

The Commission believes that market participants (retail and non-retail) are not likely to be detrimentally affected by other market participants' knowledge, via the ELO identifier, that certain orders originated from retail investors and must remain unchanged for at least one second. In particular, information leakage would likely not be a concern for retail interest because retail interest is most often represented by one order at a single price.<sup>115</sup> Also, the lack of an ELO attribute on any particular order would likely not allow market participants to say with any assurance that the order is of a particular participant type.<sup>116</sup> Moreover, the Commission does not believe that identification of ELO orders would necessarily result in market participants choosing to route to ELO orders last and therefore result in lower fill rates for these orders.<sup>117</sup> In addition, the Commission notes that the use of the ELO attribute is voluntary.

Finally, one commenter suggested that the proposal could create a conflict with FINRA Rule 5320, commonly known as the Manning rule.<sup>118</sup> According to the commenter, if a broker-dealer has routed a customer ELO order to Nasdaq but is required to pull that ELO order within one second and fill it to comply with its obligations under FINRA Rule 5320, that broker-dealer could become out of compliance with the ELO requirements and, as a result, its retail customer limit orders could be disadvantaged *vis-à-vis* other broker-dealers' retail customer limit orders.<sup>119</sup> This commenter also asserted that an Exchange member may receive a sub-second cancellation request from a customer, which could cause the member to fall under the 99% threshold and become ineligible to submit ELO orders on behalf of other customers.<sup>120</sup>

In response, the Exchange stated that the Manning obligations of a member using the ELO functionality would be no different from the obligations on an OTC market maker that internalizes orders and relies on the "no-

knowledge" exception to separate its proprietary trading from its handling of customer orders.<sup>121</sup> The Exchange stated that this exception should be equally applicable to a member using the ELO functionality.<sup>122</sup> The Exchange also noted that it believes that retail investor limit orders that are posted on the Exchange will generally not be cancelled in a short period of time such as one second, because retail investors tend to have long-term investment goals and increasing the chance of receiving an execution is worth the risk of their order resting for one second or longer.<sup>123</sup>

In response to the Exchange, the commenter disputed the Exchange's assertion that the "no knowledge" exception to the Manning rule should address its concern, noting that it would persist where a firm may choose not to use the "no-knowledge" exception in order to provide higher fill rates or price improvement opportunities to its customers.<sup>124</sup> In reply, the Exchange noted that this scenario posited by the commenter is representative of a voluntary strategy used by the broker-dealer, and that the broker-dealer is not compelled to use ELO.<sup>125</sup>

The Commission does not believe that the commenter's assertion that broker-dealers could be conflicted in their ability to utilize the ELO functionality and also comply with their obligations under FINRA Rule 5320 is a basis for finding that the Exchange's proposal is inconsistent with the Act. As the Exchange noted, the "no-knowledge" exception to FINRA Rule 5320 could be applicable to an Exchange member using the ELO functionality.<sup>126</sup> To the extent firms choose not to rely on the "no-knowledge" exception, any limitation on such firms' ability to utilize the ELO functionality and resulting effect on their ability to compete with other broker-dealers that handle retail order flow would stem from the firms' business judgment, not the eligibility criteria for ELO attribute usage, which apply uniformly to any Exchange member seeking to utilize the ELO functionality.

<sup>121</sup> See Nasdaq Response Letter I at 5. See also Supplementary Material .02 to FINRA Rule 5320.

<sup>122</sup> See Nasdaq Response Letter I at 5.

<sup>123</sup> See *id.* at 4. See also FIA PTG Letter I at 3 (stating that most retail participants do not cancel orders within one second).

<sup>124</sup> See Citadel Letter II at 3-4.

<sup>125</sup> See Nasdaq Response Letter II at 7.

<sup>126</sup> See Nasdaq Response Letter I at 5. See also Supplementary Material .02 to FINRA Rule 5320.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>127</sup> that the proposed rule change (SR-NASDAQ-2016-161), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>128</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81094; File No. SR-ISE-2017-72]

#### Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the SPY Pilot Program

July 7, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 5, 2017, Nasdaq ISE, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 the Substance of the Proposed Rule Change

The Exchange proposes to mend its rules to extend the pilot program that eliminated position and exercise limits for physically-settled options on the SPDR S&P ETF Trust ("SPY") ("SPY Pilot Program").

The text of the proposed rule change is available on the Exchange's Web site at [www.ise.com](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 Exchange included statements

<sup>127</sup> 15 U.S.C. 78s(b)(2).

<sup>128</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>115</sup> See *supra* note 102 and accompanying text.

<sup>116</sup> See *supra* notes 113-114 and accompanying text.

<sup>117</sup> See *supra* note 105 and accompanying text.

<sup>118</sup> See Citadel Letter I at 2. FINRA Rule 5320(a) states that "[e]xcept as provided herein, a member that accepts and holds an order in an equity security from its own customer or a customer of another broker-dealer without immediately executing the order is prohibited from trading that security on the same side of the market for its own account at a price that would satisfy the customer order, unless it immediately thereafter executes the customer order up to the size and at the same or better price at which it traded for its own account."

<sup>119</sup> See Citadel Letter I at 2.

<sup>120</sup> See *id.* at 5.

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 aspects of such statements.

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

1. Purpose

The Exchange proposes to amend Supplementary Material .01 to ISE Rule 412 and Supplementary Material .01 to ISE Rule 414 to extend the duration of the SPY Pilot Program through July 12, 2018. This filing does not propose any substantive changes to the SPY Pilot Program. In proposing to extend the SPY Pilot Program the Exchange reaffirms its consideration of several factors that supported the original proposal of the SPY Pilot Program, including (1) the liquidity of the option and the underlying security, (2) the market capitalization of the underlying security and the related index, (3) the reporting of large positions and requirements surrounding margin, and (4) financial requirements imposed by ISE and the Commission.

With this proposal, the Exchange submits the SPY report to the Commission, which report reflects, during the time period from May 2016 through May 2017, the trading of standardized SPY options with no position limits consistent with option exchange provisions.<sup>3</sup> The report was prepared in the manner specified in the Exchange's prior rule filing extending the SPY Pilot Program.<sup>4</sup> The Exchange notes that it is unaware of any problems created by the SPY Pilot Program and does not foresee any as a result of the proposed extension. The proposed extension will allow the Exchange and the Commission to further evaluate the SPY Pilot Program and the effect it has on the market.

The Exchange represents that, should the Exchange propose to extend the pilot program, adopt on a permanent basis the pilot program or terminate the pilot program, it will submit a new pilot report at least thirty (30) days before the end of the extended SPY Pilot Program, which will cover the extended pilot period. The Pilot Report will detail the

size and different types of strategies employed with respect to positions established as a result of the elimination of position limits in SPY. In addition, the Pilot Report will note whether any problems resulted due to the no limit approach and any other information that may be useful in evaluating the effectiveness of the SPY Pilot Program. The Pilot Report will compare the impact of the SPY Pilot Program, if any, on the volumes of SPY options and the volatility in the price of the underlying SPY shares, particularly at expiration. In preparing the report the Exchange will utilize various data elements such as volume and open interest. In addition the Exchange will make available to Commission staff data elements relating to the effectiveness of the SPY Pilot Program.

Conditional on the findings in the SPY Pilot Report, the Exchange will file with the Commission a proposal to extend the pilot program, adopt the pilot program on a permanent basis or terminate the pilot. If the SPY Pilot Program is not extended or adopted on a permanent basis by the expiration of the Extended Pilot, the position limits for SPY options would revert to limits in effect prior to the commencement of the SPY Pilot Program.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>6</sup> 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.

The Exchange believes that the proposed rule change would be beneficial to market participants, including market makers, institutional investors and retail investors, by permitting them to establish greater positions when pursuing their investment goals and needs. The Exchange also believes that economically equivalent products should be treated in an equivalent manner so as to avoid regulatory arbitrage, especially with respect to position limits. Treating SPY and SPX options differently by virtue of imposing

different position limits is inconsistent with the notion of promoting just and equitable principles of trade and removing impediments to perfect the mechanisms of a free and open market. At the same time, the Exchange believes that the elimination of position limits for SPY options would not increase market volatility or facilitate the ability to manipulate the market.

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

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard, the Exchange notes that the rule change is being proposed as a competitive response to similar filings that the Exchange expects to be filed by other options exchanges. The Exchange believes this proposed rule change is necessary to permit fair competition among the options exchanges and to establish uniform position limits for a multiply listed options class.

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

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.<sup>7</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>8</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>9</sup> 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 so that the proposal may

<sup>7</sup> 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.

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>3</sup> The report is attached as Exhibit 3 [sic].

<sup>4</sup> See Securities Exchange Act Release No. 78295 (July 18, 2016), 81 FR 46728 (July 12, 2016) (SR-ISE-2016-16).

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

become operative immediately upon filing. The Exchange believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it will allow the SPY Pilot Program to continue without interruption. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>10</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2017-72 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2017-72. 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 such 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-ISE-2017-72, and should be submitted on or before August 3, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81090; File No. SR-NASDAQ-2017-063]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the SPY Pilot Program

July 7, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 29, 2017, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 the Substance of the Proposed Rule Change

The Exchange proposes to extend for another twelve (12) month time period the pilot program to eliminate position limits for options on the SPDR® S&P 500® exchange-traded fund ("SPY ETF" or "SPY"),<sup>3</sup> which list and trade under the symbol SPY ("SPY Pilot Program").

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaq.cchwallstreet.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 aspects of such statements.

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

###### 1. Purpose

The purpose of the proposed rule change is to amend the Supplementary Material at the end of Chapter III, Section 7 (Position Limits), to extend the current pilot which expires on July 12, 2017 for an additional twelve (12) month time period to July 12, 2018 ("Extended Pilot"). This filing does not propose any substantive changes to the SPY Pilot Program. In proposing to extend the SPY Pilot Program, the Exchange reaffirms its consideration of several factors that supported the original proposal of the SPY Pilot Program, including (1) the availability of economically equivalent products and their respective position limits; (2) the liquidity of the option and the underlying security; (3) the market capitalization of the underlying security and the related index; (4) the reporting of large positions and requirements

<sup>3</sup> "SPDR®," "Standard & Poor's®," "S&P®," "S&P 500®," and "Standard & Poor's 500" are registered trademarks of Standard & Poor's Financial Services LLC. The SPY ETF represents ownership in the SPDR S&P 500 Trust, a unit investment trust that generally corresponds to the price and yield performance of the SPDR S&P 500 Index.

<sup>10</sup> 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).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.