

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54808; File No. SR-NSX-2006-15]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add a Rule Regarding Third-Party Routing Services in Respect of Orders Entered Into NSX BLADE

November 21, 2006.

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 November 21, 2006, the National Stock Exchange, Inc. ("NSX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. NSX has filed the proposal pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) 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 from interested persons.

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

The Exchange proposes to add a new NSX Rule 2.12 describing the terms under which the Exchange would provide routing services procured from a third party with respect to orders entered into its new state of the art trading system, NSX BLADE. The text of the proposed rule change is below. Proposed new language is in *italics*.

RULES OF NATIONAL STOCK EXCHANGE, INC.

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CHAPTER II—ETP Holders of the Exchange

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Rule 2.11 NSX Securities, LLC

(a)–(b) No change.

(c) *This Rule 2.11 shall become effective on March 1, 2007.*

Rule 2.12 Order Routing Services

The Exchange will route orders to other trading centers under certain circumstances ("Routing Services") as described in Chapter XI of these Rules.

The Exchange will provide its Routing Services pursuant to the terms of three separate agreements: (1) an agreement between the Exchange and each ETP Holder on whose behalf orders will be routed; (2) an agreement between the Exchange and each third-party broker-dealer that will serve as a "give-up" on an away trading center when the ETP Holder on whose behalf an order is routed is not also a member or subscriber of the away trading center; and (3) an agreement between the Exchange and a third-party service provider ("Technology Provider") pursuant to which the Exchange licenses the routing technology used by the Exchange for its Routing Services ("Exchange-Technology Provider Agreement"). This Rule 2.12 shall be effective through February 28, 2007.

Interpretations and Policies

.01 (a) The Exchange will provide its Routing Services in compliance with these Rules, as well as other provisions of the Exchange's By-Laws and Rules where applicable, and with the provisions of the Act and the rules thereunder, including, but not limited to, the requirements in Section 6(b)(4) and (5) of the Act that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

(b) As provider of the Routing Services, the Exchange will license the necessary routing technology for use within its own systems and accordingly will control the logic that determines when, how, and where orders are routed away to other trading centers.

(c) The Exchange will establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange (including its facilities) and the Technology Provider, and, to the extent the Technology Provider reasonably receives confidential and proprietary information, that adequately restrict the use of such information by the Technology Provider to legitimate business purposes necessary for the licensing of routing technology.

(d) The Exchange-Technology Provider Agreement will include terms and conditions that enable the Exchange to comply with this Interpretation and Policy .01.

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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

The Exchange proposes to add a new NSX Rule 2.12 relating to the routing of orders to other trading centers by the Exchange. The proposed Rule would apply to orders entered into the Exchange's new state of the art trading system, NSX BLADE, and would be effective through February 28, 2007. NSX states that this Rule is proposed to be effective for a finite period so that the Exchange can offer routing services through NSX BLADE while the Exchange's wholly-owned subsidiary, NSX Securities, LLC ("NSX Securities") completes its registration process as a broker-dealer with the National Association of Securities Dealers, Inc. ("NASD") (and thus becomes available to provide routing services), and while the Exchange evaluates its options for providing routing services to ETP Holders. The Exchange states that the ability to route orders entered into NSX BLADE to away markets for execution at the best available prices is a key feature of NSX's new system.

Proposed NSX Rule 2.12 provides that the Exchange's routing services would be provided under the terms of (i) an agreement between the Exchange and each ETP Holder on whose behalf the orders would be routed, (ii) an agreement between the Exchange and each third party broker-dealer that would serve as a "give-up" on any away trading center when the ETP Holder on whose behalf an order is routed is not also a member or subscriber at the away trading center, and (iii) an agreement between the Exchange and a third-party service provider pursuant to which the Exchange licenses the routing technology used by the Exchange for its routing services, as well as in compliance with the provisions of the Act and the rules thereunder, and other applicable provisions of the Exchange's

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

By-Laws and Rules. Proposed NSX Rule 2.12 also provides for (i) the equitable allocation of dues, fees and other charges, (ii) Exchange control of the routing logic, and (iii) the establishment and maintenance of procedures and internal controls designed to protect confidential and proprietary information.

Proposed NSX Rule 2.12 provides that the Rule would be effective through February 28, 2007.⁵ The Exchange intends to provide routing services in accordance with proposed NSX Rule 2.12 until February 28, 2007, unless the Exchange, with the Commission's approval, amends proposed NSX Rule 2.12 before such date. During such time period, the Exchange intends to evaluate its options for providing routing services. At the conclusion of such time period, the Exchange may decide to (i) continue the approach provided for in proposed NSX Rule 2.12 on a permanent basis and not use NSX Securities as the outbound router (by filing a proposed rule change to delete NSX Rule 2.11 and renumber proposed NSX Rule 2.12), (ii) use the Exchange's original approach of NSX Securities as an outbound router and discontinue the approach provided for in proposed NSX Rule 2.12 (by filing a proposed rule change to delete proposed NSX Rule 2.12), or (iii) file a proposed rule change to allow ETP Holders to use either NSX Securities or the approach provided for in proposed NSX Rule 2.12 for outbound routing. The Exchange's use of NSX Securities as an outbound router would be contingent on NSX Securities' successful completion of its registration process as a broker-dealer with NASD.

2. Statutory Basis

NSX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁶ in general, and with Section 6(b)(5) of the Act,⁷ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

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 neither solicited nor received 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 is subject to Section 19(b)(3)(A)(iii) of the Act⁸ and Rule 19b-4(f)(6) thereunder⁹ because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that NSX has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

NSX has fulfilled the five-day pre-filing requirement. NSX has requested that the Commission waive the 30-day operative delay requirement. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would immediately provide NSX and its market participants with the ability to route orders to away markets for execution at the best available prices, a key feature of NSX BLADE, which is now operational. The Commission notes that this proposed rule change is substantially similar to the rules of another self-regulatory organization.¹⁰ For these reasons, the Commission hereby waives the 30-day operative delay requirement.¹¹ The Commission notes that NSX intends to offer outbound routing to its ETP Holders beginning on November 27, 2006.

At any time within 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. Please include File Number SR-NSX-2006-15 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-2006-15. 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. Copies of the filing also will be available for inspection and copying at the principal office of the 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-2006-15 and should

⁵ With this rule filing the Exchange also proposes to amend NSX Rule 2.11, relating to NSX Securities' Outbound Router function, to provide that such Rule would become effective on March 1, 2007, immediately after proposed NSX Rule 2.12 ceases to be effective.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ Rule 126B-AEMI of the American Stock Exchange LLC. See Securities Exchange Act Release No. 54552 (September 29, 2006), 71 FR 59546 (October 10, 2006) (approving File No. SR-Amex-2005-104).

¹¹ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

be submitted on or before December 20, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54810; File No. SR-NYSE-2005-90]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto To Allow Certain Institutional Customers To Elect Not To Receive Account Statements

November 22, 2006.

On December 21, 2005, the New York Stock Exchange, Inc. (now known as New York Stock Exchange LLC) ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),² and Rule 19b-4 thereunder,³ a proposed amendment to NYSE Rule 409 (Statements of Accounts to Customers). On March 28, 2006, the NYSE filed Amendment No. 1 to the proposed rule change.⁴ The proposed rule change, as amended by Amendment No. 1, was published for comment in the *Federal Register* on May 25, 2006.⁵ The Commission received two comments on the proposal.⁶ On August 14, 2006, the NYSE filed Amendment No. 2 to the

proposed rule change.⁷ This order approves the proposed rule change, as amended by Amendment No. 1. Simultaneously, the Commission is providing notice of filing of Amendment No. 2 and granting accelerated approval of Amendment No. 2.

I. Description

The proposed amendment to NYSE Rule 409 would allow institutional customers conducting a Delivery versus Payment and Receive versus Payment ("DVP/RVP") business to elect not to receive quarterly account statements. Rule 409, in pertinent part, specifies the obligations of member organizations with respect to customer statements, including frequency of delivery and elements of content.

NYSE Rule 409(a) requires that, except with the permission of the Exchange, members and member organizations shall send statements at least quarterly to customers for accounts showing security and money positions and entries during the preceding quarter. The proposed amendment would provide relief from this requirement for customer accounts that are carried solely for the purpose of DVP/RVP transactions. A DVP/RVP account is an arrangement whereby delivery of securities sold is made to the buying customer's bank in exchange for payment, usually in cash, at settlement. Such accounts must comply with the requirements outlined in NYSE Rule 387 (COD Orders).⁸

Due to the nature of DVP/RVP accounts, their statements do not generally reflect any cash balance or security position at the end of a quarter. Consequently, according to NYSE, DVP/RVP customers (chiefly institutional customers) generally rely on confirmations (issued pursuant to Rule 10b-10 under the Exchange Act) or trade runs for transaction-related information. Such records provide critical transactional information (such as security name and price, commission or markup, if applicable, trade date, settlement date, etc.) in a timely fashion.

⁷ In Amendment No. 2, the NYSE proposed to partially amend the text of proposed amended Rule 409 as discussed in Section III below.

⁸ NYSE Rule 387 sets out specific prerequisites for the acceptance of such orders:

- (1) The member or member organization must have previously received the name and address of the agent, together with its customer number;
- (2) The order must note the payment on delivery or collect on delivery nature of the trade;
- (3) The member or member organization must deliver to the customer a confirmation in the specified form; and
- (4) The member organization must have obtained an agreement from the customer regarding the furnishing of appropriate instructions for the settlement of the trade.

According to NYSE, institutional investors prefer transaction confirms or trade run information to quarterly account statements.

The proposed amendment to NYSE Rule 409 would relieve member organizations of the obligation to send quarterly statements to customers if: (1) The customer's account is carried solely for the purpose of execution on a DVP/RVP basis; (2) all transactions effected for the account are done on a DVP/RVP basis in conformity with Rule 387; (3) the account does not show security or money positions at the end of the quarter; (4) the customer consents to the suspension of such statements in writing and such consents are maintained by the member organization in a manner consistent with Exchange Rule 440 and Rule 17a-4 under the Exchange Act;⁹ (5) the member organization undertakes to provide any particular statement or statements to the customer promptly upon request; and (6) the member organization undertakes to promptly reinstate the delivery of such statements to the customer upon request. The proposed rule change specifies that Rule 409 does not qualify or condition the obligations of a member organization under Rule 15c3-2 under the Exchange Act concerning quarterly notices of free credit balances on statements.¹⁰

II. Summary of Comments

The Commission received two comments on the proposal, both of which generally were supportive.¹¹ BNP opposed condition number (3) of the proposal (*i.e.*, that the account not show security or money positions at the end of the quarter). BNP believed that proposed condition (3) could, among other things, require members to monitor qualifying accounts to ensure that they had no money or positions at the end of the quarter. BNP also contended that the condition could be triggered as a result of a failed receipt

⁹ Under NYSE Rule 440, NYSE member organizations are, among other things, required to make and preserve books and records as prescribed by Rule 17a-3 under the Exchange Act. Rule 440 also states that the recordkeeping format, medium, and retention period must comply with Rule 17a-4 under the Exchange Act. Rule 17a-4 specifies the manner in which broker-dealers must maintain the records created in accordance with Rule 17a-3, and certain other records produced by broker-dealers, and the required retention periods for these records.

¹⁰ Rule 15c3-2 under the Exchange Act requires broker-dealers to provide each of their customers for whom a free credit balance is carried, not less frequently than once every three months, a written statement informing the customer of the amount due to the customer, and written notice that the funds are not segregated and may be used in the broker-dealer's business operations, and that the funds are payable on the customer's demand.

¹¹ See footnote 6, *supra*.

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a *et seq.*

³ 17 CFR 240.19b-4.

⁴ In Amendment No. 1, the NYSE proposed to partially amend the text of proposed amended Rule 409.

⁵ See Exchange Act Release No. 53826 (May 18, 2006), 71 FR 30211 (May 25, 2006).

⁶ See letter from Tom DiSpaldo, Compliance Officer, BNP Paribas Securities Corporation, to Nancy M. Morris, Secretary, Commission, dated June 12, 2006 ("BNP letter") (available for review on the Commission's Web site at <http://www.sec.gov/comments/sr-nyse-2005-90/tdispaldo7238.htm>); and letter from Noland Cheng, Chairman, Operations Committee, Securities Industry Association, to Nancy M. Morris, Secretary, Commission, dated June 16, 2006 ("SIA letter") (available for review on the Commission's Web site at <http://www.sec.gov/comments/sr-nyse-2005-90/sia061606.pdf>).