This document is scheduled to be published in the
Federal Register on 03/18/2020 and available online at
federalregister.gov/d/2020-05556, and on **govinfo.gov**

8011-01
SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-88368; File No. SR-NYSENAT-2020-09]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing of Proposed Rule Change Amending Rule 7.31 (Orders and Modifiers) Relating to How Orders are Repriced and Make Related Changes to Rules 7.36 and 7.38
March 12, 2020.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on February 28, 2020, NYSE National, Inc. ("NYSE National" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the 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 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 amend Rule 7.31 (Orders and Modifiers) relating to how orders are repriced and make related changes to Rules 7.36 and 7.38. The proposed rule change is available on the Exchange's website at www.nyse.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 self-regulatory organization 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 those statements may be examined at the places

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

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

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

The Exchange proposes to amend Rule 7.31 (Orders and Modifiers) relating to how orders are repriced and make related changes to Rules 7.36 and 7.38.

Background

Currently, if an Away Market updates its PBBO and crosses not only the Exchange's BBO, but also displayed orders in the Exchange Book not represented in the BBO, *i.e.*¸ depth-of-book orders, and then the Exchange's BBO cancels or trades, the Exchange will not disseminate its next-best priced displayed order as its new BBO to the securities information processor ("SIP").[4] Instead, the Exchange reprices such order before it is disseminated to the SIP.[5]

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4 The term "Away Market" is defined in Rule 1.1(b) to mean "any exchange, alternative trading system ("ATS") or other broker-dealer (1) with which the Exchange maintains an electronic linkage and (2) that provides instantaneous responses to orders routed from the Exchange." The term "BBO" is defined in Rule 1.1(c) to mean the best bid or offer on the Exchange, and the term "BB" means the best bid on the Exchange, and the term "BO" means the best offer on the Exchange. The term "PBB" is defined in Rule 1.1(t) to mean the highest Protected Bid, the term "PBO" means the lowest Protected Offer, and "PBBO" means the Best Protected Bid and Best Protected Offer. The terms "Protected Bid" and "Protected Offer" are defined in Rule 1.1(aa). The term "Exchange Book" is defined in Rule 1.1(l) to mean the Exchange's electronic file of orders, which contains all orders entered on the Exchange.

5 See Rule 7.31(a)(2)(C), which provides that "[i]f a BB (BO) that is locked or crossed by an Away Market PBO (PBB) is cancelled, executed or routed and the next best-priced resting Limit Order(s) on the Exchange Book that would become the new BB (BO) would have a display price that would lock or cross the PBO (PBB), such Limit Order(s) to buy (sell) will be assigned a display price one MPV below (above) the PBO (PBB) and a working price equal to the PBO (PBB). When the PBO (PBB) is updated, the Limit Order(s) to buy (sell) will be repriced consistent with the original terms of the order. If a Day ISO to buy (sell) arrives before the PBO (PBB) is updated, such repriced Limit

For example, if the Exchange's BB is $10.05 and on the Exchange Book, there is an order to buy 100 shares ranked Priority 2 - Display Orders at $10.04 ("Order A"), Order A is displayed in the Exchange's proprietary depth-of-book market data at that $10.04 price but is not disseminated to the SIP.[6] If next, an Away Market publishes a PBO of $10.03, the Exchange's BB of $10.05 will stand its ground. However, if that $10.05 BB trades, cancels, or routes, the Exchange will not disseminate Order A to the SIP as the new BB at $10.04. Instead, as provided for in Rule 7.31(a)(2)(C), Order A will be assigned a display price of $10.02 and a working price of $10.03, which is equal to the Away Market PBO, and will be disseminated to the SIP as the Exchange's BB at $10.02. Order A will be repriced to $10.04 once the Away Market PBBO no longer locks or crosses the Exchange BBO. Each time Order A is repriced, including back to its original price, it is assigned a new working time.[7] The Exchange also applies this repricing functionality to Primary Pegged Orders.[8]

The Exchange believes that no other exchange reprices resting depth orders in this manner. The Exchange understands that in the same scenario on other exchanges, "Order A" would stand its ground and be disseminated to the SIP as their new BBO at $10.04, even if that price would cross the Away Market PBO of $10.03. The rules of other exchanges vary regarding how much detail is used to describe circumstances when displayed orders stand their ground, and none explicitly address the specific scenario described above, i.e., when a resting, displayed,

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Order(s) to buy (sell) will be repriced to the lower (higher) of the display price of the Day ISO or the original price of the Limit Order(s)."

6 See Rule 7.36(b)(3) (describing which orders are collected and made available to quotation vendors for dissemination pursuant to the requirements of Rule 602 under Regulation NMS under the Act).

7 See Rule 7.36(f)(2) (an order is assigned a new working time any time its working price changes).

8 See Rule 7.31(h)(2)(B).

depth-of-book order is crossed by an Away Market quotation and then becomes the best-priced order on that exchange. For example:

- The Nasdaq Stock Market LLC ("Nasdaq") Rule 4756(c)(2) provides that Nasdaq transmits for display to the appropriate network processor its best-priced orders. That Rule specifies exceptions of which orders are not transmitted to the SIP, *i.e.*, the reserve size of orders, the discretionary portion of Discretionary Orders, and Non-Displayed Orders. This rule is silent as to whether resting, displayed, depth-of-book orders that have been locked or crossed by another market center and then become the best-ranked orders on Nasdaq are transmitted to the SIP at their original price. Separately, Nasdaq rules provide that certain previously-displayed orders stand their ground. For example, pursuant to Nasdaq Rules 4702(b)(1)(B) and 4702(b)(2)(B), resting "Price to Comply Orders" and "Price to Display Orders" entered via RASH, QIX, or FIX will stand their ground if locked or crossed by another market center. But these rules discuss top-of-book displayed orders that are crossed, not depth-of-book orders.
- CBOE BZX Exchange, Inc. ("BZX") Rule 11.12(b) (Priority of Orders) provides that the best-ranked order(s) to buy and the best-ranked order(s) to sell that are displayable in the BZX Book and the aggregated displayed size of such orders associated with such prices shall be collected and made available to quotation vendors for dissemination pursuant to the requirements of Rule 602 of Regulation NMS. This rule is silent as to whether resting, displayed, depth-of-book orders that have been locked or crossed by another market center and then become the best-ranked orders on BZX are transmitted to the SIP at their original price. BZX

Rule 11.13(a)(2)(C) (Order Execution and Routing) discusses how orders execute on BZX when the PBBO is crossed, and how that exchange processes incoming orders during a crossed market. But that rule does not address the scenario described above regarding *resting*, displayed, depth-of-book orders and whether they would be made available to quotation vendors for dissemination at their original price, even when the PBBO is crossed. Under Rule 11.13(b)(4), BZX further provides for optional "Re-Route Instructions" pursuant to which if a routable order has been locked or crossed by another market, the routable order on the BZX book would be routed to that other market. However, these are optional instructions, which implies that in the absence of one of these instructions, if a routable order on BZX is locked or crossed by another market, such order stands its ground.

- Investors Exchange LLC ("IEX") Rule 11.240(c)(1) provides that IEX disseminates the aggregate of its best-ranked displayable orders to quotation vendors for dissemination to the SIPs. IEX Rules 11.190(h)(3)(A)(i) and (h)(3)(B)(i) further provide that resting orders that are displayed at a price that later becomes locked or crossed, and were originally displayed in compliance with rules and regulations of IEX, will maintain their displayed price and quantity.[9] While these rules do not distinguish between displayed orders at the top of the IEX book and depth-of-book displayed orders, these rules appear consistent with the Exchange's proposed change to provide that resting,

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9 See also Supplementary Material .02 to IEX Rule 11.190(h) (providing that "[o]rders displayed on the Exchange which were displayed at a price compliant with Regulation NMS are generally permitted to maintain their displayed price in the event an away trading center locks or crosses the price of the IEX displayed order.")

displayed, depth-of-book orders would stand their ground and are eligible to be disseminated to the SIP as the BBO at their original displayed price.

- Long-Term Stock Exchange ("LTSE") Rule 11.240(c)(1) provides that LTSE disseminates the aggregate of its best-ranked displayable orders to quotation vendors for dissemination to the SIPs.[10] LTSE Rules 11.190(g)(3)(A)(i) and (g)(3)(B)(i) further provide that resting orders that are displayed at a price that later becomes locked or crossed, and were originally displayed in compliance with rules and regulations of LTSE, will maintain their displayed price and quantity.[11] While these rules do not distinguish between displayed orders at the top of the LTSE book and at depth, these rules appear consistent with the Exchange's proposed change to provide that resting, displayed, depth-of-book orders would stand their ground and are eligible to be disseminated to the SIP as the BBO at their original displayed price.
- MEMX LLC ("MEMX") has filed a Form 1 application for registration as a national securities exchange pursuant to Section 6 of the Act.[12] Proposed MEMX Rule 11.9(b) provides that the best-ranked order(s) to buy and the best-ranked order(s) to sell that are displayable in the MEMX Book and the aggregate displayed size of such orders associated with such prices shall be collected and made available to the SIP. MEMX claims that its proposed MEMX Rule

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[10] LTSE has been approved as a registered exchange but is not yet operational.

[11] See also Supplementary Material .02 to LTSE Rule 11.190(g).

[12] See Securities Exchange Act Release No. 87436 (October 31, 2019), 84 FR 59854 (November 6, 2019) (File No. 1--237). Although MEMX has not yet been approved as an exchange, the Exchange believes that its proposed rules are relevant to this discussion as MEMX expects to be operational in 2020, subject to approval of its Form 1 application.

11.6(j)(1)(A)(ii), which provides that "[f]ollowing the initial ranking and display or an order subject to the Display-Price Sliding instruction, an order will only be re-ranked and re-displayed to the extent it achieves a more aggressive price, provided, however, that the Exchange will re-rank an order at the same price as the displayed price in the event such orders' displayed price would be a Locking or Crossing Quotation" makes clear that an order displayed by MEMX would not be re-priced to a less aggressive price if another market locked or crossed an order displayed by MEMX.[13] The Exchange understands this response to mean that MEMX would not re-price displayed orders that were at depth that would become the MEMX best bid or offer.

The Exchange proposes to amend its rules to conform how it reprices orders in this scenario to how other exchanges function. The Exchange believes that because such orders did not lock or cross an Away Market PBBO when they were entered on the Exchange and displayed to the Exchange's proprietary market data, such resting orders have priority at the price at which they were originally displayed.[14] In other words, such resting orders did not cause a locked or crossed market condition.

The Exchange further believes that providing priority to such resting orders on the Exchange Book (e.g., disseminating "Order A" as a BB at $10.04 in the above-described

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13 See Letter from Anders Franzon, General Counsel, MEMX, to Ms. Vanessa Countryman, Secretary, Securities and Exchange Commission, dated February 11, 2020, available here: https://www.sec.gov/comments/10-237/10237-6795399-208386.pdf.

14 If the PBBO is locked or crossed at the time of an order's arrival, such arriving orders would be either routed, cancelled, or repriced, as provided for in Rule 7.37(c) (for routable orders) or Rule 7.31(e) (for non-routable orders). This proposed rule change is applicable only to resting orders.

scenario) would be consistent with Rule 610(d) under the Act ("Rule 610(d)").[15] Rule 610(d) provides that "[e]ach national securities exchange . . . shall establish, maintain, and enforce written rules that . . . are reasonably designed to assure the reconciliation of locked quotations in an NMS stock." The proposed rule change is consistent with this requirement because in the scenario described above, the Away Market has published a PBO that crosses not only the Exchange's BB, but also other orders that have already been entered on the Exchange and displayed on the Exchange's proprietary market data. Even though such depth-of-book orders have not yet been disseminated to the SIP as part of the Exchange's BBO, those resting orders pre-exist the Away Market quote that crossed them. Therefore, disseminating any pre-existing, displayed orders to the SIP as the new BB at their original price would be consistent with Rule 610(d) because it was the Away Market that crossed previously-displayed orders.

Proposed Rule Change

To effect this proposed rule change, the Exchange proposes to delete Rule 7.31(a)(2)(C) in its entirety. The Exchange also proposes to delete references to this Rule and describe how the Exchange would process orders, as follows.

First, the Exchange proposes several rule changes to specify that previously-displayed orders at any price stand their ground and remain eligible to be quoted or traded at their last-displayed price, even if locked or crossed by an Away Market. The Exchange proposes to specify this principal generally for all displayed orders by amending Rule 7.36(b) to add new subparagraph (4) that would provide that if an Away Market locks or crosses the BBO, the Exchange would not change the display price of any Limit Order ranked Priority 2 - Display

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15 17 CFR 242.610(d).

Orders[16] and any such orders would be eligible to be disseminated as the Exchange's BBO.[17] This proposed rule text both (1) provides specificity that all resting, top-of-book displayed orders stand their ground, which is current functionality,[18] and (2) describes new functionality for previously displayed depth-of-book orders, which would now stand their ground instead of being repriced if they become the Exchange's BBO.

Because such resting orders would no longer be repriced if locked or crossed by an Away Market, such orders would not need to be assigned new working times and would therefore retain priority at their original price. In addition, for market participants that read the Exchange's proprietary market data and are aware of displayed, depth-of-book orders, this proposed change provides greater certainty regarding the price at which a liquidity-taking order would execute on the Exchange.

This proposed rule text therefore promotes transparency and clarity in Exchange rules that all resting, displayed orders, including depth-of-book orders, would stand their ground if locked or crossed by an Away Market. Proposed Rule 7.36(b)(4) is based in part on IEX Rules 11.190(h)(3)(A)(i) and (h)(3)(B)(i) and LTSE Rules 11.190(g)(3)(A)(i) and (g)(3)(B)(i), described above, and is consistent with proposed MEMX Rule 11.6(j)(1)(A)(ii).

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16 As set forth in Rule 7.36(c), all non-marketable orders are ranked and maintained in the Exchange Book in the following manner: (1) price; (2) priority category; (3) time; and (4) ranking restrictions applicable to an order or modifier condition. Under Rule 7.36(e)(2), "Priority 2 - Display Orders" are non-marketable Limit Orders with a displayed working price. Limit Orders that are ranked Priority 2 - Display Orders can be top of book or at depth.

17 As set forth in Rule 7.36(b)(1), the Exchange considers an order to be "displayed" when it has been disseminated via a market data feed. Because all orders ranked Priority 2 - Display Orders, regardless of price, are displayed via proprietary data feeds, such orders are all "displayed" for purposes of Exchange rules.

18 Current Rule 7.31(e)(1)(A)(iii) specifies that Non-Routable Limit Orders stand their ground when crossed by an Away Market PBBO.

The Exchange proposes related changes to remove references to Rule 7.31(a)(2)(C) in connection Primary Pegged Orders and replace that rule text with proposed new functionality that such orders would stand their ground at their last-displayed price. As described above, if the PBBO becomes locked or crossed, displayed orders on the Exchange would stand their ground. The Exchange proposes that in such scenario, resting Primary Pegged Orders, which are dynamically pegged to the PBBO, would similarly stand their ground. As further proposed, if the PBBO becomes locked or crossed, resting Primary Pegged Orders would wait for a PBBO that is not locked or crossed before the display and working price of such orders is adjusted. While the market is locked or crossed, such orders would remain eligible to trade at their current working price.

To effect these changes, the Exchange proposes to amend Rule 7.31(h)(2)(B) relating to Primary Pegged Orders by deleting the last clause of that Rule[19] and amend the last sentence of that paragraph as follows (new text underlined, proposed text for deletion in brackets): "If after arrival, the PBBO becomes locked or crossed, the Primary Pegged Order will wait for a PBBO that is not locked or crossed before the <u>display and</u> working price [is]<u>are</u> adjusted[, but]<u>and</u> remains eligible to trade at its current working price."

<u>Second</u>, the Exchange proposes to specify how the Exchange would process orders following a UTP Regulatory Halt in a UTP Security.[20] Because continuous trading did not

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19 The last clause of current Rule 7.31(h)(2)(B) provides: "provided that, if a resting Limit Order on the Exchange Book is assigned a new display price and working price pursuant to Rule 7.31(a)(2)(C) and the PBBO is still locked or crossed, a resting Primary Pegged Order will also be assigned a new display price and working price pursuant to Rule 7.31(a)(2)(C)."

20 The term "UTP Security" is defined in Rule 1.1(ii) to mean a security that is listed on a national securities exchange other than the Exchange and that trades on the Exchange pursuant to unlisted trading privileges and the term "UTP Regulatory Halt" is defined in Rule 1.1(kk) to mean a trade suspension, halt, or pause caused by the UTP Listing Market

precede the resumption of trading of such security on the Exchange, the Exchange does not have a displayed quote eligible to stand its ground. Accordingly, to prevent publishing a quote that would lock or cross an Away Market, the Exchange proposes that before the Exchange publishes a quote, orders that are marketable against a protected quotation on an Away Market would be either routed (if routable) or cancelled (if non-routable).

The second clause of proposed new Rule 7.36(b)(4) would address how the Exchange would process orders before resuming trading and publishing a quote in a UTP Security following a UTP Regulatory Halt. This proposed rule text would be an exception to the first half of the rule text, described above, that previously-displayed orders stand their ground. The Exchange proposes this exception because during a UTP Regulatory Halt, there is no continuous trading and the Exchange "zeroes" out its quote, meaning the Exchange removes its BBO from the SIP. However, during a UTP Regulatory Halt, the Exchange may still have orders on its book. Specifically, as set forth in Rule 7.18(b), during a UTP Regulatory Halt, the Exchange cancels resting non-displayed orders and maintains all other resting orders in the Exchange Book at their last working price and display price. The Exchange does not accept new orders during such a halt. As provided for in Rule 7.18(a), the Exchange does not resume trading, including publishing a quote, in such security until it receives notification from the UTP Listing Market that the halt or suspension is no longer in effect and it has received the first Price Band in that security. The Exchange proposes that once it is eligible to resume trading, previously-displayed Limit Orders, i.e., the orders entered before the UTP Regulatory Halt, would be routed (if

in a UTP Security that requires all market centers to halt trading in that security. The term "UTP Listing Market" is defined in Rule 1.1(jj) to mean the primary listing market for a UTP Security.

routable) or cancelled (if non-routable) if such orders would be marketable against protected quotations on Away Markets.

For example, if before a UTP Regulatory Halt in XYZ security, the Exchange's BBO was $10.10 (100 shares) x $10.12 (100 shares), and before the Exchange resumes trading following that UTP Regulatory Halt, the first PBBO is $10.08 (100 shares) x $10.09 (100 shares), because the Exchange's former best bid of $10.10 is marketable against the new $10.09 PBO, the Exchange would either route that order (if routable) or cancel it (if non-routable). The Exchange would publish the former $10.12 because it is not marketable against an Away Market quotation.

The Exchange believes that following a UTP Regulatory Halt, orders that would lock or cross the Away Market PBBO should either be routed (if routable) or cancelled (if non-routable) if they would be marketable against protected quotations on Away Markets. The Exchange believes that routing or cancelling such orders is consistent with Rule 610(d) because the Away Market does not have an obligation to prevent locking or crossing an Exchange quote in this scenario. Therefore, in this scenario, to prevent locking or crossing the Away Market PBBO, the Exchange would either route or cancel previously-entered orders before publishing a quote.

<u>Third</u>, the Exchange proposes to apply the proposed processing of orders, described above, to odd-lot orders. In other words, odd-lot orders would no longer be processed differently than orders that are a round lot or greater in size. Currently, Rule 7.38(b)(1) and subparagraphs (A) - (C) describe how the working and display price of odd-lot orders are adjusted in relation to the contra-side PBBO. In short, currently, the working and display prices of odd-lot orders are

bound by the PBBO, which means that resting odd-lot orders can be repriced if the PBBO changes or becomes locked or crossed.[21]

As proposed, odd-lot sized orders would be priced the same as orders of a round-lot size or higher, and if they are designated Priority 2- Display Orders, they would stand their ground if locked or crossed by an Away Market PBBO. To effect this change, the Exchange proposes to delete Rule 7.38(b)(1) and sub-paragraphs (A) - (C) in their entirety. The Exchange also proposes to delete the clause "provided that" at the end of Rule 7.38(b) and make a non-substantive change to that Rule to replace the term "in" with the term "on." As a result of these changes, Rule 7.38(b) would provide, without any qualifiers, that "[r]ound lot, mixed lot and odd-lot orders are treated in the same manner on the Exchange." The Exchange proposes an additional non-substantive change to renumber current Rule 7.38(b)(2) as Rule 7.38(c).

<u>Fourth</u>, because displayed odd-lot orders would stand their ground, the Exchange proposes to amend Rule 7.31(d)(1) to add new subparagraph (F) relating to Reserve Orders to specify new functionality of how non-routable Reserve Orders would be replenished if the display quantity of a resting Reserve Order is decremented to an odd-lot size when the PBBO is crossed. The Exchange proposes this change only for non-routable Reserve Orders. These changes are not necessary for a routable Reserve Order because when such order replenishes, the

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21 Current Rule 7.38(b)(1) provides that "[t]he working and display price of an odd lot order will be adjusted both on arrival and when resting on the Exchange Book as follows: (A) If the limit price of an odd lot order to buy (sell) is at or below (above) the PBO (PBB), it will have a working and display price equal to the limit price. (B) If the limit price of an odd lot order to buy (sell) is above (below) the PBO (PBB), it will have a working price equal to the PBO (PBB). The display price will also be adjusted to the PBO (PBB) unless the order's instruction requires a display price that is different from the PBBO. (C) If the PBBO is locked or crossed and the limit price of an odd lot order to buy (sell) is above (below) the PBO (PBB), it will have a working and display price equal to the PBB (PBO). The working and display price of such odd lot order will not be adjusted again until the PBBO unlocks or uncrosses."

replenish quantity is evaluated for routing to Away Markets and thus would not be displayed at a price that crosses an Away Market.

As proposed in new subparagraph (F) to Rule 7.31(d)(1), if the PBBO is crossed and the display quantity of a Reserve Order to buy (sell) that is a Non-Routable Limit Order is decremented to less than a round lot, the display price and working price of such Reserve Order would be not change. This proposed rule text is consistent with the change, described above, that resting displayed orders, including odd-lot sized orders, would stand their ground if crossed by an Away Market. The proposed rule would further provide that the reserve interest that replenishes the display quantity would be assigned a display price one MPV below (above) the PBO (PBB) and a working price equal to the PBO (PBB). Because this is the first time such interest would be displayed, the Exchange proposes to adjust the display and working price so that the replenished quantity would not lock or cross the Away Market, which is the same manner that an arriving Non-Routable Limit Order is priced.[22]

When the PBBO uncrosses, the display price and working price would be adjusted as provided for under paragraph (e)(1) of this Rule relating to Non-Routable Limit Orders.

Fifth, as described above, displayed orders would stand their ground if locked or crossed by an Away Market. However, non-displayed orders do not. As set forth in Rule 7.31(d)(2)(A), the working price of a resting Non-Displayed Limit Order will be adjusted based on the limit price of the order. If the limit price of a Non-Displayed Limit Order to buy (sell) is at or below (above) the PBO (PBB), it will have a working price equal to the limit price. If the limit price of

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[22] See Rule 7.31(e)(1)(A) (describing how arriving Non-Routable Limit Order is priced). On Nasdaq, a Price to Comply Order with Reserve Size replenishes in a similar manner. See Nasdaq Rule 4703(h); see also Supplementary Material .02 to IEX Rule 11.190(h) ("When a reserve order refreshes its displayed portion, the refreshing shares are not permitted to be displayed at a price that locks or crosses the price of a protected quotation on an away market and are subject to display-price sliding").

a Non-Displayed Limit Order to buy (sell) is above (below) the PBO (PBB), it will have a working price equal to the PBO (PBB). The Exchange also proposes to amend Rule 7.31(d)(1) to provide that the working price of the reserve interest of resting Reserve Orders, which are non-displayed, would be adjusted in the same manner that the working price of Non-Displayed Limit Orders are adjusted.

To effect this change, the Exchange proposes to amend Rule 7.31(d)(1) to add the following sentence: "The working price of the reserve interest of a resting Reserve Order will be adjusted in the same manner as a Non-Displayed Limit Order, as provided for in paragraph (d)(2)(A) of this Rule." The Exchange understands that at least one other exchange also adjusts the price of the non-displayed portion of Reserve Orders in the same manner that such exchange adjusts the price of non-displayed orders.[23]

Together with the proposed rule change described above to Rule 7.36(b), these rule changes make clear that on the Exchange, if crossed by an Away Market PBBO, displayed orders would stand their ground and non-displayed orders, including the reserve interest of resting Reserve Orders, would be repriced based off of the PBBO.

Implementation

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date of this proposed rule change by Trader Update. Subject to effectiveness of this proposed rule change, the Exchange anticipates that the implementation date will be in the Spring of 2020.

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[23] See IEX Rule 11.190(b)(2) (stating that the non-displayed portion of reserve orders are treated as non-displayed orders). IEX reprices its non-displayed orders differently from how the Exchange reprices Non-Displayed Limit Orders. See IEX Rule 11.190(h)(3)(D). Importantly, both IEX and the Exchange reprice non-displayed orders when crossed by an Away Market PBBO.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[24] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[25] in particular, because it is 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that deleting Rule 7.31(a)(2)(C) and the related proposed amendment to Rule 7.36(b) to add new sub-paragraph (4) would remove impediments to and perfect the mechanism of a free and open market and a national market system because they would promote transparency in Exchange rules that previously-displayed orders would stand their ground if locked or crossed by an Away Market PBBO. The proposed rule changes would further promote transparency because they make clear that resting, displayed, depth-of-book orders that have been locked or crossed by an Away Market PBBO would be eligible to be disseminated to the SIP at their original price if they become the BBO.

The Exchange believes that previously-displayed orders, including depth-of-book orders, have priority at such price and should be able to stand their ground if locked or crossed by an Away Market. The Exchange therefore believes it is consistent with this principle to delete Rule 7.31(a)(2)(C) and change functionality on the Exchange for such orders to stand their ground and not be repriced if another market locks or crosses their price. The proposed change therefore

24 15 U.S.C. 78f(b).

25 15 U.S.C. 78f(b)(5).

benefits those resting orders because they would be able to keep their original working time and any priority ranking associated with such working time. The proposed change would also benefit liquidity takers, who would have greater certainty regarding the price at which they would receive an execution on the Exchange.

Moreover, the proposed change is consistent with how other exchanges function. While the rules of other exchanges differ in level of detail, these proposed changes are based in part on IEX Rules 11.190(h)(3)(A)(i) and (h)(3)(B)(i)and LTSE Rules 11.190(g)(3)(A)(i) and (g)(3)(B)(i), which similarly provide that previously-displayed orders on those exchanges maintain their display price and quantity if locked or crossed by an another market center. The proposal is also similar to how MEMX proposes it would function if approved as an exchange.

The Exchange further believes that these proposed amendments are consistent with Rule 610(d). If an Away Market publishes a PBBO that crosses not only the Exchange's BBO, but also resting, displayed, depth-of-book orders, it was the Away Market that crossed previously-displayed orders. If such previously-displayed, depth-of-book orders become the Exchange's BBO, the Exchange believes it is appropriate to disseminate those previously-displayed prices and quantities to the SIP as the new BBO because those resting orders pre-existed the Away Market quote that locked or crossed them.

For the same reasons, the Exchange believes that the proposed changes to Primary Pegged Orders would remove impediments to and perfect the mechanism of a free and open market and a national market system because displayed orders that are pegged to a dynamic price would stand their ground at their original displayed price if locked or crossed by an Away Market, which is consistent with the proposed rule change that all displayed orders would stand their ground. These proposed rule changes also promote transparency by specifying that such orders would continue to be eligible to trade at their original working price, and that their display and working prices would not be adjusted until the PBBO is no longer locked or crossed.

The Exchange further believes that routing or cancelling orders that are marketable against an Away Market PBBO following a UTP Regulatory Halt would also remove impediments to and perfect the mechanism of a free and open market and a national market system because in this scenario, the Away Market would not have had an obligation to prevent displaying a locking or crossing quotation. The Exchange proposes to avoid locking or crossing an Away Market PBBO in this scenario by routing or cancelling previously-displayed orders, as applicable. These proposed changes would reduce the number of times resting orders would be repriced, thereby increasing determinism for the price at which orders would be executed on the Exchange.

The Exchange believes that processing odd-lot sized orders in the same manner as round-lot sized orders would remove impediments to and perfect the mechanism of a free and open market because the same principle applies: an order of any size that has been displayed has priority at that price if an Away Market subsequently locks or crosses that price. In addition, the Exchange believes that processing odd-lot orders the same as round-lot sized orders is not novel as it is consistent with the rules of other exchanges.[26]

Finally, the Exchange believes that the proposed changes to Reserve Orders would remove impediments to and perfect the mechanism of a free and open market because it would apply these principles to a Non-Routable Limit Order that is also a Reserve Order. This

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26 See, e.g., Nasdaq Rules 4703(b)(3) (defining the term "odd lot" as an order attribute) and 4702 (describing which order attributes are available for orders on Nasdaq, without any discussion of odd-lot sized orders being priced differently than round-lot sized orders). See also BZX Rules 11.10 (defining the term "odd lot") and 11.9 (describing BZX Orders and Modifiers, without any discussion of odd-lot sized orders being priced differently than round-lot sized orders).

proposed functionality is also consistent with how Nasdaq and IEX process non-routable orders with reserve interest.[27] The proposed change to reprice the reserve interest of resting Reserve Orders in the same manner as a Non-Displayed Limit Order is priced would also remove impediments to and perfect the mechanism of a free and open market because it would promote consistency in Exchange rules regarding how similar orders are priced when crossed by an Away Market. The proposed change is also consistent with how IEX processes the reserve interest of Reserve Orders.[28]

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[29] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is competitive because it is designed to conform how the Exchange processes previously-displayed orders with the functionality available on other exchanges, i.e., that such orders would stand their ground if locked or crossed by an Away Market and be eligible to be disseminated to the SIP at their original price. The Exchange believes that the proposed change would promote competition because fewer orders would need to be repriced on the Exchange and therefore liquidity providers seeking for their orders to retain priority may route additional orders to the Exchange. Likewise, liquidity takers may be more likely to route orders to the Exchange if they have greater determinism regarding the price at which their orders would be executed.

Without this proposed rule change regarding how displayed orders would stand their ground if locked or crossed by an Away Market, the Exchange is currently at a competitive

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27 See supra note 22.

28 See supra note 23.

29 15 U.S.C. 78f(b)(8).

disadvantage vis-à-vis all other equity exchanges, which do not reprice orders in this manner. As discussed above, displayed orders on all other equity exchanges, including the two exchanges that recently had their Form 1 applications to be approved as an exchange (IEX and LTSE), stand their ground when locked or crossed by an Away Market and such orders are disseminated to the SIP if they become those exchanges' best bid or offer. In addition, MEMX proposes that displayed orders would stand their ground if locked or crossed by an Away Market.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSENAT-2020-09 on the subject line.

  Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSENAT-2020-09. 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 website (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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSNAT-2020-09, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

J. Matthew DeLesDernier,
Assistant Secretary.

[30] 17 CFR 200.30-3(a)(12).

[FR Doc. 2020-05556 Filed: 3/17/2020 8:45 am; Publication Date: 3/18/2020]