

accommodation rule is consistent with Section 19(b) of the Act. The Commission also notes that, given the amount of time it could take to implement the compensation process set forth in the proposed rule change, several commenters urged Nasdaq to waive the one-year time limit set forth in Nasdaq's service agreement within which members must bring actions against Nasdaq.<sup>120</sup> Because Nasdaq's service agreement is not before the Commission as a part of this proposed rule change, the Commission expresses no view with respect to whether Nasdaq should provide an exception under the service agreement. Finally, in issuing this order, the Commission is expressing no view as to whether Nasdaq or any other person may have violated the federal securities laws or any other laws, any rule or regulation thereunder, or the rules of Nasdaq or any other self-regulatory organization, in connection with the Facebook IPO.

## V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>121</sup> that the proposed rule change (SR-NASDAQ-2012-090) be, and hereby is, approved.

By the Commission.

Kevin M. O'Neill,  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69212; File No. SR-NSX-2013-10]

### Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Provide the Ability To Prevent Zero Display Reserve Orders From Executing in a Locked Market

March 22, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 18, 2013, National Stock Exchange, Inc. ("NSX" or the "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. The Commission is publishing this notice to

solicit comment 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 is proposing to amend Exchange Rules 11.11, 11.14, and 11.15 to: (i) Provide Users<sup>3</sup> with the ability to instruct the Exchange not to execute a Zero Display Reserve Order<sup>4</sup> when the protected bid is equal to the protected offer (i.e., a locked market); (ii) clarify that a Zero Display Reserve Order will be eligible for execution after the market is no longer locked; and (iii) clarify that a Zero Display Reserve Order will retain time priority if it is not executed during a locked market. The Exchange also proposes to make a ministerial change to Rule 11.11(c)(2)(A). The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.<sup>5</sup>

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nsx.com>, at the principal office of the Exchange, and at 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, the Exchange 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. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

On October 10, 2012, the Exchange filed a proposed rule change for immediate effectiveness with the Commission to amend Rules 11.11(c)(2)(A), 11.11(c)(2)(D), 11.14(a)(4)

<sup>3</sup> In sum, Exchange Rule 1.5 defines the term "user" as "any ETP Holder or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.9."

<sup>4</sup> Under Exchange Rule 11.11(c)(2)(A), a "Zero Display Reserve Order" is a "Reserve Order with zero display quantity." Under Exchange Rule 11.11(c)(2), a "Reserve Order" is a "limit order with a portion of the quantity displayed ("display quantity") and with a reserve portion of the quantity ("reserve quantity") that is not displayed."

<sup>5</sup> 17 CFR 240.19b-4(f)(6)(iii).

and Rule 11.15(a)(iv) to clarify that the Exchange will not execute a Zero Display Reserve Order when a protected bid is priced higher than a protected offer (i.e., a crossed market).<sup>6</sup> The Exchange now proposes to expand upon this rule change to amend its Rules to allow ETP Holders to instruct the Exchange, on an order-by-order basis, not to execute a Zero Display Reserve Order during a locked market. Specifically, the Exchange proposes to amend Rules 11.11(c)(2)(D), 11.14(a)(4) and Rule 11.15(a)(iv) to: (i) Provide Users with the ability to instruct the Exchange not to execute a Zero Display Reserve Order during a locked market; (ii) clarify that a Zero Display Reserve Order will be eligible for execution after the market is no longer locked; and (iii) clarify that a Zero Display Reserve Order will retain time priority if it is not executed during a locked market. The Exchange also proposes to make a ministerial change to Rule 11.11(c)(2)(A).

Users enter Zero Display Reserve Orders to either access undisplayed liquidity at or between the Protected Best Bid and Offer ("BBO")<sup>7</sup> or post undisplayed liquidity on the NSX Book. Users post Zero Display Reserve Orders to the NSX Book to avoid potential negative market impact that could result from publicly displaying their trading interest.<sup>8</sup> The Exchange believes that a locked market is, at times, the result of stale quotations that are disseminated by the securities information processor ("SIP"), and not always reflective of a fair and orderly market.<sup>9</sup> Investors may not receive the best price available if their orders are executed during a locked market when the locked market is the result of a stale quote. In fact, an investor may receive a worse price if its

<sup>6</sup> See Securities Exchange Act Release No. 68056 (October 16, 2012), 77 FR 64571 (October 22, 2012) (SR-NSX-2012-16).

<sup>7</sup> Under Exchange Rule 1.5, the "Protected BBO" is defined as the better of the "(a) Protected NBBO or (b) [t]he displayed Top of Book." Orders that may be posted to the NSX Book at or between the Protected BBO are a Zero Display Reserve Order with a limit price, a Market Peg Zero Display Reserve Order, and a Midpoint Peg Zero Display Reserve Order. Under Exchange Rule 11.11(c)(2)(A), a "Market Peg Zero Display Reserve Order" is a "pegged Zero Display Reserve Order which tracks the opposite side of the market" (e.g., the buy-side of the Protected BBO for a sell order or the sell-side of the Protected BBO for a buy order) and a "Midpoint Peg Zero Display Reserve Order" is a "pegged Zero Display Reserve Order that tracks the midpoint" of the Protected BBO."

<sup>8</sup> Under Exchange Rule 11.14(a)(4), the Exchange notes that a displayed order maintains time priority ahead of an undisplayed order, such as a Zero Display Reserve Order, at the same price.

<sup>9</sup> See also footnote 432 to Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (Regulation NMS Adopting Release).

<sup>120</sup> See *supra* note 91 and accompanying text.

<sup>121</sup> 15 U.S.C. 78s(b)(2).

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

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

Zero Display Reserve Order, specifically when pegged to the BBO,<sup>10</sup> is executed during a locked market rather than if the System waited for the first unlocked market. The Commission also stated that it believes that repeated or continual locking or crossing of a market may raise concerns about the orderliness and efficiency of the markets.<sup>11</sup> Therefore, the Exchange proposes to amend Rules 11.11, 11.14, and 11.15 to provide Users the ability when entering a Zero Display Reserve Order to instruct the Exchange, on an order-by-order basis, not to execute an order during a locked market.

#### Exchange Rule 11.11(c)(2)(D)

First, the Exchange proposes to amend Rule 11.11(c)(2)(D) to allow ETP Holders to indicate when entering a Zero Display Reserve Order that the order not be eligible for execution during a locked market. Exchange Rule 11.11(c)(2)(D) would also be amended to state that a Zero Display Reserve Order that is not eligible for execution during a locked market would remain posted on the NSX Book while the protected bid is priced lower than the protected offer (i.e., unlocked market), or the order is cancelled by the ETP Holder.

#### Exchange Rule 11.14

Exchange Rule 11.14(a)(4) sets forth the execution priority for Reserve Orders, including Zero Display Reserve Orders. Under this rule, Reserve Orders have time priority over Zero Display Reserve Orders. The time priority among Zero Display Reserve Orders at the same price is established by several factors including whether the order has a Minimum Execution Quantity Instruction.<sup>12</sup> Under the proposed amendment to Rules 11.11(c)(2)(A) and 11.15(a)(iv), a Zero Display Reserve Order that contains an instruction from the User not to execute during a locked market will, unless cancelled by the User, be posted to the NSX Book and executed when the market is no longer locked. The Exchange proposes to amend Rule 11.14(a)(4) to state that each Zero Display Reserve Order posted to the NSX Book during a locked market will retain its time priority as set forth in Rule 11.14(a)(4).

#### Exchange Rule 11.15

Exchange Rule 11.15(a)(iv) currently provides that a Zero Display Reserve

Order designated as a Post Only Order<sup>13</sup> which is marketable upon entry, but not executed pursuant to Rule

11.11(c)(5)(B), is ranked in the NSX Book and “matched for execution in accordance with Rule 11.15.” Under Exchange Rule 11.15(a)(iv)(B), the Exchange will not execute a Zero Display Reserve Order in an NMS Stock<sup>14</sup> during a crossed market. The Exchange proposes to amend Rule 11.15(a)(iv)(B) to now allow Users to indicate when entering a Zero Display Reserve Order that the order is not eligible for execution during a locked market. The Exchange will resume executing Zero Display Reserve Orders against incoming marketable contra-side orders once the market is no longer locked. As discussed above, Zero Display Reserve Orders that are not executed during a locked market will retain time priority in accordance with Rule 11.14(a)(4). A User’s request to cancel or replace a Zero Display Reserve Order during this period will be handled pursuant to Rule 11.11(9)(d).

#### Exchange Rule 11.11(c)(2)(A)

The Exchange also proposed to make a ministerial change to Rule 11.11(c)(2)(A). In part, Rule 11.11(c)(2)(A) states that “[a] pegged Zero Display Reserve Order may have an optional limit price (“Cap”) beyond which the order shall not be executed.” The Exchange simply proposes to amend this sentence to remove “Cap” as a defined term as it is not referenced elsewhere in the Exchange’s Rules. In doing so, the Exchange does not propose to alter the operation or its interpretation of the Rule.

#### 2. Statutory Basis

The Exchange believes that the proposed changes to Rules 11.11(c)(2)(D), 11.14(a)(4) and Rule 11.15(a)(iv) are consistent with the provisions of Section 6(b) of the Act,<sup>15</sup> in general, and Section 6(b)(5) of the Act,<sup>16</sup> in particular. The proposed rule change provides an ETP Holder flexibility by allowing them to choose that its Zero Display Reserve Order not be executed during a locked market. Zero Display Reserve Orders that are not eligible to be executed during a locked market will, unless cancelled by the User, be posted to the NSX Book, retain

their time priority while posted to the NSX Book, and be eligible for execution once the market is no longer locked. Certain Users of the Zero Display Reserve Orders have indicated that executing orders during a locked market may harm investors. These market participants believe that a locked market is the result of stale quotations that are disseminated by the SIP, and not reflective of a fair and orderly market.<sup>17</sup> Investors may not receive the best price available if their orders are executed during a locked market because the locked market is a stale quote. In addition, an investor may receive a worse price if its order is executed during a locked market rather than if the System waited for the first unlocked market. The Commission also stated that it believes that repeated or continual locking or crossing of a market may raise concerns about the orderliness and efficiency of the markets.<sup>18</sup> Therefore, the Exchange believes the proposed rule change promotes just and equitable principles of trade, removes impediments to, and perfect the mechanism of, a free and open market and a national market system.

The Exchange also believes the proposed change to Rule 11.11(c)(2)(A) is consistent with the provisions of Section 6(b)(5) of the Act<sup>19</sup> because it promotes just and equitable principles of trade by simplifying the Exchange’s Rules. The Exchange proposes to remove an incorrect reference to a defined term which is not referenced elsewhere in the Exchange’s Rules. In doing so, the Exchange does not propose to alter the operation or its interpretation of the Rule.

#### 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 Exchange Act. The Exchange believes allowing ETP Holder flexibility to choose that its Zero Display Reserve Order not be executed during a locked market will enhance order execution opportunities for ETP Holders on the NSX. Certain Users of the Zero Display Reserve Orders have indicated that executing orders during a locked market may harm investors. These market participants believe that a locked market is the result of stale quotations that are disseminated by the

<sup>13</sup> Under Exchange Rule 11.11(c)(5), a “Post Only Order” is a “limit order that is to be posted on the Exchange and not routed away to another trading center.”

<sup>14</sup> “NMS Stock” shall have the same definition as under Rule 600(b)(47) of Regulation NMS under the Exchange Act.

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> See Regulation NMS Adopting Release, *supra* note 9.

<sup>18</sup> See Regulation NMS Proposing Release, *supra* note 11.

<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> See *supra* note 7.

<sup>11</sup> See Securities Exchange Act Release No. 49325 (February 26, 2004), 69 FR 11126 (March 9, 2004) (Regulation NMS Proposing Release).

<sup>12</sup> See Exchange Rule 11.14(a)(4).

SIP, and not reflective of a fair and orderly market.<sup>20</sup> Investors may not receive the best price available if their orders are executed during a locked market because the locked market is a stale quote. In addition, an investor may receive a worse price if its order is executed during a locked market rather than if the System waited for the first unlocked market. The Commission also stated that it believes that repeated or continual locking or crossing of a market may raise concerns about the orderliness and efficiency of the markets.<sup>21</sup> Therefore, 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 Exchange Act.

Lastly, the amendments to Exchange Rule 11.11(c)(2)(A) merely simplifies the Exchange Rules by removing an incorrect reference as a defined term which is not referenced elsewhere. Therefore, the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or in furtherance of the Exchange Act.

#### *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**

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>22</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>23</sup>

<sup>20</sup> See Regulation NMS Adopting Release, *supra* note 9.

<sup>21</sup> See Regulation NMS Proposing Release, *supra* note 11.

<sup>22</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>23</sup> 17 CFR 240.19b-4(f)(6)(iii). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Such waiver would allow the Exchange to provide Users with the ability to instruct the Exchange not to execute a Zero Display Reserve Order when the protected bid is equal to the protected offer without delay. The Commission notes that the rule change affecting treatment of undisplayed orders during a locked market on NSX raises no novel issues and is similar to the treatment of undisplayed orders during a locked market on another exchange.<sup>24</sup> For this reason, the Commission waives the operative delay and designates the proposed rule change to be operative upon filing.<sup>25</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>26</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

### **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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NSX-2013-10 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

<sup>24</sup> See SR-NSX-2013-07, Items 7 and 8. See also CBSX Rule 51.8(g)(10)-(13).

<sup>25</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>26</sup> 15 U.S.C. 78s(b)(2)(B).

Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NSX-2013-10. This file number should be included on the subject line if email 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 Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 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-NSX-2013-10, and should be submitted on or before April 18, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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<sup>27</sup> 17 CFR 200.30-3(a)(12).