dues, fees and other charges among members and issuers and other persons using any facility or system which Phlx operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As originally proposed and as modified by this proposed rule change, Phlx believes that the Order Entry Fee is reasonable because it is designed to achieve improvements in the quality of displayed liquidity and market data that will benefit all market participants. In addition, although the level of the fee may theoretically be very high, the fee is reasonable because market participants may readily avoid the fee by making improvements in their order entry practices that reduce the number of orders they enter, bring the prices of their orders closer to the NBBO, and/or increase the percentage of their orders that execute. The proposed change to the fee is reasonable because it will reduce the likelihood of the fee being imposed on an MPID that is considered acceptably efficient during regular market hours, when the impact of inefficient trading on PSX and other market participants is highest.

For similar reasons, the fee is consistent with an equitable allocation of fees, because although the fee may apply to only a small number of market participants, the fee would be applied to them in order to encourage better order entry practices that will benefit all market participants. Ideally, the fee will be applied to no one, because market participants will adjust their behavior in order to avoid the fee. The proposed change will increase the likelihood that the fee will not be imposed in unwarranted circumstances. Finally, Phlx believes that the fee is not unfairly discriminatory. Although the fee may apply to only a small number of market participants, it will be imposed because of the negative externalities that such market participants impose on others through inefficient order entry practices. The proposed modification to the fee is not unfairly discriminatory because although it will lessen the potential impact of the fee on MPIDs that are active outside of regular market hours, this change is rationally related to the fee's purpose of promoting efficient trading practices in conditions where inefficiency may negatively impact Phlx and other market participants.

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

Phlx does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, Phlx believes that the fee will constrain market participants from pursuing certain inefficient and potentially abusive trading strategies. To the extent that this change may be construed as a burden on competition, Phlx believes that it is appropriate in order to further the purposes of Section 6(b)(5) of the Act.[7] The proposed change will lessen any burden on competition by removing from consideration orders entered outside of regular market hours, when concerns about the impact of inefficient trading on Phlx and other market participants are diminished.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[8] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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 furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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–Phlx–2012–85 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 SR–Phlx–2012–85. 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 such filing also will be available for inspection and copying at the principal offices 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–Phlx-2012–85, and should be submitted on or before July 24, 2012.

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

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–16211 Filed 7–2–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67275; File No. SR–BATS–2012–024]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify Rule 11.13 Entitled ''Order Execution,'' Rule 21.9 Entitled ''Order Routing'' and Rule 27.2 Entitled ''Order Protection''

June 27, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on June 15,

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(a)(ii). [sic]

[9] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b-4.

2012, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') 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 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 filing with the Commission a proposal to amend Rule 11.13 entitled ''Order Execution'', Rule 21.9 entitled ''Order Routing'' and Rule 27.2 entitled ''Order Protection'', to modify Exchange system functionality when the consolidated market is crossed and to modify the handling of orders that have been rejected after routing away through the Exchange's affiliated broker-dealer. The proposal applies to both the BATS equity securities trading platform (''BATS Equities'') and the BATS equity options trading platform (''BATS Options'').

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.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 Exchange 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 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 purpose of this rule filing is to modify Exchange system functionality when the consolidated market is crossed and to modify the handling of orders that have been rejected after routing away through the Exchange's affiliated broker-dealer. The proposal applies to both BATS Equities and BATS Options, as described below.

BATS Equities

The Exchange is proposing changes to its system functionality for BATS Equities to implement a price constraint in the event the Exchange receives a non-routable order and a Protected Bid [3] and a Protected Offer [4] are crossed (a ''Crossed Market''). The Exchange is also proposing to provide its Users with the option to avoid any execution when there is a Crossed Market. Finally, the Exchange is proposing a change to the way that it responds to rejections of orders that were routed to a Protected Quotation.[5]

Under current BATS Rules, for any execution to occur on BATS Equities during Regular Trading Hours,[6] the price must be equal to or better than the Protected NBBO,[7] unless the order is marked ISO or unless the execution falls within another exception set forth in Rule 611(b) of Regulation NMS. For any execution to occur during the Pre-Opening Session [8] or the After Hours Trading Session,[9] the price must be equal to or better than the highest Protected Bid or lowest Protected Offer. As noted below, the Exchange also currently allows executions of orders outside of Regular Trading Hours when an order is marked ISO and there is a Crossed Market.

The restrictions on executions described above reflect the Exchange's implementation of the trade-through rule of Regulation NMS, Rule 611, which only applies during Regular Trading Hours; however the Exchange has also implemented trade-through protection outside of Regular Trading Hours in order to promote the handling of orders in a consistent and orderly fashion. Pursuant to the exception of Rule 611(b)(4) during Regular Trading Hours, as well as during the Pre-Opening Session and the After Hours Trading Session, the Exchange does not currently impose trade-through protections when there is a Crossed Market. In order to constrain the price of executions when there is a Crossed Market, in the event that a Protected Bid is crossing a Protected Offer, whether during or outside of Regular Trading Hours, unless an order is marked ISO, BATS Equities will not execute any portion of a bid at a price more than the greater of 5 cents or 0.5 percent higher than the lowest Protected Offer or any portion of an offer that is not marked ISO that would execute at a price more than the greater of 5 cents or 0.5 percent lower than the highest Protected Bid. In order to provide an additional option for Users [10] that do not want any orders to execute when there is a Crossed Market, upon instruction from a User, BATS Equities will not execute any incoming order from such User in the event a Protected Bid is crossing a Protected Offer. The Exchange believes that the thresholds proposed in this rule filing will help avoid executions of orders at prices that are significantly worse than the NBBO.[11]

The following example demonstrates how the Exchange's Crossed Market threshold would operate for BATS Equities:

- The NBBO in security ABC is $5.00 (bid) by $4.98 (offer), and thus, there is a Crossed Market;
- A User submits a non-routable market order (e.g., designated as a ''BATS Only'' order) to buy 1,000 shares of ABC;
- The Exchange has liquidity in ABC as follows: 100 shares to sell for $4.98, 100 shares to sell for $5.00, 200 shares to sell for $5.03, and 300 shares to sell for $5.05.

Under the circumstances described above, the incoming market order to buy would be executed as follows:

- 100 shares executed on the Exchange at the $4.98 price level;
- 100 shares executed on the Exchange at the $5.00 price level;
- 200 shares executed on the Exchange at the $5.03 price level;
- 600 shares cancelled back to the User.

As proposed, with a Crossed Market of $5.00 by $4.98, the Exchange will execute any incoming buy orders up to and including $5.03 and any incoming sell orders down to and including $4.95

[3] As defined in BATS Rule 1.5(t), Protected Bid means a bid in a stock that is displayed by an automated trading center, disseminated pursuant to an effective national market system plan, and an automated quotation that is the best bid of a national securities exchange or association.

[4] As defined in BATS Rule 1.5(t), Protected Offer means an offer in a stock that is displayed by an automated trading center, disseminated pursuant to an effective national market system plan, and an automated quotation that is the best offer of a national securities exchange or association.

[5] As defined in BATS Rule 1.5(t), Protected Quotation means a quotation that is a Protected Bid or Protected Offer.

[6] As defined in BATS Rule 1.5(w), Regular Trading Hours means the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

[7] As defined in BATS Rule 1.5(s), Protected NBBO means the national best bid or offer that is a Protected Quotation.

[8] As defined in BATS Rule 1.5(r), the Pre-Opening Session means the time between 8:00 a.m. and 9:30 a.m. Eastern Time.

[9] As defined in BATS Rule 1.5(c), the After Hours Trading Session means the time between 4:00 p.m. and 5:00 p.m. Eastern Time.

[10] As defined in BATS Rule 1.5(cc), a User is any Member or Sponsored Participant who is authorized to access the Exchange's system pursuant to Exchange Rules.

[11] As defined in BATS Rule 1.5(o), NBBO shall mean the national best bid or offer.

per share. Accordingly, under this example, 400 shares of the incoming buy order would be executed, including 200 shares at the Crossed Market threshold of $5.03. The remaining 600 shares of the market order would be cancelled back to the User because the liquidity on the Exchange at the $5.05 price level exceeds the thresholds set forth in proposed Rule 11.13. The Exchange notes that in the event the order was designated as eligible for routing, the Exchange's normal routing strategies would apply, and, to the extent that other market centers have better prices than are available on the BATS Book,[12] the Exchange would route the order away to such other market centers rather than executing solely on the Exchange. Accordingly, the Exchange proposes to add language to Rule 11.13 to make clear that to the extent an incoming order is executable because a Protected Bid is crossing a Protected Offer but such incoming order is eligible for routing and there is a Protected Bid or Protected Offer available at another Trading Center[13] that is better priced than the bid or offer against which the order would execute on the Exchange, the Exchange will first seek to route the order to such better priced quotation pursuant to Rule 11.13(a)(2).

The Exchange has proposed to exclude ISOs from the proposed pricing threshold because a User is subject to certain specific obligations when pricing and submitting an order as an ISO.[14] The Exchange believes that rejecting an ISO upon receipt due to a Crossed Market is inconsistent with the general notion of an ISO, which allows a User to designate a price at which the Exchange can execute the order without regard to the Exchange's view of the NBBO.

In addition to the implementation of Crossed Market price constraints and the ability to designate orders as ineligible for execution during a Crossed Market, the Exchange is proposing to modify the way that it handles rejections received from other Trading Centers. Currently the Exchange routes all orders through its affiliated broker-dealer, BATS Trading, Inc. (''BATS Trading''). In certain instances, BATS Trading, in turn, routes to certain third party broker-dealers in order to ensure that the Exchange has effective and redundant connections to all other Trading Centers with Protected Quotations. BATS Trading occasionally receives ''rejections'' of orders either from the Trading Centers to which it routes directly or through the third party broker-dealers through which it routes. Such rejections can be for various reasons, including a technical problem with the order, market access thresholds implemented pursuant to SEC Rule 15c3–5, or other operational thresholds. The Exchange currently handles orders on which it receives rejections by either cancelling the order back to the User or, if the order submitted by the User instructs the Exchange to do so, by posting the order to the Exchange's order book after subjecting such order to its price sliding process pursuant to Rule 11.9(g) in order to avoid locking any Protected Quotation that it cannot access. Rather than posting an order to its book, the Exchange proposes to cancel all orders for which it has received a rejection due to an inability to access another Trading Center, providing a User with the opportunity to submit a new order or seek another path to the applicable Protected Quotation. The Exchange has also proposed to make clear that such a cancellation will not apply to Protected Quotations published by a Trading Center against which the Exchange has declared self-help pursuant to Exchange Rule 11.13(d). Although a Protected Quotation may be inaccessible to the Exchange, once the Exchange has declared self-help pursuant to Rule 11.13(d), the Exchange disregards, and will continue to execute transactions and route orders without regard to, such Protected Quotations. Notwithstanding the foregoing, however, even after the Exchange has received a rejection from a Trading Center, if there are multiple Trading Centers included in the routing option selected by the User that have Protected Quotations at the NBBO, the System[15] will continue to route the order to the Protected Quotations at other such other Trading Centers at that price level.

BATS Options

The Exchange proposes to make each of the proposed changes described above to the functionality applicable to trading on and routing away from, BATS Options. The Exchange notes that there are no substantive differences to the proposed functionality; rather, the only differences between the proposal for BATS Equities and BATS Options are the references to applicable rules and terms.

The Exchange is proposing changes to its system functionality for BATS Options to implement a price constraint in the event the Exchange receives a non-routable order and a Protected Bid is higher than a Protected Offer[16] in a series of an Eligible Class (a ''Crossed Market'').[17] The Exchange is also proposing to provide its Users with the option to avoid any execution when there is a Crossed Market. Finally, the Exchange is proposing a change to the way that it responds to rejections of orders that were routed to a Protected Quotation.[18]

Under current BATS Rules, Members are prohibited from effecting Trade-Throughs[19] on BATS Options unless the execution falls within another exception set forth in BATS Rule 27.2(b), which includes an exception for any order that is marked ISO. Pursuant to the exception of Rule 27.2(b)(3), the Exchange does not prohibit Trade-Throughs when there is a Crossed Market. In order to constrain the price of executions when there is a Crossed Market, in the event that a Protected Bid is crossing a Protected Offer, unless an order is marked ISO, BATS Options will not execute any portion of a bid at a price more than the greater of 5 cents or 0.5 percent higher than the lowest Protected Offer or any portion of an

[12] As defined in BATS Rule 1.5(e), BATS Book means the System's electronic file of orders.

[13] As defined in BATS Rule 2.11, a Trading Center is another securities exchange, facility of a securities exchange, automated trading system, electronic communication network or other broker or dealer.

[14] *See* 17 CFR 240.600(b)(30) and 611(c); *see also* BATS Rule 11.9(d)(1), which states that ''[t]he Exchange relies on the marking of an order as an ISO order when handling such order, and thus, it is the entering Member's responsibility, not the Exchange's responsibility, to comply with the requirements of Regulation NMS relating to Intermarket Sweep Orders.'' The Exchange notes that as a self-regulatory organization it conducts regulatory oversight of each Exchange Member's use of Intermarket Sweep Orders on the Exchange.

[15] As defined in BATS Rule 1.5(aa), System means the electronic communications and trading facility designate [sic] by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.

[16] As defined in BATS 27.1(18), ''Protected Bid'' or ''Protected Offer'' means a Bid or Offer in an options series, respectively, that: (A) Is disseminated pursuant to the OPRA Plan; and (B) Is the Best Bid or Best Offer, respectively, displayed by an Eligible Exchange. An ''Eligible Exchange'' is a national securities exchange registered with the SEC in accordance with Section 6(a) of the Exchange Act that: (a) Is a Participant Exchange in OCC (as that term is defined in Section VII of the OCC by-laws); (b) is a party to the OPRA Plan (as that term is described in Section I of the OPRA Plan); and (c) if the national securities exchange chooses not to become a party to this Plan, is a participant in another plan approved by the Commission providing for comparable Trade-Through and Locked and Crossed Market protection.

[17] This definition for Crossed Market is consistent with the definition contained in BATS Rule 27.1(5).

[18] As defined in BATS Rule 27.1(19), Protected Quotation means a Protected Bid or Protected Offer.

[19] As defined in BATS Rule 27.1(22), a Trade-Through is a transaction in an options series at a price that is lower than a Protected Bid or higher than a Protected Offer.

offer that is not marked ISO that would execute at a price more than the greater of 5 cents or 0.5 percent lower than the highest Protected Bid. In order to provide an additional option for Users [20] that do not want any orders to execute when there is a Crossed Market, upon instruction from a User, BATS Options will not execute any incoming order from such User in the event a Protected Bid is crossing a Protected Offer. The Exchange believes that the thresholds proposed in this rule filing will help avoid executions of orders at prices that are significantly worse than the NBBO.[21]

The following example demonstrates how the Exchange's Crossed Market threshold would operate for BATS Options:

- The NBBO in options series XYZ is $2.00 (bid) by $1.98 (offer), and thus, there is a Crossed Market;
- A User submits a non-routable market order (e.g., designated as a ''BATS Only'' order) to buy 100 contracts of XYZ;
- The Exchange has liquidity in XYZ as follows: 10 contracts to sell for $1.98, 10 contracts to sell for $2.00, 20 contracts to sell for $2.03, and 30 contracts to sell for $2.05.

Under the circumstances described above, the incoming market order to buy would be executed as follows:

- 10 contracts executed on the Exchange at the $1.98 price level;
- 10 contracts executed on the Exchange at the $2.00 price level;
- 20 contracts executed on the Exchange at the $2.03 price level;
- 60 contracts cancelled back to the User.

As proposed, with a Crossed Market of $2.00 by $1.98, the Exchange will execute any incoming buy orders up to and including $2.03 and any incoming sell orders down to and including $1.95 per share. Accordingly, under this example, 40 contracts of the incoming buy order would be executed, including 20 contracts at the Crossed Market threshold of $2.03. The remaining 60 contracts of the market order would be cancelled back to the User because the liquidity on the Exchange at the $2.05 price level exceeds the thresholds set forth in proposed Interpretation and Policy .01 to Rule 27.2. The Exchange notes that in the event the order was designated as eligible for routing, the Exchange's normal routing strategies would apply, and, to the extent that other market centers have better prices than are available on the BATS Options Book,[22] the Exchange would route the order away to such other market centers rather than executing solely on the Exchange. Accordingly, the Exchange proposes to add Interpretation and Policy .02 to Rule 27.2 to make clear that to the extent an incoming order is executable because a Protected Bid is crossing a Protected Offer but such incoming order is eligible for routing and there is a Protected Bid or Protected Offer available at another options exchange that is better priced than the bid or offer against which the order would execute on the Exchange, the Exchange will first seek to route the order to such better priced quotation pursuant to Rule 21.9.

As described for BATS Equities, the Exchange has proposed to exclude ISOs from the proposed pricing threshold for BATS Options because a User is subject to certain specific obligations when pricing and submitting an order as an ISO. The Exchange believes that rejecting an ISO upon receipt due to a Crossed Market is inconsistent with the general notion of an ISO, which allows a User to designate a price at which the Exchange can execute the order without regard to the Exchange's view of the NBBO.

In addition to the implementation of Crossed Market price constraints and the ability to designate orders as ineligible for execution during a Crossed Market, the Exchange is proposing to modify the way that it handles rejections received from other options exchanges. Currently the Exchange routes all orders through its affiliated broker-dealer, BATS Trading, Inc. (''BATS Trading''). In certain instances, BATS Trading, in turn, routes to certain third party broker-dealers in order to ensure that the Exchange has effective and redundant connections to all other options exchanges with Protected Quotations. BATS Trading occasionally receives ''rejections'' of orders either from the options exchanges to which it routes directly or through the third party broker-dealers through which it routes. Such rejections can be for various reasons, including a technical problem with the order, market access thresholds implemented pursuant to SEC Rule 15c3–5, or other operational thresholds. The Exchange currently handles orders on which it receives rejections by either cancelling the order back to the User or, if the order submitted by the User instructs the Exchange to do so, by posting the order to the Exchange's order book after subjecting such order to its price sliding process pursuant to Rule 21.1 in order to avoid locking any Protected Quotation that it cannot access. Rather than posting an order to its book, the Exchange proposes to cancel all orders for which it has received a rejection due to an inability to access another options exchange, providing a User with the opportunity to submit a new order or seek another path to the applicable Protected Quotation. The Exchange has also proposed to make clear that such a cancellation will not apply to Protected Quotations published by an options exchange against which the Exchange has declared self-help pursuant to Exchange Rule 27.2(b)(1). Although a Protected Quotation may be inaccessible to the Exchange, once the Exchange has declared self-help pursuant to Rule 27.2(b)(1), the Exchange disregards, and will continue to execute transactions and route orders without regard to, such Protected Quotations. Notwithstanding the foregoing, however, even after the Exchange has received a rejection from an options exchange, if there are multiple options exchanges included in the routing option selected by the User that have Protected Quotations at the NBBO, the System [23] will continue to route the order to the Protected Quotations at other such other options exchanges at that price level.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[24] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[25] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system by helping to avoid executions of orders on the Exchange at prices that are significantly worse than the national best bid or national best offer at the time an order is initially received by the Exchange, even if executions are permissible pursuant to Regulation NMS or under the Exchange's analogous rules for BATS Options. The Exchange believes

[20] As defined in BATS Rule 16.1(a)(63), a User is any Options Member or Sponsored Participant who is authorized to access the Exchange's system pursuant to Exchange Rules.

[21] As defined in BATS Rule 27.1(11), NBBO shall mean the national best bid and offer in an option series as calculated by an Eligible Exchange.

[22] As defined in BATS Rule 16.1(a)(9), BATS Options Book means the means the electronic book of options orders maintained by the System.

[23] As defined in BATS Rule 16.1(a)(59), System means the automated trading system used by BATS Options for the trading of options contracts.

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

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

that permitting Users to avoid any execution of an incoming order in a Crossed Market is an additional functionality that is consistent with the protection of investors and the public interest. Although the Exchange does not believe that any other self-regulatory organization has exactly the same Crossed Market threshold in place, the Exchange as well as other market centers have implemented a variety of pricing thresholds to constrain executions and protect market participants.[26] Also, this proposal is consistent with existing Exchange rules that allow for the breaking of trades deemed clearly erroneous [27] or in obvious error [28] by reference to objective thresholds worse than the NBBO. The Exchange believes that the proposed pricing thresholds are reasonable because they are significantly narrower than thresholds in place on BATS Equities for market orders received by the Exchange [29] and also narrower than applicable clearly erroneous thresholds for BATS Equities. A narrow threshold will protect market participants and their customers from potentially executing at prices away from the NBBO when there is a Crossed Market, which can be an indication of a pricing anomaly in a security or a potential systems issue at another Trading Center or options exchange. Further, the proposed threshold is consistent with the protection of investors and the public interest because it will help to avoid clearly erroneous executions or obvious error transactions from occurring in the first place, rather than allowing an execution to occur and breaking the trade based on Exchange rules.

Finally, the Exchange believes that the cancellation of all orders that have been rejected by other market centers or third party routers, rather than posting such orders to the Exchange's book will provide Users with more immediate certainty regarding their orders, and will provide Users the ability to modify and re-submit or send their orders via a different path to attempt to access the applicable Protected Quotation. Accordingly, the modifications to BATS Rules 11.13 and 20.9 [sic] promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any 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 from the date on which it was filed, 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 [30] and Rule 19b–4(f)(6) thereunder.[31]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [32] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6) [33] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay, noting that doing so would allow investors and market participants to benefit immediately from additional protection against certain executions in Crossed Market conditions and from the ability to re-route or re-submit orders that are unable to access, and therefore rejected by, other market centers with Protected Quotations at the NBBO. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[34] Therefore, the Commission designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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 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 Exchange 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–BATS–2012–024 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 SR–BATS–2012–024. 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

[26] *See, e.g.,* BATS Rule 11.9(a)(2), which constrains the executions of a market order on BATS to $0.50 or 5 percent away from the NBBO at the time the order initially reaches the Exchange; *see also* NYSE Arca Rule 7.31(a); NASDAQ Rule 4751(f)(13).

[27] *See* BATS Rule 11.17.

[28] *See* BATS Rule 20.6.

[29] *See supra* note 26.

[30] 15 U.S.C. 78s(b)(3)(A).

[31] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[32] 17 CFR 240.19b–4(f)(6).

[33] 17 CFR 240.19b–4(f)(6).

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

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.

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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.