these meetings may be obtained by contacting the Committee at U.S. Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5526, 1900 E Street, NW., Washington, DC 20415, (202) 606–2838.

Dated: February 11, 2008.

Charles E. Brooks,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. E8–2963 Filed 2–15–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57311; File No. SR–NSX–2008–03]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Creation of a Zero Display Reserve Order With a Pegging Option

February 12, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 5, 2008, the National Stock Exchange, Inc. (''NSX'' or ''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 substantially prepared by the Exchange. The Exchange has designated the proposed rule change as ''non-controversial'' under Section 19(b)(3)(A)(iii) [3] of the Act and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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 is proposing to amend its rules in order to establish a Zero Display Reserve Order type (''Zero Display Order''). The Zero Display Order may have a pegged order option.

The text of the proposed rule changes is available on the Exchange's Web site *(http://www.nsx.com),* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

[2] 17CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

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. 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 aspects 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 add a new type of Reserve Order, the Zero Display Order, to those currently permitted under its Rules. Currently, Reserve Orders must consist of a displayed quantity and a reserve quantity. The Zero Display Order will allow Users to designate the entire quantity of an order as reserve, with zero display quantity.

Zero Display Orders will be accessed from the Exchange using a priority system that the Exchange believes best balances the advantages of a Zero Display Order with those of other Reserve Orders and displayed orders. Under the Exchange's methodology, the display quantity of orders will first be exhausted according to price priority and time priority. Next, the reserve quantity of each order will be exhausted in rounds according to price and then time priority, with the reserve quantity of each order accessed according to its original display amount in each round. Zero Display Orders will be assumed to have a displayed quantity of one round lot for purposes of the process described in the preceding sentence. Zero Display Orders will not be eligible to be routed away to another market center.

For the purposes of demonstrating this methodology, consider the following examples:

NSX BOOK AT BEGINNING

Book	ETP Holder	Display	Reserve
	T1	100	1000
	T2	0	1000
	T3	500	500
	T4	100	100
	T5	0	500

Trade 1: Contra Order for 100

Trade 1 comes in with a contra order of 100 shares. Going through the process, the Exchange's system will look to all displayed orders first and match the contra order with the first order in time reflected in its book. Thus, the contra order would be matched to the first displayed order in the NSX Book, reflecting the one lot, resulting in the following execution:

EXECUTIONS

ETP Holder	Display	Reserve
T1	100	....

Once that trade is executed, the NSX Book is refreshed. Since a one lot was executed against T1 and only T1, the NSX Book is refreshed with respect to T1. Thus, T1 now has a new time attributable to its order as it is refreshed with a new display of 100 that has floated up from its reserve. The new book and the time ranking would be thus:

NEW BOOK

Book	ETP Holder	Display	Reserve
	T2	0	1000
	T3	500	500
	T4	100	100
	T5	0	500
	T1	100	900

Trade 2: Contra Order for 700

In contrast, a contra order for 1,400 shares with the NSX Book as outlined in New book under Trade 1 would show the difference between a reserve order and a zero display order. Using the snapshot identified under New Book in Trade 1, the 1,400 shares would be matched and executed against the display quantity of T3 (the first in time on displayed orders after the ''refresh'') first, then the display quantity of T4 and finally the display quantity of T1, before being matched against the reserve quantity. With 700 shares left to be matched, the system will then match 100 against the undisplayed quantity of T2 (no displayed quantity, therefore defaulting to 100), 500 against the undisplayed quantity of T3 (because it previously displayed 500) and 100 against the undisplayed quantity of T4 (because it previously displayed 100). The new book after these transactions would be:

Book	ETP Holder	Display	Reserve
	T5	0	500
	T1	100	800
	T2	0	900
	T3	0	0

Book	ETP Holder	Display	Reserve
	T4	0	0

After Trade 1 has been matched and executed, a second contra order comes in for 700 shares. The ''snapshot'' for this contra order is reflected above.

Using the snapshot above, the 700 order would be matched and executed against the display quantity of T3 (the first in time on displayed orders after the ''refresh'') first, then the display quantity of T4 and finally the display quantity of T1, reflecting in the following executions:

EXECUTIONS

ETP Holder	Display	Reserve
T3	500	
T4	100	
T1	100	

Once that trade is executed, the NSX Book is refreshed. Since a five lot was matched and executed against T3, a one lot against T4 and a one lot against T1 (in that order), those orders are refreshed and their priority remains in the book in that order as they have a new time associated with the refresh. Notice that T2 and T5, neither of which were refreshed, now has the time priority over the other undisplayed orders. The new book and the time ranking would be thus:

NEW BOOK

Book	ETP Holder	Display	Reserve
	T2	0	1000
	T5	0	500
	T3	500	0
	T4	100	0
	T1	100	800

Trade 3: Contra order for 1100

After Trade 2 has been matched and executed, a third contra order comes in for 1100 shares. The ''snapshot'' for this contra order is reflected above.

Using the snapshot above, the 1100 order would be matched and executed against the display quantity of T3 first, then the display quantity of T4 and finally the display quantity of T1 (in the sequence of the order in which they were refreshed above). Once the display quantity of 700 is exhausted, the remaining 400 shares would be executed against the undisplayed orders in the following order. One lot against T2 (the first in time, since these orders were not executed and not refreshed); one lot against T5 (the second in time, since these orders were not executed and not refreshed), one lot against T1, and then one lot against T2 again to exhaust the amount of shares. In sum, the executions would be as follows:

EXECUTIONS

ETP Holder	Display	Reserve
T3	500	
T4	100	
T1	100	100
T2		200
T5		100

Once that third trade is executed, the NSX Book is refreshed. Since a five lot was executed against T3, a one lot against T4 and a one lot against T1 (in that order), those orders are refreshed and their priority remains in the book in that order as they have a new time associated with the refresh. Similarly, the reserve orders were executed against T2, T5 and T1 in one lots and in that order. Since there was a remainder, T2 was executed again for a one lot. Given the time of execution, the priority of T2, which was the last to be executed against, is the last to be refreshed. Thus, it goes to the bottom of the queue as the last ETP Holder to be refreshed. Similarly, since the undisplayed portion of T1 was matched and executed after the undisplayed portion of T5, its time priority is after T5. The ''refresh'' order is T3, T4, T1, T2, T5, T1 and T2, which would result in the NSX Book looking like the following:

NEW BOOK

Book	ETP Holder	Display	Reserve
	T3	0	0
	T4	0	0
	T5	0	400
	T1	100	600
	T2	0	800

Trade 4: Contra order for 200

After Trade 3 has been matched and executed, a fourth contra order comes in for 200 shares. The ''snapshot'' for this contra order is reflected above.

Using the snapshot above, the 200 order would be matched and executed against the display quantity of T1 first, then the non display quantity of T5, who is first in line among the undisplayed, for a one lot, reflecting in the following executions:

EXECUTIONS

	Display	Reserve
T1	100	
T5		100

Once the fourth trade was executed (in order of T1 and T5, with T2 not being touched), T2, which was not refreshed becomes the top priority in terms of time, so that the new book would look as follows (T3 and T4 are no longer reflected since their displayed and non-displayed portions are exhausted):

NEW BOOK

Book	ETP Holder	Display	Reserve
	T2	0	800
	T1	100	500
	T5	0	300

Trade 5: Contra order for 100

After the fourth trade has been matched and executed, a fifth contra order comes in for 100 shares. The ''snapshot'' for this contra order is reflected above.

Using the snapshot above, the 100 order would be executed against the display quantity of T1, reflecting in the following executions:

EXECUTIONS

ETP Holder	Display	Reserve
T1	100	

Once the fifth trade was executed against the displayed portion of T1, the quantity of T1's reserve order becomes refreshed. As the only order that becomes refreshed, it drops to the bottom of the queue in terms of time priority, so that the new book would look as follows:

NEW BOOK

Book	ETP Holder	Display	Reserve
	T2	0	800
	T5	0	300
	T1	100	400

Trade 6: Contra order for 100

After the fifth trade has been matched and executed, a sixth contra order comes in for 100 shares. The ''snapshot'' for this contra order is reflected above.

Using the snapshot above, the 100 order would be executed against the display quantity of T1, reflecting in the following executions:

EXECUTIONS

ETP Holder	Display	Reserve
T1	100	0

Once the sixth trade was executed against the displayed portion of T1, the quantity of T1's reserve order becomes refreshed. Please note that, despite the fact that T1 has the lowest time priority, the one lot is still executed against T1 because it has a display amount and the displayed amount takes precedence over the undisplayed amount. The new book would look as follows:

NEW BOOK

Book	ETP Holder	Display	Reserve
	T2	0	800
	T5	0	300
	T1	100	300

These examples reflect the system of priority for displayed orders, reserved orders and zero display orders. Priority is always given to the display amount at the time the contra order comes in for interaction with the orders in the NSX Book.

The Exchange also proposes to provide Users with the option of pegging Zero Display Orders. These pegged Zero Display Reserve Orders (''Pegged Orders'') will allow Users to place limit orders that buy or sell stated amounts of a security that will, as directed by the User, track one of three different aspects of the Protected NBBO or the NSX Top of Book (defined in the proposed amendment to the Definition Section of the Exchange's Rules, and referred to hereinafter as the ''Protected BBO''): (1) The buy-side of the Protected BBO, (2) the sell-side of the Protected BBO, or (3) the midpoint of the Protected BBO. When a Pegged Order's price is adjusted, its original timestamp and time priority will be preserved.

If a Pegged Order is placed which traces the midpoint of the Protected BBO, it will be executed in sub-pennies if necessary to obtain a midpoint price. Even if this order type results in an ETP Holder executing on its own account for prices that are superior by less than a penny to those customer orders that it may be holding, it will not result in a violation of Rule 12.6. In addition, the execution of a midpoint Pegged Order will not result in a trade-through of a protected quotation. A midpoint Pegged Order will execute against orders on the NSX Book or against incoming orders, including other midpoint Pegged Orders. When the Protected BBO is locked, the midpoint pegged order will be executed at the locked market price. When the Protected BBO is crossed, the midpoint pegged order will wait for the Protected BBO to uncross before becoming eligible to trade again.

Any Zero Display Order may also be designated as a Post Only Order pursuant to NSX Rule 11.11(c)(5). If a Zero Display Order is designated as a Post Only Order and is immediately marketable, the order will not be executed, but will be posted to the NSX Book, unless the contra-side order with which it would interact is a Zero Display Order that has not been designated as Post Only, in which case the order will be executed.[5 6] When such a Post Only Zero Display Order is posted to the NSX Book and is thereafter matched for execution, if the price of the order is better (i.e. higher for a buy order and lower for a sell order) than the contra-side of the Protected BBO, such order will be deemed to be priced at the price of the contra-side of the Protected BBO for purposes of matching and execution.[7]

Orders marked Post Only will always be considered ''liquidity providing'' by the Exchange for purposes of application of the Exchange's fees and rebate programs. By making a Post Only designation, ETP Holders are able to avoid the risk that their orders will be considered ''liquidity taking'' for purposes of application of the Exchange's fees and rebate programs. If a Zero Display Order is not designated as Post Only, however, and the order interacts with a Zero Display Order that is designated as Post Only, the non-Post Only Zero Display Order will be considered liquidity taking by the Exchange, regardless of which order arrives at NSX first. Additionally, a Zero Display Order that has not been designated as Post Only for which the User has selected the Order Delivery mode of order interaction pursuant to Rule 11.13(b)(2) (''Order Delivery'') will be converted to the Automatic Execution mode of order interaction pursuant to Rule 11.13(b)(1) (''AutoEx'') by the Exchange if such order is immediately marketable upon its entry into the NSX BLADE℠ System.

The Zero Display Order and its variant, the Pegged Order, will provide additional flexibility and functionality to the Exchange's NSX BLADE system. The Exchange anticipates that the introduction of this new order will result in an increase in liquidity on the Exchange, resulting in increased revenues. These increased revenues will be included in the Exchange's general operating revenues which are used to fund, among other things, the Exchange's regulatory oversight functions.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[8] in general, and Section 6(b)(5),[9] in particular, which requires, among other things, that the rules of an exchange be designed 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 mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change would impose any inappropriate burden on competition.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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 after the date of filing, 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[10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[12] However, Rule 19b–4(f)(6)(iii)[13] permits the Commission to

[5 6] This will not result in a locking or crossing quote, because the Zero Display Order will not be displayed and therefore will not be a quote.

[7] *See* proposed NSX Rule 11.15(a)(iv).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *Id.*

designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has satisfied the five-day prefiling requirement.[14] In addition, the Exchange has requested that the Commission waive the 30-day pre-operative delay and designate the proposed rule change to become operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange to immediately implement this proposal. In addition, the Commission does not believe that the rule change presents novel issues since the Zero Display Order type is similar to order types that are currently available on other markets.[15] The Commission designates the proposal to become effective and operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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 the furtherance of the purposes of the Act.

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–NSX–2008–03 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NSX–2008–03. 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 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 inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NSX. 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–2008–03 and should be submitted on or before March 11, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–2955 Filed 2–15–08; 8:45 am]

BILLING CODE 8011–01–P

[14] *Id.*

[15] *See* Nasdaq Stock Market Rules 4751(e)(3) and (f)(4) and NYSE Arca Rules 7.31(h)(4), (5), and 7.31(cc).

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57312; File No. SR–NYSE–2004–70]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendments No. 2, 3, and 5 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendments No. 2, 3, and 5, To Amend Rule 104 To Require Specialists To Yield Proprietary Trades to Later-Arriving System Orders

February 12, 2008.

I. Introduction

On December 13, 2004, the New York Stock Exchange LLC[1] ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend NYSE Rule 104 to require that in transactions between a specialist and a contra order that have been agreed to but not yet reported, the specialist must yield to any system orders that enter the specialist's book and can take the specialist's position in such transaction except if the specialist's transaction meets a specified exception. On January 7, 2005, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for public comment in the **Federal Register** on January 28, 2005.[4] The Exchange filed Amendments No. 2,[5] 3,[6] 4,[7] and 5[8] to the proposed rule change on August 11, 2005, October 14, 2005, September 15, 2006, and February 8, 2008, respectively. The Commission received five comment letters from a single commenter opposing the proposed rule change.[9] On June 7, 2005 and November 18, 2005, the Exchange submitted responses to the comments.[10] This order

[1] Formerly known as the New York Stock Exchange, Inc.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] Securities Exchange Act Release No. 51048 (Jan. 18, 2005), 70 FR 4171 ("Notice").

[5] Amendment No. 2 superseded the original filing and Amendment No. 1 in their entirety and included (i) clarifying changes to the descriptions of the exceptions to the rule, (ii) the addition of system orders to the exception relating to non-regular way transactions, and (iii) the addition of convert and parity orders ("CAP orders") to the exception relating to electing transactions.

[6] In Amendment No. 3, the Exchange revised the purpose section of the filing to clarify the discussion of the exception relating to non-regular way transactions. Amendment No. 3 also makes certain technical changes to the proposed rule change.

[7] Amendment No. 4 was withdrawn on February 8, 2008, by Amendment No. 5.

[8] In Amendment No. 5, the Exchange: (i) *Withdraws* Amendment No. 4; (ii) makes certain technical corrections to the proposed rule change; (iii) clarifies that NYSE Rule 123B(d) does not apply to transactions handled pursuant to proposed NYSE Rule 104.10(10); (iv) eliminates references to the election of stop orders by specialists, as this functionality is now automated; (v) eliminates references to the Intermarket Trading System, which has been decommissioned; (vi) amends Item 5 of Amendment No. 2 to clarify that the Exchange had received comments on the proposal; and (vii) corrects a typographical error in Amendment No. 3.

[9] *See* letters from George Rutherfurd, Consultant ("Rutherfurd"), to the Commission, dated February 18, 2005 ("February 18th Rutherfurd Letter"), April 8, 2005, June 15, 2005 ("June 15th Rutherfurd Letter"), October 20, 2005 ("October 20th Rutherfurd Letter"), and November 27, 2005 ("November 27th Rutherfurd Letter") (together, the "Rutherfurd Letters").

[10] *See* letters from Mary Yaeger, Assistant Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission, dated June 7, 2005 ("June 7th NYSE Letter") and November 18, 2005 ("November 18th NYSE Letter").