



March 6, 2013

Via Electronic Mail (rule-comments@sec.gov)

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: File No. SR-NSX-2013-02: National Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Adopt a New Order Type Called the "Auto-Ex Only" Order

Dear Ms. Murphy:

The Securities Industry and Financial Markets Association ("SIFMA")¹ appreciates the opportunity to comment on the above-referenced proposed rule change filed by the National Stock Exchange, Inc. ("NSX" or "Exchange") with the Securities and Exchange Commission ("Commission"). Under the proposed rule change, NSX would implement a new "Auto-Ex Only" order type under NSX Rule 11.11(c)(13).² For the reasons set forth below, SIFMA believes the Commission should disapprove NSX's proposal.

Under the proposal, NSX's Auto-Ex Only order type would be submitted as an immediate-or-cancel ("IOC") limit or market order with "Auto-Ex Only" handling instructions and would not be routed away from the Exchange to another trading center.³ Auto-Ex Only orders would execute *only* against orders with price-time priority submitted to NSX through the Exchange's Auto-Ex mode. In addition, Auto-Ex Only orders *would not* interact with orders submitted to NSX through the Exchange's Order Delivery Mode, which are "protected quotations" under Rule 601(a)(58) of Regulation NMS.⁴

¹ The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² Securities Exchange Act Release No. 68807 (February 1, 2013), 77 FR 9094 (February 7, 2013).

³ *Id.* at 9095.

⁴ *Id.*

In its proposal, NSX states that, currently, when an incoming Auto-Ex order is matched against a resting order entered through Order Delivery mode, a potential delay may occur, because the Order Delivery participant must subsequently respond with instructions to completely fill, partially fill, or cancel the resting order.⁵ NSX states that the benefit of the Auto-Ex Only order is that it will allow participants to interact only with those orders entered through Auto-Ex mode and therefore avoid any potential delays associated with those orders placed through Order Delivery mode.⁶

SIFMA believes that the proposed Auto-Ex Only order type raises concerns under Regulation NMS, particularly the Access to Quotations requirements under Rule 610 and the Order Protection requirements under Rule 611. In addition, SIFMA is concerned that the proposed order type introduces unnecessary additional complexity for market participants, particularly retail participants. Therefore, SIFMA believes that the Commission should disapprove NSX's Auto-Ex Only order proposal.

I. NSX's Proposed Auto-Ex Only Order Type is Inconsistent with the Order Protection Rule and Access to Quotations Rule of Regulation NMS

SIFMA believes that the proposal is inconsistent with the underlying policy goals of the requirements of Rule 611 of Regulation NMS. More specifically, the proposal would foster a bifurcated marketplace by designating that only certain "protected quotations" are in fact protected. When Rule 611 was adopted, it reinforced the fundamental principle of obtaining the best price for investors when that price is represented by automated quotations that are immediately accessible. And the orders submitted to NSX through the Exchange's Order Delivery mode are automated quotations under Regulation NMS and therefore are protected quotations for purposes of Rule 611. NSX has not sufficiently explained how these underlying policy goals of Rule 611 are served when market participants can submit orders to an exchange with instructions to not execute against protected quotations that are entitled to trade-through protection under Rule 611.

NSX's proposal also is inconsistent with Rule 610(a) under Regulation NMS, which prohibits a trading center from imposing discriminatory terms that prevent or inhibit any person from obtaining efficient access to such quotations. In this regard, the Commission stated in adopting Rule 610 that "[i]n general, any SRO rule or practice that treats orders less favorably based on the identity of the ultimate party submitting the order through an SRO member could violate Rule 610(a)."⁷ SIFMA believes that it would be inconsistent with Regulation NMS to

⁵ *Id.*

⁶ *Id.* at 9097.

⁷ *See* Securities Exchange Act Release No. 51808 (Jun. 9, 2005), 70 FR 37496, 37548 (Jun. 29, 2005).

prevent orders submitted through the Order Delivery mode from interacting with Auto-Ex Only orders, simply due to the mechanism in which they were submitted.

II. NSX Proposed Auto-Ex Only Order Type Adds Unnecessary Complexity to the Marketplace.

SIFMA and its members are increasingly concerned with the growing complexity of U.S. equity market structure. NSX's proposal would unnecessarily continue the trend of complexity for its own sake, without justification as to how the proposal would serve the larger investing public. In particular, SIFMA is concerned that the proposal by NSX adds to the proliferation of order types, with the potential to cause investor confusion without serving any identifiable policy objective. The added complexity is particularly troubling in this case because it does not appear to serve any purpose other than to allow market participants to bypass quotations that are otherwise entitled to trade-through protection under Regulation NMS simply because of the means in which the quotations were entered.

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For all of the reasons noted above, SIFMA requests that the Commission disapprove SR-NSX-2013-02.

Ms. Elizabeth M. Murphy, Securities and Exchange Commission
SIFMA Comment Letter on File No. SR-NSX-2013-02
March 6, 2013
Page 4

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SIFMA greatly appreciates the Commission's consideration of the issues raised above in connection with NSX's Auto-Ex Only Order rule filing. SIFMA would be pleased to discuss these comments in greater detail with the Commission and the Staff. If you have any questions, please contact either me (at 202-962-7383 or tlazo@sifma.org) or Timothy Cummings (at 212-313-1239 or tcummings@sifma.org).

Sincerely,

A handwritten signature in blue ink, appearing to read "Theodore R. Lazo", with a long horizontal flourish extending to the right.

Theodore R. Lazo
Managing Director and
Associate General Counsel

cc: Elisse B. Walter, Chairman
Luis A. Aguilar, Commissioner
Troy A. Paredes, Commissioner
Daniel J. Gallagher, Commissioner
John Ramsay, Acting Director, Division of Trading and Markets
James R. Burns, Deputy Director, Division of Trading and Markets
David S. Shillman, Associate Director, Division of Trading and Markets