

March 14, 2013

**VIA ELECTRONIC MAIL (comments@sec.gov)**

Ms. Elizabeth M. Murphy  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: Response to Comment Letters on File No. SR-NSX-2013-02

Dear Ms. Murphy:

The National Stock Exchange, Inc. (“NSX<sup>®</sup>” or “Exchange”) submits this letter in response to comments submitted to the U.S. Securities and Exchange Commission (“SEC” or “Commission”) by Peter J. Driscoll<sup>1</sup> (“Driscoll”) and the Securities Industry and Financial Markets Association<sup>2</sup> (“SIFMA”) on the above referenced rule filing in which the NSX proposes to adopt a new “Auto-Ex Only” order type under NSX Rule 11.11(c)(13),<sup>3</sup> which would allow a User<sup>4</sup> to submit an immediate-or-cancel (“IOC”) limit or market order with “Auto-Ex Only” handling instructions to execute solely against orders with price/time priority entered via Auto-Ex mode and posted to the NSX Book.<sup>5</sup> The NSX does not propose to change its price/time priority rules.

**NSX’s Proposed Auto-Ex Only Order is Consistent with the Order Protection Rule and Access to Quotation Rule of Regulation NMS**

**Order Protection Rule – Rule 611**

The proposed Auto-Ex Only order will not cause the trade-through of a protected quotation in violation of Rule 611 of Regulation NMS. Rule 611(a)(1) of Regulation NMS requires trading centers, which includes the NSX, to implement written policies and procedures

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<sup>1</sup> See letter from Peter J. Driscoll, Investment Professional, to Elizabeth M. Murphy, Secretary, SEC (February 14, 2013) (“Driscoll Letter”), available at <http://www.sec.gov/comments/sr-nsx-2013-02/nsx201302-1.pdf>.

<sup>2</sup> See letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Elizabeth M. Murphy, Secretary, SEC (March 6, 2013) (“SIFMA Letter”), available at <http://www.sec.gov/comments/sr-nsx-2013-02/nsx201302-2.pdf>.

<sup>3</sup> Securities Exchange Act Release No. 68807 (February 1, 2013), 78 FR 9094 (February 7, 2013) (SR-NSX-2013-02).

<sup>4</sup> A “User” is any ETP Holder or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.9. See Exchange Rule 1.5(U).

<sup>5</sup> NSX Rule 1.5(N) defines “NSX Book” as “the System’s electronic file of orders.”

that are reasonably designed to prevent trade-throughs on that trading center of protected quotations in NMS Stocks.<sup>6</sup> Rule 600(b)(77) of Regulation NMS defines a “trade-through” as “the purchase or sale of an NMS stock during regular trading hours, either as principal or agent, at a price that is lower than a protected bid or higher than a protected offer.”<sup>7</sup> SIFMA and Driscoll do not argue that the proposed Auto-Ex Only order violates Rule 611 of Regulation NMS. The Auto-Ex Only order will not trade-through a protected quotation representing an order submitted via the Exchange’s Order Delivery mode. The NSX System will reject any Auto-Ex Only order when an order entered through the Order Delivery mode has price/time priority.<sup>8</sup> Therefore, the proposed Auto-Ex Only order will not trade-through a protected quotation in violation of Rule 611 of Regulation NMS.

### **Access to Quotations – Rule 610**

The proposed Auto-Ex Only order is in compliance with Rule 610(a) of Regulation NMS. Rule 610(a) of Regulation NMS prohibits a trading center from imposing unfairly discriminatory terms that prevent or inhibit any person from obtaining efficient access to the quotations in an NMS stock displayed by that trading center.<sup>9</sup> The Auto-Ex Only order does not prevent or inhibit any person from obtaining access to a displayed quotation. The Exchange does not control the order type directed to the Exchange by a User. For example, a User can 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.

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<sup>6</sup> 17 CFR 242.611(a)(1).

<sup>7</sup> 17 CFR 242.600(b)(77).

<sup>8</sup> The Exchange notes that it included numerous examples in its rule filing describing this functionality and specifically noted that Users may not rely on the Auto-Ex Only order for compliance with Rule 611 of Regulation NMS because the Auto-Ex Only order will not interact with orders entered via Order Delivery mode that may be deemed “protected quotations” on the Exchange. See supra note 3.

<sup>9</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37549 (June 29, 2005) (Regulation NMS Adopting Release). See also 17 CFR 242.610(a)(1).

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The NSX appreciates the opportunity to provide these comments. For the reasons set forth above, the NSX believes SIFMA and Driscoll's request to disapprove the proposed rule change are unwarranted and the NSX respectfully requests the Commission approve the proposed rule change. Should you require any further information, please do not hesitate to contact the undersigned.

Respectfully,



Christopher Solgan  
Senior Regulatory Counsel

cc: Elisse B. Walter, Chairman  
Luis A. Aquilar, Commissioner  
Troy A. Paredes, Commissioner  
Daniel J. Gallagher, Commissioner  
John Ramsay, Acting Director, Division of Trading and Markets  
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