filing also will be available for inspection and copying at the principal office 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–BATS–2012–024 and should be submitted on or before July 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–16215 Filed 7–2–12; 8:45 am]

BILLING CODE 8011–01–P

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67281; File No. SR–NASDAQ–2012–057]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change With Respect to the Authority of NASDAQ or NASDAQ Execution Services To Cancel Orders When a Technical or Systems Issue Occurs and To Describe the Operation of an Error Account

June 27, 2012.

I. Introduction

On April 30, 2012, The NASDAQ Stock Market LLC (''Exchange'' or ''NASDAQ'') 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] a proposed rule change to amend NASDAQ Equity Rule 4758 by adding a new paragraph (d) that addresses the authority of NASDAQ or NASDAQ Execution Services (''NES'') to cancel orders when a technical or systems issue occurs and to describe the operation of an error account for NES. The proposed rule change was published for comment in the **Federal Register** on May 16, 2012.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

NES, a broker-dealer that is a facility and an affiliate of NASDAQ, provides outbound routing services from NASDAQ to other market centers pursuant to NASDAQ rules.[4] In its proposal, NASDAQ states that a technical or systems issue may occur at NASDAQ, NES, or a routing destination that causes NASDAQ or NES to cancel orders, if NASDAQ or NES determines that such action is necessary to maintain a fair and orderly market.[5] NASDAQ also states that a technical or systems issue that occurs at NASDAQ, NES, a routing destination, or a non-affiliate third-party Routing Broker[6] may result in NES acquiring an error position that it must resolve.[7]

New paragraph (d) to NASDAQ Equity Rule 4758 provides NASDAQ or NES with general authority to cancel orders to maintain fair and orderly markets when a technical or systems issue occurs at NASDAQ, NES, or a routing destination. It also provides authority for NES to maintain an error account for the purpose of addressing, and sets forth the procedures for resolving, error positions. Specifically, paragraph (d)(1) of NASDAQ Equity Rule 4758 authorizes NASDAQ or NES to cancel orders as either deems necessary to maintain fair and orderly markets if a technical or systems issue occurs at NASDAQ, NES, or a routing destination. NASDAQ or NES will be required to provide notice of the cancellation to all affected members as soon as practicable.[8]

Paragraph (d)(2) of NASDAQ Equity Rule 4758 will allow NES to maintain an error account for the purpose of addressing error positions that result from a technical or systems issue at NASDAQ, NES, a routing destination, or a non-affiliate third-party Routing Broker.

For purposes of NASDAQ Equity Rule 4758(d), an error position will not include any position that results from an order submitted by a member to NASDAQ that is executed on NASDAQ and automatically processed for clearance and settlement on a locked-in basis.[9] NES will not be permitted to (i) accept any positions in its error account from a member's account or (ii) permit any member to transfer any positions from the member's account to NES's error account.[10] In other words, NES may not accept from a member positions that are delivered to the member through the clearance and settlement process, even if those positions may have been related to a technical or systems issue at NASDAQ, NES, a routing destination, or a non-affiliate third-party Routing Broker.[11] If a member receives locked-in positions in connection with a technical or systems issue and experiences a loss in unwinding those positions, that member may seek to rely on NASDAQ Equity Rule 4626, which provides members with the ability to file claims against NASDAQ ''for losses directly resulting from the [NASDAQ] systems' actual failure to correctly process an order, Quote/Order, message, or other data, provided the Nasdaq Market Center has acknowledged receipt of the order, Quote/Order, message, or data.''[12] If, however, a technical or systems issue results in NASDAQ not having valid clearing instructions for a member to a trade, NES may assume that member's side of the trade so that the trade can be

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

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 66964 (May 10, 2012), 77 FR 28905 (May 16, 2012) (SR–NASDAQ–2012–057) (''Notice'').

[4] *See* Notice, 77 FR at 28906, n.3 and accompanying text, and text accompanying n.4. *See also* NASDAQ Equity Rule 4758.

NASDAQ also has authority to receive equities orders routed inbound to NASDAQ by NES from NASDAQ OMX BX and the NASDAQ OMX PSX of NASDAQ OMX PHLX on a pilot basis. *See* Notice, 77 FR at 28906, n.4. *See also* Securities Exchange Act Release No. 65554 (October 13, 2011), 76 FR 65311 (October 20, 2011) (SR–NASDAQ–2011–142).

[5] *See* Notice, 77 FR at 28906. For examples of some of the circumstances in which NASDAQ or NES may decide to cancel orders, see *id.*

[6] NASDAQ states that, from time to time, it also uses non-affiliate third-party broker-dealers to provide outbound routing services. In its proposal, the Exchange refers to these broker-dealers as ''third party Routing Brokers.'' *See* Notice, 77 FR at 28906, n.3.

[7] *See* Notice, 77 FR at 28906. Specifically, NASDAQ Equity Rule 4758(d)(2) defines ''error positions'' as ''positions that result from a technical or systems issue at Nasdaq Execution Services, Nasdaq, a routing destination, or a non-affiliate third-party Routing Broker that affects one or more orders.''

For examples of some of the circumstances that may lead to error positions, see Notice, 77 FR at 28906–07.

[8] *See* NASDAQ Equity Rule 4758(d)(1).

[9] *See* NASDAQ Equity Rule 4758(d)(2)(A).

[10] *See* NASDAQ Equity Rule 4758(d)(2)(B).

[11] *See* Notice, 77 FR at 28907, n.11. This provision would not apply if NES incurred a short position to settle a member's purchase, as the member would not have had a position in its account as a result of the purchase at the time of NES's action. Similarly, if a systems issue occurs that causes one member to receive an execution for which there is not an available counterparty, action by NES would be required for the positions to settle into that member's account. *See id.*

If error positions result in connection with NASDAQ's use of a third-party Routing Broker for outbound routing and those positions are delivered to NES through the clearance and settlement process, NES would be permitted to resolve those positions. If, however, such positions were not delivered to NES through the clearance and settlement process, then the third-party Routing Broker would resolve the error positions itself, and NES would not be permitted to accept the positions. *See* Notice, 77 FR at 28906, n.3.

[12] *See* Notice, 77 FR at 28907, n.11.

automatically processed for clearance and settlement on a locked-in basis.[13]

Paragraph (d)(3) of NASDAQ Equity Rule 4758 permits NASDAQ or NES, in connection with a particular technical or systems issue, to either (i) assign all resulting error positions to members or (ii) have all resulting error positions liquidated. Any determination to assign or liquidate error positions, as well as any resulting assignments, will be made in a nondiscriminatory fashion.[14]

NASDAQ and NES will be required to assign all error positions resulting from a particular technical or systems issue to the members affected by that technical or systems issue if NASDAQ or NES:

(i) Determines that it has accurate and sufficient information (including valid clearing information) to assign the positions to all of the members affected by that technical or systems issue;

(ii) Determines that it has sufficient time pursuant to normal clearance and settlement deadlines to evaluate the information necessary to assign the positions to all of the members affected by that technical or systems issue; and

(iii) Has not determined to cancel all orders affected by that technical or systems issue in accordance with NASDAQ Equity Rule 4758(d)(1).[15]

If NASDAQ or NES is unable to assign all error positions resulting from a particular technical or systems issue to all of the affected members, or if NASDAQ or NES determines to cancel all orders affected by the technical or systems issue, then NES will be required to liquidate the error positions as soon as practicable.[16] NES will be required to provide complete time and price discretion for the trading to liquidate the error positions to a third-party broker-dealer, and would be prohibited from attempting to exercise any influence or control over the timing or methods of such trading.[17] Further, NES will be required to establish and enforce policies and procedures that are reasonably designed to restrict the flow of confidential and proprietary information between the third-party broker-dealer, on one hand, and NASDAQ and NES, on the other, associated with the liquidation of the error positions.[18]

Finally, paragraph (d)(4) of NASDAQ Equity Rule 4758 requires NASDAQ and NES to make and keep records to document all determinations to treat positions as error positions; all determinations to assign error positions to members or to liquidate error positions; and the liquidation of error positions through the third-party broker-dealer.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b) of the Act[19] and the rules and regulations thereunder applicable to a national securities exchange.[20] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[21] which requires, among other things, that the rules of a national securities exchange be 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 mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In addition, the Commission believes the proposed rule change is consistent with Section 11A(a)(1)(C) of the Act[22] in that it seeks to assure economically efficient execution of securities transactions.

The Commission recognizes that technical or systems issues may occur, and believes that NASDAQ Equity Rule 4758, in allowing NASDAQ or NES to cancel orders affected by technical or systems issues, should provide a reasonably efficient means for NASDAQ to handle such orders, and appears reasonably designed to permit NASDAQ to maintain fair and orderly markets.[23]

The Commission also believes that allowing the Exchange to resolve error positions through the use of an error account maintained by NES pursuant to the procedures set forth in the rule, and as described above, is consistent with the Act. The Commission notes that the rule establishes criteria for determining which positions are error positions,[24] and that NASDAQ or NES, in connection with a particular technical or systems issue, will be required to either (i) assign all resulting error positions to members or (ii) have all resulting error positions liquidated.[25] Also, NASDAQ or NES will assign error positions that result from a particular technical or systems issue to members only if all such error positions can be assigned to all of the members affected by that technical or systems issue.[26] If NASDAQ or NES cannot assign all error positions to all members, NES will liquidate all of those error positions.[27] In this regard, the Commission believes that the new rule appears reasonably designed to further just and equitable principles of trade and the protection of investors and the public interest, and to help prevent unfair discrimination, in that it should help assure the handling of error positions will be based on clear and objective criteria, and that the resolution of those positions will occur promptly through a transparent process.

Additionally, the Commission notes that it has previously expressed concern about the potential for unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members.[28] The Commission is also concerned about the potential for misuse of confidential and proprietary information. The Commission believes that the requirement that NES provide complete time and price discretion for the liquidation of error positions to a third-party broker-dealer, including that NES not attempt to exercise any influence or control over the timing or methods of such trading, combined with the requirement that NASDAQ establish and enforce policies and procedures that are reasonably designed to restrict the flow of confidential and proprietary information to the third-party broker-dealer liquidating such positions, should help mitigate the Commission's concerns. In particular, the Commission

[13] *See* NASDAQ Equity Rule 4758(d)(2)(C).

[14] *See* NASDAQ Equity Rule 4758(d)(3).

[15] *See* NASDAQ Equity Rule 4758(d)(3)(A)(i)–(iii).

[16] *See* NASDAQ Equity Rule 4758(d)(3)(B).

[17] *See* NASDAQ Equity Rule 4758(d)(3)(B)(i).

[18] *See* NASDAQ Equity Rule 4758(d)(3)(B)(ii).

[19] 15 U.S.C. 78f(b).

[20] In approving this proposed rule change, 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. 78f(b)(5).

[22] 15 U.S.C. 78k–1(a)(1)(C).

[23] The Commission notes that NASDAQ states that the proposed amendments to NASDAQ Equity Rule 4758 are designed to maintain fair and orderly markets, ensure full trade certainty for market participants, and avoid disrupting the clearance and settlement process. *See* Notice, 77 FR at 28908. The Commission also notes that NASDAQ states that a decision to cancel orders due to a technical or systems issue is not equivalent to the Exchange declaring self-help against a routing destination pursuant to Rule 611 of Regulation NMS. *See* 17 CFR 242.611(b). *See also* Notice, 77 FR at 28907, n.10.

[24] *See* NASDAQ Equity Rule 4758(d)(2).

[25] *See* NASDAQ Equity Rule 4758(d)(3).

[26] *See* NASDAQ Equity Rule 4758(d)(3)(A).

[27] *See* NASDAQ Equity Rule 4758(d)(3)(B).

[28] *See, e.g.,* Securities Exchange Act Release No. 65455 (September 30, 2011), 76 FR 62119 (October 6, 2011) (SR–NYSEArca–2011–61) at 62120, n.16 and accompanying text.

believes that these requirements should help assure that none of NASDAQ, NES, or the third-party broker-dealer is able to misuse confidential or proprietary information obtained in connection with the liquidation of error positions for its own benefit. The Commission also notes that NASDAQ and NES would be required to make and keep records to document all determinations to treat positions as error positions; all determinations to assign error positions to members or liquidate error positions; and the liquidation of error positions through the third-party broker-dealer.[29]

Finally, the Commission notes that the proposed procedures for canceling orders and the handling of error positions are consistent with procedures the Commission has approved for other exchanges.[30]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[31] that the proposed rule change (SR–NASDAQ–2012–057) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–16220 Filed 7–2–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67284; File No. SR–ISE–2012–58]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change To List and Trade Option Contracts Overlying 10 Shares of a Security

June 27, 2012.

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 June 20, 2012, the International Securities Exchange, LLC (''Exchange'' or ''ISE'') 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 self-regulatory organization. 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 list and trade option contracts overlying 10 shares of a security (''Mini Options''). The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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

Pursuant to ISE Rule 502, the Exchange currently lists and trades standardized options contracts on a number of equities and Exchange-Traded Fund Shares (''ETFs''), each with a unit of trading of 100 shares. The purpose of this proposed rule change is to expand investors' choices by listing and trading option contracts on a select number of high-priced and actively traded securities, each with a unit of trading ten times lower than those of the regular-sized option contracts, or 10 shares. Specifically, the Exchange proposes to list and trade Mini Options overlying five (5) high-priced securities for which the standard contract overlying the same security exhibits significant liquidity.[3] The Exchange believes that Mini Options will appeal to retail investors who may not currently be able to participate in the trading of options on such high priced securities.

Except for the difference in the deliverable of shares, the proposed Mini Options would have the same terms and contract characteristics as regular-sized equity and ETF options, including exercise style. All existing Exchange rules applicable to options on equities and ETFs would apply to Mini Options, except with respect to position and exercise limits and hedge exemptions to those position limits, which would be tailored for the smaller size. Pursuant to proposed amendments to Rule 412, position limits applicable to the regular-sized option contract will also apply to the Mini Options on the same underlying security, with 10 Mini Option contracts counting as one regular-sized contract. Positions in both the regular-sized option contract and Mini Options on the same security will be combined for purposes of calculating positions. Further, hedge exemptions will apply pursuant to ISE Rule 413(a), which the Exchange proposes to revise to provide that 10 (as opposed to 100) shares of the underlying security in [sic] the appropriate hedge for Mini Options and to make clear that the hedge exemptions apply to the position limits set forth in Rule 412(a) and any Supplementary Material thereto, as well as the position limits set forth in Rule 412(d).[4]

The Exchange believes that the proposal to list Mini Options will not lead to investor confusion. There are two important distinctions between Mini Options and regular-sized options that are designed to ease the likelihood of any investor confusion. First, the premium multiplier for the proposed Mini Options will be 10, rather than 100, to reflect the smaller unit of trading. To reflect this change, the Exchange proposes to add Rule 709(c) which notes that bids and offers for an option contract overlying 10 shares will be expressed in terms of dollars per $\frac{1}{10}$th part of the total value of the

---

[29] *See* NASDAQ Equity Rule 4758(d)(4).

[30] *See, e.g.,* Securities Exchange Act Release Nos. 66963 (May 10, 2012), 77 FR 28919 (May 16, 2012) (SR–NYSEArca–2012–22); 67010 (May 17, 2012), 77 FR 30564 (May 23, 2012) (SR–EDGX–2012–08); and 67011 (May 17, 2012), 77 FR 30562 (May 23, 2012) (SR–EDGA–2012–09).

[31] 15 U.S.C. 78s(b)(2).

[32] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] The Exchange proposes to list Mini Options on SPDR S&P 500 (''SPY''), Apple, Inc. (''AAPL''), SPDR Gold Trust (''GLD''), Google Inc. (''GOOG'') and Amazon.com Inc. (''AMZN''). These issues were selected because they are priced greater than $100 and are among the most actively traded issues, in that the standard contract exhibits average daily volume (''ADV'') over the previous three calendar months of at least 45,000 contracts, excluding LEAPS and FLEX series. The Exchange notes that any expansion of the program would require that a subsequent proposed rule change be submitted to the Commission.

[4] ISE Rule 414, Exercise Limits, refers to exercise limits that correspond to aggregate long positions as described in ISE Rule 412. The position limit established in a given option under ISE Rule 412 is also the exercise limit for such option. Thus, although the proposed rule change would not amend the text of ISE Rule 414 itself, the proposed amendment to ISE Rule 412 would have a corresponding effect to the exercise limits established in ISE Rule 414.