

19(b)(3)(A) of the Act,<sup>9</sup> and Rule 19b-4(f)(6) thereunder,<sup>10</sup> with no operative delay.

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.

#### 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-NASDAQ-2007-065 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-NASDAQ-2007-065. 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 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-NASDAQ-2006-065 and should be submitted on or before December 28, 2007.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-23769 Filed 12-6-07; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56883; File No. SR-NSX-2007-11]

### Self-Regulatory Organizations; The National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change as Modified by Amendment Nos. 1 and 2 Thereto, To Modify Rebate Programs for Automatic Execution Transactions in Certain Designated ETFs

December 3, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 1, 2007, the National Stock Exchange, Inc. ("NSX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On October 31, 2007 NSX filed Amendment No. 1 to the proposed rule change. On November 13, 2007 NSX filed Amendment No. 2 to the proposed rule change. The Exchange filed the proposed rule change 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 it 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.

<sup>11</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).

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

NSX is proposing a change to its Rules and Fee Schedule to modify its market data rebate program and its liquidity provider rebate program for transactions that are executed through NSX BLADE<sup>SM</sup>, the Exchange's trading platform, effective October 1, 2007. The Exchange wishes to modify these rebate programs for only those transactions in certain Designated ETF Shares in which the User effecting such order has chosen the automatic execution mode of order interaction as set forth in Exchange Rule 11.13(b)(1). The text of the proposed rule change is available at the Exchange's Web site, <http://www.nsx.com>, 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, NSX 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

Pursuant to Exchange Rule 16.1(a), the Exchange maintains a Fee Schedule that contains its current fees, dues and other charges applicable to transactions in NSX BLADE (the "NSX BLADE Fee Schedule"). Currently, the NSX BLADE Fee Schedule provides for a rebate of \$0.0030 per share for adding liquidity into NSX BLADE through transactions in which ETP Holders have selected the Automatic Execution mode of order interaction ("AutoEx"), regardless of which symbol such transaction involves. Similarly, orders that are AutoEx at less than \$1.00 per share will result in a rebate for a dollar amount equal to 0.3% of the price per share, multiplied by the number of shares executed. The Exchange also currently provides a 100% pro rata transaction credit of gross Tape "A", "B" and "C" market data revenue associated with

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

trading regardless of the symbol that is the subject of such trades.<sup>5</sup>

The Exchange is proposing that the NSX BLADE Fee Schedule be modified to include the concept of Designated ETF Shares, which are certain Exchange Traded Funds and Exchange Traded Notes (hereinafter "ETF Shares") that the Exchange has determined should be subject to different liquidity providing and market data rebates than other symbols. These Designated ETF Shares are generally all Exchange Traded Funds and Exchange Traded Notes that are eligible to trade on the Exchange except for the Nasdaq-100 Index, more commonly referred to as the QQQQs. The Designated ETF Shares are listed by the Exchange on Exhibit A to the NSX BLADE Fee Schedule.

ETP Holders providing liquidity using AutoEx in Designated ETF Shares will receive a rebate of \$0.0035 per share executed. Similarly, ETP Holders providing liquidity on orders executed at less than \$1.00 per share using AutoEx in Designated ETF Shares will result in a rebate for a dollar amount equal to 0.35% of the price per share, multiplied by the number of shares executed. However, trades using AutoEx in Designated ETF Shares would no longer be eligible for market data revenue transaction credits as reflected in the amendments to Exchange Rule 16.2(b). The change in the liquidity provider and market data rebates is being proposed in order to increase trading volume in these Designated ETF Shares. There is no need to provide a similar incentive to increase trading volume in the securities that are not contained in the Exhibit A. These changes would be effective October 1, 2007.

The same trades in non-Designated ETF Shares using AutoEx, as well as all trades using the Order Delivery mode of order interaction as set forth in Exchange Rule 11.13(b)(2) ("Order Delivery"), would continue to receive the current rebate. Thus, for orders executed at \$1.00 or more per share for non-Designated ETF shares, the liquidity provider rebate remains \$0.0030 per share executed and, for all orders executed at a \$1.00 or more per share using Order Delivery, the liquidity provider rebate remains \$0.0028 per share executed.<sup>6</sup> These trades will

continue to receive market data revenue transaction credits.

The Exchange is also proposing to delete the provision relating to ITS Transactions in the Fee Schedule as the Intermarket Trading System Plan has expired and therefore, the provision is no longer applicable.

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 NSX BLADE Fee Schedule and will provide a copy of the rule filing on the Exchange's Web site ([www.nsx.com](http://www.nsx.com)).

The Exchange liquidity provider rebates and market data rebates have been designed in this manner in order to ensure that the Exchange can continue to fulfill its obligations under the Act. Moreover, the proposed liquidity provider and market data rebates are not discriminatory in that all ETP Holders are eligible to trade in Designated ETF Shares listed on Exhibit A using AutoEx and may do so at their discretion.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,<sup>7</sup> in general, and Section 6(b)(4) of the Act,<sup>8</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges. NSX believes that the change is consistent with an equitable allocation of fees, because decreased market data revenue sharing for liquidity providers is offset by enhanced liquidity provider credits for the same market participants, which allows a more direct and readily calculated incentive for liquidity provision. Moreover, the proposed liquidity provider and market data rebates are not discriminatory in that all ETP Holders are eligible to trade in Designated ETF Shares listed on Exhibit A using AutoEx 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 result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments on the proposed rule change were neither solicited nor received.

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

The foregoing proposed rule change is filed pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>10</sup> because it establishes or changes a due, fee, or other charge applicable only to a member imposed by a self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. 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.<sup>11</sup>

## 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-2007-11 on the subject line.

### Paper Comments

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

All submissions should refer to File Number SR-NSX-2007-11. 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

<sup>5</sup> See Securities Exchange Act Release No. 56008 (July 3, 2007), 72 FR 37809 (July 11, 2007) (SR-NSX-2007-07).

<sup>6</sup> For orders executed at less than \$1.00 per share, the rebate for non-Designated ETF shares using AutoEx remains 0.30% of the price per share, multiplied by the number of shares executed and the rebate for all trades using Order Delivery remains 0.28% of the price per share, multiplied by the number of shares executed.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>11</sup> 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 Commission considers the period to commence on November 13, 2007, the date on which NSX filed Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

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 NSX. 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-2007-11 and should be submitted on or before December 28, 2007.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56879; File No. SR-NYSEArca-2007-110]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change Relating to Certain Modifications to the Initial Listing and Trading Standards for Equity Index-Linked Securities

December 3, 2007.

#### I. Introduction

On October 18, 2007, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposal to modify certain initial listing and trading standards for Equity Index-Linked Securities.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on November 1, 2007.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

NYSE Arca Equities Rule 5.2(j)(6)(B)(I) currently permits the Exchange to list and trade, pursuant to Rule 19b-4(e) under the Act,<sup>5</sup> Equity Index-Linked Securities if, among other requirements, all component securities included in the underlying index are either: (1) Securities (other than foreign country securities and American Depository Receipts ("ADRs")) that are (a) issued by a reporting company under the Act that is listed on a national securities exchange and (b) an "NMS stock," as defined in Rule 600 of Regulation NMS;<sup>6</sup> or (2) foreign country securities or ADRs, subject to certain limitations. The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(I) to permit the listing and trading of Equity Index-Linked Securities where the underlying index consists, in whole or in part, of (1) securities of closed-end management investment companies ("Closed-End Fund Securities") or (2) investment company units ("ETF Securities"), which, in each case, are registered under the Investment Company Act of 1940 (the "1940 Act") and listed on a national securities exchange.

In its proposal, the Exchange stated its belief that trading in exchange-listed Closed-End Fund Securities and ETF Securities is subject to the same level of

regulation as trading in exchange-listed equity securities. In addition, the Exchange stated that Closed-End Fund Securities and ETF Securities trade on the same exchange platforms as equity securities registered under the Act and are subject to the same exchange trading rules as equity securities. As such, the Exchange believes that it is appropriate to permit their inclusion as components of indexes underlying Equity Index-Linked Securities.

The Exchange also proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(2)(v) to incorporate a limited exception to the requirement that 90% of the index's numerical value and at least 80% of the total number of component securities underlying an Equity Reference Asset must meet the then current criteria for standardized options trading set forth in NYSE Arca Rule 5.3. The Exchange proposes that an underlying index would not be subject to such requirement if (1) no underlying component security represents more than 10% of the dollar weight of such index, and (2) such index has a minimum of 20 component securities.

All of the options exchanges apply the same criteria to securities underlying exchange-traded options.<sup>7</sup> These criteria relate primarily to the distribution and trading volume of the securities underlying an option,<sup>8</sup> and, as such, the Exchange believes that such criteria are duplicative of the minimum market capitalization and trading volume requirements for securities underlying Equity Index-Linked Securities set forth in NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(2)(i) and (ii), respectively. The Exchange notes that the current requirement of NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(2)(ii), in particular, that relates to minimum trading volume for each component security is more stringent than the trading volume requirement related to options trading.<sup>9</sup> Notwithstanding the

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

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

<sup>3</sup> NYSE Arca Equities Rule 5.2(j)(6) defines Equity Index-Linked Securities as securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes of equity securities, also referred to as the "Equity Reference Asset." See NYSE Arca Equities Rule 5.2(j)(6).

<sup>4</sup> See Securities Exchange Act Release No. 56696 (October 24, 2007), 72 FR 61927 ("Notice").

<sup>5</sup> See 17 CFR 240.19b-4(e). Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to Section 19(b) of the Act (15 U.S.C. 78s(b)), the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for such product class.

<sup>6</sup> See 17 CFR 242.600(b)(47). NMS stock means any security or class of securities (other than options) for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan.

<sup>7</sup> See, e.g., Rule 1009 of the Philadelphia Stock Exchange, Inc.; Rule 5.3 of the Chicago Board Options Exchange, Incorporated; Rule 5.3 of NYSE Arca; and Rule 502 of the International Securities Exchange, LLC.

<sup>8</sup> The rules generally require a minimum of 7,000,000 publicly-held shares, 2,000 holders, a trading volume of at least 2,400,000 shares in the preceding 12 months, and a market price per share of the underlying security of at least \$3.00 per share for securities that are "covered securities," as defined in Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. 77r(b)(1)), and a market price per share of the underlying security of at least \$7.50 for securities that are not "covered securities." See, e.g., NYSE Arca Rule 5.3.

<sup>9</sup> NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(2)(ii) requires that each component security must have trading volume in each of the last six months or not less than 1,000,000 shares per month, except that for each of

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