SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88793; File Nos. SR-NYSE-2020-13, SR-NYSENAT-2020-09, SR-NYSEArca-2020-17, SR-NYSEAMER-2020-12, SR-NYSECHX-2020-06)

May 1, 2020

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE National, Inc.; NYSE Arca, Inc.; NYSE American LLC; NYSE Chicago, Inc.; Order Granting Approval of Proposed Rule Changes Relating to Repricing of Depth-of-Book Orders In Response to a Locked or Crossed Market

I.   Introduction

On February 28, 2020, New York Stock Exchange LLC ("NYSE"), NYSE National, Inc. ("NYSE National"), NYSE Arca, Inc. ("NYSE Arca"), NYSE American LLC ("NYSE American"), and NYSE Chicago Inc. ("NYSE CHX", and collectively, the "Exchanges") 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] proposed rule changes regarding their rules on the re-pricing of orders in certain market situations and related rules relevant to each Exchange. The proposed rule changes were published for comment in the Federal Register on March 18, 2020.[3] The Commission has received no comments on the proposed rule changes. The Commission is approving the proposed rule changes.

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

[2]   17 CFR 240.19b-4.

[3]   See Securities Exchange Act Release Nos. 88362 (March 12, 2020), 85 FR 15538 (SR-NYSE-2020-13) ("NYSE Notice"); 88368 (March 12, 2020), 85 FR 15510 (SR-NYSENAT-2020-09); 88369 (March 12, 2020), 85 FR 15515 (SR-NYSEArca-2020-17) ("NYSE Arca Notice"); 88363 (March 12, 2020), 85 FR 15544 (SR-NYSEAMER-2020-12) ("NYSE American Notice"); 88367 (March 12, 2020), 85 FR 15551 (SR-NYSECHX-2020-06) (collectively, the "Notices"). For ease of reference, page citations in this order are from the NYSE Notice, as published in the Federal Register.

II.   Description of the Proposed Rule Change

Each Exchange's current rules provide that, if an away market ("Away Market") updates its Protected Best Bid and Offer ("PBBO") and crosses not only the BBO of the Exchange, but also displayed orders in the Exchange's Book not represented in the Best Bid or Offer ("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 depth-of-book order as its new BBO to the securities information processor ("SIP"). Instead, the Exchange will reprice such order before it is disseminated to the SIP.[4]

For example, consider a scenario where NYSE's Best Bid ("BB") is $10.05, and on the NYSE Book there is an order to buy 100 shares ranked as a Priority 2 - Display Order at $10.04 ("Order A"). Currently, Order A is displayed in the NYSE's proprietary depth-of-book market data at that $10.04 price, but is not disseminated to the SIP. If an Away Market subsequently publishes a Protected Best Offer ("PBO") of $10.03, NYSE's BB of $10.05 will not reprice (i.e., it will "stand its ground"). However, if that $10.05 BB trades, cancels, or routes, NYSE will not disseminate Order A to the SIP as the new BB at $10.04. Instead, Order A will be assigned a display price of $10.02 and a NYSE working price of $10.03, which is equal to the Away Market PBO, and will be disseminated to the SIP as the NYSE BB at $10.02. Order A subsequently will be repriced to $10.04 once the Away Market PBO no longer locks or crosses the NYSE BB. Each time Order A is repriced, including back to its original price, it is assigned a new working time. In addition, NYSE currently applies this repricing functionality to other order types (specifically, D Orders and Primary Pegged Orders), and following an auction.[5]

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[4]   See NYSE Notice, 85 FR at 15538-39.

[5]   See id. The rules of the other Exchanges do not provide for D Orders, but, except for NYSE American, they do provide for Primary Pegged Orders and apply the same

The Exchanges propose to eliminate their existing rules requiring the repricing functionality described above, and to add new rule text that provides 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 Orders (which would include previously displayed depth-of-book orders) and that any such orders would be eligible to be disseminated as the Exchange's BBO.[6] As a result, in the example set forth above, Order A instead would not be repriced before being displayed and disseminated to the SIP following the prior Exchange BB being executed or cancelled.[7] Accordingly, Order A would be disseminated to the SIP as the Exchange's new BB at $10.04, even if that price would cross the Away Market Protected Bid of $10.03.[8] The Exchanges also propose other changes to their rules related to this proposal, as further described below.

Odd-Lot Orders

The Exchanges propose to extend the same processing of orders, discussed above, to odd-lot orders. 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

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repricing functionality to those orders. Similarly, the other Exchanges that provide for auctions on their markets (NYSE American and NYSE Arca) apply the same repricing functionality following an auction; NYSE CHX and NYSE National do not have auctions on their markets.

[6] See NYSE Notice, 85 FR at 15540.

[7] Because such resting orders no longer would 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. See id.

[8] The Exchanges also propose that Primary Pegged Orders and D Orders (where applicable, as noted in supra note 5) not be subject to the repricing functionality, but propose instead that such orders be eligible to trade at their current working price; however, they would wait for a PBBO that is not locked or crossed before the display and working price of those orders are adjusted. See NYSE Notice, 85 FR at 15540-41.

or crossed. Under the proposals, odd-lot sized orders would be priced in the same manner as orders of a round-lot size or higher.[9]

Reserve Orders

The Exchanges also propose several related changes for the processing of Reserve Orders. First, in a scenario when the PBBO is crossed and the display quantity of a resting, non-routable Reserve Order is decremented to an odd-lot size, the Exchanges propose that the display price and working price of the remaining odd-lot quantity of the Reserve Order would not change.[10] The Exchanges state that this proposed change is consistent with the above-described changes establishing how resting, displayed orders, including odd-lot sized orders, will be disseminated to the SIP.

However, the Exchanges propose that the reserve interest that replenishes the display quantity (which interest was not previously displayed) 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 Exchanges propose 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 in which an arriving Non-Routable Limit Order is priced.[11] Similarly, the Exchanges propose that the working price of the reserve interest of resting Reserve Orders

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9   See NYSE Notice, 85 FR at 15542.

10   The Exchanges propose this change only for non-routable Reserve Orders, stating that it is not necessary for routable Reserve Orders because when such orders replenish, the replenish quantity is evaluated for routing to Away Markets (i.e., it would be routed) and thus would not be displayed at a price that crosses an Away Market. See id.

11   See, e.g., NYSE Rule 7.31(e)(1) (describing how an arriving Non-Routable Limit Order is priced).

that are not displayed be adjusted in the same manner that the working price of Non-Displayed Limit Orders are adjusted.[12]

Trading After UTP Regulatory Halts or Auctions

Finally, the Exchanges propose changes to their order processing rules following UTP Regulatory Halts or auctions, if the PBBO becomes locked or crossed, as described in further detail below.

Specifically, when transitioning to continuous trading following a UTP Regulatory Halt, the Exchanges' proposals provide that before publishing a quote, previously-entered orders would be routed (if routable) or cancelled (if non-routable) if such orders would be marketable against protected quotations on Away Markets.[13]

When transitioning to continuous trading following an auction on NYSE – and, on NYSE American and NYSE Arca, following specifically an auction not preceded by continuous trading[14] – before publishing a quote, these Exchanges would also route (if routable), or cancel (if not routable), any orders that are marketable against a PBBO on an Away Market (except for Primary Pegged Orders on NYSE and NYSE Arca, D Orders on NYSE, and, during a Short Sale Price Test, sell short orders on all three exchanges). Then, the Exchanges would (i) trade any orders that are marketable against any other orders on their book; (ii) replenish the display

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[12]   See, e.g., NYSE Rule 7.31(d)(2)(A) (describing how the working price of a Non-Displayed Limit Orders is adjusted). 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 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).

[13]   See NYSE Notice, 85 FR at 15541.

[14]   Such auctions include a Trading Halt Auction, a Closing Auction if not preceded by continuous trading, and an IPO Auction on NYSE American. With respect to auctions preceded by continuous trading on NYSE American and NYSE Arca, see next paragraph.

quantity of any Reserve Orders, (iii) assign Primary Pegged and D Orders (for those Exchanges, where applicable) a display and working price as noted above, provided that if the PBBO is locked or crossed or if there is no PBBO to peg to, they would be cancelled; and (iv) price any sell short orders (for the Exchanges, where applicable) to a Permitted Price.[15]

On NYSE American and NYSE Arca, to specify how orders would be processed before publishing a quote when transitioning from a prior trading session or following the Core Open or Closing Auction, which are transitions preceded by continuous trading and where the exchange has a published quote immediately preceding the transition, these Exchanges propose that those displayed orders are eligible be disseminated to the SIP at their then-current price.[16] These Exchanges state that this proposed change is consistent with the other proposed changes, described above, about how orders will be disseminated to the SIP even if crossed by an Away Market.[17]

Because of the technology changes associated with these proposed rule changes, the Exchanges propose to announce the implementation date of the proposed rule changes by Trader Update and to implement these changes in Spring 2020.

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[15]   See, e.g., NYSE Rule 7.16(f)(5) (describing the Permitted Price for sell short orders).

[16]   To effect this change, NYSE American proposes to amend Rule 7.35E(h)(3)(A)(i) – its provision governing transitioning from a prior trading session or following the Early Open Auction, Core Open Auction, or Closing Auction – by specifying that it applies only to such auctions if preceded by continuous trading, and deleting its last clause, which provides that, if the new published quote is worse than the previously-published quote and would lock or cross the PBBO, the display price of Limit Orders will be adjusted in accordance with the rule describing the repricing functionality that is proposed to be deleted. NYSE Arca proposes to make the equivalent amendment to its Rule 7.35-E(h)(3)(A)(i). NYSE American and NYSE Arca also propose a non-substantive change to their respective definitions of "previously-live orders".

[17]   See NYSE Arca Notice, supra note 3, 85 FR at 15518.

III.   Discussion and Commission Findings

After careful consideration of the proposed rule changes, the Commission finds that the

Exchanges' proposed rule changes are consistent with the requirements of the Act and the rules

and regulations thereunder applicable to national securities exchanges. In particular, the

Commission finds that the Exchanges' proposed rule changes are consistent with Section 6(b)(5)

of the Act,[18] which requires that the rules of an exchange be designed, among other things, to

promote just and equitable principles of trade, 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, and not be designed to permit unfair discrimination between

customers, issuers, brokers or dealers.

The Exchanges state that their proposed rule changes will make their rules consistent

with the rules and functionalities of other exchanges.[19] Accordingly, the proposals remove

impediments to and perfect the mechanism of a free and open market and are not designed to permit

unfair discrimination to the extent that they promote consistency among the rules of the equity

exchanges regarding how orders are priced, processed, and disseminated to the SIP. Based on the

foregoing, the Commission therefore finds that the proposed rule changes are consistent with the

Act. [20]

IV.   Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[21] that the

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[18]   15 U.S.C. 78f(b)(5).

[19]   See NYSE Notice, 85 FR at 15543. See also 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).

[20]   In approving these proposed rule changes, 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. 78s(b)(2).

proposed rule changes (SR-NYSE-2020-13, SR-NYSENAT-2020-09, SR-NYSEArca-2020-17, SR-NYSEAMER-2020-12; and SR-NYSECHX-2020-06) be, and hereby are approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier
Assistant Secretary

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[22]   17 CFR 200.30-3(a)(12).