

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57390; File No. SR-NSX-2008-02)

February 27, 2008

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Pass-Through of Certain Costs to ETP Holders

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 5, 2008, the 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 substantially by the Exchange. On February 27, 2008, NSX filed Amendment No. 1 to the proposed rule change to make certain clarifying changes to the description of its proposal. NSX has designated this proposal as one establishing or changing a member due, fee, or other charge imposed by NSX under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

NSX proposes to amend the NSX BLADESM Fee and Rebate Schedule to give the Exchange the explicit authority to pass through to a specific ETP Holder costs that are assessed to the Exchange by a third party that are attributable to that particular ETP Holder for its use of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

the facilities of the Exchange. The text of the proposed rule change is available at www.nsx.com, the principal offices of the Exchange, and 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. NSX 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 that the NSX BLADE Fee Schedule be amended to give the Exchange the explicit authority to pass through to a specific ETP Holder⁵ costs that are assessed to the Exchange by a third party vendor that are attributable to that particular ETP Holder for its use of the facilities of the Exchange. These costs include line connectivity and other technological charges and/or upgrades assessed for the ETP Holder's communications with the Exchange, in connection with the Cross Connect service defined below.

The Exchange currently offers ETP Holders the option of connecting to the Exchange through a direct connection, a service provider or through an extranet provider. ETP Holders

⁵ An ETP Holder is a registered broker or dealer that has been issued an Equity Trading Permit ("ETP") by NSX. An ETP Holder will have the status of a "member" of the Exchange as that term is defined in Section 3(a)(3) of the Act (15 U.S.C. 78c(a)(3)).

electing a direct connection to the Exchange that do not utilize a circuit/line obtained from the third party vendor that houses the Exchange's data center must be connected to the Exchange through a line or circuit provided by that vendor (hereinafter the "Cross Connect" service). The third party vendor charges fees associated with this Cross Connect service (the "Cross Connect Fee Schedule"). It should be noted that the third party vendor does not charge a Cross Connect fee for any ETP Holder that utilizes the vendor's circuits.

The Cross Connect Fee Schedule includes a one-time installation charge per circuit or line, and monthly fees which vary depending on the different circuit levels selected. These circuit options include a T-1, T-3 and Ethernet circuit lines. The vendor also offers this service to connect to the Exchange's primary and back-up data centers. Thus, to establish connectivity, the ETP Holder must select the preferred circuit/line size, number of lines desired and location preferences. In all cases, the ETP Holder selects the service that it desires, and thus, is apprised of and in fact exercises control over the fees associated with this connectivity to the Exchange.

The current Cross Connect Fee Schedule provides for a one-time installation charge for a router of \$150 and a one-time installation charge ranging between \$100 and \$275 per circuit depending on the circuit selected. In addition, the current Cross Connect Fee Schedule provides for monthly fees ranging between \$50 and \$375 per circuit per location. While these costs are determined between the ETP Holder and vendor, the Exchange represents that it will maintain a current schedule of fees from the third-party vendor, and will provide this Cross Connect Fee Schedule to ETP Holders upon request and/or otherwise make it available on the Exchange's Web site.

It should be noted that these costs could be directly billed to the ETP Holder by the third party vendor, but for administrative ease, the Exchange has agreed to act as an intermediary.

Because the Exchange has an existing contractual relationship with the third party vendor, the latter prefers to charge the Exchange rather than the ETP Holder directly. These charges are limited to those that are incurred by the Exchange from a third party on behalf of a particular ETP Holder for that ETP Holder's benefit and use of the facilities of the Exchange. In addition, as stated, the ETP Holder would be notified of any charges which would be subject to this pass through provision prior to the charge being incurred.

This provision is intended to capture those costs relating to services that directly benefit and are requested by ETP Holders for certain services and do not include the general operating expenses of the Exchange. Moreover, the Exchange proposes to pass through such costs without any markup or premium imposed by the Exchange.

The Exchange has determined that this change is necessary for competitive reasons. The cumulative amount of such costs, without the ability to pass them through to the ETP Holders who benefit from and in fact request the services giving rise to such costs, puts the Exchange at a competitive disadvantage. The Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest.

The Exchange intends to pass through costs to ETP Holders in accordance with the proposed rule change immediately upon filing of this proposed rule change with the Commission for the time period covered by the February invoice.

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". The Exchange will issue a Regulatory Circular of the changes to the NSX BLADE Fee Schedule and will provide a copy of the rule filing on the Exchange's Web site (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,⁶ in general, and with Section 6(b)(4) of the Act,⁷ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges.

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 proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act⁸ and Rule 19b-4(f)(2)⁹ thereunder, because it establishes or changes a due, fee, or other charge imposed on members by the Exchange. Accordingly, the proposal is effective upon filing with the Commission. At any time within 60 days of the filing of the 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.¹⁰

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

¹⁰ For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the

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-NSX-2008-02 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NSX-2008-02. 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal

Commission considers the period to commence on February 27, 2008, the date on which NSX filed Amendment No. 1.

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-2008-02 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).