

The proposed rule change adds a new Policy Statement<sup>5</sup> to NSCC's Rules that in addition to requiring execution of the standard NSCC Membership Agreement requires a foreign entity to enter into a series of undertakings and agreements that are designed to address jurisdictional concerns and to assure that NSCC is provided with audited financial information that is acceptable to NSCC.<sup>6</sup> These include that a premium on the financial requirements for a member that submits audited financial statements prepared in other than U.S. generally accepted account principles ("GAAP"). The premiums are as follows:

(i) For financial statements prepared in accordance with International Financial Reporting Standards ("IFRS"), the Companies Act of 1985 ("UK GAAP"), or Canadian GAAP—a premium of 1½ times the existing requirement;

(ii) For financial statements prepared in accordance with a European Union ("EU") country GAAP other than UK GAAP—a premium of 5 times the existing requirement; and

(iii) For financial statements prepared in accordance with any other type of GAAP a premium of 7 times the existing requirement.

The requirements in the Policy Statement also include that each non-U.S. entity agree to certain conditions with respect to actions brought by NSCC to enforce the entity's obligations under NSCC's Members Agreement, such as irrevocably waiving all immunity from NSCC's attachment of the entity's assets in the U.S. Each non-U.S. entity will also be required to obtain an opinion of reputable foreign counsel satisfactory to NSCC providing, among other things, that the agreements described in the Policy Statement may be enforced against the foreign entity in the courts of its home country or other jurisdictions where the entity or its property may be found.<sup>7</sup> Each non-U.S. entity would have to be subject to regulation in its home country and its home country regulator must have entered into a Bilateral Information

Sharing Arrangement or Memoranda of Understanding with the U.S. Securities and Exchange Commission regarding the sharing or exchange of information and each non-US entity must be in compliance with the financial reporting and responsibility standards of its home country regulator. Finally, the Policy Statement requires that each non-U.S. entity must provide sufficient information to NSCC in order to evaluate AML risk, including whether the non-U.S. entity is subject to comparable AML requirements to those imposed in the U.S. in its home country jurisdiction.

### III. Discussion

Section 17A(b)(3)(F) of the Act provides that the rules of a clearing agency should be designed to promote the prompt and accurate clearance and settlement of securities transactions and to safeguard securities and funds which are in the custody or control of the clearing agency or for which it is responsible.<sup>8</sup> By expanding the types of entities that are eligible for membership in NSCC, the proposed rule change will increase the direct access to and use of NSCC's clearance and settlement services and therefore should promote the prompt and accurate clearance and settlement of securities transactions. However, because these entities are organized outside of the U.S. and are not subject to U.S. regulation, the Policy Statement includes a number of requirements that are designed to address legal, financial, and information sharing risk that may result from the entity's non-U.S. status. These requirements include (1) the entity make certain waivers and agreements, including a foreign legal opinion, to ensure that NSCC may enforce the member's obligations under its Members Agreement; (2) the entity provide audited financial statements prepared in accordance with generally accepted accounting principles ("GAAP"), with an increase to the member's minimum financial requirements where non-U.S. GAAP is used; and (3) the entity is subject to regulation in its home country, there is an information sharing agreement with the home country regulator and the Commission, and the entity is in compliance with the financial reporting and responsibility standards of its home country regulator. The Commission believes that the additional requirements in the Policy Statement are designed to address the legal, financial, and information sharing risks presented by non-U.S. members and that, therefore, the proposed rule

change is designed to assure the safeguarding of securities and funds which are in NSCC's control or for which it is responsible.

### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.<sup>9</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–2006–15) be and hereby is approved.

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

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58342; File No. SR–NSX–2008–14]

### Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the NSX BLADE<sup>SM</sup> Fee Schedule To Reduce Routing Fees

August 11, 2008.

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 August 8, 2008, the National Stock Exchange, Inc. (the "Exchange" or the "NSX") 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 NSX filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b–4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>9</sup>In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

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

<sup>4</sup>17 CFR 240.19b–4(f)(2).

<sup>5</sup>NSCC's proposed "Policy Statement on the Admission of Non-U.S. Entities as Direct Clearing Corporation Members" is attached as Exhibit 5 to its filing, which can be found at [http://www.dtcc.com/downloads/legal/rule\\_filings/2007/nscc/2007-15.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2007/nscc/2007-15.pdf).

<sup>6</sup>In the Policy Statement, NSCC has reserved the right to waive certain of the criteria where such criteria are inappropriate to a particular applicant or class of applicants (e.g., a foreign government or international securities clearing corporation).

<sup>7</sup>NSCC reserves the right to require the entity to deposit additional amounts to the clearing fund and to post a letter of credit in an instance where NSCC, in its sole discretion, believes the entity presents legal risk.

<sup>8</sup>15 U.S.C. 78q–1(b)(3)(F).

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend the NSX BLADE<sup>SM</sup> Fee and Rebate Schedule (the "Fee Schedule") issued pursuant to Exchange Rule 16.1(c) in order to modify the fees associated with routing transactions to away market centers.

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 certain fees with respect to outbound routing. Specifically, with respect to securities traded at one dollar or more, the instant filing proposes reducing the per share executed routing fee across all tapes from \$0.0040 to \$0.0029. With respect to securities traded at less than one dollar, the instant filing proposes reducing the per share executed routing fee across all tapes from \$0.0040 to 0.3 percent (0.3%) of the trade value. As with the fees and rebates currently applicable to trades of securities under one dollar, "trade value" means a dollar amount equal to the price per share multiplied by the number of shares executed.

In addition, the Exchange is proposing in the instant rule filing to eliminate the reference to the term "NSX BLADE<sup>SM</sup>" in the Fee Schedule.

#### Rationale

The Exchange has determined that this change is necessary for competitive reasons. Under the current Fee Schedule, the charge for routed executions at the Exchange is \$0.0040 per share, which is higher than the

routing fee currently charged by other exchanges and ECN alternatives. Consequently, many ETP Holders do not send orders to the Exchange that are "routable" in order to avoid the current NSX routing charge. The instant proposal seeks to offer competitive routing fees in order to attract more routable orders. The Exchange is able to reduce this routing fee as a result of the activation of NSX Securities, LLC as the Exchange's outbound router. In addition, the proposed rule change is intended to increase the amount of order flow on the Exchange, regardless of whether a given trade in fact executes at an away exchange or other market center.

NSX notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be more attractive. Accordingly, the proposed modification attempts to keep the fees reflected in the Fee Schedule competitive with fees charged by other venues and to continue to be reasonable and equitably allocated to those ETP Holders that opt to route orders. Based upon the information above, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest.

In addition, the Exchange proposes to delete the term "NSX BLADE<sup>SM</sup>" in the Fee Schedule in order to eliminate potential confusion. NSX currently has only one trading platform and therefore does not need to distinguish between NSX BLADE and any other platform. For purposes of clarity, the instant rule filing therefore proposes to delete reference to "NSX BLADE<sup>SM</sup>" and to rename the fee schedule referenced in Rule 16.1(c) as simply the "Fee and Rebate Schedule."

#### Operative Date and Notice

The Exchange intends to make the proposed fee structure for routed trades operative on August 8, 2008. 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 that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,<sup>5</sup> in general, and Section 6(b)(4) of

the Act,<sup>6</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 routing fees are not discriminatory in that all ETP Holders are eligible to submit (or not submit) trades for routing 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>7</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>8</sup> because, as provided in (f)(2), it "changes a due, fee or other charge imposed by the Exchange 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-2008-14 on the subject line.

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> 17 CFR 19b-4(f)(2).

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

*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-2008-14. 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-2008-14 and should be submitted on or before September 9, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58351; File No. SR-NYSE-2008-73]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 104(b) To Provide for an Automated Opening Message That Will Be Effectuated Through the Specialist Application Programmed Interface To Allow Specialists To Automatically Open a Security on a Trade

August 13, 2008.

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 August 5, 2008, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. NYSE has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 proposes to amend NYSE Rule 104(b) to provide for an automated opening message that will be effectuated through the Specialist Application Programmed Interface ("Specialist API<sup>SM</sup>" or "SAPI") to allow specialists to automatically open a security on a trade. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

#### 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 self-regulatory organization 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 those 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 NYSE Rule 104(b) to provide for an automated opening message that will be effectuated through the SAPI to allow specialists to automatically open a security on a trade.

##### Background

Pursuant to NYSE Rule 104, Exchange specialists, in their capacity as dealers for their assigned securities, maintain systems that use proprietary algorithms, based on predetermined parameters, to electronically participate in the Exchange market ("Specialist Algorithm"). The Specialist Algorithm communicates with the NYSE Display Book<sup>®</sup> system<sup>5</sup> via the SAPI. The Specialist Algorithm is intended to replicate electronically some of the activities specialists are permitted to engage in on the Floor in the auction market and to facilitate the specialists' ability to fulfill their obligation to maintain a fair and orderly market.

Specialists on the Exchange are responsible for initiating trading (the "opening") in their assigned securities. Pursuant to NYSE Rule 123D, it "is the responsibility of each specialist to ensure that registered stocks open as close to the opening bell as possible, while at the same time not unduly hasty, particularly when at a price disparity from the prior close." Specialist Algorithms may generate quoting and trading messages as prescribed by NYSE Rule 104(b)(i). Specialists may either open trading in their assigned securities with a manual transaction or, pursuant to NYSE Rule 104(b), with an automated quote.<sup>6</sup>

<sup>5</sup> The Display Book<sup>®</sup> system is an order management and execution facility. The Display Book system receives and displays orders to the specialists, contains the Book, and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

<sup>6</sup> See Securities Exchange Release No. 56588 (October 1, 2007), 72 FR 57366 (October 9, 2007) (SR-NYSE-2007-92).

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

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

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> 17 CFR 200.30-3(a)(12).