matched within the System for execution against an Order Delivery Order.

[5] As a result of consolidating the Primary and Alternate Fee Schedules, ETP Holders that are Order Delivery Participants will no longer automatically receive the Alternate Fee Schedule upon meeting a minimum ADV in both Auto-Ex Mode and Order Delivery Mode because a separate Alternate Fee Schedule will not be available.

[6] As part of the proposed rebate consolidation, Midpoint Peg Zero Display Reserve Orders will receive the proposed $0.0030 per share rebate described above rather than the existing fixed rebate of $0.0017 per executed share.

[7] The Commission notes that this rule filing increases rebates for transactions in stocks priced over $1, but actually eliminates rebates for transactions in stocks priced under $1.

National Market System. ECNs can use Order Delivery Mode to fulfill certain regulatory obligations such as qualifying as an ECN Display Alternative [8] or publishing quotations in the consolidated quotation system when the five (5) percent order display requirement is triggered.[9] Order Delivery Mode provides ECNs with the ability to (i) Publish quotations into the consolidated quotation system, (ii) receive ''protected quotation'' status under Rule 611 of Regulation NMS,[10] (iii) receive an Order Delivery Notification when there is a potential match against a published quotation, and (iv) distribute attributed quotations through the Exchange's Depth-of Book market data product. Order Delivery Mode is a unique market structure that costs more to operate and regulate than if the Exchange offered only automatic executions. Instead of moving to a less expensive market model and technology, the Exchange maintains this high cost structure to foster competition between markets, to encourage the display of limit orders by alternative trading systems, and to provide ECNs with a mechanism to grow within the National Market System. However, maintaining the Order Delivery program inhibits the Exchange's ability to gain additional liquidity through automatic executions.

The Exchange's Order Delivery Mode currently provides ECN's with ''free advertising'' through attributed quotations, which facilitates an increasing rate of executions away from the Exchange. Over the past several months, the overall messaging activity for Order Delivery Participants has increased rapidly without a corresponding increase in executions or an increase in net transaction revenue. During the month of November 2012, Order Delivery Mode accounted for approximate [sic] seventy-four (74) percent of the Exchange's overall messaging activity with one Order Delivery Participant accounting for approximately fifty-five (55) percent of that activity, while only accounting for nine (9) percent of the Exchange's overall trading volume. The disproportionate trade-to-quote ratio in Order Delivery Mode is a result of ECNs successfully leveraging the Exchange's infrastructure to develop their businesses away from the Exchange, even as the majority of the Exchange's operational costs are fixed. Consequently, the Exchange strongly believes that continuing to rely on transaction-based revenues to support Order Delivery Mode is not feasible. The Exchange believes that it is reasonable to charge for the services provided to Order Delivery Participants, and recover the development and ongoing operational costs, excluding the costs of regulation, of Order Delivery Mode. The Exchange will evaluate on a quarterly basis the level of quotations, Order Delivery Notifications and executions as a percentage of overall operations in order to ensure that the Order Delivery Notification Fee is reasonable, equitable and not unfairly discriminatory among ETP Holders.

Operative Date and Notice

The Exchange will make the proposed modifications, which are effective on filing of this proposed rule, operative as of commencement of trading on December 3, 2012.[11] 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 an Information Circular of the changes to the Fee Schedule and will post a copy of the rule filing on the Exchange's Web site (*www.nsx.com*).

2. Statutory Basis

The Exchange believes that the proposed changes to Section II of the Fee Schedule are consistent with the provisions of Section 6(b) of the Securities Exchange Act of 1934 [12] (the ''Act''), in general, and Section 6(b)(4) of the Act,[13] in particular in that they are 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 rebate structure under Section II of the Fee Schedule is not discriminatory in that all ETP Holders are eligible to submit (or not submit) liquidity adding trades [sic] and quotes, and may do so at their discretion in the daily volumes they choose during the course of the billing period. All similarly situated ETP Holders are subject to the same fee structure, and access to the Exchange is offered on terms that are not unfairly-discriminatory. Rebates and discounts have been widely adopted in the equities markets, and are equitable because they are open to all ETP Holders on an equal basis and provide rebates that are reasonably related to the value of an exchange's market quality associated with its Order Delivery Mode. Lastly, the Exchange believes offering different rebates for executions in securities with prices quoted above and below $1.00 is reasonable because it is designed to encourage ETP Holders to improve liquidity in securities with quoted prices at or above $1.00.

The Exchange believes that the proposed Order Delivery Notification Fee is consistent with the provisions of Section 6(b) of the Act,[14] in general, and Section 6(b)(4) of the Act,[15] 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. As stated above, Order Delivery Participants utilize a substantial portion of the Exchange's infrastructure, operational and processing resources. The Order Delivery Notification Fee is a mechanism under which the Exchange can recoup the costs associated with Order Delivery Mode, as it did by capturing the difference between the rebate provided to the Order Delivery Participant and the fee charged to the liquidity taker. The Exchange believes that is [sic] fair and equitable to charge a [sic] Order Delivery Participant a fee which covers the proportionate cost of a unique technology that offers Order Delivery Mode. The Order Delivery Notification Fee is reasonable since it will only recoup the costs associated with Order Delivery Mode. The Exchange will evaluate the Order Delivery Notification Fee on a quarterly basis to ensure that it remains reasonable and equitable among all ETP Holders. In addition, the Exchange proposes to cap the Order Delivery Notification Fee to the first 1.5 million Order Delivery Notifications transmitted to each Order Delivery Participant.

The Exchange also believes the Order Delivery Notification Fee and cap is a reasonable means for the Exchange to recover the development costs of Order Delivery Mode, as well as the ongoing operating costs. During the month of November 2012, Order Delivery Mode accounted for approximate [sic] seventy-four (74) percent of the Exchange's overall messaging activity with one Order Delivery Participant accounting for approximately fifty-five (55) percent of that activity, while only accounting for nine (9) percent of the Exchange's overall trading volume. The disproportionate trade-to-quote ratio in

[8] 17 CFR 242.602(b)(5)(i).

[9] 17 CFR 242.301(b)(3)(B).

[10] 17 CFR 611.

[11] While the Exchange proposes to amend the date of its Fee Schedule to December 1, 2012, it will not implement the proposed fee changes until Monday, December 3, 2012, the first day of trading. The Exchange proposes to amend the Fee Schedule's date to December 1 as it contains non-transaction based fees that are charged on a monthly basis.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

Order Delivery Mode is a result of ECNs successfully leveraging the Exchange's infrastructure to develop their businesses away from the Exchange, even as the majority of the Exchange's operational costs are fixed. While the Exchange could modify its transaction-based fee structure to charge Order Delivery participants a fee for posting Order Delivery liquidity, the Exchange believes that utilizing an [sic] capped Order Delivery Fee structure provides Order Delivery participants a greater incentive to post liquidity on the Exchange. Consequently, the Exchange strongly believes that continuing to rely on transaction-based revenues to support Order Delivery Mode is not feasible. The Exchange believes that it is reasonable to charge for the services provided to Order Delivery Participants, and recover the development and ongoing operational costs, excluding the costs of regulation, of Order Delivery Mode. The Exchange will evaluate on a quarterly basis the level of quotations, Order Delivery notifications and executions as a percentage of overall operations in order to ensure that the Order Delivery Notification Fee is reasonable, equitable and not unfairly discriminatory among ETP Holders.

Moreover, the Exchange believes that the proposed Order Delivery Notification Fee and cap is consistent with the provisions of Section 6(b)(5) of the Act,[16] in that the proposed fee is not unfairly discriminatory amongst Order Delivery Participants. Order Delivery Participants are eligible to submit (or not submit) liquidity adding quotes, and may do so at their discretion in the daily volumes they choose during any given trading day. As stated earlier, Order Delivery Mode currently accounts for approximately 74% of the Exchange's overall incoming messaging activity. Due to the low level of executions resulting from the quotation activity, the Exchange does not believe that a transaction-based fee is a reasonable means for the Exchange to recover the development and the ongoing operational costs of the Order Delivery program. The Exchange does not believe that the Order Delivery Fee is unfairly discriminatory since it directly correlates to the amount of Exchange infrastructure, operations and processing required to maintain the Order Delivery program. The Exchange will evaluate the Order Delivery Notification Fee on a quarterly basis to ensure that changes in Order Delivery activity or volume compared to the Exchange's other operations which causes the fee to become unfair or discriminatory among Order Delivery Participants.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act [17] and subparagraph (f)(2) of Rule 19b–4.[18] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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 email to *rule-comments@sec.gov*. Please include File Number SR–NSX–2012–25 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–NSX–2012–25. This file number should be included on the subject line if email 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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–2012–25, and should be submitted on or before January 4, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30166 Filed 12–13–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68389; File No. SR–NASDAQ–2012–122]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend and Adopt Several NASDAQ Rules To Reflect Changes to Rules of the Financial Industry Regulatory Authority (''FINRA'')

December 10, 2012.

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 26, 2012, The NASDAQ Stock Market LLC (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

[18] 17 CFR 240.19b–4.

[19] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.