SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69519; File No. SR–NSX–2013–02]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change To Adopt a New Order Type Called the ''Auto-Ex Only'' Order and Add New Definitions Regarding Automatic Execution Mode and Automatic Execution Orders

May 6, 2013.

I. Introduction

On January 23, 2013, National Stock Exchange, Inc. (''Exchange'' or ''NSX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a new order type called the ''Auto-Ex Only'' order and to add new definitions regarding automatic execution (''Auto Ex'') mode and Auto Ex orders. The proposed rule change was published for comment in the **Federal Register** on February 7, 2013.[3] The Commission received two comment letters on the proposed rule change.[4] The Exchange submitted a response on March 14, 2013.[5] On March 19, 2013, the Commission extended the time period for Commission action.[6] This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange is proposing to (1) to adopt a new order type called the ''Auto-Ex Only'' order; and (2) add new definitions for ''Auto-Ex Mode'' and ''Auto-Ex Order'' to clarify the operation of its existing Auto-Ex Mode of order interaction.

A. Auto-Ex Only Order Type

NSX is a price-time priority market with two modes of order interaction: (1) Auto-Ex Mode and (2) Order Delivery Mode.[7] The Exchange's trading system, NSX BLADE® (''Blade''), matches and executes like-priced orders, regardless of whether an order was entered via Auto-Ex Mode or Order Delivery Mode, that are resting on the NSX Book [8] in accordance with the process described in NSX Rule 11.13(b)(1).

Currently, an incoming marketable order would be executed immediately against contra-side orders entered via Auto-Ex Mode resting in the NSX Book. However, that same incoming marketable order may experience a delay if matched against an order resting on the NSX Book that was entered via Order Delivery Mode.[9] To provide Users [10] with the ability to avoid the delays associated with order delivery service, the Exchange proposes to implement a new order type—the Auto-Ex Only order, which would allow Users to submit an immediate-or-cancel (''IOC'') limit [11] or market order with ''Auto-Ex Only'' handling instructions.[12] Auto-Ex Only orders would be executed solely against orders with price-time priority entered via Auto-Ex Mode and posted to the NSX Book. An Auto-Ex Only order would not interact with any orders resting on the NSX Book entered via Order Delivery Mode and would not be routed away to another trading center. Like an IOC order, the unexecuted portion of an Auto-Ex Only order would be cancelled if not fully matched for execution against Auto-Ex orders with price/time priority on the NSX Book.

According to the Exchange, its price/time priority and order execution rules [13] would limit an Auto-Ex Only order's ability to interact with certain undisplayed orders. Specifically, an Auto-Ex Only order would first execute against displayed orders on the NSX Book. An Auto-Ex Only order could be precluded from interacting with an undisplayed order (*e.g.,* a Zero Display Reserve Order [14]) entered via Auto-Ex Mode if the undisplayed order shares a price point with an order entered via Order Delivery Mode. Similarly, an order entered via Order Delivery Mode could also prevent an incoming Auto-Ex Only order from interacting with the undisplayed portion of a Reserve Order [15] under circumstances in which the order entered via Order Delivery Mode has price/time priority. Like displayed orders, the displayed portion of a Reserve Order will interact against incoming Auto-Ex Only orders only to the extent that there are no orders entered via Order Delivery Mode in the NSX Book with price/time priority.[16]

B. Proposed New Definitions

The Exchange proposes to amend NSX Rules 1.5 and 11.11 to include definitions for Auto-Ex Mode and Auto-Ex orders. Specifically, the Exchange proposes to define ''Automatic Execution Mode'' as ''[t]he mode of order interaction on the Exchange as described in Rule 11.13(b)(1).'' [17] In addition, the Exchange proposes to define an ''Auto-Ex Order'' as ''[a] limit or market order that is automatically executed by the System against any marketable contra side order as in the manner described in Rule 11.13(b)(1).'' [18] These definitions are intended to add clarity and provide the ability to internally cross reference these terms in the Exchange's rules.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 68807 (Feb. 1, 2013), 78 FR 9094 (Feb. 7, 2013) (''Notice'').

[4] *See* Letters to Elizabeth M. Murphy, Secretary, Commission, from Peter J. Driscoll, Investment Professional, dated February 14, 2013 (''Driscoll Letter'') and Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, dated Mar. 6, 2013 (''SIFMA Letter'').

[5] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Christopher Solgan, Senior Regulatory Counsel, NSX, dated Mar. 14, 2013 (''NSX Response'').

[6] *See* Securities Exchange Act Release No. 69183 (Mar. 19, 2013), 78 FR 18377 (Mar. 26, 2013).

[7] *See* Securities Exchange Act Release No. 54391 (Aug. 31, 2006), 71 FR 52836 (Sept. 7, 2006) (SR–NSX–2006–08). The Exchange's two modes of order interaction are described in NSX Rule 11.13(b).

[8] ''NSX Book'' is defined as ''the System's electronic file of orders.'' *See* NSX Rule 1.5(N)(1).

[9] The delays are due to the Exchange sending to and receiving a response from a User that has satisfied the Exchange's requirements to participate in order delivery service. *See* NSX Rule 11.13(b)(2) and the Interpretations and Policies thereto. To be eligible for order delivery service, Users must demonstrate to Exchange examiners that the User's system can automatically process the inbound order and respond immediately.

[10] A ''User'' is any ETP Holder or Sponsored Participant who is authorized to obtain access to the System pursuant to NSX Rule 11.9. *See* NSX Rule 1.5(U)(1).

[11] An IOC order is a limit order that is to be executed in whole or in part as soon as such order is received, and the portion not so executed is to be treated as cancelled. *See* NSX Rule 11.11(b)(1). An order designated as IOC is not eligible to be routed away pursuant to NSX Rule 11.15.

[12] *See* Proposed NSX Rule 11.11(c)(13).

[13] *See* NSX Rule 11.14(a) and, with respect to Reserve Orders (including Zero Display Reserve Orders), NSX Rule 11.14(a)(4).

[14] *See* NSX Rule 11.11(c)(2)(A). A User may enter a Reserve Order with zero display quantity, in which case the Reserve Order will be known as a ''Zero Display Reserve Order.''

[15] A Reserve Order is defined as a ''limit order with a portion of the quantity displayed and with a reserve portion of the quantity that is not displayed.'' *See* NSX Rule 11.11(c)(2).

[16] The Exchange provided several illustrative examples that provide greater clarity regarding how the proposed Auto-Ex Only order type will interact with other orders. *See* Notice, *supra* note 3, at 9096–7.

[17] *See* Proposed NSX Rule 1.5(A)(3). Rule 11.13(b)(1) provides as follows: ''If automatic execution is selected, the System shall match and execute like-priced orders on an order by order basis only at the specific instruction of Users.''

[18] *See* Proposed NSX Rule 11.11(c)(11). Rule 11.13(b)(1) provides as follows: ''If automatic execution is selected, the System shall match and execute like-priced orders on an order by order basis only at the specific instruction of Users.''

Section 6 of the Act [19] and the rules and regulations thereunder applicable to a national securities exchange.[20] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[21] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that NSX's proposed new order type will offer Users the option of interacting with marketable orders on the NSX's Book without having to incur the delays associated with the order delivery service. Accordingly, the Commission finds that the proposed rule change is consistent with the Act as it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and protects investors and the public interest. The Commission further believes that NSX's proposed new definitions will provide clarity when referring to the Auto-Ex Mode of order interaction and the Auto-Ex order type, which will further the Act's goal of promoting just and equitable principles of trade.

The Commission received two comment letters on the proposed rule change. Both commenters asserted that the proposed order type raises concerns under Regulation NMS.[22] Specifically, one commenter stated that the proposed Auto-Ex Only order is inconsistent with the underlying policy goals of Rule 611 of Regulation NMS (''Order Protection Rule'') [23] by designating that only certain ''protected quotations'' are in fact protected.[24] NSX responded to this concern by explaining that the proposed Auto-Ex Only order would not trade-through a protected quotation established by an order submitted via Order Delivery Mode.[25] According to the Exchange, Blade would reject any Auto-Ex Only order when there is an order that was entered via Order Delivery Mode that has price/time priority resting on the NSX Book. Based on the Exchange's representations, the Commission does not believe that the Auto-Ex Only order is inconsistent with Rule 611 of Regulation NMS because an Auto-Ex Only order will not trade-through a protected quotation in violation of Rule 611.

In addition, one of the commenters stated that the proposed new order type is inconsistent with Rule 610(a) of Regulation NMS (''Access to Quotations Rule''),[26] which prohibits an exchange from imposing discriminatory terms that prevent or inhibit any person from obtaining efficient access to such quotations, by preventing orders submitted through Order Delivery Mode from interacting with Auto-Ex Only orders.[27] NSX responded to this commenter's concern by stating that the Auto-Ex Only order would not prevent or inhibit any person from obtaining access to a displayed quotation.[28] The Exchange further explained that Users could access a displayed quotation by submitting an intermarket sweep order or by submitting an Auto-Ex Only order to gain access to orders in the Exchange's displayed quotations that are entered using the Auto-Ex Mode.[29] The Commission does not believe that the Auto-Ex Only order is inconsistent with the Access to Quotations Rule because it does not prevent or inhibit a market participant from gaining access to a displayed quotation.

Both commenters also noted concerns regarding the complexity of the U.S. equity market structure, and one commenter stated that the NSX's proposal would unnecessarily continue the trend of complexity for its sake, without justification as to how the proposal would serve the larger investing public.[30] The same commenter believes that the NSX's proposal adds to the proliferation of order types, with the potential to cause investor confusion without serving any identifiable policy objective other than to allow market participants to bypass quotations that are otherwise entitled to trade-through protection under Regulation NMS simply because of the manner in which the quotations were entered.[31] The other commenter asserted that the proposed order type adds another layer of complexity to an already overly complex market structure.[32] The Commission believes that the NSX's proposed Auto-Ex Only order will benefit Users by offering them the option of interacting with marketable orders on the NSX's Book without having to incur the delays associated with the order delivery service and will not cause investor confusion or significantly add to the complexity of the existing market structure.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[33] that the proposed rule change (SR–NSX–2013–02) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Kevin M. O'Neill,

Deputy Secretary.

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[19] 15 U.S.C. 78f.

[20] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78f(b)(5).

[22] *See* SIFMA Letter and Driscoll Letter, *supra* note 4.

[23] 17 CFR 242.611. Rule 611(a)(1) requires trading centers to, among other things, establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that trading center of protected quotations in NMS stocks.

[24] *See* SIFMA Letter, *supra* note 4, at 2.

[25] *See* NSX Response, *supra* note 5, at 2.

[26] 17 CFR 242.610(a).

[27] *See* SIFMA Letter, *supra* note 4, at 2–3.

[28] *See* NSX Response, *supra* note 5, at 2.

[29] *See id.*

[30] *See* Driscoll Letter, *supra* note 4, at 1–2 and SIFMA Letter, *supra* note 4, at 3.

[31] *See* SIFMA Letter, *supra* note 4, at 3.

[32] *See* Driscoll Letter, *supra* note 4, at 2. The commenter went on to question whether the current market structure needs an order delivery function and whether the current criteria under which order delivery operates is appropriate. *Id.* at 2–4. This concern is beyond the scope of the proposed rule change and the Commission's consideration of such proposed rule change.

[33] 15 U.S.C. 78s(b)(2).

[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69518; File No. SR–MIAX–2013–18]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Priority Customer Size

May 6, 2013.

Pursuant to the provisions of 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 April 24, 2013, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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

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

[2] 17 CFR 240.19b–4.