amendment proposes to add BOX as a party to the Symbology Plan. The Commission is publishing this notice to solicit comments on the proposed amendment from interested persons.

I. Description and Purpose of the Amendment

The current parties to the Symbology Plan are BATS Exchange, Inc. (''BATS''), NASDAQ OMX BX, Inc. (''BSE''), Chicago Board Options Exchange, Incorporated (''CBOE''), CHX, EDGA Exchange, Inc. (''EDGA''), EDGX Exchange, Inc. (''EDGX''), FINRA, the International Securities Exchange, LLC (''ISE''), Nasdaq, New York Stock Exchange LLC (''NYSE''), NYSE Arca, Inc. (''NYSE Arca''), NYSE Amex LLC (''NYSE Amex'') (f/k/a NYSE Alternext US LLC'' (''NYSE Alternext'')), NSX and Phlx.[4] The proposed amendment to the Symbology Plan would add BOX as a party to the Symbology Plan. A self-regulatory organization (''SRO'') may become a party to the Symbology Plan if it satisfies the requirements of Section I(c) of the Plan. Specifically, an SRO may become a party to the Symbology Plan if: (i) It maintains a market for the listing or trading of Plan Securities[5] in accordance with rules approved by the Commission, which securities are identified by one, two, or three character symbols, on the one hand, or four or five character symbols, on the other hand, in each case prior to any

suffix or special conditional identifier; (ii) it signs a current copy of the Plan; and (iii) it pays to the other parties a proportionate share of the aggregate development costs, based upon the number of symbols reserved by the new party during the first twelve (12) months of such party's membership.[6]

BOX has submitted a signed copy of the Symbology Plan to the Commission in accordance with the requirement set forth in the Symbology Plan regarding new parties to the plan. Additionally, BOX represented that it maintains a market for the listing or trading of Plan Securities. Finally, BOX has agreed to pay all costs required by BOX pursuant to the Symbology Plan, including its proportionate share of the aggregate development costs previously paid by the other parties to the Processor.

II. Effectiveness of the Proposed Symbology Plan Amendment

The foregoing proposed Symbology Plan amendment has become effective pursuant to Rule 608(b)(3)(iii)[7] because it involves solely technical or ministerial matters. At any time within sixty days of the filing of the amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraph (b)(1) of Rule 608,[8] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amendment is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/ rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number 4–533 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number 4–533. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/ sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of BOX. 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 4–533 and should be submitted on or before June 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–11792 Filed 5–15–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66964; File No. SR–NASDAQ–2012–057]

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

May 10, 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 April 30, 2012, The NASDAQ Stock Market LLC

Stock Exchange, Inc. (''NSX''), and Philadelphia Stock Exchange, Inc. (''Phlx''), subject to certain changes. *See* Securities Exchange Act Release No. 58904, 73 FR 67218 (November 13, 2008) (File No. 4–533).

[4] On November 18, 2008, ISE filed with the Commission an amendment to the Plan to add ISE as a member to the Plan. *See* Securities and Exchange Act Release No. 59024 (November 26, 2008), 73 FR 74538 (December 8, 2008) (File No. 4–533). On December 22, 2008, NYSE, NYSE Arca, and NYSE Alternext (''NYSE Group Exchanges'') and CBOE filed with the Commission amendments to the Plan to add the NYSE Group Exchanges and CBOE as members to the Plan. *See* Securities Exchange Act Release No. 59162 (December 24, 2008), 74 FR 132 (January 2, 2009) (File No. 4–533). On December 24, 2008, BSE filed with the Commission an amendment to the Plan to add BSE as a member to the Plan. *See* Securities Exchange Act Release No. 59187 (December 30, 2008), 74 FR 729 (January 7, 2009) (File No. 4–533). On September 30, 2009, BATS filed with the Commission an amendment to the Plan to add BATS as a member to the Plan. *See* Securities Exchange Act Release No. 60856 (October 21, 2009), 74 FR 55276 (October 27, 2009) (File No. 4–533). On July 7, 2010, EDGA and EDGX filed with the Commission an amendment to the Plan to add EDGA and EDGX, each as a party to the Symbology Plan. *See* Securities Exchange Act Release No. 62573 (July 26, 2010), 75 FR 45682 (August 3, 2010) (File No. 4–533).

[5] ''Plan Securities'' are defined in the Symbology Plan as securities that: (i) Are NMS securities as currently defined in Rule 600(a)(46) under the Act; and (ii) any other equity securities quoted, traded and/or trade reported through an SRO facility.

[6] Sections I(c) and V(a) of the Plan.

[7] 17 CFR 242.608(b)(3)(iii).

[8] 17 CFR 242.608(b)(1).

[9] 17 CFR 200.30–3(a)(29).

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

[2] 17 CFR 240.19b–4.

("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit 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

NASDAQ proposes a rule change with respect to the authority of the Exchange or NASDAQ Execution Services ("NES") to cancel orders when a technical or system issue occurs and to describe the operation of an error account for NES. NASDAQ will implement the proposed change upon approval by the Commission. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com,* at NASDAQ's principal office, 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 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 4758 by adding a new paragraph (d) that addresses the authority of the Exchange or NES to cancel orders when a technical or systems issue occurs and to describe the operation of an error account for NES.[3]

---

[3] NES is a facility of the Exchange. Accordingly, under Rule 4758, the Exchange is responsible for filing with the Commission rule changes and fees relating to NES's functions. In addition, the Exchange is using the phrase "NES or the Exchange" in this rule filing to reflect the fact that a decision to take action with respect to orders affected by a technical or systems issue may be made in the capacity of NES or the Exchange depending on where those orders are located at the time of that decision.

From time to time, the Exchange also uses non-affiliate third-party broker-dealers to provide outbound routing services (*i.e.,* third-party Routing

NES is the approved routing broker of the Exchange, subject to the conditions listed in Rule 4758. The Exchange relies on NES to provide outbound routing services from itself to routing destinations of NES ("routing destinations").[4] When NES routes orders to a routing destination, it does so by sending a corresponding order in its own name to the routing destination. In the normal course, routed orders that are executed at routing destinations are submitted for clearance and settlement in the name of NES, and NES arranges for any resulting securities positions to be delivered to the member that submitted the corresponding order to the Exchange. From time to time, however, the Exchange and NES encounter situations in which it becomes necessary to cancel orders and resolve error positions.[5]

Examples of Circumstances That May Lead to Canceled Orders

A technical or systems issue may arise at NES, a routing destination, or the Exchange that may cause the Exchange or NES to take steps to cancel orders if the Exchange or NES determines that such action is necessary to maintain a fair and orderly market. The examples

---

Brokers). In those cases, orders are submitted to the third-party Routing Broker through NES, the third-party Routing Broker routes the orders to the routing destination in its name, and any executions are submitted for clearance and settlement in the name of NES so that any resulting positions are delivered to NES upon settlement. As described above, NES normally arranges for any resulting securities positions to be delivered to the member that submitted the corresponding order to the Exchange. If error positions (as defined in proposed Rule 4758(d)(2)) result in connection with the Exchange'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 in accordance with proposed Rule 4758(d). If the third-party Routing Broker received error positions in connection with its role as a routing broker for the Exchange, and the error 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 error positions, as set forth in proposed Rule 4758(d)(2)(B).

[4] The Exchange has authority to receive inbound routes of equities orders by NES from NASDAQ OMX BX ("BX") and the NASDAQ OMX PSX ("PSX") of NASDAQ OMX PHLX on a pilot basis. *See* Securities Exchange Act Release No. 65554 (October 13, 2011), 76 FR 65311 (October 20, 2011) (SR–NASDAQ–2011–142).

[5] The examples described in this filing are not intended to be exclusive. Proposed Rule 4758(d) would provide general authority for the Exchange or NES to cancel orders in order to maintain fair and orderly markets when technical and systems issues are occurring, and Rule 4758(d) also would set forth the manner in which error positions may be handled by the Exchange or NES. The proposed rule change is not limited to addressing order cancellation or error positions resulting only from the specific examples described in this filing.

set forth below describe some of the circumstances in which the Exchange or NES may decide to cancel orders.

Example 1. If NES or a routing destination experiences a technical or systems issue that results in NES not receiving responses to immediate or cancel ("IOC") orders that it sent to the routing destination, and that issue is not resolved in a timely manner, NES or the Exchange would seek to cancel the routed orders affected by the issue.[6] For instance, if NES experiences a connectivity issue affecting the manner in which it sends or receives order messages to or from routing destinations, it may be unable to receive timely execution or cancellation reports from the routing destinations, and NES or the Exchange may consequently seek to cancel the affected routed orders. Once the decision is made to cancel those routed orders, any cancellation that a member submitted to the Exchange on its initial order during such a situation would be honored.[7]

Example 2. If the Exchange experiences a systems issue, the Exchange may take steps to cancel all outstanding orders affected by that issue and notify affected members of the cancellations. In those cases, the Exchange would seek to cancel any routed orders related to the members' initial orders.

Examples of Circumstances That May Lead to Error Positions

In some instances, the technical or systems issue at NES, a routing destination, the Exchange, or a non-affiliate third party Routing Broker may also result in NES acquiring an error position that it must resolve. The examples set forth below describe some of the circumstances in which error positions may arise.

Example A. Error positions may result from routed orders that the Exchange or NES attempts to cancel but that are executed before the routing destination receives the cancellation message or that are executed because the routing destination is unable to process the cancellation message. Using the situation described in Example 1 above, assume that the Exchange seeks to cancel orders routed to a routing destination because it is not receiving timely execution or cancellation reports from the routing destination. In such a situation, NES may

---

[6] In a normal situation (*i.e.,* one in which a technical or systems issue does not exist), NES should receive an immediate response to an IOC order from a routing destination, and would pass the resulting fill or cancellation on to the Exchange member. After submitting an order that is routed to a routing destination, if a member sends an instruction to cancel that order, the cancellation is held by the Exchange until a response is received from the routing destination. For instance, if the routing destination executes that order, the execution would be passed on to the member and the cancellation instruction would be disregarded.

[7] If a member did not submit a cancellation to the Exchange, however, that initial order would remain "live" and thus be eligible for execution or posting on the Exchange, and neither the Exchange nor NES would treat any execution of that initial order or any subsequent routed order related to that initial order as an error.

still receive executions from the routing destination after connectivity is restored, which it would not then allocate to members because of the earlier decision to cancel the affected routed orders. Instead, NES would post those positions into its error account and resolve the positions in the manner described below.

Example B. Error positions may result from an order processing issue at a routing destination. For instance, if a routing destination experienced a systems problem that affects its order processing, it may transmit back a message purporting to cancel a routed order, but then subsequently submit an execution of that same order (*i.e.,* a locked-in trade) to The Depository Trust & Clearing Corporation ("DTCC") for clearance and settlement. In such a situation, the Exchange would not then allocate the execution to the member because of the earlier cancellation message from the routing destination. Instead, NES would post those positions into its error account and resolve the positions in the manner described below.

Example C. Error positions may result if NES receives an execution report from a routing destination but does not receive clearing instructions for the execution from the routing destination. For instance, assume that a member sends the Exchange an order to buy 100 shares of ABC stock, which causes NES to send an order to a routing destination that is subsequently executed, cleared, and closed out by that routing destination, and the execution is ultimately communicated back to that member. On the next trading day (T+1), if the routing destination does not provide clearing instructions for that execution, NES would still be responsible for settling that member's purchase, but would be left with a short position in its error account.[8] NES would resolve the position in the manner described below.

Example D. Error positions may result from a technical or systems issue that causes orders to be executed in the name of NES that are not related to NES's function as the Exchange's routing broker and are not related to any corresponding orders of members. As a result, NES would not be able to assign any positions resulting from such an issue to members. Instead, NES would post those positions into its error account and resolve the positions in the manner described below.

Example E. Error positions may result from a technical or systems issue through which the Exchange does not receive sufficient notice that a member that has executed trades on the Exchange has lost the ability to clear trades through DTCC. In such a situation, the Exchange would not have valid clearing information, which would prevent the trade from being automatically processed for clearance and settlement on a locked-in basis. Accordingly, NES would assume that member's side of the trades so that the counterparties can settle the trades. NES would post those positions into its error account and resolve the positions in the manner described below.

Example F. Error positions may result from a technical or systems issue at the Exchange

that does not involve routing of orders through NES. For example, a situation may arise in which a posted quote/order was validly cancelled but the system erroneously matched that quote/order with an order that was seeking to access it. In such a situation, NES would have to assume the side of the trade opposite the order seeking to access the cancelled quote/order. NES would post the position in its error account and resolve the position in the manner described below.

In the circumstances described above, neither the Exchange nor NES may learn about an error position until T+1, either: (1) During the clearing process when a routing destination has submitted to DTCC a transaction for clearance and settlement for which NES never received an execution confirmation; or (2) when a routing destination does not recognize a transaction submitted by NES to DTCC for clearance and settlement. Moreover, the affected members' trade may not be nullified absent express authority under Exchange rules.[9]

Proposed Amendments to Rule 4758

The Exchange proposes to amend Rule 4758 to add new paragraph (d) to address the cancellation of orders due to technical or systems issues and the use of an error account by NES.

Specifically, under paragraph (d)(1) of the proposed rule, the Exchange or NES would be expressly authorized to cancel orders as may be necessary to maintain fair and orderly markets if a technical or systems issue occurred at the Exchange, NES, or a routing destination.[10] The Exchange or NES would be required to provide notice of the cancellation to affected members as soon as practicable.

Paragraph (d)(2) of the proposed rule would permit NES to maintain an error account for the purpose of addressing positions that result from a technical or systems issue at NES, the Exchange, a routing destination, or a non-affiliate third-party Routing Broker that affects one or more orders ("error positions"). By definition, an error position would not include any position that results from an order submitted by a member to the Exchange that is executed on the Exchange and automatically processed for clearance and settlement on a locked-in basis. NES also would not be permitted to accept any positions in its

error account from an account of a member and could not permit any member to transfer any positions from the member's account to NES's error account under the proposed rule.[11] However, if a technical or systems issue results in the Exchange 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 processed for clearance and settlement on a locked-in basis.[12]

Under paragraph (d)(3), in connection with a particular technical or systems issue, NES or the Exchange would be permitted to either (i) assign all resulting error positions to members, or (ii) have all resulting error positions liquidated, as described below. Any determination to assign or liquidate error positions, as well as any resulting assignments, would be required to be made in a nondiscriminatory fashion.

NES or the Exchange would be required to assign all error positions resulting from a particular technical or systems issue to the applicable members affected by that technical or systems issue if NES or the Exchange:

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

• Determined that it has sufficient time pursuant to normal clearance and settlement deadlines to evaluate the information necessary to assign the

---

[8] To the extent that NES incurred a loss in covering its short position, it would submit a reimbursement claim to that routing destination.

[9] *See, e.g.,* Rule 11890 (regarding clearly erroneous executions).

[10] Such a situation may not cause the Exchange to declare self-help against the routing destination pursuant to Rule 611 of Regulation NMS. If the Exchange or NES determines to cancel orders routed to a routing destination under proposed Rule 4758(d), but does not declare self-help against that routing destination, the Exchange would continue to be subject to the trade-through requirements in Rule 611 with respect to that routing destination.

[11] The purpose of this provision is to clarify that NES may address error positions under the proposed rule that are caused by a technical or systems issue, but that 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 NES, the Exchange, a routing destination of NES, or a non-affiliate third-party Routing Broker. This provision would not apply, however, to situations like the one described in Example C in which NES incurred a short position to settle a member's purchase, as the member did not yet have a position in its account as a result of the purchase at the time of NES's action (*i.e.,* NES's action was necessary for the purchase to settle into the member's account). Similarly, the provision would not apply to situations like the one described in Example F, where a system issue caused one member to receive an execution for which there was not an available contraparty, in which case action by NES would be necessary for the position to settle into that member's account. Moreover, to the extent a member receives locked-in positions in connection with a technical or systems issue, that member may seek to rely on NASDAQ Rule 4626 if it experiences a loss. That rule provides members with the ability to file claims against the Exchange 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] *See* Example E above.

positions to all of the applicable members affected by that technical or systems issue; and

• Had not determined to cancel all orders affected by that technical or systems issue.

For example, a technical or systems issue of limited scope or duration may occur at a routing destination, and the resulting trades may be submitted for clearance and settlement by such routing destination to DTCC. If there were a small number of trades, there may be sufficient time to match positions with member orders and avoid using the error account.

There may be scenarios, however, where NES determines that it is unable to assign all error positions resulting from a particular technical or systems issue to all of the affected members, or determines to cancel all affected routed orders. For example, in some cases, the volume of questionable executions and positions resulting from a technical or systems issue might be such that the research necessary to determine which members to assign those executions to could be expected to extend past the normal settlement cycle for such executions. Furthermore, if a routing destination experiences a technical or systems issue after NES has transmitted IOC orders to it that prevents NES from receiving responses to those orders, NES or the Exchange may determine to cancel all routed orders affected by that issue. In such a situation, NES or the Exchange would not pass on to the members any executions on the routed orders received from the routing destination.

The proposed rule also would require NES to liquidate error positions as soon as practicable.[13] In liquidating error positions, NES would be required to provide complete time and price discretion for the trading to liquidate the error positions to a third-party broker-dealer and could not attempt to exercise any influence or control over the timing or methods of trading to liquidate the error positions.[14] NES also would be required to establish and enforce policies and procedures

reasonably designed to restrict the flow of confidential and proprietary information between the third-party broker-dealer and NES/the Exchange associated with the liquidation of the error positions.

Under proposed paragraph (d)(4), NES and the Exchange would be required to make and keep records to document all determinations to treat positions as error positions and all determinations for the assignment of error positions to members or the liquidation of error positions, as well as records associated with the liquidation of error positions through the third-party broker-dealer.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[15] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5),[16] in particular, in that 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 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 it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange believes that this proposal is in keeping with those principles since NES's or the Exchange's ability to cancel orders during a technical and systems issue and to maintain an error account facilitates the smooth and efficient operations of the market. Specifically, the Exchange believes that allowing NES or the Exchange to cancel orders during a technical or systems issue would allow the Exchange to maintain fair and orderly markets. Moreover, the Exchange believes that allowing NES to assume error positions in an error account and to liquidate those positions, subject to the conditions set forth in the proposed amendments to Rule 4758, would be the least disruptive means to correct these errors, except in cases where NES can assign all such error positions to all affected members of the Exchange. Overall, the proposed amendments are designed to ensure full trade certainty for market participants and to avoid disrupting the clearance and settlement process. The proposed amendments are also designed to provide a consistent methodology for handling error positions in a manner

that does not discriminate among members. The proposed amendments are also consistent with Section 6 of the Act insofar as they would require NES to establish controls to restrict the flow of any confidential information between the third-party broker and NES/the Exchange associated with the liquidation of error positions.

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

NASDAQ does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

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 within such longer period (i) as the Commission may designate up to 90 days of such date 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 such 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 email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–057 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

---

[13] If NES determines in connection with a particular technical or systems issue that some error positions can be assigned to some affected members but other error positions cannot be assigned, NES would be required under the proposed rule to liquidate all such error positions (including those positions that could be assigned to the affected members).

[14] This provision is not intended to preclude NES from providing the third-party broker with standing instructions with respect to the manner in which it should handle all error account transactions. For example, NES might instruct the broker to treat all orders as ''not held'' and to attempt to minimize any market impact on the price of the stock being traded.

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

[16] 15 U.S.C. 78f(b)(5).

All submissions should refer to File Number SR–NASDAQ–2012–057. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 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 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–NASDAQ–2012–057, and should be submitted on or before June 6, 2012.

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

Kevin M. O'Neill,
Deputy Secretary.
[FR Doc. 2012–11819 Filed 5–15–12; 8:45 am]
BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66958; File No. SR–NSX–2012–07]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Clarify the Purpose of, and Statutory Basis for, the May 1, 2012 Changes to the NSX Fee and Rebate Schedule

May 10, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2]

[17] 17 CFR 200.30–3(a)(12).
[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

notice is hereby given that on May 9, 2012, National Stock Exchange, Inc. filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

National Stock Exchange, Inc. ("NSX®" or "Exchange") is proposing to clarify the purpose of, and statutory basis for, its amended Fee and Rebate Schedule (the "Fee Schedule") issued pursuant to Exchange Rule 16.1(c) that went into effect on May 1, 2012 pursuant to SR–NSX–2012–06 to adjust the take fee and rebates for certain orders executed in the Exchange's Automatic Execution Mode, adjust the rebates and for certain orders executed in the Exchange's Order Delivery Mode, and re-introduce a market data revenue rebate sharing program, and to reinstate the fee changes that were implemented in SR–NSX–2012–06 which was withdrawn on May 8, 2012.

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

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

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

1. Purpose

With this rule change, the Exchange is proposing to more clearly state the purpose of, and statutory basis for, its amended Fee Schedule that went into effect on May 1, 2012, pursuant to SR–NSX–2012–06, and to reinstate the fee changes that were implemented in SR–NSX–2012–06 which was withdrawn on May 8, 2012. No changes to the Fee Schedule are proposed other than those described in SR–NSX–2012–06.[3]

The fee change proposed by SR–NSX–2012–06 modified the Fee Schedule in four respects. First, SR–NSX–2012–06 amended the rebates applicable to liquidity adding order executions in securities priced at least one dollar in

[3] As a result of this filing, the fee changes that were implemented on May 1, 2012 will continue uninterrupted despite the withdrawal of SR–NSX–2012–06.

the Exchange's Automatic Execution Mode of order interaction ("AutoEx"). Second, SR–NSX–2012–06 amended the take fee applicable to order executions in securities priced at least one dollar in AutoEx. Third, SR–NSX–2012–06 amended the rebate tiers applicable to order executions in securities priced at least one dollar in the Exchange's Order Delivery Mode of order interaction ("Order Delivery"). Finally, with respect to the rebate adjustments in both AutoEx and Order Delivery, SR–NSX–2012–06 re-established a market data rebate sharing program with Exchange ETP Holders. Each of the changes is further addressed below.

1. Rebates for Executions in Securities Priced at Least One Dollar in AutoEx

SR–NSX–2012–06 proposed to modify the rebates applicable to liquidity adding order executions in securities priced one dollar or more in AutoEx. These changes can be found in Section I of the Fee Schedule.

Prior to May 1, 2012, a flat $0.0026 rebate per share applied to an ETP Holder's displayed liquidity adding order executions of securities of at least one dollar in AutoEx. Under SR–NSX–2012–06, progressively greater rebates, of $0.0024, $0.0026, $0.0027, $0.0028 or $0.0029 per share, plus 50% of market data revenues attributable to such orders if the second (or higher) volume tier is achieved, apply depending on an ETP Holder's "Average Daily Volume" ("ADV") (as such term is further discussed below). A $0.0024 per share rebate (with no market data revenue sharing) applies to an ETP Holder's AutoEx, dollar or higher displayed order executions that add liquidity where the ETP Holder's ADV is less than 500,000 shares; a $0.0026 per share rebate (plus 50% market data revenue sharing, as further described below) applies to an ETP Holder's AutoEx, dollar or higher displayed order executions that add liquidity where the ETP Holder's ADV is at least 500,000 shares but less than 1,500,000 shares; a $0.0027 per share rebate (plus 50% market data revenue sharing) applies to an ETP Holder's AutoEx, dollar or higher displayed order executions that add liquidity where the ETP Holder's ADV is at least 1,500,000 shares but less than 5,000,000 shares; a $0.0028 per share rebate (plus 50% market data revenue sharing) applies to an ETP Holder's AutoEx, dollar or higher displayed order executions that add liquidity where the ETP Holder's ADV is at least 5,000,000 shares but less than 10,000,000 shares; and a $0.0029 per share rebate (plus 50% market data revenue sharing) applies to an ETP Holder's AutoEx, dollar or higher